

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

MISC. APPLICATION NO. 15 OF 2021

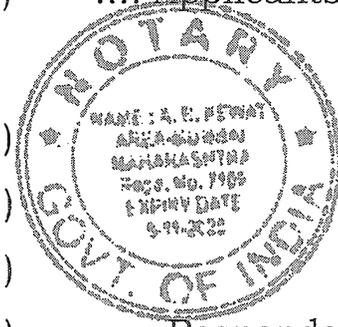
1. Smt Jyoti H. Mehta, sole legal heir)
of late Shri Harshad Mehta)
2. Shri Ashwin Mehta)
3. Smt Bhavna Manish Shah)
4. Dr. Hitesh S. Mehta)
5. Shri Sudhir S. Mehta)
6. Shri Aatur Harshad Mehta)
Residing at 32, Madhuli Apts.,)
Worli, Mumbai 400 018)



.... Applicants

Vs.

- The Custodian appointed u/s 3(2) of)
the Torts Act and having his office at)
10th Floor, Nariman Bhavan, Nariman)
Point, Mumbai 400 021)



..... Respondent

**THE HUMBLE APPLICATION OF
THE APPLICANTS ABOVE NAMED:**

MOST RESPECTFULLY SHEWETH:

1. The Applicants (other than Smt Bhavna M. Shah and Shri Aatur Harshad Mehta) are all notified entities notified by the Custodian on 08.06.1992 u/s 3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (**Torts Act**) and consequent to their notification all their assets have come to be automatically attached u/s 3(3) of the Torts Act and in terms of Sec.3(4) of the Torts Act these attached assets are liable to be dealt with by the Custodian as per the orders of this Hon'ble Court. The Applicant, Smt Bhavna Manish Shah is the married daughter of late Smt Rasila Mehta and one of her legal heir. That Smt Rasila Mehta came to be notified by the

Custodian after about 15 years on 04.01.2007. That Shri Aatur Harshad Mehta is son of and one of the 3 legal heirs of late Shri Harshad Mehta and also the legal heir of late Smt Rasila Mehta through her son late Shri Harshad Mehta. Smt Rasila Mehta was also one of the legal heir of late Shri Harshad Mehta being his mother since he expired in judicial custody on 30.12.2001. That both Smt Rasila Mehta and Shri Aatur Mehta had not made any claim on the estate of late Shri Harshad Mehta and in his Will late Shri Harshad S. Mehta had bequeathed his estate in favour of Smt Jyoti Mehta being the sole legal heir. That therefore Smt Jyoti Mehta has filed the present Application in the capacity of sole legal heir of late Shri Harshad Mehta as she has been now for past 2 decades representing the estate of late Shri Harshad Mehta. In fact, Smt Jyoti Mehta is also notified by the Custodian as wife of Shri Harshad Mehta since 08.06.1992. That therefore Applicant Nos.1, 2, 4 and 5 are notified entities suffering the drastic consequences of notification and consequent attachment of their assets for past almost 29 years since 08.06.1992 and suffered the legal disability for all these years only because they happen to be related to Shri Harshad Mehta.

2. The Applicants state that Respondent is the Custodian appointed u/s 3(2) of the Torts Act and required to manage the attached assets of the Applicants u/s 3(4) of the Torts Act as per the directions of the Hon'ble Special Court. The Applicants have joined the Custodian as a party since they have prayed for reliefs against him. The Applicants state that under the Torts Act, the Custodian has 2 powers viz. (i) power to notify a person u/s 3(2) and (ii) power to cancel a contract or an agreement u/s 4(1) of the Torts Act of any notified person fraudulently entered into by him during the statutory period of 01.04.1991 to 06.06.1992 ("**statutory period**"). The Custodian, besides above does not enjoy any independent powers and the property which gets attached also does not vest in him.



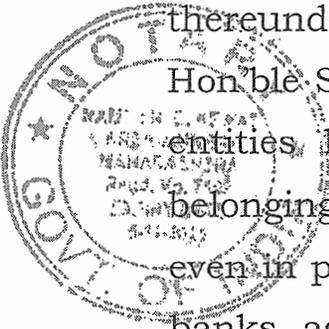
3. The Applicant states that Smt Jyoti Mehta and Dr. Hitesh Mehta have never been accused and involved in any offence relating to transactions in securities during the statutory period but yet they have been notified by the Custodian presumably under an apprehension and belief that they have received tainted monies belonging to banks from Shri Harshad Mehta (**HSM**) out of monies allegedly diverted by him from banks during the statutory period. In fact, Smt Jyoti Mehta was cited as an accused but this Hon'ble Court by an order dated 26.10.1994 discharged her before trial when she filed MA 27 of 1994 in Special Case No.1 of 1993 and a copy of above order is enclosed at **Exhibit A**. The Applicants state that Shri Ashwin Mehta and Shri Sudhir Mehta were also notified by Custodian under similar apprehensions but in several cases registered by CBI citing them as accused no evidence has been adduced or established by CBI for any participation or receipt of any tainted monies belonging to banks by them. The Applicants clarify that only the sole proprietary brokerage firm of M/s. Harshad S. Mehta had undertaken the transactions in securities with banks and financial institutions and this fact has got conclusively established since no bank or financial institution has filed any claim on any of the family members or even against legal heirs of late Shri Harshad Mehta alleging any benefit received by them out of the monies belonging to the banks. This fact conclusively establishes that they have not participated in any transactions in securities undertaken with the banks.

4. The Applicants state that the Custodian is given powers u/s 4(1) to cancel a contract or an agreement if it is fraudulently entered into by a notified person during the statutory period to enable him to trace and recover the attached properties fraudulently diverted by the notified person to any third party. However, the Custodian during past 29 years has not invoked his powers u/s 4(1) of the Torts Act against any of the notified entities in the family of HSM or corporate entities promoted by them (**hereinafter collectively referred to as "Mehtas"**) and



therefore it is liable to be presumed that HSM has not diverted any monies to the other notified entities during the statutory period. In essence, all the contracts entered into by the other notified entities with HSM are all legally valid and this fact also establishes that but for the complaint received by the Custodian from Ministry of Finance against 29 entities, there is no material with the Custodian which justifies their notification. During past 29 years the Custodian has not adduced any evidence in any proceedings before this Hon'ble Court to establish any nexus as required in law laid down by Hon'ble Bombay High Court in the case of Hitesh Shantilal Mehta Vs Union of India reported as **1992 (3) BOM.C.R.716**.

5. The Applicants state that during past 29 years the Custodian has also not obtained any decrees against the family members and the corporate entities for and on behalf of Shri Harshad Mehta even after receiving their books of accounts and even therefore it emerges that the Custodian had notified the family members and corporate entities without having any material before him and instead of using his powers u/s 4(1) to trace and recover the monies allegedly diverted by HSM to the family members and corporate entities, the Custodian has abused his powers and used notification as a tool for causing recovery from the family members but yet never filed any recovery applications against them to perpetuate their notification for past 29 years. The Applicants state that they have suffered the drastic consequences of notification at the hands of the Custodian only because they happen to be related to Shri Harshad Mehta.
6. The Applicants state that besides above, even the specialized investigating agencies like CBI and the Income Tax department who were directed by this Hon'ble Court to produce evidence in their possession has not implicated any of the family members with the charge of receipt of tainted monies belonging to banks from the account of HSM to them. This was after combing through each and every impugned transaction of HSM and analysing the flow and utilisation of monies received

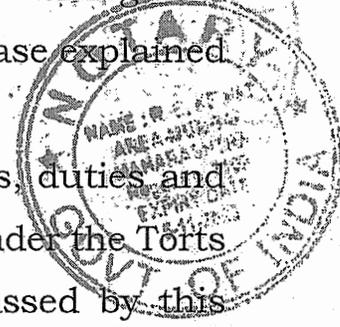


thereunder. That the banks even after being given remedy by Hon'ble Supreme Court to lodge their claims on other notified entities, have not put any claims on the attached assets belonging to other notified entities during past 29 years. That even in proceedings leading to awarding of *ex-parte* decrees to banks against HSM, the banks have averred that monies belonging to them have been fully utilized by HSM himself and therefore they have pleaded and prayed for decrees only against the estate of late Shri Harshad Mehta. That even while joining the 3 legal heirs of late HSM in decretal and execution proceedings, the banks have averred that their liability to pay to banks will be limited only to the inheritance received from the estate of late HSM. The Applicants crave leave to refer to and rely upon the proceedings of this Hon'ble Court awarding 3 *ex-parte* decrees to SBI, 1 decree to SBI Capital Markets Ltd. and 1 decree in favour of Standard Chartered Bank as also the execution proceedings filed by the banks in respect of above decrees when produced.

7. The Applicants state that in essence, after 29 years when all facts and evidence have already emerged and trials of all criminal cases are already over and since the Custodian has neither invoked the powers u/s 4(1) nor established the nexus, it can be easily concluded that none of the Applicants who have been notified by the Custodian are involved in any offence relating to transactions in securities during the statutory period. The Applicants therefore humbly submit that they should not be penalised any further by the Custodian as they are not liable to be treated on the same footing as other notified entities who have actually been involved in offences relating to transactions in securities. The above is humbly submitted as the scheme, objects and provisions of the Torts Act does not mandate or justify any harsh treatment to the persons who have not committed offences for which the Torts Act has been promulgated by the Parliament. The Applicants humbly pray that therefore the reliefs prayed for by the Applicants in the

present Application may be granted to them by taking into account the aforesaid factual background of the case explained by them.

8. The Applicants state that the role, responsibilities, duties and functions of the Custodian are very well defined under the Torts Act as also through a number of judgments passed by this Hon'ble Court and Hon'ble Supreme Court, the relevant extracts of which are furnished in an enclosed chart at **Exhibit B**. The primary duty of the Custodian under the Torts Act is to preserve, protect and augment the attached assets of notified persons and to trace and recover the attached assets lying in the hands of third parties by assisting this Hon'ble Court in attachment and recovery of such assets so that they become available for distribution amongst the creditors of notified entities. Thus as a part of his primary duty the Custodian is required to contest false claims of recovery against notified persons and is also required to cause recovery of the attached assets from the third parties. The Applicants state that in case of every other notified entity, the Custodian has been filing applications for recovery of the smallest amounts for recovery from third parties and has also been contesting the claims made on the notified entities but so far as Mehtas are concerned, the Custodian has been colluding with the creditors as also deliberately not recovering their attached assets. In support of above contentions, the Applicants are pleased to enclose a chart at **Exhibit C** giving particulars of recovery applications filed by the Custodian on behalf of other notified entities whereas in case of the Mehtas the recovery has not been caused for more than two decades for amounts running into hundreds of crores including in cases where the Custodian has been already directed to recover the attached assets from third parties. In further support of above contentions, the Applicants crave leave of this Hon'ble Court to refer to and rely upon the proceedings in MA 106 to 113 of 2007, MA 13 and 14 of 2011 and MA 8 of 2016 when produced.





9. The Applicants state that notwithstanding above, in terms of law examined and analysed in Paras 30 to 32 of the judgment of the Hon'ble Supreme Court in the case of Harshad Shantilal Mehta Vs Custodian reported as (1998) 5 SCC 1 (**hereinafter referred to as "the said judgment"**) the role of the Custodian and of this Hon'ble Court is likened with the role played by the official receiver and official assignee both under winding up of companies and insolvency of persons. It is laid down that the Liquidator and Official Receiver has a duty to resist any false claims. The Applicants humbly submit that adopting the same analogy the Custodian and this Hon'ble Court has the duty to resist false claims made on notified persons on behalf of the other genuine creditors by acting as their trustee in order to ensure a fair, early and an equitable distribution amongst the creditors u/s 11(2) of the Torts Act. This is because if any party succeeds in securing a decree for amounts to which it is not entitled to, the same would be at the cost and expense of the other creditors and it will vitiate the distribution. That the functioning of the Custodian and this Hon'ble Court has been likened by the Hon'ble Supreme Court in the said judgment with the functioning of the insolvency court or the Official Receiver.
10. The Applicants state that the notified person may/may not defend his legal interest for a variety of reasons and more particularly due to attachment of his assets and therefore judicial notice has been taken by Hon'ble Supreme Court of the conditions prevailing with the notified persons in Para 35 of the said judgment which is reproduced as under:

Para 35: ".....*The assessee who is before the Special Court, is a person liable to be charged with an offence relating to transactions in securities. He may not, in these circumstances, explain transactions before the Income Tax authorities, in case his position is prejudicially affected in defending criminal charges. Then, on account of his property being attached, he may not be in a position to deposit the tax assessed or file appeals of further*



proceedings under the relevant tax law which he could have otherwise done”.

The Applicants state that once the assets of the notified persons get attached and comes within the management of the Custodian and control of this Hon'ble Court the notified persons thereafter cannot be concurrently made liable to manage their attached assets which responsibility rests with the Custodian. However, the notified entities have a freedom to participate and defend their legal interest particularly if it is being neglected by the Custodian.

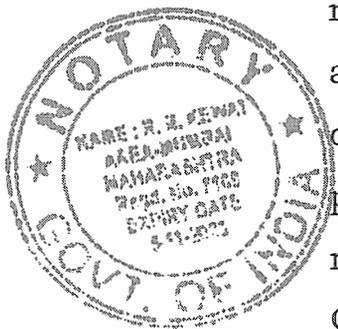
11. The Applicants state that thus the Custodian has a primary duty to preserve, protect and augment the attached assets of a notified person at all times including in cases where the notified person does not defend his legal interest as is explained above and also observed by this Hon'ble Court in the judgment passed by it on 12.02.1996 in MP 215 of 1995 being *Growmore Research & Assets Management Ltd. Vs Custodian*, a copy of which is enclosed at **Exhibit D**. The Applicants state that maximum emphasis has been laid down by this Hon'ble Court in the above judgment on preservation, protection and augmentation of attached assets and held that any expense incurred which leads to the above is justified. This is obviously because it would help in achieving the objects of the Torts Act. The Applicants state that the primary responsibility of preserving, protecting and augmenting the attached assets is cast upon the Custodian but even the notified persons have a right to defend themselves as also a locus to point out the facts relating to the attached assets recoverable from any third party.
12. The Applicants state that the Custodian had opposed MP 215 of 1995 on the basis that according to him the liabilities appeared to be greater than assets. The Custodian opposed the Application on the ground that no prior permission was obtained by the Applicant before incurring the expenses and

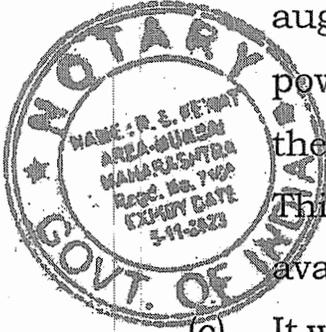
therefore such claims can be met only u/s 11(2)(c). The Custodian had himself categorized the application in terms of the nature of expense whether it fell in the category for preservation, protection and/or augmentation of the attached assets vis-à-vis the other types of expenses. The Custodian urged that if expenses are incurred in criminal matters or for the wrongs committed by the notified entities, then monies should not be released. It was urged and recorded in Para 35 of the judgment that this Hon'ble Court undoubtedly has power to release funds for the purposes of preservation, protection and/or augmentation of the attached assets and the Court cannot say who was to be engaged and who was to appear on behalf of a notified party.

13. The Applicants state that this Hon'ble Court laid down the law as under:

(a) That this Hon'ble Court will have power to release monies for the purposes of preservation, protection and/or augmentation of the attached assets. Till distribution takes place the Court will have to preserve, protect and/or augment attached assets. Thus, the monies have to be released for this purpose. This the Court would have to do whether or not the notified party himself took any interest in the preservation, protection and/or augmentation of attached assets. The power of the Court to take decisions and to release monies has nothing to do with and is not dependent on a notified party appearing before the Court. It cannot be denied and it has not been denied that the Court must preserve, protect and/or augment the attached assets and for this purpose it would be absolutely necessary to release monies in appropriate cases and the legislature had provided the power to the Court u/s 3(4) and 11(1) of the Torts Act (Para 48).

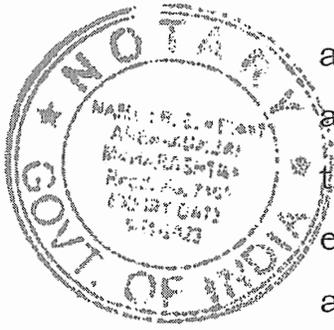
(b) Thus, to sum up, it will have to be held that for the purposes of preservation, protection and/or





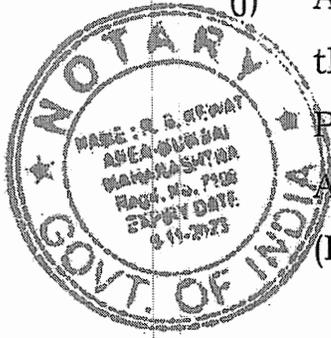
augmentation of the attached assets the Court has power to incur expenses. This is irrespective of whether the assets are sufficient to meet the liabilities or not. This power is given to Court so that the assets are available for distribution (Para 80).

- (c) It would have to be accepted that every person including notified parties have a right to legal representation of his choice. This necessarily means that persons can engage Advocates of their choice irrespective of whether the matter is a civil case or a criminal case (Para 64).
- (d) The next question is what is to be done about Advocates fees, when an application for release of fees is made in advance and before the services are rendered. It is already held that notified parties have a right to legal representation of their choice. However, an argument based on constitutional rights ignores ground realities. The right to have legal representation and the right to have an Advocate of one's choice can only be enjoyed by those who can afford the legal fees of the Advocates. Thus, ultimately the right to legal representation and to have an Advocate of one's choice is circumscribed by the capacity to pay. To be noted that the law is not prohibiting the right to legal representation of one's own choice (Para 65).
- (e) For the purpose of distribution, the Court is more concerned with seeing whether these persons have entered into transactions in securities between the stated period and whether there are liabilities of the nature set out in Sec. 11(2) (Para 66).
- (f) Thus, in cases where the liabilities exceed assets, what the notified party is seeking to do is not spend his own money or property. The notified party is seeking to spend public money which belongs to banks and FIs. As the property is to be returned to banks and FIs, till it is so returned, it will have to be preserved, protected



and/or augmented. ¹¹ It is preserved, protected and/or augmented not for the notified party but on behalf of the party to whom it will ultimately be returned. Thus, expenses for preservation, protection and/or augmentation of the property can and will be incurred (Para 70).

- (g) Thus it is only in cases where assets are more than sufficient to meet the liability that it can be said that the notified party is seeking to spend his own money, it is only in those stages that the notified party can insist that he be allowed to spend as he likes on his own defence (Para 71). That payment can only be made when it is finally decided that the monies are belonging to the notified party (Para 72).
- (h) In all such cases the Court will have to ascertain whether the assets are sufficient to meet the liabilities. If the assets are clearly sufficient to meet the liabilities there is no difficulty at all. In that case the right to legal representation of his choice can be freely enjoyed by the notified party because the surplus assets would be assets belonging to the notified party (Para 74). If there is surplus it can be used for payment of such expenses as the notified party desires but not otherwise (Para 76). If the notified party has capacity to pay, he can avail of legal representation of his choice and in all matters irrespective of what sort of matter it is (Para 78).
- (i) If there is surplus after distribution it will then be monies of the Notified Party. In that case, at this stage, Court prima facie sees no reason why payments should not be made for services already rendered to a notified party or at his behest to somebody else. In that case, Court prima facie sees no reason why payment should not be at the rate agreed to by the Notified Party (Para 81).



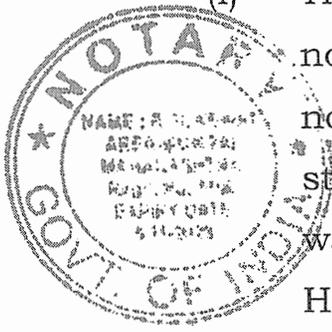
- (j) As stated above, in cases where the assets are more than the liability there is no difficulty. The Notified Party can spend as much as he likes and get an Advocate of his choice no matter how expensive they are (Para 85).

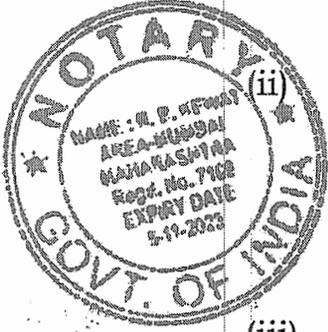
14. The Applicants state that both this Hon'ble Court and Hon'ble Supreme Court has laid down the law in the case of L.S. Synthetics Vs FFSL reported as **(2004) 11 SCC 456** that it is the duty of this Hon'ble Court to recover the attached assets lying in the hands of third parties whenever the facts relating to it are brought to its notice either by the Custodian or by the notified entities or even *suo motu* if this Hon'ble Court discovers the facts relating to the unrecovered attached assets. The Applicants humbly state that the converse of the same principle would also be true that the Custodian and this Hon'ble Court would also have a duty to contest each and every false claim filed against the notified person which would include revenue, banks and third parties in order to preserve and protect the attached assets for the benefit of genuine creditors including under the Torts Act the affected banks and financial institutions for whose benefit this Act has been promulgated.
15. The Applicants have filed the present application inter alia to seek the following reliefs from this Hon'ble Court:
- a. Release of amount of Rs.3 Crores each from the attached account of late Shri Harshad Mehta and late Smt Rasila Mehta in favour of Shri Ashwin Mehta for meeting the expenses for engaging the services of Counsels and Advocates to defend the legal interest of late Shri Harshad Mehta and late Smt Rasila Mehta and thereby their legal heirs being the Applicants;
- OR
- b. In the alternative to release an amount of Rs.1.5 Crores each from the attached account of Applicants, Smt Jyoti Mehta, Shri Ashwin Mehta, Dr. Hitesh S. Mehta or Shri

Sudhir S. Mehta to meet the expenses for engaging Counsels and Advocates to defend the legal interest of late Shri Harshad Mehta and late Smt Rasila Mehta.

16. The Applicants state that since the law was laid down by this Hon'ble Court on 12.02.1996 in MP 215 of 1995 there are several subsequent events which have taken place and which support the granting of reliefs as prayed for in the present application. These subsequent events are as follows:

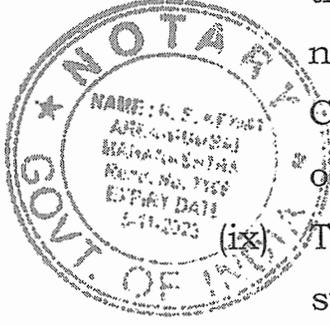
(i) That when the law was laid down, this Hon'ble Court did not have before it either the assets and liabilities picture nor even the criminal trials were conducted. There was strong apprehension that huge amounts of public money was involved and the same was lost. However, until Shri Harshad Mehta was alive for 9 years and available on a day-to-day basis the criminal charges against him were not proved by the CBI about alleged diversion and after the sudden demise the cases against him got abated. That even before the claims of the banks which are disputed by Smt Jyoti Mehta, the entire principal amount stands paid to the banks by payment of Rs.1716.07 Crores. That even revenue has been paid a huge amount of Rs.3285.46 Crores to meet the entire demand for tax raised under AY 1992-93 and AY 1993-94 a large part of it has now become refundable. Thus, the prima facie presumption made by this Hon'ble Court in the said judgment that liabilities are greater than assets has been completely disproved and the Applicants are having a reasonably large surplus of assets over liabilities which picture is improving by the day by recovery of attached assets and by reduction in the false claims made by the revenue leading to further refunds from the revenue and in view of the above the Applicants are entitled to the benefit of law laid down and are clearly entitled to the reliefs prayed for by them in the present application.





- (ii) That the Hon'ble Supreme Court laid down the law through the said judgment and held that "Taxes Due" would represent only those demands of revenue which is finally assessed and which has become final and binding.
- (iii) That claims for interest and penalty levied by revenue post-statutory period not covered under the Torts Act.
- (iv) That no interest or penalty is liable to be levied on notified entity for period covering the notification.
- (v) That all the Mehtas filed their books of accounts giving their assets and liabilities picture as on 08.06.1992 i.e. the date of their notification and which disclose surplus of assets over liabilities.
- (vi) That the Hon'ble Supreme Court has laid down the law in Para 35 in the case of Jyoti Mehta Vs Custodian reported as **(2009) 10 SCC 564** taking judicial notice as under:
"Notified parties have special knowledge of the facts relating to their assets and liabilities and, therefore, can always show that they have been notified wrongly or that their properties are not liable for sale either because their liabilities can otherwise be discharge or the quantum of liabilities projected by the Custodian is not correct."
The notified entities have been asserting now for past 25 years that the claims made by the revenue are patently illegal and high-pitched and they have demonstrably established this fact by winning 1200 matters before appellate authorities and by also establishing that all of them have surplus of assets over liabilities.
- (vii) That the presumption made in the judgment that the Custodian would always work for preservation, protection and/or augmentation of attached assets is proved to be false as the Custodian has been found not discharging his statutory duties of preserving, protecting and/or augmenting the attached assets.
- (viii) That the Custodian has not established any diversion of monies to the other notified entities or any nexus during

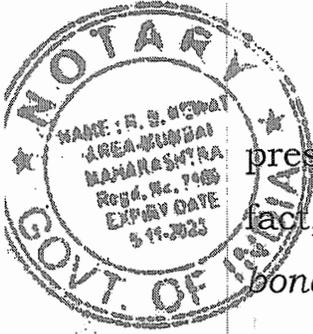
past 29 years nor has ever invoked his powers u/s 4(1) of the Torts Act nor established any payables by the other notified entities to Shri Harshad Mehta. Neither the Custodian nor the banks have established any liability of other notified entities towards late Shri Harshad Mehta.



That all these other notified entities have a clear and huge surplus of assets over liabilities.

- (x) That even Smt Jyoti Mehta has established that Shri Harshad Mehta has surplus of assets over liabilities by successfully contesting the false claims of the revenue.
- (xi) That it is conclusively established under orders of appellate authorities that the revenue taking advantage of priority accorded to it u/s 11(2)(a) has foisted upon Mehtas completely bogus, illegal and high-pitched claims and on that basis secured release of vast amounts to it.

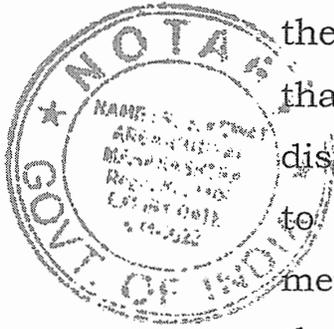
17. The Applicants state that in support of the reliefs prayed for in the present Application, the Applicants state that both the estate of late Shri Harshad Mehta and late Smt Rasila Mehta have a huge surplus of assets over liabilities and similarly even Applicants Smt Jyoti Mehta, Shri Ashwin Mehta, Dr. Hitesh Mehta and Shri Sudhir Mehta have a huge surplus of assets over liabilities and therefore they are entitled to the above relief of release of the above amounts in terms of law laid down by this Hon'ble Court under aforecited order dated 12.02.1996 in MP 215 of 1995 cited supra. The Applicants state that this Hon'ble Court has laid down the law that if the notified persons have surplus assets then they have a constitutional right to be represented by the Counsels and Advocates of their choice and they can spend any amounts in the manner they like so far as there is surplus of assets over liabilities and the amounts are being spent out of such surplus and hence this Application. That this Hon'ble Court has given highest emphasis in the above judgment on preservation, protection and augmentation of attached assets and the Applicants have sought the relief in the



present Application to meet all the aforesaid three objects. In fact, over past several years they have already established their *bona fides* both by recovering huge quantities of attached assets running into more than Rs.2000 Crores which were not being recovered by the Custodian and by contesting false claims of revenue and securing huge refunds and even contested the false claims of the banks, the facts relating to which are narrated hereinafter.

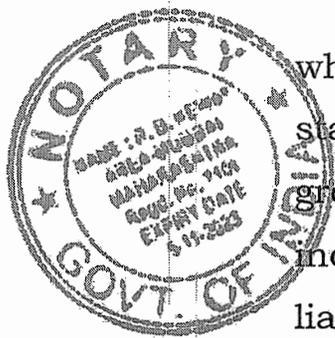
18. The Applicants state that they are entitled to the above reliefs on the following amongst other grounds which are stated without prejudice to each other as under:

- (i) That when this Hon'ble Court laid down the law under its judgment dated 12.02.1996 in MP 215 of 1995 cited supra, a clear picture of assets and liabilities was not available before this Hon'ble Court and even the Hon'ble Supreme Court had not laid down the law which came to be laid down only on 13.05.1998 under the said judgment. That since then the Applicants have conclusively established that each one of them have surplus of assets over liabilities.
- (ii) That the Hon'ble Supreme Court through the said judgment interpreted Sec.3 r/w Sec.11 of the Torts Act and examined the constitutional validity of these sections. The Hon'ble Supreme Court also framed 6 questions of law and seriatim answered the same. It upheld the constitutional validity of Sec.3 r/w Sec.11 subject to the conditions laid down by it in Paras 11 to 18 and 41 of the said judgment.
- (iii) That the Hon'ble Supreme Court also answered the 6 questions of law framed by it. In reply to Question 1 of what constitutes "**Taxes Due**" a phrase used in Sec.11(2)(a) of the Act, it examined the definitions in various dictionaries of the word "**Due**" and also several prior judgments on this issue and thereafter this Hon'ble Court interpreted the phrase "**Taxes Due**" by adopting



the contextual meaning of the said phrase. It observed that the "**Taxes Due**" occur in a section dealing with distribution of property at which stage taxes "**Due**" have to be actually paid out and therefore it cannot refer merely to a liability created by the charging section to pay the tax under the relevant law. It laid down in Paras 23 and 24 of the said judgment that the phrase "**Taxes Due**" used in Sec.11(2)(a) of the Torts Act represents only those demands of the revenue which are raised under assessment orders framed in accordance with law and which have become final and binding on the notified persons. It is further laid down that until the demands become final and binding no disbursements are liable to be made to revenue. It is held that in the context of Sec.11(2), therefore, the "**Taxes Due**" refer to "**Taxes as finally assessed**". The Applicants are aggrieved that in violation of the above law and in order to deny the benefit of it to the Applicants, the Custodian has been treating all the demands of revenue as crystallized liabilities while presenting the assets and liabilities picture before this Hon'ble Court and falsely urging that the liabilities are far greater than the assets. The disputed claims of revenue which are under challenge before the appellate authorities and which have not become final and binding are falsely included in the liabilities to exaggerate them and therefore all such claims are liable to be excluded and the Custodian has an obligation to draw the assets and liabilities picture in accordance with the law laid down in the said judgment.

- (iv) That after the law got laid down through the said judgment the Custodian was required to comply with the same but he has failed to do so on several counts. The Custodian for more than 2 decades has been presenting an incorrect assets and liabilities picture by understating the assets and overstating the liabilities in several ways



which are duly explained hereinafter. The Applicants state that at all points in time their assets have been greater than the liabilities but only because of incorrect inclusions of disputed demands of revenue that the liabilities are grossly exaggerated by the Custodian and in this manner the Applicants have been denied the benefit of law laid down by this Hon'ble Court in its judgement dated 12.02.1996 in MP 215 of 1995.

- (v) That the interpretation put by the Custodian and revenue to the said judgment for the purpose of release of monies is contrary to what has been even urged by Solicitor General of India before Hon'ble Supreme Court in the scaling down proceedings which culminated into a judgment titled as DCIT Vs SBI reported as **(2009) 2 SCC 451**. The Ld. Solicitor General has urged before Hon'ble Supreme Court as recorded in Para 17 of the judgment in regard to the said judgment is as under:

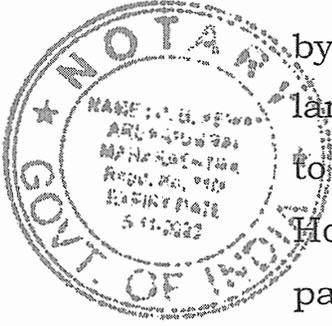
Para 17: *"On the question of refund and disbursement it was submitted that the application of Sec.11(2)(a) can arise only at the stage of final distribution of assets and an order under the said section can be passed only after examining the claims by the Special Court under Section 9A of the Act."*

The above submissions make it abundantly clear that the monies released to revenue before the stage of final distribution of assets are premature and the revenue is not entitled to the same and therefore such amounts together with accrued interest on it is liable to be included in the assets of the Applicants.

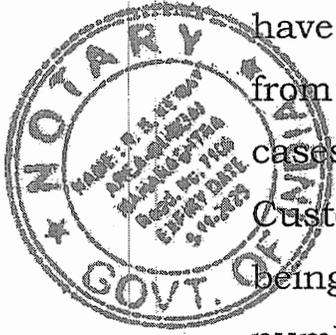
- (vi) In fact, the large amounts released to revenue on an interim and adhoc basis pending crystallization of claims are liable to be treated as interest-bearing deposits placed with the revenue as the same has not been finally distributed or allowed to be appropriated against the

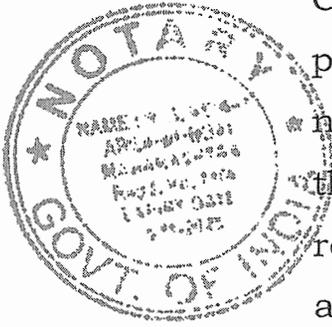
demands and even therefore they are liable to be added in the assets of the Applicants which is not being included by the Custodian. The Applicants state that extremely large amounts of Rs.3285.46 Crores have been released to revenue which is unconditionally recallable by this Hon'ble Court and by Hon'ble Supreme Court and the particulars of the same on an entity-wise and order-wise basis are provided at **Exhibit E** and **Exhibit F** respectively. The Applicants state that if the above amounts are accounted for and included in the assets together with accrued interest thereon then the correct picture of assets will emerge.

- (vii) In support of above contentions that their assets are greater than their liabilities, the Applicants have drawn their books of accounts and also presented their assets and liabilities picture before the 3 firms of Chartered Accountants appointed by this Hon'ble Court. The Applicants state that these books of accounts and the balance sheets as on 08.06.1992 confirm that the assets of the Applicants are far greater than their liabilities. These books of accounts have been heavily relied upon by the Custodian in numerous proceedings before this Hon'ble Court such as MP 41 of 1999, MA 4 of 2001, MP 1 and 2 of 2007 but they are not referred to by the Custodian while presenting the assets and liabilities picture before this Hon'ble Court and before Hon'ble Supreme Court. The Applicants crave leave of this Hon'ble Court to refer to and rely upon the above proceedings and the books of accounts and the Affidavits filed by the Custodian therein when produced. The Applicants are pleased to enclose a chart at **Exhibit G** which gives particulars of the books of accounts forwarded by the Mehtas to the 3 firms of Chartered Accountants to make compliance with the orders of this Hon'ble Court.



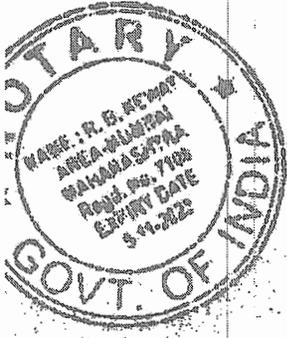
(viii) The assets disclosed in the balance sheets of the Mehtas have deliberately not been recovered by the Custodian from third parties for more than 2 decades including in cases where this Hon'ble Court has already directed the Custodian to recover them so much so that they are not being included in the assets of the Applicants. That a number of orders have been passed by this Hon'ble Court repeatedly directing Custodian to comply with its orders and to recover the attached assets but these orders repeatedly passed by this Hon'ble Court have not been deliberately complied with by the Custodian in order to impoverish their asset base and thereby understate the same. In support of above contentions, the Applicants rely upon the orders passed in MP 114 to 158 of 1995, MA 332 of 2003, MA 107 to 113 of 2007, MA 13 & 14 of 2011, MA 8 of 2016 and several such orders of this Hon'ble Court. The Custodian has failed to not only recover the above attached assets valued at about Rs.5000 Crores but has also not filed any Compliance or Status Reports before this Hon'ble Court nor sought any extension of time to make compliance with the orders of this Hon'ble Court so that his failures to recover the attached assets and to make compliance with the orders of this Hon'ble Court does not come to light and thereby he gets the freedom to confer monetary benefits onto third parties by sacrificing the interest of Mehtas. In these circumstances the Mehtas were compelled to recover their attached assets which they have successfully done for more than Rs.2000 Crores and several of their applications are still pending before this Hon'ble Court. The Applicants state that having failed to comply with the orders of this Hon'ble Court and to recover the attached assets lying in the hands of third parties, it does not then lie in the mouth of Custodian to allege that the liabilities of the Applicants are greater than their assets since he





himself is responsible for not recovering the attached assets belonging to them. The Applicants state that the Custodian has been opposing release of monies for payments to Counsels and Advocates to ensure that neither he discharges his statutory duties of recovering the attached assets nor he permits the Applicants to recover the same and to contest false claims of revenue and banks filed on them. In the aforesaid circumstances, the Custodian cannot be permitted to oppose the present Application filed by the Applicants to seek release of monies to effectively defend their legal interest and minimise the losses being caused to them by the above illegal and high-handed conduct of the Custodian. In support of above allegations, the Applicants rely upon proceedings before this Hon'ble Court in MA 106 to 113 of 2007, MA 13 & 14 of 2011, MA 102 of 2014 and MA 8 of 2016 when produced. The Applicants have demonstrably proved their allegations against the Custodian both by causing recovery of the attached assets of more than Rs.2000 Crores and by contesting the false claims of revenue and bringing them down by about Rs.25,000 Crores and generating refunds of more than Rs.5000 Crores from revenue after already successfully securing refunds of Rs.814.33 Crores, particulars of which are provided in an enclosed chart at **Exhibit H**. The Applicants state that by their conduct till today and because of their aforesaid achievements they are bound to be granted relief by this Hon'ble Court to quickly achieve the objects of the Torts Act atleast after 29 years as set out in an express statute promulgated to achieve the objects expeditiously.

- (ix) The Custodian also cannot oppose the present Application after failing to make compliance with the order of Hon'ble Supreme Court dated 08.05.2017 in CA 6326 of 2010 wherein the Custodian has been directed to

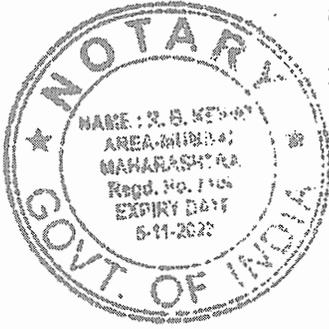


recover all the attached assets, a copy of which is enclosed at **Exhibit I**. Thus, attached assets of several thousand crores remain unaccounted and unrecovered by the Custodian and are not included in the assets of the Applicants for failures entirely attributable to the Custodian himself. The Applicants state that any further delay caused in recovery of the attached assets will itself jeopardize the recovery and cause irreparable harm and losses to the Applicants which will be far beyond the relief sought for by them in the present Application.

- (x) That in matter of recovery of attached assets belonging to the Applicants, the failure of Custodian is deliberate which gets established from the fact that it is only in case of Mehtas that the Custodian has not been taking steps to recover their attached assets but in the case of other notified entities even for the smallest of the amounts the Custodian has been filing Applications to recover their attached assets. The Custodian though being a statutory authority has been discriminating against the Applicants vis-à-vis the other notified entities and thereby even violating the fundamental rights of the Applicants guaranteed to them under Article 14 and 19 of the Constitution of India. In support of above allegations, the Applicants have already furnished particulars of recovery applications filed by the Custodian on behalf of other notified entities for the smallest of the amounts but the Custodian has not been filing Applications for recovery of attached assets valued in crores belonging to the Applicants. That even therefore the Custodian cannot oppose the present Application seeking release of monies for payment to Counsels and Advocates.
- (xi) The Applicants state that according to them as of today no liabilities exist inasmuch as demands and claims made by the revenue and banks which qualify to fall u/s 11(2)(a) and 11(2)(b) are already fully met even though

these claims are disputed and denied by the Applicants and presently under contest. The revenue has in fact secured release of Rs.1038.59 Crores towards its claims for AY 1993-94, the particulars of which are furnished in an enclosed chart at **Exhibit J**. The Applicants state that in terms of the law laid down in the said judgment, the revenue could have claimed u/s 11(2)(a) only those demands of revenue under AY 1993-94 which cover the period 01.04.1992 to 06.06.1992 and therefore it could have sought release of taxes only for the broken period as above but yet acting in collusion with the Custodian and in gross violation of the law laid down in the said judgment, the entire demand for AY 1993-94 has been fully met by the Custodian. The Applicants state that this has distorted the assets and liabilities picture and the excess amount released to the revenue is liable to be recalled with interest which amount can then be added to the assets of the Applicants. Presently the assets are understated by the Custodian as he has not raised any objection to release of the above amounts to revenue.

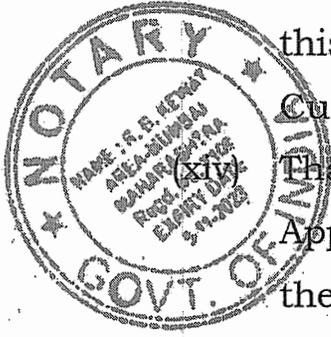
- (xii) The Applicants state that as explained above and since entire demands of revenue and banks u/s 11(2)(a) and 11(2)(b) has been fully met despite these demands and claims being disputed there is a strong likelihood of refunds of monies released to revenue and banks on an adhoc and interim basis which will further augment the assets and reduce the liabilities of Mehtas.
- (xiii) That notwithstanding the foregoing and in terms of the provisions of the Torts Act until this Hon'ble Court specifies the claims liable to be met u/s 11(2)(c) of the Torts Act, the Custodian cannot include the claims of revenue for tax (non-statutory period), interest and penalty and claims of banks for interest in the liabilities of the Applicants as is being done by him both in violation of provisions of Sec.11(2)(c) of the Torts Act as also in



violation of law laid down in the said judgment. That in this manner the liabilities are exaggerated by the Custodian by several thousands of crores.

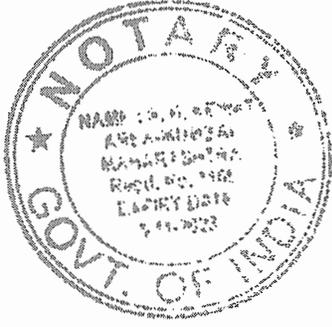
(xiv) That the amounts proposed to be expended by the Applicants are a miniscule sum of the stakes involved and the likely gains that will accrue to the Applicants by effectively defending the legal interest of estate of late Shri Harshad Mehta and estate of late Smt Rasila S. Mehta. The amounts proposed to be incurred would constitute less than 1% of the potential benefits and substantial gains would accrue. The reliefs when granted would lead to preservation, protection and augmentation of the attached assets which itself fully justifies the granting of reliefs.

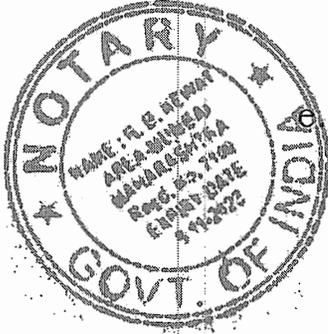
- (xv) That the assets are understated and the liabilities of the Applicants are overstated by the Custodian by deploying the following illegal methods:
- a. That as explained earlier the "Taxes" as claimed but which are not due as per the said judgment are included in the liability by the Custodian to overstate them.
 - b. That monies released to revenue being a sum of Rs.3285.46 Crores together with accrued interest on it is liable to be included in assets but as explained earlier the Custodian has been treating as taxes paid.
 - c. That in terms of law laid down in Para 27 of the said judgment, those demands raised by revenue in accordance with law and which have become final and binding are liable to be reckoned as liabilities only when the date of distribution arrives. It is laid down that the date of distribution arrives only upon completion of examination of all claims u/s 9A of the Torts Act. Such claims would include claims by and against the notified persons the object clearly being to undertake final distribution u/s 11(2) only after a



clear, complete and a crystallized picture of assets and liabilities emerges before this Hon'ble Court. Presently, a large number of claims for recovery of attached assets deliberately not recovered by the Custodian for more than 2 decades are pending adjudication. The false and illegal claims of the revenue are denied and disputed and under contest and therefore they cannot be reckoned in liabilities. That even the *ex-parte* decrees awarded to banks are presently under challenge before Hon'ble Supreme Court in several Civil Appeals filed by Smt Jyoti Mehta. The final distribution has got indefinitely delayed because of the failure of Custodian to recover the attached assets and due to his failures to contest the false claims of both revenue and banks. Thus, the date of distribution has got indefinitely postponed due to the illegal conduct of Custodian himself and therefore the disputed demands of revenue and banks cannot be included in the liabilities.

- d. That the Applicants have already won more than 1200 cases before the appellate authorities which has not only brought down the demands of the revenue very sharply but has also culminated into huge refunds and all the orders of the appellate authorities together with the claims of refunds have been filed with the revenue and copy of it provided to the Custodian with a request to update the demand picture and recover the amounts due and refundable from revenue and include the same in the assets of the notified entities. The refunds of Rs.5000 Crores are overdue and they are liable to be included in the assets of the Applicants but neither the revenue nor the Custodian is accounting for the same in the assets of the Applicants. The Applicants crave leave of this Hon'ble Court to refer to and rely upon several





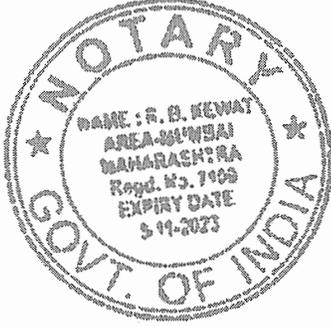
letters addressed by the Mehtas to the revenue and Custodian when produced.

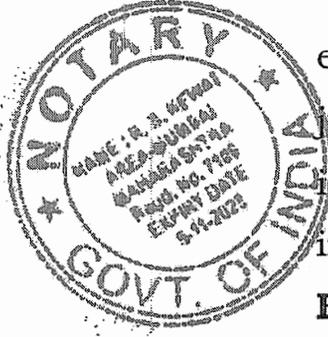
That the revenue itself has given a concession before Hon'ble Supreme Court as recorded in Para 36 of the said judgment in terms of which the exorbitant tax demands can be ignored but yet patently illegal and high-pitched demands of revenue are being included in the liabilities by the Custodian to exaggerate the same.

- f. That in terms of Para 38 of the said judgment, the claims for interest and penalties for the post-statutory period are not covered under the Act and therefore they cannot be included in the liabilities of the Mehtas as illegally included by the Custodian. In fact, it is settled law that the notified persons are not liable to pay any interest or penalty for period covering their notification and therefore all claims of interest and penalty by revenue and banks are liable to be excluded from the liabilities of Mehtas.
- g. So far as claims for interest and penalty levied by revenue is concerned, the notified entities have been given a remedy in the said judgment to seek waiver of the same under the Income Tax Act and even therefore pending such a waiver they cannot be included in the liabilities.
- h. That notwithstanding above, the claims for interest and penalty levied by revenue and banks qualify to fall u/s 11(2)(c) of the Torts Act. That only this Hon'ble Court has the discretion to specify and include such claims in the distribution u/s 11(2)(c) of the Torts Act. That this Hon'ble Court has not specified inclusion of the above claims in the distribution u/s 11(2)(c) of the Torts Act and therefore the Custodian cannot include such claims in the

liabilities of the Applicants as is being illegally done by him as at present.

- i. That the time to exercise the above discretion by this Hon'ble Court to specify inclusion of claims u/s 11(2)(c) has not come as the same can be exercised only after final distribution u/s 11(2)(a) and 11(2)(b) of the Torts Act and if any surplus is still left in the hands of the Custodian. That despite above and acting illegally the Custodian has pre-empted the powers of this Hon'ble Court to exercise the above discretion and added all the claims of the revenue falling u/s 11(2)(c) in the liabilities of the Applicants even before this Hon'ble Court exercises its above discretion.
- j. That this Hon'ble Court also has absolute discretion to decide if the demands of the revenue are liable to be met or the same can be scaled down and such scaled down demands can also be kept outside of distribution directing revenue to recover the same in accordance with law under machinery available to it. That the Custodian has yet without awaiting for this Hon'ble Court to exercise its aforesaid discretionary powers has himself decided to include all the demands of the revenue in the liabilities of the Applicants.
- k. That the claims made by the banks in respect of interest are denied by Smt Jyoti Mehta on the ground that no interest is leviable by banks in respect of their claims for the period covering the notification in terms of law laid down by this Hon'ble Court on 20.02.1995 in MA 107 of 1993 and which judgment has been upheld by the Hon'ble Supreme Court by not disturbing the conclusions reached by this Hon'ble Court save and except the claims of revenue for interest and penalties which cannot be





extinguished under the Torts Act. That after the said judgment was delivered this Hon'ble Court has interpreted the same by an order dated 20.07.1998 in MA 222 of 1996, a copy of which is enclosed at **Exhibit K**. It can be seen from the above judgement that interest and penalty is not leviable for the period covering notification and therefore Smt Jyoti Mehta has challenged the claim of interest made by banks on late Shri Harshad Mehta which appeals are presently pending hearing before Hon'ble Supreme Court. That Smt Jyoti Mehta has also denied her liability to pay interest to the banks awarded under ex-parte decrees to them even in the Execution Applications filed by them and the Applicants crave leave of this Hon'ble Court to refer to and rely upon the Affidavits filed by them opposing the reliefs prayed for by the banks in these Execution Applications when produced.

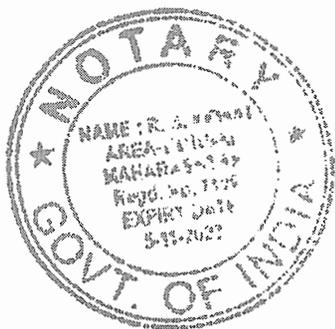
1. That a number of representations have been made by the Mehtas to the Custodian challenging the assets and liabilities picture being presented by him but he continues to violate the said judgment and even ignores the orders of relief passed by the appellate authorities and only goes by old and out-dated charts of demands being presented by the revenue to him by treating them as gospel truth. The Applicants crave leave of this Hon'ble Court to refer to and rely upon the letters addressed by them to the Custodian challenging the assets and liabilities picture when produced.
- m. That the assets and liabilities picture of the Custodian was challenged by some of the Applicants before Hon'ble Supreme Court in the proceedings in CA 6326 of 2010. Since there was wide variance between the assets and liabilities picture presented

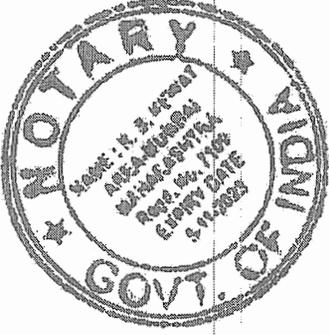
by the Custodian and the Appellants, the issue was thoroughly examined by Hon'ble Supreme Court and the Appellants also presented a reconciliation chart between the surplus of assets shown by the Appellants at Rs.10,860 Crores and excess of liabilities shown by the Custodian at Rs.25,843 Crores, a copy of which reconciliation chart is enclosed at **Exhibit L**. The assets and liabilities picture of the Custodian was rejected and the impugned order of sale of residential flats dated 30.04.2010 passed in MP 41 of 1999 was set aside by the Hon'ble Supreme Court under an order dated 02.05.2017 in CA 6326 of 2010, a copy of which is enclosed at **Exhibit M**. The Hon'ble Supreme Court found the impugned order to be premature as the true assets and liabilities picture had not emerged nor the time for distribution had arrived and therefore it can be seen from the above order that relief was granted to the Appellants by Hon'ble Supreme Court by directing in Para 7 as under:

Para 7: *"Insofar as the flats in question are concerned, no steps including selling of the same shall be taken until final distribution is made by the Custodian."*

Thus, the assets and liabilities picture presented by the Custodian was rejected in favour of the picture presented by the Mehtas.

- n. That during the course of the above proceedings and upon probing by Hon'ble Supreme Court the Advocate for Custodian conceded that Rs.15,898.86 Crores representing the claim of interest of revenue u/s 220(2) of the I.T. Act was not liable to be included in the liabilities by the Custodian. The Applicants state that this fact was subsequently confirmed and put on record by Shri Ashwin Mehta addressing a





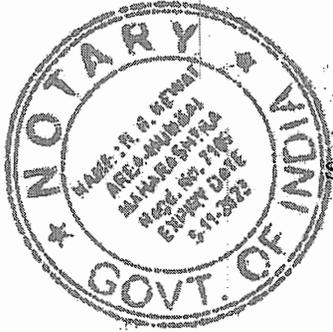
letter to the Custodian on 10.06.2017 with a copy marked to the Mumbai office of Custodian, a copy of which letter is enclosed at **Exhibit N**. The Applicants state that despite above and only in order to inflate the liabilities and acting in collusion with revenue, the Custodian continues to include the disputed claims for tax, interest and penalties in the liabilities of the Applicants.

- o. That after the passage of the above judgment on 02.05.2017 there has been vast improvement in the assets and liabilities picture of the Applicants as several orders of reliefs have since then have been passed by the appellate authorities which has dramatically brought down the claims of revenue by several thousand crores and also resulted into refunds of more than Rs.5000 Crores. That the situation has further improved by atleast Rs.800 Crores because of sharp improvement and appreciation in the valuation of investments. That further discovery and recovery of assets of more than Rs.500 Crores has taken place in the case of shares of Reliance Industries Ltd. alone. That the Hon'ble ITAT has also passed the composite and combined order on 14.01.2019 in the 3 largest cases of late Shri Harshad Mehta, Shri Ashwin Mehta and Smt Jyoti Mehta covering the crucial period of AY 1992-93. The above order has resulted into deletion of demands raised by revenue of Rs.4053.34 Crores and has resulted into claims of refund of Rs.5185.53 Crores as computed on 31.03.2019 and a summary of the reliefs obtained is furnished in an enclosed chart at **Exhibit O**. The Applicants state that the Hon'ble ITAT was pleased to quash the assessment orders in the case of late Shri Harshad Mehta and Shri Ashwin Mehta for AY 1992-93 thereby deleting 100% of the

demands. That in the alternative and on merits, reliefs have been granted even on merits by deleting 98% to 99% of the additions. The Applicants are also pleased to enclose the individual 4 charts giving particulars of reliefs in each of the 4 matters which are enclosed at **Exhibit P, Exhibit Q, Exhibit R and Exhibit S.**



- p. That consequently the Applicants have lodged their claims for refund on AO by letter dated 12.02.2019 for claim of Rs.3803.90 Crores on behalf of late Shri Harshad Mehta, by letter dated 12.02.2019 on behalf of Shri Ashwin Mehta for claim of refund of Rs.716.86 Crores and letter dated 20.02.2019 on behalf of Smt Jyoti Mehta for claim of refund of Rs.623.97 Crores and letter dated 28.02.2019 on behalf of Shri Ashwin Mehta for claim of refund of Rs.27.55 Crores AY 1993-94 totalling to Rs.5172.28. The copies of the aforesaid 4 letter are enclosed (with relevant annexures) at **Exhibit T, Exhibit U, Exhibit V and Exhibit W** respectively.
- q. The Applicants state that with the above order of Hon'ble ITAT Smt Jyoti Mehta has conclusively established that even late Shri Harshad Mehta has a huge surplus of assets over liabilities and the same also therefore demolishes the Harshad Mehta Group theory as propounded by the Custodian since the estate of late Shri Harshad Mehta can itself meet all the genuine claims of the revenue.
- r. That even in respect of several other claims made by revenue, the appellate authorities have similarly deleted almost 98% to 99% of the additions and the Applicants crave leave of this Hon'ble Court to refer to and rely upon the orders of relief passed by the appellate authorities when produced. The Applicants state that in view of the above even the residual

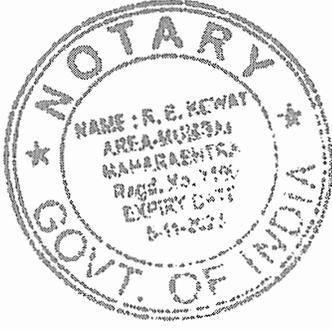


demands raised by revenue which are presently under challenge before the appellate authorities are not liable to be included in the liabilities of the Mehtas.

s. That the said judgment once again came to be interpreted by Hon'ble Supreme Court in the case of Gurukripa Trust Vs The Custodian where once again the Hon'ble Supreme Court set aside the order of sale of property of Gurukripa Trust by a judgment and order dated 09.04.2019 in CA 6416 of 2005, a copy of which is enclosed at **Exhibit X**. The Para 38 of the said judgment came to be interpreted by the Hon'ble Supreme Court reaffirming that interest and penalty for any action for default after the date of notification are not covered under the Act. It is further held that liability to pay penalty or interest is not extinguished under the Torts Act but for this purpose the competent authority under the taxing statute has to be approached. In the said case, the Appeal to waive the same was already made before the appellate authority. The Hon'ble Supreme Court further laid down as under:

Page 6: *“What the Special Court is really required to do is that in case such penalty or interest is found to be recoverable, the Special Court would examine whether out of the monies lying with the Custodian, the amounts should be released towards the penalty and interest to the competent authority.”*

- t. That the Applicants have also pointed out that in more than 100 cases, the revenue has not passed any Order Giving Effects (**OGEs**) to the reliefs secured by them only in order to exaggerate the demand picture. That several OGEs are passed wherein in order to

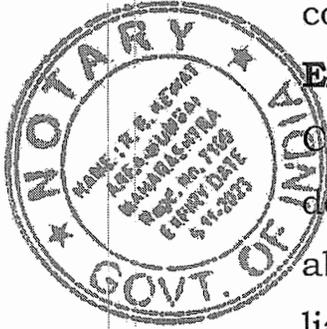


inflate the demand the revenue has illegally levied interest under sections 234A, 234B, 234C and 220(2) of the Income Tax Act and therefore the demand charts presented by the revenue are grossly erroneous and exaggerated and such demands cannot be included by the Custodian in the liabilities. In support of above contentions the Applicants rely upon copies of their letters seeking issue of OGEs to the Custodian with a request to obtain an upto-date picture when produced. The Custodian is also being furnished with the copies of the appellate orders together with charts giving complete particulars of the reliefs but yet in order to exaggerate the liabilities, the Custodian has been mechanically adopting the demand picture being presented by the department. The Applicants crave leave of this Hon'ble Court to rely upon letters addressed by them as above.

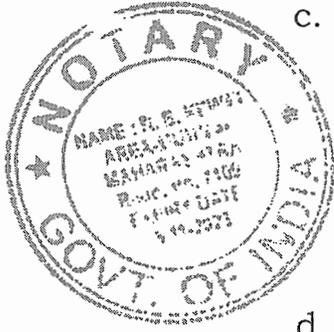
- u. That besides above, several letters have been addressed by the Applicants to the Assessing Officers with copies marked to the Custodian pointing out false OGEs or demand notices issued by the AOs. Several letters have been addressed to revenue pointing out cases of false demands with a request to rectify the same which have not been replied to nor any corrective steps taken and even copies of these letters are marked to the Custodian and the Applicants crave leave to rely upon them. In the above circumstances, the demand charts being presented by the revenue are liable to be rejected.
- v. That the demand charts of the department are so grossly erroneous that in the chart presented by the AO under his letter dated 06.02.2018 disclosing the demand as on 31.01.2018 it is falsely claimed that a huge amount of Rs.2701.25 Crores is still recoverable by revenue u/s 11(2)(a) of the Torts Act even though

the entire demands for tax are fully met as raised for AY 1992-93 and AY 1993-94. In support of above contentions, the Applicants are pleased to enclose at **Exhibit Y**, a copy of letter of AO addressed to Custodian dated 06.02.2018 along with the summary demand chart. The Custodian has yet accepted the above demand chart and falsely presented the liabilities of the Applicants by including the aforesaid amount of Rs.2701.25 Crores and in support of above the Applicants are pleased to enclose the relevant page Annexure B of the assets and liabilities presented by the Custodian in Report 14 of 2011 with Report 9 of 2010, a copy of which is enclosed at **Exhibit Z**. The Applicants state that it suited the Custodian to exaggerate the liabilities by Rs.2701.25 Crores and therefore he has not even referred to his own records which establish that when this Hon'ble Court passed its order on 25.02.2011 in Report 9 of 2010, it had fully met the entire demand of the revenue by ordering payment of Rs.1995.67 Crores to it. The Applicants crave leave of this Hon'ble Court to refer to and rely upon the proceedings in which this Hon'ble Court ordered release of Rs.1995.67 Crores to revenue under order dated 25.02.2011 when produced.

- w. The Applicants state that the falsity of the assets and liabilities picture being presented by the Custodian have been conclusively established by the Applicants by the following:
- a. By conclusively establishing that the Custodian was deliberately not recovering their attached assets to understate their assets which are presently estimated to be Rs.5000 Crores.



- b. That the Applicants have actually recovered attached assets from third parties of more than Rs.2000 Crores.
- c. That the false claims of the revenue have come down from about Rs.30,000 Crores to about Rs.4000 Crores which will further go down sharply after the pending appeals are heard by the appellate authorities.
- d. That the Applicants have secured refunds of Rs.814.33 Crores from revenue which is paid over to Custodian, the particulars of which are already provided earlier.
- e. That further refunds of more than Rs.5000 Crores are overdue which are not being paid by the revenue to the Custodian without obtaining any stay on the orders of the appellate authorities granting the reliefs.
- f. That when balance appeals are heard not only the liabilities will come down further but large refunds will further become due and payable by the department as the issues which require adjudication are already decided by the appellate authorities in favour of the Applicants.
- g. That on account of persistent efforts made by Smt Jyoti Mehta, the State Bank of India (SBI) has conceded to a credit of Rs.592.49 Crores retrospectively from 2002-03 onwards which has reduced the liability of late Shri Harshad Mehta by about Rs.2000 Crores. In support of above, reliance is placed on MA 36 of 2011 filed by SBI before this Hon'ble Court in which it has without assigning any reasons offered to give retrospectively after 8 years a credit of Rs.592.49 Crores to the estate of late Shri Harshad Mehta. The SBI has also addressed a





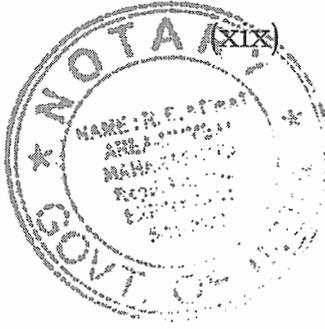
greater than the assets only in order to justify several coercive but totally illegal and high-handed steps he has been taking against the Mehtas such as sale of all their movable and immovable assets, dismissing services of their staff, illegally seizing their books of accounts, computers and other records and opposing release of any monies from their attached accounts to meet the legitimate expenses and also opposing release of those attached assets purchased prior to the statutory period and which has no nexus with any tainted monies belonging to any banks. The Custodian sold the offices to paralyze the organization and the first Petition was filed by him being MP 41 of 1999 to sell 8 residential flats to uproot the Mehta family knowing fully well that they have no space to keep the records and no alternative accommodation to live. The above high-handed actions virtually paralyzed the family members for more than 5 years between 2001 to 2005. The Custodian has been denying even the benefit of the law laid down by Hon'ble Bombay High Court in the case of Hitesh Shantilal Mehta Vs Union of India reported as **1992 (3) BOM.C.R.716**, in Para 14 of the said judgment and Para 35 of the judgment in the case of Jyoti Harshad Mehta Vs Custodian reported as **(2009) 10 SCC 564**.

- (xvii) That the Custodian has failed to make compliance with the directions given by Hon'ble Supreme Court in Para 39 of the said judgment in terms of which Rs.193.71 Crores released to revenue under interim order dated 26.08.1996, a copy of which is enclosed at **Exhibit CC**, was liable to be recalled by applying the law laid down in the said judgment. The Applicants state that in terms of the law laid down in the said judgment, no further monies could have been released to revenue under any adhoc or interim distribution but yet the Custodian acting in collusion with the revenue instead of seeking

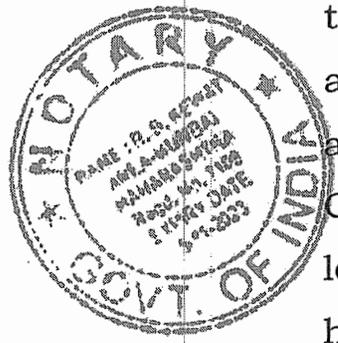
directions from this Hon'ble Court for recall of the above Rs.193.71 Crores with interest have now been for more than 2 decades supporting further release of monies to revenue at the expense of other creditors and Mehtas. That therefore monies released to revenue and banks under such adhoc and interim arrangement are bound to be included in the assets of the Applicants together with accrued interest on it so long as final distribution is not undertaken by this Hon'ble Court.

- (xviii) The Hon'ble Supreme Court in the said judgment resorted to purposive interpretation and overruled its own previous judgment delivered in the case of CIT Vs A.K. Menon reported as **(1995) 5 SCC 200** to achieve the objects of the Torts Act and make way for payment to banks by reading down priority accorded to revenue u/s 11(2)(a) of the Torts Act as can be seen from Paras 29 onwards upto Para 36 of the said judgment. That despite above and in gross violation of it, the Custodian supported release of Rs.3285.46 Crores to revenue as per particulars disclosed earlier. The above release of monies has thus grossly vitiated the actual assets and liabilities picture by the method adopted by the Custodian in presenting the same. The Applicants state that this Hon'ble Court delivered the judgment in MP 215 of 1995 being guided by the above judgment of Hon'ble Supreme Court reported as **(1995) 5 SCC 200** though the same was thereafter overruled by Hon'ble Supreme Court in the said judgment. The Applicants state that under the previous judgment the demands of revenue were liable to be treated as liabilities but under the said judgment when "Taxes Due" was defined the demands of revenue could not have been included in the liabilities until they became final and binding and even this subsequent change in the legal position has been

completely ignored by the Custodian to exaggerate the liabilities of Mehtas.

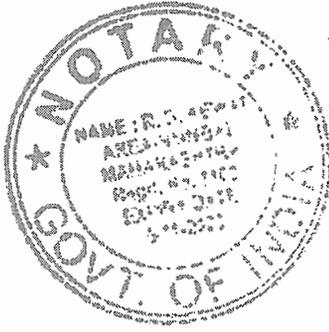


(xix) The Applicants state that the Custodian has also acted *mala fide* and urged before this Hon'ble Court in the proceedings in MP 64 of 1998 presenting a scheme governing sale of shares that sale of assets need not await crystallization of liabilities so as to prematurely liquidate the appreciating investments in shares belonging to the Mehtas so as to pay large amounts to revenue even though it was not entitled to it in terms of the law laid down in the said judgment. Such premature sale of shares has already caused losses of more than Rs.18,275.35 Crores to the Mehtas in respect of bulk sale of shares alone, the particulars of which are furnished in an enclosed chart at **Exhibit DD**. The Applicants state that the actual losses would be much higher if sale of all the shares is taken into consideration. The Custodian has falsely justified sale of shares and other assets including of those family members and corporate entities without awaiting crystallization of liabilities and without awaiting the demands of revenue to become final and binding as per the law laid down in the said judgment and even in this manner the Custodian acted illegally and high-handedly and deprived the Mehtas of the benefit of the law laid down in the said judgment. The Applicants state that while the Hon'ble Supreme Court expressly laid down that monies should not be released to revenue until the demands are finally assessed and further laid down that monies are payable to revenue only when the date of distribution arrives but in gross violation of the above the Custodian urged before this Hon'ble Court in the proceedings in MP 64 of 1998 that sale of shares is governed by Section 11(1) of the Torts Act which is not co-related with the distribution u/s 11(2) of the Torts Act. In essence the



Custodian argued that the assets of Mehtas were liable to be sold even if they had no liabilities to meet on with a view to make a way for prematurely releasing large amounts to the revenue and in this manner the Custodian colluded with revenue and caused huge losses to the Mehtas. The Applicants state that now they have conclusively established the falsity and illegality of the claims of revenue and established thereby that no monies were actually liable to be released to revenue. In fact, the judgment was further violated as it is laid down in Paras 30 to 32 of the said judgment that the Custodian has a duty to oppose the false claims of the revenue and thereby protect the interest of genuine creditors including banks for whom the Torts Act has been enacted but the Custodian has got the amounts locked up in the hands of revenue. These amounts ironically are now not being refunded by the revenue and once again acting in collusion with it the Custodian is not taking any steps to recover huge amounts which have become refundable by revenue so as to perpetuate the notification of Mehtas. The above facts conclusively establish that the Custodian is primarily responsible for the indefinite delay that has taken place in final distribution which has not taken place despite the passage of 29 years from the time the express legislation of Torts Act has been promulgated. In the aforesaid facts and circumstances, the Applicants wish to work towards early resolution of disputes by availing services of experienced and Senior Counsels and Advocates.

- (xx) That while advocating pre-mature sale of appreciating shares even before the crystallization of liabilities the Custodian knew very well settled law that sale of assets can never precede crystallization of liabilities as in fact in terms of settled law no excess assets can ever be sold beyond the decree awarded to the creditor. That even the

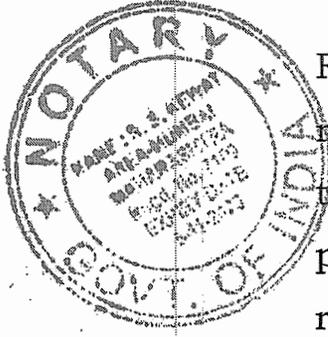


Hon'ble Supreme Court in Para 56 of the judgment in the case of Smt Jyoti H Mehta vs. Custodian reported as **(2009) 10 SCC 564** has laid down the law as under:

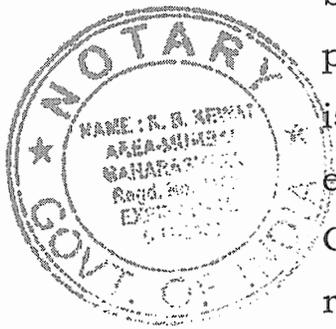
Para 56: *"It is true that to such an extent all properties would be liable to be sold which are needed for redemption and not beyond the same. What should be kept uppermost in the mind of the Court is to seek that the liabilities are discharged and not beyond the same. It is with that end in view that the powers of the Special Court contained in Sections 9-A and 11 must be construed."*

That had the Custodian abided by the law laid down in the said judgment and awaited crystallization of liabilities the above losses of Rs.18,275.35 Crores would not have been caused and such amount would have been available for distribution even though the date of distribution has still not arrived. That even in Para 41 of the said judgment it is clearly laid down that until the banks establish their claim on attached properties and until such a claim is determined the property attached cannot be sold or distributed u/s 11 of the Torts Act.

- (xxi) That the Custodian while supporting release of monies to revenue and while drawing the assets and liabilities picture has completely ignored the orders of this Hon'ble Court and of the Hon'ble Supreme Court in the scaling down proceedings filed by the banks against the high-pitched assessments framed by the revenue against Shri Harshad Mehta which also conclusively establishes that the Custodian has acted in collusion with the revenue in order to confer huge benefits on it. That this Hon'ble Court by an order dated 29.09.2007 in Report 15 of 2006 held that there was gross miscarriage of justice in the two assessments of Shri Harshad Mehta for AY 1992-93 and AY 1993-94 and on that basis the demands of revenue were scaled down by 92% from Rs.3400 Crores to Rs.278 Crores determining the liability to pay taxes at



Rs.140 Crores. That this Hon'ble Court further directed revenue to refund Rs.546.22 Crores with interest and that the said amounts alongwith other amounts may be paid over to the banks but instead of securing the said refund the Custodian secured the order for release of Rs.1995.67 Crores to revenue in Report 9 of 2010 under order dated 25.02.2011. This Hon'ble Court in the above scaling down order had already held that the entire sale value of securities could not have been treated as taxable income of Shri Harshad Mehta and only the difference between the sale value of securities less the purchase cost could be brought to tax. The revenue had made the largest additions under the head of Money Market Oversold Position (**MMOP**) of Rs.1080.59 Crores for AY 1992-93 and Rs.1181.05 Crores for AY 1993-94 totalling to Rs.2261.64 Crores by treating the entire sale value of securities as taxable income of Shri Harshad Mehta. The Custodian was bound to get guided by the aforesaid findings of this Hon'ble Court which was duly re-affirmed by Hon'ble Supreme Court in their scaling down judgment reported as **(2009) 2 SCC 451**. The Applicants state that in fact both Hon'ble CIT(A) by order dated 28.06.2017 and thereafter Hon'ble ITAT by order dated 14.01.2019 has deleted the entire addition of MMOP of Rs.1080.59 Crores of AY 1992-93 in the case of late Shri Harshad Mehta by complying with the scaling down judgment of this Hon'ble Court and Hon'ble Supreme Court. The Applicants crave leave of this Hon'ble Court to refer to and rely upon the appellate proceedings leading to orders of relief dated 28.06.2017 and 14.01.2019 when produced. The Applicants state that even therefore the addition under the head of MMOP for AY 1993-94 of Rs.1181.05 Crores was bound to be deleted in compliance with the scaling down judgment as and when the hearing for AY 1993-94 is undertaken



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by Hon'ble CIT(A) before whom the said appeal is presently pending hearing. The Applicants state that it is on that basis also that they are expecting large refunds even for AY 1993-94. The Applicants state that Custodian acting in collusion with revenue secured release of Rs.1995.67 Crores even though the revenue had not made compliance and refunded Rs.546.22 Crores as ordered by this Hon'ble Court.

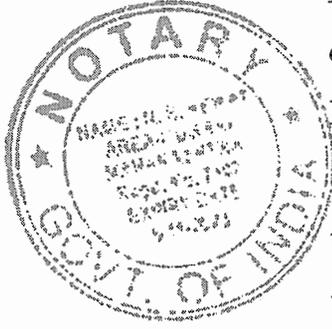
- (xxii) That upon challenge to the order of this Hon'ble Court dated 29.09.2007 even the Hon'ble Supreme Court has largely upheld the findings of this Hon'ble Court in its scaling down judgment cited supra. The Hon'ble Supreme Court upheld the 2 items of scaling down and also laid down the law in favour of the banks as can be seen from Paras 37 to 39 of the judgment. However, the revenue raised 2 disputed questions of facts which were remanded back for adjudication since this Hon'ble Court had not examined the same or given any findings in that regard. However, the Hon'ble Supreme Court in Para 44 also upheld that the entire sale value of securities was not liable to be treated as income but only the difference between the sale value and purchase cost was taxable. The Hon'ble Supreme Court directed that remanded issues were mandatorily liable to be decided within 3 months but now for past 13 years neither the banks nor the revenue has made compliance with the above directions and recently the banks have also withdrawn their Applications seeking scaling down of income after almost 10 years. The Applicants state that the revenue applied for extension of time before Hon'ble Supreme Court for making compliance with its above directions only for about a year and thereafter failed to make any compliance with the scaling down judgment. However, pending compliance of the said scaling down judgment, the Custodian yet acted in collusion with the revenue



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and secured release of Rs.1995.67 Crores to revenue under order of this Hon'ble Court dated 25.02.2011 in the said Report 9 of 2010. A deep vested interest has been created in favour of revenue to retain the vast amounts released to it and to only therefore the amounts are not being refunded by revenue since then. The Applicants may therefore be supported by release of the amounts prayed for in the present application even to contest the false claims of revenue and also to secure refunds of vast amounts which are overdue now for past several years. The Applicants state that this will augment the attached assets and a few thousand crores will become available for expediting final distribution u/s 11(2) of the Torts Act.

- (xxiii) That the constitutional validity of Sec.3 r/w Sec.11 have also been upheld subject to the law and conditions which are laid down by Hon'ble Supreme Court in Paras 11 to 18 and 41 of the said judgment. It is laid down that this Hon'ble Court is required to undertake distribution only by using the assets of a notified person and cannot sell or extinguish the right, title and interest of any third party in his assets to meet any claims against notified person. It is further laid down that had the Act provided for extinguishment of right, title and interest of third parties in his assets then the same would have been unconstitutional. That in direct violation of the law laid down in the said judgment, the Custodian has propagated a completely illegal Harshad Mehta Group theory to take away the monies belonging to other notified entities to meet the claims against the estate of late Shri Harshad Mehta. The Custodian is fully aware that the banks have pleaded and prayed for and obtained decrees only against the estate of late Shri Harshad Mehta but yet he stepped into the shoes of the banks to take recourse to monies belonging to other



notified entities. That even therefore it is absolutely necessary for the other notified entities including the estate of late Smt Rasila Mehta to contest such illegal Harshad Mehta Group theory as the Custodian has already drawn a huge amount of Rs.289.43 Crores from the account of Smt Rasila Mehta and transferred it into the account of late Shri Harshad Mehta for payments to banks. This amount is now required to be secured back from the banks who have illegally supported the Custodian and accepted the amounts from the account of Smt Rasila Mehta though they were not entitled to it in terms of decrees obtained by them. Such large amounts have been secured by banks and Custodian by suppressing the material fact in terms of decrees obtained by the banks they were entitled to release of monies only from the estate of late Shri Harshad Mehta.

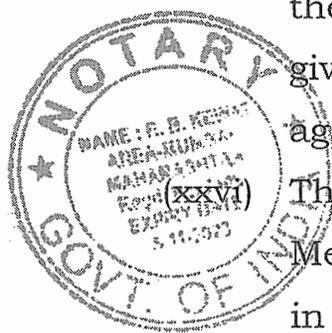
- (xxiv) The Custodian is aware that even under the Income Tax Act, the revenue cannot recover the dues of "A" from "B". The Custodian is also aware that all the banks have obtained decrees only against the estate of late Shri Harshad Mehta. That knowing this fully well the Custodian sought permission of this Hon'ble Court under Report dated 12.08.2005 to proceed with the distribution for 60 notified entities covering all the Mehtas including late Shri Harshad Mehta and sought orders from this Hon'ble Court to invite claims against them by issuing a Public Notice which prayer was granted by this Hon'ble Court on 05.09.2005. The Custodian thereafter issued the Public Notice on 19.10.2005 and copies of Custodian's Report dated 12.08.2005, order of this Hon'ble Court dated 05.09.2005 and copy of Public Notice dated 19.10.2005 are enclosed at **Exhibit EE**, **Exhibit FF** and **Exhibit GG** respectively. The Applicants state that the Custodian after seeing that no claims were received against the



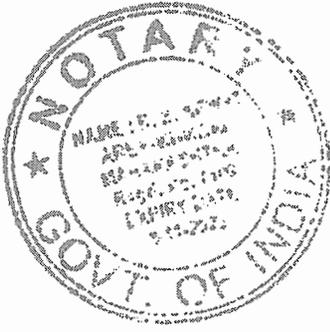
other notified entities except late Shri Harshad Mehta and in order to perpetuate their notification, he made baseless allegations without proving any one of them that these other notified entities were fronts and benamidars of Shri Harshad Mehta and later alleged that they were members of the so called Harshad Mehta Group. The Custodian has not filed a single Application in support of above allegations nor ever offered to prove them under the Indian Evidence Act but yet has got transferred about Rs.2500 Crores from the accounts of other notified entities to the account of late Shri Harshad Mehta by making the above baseless allegations and in this manner promoted litigation and got indefinitely delayed the final distribution from the year 2005 onwards.

- (xxv) The Applicants state that the Custodian had earlier filed MP 20 of 2006 against Smt Rasila Mehta and Smt Rina Mehta alleging that they were fronts and benamis of Shri Harshad Mehta and other notified entities and therefore their assets were liable to be used in discharge of claims on Shri Harshad Mehta and other notified entities and the Applicants are pleased to enclose at **Exhibit HH**, a copy of the said Petition (without annexures) and crave leave of this Hon'ble Court to refer to and rely upon the said proceedings when produced. The said Petition was extremely vague as it did not define whose fronts and benamis were Smt Rasila Mehta and Smt Rina Mehta nor a single transaction undertaken by them was impugned. The Applicants state that after Smt Rasila Mehta and Smt Rina Mehta filed their Affidavits-in-reply the Custodian instead of proving his allegations withdrew the said Petition under order of this Hon'ble Court dated 23.01.2007, a copy of which is enclosed at **Exhibit II**. The Petition was withdrawn by Custodian with liberty to file it again but now for past 14 years the

said Petition is not filed again by the Custodian and therefore it can be easily inferred that the Custodian has given up his allegations of fronts and benamis levelled against Smt Rasila Mehta and Smt Rina Mehta.



The Custodian thereafter propounded the Harshad Mehta Group theory which has no basis either in fact or in law under which he proposed that the assets of all other notified entities are liable to be used for discharging the claims against late Shri Harshad Mehta. That the order obtained by the Custodian dated 30.04.2010 in MP 41 of 1999 has already been set aside by Hon'ble Supreme Court under their order dated 02.05.2017 in CA 6326 of 2010 cited supra. The Custodian is falsely propagating that the Hon'ble Supreme Court has held some of the Mehtas as members of alleged Harshad Mehta Group since the Hon'ble Supreme Court in its above order dated 02.05.2017 have made some observations which are not only obiter but with respect it is submitted that the same are incorrect. It is submitted that in the judgment of Hon'ble Supreme Court in the case of Rasila Mehta Vs Custodian reported as **(2011) 6 SCC 220** nowhere Smt Rasila Mehta or Smt Rina Mehta are held to be members of Harshad Mehta Group much less any direction is given in this judgment that their assets are liable to be used for discharge of liabilities of late Shri Harshad Mehta. It is settled law that the Indian Evidence Act is applicable to the proceedings before this Hon'ble Court and therefore the Custodian is required to file a proper application and secure an order by proving his allegations about the alleged Harshad Mehta Group which he has failed to do so. That in fact the Custodian is incompetent to make any such allegations as he has no first-hand knowledge about the arrangement prevailing *inter se* between the Mehtas before he came to



The Applicants wish to vigorously contest the decrees not only in the above Execution Applications but also in the 6 Civil Appeals filed by Smt Jyoti Mehta before Hon'ble Supreme Court which is possible only if the Applicants are granted the reliefs prayed for in the present Application. The Applicants crave leave of this Hon'ble Court to refer to and rely upon all the aforecited proceedings in which the *ex-parte* decrees are awarded and the execution proceedings as also the proceedings in 6 Civil Appeals filed by Smt Jyoti Mehta before Hon'ble Supreme Court when produced.

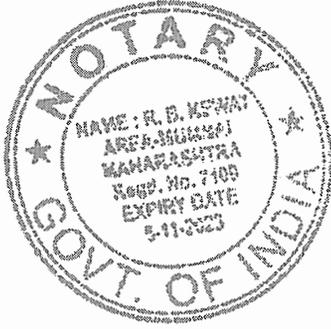
(xxviii) The Applicants state that in the aforesaid Affidavits they have prayed for release of monies from the attached accounts to engage Counsels and Senior Advocates and alleged that the Custodian has colluded with the banks securing *ex-parte* decrees against late Shri Harshad Mehta for much higher amounts to which they were not entitled to as the decrees have been obtained by the banks by playing a fraud on this Hon'ble Court and by acting in collusion with the Custodian. The Applicants have set out the facts and evidence in support of the above allegations and further alleged how the Custodian is deliberately not discharging his statutory duties and caused huge and irreparable losses to the estate of late Shri Harshad Mehta and late Smt Rasila Mehta and other notified entities both in the present Application as also in the Affidavits recently filed in aforecited Execution Applications. The Applicants are aggrieved that since the Custodian has failed to discharge his statutory duties and because he has an animus against the Applicants and has been acting as their adversary it has now become absolutely necessary for the Applicants to effectively defend their legal interest and arrest losses



and damage already caused to them by the aforesaid illegal conduct of the Custodian. The Applicants state that even therefore they humbly pray to this Hon'ble Court to grant the reliefs prayed for by them in the present Application.

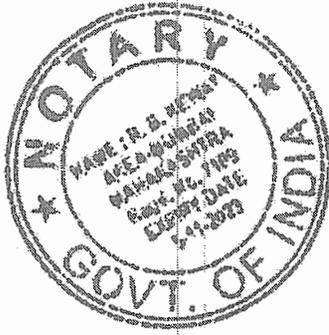
- (xxix) The Applicants state that they have adequate liquid balances in the Current Accounts and in fixed deposits to meet the prayers of relief of release of monies from their attached accounts. The Applicants state that this Hon'ble Court has already recognised the constitutional rights of the notified entities to be defended by Counsels and Advocates of their choice as can be seen from the judgment delivered by this Hon'ble Court on 12.02.1996 in MP 215 of 1995. The Applicants had once again applied for release of monies from their attached accounts in the year 2011 which were rejected by this Hon'ble Court under a combined order dated 31.01.2013 in MA 62 of 2012 & Ors. a copy of which is enclosed at **Exhibit JJ**. The Applicants state that the Custodian even in the said proceedings had misled this Hon'ble Court by presenting a completely false assets and liabilities picture and by falsely stating that the liabilities of the Group are far greater than the assets. The Applicants state that when the family members have surplus of assets they cannot be denied the benefit of the judgment of this Hon'ble Court in MP 215 of 1995 on the ground that claims on late Shri Harshad Mehta are also liable to be taken into account as the same would amount to re-writing the law laid down in the above judgment even though the same had already attained finality. In any case, the Mehtas have already conclusively established the falsity of the claims of revenue and also the falsity of the assets and liabilities picture being presented by the Custodian to secure favourable orders.

(xxx) The Applicants have also conclusively established that the Custodian is deliberately not been recovering their attached assets and has colluded with revenue and banks by failing to discharge his primary statutory duties. That most importantly the order of this Hon'ble Court dated 30.04.2010 passed in MP 41 of 1999 has been set aside by Hon'ble Supreme Court by order dated 02.05.2017 in CA 6326 of 2010.



(xxxii) The Applicants state that being helpless the Mehtas had to seek assistance of Shri Ashwin Mehta who obtained his Sanad and got enrolled as an Advocate on 01.02.2013 after almost 34 years of obtaining the law decree. That despite lacking experience he has been defending the legal interest of Mehtas. Shri Ashwin Mehta is now 66 years of age and has already repeatedly suffered heart problems and undergone a by-pass surgery and two episodes of angioplasties. That the cumulative volume of litigation is enormous and since he is not keeping good health on one or the other count it has become absolutely necessary for the Mehtas to engage services of Advocates and Senior and experienced Counsels to defend their legal interest. That Shri Ashwin Mehta despite having served the Mehta family for a number of years have not been paid any fees for the purpose. However, due to efforts made by him and the family members the scenario has dramatically improved over past few years as explained in the present Application.

(xxxiii) The Applicants state that in support of their allegations against the Custodian they rely upon several judgments / orders passed by this Hon'ble Court and Hon'ble Supreme Court criticising the conduct of the Custodian a list of which is enclosed at **Exhibit KK**. The Applicants are pleased to rely upon the proceedings in which the above orders have been passed when produced. The



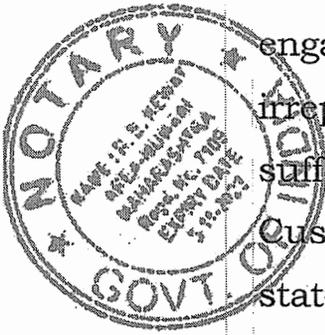
Applicants also rely upon order passed by this Hon'ble Court on 14.01.1999 in MA 222 of 1996 where it is recorded that the question of interest after the date of the notification is to be decided by this Hon'ble Court at the time of final distribution u/s 11(2)(c) of the Torts Act. This Hon'ble Court has also laid down that for AY 1993-94 as per the said judgment only the claims for tax due for the relevant months, during this period, have to be taken into consideration. That in all cases for decrees awarded against FFSL the interest has been awarded only upto the date of notification and it is further laid down that the balance claim for interest, if any, would be considered only at the time of final distribution u/s 11(2)(c) if there is any surplus left.

(xxxiii) The Applicants also rely upon the judgment of this Hon'ble Court dated 02.05.2002 in the said MA 222 of 1996 wherein the Custodian has urged that for distributing dividends the Court should take into account only ascertained liabilities and that liabilities which have not been ascertained till date cannot be taken into account whereas even disputed demands and claims have been included in the liabilities of the Mehtas. The Custodian also submitted that Section 11(2)(c) will not apply to post-notification tax and that u/s 11(2)(c) only the adjudicated claims would stand covered. In Para 10 of the above judgment this Hon'ble Court has included u/s 11(2)(a) only the claims which were covering the statutory period upto 06.06.1992 for tax liability of the said period. It has also held that claim for interest post-statutory period were yet to be adjudicated upon by the Hon'ble Court. The above judgments are also relied upon in support of the contention that unless this Hon'ble Court exercises the discretion given to it to include the claims falling u/s 11(2)(c) of the Torts Act in the distribution the Custodian



cannot include such claims in the liabilities of Mehtas. The Applicants state that therefore the Custodian was liable to present the assets and liabilities picture as per the law canvassed by him before this Hon'ble Court and as per the law laid down by this Hon'ble Court.

19. The Applicants state that they have filed the present Application to seek the reliefs which were denied to them in absence of a clear picture of assets and liabilities in the year 1995. That the reliefs were once again denied to them in the year 2011 by Custodian presenting a false assets and liabilities picture. However, since then during past 10 years there is complete change of scenario in favour of the Applicants because of steps taken by them notwithstanding the adversarial role played by the Custodian. The Applicants state that at all points in time they were entitled to the benefit of law laid down by this Hon'ble Court under its judgment dated 12.02.1996 passed in MP 215 of 1995 which has attained finality since the same was not challenged before Hon'ble Supreme Court. That it is clearly laid down in this judgment that the Applicants have a constitutional right to be represented by Advocates of their choice if they have surplus of assets over liabilities. The Applicants state that on a number of occasions they have averred through Affidavits in proceedings before this Hon'ble Court that revenue has filed against them patently illegal and high pitched demands and that they have surplus of assets over liabilities but they were yet denied the benefit of the law laid down by this Hon'ble Court. That this Hon'ble Court has already passed adverse orders against the revenue on 02.07.1993 in MA 107 of 1993 and once again on 29.09.2007 in Report 15 of 2006 and now the Applicants have already proved the falsity of claims made by the revenue. The Applicants have established their *bona fides* against all odds. The Applicants state that gross injustice has already been caused to them as they have gone unrepresented or they were poorly represented due to acute difficulties in



engaging Counsels of their choice and thereby suffered irreparable harm and damage. The Applicants have also suffered irreparable harm and losses at the hands of the Custodian running into thousands of crores. The Applicants state that the Custodian has also violated the law laid down in the said judgment on several counts while drawing the assets and liabilities picture. The Applicants state that therefore even at this belated stage justice may be done to them by giving them the benefit of the settled law.

20. The Applicants state that if this Hon'ble Court is not inclined to release any monies from the attached account of late Shri Harshad Mehta the reliefs prayed for by them in the alternative may be granted to them by drawing the amounts from the account of late Smt Rasila Mehta or other Applicants as prayed for by them in the interest of justice and by taking into account both the enormity of stakes involved and the fact that the decrees were awarded *ex-parte* as Smt Jyoti Mehta the widow of late Shri Harshad Mehta could not defend the legal interest of late Shri Harshad Mehta in the decretal proceedings for very valid and genuine reasons. In fact she *bona fide* believed that the Custodian as a part of his primary duty will contest the false claims and defend the legal interest of late Shri Harshad Mehta in order to preserve, protect and augment his attached assets.
21. The Applicants state that they have not filed any other Application seeking the same reliefs and only this Hon'ble Court has exclusive civil jurisdiction to grant the prayers made in the present Application. The Applicants therefore seek and beg for justice from this Hon'ble Court.
22. The Applicants humbly pray that the present Application may be heard on an urgent basis and well before the hearing of 6 Execution Applications filed by the banks seeking release of monies to them. At least 5 large decrees have been awarded by

Solemnly affirmed at Mumbai)

this 12 day of April 2021)

1) Smt Jyoti H. Mehta
L/H of late Shri Harshad Mehta

3) Smt Bhavna Manish Shah

5) Shri Sudhir S. Mehta

2) Shri Ashwin Mehta

4) Ashwin S Mehta
Constitute Attorney
Applicant no. 4

6) Shri Aatur H Mehta

(Mr. Ashwin S Mehta)
Advocate for the Applicant Nos. 1, 3, 5, 6

VERIFICATION

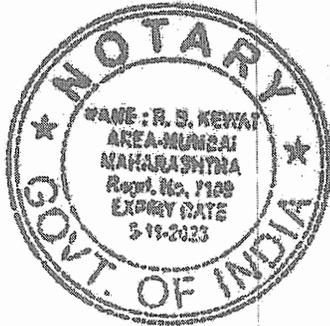
I, Shri Ashwin Mehta, Applicant No.2 abovenamed residing at 32 Madhuli, Dr. Annie Besant Road, Worli, Mumbai 400 018, do hereby solemnly declare that what is stated in the foregoing Application in Para Nos.1 to 23 are true to the best of my knowledge and belief and I believe the same to be true.

Verified at Mumbai this 12 day of April 2021.

Solemnly declared at Mumbai)

this 12 day of April 2021)

(ASHWIN MEHTA)
Applicant No. 2



BEFORE ME
RAMBHAVAN B. KEWAT
Regd. No. 7102
ADVOCATE AND NOTARY
16-A, Jimmy Bldg., 1st Floor,
Room No. 10, Parel Station Road,
Parel (E), Mumbai - 400 012

NOTED & REGISTERED
Sr. No. 1155 Page No. 44
Date: 12-04-2021

