JYOTI HARSHAD MEHTA & ORS. A

v.

THE CUSTODIAN & ORS.

(Civil Appeal No. 5176 of 2009 @ D-25207 of 2008)

AUGUST 7, 2009 B

[S.B. SINHA AND DEEPAK VERMA, JJ.]

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 – ss.3(2) & (3), 4(1), 9A and 11 – Diversion of public funds for short term investment in C *securities market – Trial of criminal offences, as also civil disputes, arising therefrom – Custodian appointed in terms of the Act notified Harshad Mehta as also the appellants – All their properties stood attached – Judge, Special Court directed sale of flats purportedly belonging to appellants –* D *Order challenged – Matter remitted back to Special Court – Judgment passed by Judge, Special Court – Challenge to – Dispute over interpretation and/or application of provisions of the Act – Held: On facts, the Judge, Special Court failed to consider relevant aspects in detail and did not weigh* E *submissions and counter-submissions of both the parties in proper perspective – There was non-application of mind on his part – Direction to Judge, Special Court to consider the matter afresh – Interpretation of Statutes – Purposive construction –"ut res magis valeat quam pereat".* F

The Reserve Bank of India in course of an investigation, had inter alia opined that Harshad Mehta (since deceased), alongwith his associates had diverted huge amount of public funds belonging to Public Sector Banks and Financial Institutions for short term G **investments in the securities market. The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 provided inter alia for constitution of a Special**

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A Court for trial of criminal offences, as also civil disputes, arising therefrom during the "window period" i.e. from 1st April, 1991 and 6th June, 1992. Around this time, the family members of late Harshad Mehta had purchased movable, immovable properties and shares. Out of these
B properties, there were nine residential flats purchased, in a building called "Madhuli", in Worli, Mumbai. These flats were merged and redesigned for joint living of the entire family and these properties are the subject matter of the present lis.

C In terms of the said Special Act, a Custodian was appointed. The Custodian notified Harshad Mehta as also the appellants; pursuant whereto all their properties stood attached. The Judge, Special Court, on an application filed by the custodian inter alia directed sale
D of flats purported to be belonging to the appellants. The order came to be challenged before this Court in *Ashwin Mehta* which remitted the matter back to the Special Court with certain directions. The matter was taken up thereafter by the Judge, Special Court which passed the impugned
E judgment.

Before this Court, the appellants contended that the Judge, Special Court misconstrued and misread the directions issued by this Court in *Ashwin Mehta;* that he
F failed to take into consideration that the properties belonging to the appellants were not and could not have been treated as the benami properties of Harshad Mehta; that in such an event sub-section(1) of Section 4 of the Special Act was attracted; that sub-section (1) of Section
G 4 of the Special Act postulates that the notified persons must acquire property in the name of another from the tainted money during the window period and having regard to the findings of the Auditors that Harshad Mehta had purported to have advanced amounts by way of loans or otherwise to the appellants much prior thereto,
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the impugned judgment is wholly unsustainable; that the right to keep property being a Constitutional as well as Human Right and furthermore the provisions of the Special Act being penal in nature, they deserve a strict construction; that no finding having been arrived at, that the properties in question had any nexus with the tainted funds received from the illegal security transactions, they should have been released from attachment by the Custodian; that the appellants being notified persons are responsible for discharging their own liabilities from their own assets and not those of Harshad Mehta and/or any other person and therefore it was not proper on the part of the Judge, Special Court to club the appellants as part of the Harshad Mehta Group and that the Judge, Special Court reproduced large amounts of the Custodians' report in the Judgment and did not take into account the arguments of the appellants. A B C D

Per contra, on behalf of the custodian, it was contended that as the appellants were notified persons, Section 4(1) of the Special Act had no application as all their properties stood attached in terms of Section 3 of the Act and as such they could have been appropriated for discharge of the liabilities of Harshad Mehta and group under the scheme of the latter provision. E

Interpretation and/or application of the provisions of the Special Act was thus involved in the present appeal. F

Allowing the appeal and remanding the matter to the Special Court, the Court

HELD: 1.1. Sub-section (1) of Section 4 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 applies to the third parties and not any notified party. It is only when a property has been purchased in the name of a third party by a notified party from the tainted funds acquired by him during the G H

A window period, that the provisions of sub-section (1) of Section 4 would apply. But in a case where the properties have been purchased by the notified parties themselves as members of a group in the name of one or the other, the rigours of sub-section (1) of Section 4 B shall not apply. Section 3 of the Special Act, on the other hand, postulates automatic statutory attachment of the properties of the notified party. The acquisition of the properties whether prior to the window period, during the window period or thereafter can be attached for the C discharge of liabilities. [Para 50] [1251-D-F]

1.2. A statute which seeks to take away a person's right in property deserves strict construction. However, the courts are required to give purposive construction to a statute to see that the purpose and object thereof is D fully attained. This Act is a Special statute. It 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 acts of criminal misconduct in respect of defrauding banks and financial institutions. Its object was to see that E the properties of those who were involved shall be appropriated for discharge of liabilities not only of banks and financial institutions but also other governmental agencies including the Income-tax Department. [Para 51] [1251-G-H; 1252-A-B]

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1.3. It is, however, not an expropriatory legislation as such. The Act provides for sufficient safeguards in the matter of sale of properties by auction or otherwise towards discharge of debts of the notified persons. It G provides for grant of full opportunity of hearing to the notified persons. Notified persons have special knowledge of the facts relating to their assets and liabilities and, therefore, can always show that they have been notified wrongly or that their properties are not liable for sale either because their liabilities can otherwise be

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discharged or the quantum of liabilities projected by the Custodian is not correct. [Para 52] [1252-C-D] A

1.4. In construing the statute of this nature, the Court should not always adhere to a literal meaning but would construe the same, keeping in view 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. [Para 53] [1252-E-F] B C

1.5. The appellants are not correct in contending that the advances made by Harshad Metha to them for the purpose of purchase of properties would amount to benami transactions whereof sub-section (1) of Section 4 of the Special Act shall apply. [Para 58] [1254-H; 1255-A] D

Indian Handircrafts Emporium and others v. Union of India and others, **(2003) 7 SCC 589;** *Balram Kumawat v. Union of India and others,* **[(2003) 7 SCC 628 and** *P.K. Arjunan v. State of Kerala* **(2007) 9 SCC 516, relied on.** E

Ashwin S. Mehta and another v. Custodian and others, **[(2005) 2 SCC 385 and** *Sudhir S Mehta v. Custodian & Ors,* **[(2008) 12 SCC 84], referred to.** F

2. As regards the issue regarding nomenclature of the parties, namely whether to consider them as a whole group or as individuals, the appellants were members of an H.U.F. and were seen to be working in tandem. Harshad Metha *vis-à-vis* **the appellants was, thus, not a third party. [Paras 59 and 61] [1255-B-C; 1256-G]** G

3.1. 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 H

A 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. The said sub-
B section does not provide for any qualification that the properties which are liable to be attached should relate to the illegal securities transactions in respect of which the Act was enacted. Had the intention of the Parliament been so, it would have clearly mentioned it. It is well
C settled that when the meaning of the words used in an Act is plain and clear, effect must be given thereto. [Para 65] [1258-B-D]

3.2. The provisions of Section 3(2) should not be read into Section 3(3). Though Section 3 (3) is dependent on
D Section 3(2) for its operation, but once Section 3(2) comes into operation, Section 3(3) becomes independent of it and accordingly the qualifications of Section 3(2) cannot be read into Section 3(3). Had it been the intention of the legislature to attach only those properties acquired within
E the statutory period, it would have clearly said so. The statutory window period is only a relevant criterion for application of Section 3(2) and therefore has no bearing on the application of Section 3(3). [Para 70] [1259-G-H; 1260-A-B]

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3.3. A plain reading of Section 3(3) would suggest that all properties of the notified persons on the date of the said notification would automatically stand attached irrespective of the fact as to whether they had been
G acquired before, during or even after the statutory period. A logical corollary of this would be that all income accruing or arising from the said property even after the date of attachment would also automatically stand attached. However property acquired by a notified person after the notification under the Special Act cannot be
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attached. That property does not come within the purview of the Section 3(3). The cut off date for the attachment of the property accordingly is the date of notification. All properties of the persons on the said date automatically stand attached. The statutory window period is irrelevant for the attachment of the property. It would have no bearing on the said attachment. [Paras 71, 72 and 73] [1260-B-E]

Tej Kumar Balakrishna Raju v. A.K. Menon, (1997) 9 SCC 123, relied on.

4. 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. [Para 74] [1260-F-G]

5. The reports of the Jankiraman Committee, the Joint Parliamentary Committee and the Inter Disciplinary Group (IDG) are admissible only for the purpose of tracing the legal history of the Act alone. The contents of the report should not have been used by the Judge, Special Court as evidence. A lot of documents have been filed with regard to Audited Reports. It does not appear that the Special Judge had considered this aspect of the matter in great detail. The Judge, Special Court, should consider the audit reports so as to arrive at a positive finding with regard to the liabilities and assets possessed by the appellants so as to enable to pass appropriate orders. The Special Court in his judgment has mainly dealt with the contentions raised by the custodian in terms of the written submission filed on its behalf. The contentions of the appellants have not been considered in the impugned judgment. This clearly shows the non-

A **application of mind of the Judge, Special Court. He was required to weigh the submissions and counter-submissions of both the parties in his proper perspective and then arrive at a well reasoned opinion, which doesn't seem to be the case. It is well settled that "Justice must** B **not only be done, but also must be seem to be done". The parties are directed to file Audited Reports and the objections before the Judge, Special Court, so as to enable him to consider the matter afresh strictly in the light of the earlier judgment passed in Ashwin Mehta as** C **well as the observations made herein. [Paras 75, 76, 77, 78 and 79] [1260-G-H; 1261-A-H; 1262-A]**

Case Law Reference:

(2005) 2 SCC 385	**referred to**	**Para 8**
D **(2008) 12 SCC 84**	**referred to**	**Para 21**
(2003) 7 SCC 589	**relied on**	**Para 53**
(2003) 7 SCC 628	**relied on**	**Para 54**
E **(2007) 9 SCC 516**	**relied on**	**Para 57**
(1997) 9 SCC 123	**relied on**	**Para 72**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5176 of 2009.

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From the Judgment & Order dated 25.7.2008 of the Special Court (Trial of Offences Relating to Transactions in Securities) Mumbai in Misc. Petition No. 41 of 1999.

I.H. Syed, Varinder Kumar Sharma, Kamini Jaiswal, Rani G Mishra, V.B. Joshi, Mukesh Kumar, Arvind Kumar Tewari, Abhishek Tewari, Subramonium Prasad for the appearing parties.

The Judgment of the Court was delivered by

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S.B. SINHA, J. 1. Interpretation and/or application of the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, (hereinafter, for the sake of brevity, referred to as 'the Special Act') is involved herein. A

2. It arises out of an order dated 25th July, 2008 passed by the learned Judge, Special Court at Mumbai in Misc. Petition No.41 of 1999. B

Historical Background

3. The history as well as the purpose and object for which the Special Act was enacted, in view of the several decisions rendered by this Court, is now well-settled. The Reserve Bank of India in course of an investigation conducted by it, had inter alia opined that Harshad Mehta (since deceased), alongwith his other associates had diverted a huge amount of public funds belonging to Public Sector Banks and Financial Institutions for short term investments in the securities market. C D

4. An Inquiry Committee was thereafter constituted under the Chairmanship of Shri Janakiraman. The said Committee in its report had noticed a large number of gross malpractices and irregularities in transactions of both Government and other securities, pursuant whereto and in furtherance whereof the Special Act was enacted providing inter alia for the constitution of a Special Court for trial of criminal offences, as also civil disputes, arising therefrom during the period between 1st April, 1991 to 6th June, 1992, hereinafter referred to as the "window period". E F

5. Around this time, the family members of late Harshad Mehta had purchased movable, immovable properties and shares. Out of these properties, there were nine residential flats purchased, in a building called "Madhuli", in Worli, Mumbai. These flats were merged and redesigned for joint living of the entire family and these properties are the subject matter of this lis. G H

A **History of the Proceedings**

6. In terms of the said Special Act, a Custodian was appointed. The Custodian notified Harshad Mehta as also the appellants herein; pursuant whereto all their properties stood attached. Some of the appellants had filed applications for de-notifications. The same were, however, not pressed and were later withdrawn. It has been claimed by the appellants in an Affidavit dated 28.07.2009 that they had filed their denotification applications registered as M.A. Nos. 50 to 55 of 2009, however they withdrew the same again with a liberty to file afresh by an order dated 12.06.2009.

7. In the aforementioned premise a question came up before the learned Judge, Special Court in regard to sale of movable and immovable properties belonging to the notified persons. The learned Judge, Special Court, on an application filed by the custodian inter alia directed sale of flats purported to be belonging to the appellants.

8. The learned Judge, Special Court, by his judgment and order dated 17th October, 2003 directed sale of the said flats. The aforementioned order came to be challenged before this Court by way of appeals preferred under Section 10 of the Special Act. They were registered as Civil Appeal Nos. 667-71 of 2004 and 672 to 681 of 2004. This Court by its judgment and order dated 3rd January, 2006 allowed the said appeals and remitted the matter back to the Special Court with some directions. That decision of this Court has since been reported in *Ashwin S. Mehta and another v. Custodian and others,* [(2005) 2 SCC 385].

9. The matter was taken up thereafter by the learned Judge, Special Court which passed the impugned judgment.

Involvement of Chartered Accountants

10. The findings of Chartered Accountants have a major role to play in this case. We may notice that during pendency

of the proceedings before the Special Court M/s Vyas & Vyas, Chartered Accountant, was appointed in respect of assets and liabilities of Harshad Metha on 16th October, 2003. They submitted a report upon auditing the Accounts of Late Harshad Mehta for the financial year ending 31.03.1992 and for the period ending 08.06.1992 on 17th January, 2006. The notified parties have contested this, in an affidavit dated 28th July, 2008, by stating that the Custodian had actually received the same on 30.11.2005.

11. After the order of this Court in *Ashwin Mehta* (supra) another Chartered Accountant, M/s. Vinod K. Aggarwala & Co. was appointed by the custodian for preparation of "Realistic Estimates of the Assets and Liabilities". The report of the said Chartered Accountant was based on the Report of the three firms of Chartered Accountants appointed by the court. This report was submitted on the 27.02.2006. The Realistic Estimates of Assets and Liabilities of the Harshad Mehta Group as on 01.01.2007 was prepared by Vinod K. Aggarwala & Co. and was submitted on 26th April, 2007.

12. We may also place on record that M/s Vyas & Vyas, Chartered Accountant had categorically stated that the said books of accounts were not complete. This can be seen through excerpts mentioned in their own report,

> "19.6 Due to the compelling nature of limitations on our work and unreliable nature of the books of accounts, we are unable to accept responsibility for the accuracy and completeness of the information/particulars provided to us nor do we accept such responsibility."

> "...Therefore, we are unable to comment about the true and fair state of affairs of HSM and M/s HSM for the year ended 31st March, 1991, 31st March 1992 and for the period ended as on 8th June, 1992".

A **IMPUGNED JUDGEMENT OF THE SPECIAL COURT**

13. The Special Court in the impugned judgment noticed that it was to decide the issues in accordance with the directions of this court in *Ashwin Mehta* (supra), wherefor it quoted in extenso the conclusions and directions issued. We shall proceed to deal with each of the eleven directions that had been given by the this Court in *Ashwin Mehta* (supra) while remitting the matter back to the learned Judge, Special Court and how accordingly the Special Court went on to deal with them.

14. Direction No. 1 of this Court in *Ashwin Mehta* (supra) was:-

> "(i) The contention of the Appellants that they being not involved in offences in transactions in securities could not have been proceeded in terms of the provisions of the Act cannot be accepted in view of the fact that they have been notified in terms thereof."

15. The Special Court noted that this Court, as regards the first direction, had itself recorded a finding against the appellants and therefore nothing further was to be done by it in that regard.

16. Direction No. 2 of the court, which is most relevant for our purposes reads as under:-

> "(ii) The Appellants being notified persons all their personal properties stood automatically attached and any other income from such attached properties would also stand attached. The question as to whether the Appellants could have been considered to be part of Harshad Mehta Group by the learned Special Court need not be determined by us as, at present advised, in view of the fact that appropriate applications in this behalf are pending consideration before the learned Special Court. The

question as regard intermingling of accounts by the Appellants, herein with that of the Harshad Mehta Group and/ or any other or further contentions raised by the parties hereto before us shall receive due consideration of the learned Judge, Special Court afresh in the light of the observations made hereinbefore." A B

17. The learned Judge, Special Court, considered the said direction into three parts.

18. The first part of the direction being that the appellants being notified persons, all their personal properties stood automatically attached and any other income from such attached properties would also therefore get attached. C

19. As regards this part the learned Judge, Special Court noted that this was a finding recorded against the appellants and accordingly no orders were necessary to be passed by it in that respect. D

20. The second part of the said direction being that the question that the appellants could have been considered to be part of Harshad Mehta Group by the learned Special Court need not be determined by the Supreme Court, in view of the fact that appropriate applications in this behalf were pending consideration before the learned Special Court. E

21. In regard to the said direction the learned Special Judge, Special Court noted that the applications referred to in the said direction issued by the Supreme Court were a reference to the applications for de-notification filed by members of the Harshad Mehta Family. The court thereafter having made reference to *Sudhir S Mehta v. Custodian & Ors,* [(2008) 12 SCC 84] noted that there were no applications for de-notifications pending before the Special Court, as all applications had been withdrawn and therefore there was no further steps required to be taken by the learned Judge, Special Court. F G H

A 22. However in the alternative, again referring to *Sudhir Mehta* (supra), the learned Judge, Special Court also noted that the contention whether the appellants should be treated as a 'group' or not would not be relevant unless they were able to show that some prejudice had been caused to them thereby.

B 23. The third and the final part of the said direction dealt with the question as regards intermingling of accounts by the Appellants, herein with that of the Harshad Mehta Group which in the opinion of this Court were required to be dealt with by the Special Court afresh in the light of the observations made C therein.

24. This part of the direction in the opinion of the learned Judge Special Court was the main question, which was required to be considered by him.

D 25. He went on to note the observations of this court in *Sudhir Mehta* (supra) as regards the finding that the claim of the notified parties that their assets exceeded their liabilities was not correct. In *Sudhir Mehta* (supra) the court had E accepted the submissions of the custodian that even the individual liabilities of the notified parties far exceeded their assets.

26. The Special Court in the impugned judgment then went on to deal with the contention that the properties in question F had been purchased before the statutory period or window period prescribed under the said act being 01.04.1991 to 06.06.1992 and they were therefore not liable to be attached.

G 27. It noted that the properties of the notified parties held by them on the date of their notification got statutorily attached and became liable to be sold for discharging the liability of the notified parties, therefore, the previous contention does not stand.

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28. It, thereafter, went on to deal with the argument that the properties in question had no nexus with the illegal securities transactions and the flats had been purchased by the notified parties at the relevant time by taking interest bearing loan from M/s Harshad S Mehta. These loans had been repaid either fully or substantially. A B

29. As regards this contention the Special Court again referred to *Sudhir Mehta* (supra) to note that properties of the notified persons stood attached irrespective of the fact whether those properties were bought by using tainted funds or not. Therefore the nexus to the illegal security transactions was irrelevant. C

30. It also came to the conclusion that all the residential properties had been funded by Harshad S Mehta and they could therefore be disposed of accordingly. In this regard the Special Court relied on the report of the auditors, M/s. Vyas and Vyas who had considered the flow of funds from Harshad Mehta to various other notified parties. This was the fact that the funds had specifically been transferred for purchase of the properties just before the purchase. There was also a huge amount outstanding in the accounts of the notified parties to Harshad Mehta on the 1st of April, 1990 and 1991. D E

31. The Special Court also noted that one of the flats in Madhuli, being No. 34-A was owned by M/s Aatur Holding Pvt. Ltd. In regard to the said company the Special Court found it necessary to pierce the corporate veil. This was based on the fact that even though the paid up capital of the said company was only Rs. 10,000/- and the highest salary paid by the company was only a meager Rs. 4,000/- p.m., the company had entered into trading security transactions running into crores of rupees. It therefore opined that the real owner of the said company was none other than Shri Harshad Mehta. F G

32. In conclusion it was opined that the business and H

A dealings of various individuals who held flats in Madhuli and the company M/s Aatur Holding were nothing but fronts of Harshad Mehta and the money that was invested for buying the flats was that of Harshad Mehta. Harshad Mehta, therefore, had merely used the names of various individuals who were related to him
B for buying the said flats.

33. Direction No. 3 of this Court in *Ashwin Mehta* (supra) reads as under :-

"(iii) As regard the tax liabilities of the Appellants, herein,
C we would request the learned Judge, Special Court to consider the matter afresh in the light of the observations made hereinbefore. The learned Judge, Special Court, in this behalf, having regard to the fact that several orders of Best Judgment Assessment have been passed by the
D Assessing Authority, may take into consideration the ratio laid down in the decision of this Court in *Harshad Shantilal Mehta v. Custodian & Ors.* 1998 (3) SCALE 556."

34. As regards this direction the Special Court noted that
E the order had already been made on applications which were filed by the decree holder bank by it and the said matter was pending before this Court.

35. Direction No 4 of this Court reads as under:-

F "(iv) The learned Special Court shall proceed to pass appropriate orders as regard confirmation of the auction sales in respect of commercial properties."

36. As regards this direction the Special Court noted that
G the necessary orders had already been passed.

37. The next direction, being Direction No 5 reads:-

"(v) As regard, sale of residential properties, an appropriate order may be passed by the learned Judge,

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Special Court in the light of the observations made hereinbefore." A

38. In respect of this direction the Special Court directed the custodian to sell Flats No. 32 A, 32 B, 33, 33A, 33 B, 44 A, 44 B and 45 in 'Madhuli' by following the procedure laid down by the Special Court itself for sale of the property belonging to the notified parties. It also directed the custodian to seek directions, if necessary, from it in this behalf. B

39. Direction Nos. 6, 7 and 8 are as under:- C

"(vi) We direct the Custodian to permit the Appellants to have inspection of all the documents in his power or possession in the premises of the Special Court in the presence of an officer of the court. Such documents must be placed for inspection for one week continuously upon giving due notice therefor to the Appellants jointly. As the Appellants have been represented in all the proceedings jointly, only one of them would be nominated by them to have the inspection thereof. The Appellants shall be entitled to take the help of a Chartered or Cost Accountant and may make notes therefrom for their use in the pending proceeding. D E

(vii) The Appellants shall file their objections to the said report, if any, within ten days thereafter. The Custodian may also take assistance and/ or further assistance from a Chartered Accountant of his choice. A reply and/ or rejoinder thereto shall be filed within one week from the date of the receipt of the copy of the objection. The parties shall file their respective documents within one week thereafter. Such documents should be supported by affidavits. Both the parties shall be entitled to inspect such documents and filed their responses thereto within one week thereafter. The parties shall file the written submissions filed before this Court together with all charts before the learned Special Judge, Special Court within F G H

A eight weeks from date.

(viii) The learned Judge, Special Court shall allow the parties to make brief oral submissions with pointed reference to their written submissions. Such hearing in the peculiar facts and circumstances of this case should B continue from day to day. (ix) The learned Judge, Special Court while hearing the matter in terms of this order shall also consider as to whether the auction sale should be confirmed or not. It will also be open to the learned Judge, Special Court to pass an interim order or orders, as it may C think fit and proper, in the event any occasion arises therefore."

40. As regards these three directions the Special Court noted that the Custodian had already complied with the said D directions and allowed for the necessary inspection. The Special Court further noted that there were no complaints made before it that the said directions had not been complied with.

41. Direction No 9 reads:-

E "(ix) The learned Judge, Special Court while hearing the matter in terms of this order shall also consider as to whether the auction sale should be confirmed or not. It will also be open to the learned Judge, Special Court to pass an interim order or orders, as it may think fit and proper, F in the event any occasion arises therefore."

42. As regards this the Special Court noted that necessary orders had already been passed.

43. Direction No 10 of the court in *Ashwin Mehta* (supra) G was:-

"(x) We would, however, request the learned Special Judge, Special Court to complete the hearings of the matter, keeping in view of the fact that auction sale in

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respect of the residential premises is being consideration, as expeditiously as possible and not later than twelve weeks from the date of the receipt of the copy of this order. Save and except for sufficient or cogent reasons, the learned Judge shall not grant any adjournment to either of the parties."

44. As regards the said direction the Special Court noted after the said matter had been taken up by them for hearing, the notified parties had given their consent for initiating the process of sale of the flats. This process was set in motion and at the request of the parties, both were granted time to submit their pleadings and documents.

45. The last Direction of the Court, being No 11:-

"(xi) The learned Judge, Special Court shall take up the matter relating to confirmation of the auction sale in respect of the commercial properties immediately and pass an appropriate order thereupon within four weeks from the date of receipt of copy of this order. If in the meanwhile orders of assessment are passed by the Income Tax Authorities, the Custodian shall be at liberty to bring the same to the notice of the learned Special Court which shall also be taken into consideration by the learned Judge, Special Court."

46. As regards this direction the Special Court noted that necessary orders had already been passed.

SUBMISSIONS

47. Mr. I.H. Syed, learned counsel appearing on behalf of the appellants contended :-

(i) That the learned Judge, Special Court misconstrued and misread the directions issued by this Court in *Ashwin Mehta* (supra).

A (ii) That he failed to take into consideration that the properties belonging to the appellants were not and could not have been treated as the benami properties of Harshad Mehta.

B (iii) In such an event the provisions of the Benami Transactions (Prohibition) Act, 1988, should have been invoked or in any event Sub-section (1) of Section 4 of the Special Act which deals with transactions to defeat the provisions of the Act was attracted. These provisions provide for an C opportunity of hearing to be given.

(iv) That Sub-section (1) of Section 4 of the Special Act postulates that the notified persons must acquire property in the name of another from the tainted D money during the window period and having regard to the findings of the Auditors that Harshad Mehta had purported to have advanced amounts by way of loans or otherwise to the appellants herein much prior thereto, the impugned judgment is wholly E unsustainable.

(v) That the right to keep property being a Constitutional as well as Human Right and furthermore the provisions of the Special Act being penal in nature, they deserve a strict construction. F

(vi) No finding having been arrived at, that the properties in question had any nexus with the tainted funds received from the illegal security transactions, they should have been released from G attachment by the Custodian.

(vii) That the properties having not been acquired within the 'window period' i.e. during 1st April, 1991 to 6th June, 1992, the order of the learned Special Court for auction sale thereof must be held to be wholly H

illegal. A

(viii) The learned Judge, Special Court, committed a serious illegality in so far as he relied upon the Janakiraman Reports and other reports, which are wholly inadmissible as evidence. B

(ix) The appellants being notified persons are responsible for discharging their own liabilities from their own assets and not those of Harshad Mehta and/or any other person and therefore it was not proper on the part of the learned Judge, Special Court to club the appellants herein as part of the Harshad Mehta Group. C

(x) The learned Judge, Special Court seems to have reproduced large amounts of the Custodians' report in the Judgment, this raises the question as to whether he took into account the arguments of the appellants in the case. D

48. Mr. Arvind Kumar Tewari, learned counsel for the custodian, on the other hand, contended :- E

(i) As the appellants were notified persons, Section 4(1) of the Special Act has no application as all their properties stood attached in terms of Section 3 of the Act and as such they could have been appropriated for discharge of the liabilities of Harshad Mehta and group under the scheme of the latter provision. F

(ii) Appellants having not filed any application for their de-notification and the Custodian and/or the Special Court having all along proceeded with the case against the appellants and the late Harshad Metha as one group, it is too late in the day to contend that they are not bound to discharge the liability of G H

A Harshad Mehta and should instead be treated individually.

(iii) In a case of this nature where Section 3 would apply and not the sub-section (1) of Section 4; properties can be sold in discharge of the liabilities of all the notified persons irrespective of the fact whether they had been acquired from the tainted money or acquired during the window period or not.

(iv) The learned Judge, Special Court, having proceeded to determine the issues raised before it by the parties on the basis of the Audit Reports filed by M/s. Vyas & Vyas, the impugned judgment is unassailable.

(v) Harshad Metha was not acting alone. There were various corporate entities, firms etc. involved and the appellants were in one way or the other involved actively in the said companies and/or the firms. It was in that sense the custodian proceeded on the basis that the appellants should be clubbed together as a part of the same group.

(vi) All the appellants are notified persons. Proceedings started against them in 1992. They were proceeded against as the Harshad Mehta Group and not in their individual capacity. Indisputably they had acted as a part of this group, whatever might have been their individual contribution in regard to the acts of omission and commission towards defrauding the banks and the financial institutions for the purpose of making investment in the security transactions.

(vii) In the absence of any proof that they have no connection with the said business they should be treated as belonging to the said group.

(viii) That the flow of fund from one member to the other, as reflected from their own books of accounts, clearly establish that they are part of the same group and/or it is the contribution of Harshad Mehta alone which enabled the appellants to purchase the flats in their individual names.

USE OF SECTION 4(1) OF SPECIAL ACT

49. As regards intermingling of accounts of the appellants with that of the Harshad Mehta Group and/or any other or further contentions raised by the parties, it was directed by this Court in *Ashwin Mehta* (supra) that the same shall receive due consideration of the learned Judge, Special Court afresh in the light of the observations made therein.

50. On a plain reading of sub-section (1) of Section 4 of the Special Act it would appear that the same applies to the third parties and not any notified party. It is only when a property has been purchased in the name of a third party by a notified party from the tainted funds acquired by him during the window period, that the provisions of sub-section (1) of Section 4 would would apply. But in a case where the properties have been purchased by the notified parties themselves as members of a group in the name of one or the other, the rigours of sub-section (1) of Section 4 shall not apply. Section 3 of the Special Act, on the other hand, postulates automatic statutory attachment of the properties of the notified party. The acquisition of the properties whether prior to the window period, during the window period or thereafter can be attached for the discharge of liabilities.

51. Indisputably, a statute which seeks to take away a person's right in property deserves strict construction. However, it is also well settled that the courts are required to give purposive construction to a statute to see that the purpose and object thereof is fully attained. This Act is a Special statute. It is a complete Code in itself. The purpose and object for which

A it was created was to punish the persons who were involved in the acts of criminal misconduct in respect of defrauding banks and financial institutions. Its object was to see that the properties of those who were involved shall be appropriated for discharge of liabilities not only of banks and financial institutions but also B other governmental agencies including the Income-tax Department.

52. It is, however, not an expropriatory legislation as such. The Act provides for sufficient safeguards in the matter of sale of properties by auction or otherwise towards discharge of C debts of the notified persons. It provides for grant of full opportunity of hearing to the notified persons. Notified persons have special knowledge of the facts relating to their assets and liabilities and, therefore, can always show that they have been notified wrongly or that their properties are not liable for sale D either because their liabilities can otherwise be discharged or the quantum of liabilities projected by the Custodian is not correct.

53. In construing the statute of this nature the Court should E not always adhere to a literal meaning but would construe the same, keeping in view 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 F liability imposed by the charging section and to make the machinery workable. [See *Indian Handircrafts Emporium and others v. Union of India and others,* (2003) 7 SCC 589].

54. In *Balram Kumawat v. Union of India and others,* [(2003) 7 SCC 628] this Court preferred a dictionary meaning G of the word "ivory" in preference to the technical meaning stating

"20 Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should H 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. The rule of "*ex visceribus actus*" should be resorted to in a situation of this nature." A

55. It was furthermore held :- B

"23. 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 C purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so."

56. It was observed :- D

"26. The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. [See *Salmon* v. *Duncombe* (AC at p. 634).] Reducing the legislation futility shall be avoided and in a case where the E 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 F by the language it used when it is tolerably plain what it seeks to achieve. [See *BBC Enterprises* v. *Hi-Tech Xtravision Ltd.* (All ER at pp. 122-23).]"

57. Yet again in relation to application of doctrine of strict G construction, it was noticed :-

"34. In *State of Maharashtra* v. *Natwarlal Damodardas Soni* this Court was concerned with search and seizure of gold under the Customs Act and the Defence of India H

A Rules. The Court was dealing with smuggling of gold into India affecting the public economy and financial stability of the country and in that context the Court applied the Mischief Rule. While interpreting the words "acquires possession" or "keeping" in clause (*b*) of Section 135(1) B of the Customs Act, this Court observed that they are not to be restricted to "possession" or "keeping" acquired as an owner or a purchaser of the goods, observing: (SCC p. 677, para 22)

C "Such a narrow construction — which has been erroneously adopted by the High Court — in our opinion, would defeat the object of these provisions and undermine their efficacy as instruments for suppression of the mischief which the legislature had in view. Construed in consonance with the scheme of the statute, the purpose of these D provisions and the context, the expression 'acquired possession' is of very wide amplitude and will certainly include the acquisition of possession by a person in a capacity other than as owner or purchaser...."

E **35.** This Court while setting aside a judgment of acquittal passed in favour of the respondents therein on the basis of the interpretation of the Customs Rules observed: (SCC p. 678, para 25)

F "... These provisions have, therefore, to be specially construed in a manner which will suppress the mischief and advance the object which the legislature had in view. The High Court was in error in adopting too narrow a construction which tends to stultify the law. The second charge thus had been fully established against the G respondent."

[See also *P.K. Arjunan v. State of Kerala* (2007) 9 SCC 516, para 11]

H 58. Mr. Syed, therefore, in our opinion is not correct in

contending that the advances made by Harshad Metha to the appellants herein for the purpose of purchase of properties would amount to benami transactions whereof sub-section (1) of Section 4 of the Special Act shall apply.

ISSUES REGARDING NOMENCLATURE

59. In *Ashwin Mehta* (supra), this Court had specifically asked the ld. Judge of the Special Court to decide on the issue of nomenclature of the parties, namely whether to consider them as a whole group or as individuals. The Special Court in the impugned judgment preferred to rely on the judgment of this court in *Sudhir Mehta* (supra) on this issue; wherein this Court observed:

> **45.** This takes us to the aforementioned paragraphs heavily relied upon by the learned counsel in the judgment of *Ashwin Mehta case*. In para 41, it was stated that it was open to the appellants to show that even if they continued to be notified, the Custodian was not right in clubbing all the individual members of the family as a single entity styled as the Harshad Mehta Group. We do not find that there was any attempt on the part of the appellants to disassociate themselves from the Harshad Mehta Group. When we see the judgment dated 17-8-2000 passed by the Special Court, it is obvious that the learned counsel arguing that matter had argued it on behalf of the Harshad Mehta Group. It is for this purpose that we have quoted the argument before the learned Special Judge in extenso. We will only quote a sentence which forms a part of the argument:
>
> "It was contended that on a proper and legal assessment, the actual tax liability of the *Harshad Mehta Group* would be marginal and a large portion of the amounts would have to be refunded by the Revenue. *He contended that in case of the Harshad Mehta Group*, the demands made

A by the Department are based on the best-judgment assessments, which are highly exaggerated. He contended that the assessment orders are ex parte in nature. He contended that the *Harshad Mehta Group is contesting the demands before the appellate authorities.*"

B

(emphasis supplied)

It was, therefore, obvious that at that juncture, when the question was as to whether the shares should be sold or not, the move was objected to by the appellants formulating C themselves as the Harshad Mehta Group. *No such objection to form and treat the relatives as a group was raised before the Special Court in the year 2000 when the question of sale of shares fell for consideration for the first time.* At any rate, unless it is shown as to what D prejudice would be caused by treating them to be a group, this contention has no basis. We, therefore, do not think that the argument in this behalf has any basis."

60. Criticism has also been made with regard to the E application of the doctrine of lifting the corporate veil which was not supposed to be made applicable to the individual. The said doctrine was applied by the learned Judge of the Special Court in the instant case in respect of the company M/s. Aatur Holding Pvt. Ltd. The abovementioned company purchased a flat, although its paid up capital was only Rs.10,000/- and the F highest salary paid to the employee by it was only Rs.4000/- per month. Despite this the said company allegedly entered into security trading transactions amounting to crores.

61. The appellants were members of an H.U.F. and were G seen to be working in tandem. Harshad Metha vis-à-vis the appellants was, thus, not a third party.

ISSUE OF DENOTIFICATION

62. Appellants contend that they had withdrawn the H

denotification applications in 2000 although the same had been filed in 1993. The delay in disposal of the said applications is sought as a reason assigned in support of the same. We fail to see any justification in the said stand. Appellants contend that they wanted to file fresh applications. If that be so the reason why the earlier applications were withdrawn had not been properly and sufficiently explained. The reason assigned is hardly a ground for withdrawal of the applications. We have been informed by the appellants that fresh applications for denotifications have been filed and the same have been withdrawn in the year 2009. The same issue may have to be dealt with by the Special Court. We wonder, why it took nine years to file these fresh applications.

63. We may notice that applications for denotification were filed by Raseela Mehta and Rina Mehta which were rejected by the Special Court. The order rejecting the same have been challenged before this Court by way of Appeals which are numbered as Civil Appeal Nos. 2915 of 2008 and 2924 of 2008 and are pending.

NEXUS OF THE PROPERTIES WITH THE ILLEGAL SECURITIES TRANSACTION

64. 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 security transactions, the same can be released from attachment or at least need not be sold. 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

A to show that they had no nexus with the funds diverted there from.

65. 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. The said sub-section does not provide for any qualification that the properties which are liable to be attached should relate to the illegal securities transactions in respect of which the Act was enacted. Had the intention of the Parliament been so, it would have clearly mentioned it. It is well settled that when the meaning of the words used in an Act is plain and clear, effect must be given thereto.

66. This is supported by the decision of this court in *LS Synthetics Ltd. v. Fairgrowth Financial Services Ltd.* [(2004) 11 SCC 465]. Therein the appellants had taken a loan from the respondents, Fairgrowth who had admittedly been notified under the Act. The respondent therein, Fairgrowth thereafter filed an application before the Special Court seeking attachment of the said funds due to them by LS Synthetics. It was argued on behalf of the debtors, LS Synthetics, that the loans due to the respondents had no nexus to the nature of securities transactions specified under the Special Act and they were therefore not liable to be attached. This Court while rejecting the said contention noted that having regard to the provisions of the Act, it was not required that the properties in question must have a nexus to the illegal securities transaction. Accordingly all assets of the notified parties including the loans advanced by them in the case at hand were found liable to be

attached.

67. The Court however in *LS Synthetics* (supra) was not concerned with the issue of whether the properties in question had been acquired before the window period or not. The loans in that case had admittedly been advanced within the window period and accordingly the only question before the court was whether the loan would be liable to be attached despite not having a nexus to the illegal security transactions. This accordingly brings us to the next submissions as regards the statutory window period.

STATUTORY WINDOW PERIOD

68. It was contended on behalf of the Appellants, that the properties in question had been purchased much before the statutory window period provided under the Special Act. It is argued that the jurisdiction of the Special Court is strictly confined to the period from 01.04.1991 to 06.06.1992 and as such the Court would not have the power to investigate and give any findings pertaining to any transaction entered into prior to the statutory period. The appellants state that, the fact, no claims have been received by the custodian from any bank pertaining to the pre-statutory period, should be conclusive evidence that no monies were siphoned off in that period as falsely alleged.

69. In our opinion the interpretation advanced by the appellants on the provisions would be a clear misreading of the Act. We must in this regard refer to the relevant provisions of the Act.

70. Provisions of Section 3(2) should not be read into Section 3(3). Though Section 3 (3) is dependent on Section 3(2) for its operation, but once Section 3(2) comes into operation, Section 3(3) becomes independent of it and accordingly the qualifications of Section 3(2) cannot be read into Section 3(3). We must place emphasis on a plain reading

A of the said section. Had it been the intention of the legislature to attach only those properties acquired within the statutory period, it would have clearly said so. The statutory window period is only a relevant criterion for application of Section 3(2) and therefore has no bearing on the application of Section 3(3).

B

71. A plain reading of Section 3(3) would suggest that all properties of the notified persons on the date of the said notification would automatically stand attached irrespective of the fact as to whether they had been acquired before, during or even after the statutory period. A logical corollary of this C would be that all income accruing or arising from the said property even after the date of attachment would also automatically stand attached.

72. However property acquired by a notified person after D the notification under the Special Act cannot be attached. That property does not come within the purview of the Section 3(3). [See *Tej Kumar Balakrishna Ruja v. A K Menon,* (1997) 9 SCC 123 para 6]

E 73. The cut off date for the attachment of the property accordingly is the date of notification. All properties of the persons on the said date automatically stand attached. The statutory window period is irrelevant for the attachment of the property. It would have no bearing on the said attachment.

F 74. 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 G the Special Court contained in Sections 9A and 11 must be construed.

75. It is an accepted fact that the reports of the Jankiraman Committee, the Joint Parliamentary Committee and the Inter

H

Disciplinary Group (IDG) are admissible only for the purpose of tracing the legal history of the Act alone. The contents of the report should not have been used by the ld. Judge of the Special Court as evidence.

76. However, a lot of documents have been filed before us with regard to Audited Reports. Vyas and Vyas had filed an Audited Report in 2003. Copies whereof were supplied in 2005. Audited Report of Vyas and Vyas related only to Harshad Mehta. A Report on the Assets and Liabilities of the Appellants by M/s. Vinod K. Agarwala and Co. as on November, 2007 has also been placed on record. It does not appear that the Special Judge had considered this aspect of the matter in great detail. The learned Judge, Special Court, should consider the aforementioned two audit reports so as to arrive at a positive finding with regard to the liabilities and assets possessed by them so as to enable to pass appropriate orders.

77. The learned Judge, Special Court, in his judgment has mainly dealt with the contentions raised by the custodian in terms of the written submission filed on its behalf. The contentions of the appellants have not been considered in the impugned judgment. It is furthermore contended on behalf of the appellants, that out of the twenty six paragraphs of the impugned judgment, 15 paragraphs are near verbatim reproductions.

78. In our opinion this clearly shows the non-application of mind of the learned Judge, Special Court. He was required to weigh the submissions and counter-submissions of both the parties in his proper perspective and then arrive at a well reasoned opinion, which doesn't seem to be the case before us. It is well settled that "Justice must not only be done, but also must be seem to be done".

79. The Audited Reports and the objections have been filed before us. We direct the parties to file the same before the learned Judge, Special Court, so as to enable him to

A consider the matter afresh strictly in the light of the earlier judgment passed in *Ashwin Mehtas* (supra) as well as the observations made herein.

80. For the reasons aforementioned, the impugned judgment is set aside and the matter is remanded to the learned B Judge, Special Court, for consideration thereof afresh in the light of the observations of this Court as expeditiously as possible and preferably within a period of six months from the date of this judgment. The appeals are allowed with the aforementioned observations. In the facts and circumstances C of the case, there shall be no order as to costs.

B.B.B. Appeal allowed.