

**SUPREME COURT OF INDIA**

Rasila S.Mehta

Vs.

Custodian, Nariman Bhavan

C.A.No.2924 of 2008

(P.Sathasivam and B.S.Chauhan,JJ.,)

06.05.2011

**JUDGMENT**

**P.Sathasivam,J..**

1. Civil Appeal No. 2924 of 2008 has been filed by Smt. Rasila S. Mehta, mother of late Harshad S. Mehta and Civil Appeal No. 2915 of 2008 has been filed by Smt. Rina S. Mehta, sister-in-law of late Harshad S. Mehta against the final judgment and order dated 26.02.2008 passed by the Special Court under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as "the Act") at Bombay in Misc. Petition Nos. 2 and 1 of 2007 respectively whereby the Special Court dismissed their petitions challenging the notification dated 04.01.2007 issued by the Custodian exercising powers under Section 3(2) of the Act notifying the appellants.

2. Civil Appeal No. 3377 of 2009 has been filed by Smt. Jyothi H. Mehta, widow of late Shri Harshad S. Mehta and six others against the judgment and order dated 13.03.2009 passed by the Special Court in approving Report No. 19 of 2008 filed by the Custodian in respect of outstanding dues towards Flat Nos. 32A, 32B, 33, 34A, and 34B on the Third Floor and 44A, 44B and 45 on the Fourth Floor together with terrace area on the Third Floor and eight car parking space in Madhuli Cooperative Housing Society Limited, Worli belonging to late Harshad S. Mehta as well as other related notified entities of the Harshad Mehta Group.

3. Civil Appeal No. 4764 of 2010 has been filed by Smt. Rasila S. Mehta challenging the order dated 07.05.2010 passed by the Special Court in approving Report No. 23 of 2009 of the Custodian on outstanding dues of Madhuli Cooperative Housing Society Limited, Worli as on 31.03.2009 towards Flat No. 31 on the Third Floor belonging to her being a notified party.

4. Since all the parties in the above appeals are family members of late Harshad S. Mehta and the orders challenged were of the Special Court, the same are being disposed of by the following common judgment.

## 5. Brief Facts:

“a) Sometime in 1992, it was noticed that frauds and irregularities involving colossal amounts of money were committed by certain stock brokers and other persons as also by certain banks and financial institutions. The amounts involved in the said frauds and/or irregularities were estimated to run into several thousand crores. The Central Government, therefore, formed an opinion that it was necessary to take immediate steps to try offences relating to such transactions in securities and for matters connected therewith or incidental thereto. The President of India thereupon promulgated an Ordinance on 6th June 1992 known as the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance 1992 and the said Ordinance came into force on the same day. The said Ordinance with certain modifications became the Act when the assent of the President was given thereto on 18th August 1992 and the said Act was deemed to have come into force on 6th June 1992, namely, the date on which the said Ordinance had been promulgated.

b) On 6th June, 1992 the Central Government had also framed certain rules under the provisions of Section 14 of the said Ordinance known as the Special Court (Trial of Offences Relating to Transactions in Securities) Rules, 1992 (hereinafter referred to as 'the Rules'). The said rules came into force on the 6th June 1992 and continue in force after the enactment of the Act under section 15(2) of the Act and/or Section 24 of the General Clauses Act, 1897.

c) The object of the Act, as apparent from the provisions thereof, is to ensure that offences relating to securities were expeditiously tried and it, therefore, provides for the establishment of a Special Court. The Act also provides that an appeal lies from the judgment, sentence or order, not being interlocutory order, of the said Special Court to the Supreme Court of India both on facts and on law. An important object of the said Act is to ensure speedy recovery of the huge amounts involved, to punish the guilty in such irregularities or fraud, to restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions.

d) On 13.05.1992, the Central Bureau of Investigation (in short "the CBI") issued freeze orders under Section 102 of the Code of Criminal Procedure (in short 'the Code) on all the bank accounts of Smt. Rasila S. Mehta and Smt. Rina S. Mehta on the ground that the appellants are recipients of monies diverted by M/s Harshad S. Mehta from banks and financial institutions. This was a preventive measure taken by the CBI which powers are normally invoked pending investigation to bring within their fold, any property which is the subject-matter of an offence. Since then, all the charge-sheets came to be filed by the CBI after thorough investigation and trial has been completed in several cases. Based on the provisions of the Act, on 08.06.1992, the Custodian notified 29 entities except the appellants (Smt. Rasila S. Mehta and Smt. Rina S. Mehta) in the Mehta family comprising four brothers, the wives of three brothers, their three HUFs, a partnership firm, three brokerage firms in the family and

15 corporate entities promoted by them. These persons were notified on the basis of information/complaint received from the Ministry of Finance in which the Janakiraman Committee report was cited and relied upon.

e) On 25.01.1994, an amendment was carried out in the Act, wherein, Section 9-A was inserted to confer civil jurisdiction to the Special Court. Smt. Rasila S. Mehta and Smt. Rina S. Mehta were active investors and had built up a portfolio of investments which has appreciated in value over the years, more particularly, during the last three years. They own one each of the nine flats at Madhuli Cooperative Housing Society Limited which are merged/amalgamated with other flats under the occupation of the joint family. The bank accounts and shareholdings of these appellants are held jointly where the appellants are the first holders and their family members are joint/second holders. Due to the fact that joint/second holders are notified entities, the assets of the appellants have been treated as attached on and from 08.06.1992 and the same are being managed by the Custodian for the last 15 years. On 21.07.2006, the Custodian preferred a common Misc. petition No. 20 of 2006 against Smt. Rasila S.Mehta and Smt. Rina S. Mehta seeking relief of a declaration that the said appellants are benamis and fronts of late Harshad S. Mehta and other notified entities and, therefore, their assets should be utilized in discharge of their liabilities. The appellants also filed M.A. No. 291/2006 on 11.09.2007 seeking relief of a declaration that all the assets belonged to them and they were the first holders, namely, bank accounts and fixed deposits and the shareholdings may be declared as free from attachment.

f) On 04.01.2007, the Custodian issued a notification notifying both the appellants under Section 3(2) of the Act for which a public notice was published in the newspapers on 06.01.2007.

g) On 19.01.2007, Smt. Rina S. Mehta filed Misc. Petition No. 1 of 2007 and on 18.06.2007, Smt. Rasila S. Mehta filed Misc. Petition No. 2 of 2007 for the relief of de-notification under Section 4(2) of the Act. It transpired that the appellants were notified on the basis of the alleged complaint by Canbank Financial Services Ltd. (in short "Canfina"). On considering the materials, the Special Court, by impugned order dated 26.02.2008, dismissed the petitions filed by the appellants - Smt. Rasila S. Mehta and Smt. Rina S. Mehta.

h) Inasmuch as the other two appeals relate to the orders passed on the report submitted by the Custodian, there is no need to traverse all the details as stated therein.

6. Heard Mr. I.H. Syed, learned counsel for the appellants, Mr. Subramonium Prasad, learned counsel for the Custodian, Mr. K.K. Venugopal, learned senior counsel for intervenor/Standard Chartered Bank and Mr. Tushad Cooper, learned counsel for intervenor/State Bank of India.

7. Mr. Syed, learned counsel for the appellants after taking us through the relevant provisions of the Act, Rules and the materials available with the Custodian as well as the reasonings of the Special Court raised the following contentions:

“(i) The impugned notification is non-reasoned and non-speaking. The validity of a statutory order must be judged by a court of law by the reasons mentioned in the order itself and a statutory order cannot be explained and supplemented by fresh reasons in the shape of affidavit or otherwise whereas in the present case the Special Court accepted the same which is contrary to settled law.

(ii) Delay of 15 years in passing the order of notification is unreasonable. The explanation offered for delay is also unacceptable.

(iii) Material relied upon in passing the order of notification i.e. Canfina's letter dated 28.12.2006 is not supported by an affidavit which could not have been relied upon as it is contrary to proviso to Rule 2 of the Rules.

(iv) Reliance on the reports of Joint Parliamentary Committee, Jankiraman Committee, IDG and Chartered Accountants' by the Custodian is unacceptable.

(v) Pre-decisional hearing by the Custodian was required to be given and in the case on hand such opportunity was not afforded.

(vi) No effective post-decisional hearing as the materials relied upon was not supplied in time.

(vii) The Special Court erroneously held the transaction to be benami in general on the basis of Chartered Accountants' reports without examining individual transactions.

(viii) The onus to establish the validity, correctness, legality, propriety of the notification order is on the Custodian but wrongly shifted on the appellants.

(ix) Satisfaction of Custodian while passing an order of notification should be objective and based on materials as provided in the Rules.

(x) The Special Court erroneously held that the meaning of the phrase "involved an offence" has attained finality by this Court, though the said question was left open. In any event, the case of the Custodian was that a sum of Rs. 50 crores was diverted by M/s Harshad S. Mehta to the appellants during the period 01.04.1990 to 06.06.1992. In such event, monies transferred/diverted from the banks/financial institutions can only be recovered from the appellants and nothing more.

(xi) The jurisdiction of the Special Court is limited to the statutory period only, i.e. 01.04.1991 to 06.06.1992.

(xii) No interest can be levied on the notified parties as per the judgment of this Court in *Harshad Shantilal Mehta vs. Custodian and Ors.* (1998) 5 SCC 1.

8. On the other hand, Mr. Subramonium Prasad, learned counsel for the Custodian heavily relying on the circumstances for passing the Act, the statement of Objects and Reasons and the relevant provisions submitted that:

“(i) The impugned order of the Special Court is valid and the appellants have not made out any case for interference by this Court.

(ii) As per Section 4(2) of the Act, it is for the appellants to show to the Special Court that they are not involved in any offence in securities between 01.04.1991 to 06.06.1992.

(iii) A perusal of various reports like the Auditor's report, Janakiraman Committee's report, report of Inter Disciplinary Group (IDG), report of Vinod K. Aggarwal and Company coupled with materials placed and discussed, the impugned decision of the Special Court cannot be faulted with.

(iv) From the materials placed, it is clear that the appellants are nothing but front benamidars of Harshad S. Mehta and there is no acceptable material to show that the appellants were having sufficient funds in their hands due to the purchase and sale of shares by placing acceptable materials such as income-tax returns etc. Inasmuch as the Special Court is manned by or presided over by a sitting Judge of High Court, sufficient safeguards are provided in the Act and, in any event, the appellants have no way prejudiced.

(v) As per the provisions of the Act and interpreted by this Court on various occasions, it is for the appellants to make out a case before the Special Court that they are not involved in any offence or that they have no nexus.

9. Mr. K.K. Venugopal, learned senior counsel for intervenor/Standard Chartered Bank and Mr. Tushad Cooper, learned counsel for intervenor/State Bank of India assisted the Court by highlighting the object and salient features of the Act as well as huge financial implications on the banks due to the act of Harshad S. Mehta in the sale and purchase of shares. They also highlighted that crores of public monies were lost due to the conduct of Harshad S. Mehta and his family members which resulted in huge financial loss to the banks.

10. Before going into the rival submissions, it is necessary to trace the history of enactment of the Act. The Special Courts Act, 1992 (27 of 1992) was legislated to meet the necessity of establishing Special Courts for trial of offences committed in relation to Transactions in

Securities Act, 1992. Reserve Bank of India found that large scale irregularities and malpractices were found in Government and other securities through brokers in collusion with Bank employees. This legislation was enacted to meet this situation. It is a short Act containing only 15 sections. It deals with establishment of Courts, defines jurisdiction and powers of Special Court. It also defines civil jurisdiction of such Special Courts. Provision of arbitration was reserved and appeal could also be preferred under the Act. Much protection was given for acts done in good faith and punishment for contempt was also provided so that the provisions of the Act would be more strictly implemented.

11. Objects & Reasons: The Statement of Objects and Reasons is as follows:-

"(1) In the course of the investigations by the Reserve Bank of India, large scale irregularities and malpractices were noticed in transactions in both the Government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions. The said irregularities and malpractices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers.

(2) To deal with the situation and in particular to ensure speedy recovery of the huge amount involved, to punish the guilty and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992, was promulgated on the 6th June, 1992. The Ordinance provides for the establishment of a Special Court with a sitting Judge of a High Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. It also provides for appointment of one or more custodians for attaching the property of the offenders with a view to prevent diversion of such properties by the offenders."

12. It is settled law that the objects and reasons of the Act are to be taken into consideration in interpreting the provisions of the statute. It is incumbent on the court to strive and interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind while applying the provisions of the Act to the facts of the case. It is a cardinal principle of construction of statute or the statutory rule that efforts should be made in construing the different provisions, so that each provision may have effective meaning and implementation and in the event of any conflict a harmonious construction should be given. It is also settled law that literal meaning of the statute must be adhered to when there is no absurdity in ascertaining the legislative intendment and for that purpose the broad features of the Act can be looked into. The main function of the Court is to merely interpret the section and in doing so it cannot re-write or re-design the section. Keeping all these principles in mind, let us consider the relevant provisions.

13. Relevant Provisions: As per Section 2(b), 'Custodian' means "the Custodian appointed under sub-section (1) of Section 3." Section 2(c) 'securities' includes.--

"(i) shares, scrips, stocks, bonds, debentures, debenture stock, units of the Unit Trust of India or any other mutual fund or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ii) Government securities; and

(iii) Rights or interests in securities;" and as per Section 2(d) 'Special Court' means "the Special Court established under sub-section (1) of Section 5." Among all the provisions Sections 3 and 4 are relevant which read as follows:

"3. Appointment and functions of Custodian.---(1) The Central Government may appoint one or more Custodian as it may deem fit for the purposes of this Act. (2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 6th June, 1992, notify the name of such person in the Official Gazette. (3) Notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously with the issue of the notification.

(4) The property attached under sub-section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct.

(5) The Custodian may take assistance of any person while exercising his powers or for discharging his duties under this section and section 4.

4. Contracts entered into fraudulently may be cancelled.--(1) If the Custodian is satisfied, after such inquiry as he may think fit, that any contract or agreement entered into at any time after the 1st day of April, 1991 and on and before the 6th June, 1992 in relation to any property of the person notified under sub-section (2) of section 3 has been entered into fraudulently or to defeat the provisions of this Act, he may cancel such contract or agreement and on such cancellation such property shall stand attached under this Act: Provided that no contract or agreement shall be cancelled except after giving to the parties to the contract or agreement a reasonable opportunity of being heard. (2) Any person aggrieved by a notification issued under sub-section (2) of section 3 or any cancellation made under sub-section (1) of section 4 or any other order made by the Custodian in exercise of the powers conferred on him under section 3 or 4 may file a petition objecting to the same within thirty days of the assent to the Special Court (Trial of Offences Relating to Transactions in Securities) Bill, 1992 by the President before the Special Court where such notification, cancellation or order has been issued before the date of assent to the Special Court (Trial of Offences Relating to Transactions in Securities) Bill, 1992 by the President and where such notification, cancellation or order has been issued on or after that date, within thirty days of the issuance of such notification, cancellation or order, as the case may be; and the Special Court after hearing the parties, may make such order as it deems fit."

Section 9 speaks about procedure and powers of Special Court and by way of an amendment with effect from 25th January, 1994, Section 9-A was inserted to confer jurisdiction, powers, authority and procedure of Special Court in respect of civil matters. As per Section 10, against any judgment, sentence or order, not being interlocutory in nature of the Special Court, an appeal shall lie to the Supreme Court both on facts and on law. Like Sections 3 and 4, another important section is Section 11 which reads as under:

"11. Discharge of liabilities.- (1) Notwithstanding anything contained in the Code and any other law for the time being in force, the Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment.

(2) The following liabilities shall be paid or discharged in full, as far as may be, in the order as under :-

(a) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub- section(2) of Sec. 3 to the Central Government or any State Government or any local authority.

(b) all amounts due from the person so notified by the Custodian to any bank or financial institution or mutual fund ; and

(c) any other liability as may be specified by the Special Court from time to time."

Section 13 makes it clear that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any Court, Tribunal or other authority. Section 14 empowers the Central Government to make rules for carrying out the provisions of the Act."

14. Based on the above statutory provisions, let us consider the claim of the appellants, stand taken by the Custodian and the reasonings of the Special Court in passing the impugned orders.

15. Discussion:

“The objects of the Act are two fold:

(a) to punish the guilty, and

(b) to ensure speedy recovery of the huge amount involved.

"Amount involved" means the amount of the banks and financial institutions alleged to have been diverted to the accounts of the offenders during the statutory period from 01.04.1991 to 06.06.1992."

16. The attached properties can be dealt with by the Special Court under sub-Sections (3) and (4) of Section 3, sub-Section (2) of Section 4, Sections 9-A and 11 of the Act. Section 3(3) of the Act provides for an automatic attachment of all properties as a consequence of Notification. The object provides the attachment of all properties of the offender with a view to prevent diversion of such properties. The said provision is a preventive provision.

17. Section 11 provides for disposal and sale of attached properties extinguishing the rights and title of a notified party, which is a punitive provision. Section 3 of the Act provides for appointment and functions of the Custodian. Sub-section (2) of Section 3 postulates that the Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 06.06.1992 (the statutory period), notify the name of such person in the Official Gazette. Sub-section (3) of Section 3 contains a non obstante clause providing that on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously with the issue of the notification and sub-section (4) of Section 3 makes it clear that such attached property shall be dealt with by the Custodian in such manner as the Special Court may direct.

18. In the Ordinance which preceded the Act, there was no provision for giving post facto hearing to a notified person for cancellation of notification, but such a provision has been made in the Act, as would appear from Section 4(2) thereof. Sub-section (2) of Section 4, however, provides for a hearing as regards correctness or otherwise of the notification notifying a person in this behalf, in the event an appropriate application therefor is filed within 30 days of the issuance of such notification. Section 5 provides for establishment of the Special Court. Section 7 confers exclusive jurisdiction of Special Court. A perusal of the Act makes it clear that any prosecution in respect of any offence referred to in sub-section (2) of Section 3 pending in any court is required to be transferred to the Special Court. Section 9 provides for the procedure and powers of the Special Court. Section 9-A, which was inserted by Act 24 of 1994 with effect from 25.01.1994, confers all such jurisdiction, powers and authority as were exercisable, immediately before such commencement by any civil court in relation to the matter specified therein. The Act provides for stringent measures. It was enacted for dealing with an extraordinary situation in the sense that any person who was involved in any offence relating to transaction of any security could be notified, whereupon all his properties stood attached. The provision contained in the Act being stringent in nature, the purport and intent thereof must be ascertained having regard to the purpose and object it seeks to achieve. Provisions with regard to Attachment

19. The vires of Sections 3(2), 3(3) and 3(4) of the Ordinance was challenged before the High Court of Bombay in Writ Petition No. 1547 of 1992 Hitesh S. Mehta vs. Union of India

& Anr., 1992 (3) Bomb. C.R. 716. It was argued before the Bombay High Court that there is no provision for hearing at the stage of notification i.e. Section 3(2) and also at the stage of attachment of all properties i.e., Section 3(3). Therefore, the provisions are contrary to the principles of natural justice and be struck down. The Division Bench of the High Court in paragraph 8 of the said judgment observed as follows:

"Had the provision been confined to Section 3, sub-sections (2) and (3), the argument which is advanced before us would have had considerable force. It is undoubtedly true that neither in sub-Section (2) nor in (3) is there any provision for any hearing being given to the person who may be notified; nor is there any provision for any reasoned order being passed by the Custodian at the time when he notifies such a person. There is, however, a further sub-Section, namely, sub-Section (4) of Section 3 which provides as follows: Section 3 (4) : The property attached under sub-Section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct. This sub-section clearly contemplates that the power of the Custodian to deal with the property of a person who has been notified is subject to the orders and directions of the Special Court. Now, in the first place, the Special Court under the Ordinance is a Court presided over by a sitting Judge of a High Court. This itself is a check on any arbitrary exercise of powers by the Custodian. Secondly, the power of the Special Court to give directions to the Custodian in respect of any attached property must necessarily bring within its ambit, the power to order the release of such property or any part of its from attachment. If the person who is aggrieved by his name being notified under sub-section (2) approaches the Special Court and makes out, for example, a case that the property which is attached or a portion of its has no nexus of any sort with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and/or that there are no claims or liabilities which have to be satisfied by attachment and sale of such property, in our view, the Special Court would have the power to direct the custodian to release such property from attachment. In the same way, if ultimately, the Special Court, after looking at all the relevant circumstances, comes to the conclusion that the entire property should be released from attachment, we do not see any reason why such a direction also cannot be given by the Special Court under Section 3, sub-section (4). In such a situation, if the entire property is required to be released from attachment, the Special Court, in our view, can also direct the Custodian that the name of the notified person should be de-notified. This would be a necessary consequence of the power of the Special Court to give proper directions in connection with the property which the Custodian seeks to attach. If sub-section (4) is read in this light, the grievance of the petitioner relating to the validity of powers granted to the Custodian under Section 3 would not survive. The above-said paragraph of Hitesh S. Mehta's judgment was relied upon by this Court in Harshad S. Mehta vs. Custodian (supra).

20. This Court in *L.S. Synthetics Ltd. vs. Fairgrowth Financial Services Ltd. & Anr.* (2004) 11 SCC 456 considered the judgment of Harshad S. Mehta (supra) and in paragraphs 27 to 29 observed as under:

"27. This Court in para 14 was merely recording the submissions of one of the notified parties. Even a question as to whether all properties of notified persons would be subject to the statutory attachment under sub-section (3) of Section 3 of the said Act or not did not arise for consideration therein.

28. Therein indisputably this Court was referring to a judgment of the Bombay High Court but did not pronounce finally on the correctness or otherwise thereof.

29. In Hitesh Shantilal Mehta the Bombay High Court appears to have merely held that in appropriate cases the Special Court would have the power to direct the Custodian to release such property from attachment, in the event, it is found that the property which is attached has no nexus with the illegal dealings in securities belonging to banks and financial institutions during the relevant period and/or there are no claims or liabilities which have to be satisfied by attachment and sale of such property. Once it is held that a debt can be the subject-matter of attachment, the provisions of sub-section (3) of Section 3 of the said Act would squarely be applicable in view of the fact that the same was the property belonging to a notified person. This position in law is not disputed. Such attached property, thus, if necessary, for the purpose of discharging the claims and liabilities of the notified person indisputably would stand attached and can be applied for discharge of his liabilities in terms of Section 11 of the said Act."

21. In paragraphs 45, 46 and 47 of Jyoti Harshad Mehta & Ors. vs. Custodian & Ors. (2009) 10 SCC 564 this Court held as under:

"45. It is contended by the learned counsel for the appellants Mr Syed that if any of the properties or assets of the notified parties have no nexus with the illegal securities transactions, the same can be released from attachment or at least need not be sold.

46. It has further been argued that no evidence has been adduced that loans given by M/s Harshad S. Mehta to his family members or monies used by Shri Harshad Mehta for purchase of his flat were acquired from the tainted funds. It is submitted by the appellants that unless it can be shown that the properties in question were acquired from the tainted funds they would be liable to be released from attachment. It is argued that the fact that the properties had been purchased much before the securities scam would go on to show that they had no nexus with the funds diverted therefrom.

47. In our opinion the arguments advanced on behalf of the appellants need to be rejected at the outset because a plain reading of the sections of the Special Act would clearly point otherwise. In our opinion the attachment of all the properties in terms of sub-section (3) of Section 3 of the Special Act is automatic. The attachment restricts sale of the properties which have been acquired from illegal securities transaction. The sub-section specifically mentions that on and from the date of the notification, "any property, movable or immovable, or both", belonging to any person notified under the Act shall stand attached. ...."

22. In *Ashwin S. Mehta vs. Custodian & Ors.* (2006) 2 SCC 385 in paragraph 15, this Court observed as under:

"15. The Act provides for stringent measures. It was enacted for dealing with an extraordinary situation in the sense that any person who was involved in any offence relating to transaction of any security may be notified, whereupon all his properties stand attached. The provision contained in the Act being stringent in nature, the purport and intent thereof must be ascertained having regard to the purpose and object it seeks to achieve. The right of a person notified to file an application or to raise a defence that he is not liable in terms of the provisions of the Act or, in any event, the properties attached should not be sold in discharge of the liabilities can be taken at the initial stage by filing an application in terms of sub-section (2) of Section 4 of the Act. But, at the stage when liabilities are required to be discharged, the notified persons may raise a contention inter alia for the purpose of establishing that the properties held and possessed by them are sufficient to meet their liabilities. In terms of the provisions of the Act, the Special Court had been conferred a very wide power."

23. Section 9-A was inserted by an amendment dated 25.01.1994 conferring jurisdiction, powers, authority and procedure of Special Court in civil matters. In view of this amendment, this Court in paragraph 41 of *Harshad Mehta's case* (supra) observed as under:

"41. .... If, according to any of the banks or financial institutions, any of the properties attached belongs to the bank or financial institution concerned, it is open to that bank or financial institution to file a claim before the Special Court in that connection and establish its right to the property attached or any part thereof in accordance with law. Obviously, until such a claim is determined, the property attached cannot be sold or distributed under Section 11....."

24. This Court in *Ashwin S. Mehta's case* (supra), in paragraphs 51 and 52 observed as under:

"51. ....It was, thus, necessary for the learned Special Court to arrive at a firm conclusion as regards the involvement of the individuals with *Harshad Mehta*, if any, and the extent of his liability as such.

52. Furthermore, the question as regards liability of the parties should have been determined at the stage of Section 9-A of the Act. .... It does not appear that claims inter se between the entities within the so-called group had ever been taken into consideration. The Custodian does not appear to have preferred claims before the Special Court on behalf of the largest lender on the so-called group against those he had to recover loans. Such claims may also be preferred."

25. As regards Section 11, the properties which stand attached by the Custodian are used to discharge the liabilities in full as far as may be in the order prescribed under Section 11(2) of

the Special Court Act. There is nothing in the Act which suggests that only such properties which belong to the notified party and which have been acquired by the use of tainted funds alone can be attached for the purposes of distribution under Section 11 of the Act. Section 3(3) postulates that on and from the date of notification all properties movable, immovable or both, belonging to the notified party on and from the date of the notification stand attached. Attachment of all the properties in terms of Section 3(3) of the Act is automatic. The said section does not provide any qualification that the properties which are liable to be attached should relate to the illegal transactions in securities in respect of which the Act was brought in force. Had the Parliament intended otherwise it would have specifically provided for the same as was done under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. A reading of Section 11 of the Act further provides that all the properties which stand attached to the Special Court under Section 3(3) are available for distribution under Section 11 of the Act. There is again nothing which suggests that the distribution must be restricted only to sale of such properties which have been acquired by use of tainted funds. The statutory period is irrelevant for the attachment of properties and sale of the same. All properties which are attached would be liable to be sold for redemption of liabilities till the date of notification under Section 11 of the Act.

26. The Custodian filed Misc. Petition No. 20 of 2006 on 21.07.2006 against the appellants for the recovery of the money alleged to have been advanced by the three brokerage firms i.e., M/s Harshad S. Mehta, M/s Ashwin Mehta and M/s J.H. Mehta to the appellants and prayed that the appellants be declared benami/front of late Harshad S. Mehta and/or his group, and the assets be utilized for discharging the liabilities of late Harsahd S. Mehta and/or his group. On 04.01.2007, the Custodian notified the appellants and subsequently on 23.01.2007 withdrew the said M.P. No. 20 of 2006 after the notification.

27. The appellants filed Misc. Petition Nos. 1 & 2 of 2007 challenging the validity of the Notification dated 04.01.2007 before the Special Court. The Special Court dismissed the said petitions and granted the prayer in Misc. Petition No.20 of 2006 filed by the Custodian.

28. This Court in L.S. Synthetics (supra) in paragraphs 35, 36 and 42 held as under:

"35. S.N. Variava, J. in A.K. Menon, Custodian whereupon the learned Special Court has placed reliance, observed:

"19. It is thus that the said Act lays down a responsibility on the Court to recover the properties. So far as monies are concerned, undoubtedly the particular coin or particular currency note given to a debtor would no longer be available. That however does not mean that the lender does not have any right to monies. What is payable is the loan i.e. the amount which has been lent. The right which the creditor has is not a 'right to recover' the money. The creditor has the title/right in the money itself. An equivalent amount is recoverable by him and the title in any equivalent amount remains with the lender. Thus the property which a notified party would have is not the right to recover but the 'title in the money itself'. Thus under Section 3(3) what would stand attached would be the title/right in the money itself. Of course what

would be recoverable would be an equivalent of that money. Once the money stands attached then no application is required to be made by any parties for recovery of that money. It is then the duty of the court to recover the money. No period of limitation can apply to any act to be done by a court. Therefore in all such applications the only question which remains is whether on the date of the notification the right in the property existed. If the right in the property existed then irrespective of the fact that the right to recover may be barred by limitation there would be a statutory attachment of that property. Once there is a statutory attachment of that property the court is duty-bound to recover it for the purposes of distribution. There can be no period of limitation for acts which a court is bound to perform. In this case since the court is compulsorily bound to recover the money there can be no limitation to such recovery proceedings. To be remembered that Section 3(3) as well as Section 13 provide that provisions of the said Act would prevail over any other law. This would include the Limitation Act.

36. We respectfully agree with the said view.

42. Only in the event, all the claims as provided for under Section 11 of the said Act are fully satisfied, the amount belonging to the notified person can be directed to be released in his favour or in favour of any other person."

29. The same position is reiterated in para 56 of the judgment in Jyoti Harshad Mehta's case (supra) wherein this Court held that, ".....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 see 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 9A and 11 must be construed."

30. Whether there are sufficient provisions for pre and post decisional hearing thereby ensuring Rules of Natural Justice? Section 3(2) of the Special Courts Act confer power to Custodian to notify a person in the Official Gazette on being satisfied on information received that such person was involved in any offence relating to transactions in securities during the statutory period 01.04.1991 to 06.06.1992. Though Mr. Syed contended that the appellants are entitled to hearing even at the stage of Section 3(2), we are unable to accept his claim. Section 3(2) does not give any right of personal hearing to the person being notified. In the absence of any such right there is no pre-decisional hearing The provisions of the Act do not provide for a pre-decisional hearing before notification but contains an impeccable milieu for a fair and just post decisional hearing. The fact that it does not provide for a pre-decisional hearing is not contrary to the rules of Natural Justice because the decision of the Custodian to notify does not ipso facto takes away any right of the person thus notified or imposes any duty on him. This also has to be read in the light of the judgment of *Swadeshi Cotton Mills v. Union of India*, (1981) 1 SCC 664 which reads as under:

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo iudex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle--as distinguished from an absolute rule of uniform application-- seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(Emphasis supplied)

31) Attachment of property is a natural consequence of notification and not sale of the property. The power to order a sale of the property lies only with the Special Court under Section 11 and at this instance where the notified person can be adversely affected, Section 4(2) provides that any person aggrieved by the notification can file a petition objecting the same within 30 days of the date of the issuance of the notification. The Special Court is presided over by a sitting Judge of the High Court. All material before the Custodian is placed before the Special Court which independently analyses all the material while deciding the application filed by the notified party challenging the notification. This amounts to post decisional hearing satisfying the principles of natural justice. Also a pre-decisional hearing would frustrate the entire purpose of the Act. If there is time given to Show Cause why a person should not be notified, that time could practically be utilized to further divert the funds, if any, so that it becomes even more difficult to trace it.

32. Notification of the appellants: As stated earlier that some time in 1992, it was noticed that frauds and irregularities involving huge amounts of money running into several thousand crores were committed by certain financial brokers and financial institutions. The Central Government, to combat with the situation, promulgated an ordinance on 6.6.1992 known as the Special Court (Trial of Offences relating to Transactions in Securities) Ordinance, 1992. On 08.06.1992 Mr. Harshad S. Mehta (since deceased) and 28 members of his group including his family members/entities were notified under the Ordinance. It is pertinent to mention here that the complete details of the transactions of Harshad Mehta were not known.

At that time the appellants - Mrs. Rasila Mehta (mother of Harshad Mehta) and Mrs. Rina Mehta (sister-in law of Harshad Mehta and wife of Sudhir Mehta) were not notified because their involvement and diversion of funds to them was not clear. The Reserve Bank of India constituted the Janakiraman Committee to look into the diversion of funds. The Janakiraman Committee in March 1993 brought out the 4th Interim Report. Para 2.3 of the said report reads as under:

"2.3 In the names of HSM and his family members, the bank's Adayar branch, Madras granted 19 individual overdrafts against shares. Significantly, all the current accounts, which were opened between April and June, 1991 were introduced by the same person viz. Branch Manager Shri Bakshi Varunkumar, Adayar branch, Madras and a cheque book was issued only in the name of one account holder, Smt. Jyoti H. Mehta. All the overdrafts limits were sanctioned between 20 April, 1991 and 24th July, 1991 and on the very day of sanction, the overdrafts amounts were transferred to Smt. Jyoti H. Mehta's current account for operational convenience. This facility also appears to have been extended, as HSM was a 'significant customer'."

Similarly, the Joint Parliamentary Committee established to enquire into the irregularities in securities and bank transactions also found out the involvement of the family members of Harshad Mehta. Para 17.21 of the Report reads as under:

"17.21 In January, 1992 Smt. Rasila Mehta, mother of HSM and Shri Hitesh Mehta, brother of HSM received US \$ 5 lakhs each from Popular Espanol Las Palmas, Spain on the advice of Giorgia Pvt. Ltd., New York under the Immunity Scheme, 1991. Smt. Rasila Mehta also received US \$ 96, 331 as per advice of Morgan Guaranty Trust Co. New York also under the Immunity Scheme, 1991. As Shri Niranjana J Shah had narcotic and hawala business links, it was suspected that the said remittances were arranged through him."

In accordance with the recommendations of the Joint Parliamentary Committee a group known as Inter Disciplinary Group (IDG) for tracing the end use of funds was set up by the Reserve Bank of India. The findings of the IDG read as under:

"3.5.2 On the basis of reliable and specific information, action under Section 132 of the Income Tax Act was taken on 23.07.1993, during which shares valued at Rs. 22.69 crores were seized. Records of Income Tax investigations indicated that investment in these shares had been made in the names of dummy companies and individuals at the behest of the HMG. About 30 defunct Private Limited Companies appear to have been 'purchased' and the shares transferred in their names. Further enquiries led to identification of further 50 dummy companies and over 40 individuals. Enquiries have revealed that they were apparently fronts, since they were located in chawls, shops, etc. and prima facie could not have been made such huge investments. Considerable assistance was made available by CBI in identifying employees and associates of HMG.

3.5.3 Action under Section 132 was thereafter conducted on 27.08.1993 at more than 30 premises. The search confirmed that the shares had been transferred in the names of these companies and individuals by the HMG. Documents seized indicated the possibility of investments of market value of over Rs. 50 crores in the names of Smt. Rasila Mehta, mother of Harshad Mehta and Smt. Reena Mehta, wife of Sudhir Mehta. Statements recorded of various persons confirmed that they had merely allowed their names as benamidars of HMG. In addition, persons found in premises given as addresses of various companies stated that they had allowed their premises to be used as mailing addresses, and no companies existed there. They also stated that the shares received at these addresses were handed over mainly to one Shri Vinod Mehta, an uncle of HSM, who died in February, 1993. Subsequent to his death, these were handed over to his wife, Smt. Vanita Mehta who confirmed that her husband was receiving these shares, and that after his death she had, on instructions from HSM, handed them over to his representative. The involvement of the HMG in the matter of transfer of shares in benami names was corroborated by recorded statements of HSM and Sudhir Mehta. The total shareholding of HMG in benami shares identified so far comes to 81.65 lakh shares in 131 companies of market value (as in June, 1995) of Rs. 453 crores.

#### 4.7 Problems in tracing:

4.7.1. The identification of end use of funds was a laborious process involving examination and correlation of every investment transaction of the brokers and banks. The following were among the more important constraints:

- Entries in the books of one counterparty bank did not correspond with that of the other counterparty.
- There was mismatch between seller and payee or buyer and payer.
- The investment records did not depict the true character of the deals. Actual recipient and issuer of cheque were not known.
- Often, and more particularly in the case of HMG, entries in broker's current account at SBI, Bombay only revealed the net effect of all bankers cheques received and issued on his behalf on a particular day. On days when the value of cheques issued equaled the value of cheques received there was no entry in his current account.
- Transactions with banks/financial institutions whose investment account was maintained by the same routing bank was difficult to analyze as the payments and receipts were netted and only the net effect reflected in the bank accounts. One to one correspondence between security transactions and payments was difficult to establish as entries did not reflect true details of the transactions.
- Accounts of the brokers had not been prepared."

33. Mr. Syed heavily contended that the Custodian and the Special Court ought not to have based reliance on these reports since the appellants were not afforded opportunity to go through the contents of the same. This objection is liable to be rejected. First of all, there is no criminal prosecution against these appellants and in the event of prosecution, all documents relied on by them could be furnished. These are all materials from various bodies constituted by the Reserve Bank of India/Government of India about the scam created at the instance of Harshad Mehta. These bodies consist of experts in various fields, particularly, from the financial side. The Special Court is fully justified in relying on these Reports.

34. This Court in *Childline India Foundation & Anr. Vs. Allan John Waters & Ors.*, JT 2011(3) SC 750, while considering the plight of street children in Bombay, heavily relied on the evidence of PW-2 & PW-3, who were the members of NGOs, who highlighted the plight of street children in a shelter home at Bombay. Similar objection was raised in that case about the admissibility and reliability of those witnesses. Rejecting the said objection, this Court held that though based on the statements of PWs 2 & 3, members of NGOs the accused persons cannot be convicted but taking into account their initiation, work done, interview with the children, interaction with the children at the shelter homes which laid the foundation for the investigation and to that extent their statements and actions are reliable and acceptable. By applying the same analogy, inasmuch as the scam relates to accounts and money transactions by way of transfer of shares through nationalized banks and financial institutions, various committees were appointed by the Union of India which collected relevant materials and unearthed the persons involved, hence the Custodian and the Special Court are justified in relying on those reports in order to ascertain the correctness or otherwise of the transactions. Accordingly, we reject the objection of the counsel for the appellants relating to the report of various Committees mentioned above.

35. The Special Court, vide its order dated 03.08.1993 allowed the application of the Custodian for appointing Auditor. The Minutes of the Order read as under:

"1. Order in terms of prayer (a)

2. Order in terms of prayer (b) & (c), Respondents 2 and 3 to furnish the information within 6 weeks.

3. To enable the 1st Respondent to furnish the said information one or more of the following persons, viz., Mr. Harshad Mehta, Mr. Ashwin Mehta, Mr. Pankaj Shah and Mr. Atul Parekh and a computer specialist will be entitled to attend the offices of the 1st Respondent between 10 a.m. to 6 p.m. A representative of the Custodian and the C.B.I. will be present for which prior intimation will be given. The said persons will be entitled to operate the computers in the presence of the officers of Respondent Nos. 2 and 3 and if necessary hire a personal computer to compile the requisite information.

4. The Custodian will appoint one or more auditors to prepare and audit the accounts of the 1st Respondent from 1st April, 1990. The auditors will be entitled to obtain all requisite information and documents from the Respondents or any other person in possession of the same. They will be entitled to use the computers of Respondent no.1 and the requisite hard discs and floppy discs will be made available to the auditors by Respondents No. 2 and/or 3. The remuneration of the auditors will be determined by the Custodian. The persons named in Clause 2 will assist the auditors. The auditors will complete the work and submit a report to court as expeditiously as possible and preferably within 3 months. The auditors will be entitled to furnish reports from time to time as the work is completed.

5. The remuneration payable to the auditor to be released from the bank account of the Respondent No.1.

6. Liberty to apply."

36. The Special Court vide its order dated 03.02.1994 appointed M/s Kalyaniwalla & Mistry, M/s Kapadia Damania & Co. and M/s Natwarlal Vepari & Co., Chartered Accountants firms for the purposes of preparing Statements of Accounts and liabilities of the notified parties i.e. the Harshad Mehta Group for the period 01.04.1990 to 08.06.1992.

37. It was the grievance of the Custodian that the notified parties were not at all cooperating in the process of auditing. The accounts of the notified parties where significant diversion of funds had taken place were not completed due to non-cooperation of members of M/s Harshad Mehta Group. When their non-cooperation was brought to the notice of the Special Court, the members of the Harshad Mehta Group had given an undertaking to fully cooperate with the Auditors. Rasila S. Mehta, the appellant herein had filed an application being M.A. No. 467/1999 for lifting the attachment over assets which she was owning jointly with the other members of the family. In the said application, the Custodian filed a reply highlighting the complete non-cooperation of the group in completing the accounts.

38. The important aspect is that the appellants have not explained the source of their income. The outstanding Income tax from the appellants for the Assessment Years 1988-89 to 1993-94 is as under:

1988-89	Rs.2,005
1989-90	Rs. 0
1990-91	Rs.2,54,595
1991-92	Rs.2,65,38,345

1992-93	Rs.11,55,28,951
1993-94	Rs.4,46,40,586

The appellants are house-wives having no independent source of income. It is impossible for such persons to have such huge amounts of money unless they were the beneficiaries of monies diverted by late Harshad Mehta and his other family members who were notified and firms belonging to the Harshad Mehta Group. The appellants have not been able to reveal their source of income either to the Custodian or to the Income Tax authorities.

39. It is relevant to point out that in a letter dated 22.03.1996 addressed to the Assistant Commissioner of Income Tax the appellant - Rasila P. Mehta has stated as under:

"3) Please be informed that as far as my source of funds is concerned for making investments or taking trading positions to the extent the funds are required the same are from the following:

- a) Capital plus profits
- b) Borrowings
- c) Proceeds from sale of shares and debentures.

4) As far as borrowings are concerned, the same is resorted in two ways. I have obtained loans from my family members, particularly, Shri Harshad S. Mehta which is as and by way of monies advanced to me through cheques or payments made on my behalf. The other way of borrowing is through enjoying a running current account with the brokerage firms in my family of M/s Harshad S. Mehta, M/s Ashwin S. Mehta and M/s Jyoti Mehta which are partly paid-unpaid. Under this arrangement for transactions undertaken by me at these respective brokerage firms my account is debited and credited for each and every transaction, i.e. for every purchase made by me my account gets debited and for every sale effected by me my account with these brokerage firms gets credited. I state that barring a few exceptions payments for these transactions have not been exchanged on a transaction to transaction basis and the account is in the nature of a running account. I state that for the borrowings effected under both the methods. I have agreed to pay interest to the lender. I state that the same is computed on the basis of deliveries performed for purchase and sale of shares. I state that in cases where I have purchased the shares for delivery and the delivery has not been tendered to me, for the purposes of computation of interest the debit will not be reckoned. I say that thus on the net outstanding balance after giving credit to each party on account of non-delivery of share the amount payable at the end of month is arrived at which is mentioned for the computation of interest (not on

compounded basis). I state that as such interest is payable on the amounts borrowed by me and the same constitutes my expense. I humbly submit that this expense is allowable as a deduction from my taxable income. In support of my above and other related contentions I am also pleased to enclose confirmation letters of the three brokerage firms of M/s Harshad S. Mehta, M/s Ashwin S. Mehta and M/s J.H. Mehta. I further submit that due to course of events and multiple raids and our groups accounting system having gone haywire and the delivery status of all the transactions remaining unascertained we have not been able to precisely compute my interest liability for the earlier as well as the present year.

5. I state that I follow an accrual method of accounting for all my income as well as expenses which system of accounting is being followed by me for a number of years. I state that pending finalization of my payable figure for which effort is being made to arrive at the figure and on the basis of the minimum amount due by me I have made the provision of interest payable by me in my books of accounts and the extract of my account in this regard is being forwarded separately to your kindness. I submit that since my books of accounts are in the process of being drawn I am not in a position to make a provision of the precise figures of interest amount much as I would like to do. I submit that in this regard the respective brokerage firms have to assist and furnish substantial particulars. I further state that the provision made by me is in fact on a conservative basis though the interest payable by me would be higher than the provision. I humbly request your kindness to take note of above and grant me a deduction of the same from the income that your kindness is arriving for the present year. In case your kindness is not inclined to accept my submissions or allow me the deduction of above expenses then kindly give me an opportunity to make further representation in this regard more so as it vitally affects determination of my taxable income".

40. A perusal of the above letter shows that there was no proper maintenance of accounts and there was no cooperation at all. Even, late Harshad Mehta in his letter and declarations to the Income Tax Authorities in which the appellant Rasila Mehta is a signatory had admitted that the family is a joint Hindu family where all are living together and that the business is such that it requires very close control at the operational level.

41. It is relevant to note that in a letter dated 21.01.1991 late Harshad S. Mehta informed the following particulars about source of payments for acquisition of flats in Madhuli, Worli by the entities of his family to the Deputy Director of Income Tax (Investigation), Mumbai.

"My transactions in the Capital and Money markets, especially the latter, result in a continuous stream of funds and securities moving in and out. These transactions result in large but transient positive balances in my bank accounts on any given day. Running up of such current liabilities constitutes payables to my clients/constituents which include, inter alia, corporates and banks. Such funds, though transient in nature, tend to acquire semi-permanency in view of the daily operations in the Money Market and result in a pool of funds float. This float of funds has been utilized

for acquisition of flats as well as for making investments in shares, pending accrual of income, in future, when such liabilities are automatically washed off. In point of fact, deferred and future incomes have been financed in advance by the float. I now enclose, on behalf of my family and myself details of payments made to M/s Crest Hotels Pvt. Ltd. the owners of the 9 (nine) flats, at "Madhuli", Worli in the first half of 1990 and extracts of the relevant Bank Accounts of the concerned members of my family, reflecting the payments and corresponding receipts in the bank. Details of transactions which resulted in credit balances in my accounts on those particular dates on which the payments for these flats were effected are also enclosed. You will appreciate that all my family members have been financed through my business operations."

42. Another important aspect relates to final declaration made by Harshad S. Mehta and all his family members including Rasila S. Mehta under Section 132(4) of the Income Tax Act, 1961. The following material from his statement dated 24.01.1991 is relevant:

"First of all, I would like to put on record a few things about my family members. I take justifiable pride in asserting that it is the combination of the efforts of all the members of my family that has been responsible for our expansion and growth in terms of volume since 1988. Each and every member of the family is taking charge of some or the other vital functions in the organization creating controls and checks which are so very essential for generating, maintaining and reaping the fruits of any business activity. Almost all of them are very well attained and qualified and do business in their individual capacities and possess a sound and thorough knowledge of Investments, Finance and are authorized agents of the Unit Trust of India or members of the recognized Stock Exchange in Bombay. All of them take active interest in Investments in the Stock Market. Ours is an investor family committed to growth through capital appreciation and holds a mix of both short term and long term portfolio of shares. In brief, we owe our success to our coordinated endeavours and investment philosophy. The sharp growth in income in the last two years from 1988 is only after entering the Money Market. .... .."

Our family is run as a Joint Hindu Family. We, all live together. Our joint effort is one of the most important factors that has contributed to the growth of our business. Our business is such that it requires very close control at the operational level. The different members of the family have taken charge of various areas of crucial importance in our business e.g. Research, On-the-floor, trading, dealing in Money Market, Share Handling, Accounts, Finance, etc. My wife Mrs. Jyoti Mehta and Ashwin's wife Mrs. Deepika Mehta while handling other functions in the office, also work as authorized clerks and hold the necessary badge for entry into the trading floor of the Stock Exchange, Bombay. .... .."

43. It is also useful to refer the letter of Smt. Rasila S. Mehta dated 25.06.2007 addressed to Mukund M. Chitale & Co., Chartered Accountants, Mumbai wherein she admitted that during the relevant period i.e. in 1990s she and all her family members actively associating

in the brokerage firms and companies promoted by them jointly. She also admitted that she had a running account with brokerage firms of M/s Harshad S. Mehta, M/s Ashwin Mehta and M/s J.H. Mehta.

44. All the above details clearly show their association with brokerage firms being handled by Harshad S. Mehta and also their interest and entitlement in the transactions of their joint family business.

45. The firms of M/s Kalyaniwalla & Mistry, M/s Kapadia Damania & Co. and M/s Natwarlal Vepari & Co. did not complete the audit and as permitted by the Special Court, vide Order dated 16.10.2003, the Custodian was permitted to appoint another Auditor. The Custodian, vide its Order dated 05.11.2003, appointed M/s Vyas & Vyas Chartered Accountants to audit the accounts and also to investigate fraudulent and illegal transactions entered into by M/s Harshad S. Mehta Group and his notified entities as referred to in Janakiraman Committee Report, IDG Report and reports based on the audit of the banks conducted by the RBI and the charge-sheet filed in the Special Court. M/s Vyas & Vyas submitted their report in respect of Harshad S. Mehta Group. Even in the said report, Vyas & Vyas pointed out the complete non-cooperation on the part of the appellants and the group while auditing the accounts. In the report, on review of un-audited accounts of M/s Harshad S. Mehta regarding the diversion of funds it was observed as under:

"12 Diversion of funds 12.1 HSM diverted his funds to his family members as and when he received funds generated from PSU banks and financial institutions. We have drawn a statement of funds diverted to family members and his associate companies in Annexure No. 7. We have also checked these figures from the audited reports of his family members and associate companies and comparative chart is enclosed in Annexure No. 6A.

12.2 Further we studied the end use of funds diverted to family members and associate companies of HSM group and found that either funds were used for purchase of immovable properties or for purchase of shares and securities. HSM has not charged interest from his family members and his associate companies. The details of end use (broadly) by HSM group are also enclosed.

12.3 It is a case of one man show i.e. Mr. H.S. Mehta, who generated funds from PSU banks and financial institutions and diverted funds to his group entities. There is no ban on payment/receipt of funds from one family member to another member of the family. But then all prudential norms should have been followed. In this case no interest was charged/paid and there are huge differences in the balances of both the books.

12.4 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 other the corporate character should be ignored and will look at the reality behind the corporate veil.

12.5 We have found that these corporate bodies are merely cloaks behind which lurks HSM and/or member of his family are involved and the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud revenue and other people. Finally to get protection by law, in case HSM gets exposed the property belonging to his family members may be protected.

12.6 Further we have studied the accounts of Smt. Rasila Mehta and Reena Mehta who is not notified parties and their accounts were not subject to audit. The total balances outstanding in the books of M/s HSM of both the entities are as under as on 8/6/92: Smt. Rasila Mehta 10,82,65,860.74 Dr Smt. Reena Mehta 6,33,35,834.69 We are enclosing the copies of accounts of Smt. Rasila Mehta and Reena Mehta appearing in the books of M/s HSM. From the accounts we observed that M/s HSM paid a sum of Rs. 30 Lacs on 16th April 1990 and a sum of Rs. 1259000/- on 18th April 1990 to Rasila Mehta. These are the dates when other members of the family purchased flat in 'Madhuli'. Therefore in our opinion these funds were diverted by M/s HSM to Smt. Rasila Mehta (mother) for purchase of flat in 'Madhuli'. Further we have also observed that M/s HSM debited the account of Smt. Rasila on account of purchases of shares in different companies. Similarly in case of Smt. Reena Mehta huge quantity of share were purchased by her, which were funded by M/s HSM. Copy of accounts of Mrs Rasila & Mrs Reena Mehta is enclosed in annexure No.5E 12.7 The above funds diverted by HSM to his family members were certainly for purchase of immovable properties and shares. Therefore all assets so called belonging to above persons should go back to HSM only."

46. On a complaint, filed by Canbank Financial Services Ltd. (wholly owned subsidiary of Canara Bank), the Custodian notified the Appellants on 04.01.2007. The appellants filed petitions challenging the order of notification under Section 4(2) of the Act. The Special Court looked into all the materials including the Audit Report submitted by M/s Vyas & Vyas. A summary of the accounts produced by M/s Vyas & Vyas is as under: Ledger Account of Mrs. Rasila S. Mehta for the period 1.4.1991 to 8.6.1992 in the books of accounts of various entities of Harshad Mehta Group.

## SUMMARY

M/s Harshad S. Mehta

Opening Balance as on 01.04.1990

ADD: 3227047.30

i) Shares purchased	275393709.50
ii) Funds transferred	110184616.44

Total debits	388805373.24
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LESS CREDITS:

1990-91	71135919.00	
1991-92	195090538.50	
8TH June 1992	16948055.00	283174512.50

Debit balance as on 08.06.1992	105630860.74
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ADD:

Loans & Advances due to M/s	2635000.00
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Harshad S. Mehta as per Balance

Sheet as on 08.06.1992.

Total Debits	108265860.74
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Mr. Harshad S. Mehta

Opening Balance as on 01.04.1991	NIL
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ADD:

i) Shares purchased	NIL
ii) Funds transferred	5000000.00
Debit balance as on 08.06.1992	5000000.00

LESS CREDITS:

1991-92	NIL
8TH June 1992	NIL
Total Debits	5000000.00

M/s Jyoti H. Mehta

Opening Balance as on 08.06.1992	
As per client control - AR summary	117899544.00

ADD:

i) Interest receivable (as per Annexure E of Balance Sheet)	2500000.00
Total Debits	120399544.00

Mrs. Jyoti H. Mehta

Opening Balance as on 01.04.1990                      179550.00

ADD:

    i) Shares purchased                                      NIL

    ii) Funds transferred                                    18000.00

        Total Debits                                          197550.00

LESS CREDIT:

        Debit balance as on 31st March 1991.              NIL

        The balance is as per Trial balance

        as on 8th June, 1992.                                  197550.00

M/s Ashwin S. Mehta

Opening Balance as on 01.04.1990                      117756.00

ADD:

i) Shares purchased	149166082.25
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ii) Funds transferred	300.00
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Total debits	149048626.25
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LESS CREDITS:

1990-91	88034149.00
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1991-92	47414656.84
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8TH June 1992	649373.00	136098178.84
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Debit balance as on 08.06.1992	12950447.41
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Mr. Ashwin S. Mehta

Opening Balance as on 01.04.1991	NIL
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ADD:

i) Shares purchased	204085.50
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ii) Funds transferred	NIL
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Total Debits	204085.50
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Less Credits	NIL
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Total Debits	204085.50
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Mrs. Deepika A. Mehta

Opening Balance as on 08.06.1992	20500.00
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(As per Trial Balance of

Mrs. Deepika A. Mehta)

Ledger Account of Mrs. Rina S. Mehta for the period from 1st April, 1990 to 8th June, 1992 in the books of accounts of various entities of Harshad Mehta Group:

SUMMARY:

M/s Harshad S. Mehta

Opening balance as on 01.04.1990	NIL
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ADD:

i) Shares purchased	72918112.75
ii) Funds transferred	32239980.94

Total Debits	105158093.69
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LESS CREDITS:

1990-91	NIL	
1991-92	41822259.00	41822259.00

Debit Balance as on 08.06.1992.

The balance is the same as on 31.03.1992

(as per the copy of client control accounts as on 08.06.1992.) 63335834.69 Mr. Harshad S Mehta Opening balance as on 01.04.1991 NIL ADD:

i) Shares purchased	NIL
ii) Funds transferred	3500000.00

Total Debits 3500000.00

LESS CREDITS:

NIL

Total Debits 3500000.00

Balance as on 08.06.1992

is the same as on 31.03.1992

(As per trial balance as on 08.06.1992)

M/s Jyoti H. Mehta

Opening balance as on 08.06.1992                      50757937.00

As per client control - AR Summary

(extracts of report of M/s Jyoti H. Mehta)

Add: Interest receivable                                      3000000.00

Total Debits                                                      53757937.00

Mrs. Jyoti H. Mehta

Opening balance as on 08.06.1992                      131000.00

(as pretrial balance as on

8th June 1992)

M/s Ashwin S. Mehta

Opening balance as on 01.04.1990                      NIL

ADD:

i) Shares purchased                                              102293155.00

ii) Funds transferred                                              4929687.50

Total Debits	107222842.50
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LESS CREDITS:

1990-91	NIL
1991-92	50936485.00

Total Debits	56286357.50
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Mrs. Deepika A. Mehta

Opening Balance as on 08.06.1992	8300.00
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(As per Trial Balance of

Mrs. Deepika A. Mehta)

After perusing the Report of M/s Vyas & Vyas, the Special Court came to a conclusion that the appellants are only fronts of late Harshad S. Mehta. It further concluded that the appellants are only housewives and were given loan by the brokerage firms for purchase of shares. The Special Court, therefore, rightly held that the money and assets were diverted to the appellants by the brokerage firms who were notified parties. Mr. Syed objected to the order of the Special Court for fully relying on the Auditor's report. We reject his objection for the following reasons. First of all, the issue relates to accounting of several persons. Several volumes of accounts relating to various members of late Harshad Mehta's family have to be scrutinized. The Court and members of the bar are not conversant with the accounting procedures and in such event assistance from an established Chartered Accountant Firm is needed. In fact, even during the course of arguments in respect of questions by the Court, Mr. Syed himself sought the assistance of persons who are conversant with accountancy. In view of complicity in the matter, there is nothing wrong on the part of the Special Court getting report from M/s Vyas and Vyas who are recognized Chartered Accountants. The order of the Special Court does not suffer from any infirmity and there was sufficient material before the Custodian to arrive at a satisfaction that monies had been diverted by late Harshad S. Mehta to the appellants.

47. Whether the appellants being not involved in offences in transactions in securities could have been proceeded against in terms of the provisions of the Act? The contention of the appellants that since they have not been charged for any offence, they cannot be notified under the Act. According to the appellants, the phrase "involved in the offence" could only mean "accused of the offence" and since they are not charged with any offence they can not be notified. In construing the above mentioned words which are used in association with each other, the rule of construction *noscitur a sociis* may be applied. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. The actual order of these three words in juxtaposition indicates that meaning of one takes colour from the other. The rule is explained differently: 'that meaning of doubtful words may be ascertained by reference to the meaning of words associated with it. (vide *Ahmedabad Teachers' Association vs. Administrative Officer*, AIR 2004 SC 1426).

48. Therefore, in the present case the nature of "offence", in which the appellants are allegedly involved, is to be taken into consideration. The Act does not create an offence for which a particular person has to be charged or held guilty. Thus the phrase "involved in the offence" would not mean "accused of the offence". Also, the appellants could have been reasonably suspected to have been involved in the offence after consideration of the various reports of the Janakiraman Committee, Joint Parliamentary Committee and the Inter Disciplinary Group (IDG); and also the fact that 28 members of the M/s Harshad S. Mehta group including his family members/entities were notified under the Special Act Ordinance itself. The above factual matrix was sufficient for the satisfaction of the Custodian to notify the Appellants. The object of the Act is not merely to bring the offender to book but also to recover what are ultimately public funds. Even if there is a nexus between a third party, an offender and/or property the third party can also be notified. The word "involved" in Section 3(2) of the Special Court Act has to be interpreted in such a manner so as to achieve the purpose of the Act. This Court in *Ashwin S. Mehta vs. Custodian & Ors.*, (2006) 2 SCC 386 has observed as under:

"Although, we do not intend to enter into the correctness or otherwise of the said contention of the appellants at this stage, however, there cannot be any doubt whatsoever that they being notified persons, all their properties would be deemed to be automatically attached as a consequence thereto. For the said purpose, it is not necessary that they should be accused of commission of an offence as such."

49. In *Jyoti H Mehta & Ors. vs. Custodian & Ors.*, (2009) 10 SCC 564, this Court from para 33 to 38 has held that the Special Court Act is a special statute and is a complete code in itself. The purpose and object for which it was created was to punish the persons who were involved in the act for criminal misconduct in respect of defrauding banks and financial institutions and its object was to see that the properties of those who were involved shall be appropriated for the discharge of liabilities of not only banks and financial institutions but also other governmental agencies. In

construing the statute of this nature the court should not always adhere to a literal meaning but should construe the same, keeping in view in the larger public interest. For the said purpose, the court may also take recourse to the basic rules of interpretation, namely, *ut res magis valeat quam pereat* to see that a machinery must be so construed as to effectuate the liability imposed by the charging section and to make the machinery workable. The statutes must be construed in a manner which will suppress the mischief and advance the object the legislature had in view. A narrow construction which tends to stultify the law must not be taken. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context *vis-à-vis* the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out the meshes of law. The courts will reject the construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. The courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve.

50. Whether Canfina is a Financial Institution and whether the complaint filed by Canfina is invalid? The complaint has been received from Canfina which is a 100% subsidiary of Canara Bank, a nationalized bank. The term financial institution has not been defined under the Act. It became necessary to enact the Special Court Act because of the large scale irregularities which came to light as a result of the investigations by the Reserve Bank of India into the affairs of various banks and financial institutions whose monies were siphoned out. Thus the Statement of Objects and Reasons makes it clear that the purpose and the object of the Act was to recover and return monies to those banks and financial institutions from whom the monies were siphoned out. It is thus clear that the bodies which were sought to be covered were the banks and financial institutions whose affairs were investigated into by the Reserve Bank of India. The investigation was conducted by the Reserve Bank of India through Janakiraman Committee; the Joint Parliamentary Committee, and the Inter Disciplinary Group. The affairs of Canfina were also investigated by the various committees as a financial institution. It has come to light that there were large scale siphoning out of monies from Canfina also as held by the Special Court in its order dated 25.06.1997 in the matter of Fairgrowth Financial Services Vs. Andhra Bank in Misc.

Petition No. 222 of 1996.

51. It is the argument of learned counsel for the appellants that Canfina should not be treated as a Financial Institution after the rejection of the Reserve Bank of India to consider Canfina as a Financial Institution. But this straight jacket definition should be applied to the provisions of other Acts like the Debt Recovery Act, the Companies Act, the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 etc. The term "Financial Institution" for the purposes of this Act should be interpreted in accordance with the Statement of Objects and Reasons of the Act.

52. Thus, at the very inception of this Act are the investigations by the Reserve Bank of India and these investigations were carried on by the Janakiraman Committee. The Act was intended to be applied to the workings of the banks and financial institutions (though not covered by the strict definition of the term but involved in the securities scam of 1992) into whose affairs the Janakiraman Committee had investigated. Canfina, was one such non-banking financial institution that Janakiraman Committee had investigated and thus it was meant to be covered under the Act.

53. These sources of information have been illustrated in Rule 2 of the Rules, which reads as under:

" 2. Sources of information: The Custodian appointed under sub-section (1) of section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as the Act) may entertain for consideration any information or complaint in writing submitted personally or sent by post to him by ---  
--

(a) the Reserve Bank of India;

(b) any bank or financial institution

(c) any enforcement or investigating agency or department of the Government;

(d) any officer or authority of the Government;

(e) any person who is engaged in transactions of securities as a dealer, agent or broker;

(f) any other person whose rights or interests in securities are affected:

(g) any other source including reports and proceedings before the Special Court established under the Act or any Court or Tribunal for the time being in force as the Custodian may deem fit at any point of time. Provided that the information or complaint sent by any person referred to in clauses (e) and (f) shall not be entertained by the Custodian if it is not accompanied by an affidavit signed by that person and duly verified by a Magistrate or a Notary Public."

Thus the claim of Canfina falls under Section 11(2)(b) of the Act and their complaint falls under Rule (2)(b). Thus the fact that it was not accompanied by an affidavit signed by that person and duly verified by a Magistrate or a Notary Public, does not make it an inappropriate complaint for consideration by the Custodian.

54. Further, Rule 3 illustrates situations whereby the Custodian may reject a certain complaint which is not accompanied by copies of documents referred to in the information or complaint, or is vague or does not contain the name and address of the sender. This rule also does not make it mandatory on the Custodian to reject a complaint if it does not accompany the above details. If the material information or the documents received by the Custodian are sufficient in his opinion, to reveal that a person is involved in an offence referred to in sub-section (2) of section 3 of the Act, he may proceed to notify the name of the person under that sub-section. Thus the satisfaction of the Custodian is of a subjective nature and is not violative of Natural Justice. The power to deal with the property ultimately lies with the Special Court.

55. In view of the same, we are in entire agreement with the conclusion arrived at by the Special Court and unable to accept any of the contentions raised by counsel for the appellants.

56. Claims for maintenance, repair charges, interest and penalty for belated payment (Civil Appeal Nos. 3377 of 2009 and 4764 of 2010) With regard to the above appeals filed against the orders of the Special Court approving their report of the Custodian for realization of certain amounts payable to the Society towards repairs and maintenance charges, interest and penalty for belated payment, learned counsel for the appellants again raised various objections, inasmuch as the claim of the Custodian depends upon the outcome of the other appeals i.e. Civil Appeal Nos. 2924 of 2008 and 2915 of 2008 and in view of our conclusion on these appeals, we are not inclined to go into all those details once again. Since we agree with the claim of the Custodian and various steps taken by him and the ultimate order of the Special Court in the normal circumstance, present appeals are also to be dismissed. We have already noted that Smt. Jyoti H. Mehta and six other family members of late Harshad S. Mehta were notified under the Act. Upon enforcement of the aforesaid Act, all the properties of late Harshad S. Mehta and his family members, including the six appellants in Civil Appeal No. 3377 of 2009 apart from other corporate entities stood attached by the Custodian. As a consequence thereof, all eight residential properties/flats of the appellants, namely, residential flat Nos. of 32A, 32B, 33, 34A, 34B, 44A, 44B and 45 in the Madhuli Cooperative Housing Society Limited at Dr. Anne Besant Road, Worli, Mumbai continue to remain attached under the Act by the Custodian. Since the aforesaid eight residential properties remain attached with the Custodian their upkeep/repair is essential so that the market value of the said attached properties does not get depreciated and that they may fetch best market value as and when the same are permitted to be sold by the Special Court so as to pay the liabilities of the Government, Banks, Financial Institutions as well as other decree holders under the provisions of Section 11(2) of the Act.

57. It was highlighted by the Custodian that as per the rules and bye-laws of the Cooperative Housing Societies in Mumbai, which are incorporated under the provisions of the Maharashtra Cooperative Societies Act, all the owners of the residential properties/flats, as the members of the Housing Society are liable to pay such amount as may be determined by

the Society towards the upkeep, maintenance and repairs of the flats as well as common areas and amenities in the housing complex. In view of the same, the Cooperative Housing Societies are entitled to recover all the arrears and charges from the members who have not paid the society in time.

58. The appellants herein are notified parties who are the owners of the attached properties and have failed to pay to the Madhuli Cooperative Housing Society Limited their contribution towards the maintenance charges, interest thereon and the charges incurred towards the repair of the attached property by the Society. The total dues demanded by Madhuli Cooperative Housing Society Limited vide its letter dated 12.03.2009 relating to the eight attached properties in question is Rs.1,87,97,011/-. The Custodian has furnished break-up of the same as follows:

- "i. Maintenance Charges & Rs. 1,62,80,811-00 Interest thereon.
- ii. Repairs of 8 Flats. Rs. 25,16,200-00"

59. Learned counsel for the Custodian submitted that as per the scheme of the repair and upkeep of the attached properties, the maintenance charges including the interest for the delayed payment is to be borne by the notified parties/entities occupying the attached property, whereas the charges incurred by the society towards the repair of the attached properties is to be paid by the Custodian from the attached account of the notified parties. Regarding payment of maintenance and repair charges, there cannot be any doubt that the Custodian is liable to pay the same to the society. However, the Custodian has claimed interest for arrears of maintenance charges as claimed by the Housing Society.

60. In the same way, in Civil Appeal No. 4764 of 2010, the appellant, namely, Rasila S. Mehta, a notified party who is the owner of the attached property failed to pay to the Madhuli Cooperative Housing Society Limited her contribution towards maintenance charges, interest thereon and also the charges incurred by the Society towards repair of the attached property. The total dues demanded by the Madhuli Cooperative Housing Society Limited, vide its letter dated 21.06.2010 qua the attached property is Rs.21,06,230/- and breakup of the same is as follows:

- "i. Maintenance Charges Rs. 2,59,759-00
- ii. Repairs Rs. 9,57,501-00
- iii. Interest Rs. 8,88,970-00"

61. As discussed earlier, unless the attached properties are properly maintained and as per the scheme, the repair and upkeep of the attached properties are to be followed by the Custodian and on the orders of the Special Court.

62. It is also brought to our notice that during the course of hearing, either before the Special Court or in this Court, certain amounts have been paid/deposited by the appellant. Considering the fact that the appellants are agitating the matter at the hands of the Custodian, the Special Court and before this Court, we feel that the appellants need not be burdened with interest and penal charges for non-payment of maintenance and repair charges to the society. Accordingly, while sustaining the claim of the Custodian as approved by the Special Court in view of the reasons mentioned above, we clarify that the Custodian is not permitted to collect interest and penalty charges from the arrears of maintenance and repair charges. This position is also clear from the decision of this Court in *Harshad Shantilal Mehta vs. Custodian & Ors*, (1998) 5 SCC 1. The Custodian is free to adjust the amounts deposited by the appellants on the orders of this Court or the Special Court. With the above direction, the impugned order in both the appeals is modified to the limited extent.

63. In the light of the above discussion, we do not find any merit in Civil Appeal Nos. 2924 of 2008 and 2915 of 2008 and accordingly they are dismissed. Civil Appeal Nos. 3377 of 2009 and 4764 of 2010 are disposed of granting the relief to the extent mentioned in para 62. No order as to costs in all the appeals.