

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

MISC. PETITION NO. 41 OF 1999

The Custodian ... Applicant
v/s.

Harshad S. Mehta & ors. ... Respondents

Mr. G.R. Joshi i/b P.M. & Mithi & Co. for Custodian.
Mr. Ajay Khandhar for Respondents Nos. 2, 3, 5 & 6.
Mr. Amol Chaugule for Respondent No. 1(a) & 9.
Mr. Chatterjee for Income-tax Department.

AND

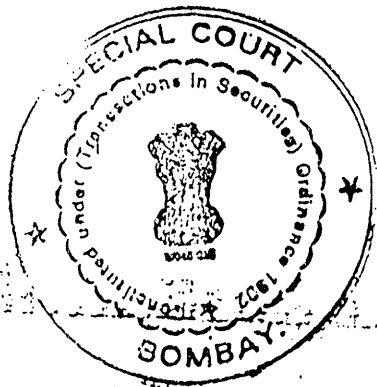
MISC. PETITION NO. 4 OF 2001

Custodian ... Applicant
v/s.

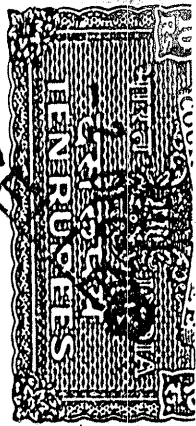
Growmore Exports Pvt. Ltd. and others ... Respondents

Mr. G.R. Joshi i/b P.M. & Mithi & Co. for Custodian.
Mr. Ajay Khandhar for Respondents Nos. 1, 2, 5, 6 & 10.
Mr. Amol Chaugule for Respondent No. 4(a).

AND



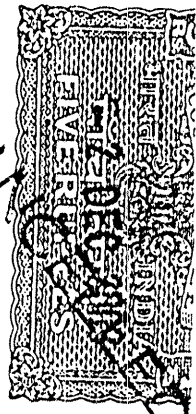
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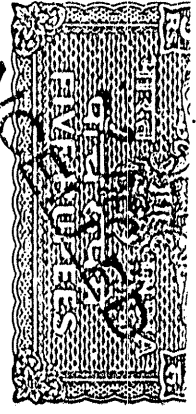
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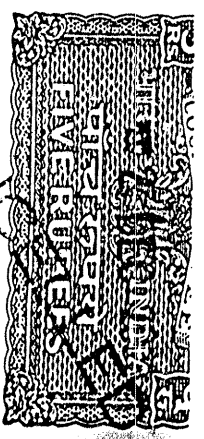
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CANCEL



CANCEL



MISC. APPLICATION NO. 254 OF 2003

Jyoti H. Mehta ... Applicant

v/s.

The Custodian ... Respondent

Mr. Amol Chauhan for the Applicant.

Mr. G. R. Joshi i/b P. M. & Mithi & Co. for Custodian.

AND

MISC. APPLICATION NO. 261 OF 2003

Hitesh S. Mehta ... Applicant

v/s.

The Custodian ... Respondent

Applicant in person.

Mr. G. R. Joshi i/b P. M. & Mithi & Co. for Custodian.

AND

MISC. APPLICATION NO. 262 OF 2003

Sudhir S. Mehta ... Applicant

v/s.

The Custodian ... Respondent

Applicant in person.

Mr. G. R. Joshi i/b P. M. & Mithi & Co. for Custodian.

AND



MISC.APPLICATION NO.263 OF 2003

Pratima H. Mehta ...Applicant
v/s.
The Custodian ...Respondent

Applicant in person.
Mr.G.R. Joshi i/b P.M. & Mithi & Co. for Custodian.

AND

MISC.APPLICATION NO.265 OF 2003

Deepika A.Mehta ...Applicant
v/s.
The Custodian ...Respondent

Mr.Ajay Khandhar for the Applicant.
Mr.G.R. Joshi i/b P.M. & Mithi & Co. for Custodian.

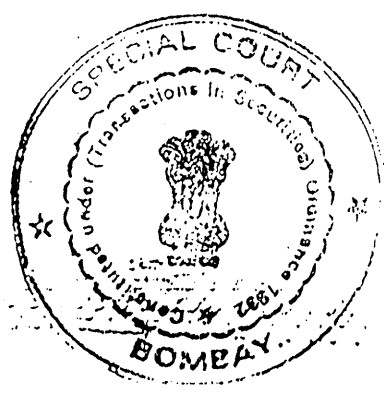
AND

MISC.APPLICATION NO.266 OF 2003

Jyoti H. Mehta ...Applicant
v/s.
The Custodian ...Respondent

Mr.Ajay Khandhar for the Applicant.
Mr.G.R. Joshi i/b P.M. & Mithi & Co. for Custodian.

AND



MISC.APPLICATION NO.275 OF 2003

...
Aatur Holdings Pvt.Ltd. ...Applicant

v/s.

The Custodian ...Respondent

...
Mr.Ajay Khandhar for the Applicant.

Mr.G.R. Joshi i/b P.M. & Mithi & Co. for Custodian.

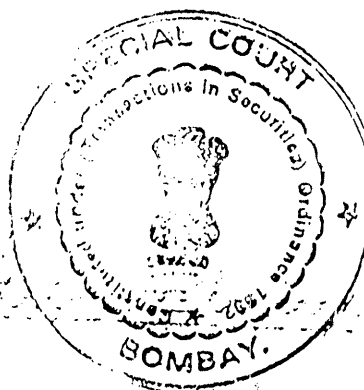
...
CORAM: D.K. DESHMUKH
JUDGE, SPECIAL COURT

DATED: 17th OCTOBER, 2003

P.C.

1. Misc.Petition No.41 of 1999 has been taken out by the custodian seeking orders of the court for sale of the properties belonging to the notified parties, who are joined as Respondents in this Petition, which are described in Exh.B and Exh.B-1 to this Petition. These properties are residential premises occupied by Harshad Mehta group. This petition is opposed by the Respondents, who have filed their affidavits opposing this petition.

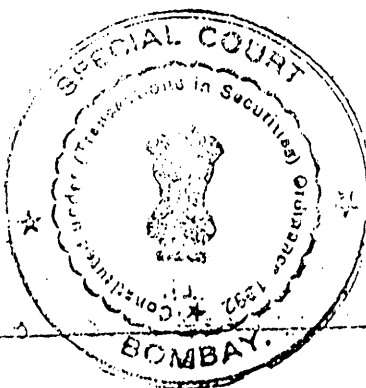
2. Misc.Petition No.4 of 2001 is also taken out by the custodian seeking orders of the court for sale of the properties belonging to the notified



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parties and legal representatives of the deceased Harshad Mehta, who have been joined as Respondents in this petition. These properties are described in Exh.A to this Petition. These are mainly commercial premises being used for commercial purposes. The Respondents in this petition also belong to Harshad Mehta group. This petition is also opposed by Respondents Nos. 1 to 3 and 5 to 10, who have filed their affidavits opposing the Petition.

3. Misc.Application No.254 of 2003 has been taken out by Ms.Jyoti H. Mehta for release of Flat No.32-B, Madhuli, 3rd floor, Dr,Annie Besant Road, Worli, Mumbai-400 018 from attachment. Misc.Application No.261 of 2003 is taken out by Hitesh Mehta, again a notified party, seeking court orders for release of Flat No.44-A. Misc.Application No.262 of 2002 is taken out by Sudhir S. Mehta, again a notified party, for release of the flat No.44-B from attachment. Misc.Application No.263 of 2002 is taken out by Smt.Pratima H. Mehta, again a notified party, for release of the flat No.33 from attachment. Misc.Application No.265 of 2002 is taken out by Smt.Deepika A. Mehta, again a notified party, for release of Flat No.45 from attachment.

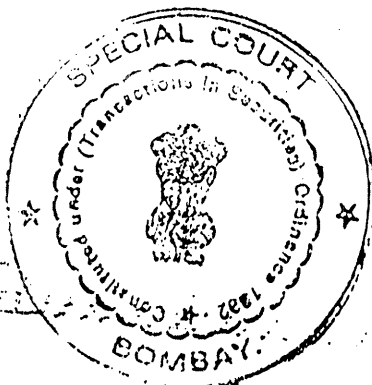


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Misc.Application No.266 of 2002 is taken out by Ashwin S. Mehta, a notified party, for release of Flat No.32-A from attachment. Misc.Application is taken out by Aatur Holdings Pvt.Ltd., a notified party, for release of Flat No.34-A from attachment.

4. In short these Applications have been taken out by the notified parties for release of the residential flat at Madhuli, Dr. Annie Besant Road, Worli, Mumbai which are occupied by the notified parties. In other words these Misc. Applications being Misc.Applications Nos. 254 of 2003, 261 of 2003, 262 of 2003, 263 of 2003, 265 of 2003, 266 of 2003 and 275 of 2003 are for release from attachment all the flats in relation to which the custodian has sought orders for sale in Misc.Petition No.41 of 1999.

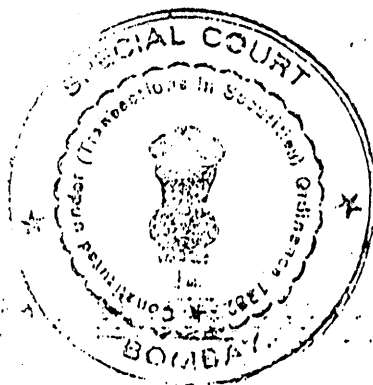
5. In these Applications the question to be considered is whether the residential flats at Madhuli belonging to the notified parties and under attachment under the Act are to be released from attachment or they are to be sold as per the petition filed by the custodian as also the question whether the commercial properties described in Exh.A to Misc.Petition No.4 of 2001 which are also under attachment under the Act are



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permitted to be sold as per the Petition of the custodian being Misc.Petition No.4 of 2001. In other words, so far as residential flats are concerned, there is an application for release of the flats from attachment as also for sale of those flats, but so far as the commercial properties involved in Misc.Petition No.4 of 2001 are concerned, there is a Petition of the custodian for sale of the properties, but there is no application from the notified parties for release of those properties from attachment.

6. As per the scheme of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act 1992 the custodian is vested with the powers by virtue of the provisions of sub-section (2) of Section 3 to notify any person who has been involved in any offences relating to transactions in securities during the period from 1st April, 1991 to 6th June, 1992. The consequence of a person being notified by the custodian under sub-section (2) of Section 3 of the Act is provided by sub-section (3) of Section 3. The consequence is from the date of notification any property moveable or immoveable or both belonging to the notified person stands statutorily attached in terms of the provisions of sub-section (4) of Section 3 that

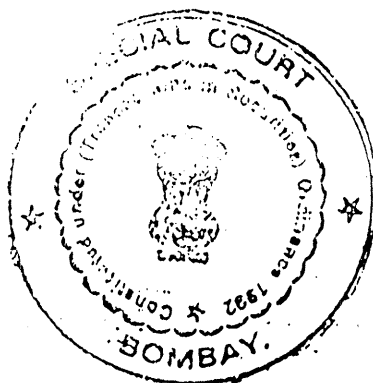


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property is to be dealt with by the custodian in such a manner as may be directed by this Court. Section 11 of the Act empowers this Court to issue directions to the custodian for disposal of the property which stands attached by virtue of the provisions of Section 3 of the Act. Sub-section (2) of Section 11 provides for discharge of liabilities by making payments of the notified parties. It is thus clear that the property of a notified person is statutorily attached so that the property can be disposed of for the purpose of payment or discharge of liabilities of the notified parties. Thus, the principal object of statutorily attaching the property of the notified party is that to use the property for realising moneys for discharging the liability of the notified party.

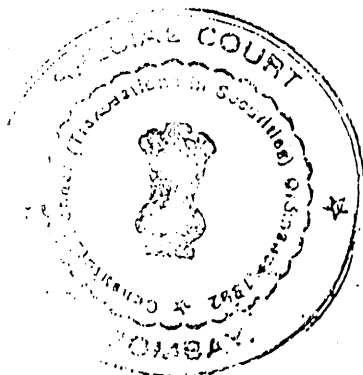
7. It may be pointed out here that in the judgment in Misc. Petition No. 64 of 1998, The Custodian v/s. Union of India and ors., decided on 17th August, 2000, this court was considering the scheme for sale of attached shares belonging to the notified parties. This court in paragraph 8(III) has observed thus:-

Section 11(1) expressly refers to the duty of the Custodian to dispose of the assets whereas, section 11(2) refers to



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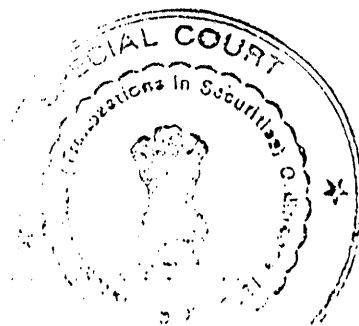
distribution. Reliance is placed on the judgment of the Supreme Court in the case of Harshad Mehta (supra). However, on reading the said judgment it is clear that various questions referred by this Court to the Supreme Court, each of the said questions were separately answered. While answering the question, the Scheme of section 11(1), sections 11(2)(a), (b) and (c) are separately considered. Therefore, when reading the judgment, one has to keep in mind the relevant question and the context in which the said question is framed. In para 13 of the said judgment in the context of section 11(1), the Supreme Court has clearly laid down the condition which would attract the said section. The Supreme Court has held that section 11(1) empowers this Court to direct the Custodian to dispose of the property under attachment. The only condition prescribed by the Supreme Court in the said judgment vide para 13 is the satisfaction of the Special Court before it gives directions for disposal to the effect that the attached property belonged to the notified party. In other words, before the direction of disposal is given, the Special Court should be



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satisfied that the attached property belonged to the notified party. All subsequent paras of the said judgment thereafter, deal with the question of distribution under section 11(2). Therefore, even under the judgment of the Supreme Court this dichotomy between sale and distribution is spelt out. In the present application the Scheme is not for distribution. The Scheme is not under Section 11(2). The Scheme squarely falls under Section 11(1) for sale.

Thus, it is clear from the above referred observations that the only question that is to be considered by the Court while giving direction for disposal of the attached property is whether the attached property belongs to the notified party. In so far as the present case is concerned, there is no dispute, in any case it is not contended by any of the notified parties that the properties in relation to which directions are sought by the custodian for sale do not belong to the notified parties. Really speaking, therefore, in the absence of any dispute that the properties belong to the notified party, the Petition filed by the custodian for sale of these properties deserves to be granted. In so far as commercial properties in



relation to which directions are sought in Misc. Petition No. 4 of 2001 as observed above. There is no application made by the notified parties for release of those properties and therefore there can be no impediment for issuing directions sought by the custodian in Misc. Petition No. 4 of 2001.

8. So far as Misc. Petition No. 41 of 1999 is concerned, it is nobody's case that the properties in relation to which directions for sale is sought by the custodian in this petition do not belong to the notified parties, and therefore, this Petition also deserves to be granted. Therefore, the only aspect that needs to be considered is whether the residential properties which are subject matter of Misc. Petition No. 41 of 1999 can be released from attachment because the notified parties have filed Misc. Applications Nos. 254 of 2003, 261 of 2003, 262 of 2003, 263 of 2003, 265 of 2003, 266 of 2003 and 275 of 2003 for release of the properties.

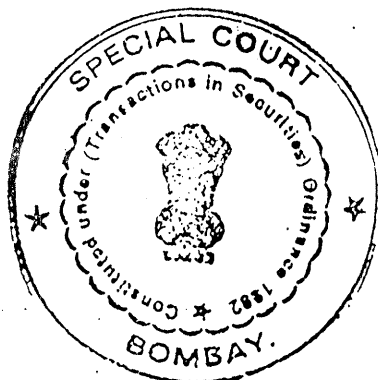
9. According to the learned Counsel appearing for the notified parties, who have taken out above referred Misc. Applications, it is not necessary to continue the properties under attachment because the liabilities of the notified parties can be met from the funds that are available with the



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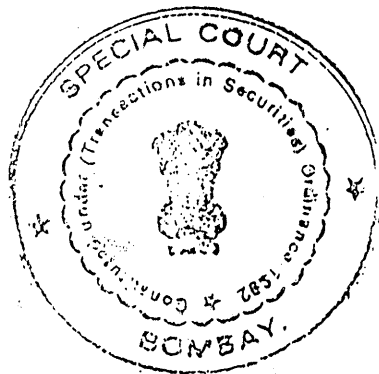
custodian already and the funds that will be available with the custodian by sale of the commercial properties which are subject matter of Misc. Petition No. 4 of 2001. So far as the position of the assets and liabilities of the notified parties who have taken out aboveresferred Misc. Applications for release of the properties are concerned, the custodian has filed an affidavit of one Shri N.K. Srivastava dated 18th October, 2003 giving full details in that regard. The detailed statement that have been filed along with this affidavit are based on the audit report of the auditor who have been appointed by this Court to audit the accounts of these notified parties as also the decrees passed against the persons and the entities in Harshad Mehta Group. The amount of decrees passed by the Court is to the tune of Rs. 43,394,054,846.21. Apart from that a statement has also been filed which shows that the admitted liability of late Shri Harshad Mehta is Rs. 227,255,596.04, M/s Harshad S. Mehta is Rs. 3,525,504,845.45, Mrs. Jyoti H. Mehta is Rs. 262,428,106.99, M/s. Jyoti H. Mehta is Rs. 2,517,694,407.57, Mr. Ashwin S. Mehta is Rs. 2,321,245.89, M/s. Ashwin S. Mehta is Rs. 635,918,025.16, Growmore Research & Management Ltd. is Rs. 108,005,090.05. The grand total of the

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admitted liabilities thus comes to Rs.7,279,127,317.15. Along with the affidavit a statement of income-tax liabilities against the notified parties of Harshad Mehta Group as on 13-8-2003 has also been given which is at Exh.H to the aboveresferred affidavit. The amount of priority demand of income-tax liabilities against Harshad Mehta group as per this affidavit is Rs.18,297,576,248/-. Non-priority demand including interest and penalty is Rs.119,795,586,432/-. Thus the total income-tax demand comes to Rs.138,093,162,680/-. With this affidavit a chart has been filed at Exh."G" giving summary of assets (immoveable properties-Flats and Offices, balance in current Account and Term Deposit as on 31-8-2003 has been given). As per this chart the estimated value of the immoveable properties of this group is Rs.184,030,038/-. Value of shares is given at Rs.3,445,273,576.79 and the balance in the Current Account and Term Deposit is given at Rs.6,098,028,552.15. Thus the total value of the assets as per the affidavit filed on behalf of the custodian of Harshad Mehta group is Rs.9,727,332,166.94. Thus taking into consideration the total of the decretal amount and the income-tax liability it is clear that the total assets of Harshad Mehta group would be far below



the liabilities. Thus the only ground on which the release of the properties is sought by the notified parties clearly appears to be non-existent.

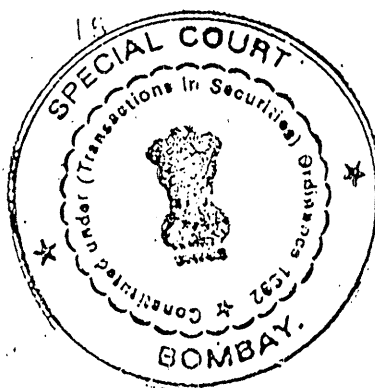
10. It was contended that presently only assessment orders have been made by the income-tax department. Therefore, till the assessments attains finality those dues can not be taken into consideration. It appears that the same contention was urged before this Court in Miso. Petition No. 64 of 1998 and that contention has been rejected by the Court by observing thus:

"In the first question, the Court has answered the meaning of the words taxes due. Under the Income-tax Act, there is a difference between liability and assessment. The Scheme of the Income-tax clearly indicates that liability to pay Income-tax chargeable under section 4(1) of the Act does not depend upon the assessment being made by the Income-tax Officer but, it depends on the enactment of the Finance Act prescribing rate/rates for any assessment year. Therefore, as soon as the rates are prescribed by the Finance Act, the liability to pay taxes arises on the total income which

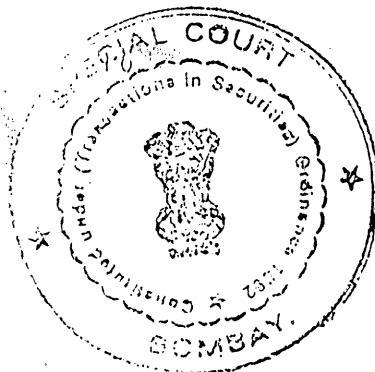


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is to be computed by the assessee in accordance with the provisions of the Act. In view of the said difference in the concept of liability and assessment under the Income-tax Act particularly, the question referred to the Supreme Court was whether the word 'due' refer merely to the liability to pay taxes or does it refer to the liabilities which are crystallised into a legally ascertained amount. By the aforesaid judgment, it has been laid down that the words 'taxes due' under section 11(2)(a), which deals with distribution can only refer to the liability, which has been computed in accordance with the provisions of the Income-tax Act. In other words, the Supreme Court has held the words 'taxes due' do not merely refer to the liability which arises under section 4(1) of the Act when the rates are prescribed by the Finance Act, but it refers to the liability to pay tax on the total income which is computed in accordance with the provisions of the Act. Where the return is filed by the assessee, the ITO is required to check whether the returned income is computed in accordance with the Act. The tax, which becomes payable on the basis of the returns.

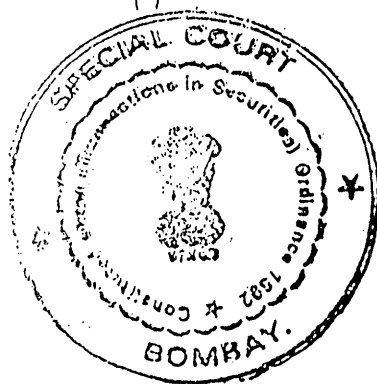


is an assessed tax. Therefore, the Supreme Court has laid down that the words 'taxes due' referred to the liability which was crystallised into a legally ascertained sum immediately payable. In other words, the expression 'taxes due' is equated with assessed tax. In fact, while answering question No.1 the Supreme Court has clearly stated in para 24 that the expression 'taxes due' in section 11(2)(a) meant assessed taxes, which are presently payable. The Supreme Court has nowhere stated that the 'taxes due' would mean the taxes which are finally payable. The expression 'taxes due' finds place in section 11(2)(a). It is the section which deals with distribution of assets. Therefore, the Supreme Court has laid down that in the context of distribution, the expression 'taxes due' can only mean assessed taxes. In the circumstances, there is no merits in the contentions of the notified parties that till they have exhausted all their remedies under the Act, the taxes do not become due for payment."



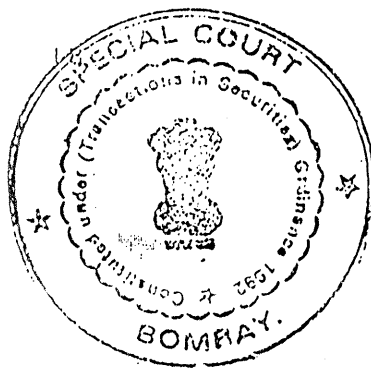
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It is thus clear that the contention urged already stands decided by this Court and it can not be permitted to be reargued. On behalf of the custodian an extract from the report of the auditor has been produced, which shows that bulk of the consideration for purchase of these residential flats at Madhuli has come from late Shri Harshad S. Mehta. Nothing was shown to me, which would even raise a doubt about the figures which were disclosed by the custodian in relation to the purchase of these flats by the notified parties. It is further clear that though some of the properties are shown to have been owned by certain companies which are of the Harshad Mehta group, really the properties belong to the members of Harshad Mehta family. It is pointed out that so far as Growmore Leasing and Investments Ltd. is concerned, it is a company incorporated under the Companies Act. The paid-up capital of this company is only Rs.900/-. It is divided into 9 equity shares of 100/- each and all the 9 shares are held by the members of the family of Harshad Mehta group. It is clear that this company has been used by the family for transfer of funds. So far as M/s. Zest Holding Pvt. Ltd. is concerned, the paid-up capital of this company as on 8-6-1992 is only Rs.5,200 divided into 52 equity shares of Rs.100/- each. One share



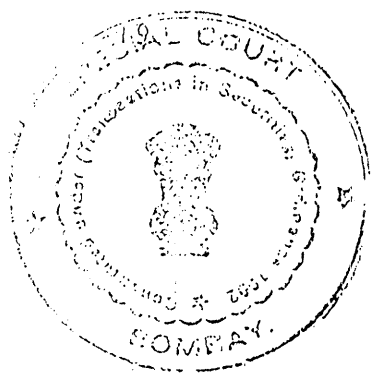
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each is held by Mr. Hitesh S. Mehta and Mrs. Deepika A. Mehta and the balance 50 shares are shown to be held by Mr. Harshad S. Mehta. The directors of the Company are Mr. Hitesh S. Mehta and Mr. Sudhir S. Mehta. It is clear from the affidavit of the chartered accountant that this corporate entity was used by the Harshad Mehta group for transfer of funds. The chartered accountant has also reported that funds for purchase of immovable property at NCPC were made available to this company from M/s. Harshad S. Mehta and Mrs. Deepika A. Mehta. Similar is the case with other corporate entities belonging to this group. Thus, the properties have been purchased in the name of such corporate entities which are totally controlled by the members of the family of late Shri Harshad Mehta. On behalf of the custodian, relying on the judgment of the Supreme Court in the case of Delhi Development Authority v/s. Skipper Construction Company (P) Ltd., AIR 1996 SC 2005 it was submitted that as these corporate entities have been created by the members of the Harshad Mehta group they are to be treated as one entity by lifting the corporate veil. Observations of the Supreme Court found in paragraph 28 of this judgment, in my opinion, are pertinent, which read as under:-



28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.

11. It is further to be considered here that though the members of Harshad Mehta family are occupying the residential premises, they have not bothered to pay the outgoings of these properties.



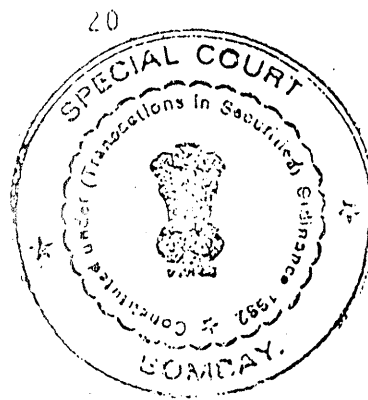
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They expect the custodian to pay the outgoings of these properties to the Co-operative Society from the attached account. It becomes clear from what has been observed above that the assets of this group may not be enough to pay their liabilities.

12. Taking overall view of the matter, therefore, in my opinion, there is no justification for releasing residential properties from the attachment. In the result, therefore, Misc. Applications Nos. 254 of 2003, 261 of 2003, 262 of 2003, 263 of 2003, 265 of 2003, 266 of 2003 and 275 of 2003 are rejected.

13. Misc. Application No. 4 of 2001 is, therefore, allowed. The custodian is directed to take steps to sell the properties which are described at Exh. A to this Petition by following the usual procedure and in accordance with the provisions of Special Courts Act. The custodian is permitted to withdraw the amounts from the attached accounts that may be necessary for taking steps for sale of these properties as directed above.

14. Misc. Petition No. 41 of 1991 is also granted. The Custodian is directed to take steps to sell the flats described in Exh. B and Exh. B-1 to this

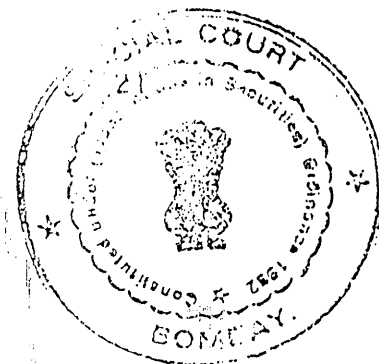


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Petition by following usual procedure and in accordance with law. The custodian is permitted to withdraw the amounts that may be necessary for the purpose of taking steps for sale of the properties.

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

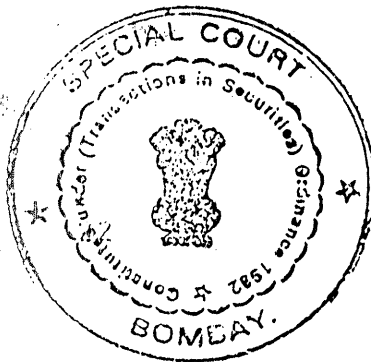
16. In case no such undertakings are filed by the adult members as directed above, within the aforesaid period, the custodian shall stand appointed as receiver of the flats which are described in Exh.8 and Exh.8-1 to Misc. Petition No.41 of 1999.



17. The custodian shall initially take only symbolic possession. In case the members of Harshad Mehta family, who are presently occupying these flats, agree to occupy the flat as agent of the Receiver, on usual terms and conditions without payment of royalty and security, the custodian shall appoint them as agent of the Receiver to be in possession of the flats, but they will have to pay the outgoings. In case they do not so agree and execute the agency agreement within a period of two weeks from being called upon to do so by the Receiver, the Receiver shall be free to take physical possession of the flats, if necessary by taking police help. In that event the custodian shall be permitted to withdraw the amount that may be necessary for protecting the properties from the attached account.

Parties to act on ordinary copy of the order duly authenticated by the Associate/ Personal Secretary of the Court as a true copy.

Applied on 21/2/03
 Pages (22)
 Examined by Mrs. Kadam
 Compared with Mr. P. K. Kadam
 Ready on 21/2/03
 Delivered on 21/2/03



Certified to be a true copy
 SARGAC
 21/2/03
 OFFICER ON SPECIAL DUTY
 Office of the Special Court
 Bombay.

21/2/03