

Phadke

IN THE SPECIAL COURT AT BOMBAY
Constituted under the Special Court [Trial of Offences Relating to
Transactions in Securities] Act, 1992

MISCELLANEOUS APPLICATION NO. 39 OF 2018

The Custodian,
appointed under the provisions of the
Special Court (Trial of Offences relating
to Transactions in Securities) Act, 1992,
and having its office at 10th floor, Nariman
Bhavan, 227, Vinay K. Shah Marg,
Nariman Point, Mumbai – 400 021.

...Applicant

Versus

1. Apollo Tyres Ltd.
7, Institutional Area, Sector 32,
Gurgaon, Haryana – 122001.
- 2(a) Mrs. Jyoti H. Mehta
(b) Mrs. Rasila Mehta
(c) Mr. Aatur H. Mehta, Legal Heirs of Late
Mr. Harshad Mehta
3. Cascade Holdings Pvt. Ltd.
4. Fortune Holdings Pvt. Ltd.
32, Madhuli Dr. A.B.Road,
Worli, Mumbai – 400 018.
5. Investor Education & Protection Fund
Department of Company Affairs, Shahtri
Bhavan, New Delhi
6. Central Bureau of Investigation, Bank
Securities & Fraud Cell,
New Hind House, 2nd Floor,
Narottam Morajee Marg,
Ballard Pier, Mumbai – 400 001

...Respondents

Mr. Hormaz Daruwalla, Senior Advocate, i/b M/s. Shilpa Bhate, for the
Applicant.

Mr. Tushad Cooper, Senior Advocate, a/w Aditya Singh and Drishti Doshi,
i/b Akash Menon, for Respondent Nos.1.

Mr. Ashwin Mehta, for Respondent Nos.2A, B and C.

**CORAM: N. J. JAMADAR, J.
Judge, Special Court**

Reserved On: 25th AUGUST, 2023

Pronounced On: 14th JUNE, 2024

JUDGMENT :

1. The Custodian has preferred this application seeking, *inter alia*, the following reliefs:

(a) To direct the R1 to transfer and demat 1,75,350 shares and 2,27,250 shares held by respondent Nos.3 and 4 along with all accruals thereon in favor of “Custodian (Special Court) A/c Harshad Mehta Group” with Client ID No.16186594.

(b) To direct the R1 to furnish the present status and reasons, for unavailability of remaining share aggregating to 4,01,379 & 5,60,954 (face value of Rs.10/-) of the respondent Nos.3 & 4 respectively as per original data furnished by the company.

(c) To direct the R1 to furnish full details of all accruals on above mentioned shares and their present status from the date of notification till today.

(d) To direct the R1 to deposit the dividend amount on 4,02,600 shares from 2006 onwards till date with the applicant.

(e) To direct the respondent No.5 to remit the dividend amount for period of 2001 – 2008 for credit of A/c “Custodian A/c Harshad Mehta Group” in the light of the order dated 18th August, 2016 in MA No.24 of 2016.”

2. The background facts can be stated as under :

To address the situation, in the wake of securities scam, the Parliament enacted the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (“TORT Act, 1992”). Under the provisions of Section 3 of the TORT Act, 1992, the Custodian came to be appointed. In exercise of

the power under Section 3(2) of the TORT Act, 1992 to notify the persons involved in offences relating to transactions in securities, late Harshad Mehta alongwith his relatives and entities were notified on 8th June, 1992. Resultantly all the properties belonging to the notified parties stood statutorily attached under sub-section (3) of Section 3 on and from the date of the said notification. Respondent Nos.2(a), (b) and (c) are the legal representatives of late Harshad Mehta. Respondent Nos.3 and 4 are the entities of Harshad Mehta Group, who were also notified alongwith late Harshad Mehta.

3. During the course of investigation into the offences relating to transactions in securities, CBI – respondent No.6, had seized vast quantities of shares of different companies. On 28th June, 1995 late Harshad Mehta addressed a letter to the Custodian contending that between 16th June, 1992 to 29th June, 1992 CBI had effected the seizure of shares at the premises of Mr. Mohan Khandelwal at New Delhi. Those shares pertained to the transactions undertaken by the three brokerage firms of M/s. Harshad Mehta, M/s. Ashwin Mehta and M/s. J. S. Mehta through different stock brokers at Delhi Stock Exchange. After obtaining copies of the seizure memo he had built up a data base on a computer by using seizure memo as an input. The Custodian was requested to take custody of those shares from CBI, intimate the respective companies that those shares were attached assets and arrest flow of benefits/accretions thereon to the erstwhile owners and initiate steps to recover the benefits which had already been given to the erstwhile owners.

4. On 29th February, 1996 the Custodian addressed a letter to Apollo Tyres Ltd. (ATL) - R1 and requested it to hold in abeyance the benefits on unregistered shares of ATL seized by CBI and not to deal with those shares in any manner including transfer, pledge or issue of duplicate shares.

5. The Custodian preferred MA No.475/1996. By an order dated 8th January, 1997 this Court directed CBI - respondent No.6 to hand over the seized shares to the Custodian.

6. The Custodian claims, he thereafter took up the matter with ATL - R1. There was an exchange of lengthy correspondence. Eventually vide letter dated 21st March, 2013 ATL - R1 informed the Custodian that on verification/reconciliation and after removal of overlappings and mismatches, 1,75,350 and 2,27,250 shares of Rs.1 face value, standing in the name of Cascade - respondent No.3. and Fortune - respondent No.4, were available for transfer in their respective attached accounts, out of the data in respect of 4,01,379 and 5,60,954 shares of Rs.10 face value of respondent Nos.3 and 4, which was originally received by ATL - R1. Vide another letter dated 20th April, 2017 ATL - R1 further informed that ATL had transferred the dividend amount kept in abeyance on the aforesaid shares for the period 2000 - 2001 to 2008 - 2009 to Investor Education & Protection Fund (IEPF) - respondent No.5 and the dividend for the subsequent period was held in abeyance.

7. The Custodian thus asserts that 1,75,350 shares standing in the name of Cascade - respondent No.3 and 2,75,250 shares standing in the name of

Fortune – respondent No.4, constitute the attached property. Since those shares are not in the custody of the Custodian, a direction for transfer of the said shares is required to be issued to ATL – R1. Likewise, ATL – R1 be directed to furnish the present states and reasons for unavailability of the remaining shares aggregating to 4,01,379 and 5,60,954 (of the face value of Rs.10) of Cascade – respondent No.3 and Fortune – respondent No.4, respectively, furnish full details of all accruals and deposit the dividend amount held in abeyance from 2006 onwards. A direction is also sought against respondent No.5 to remit the dividend amount for the period of 2000 – 2001 to 2008 – 2009.

8. ATL – R1 resisted the prayers in the application. At the outset, it was contended that Cascade – respondent No.3 and Fortune – respondent No.4 were share broking firms and were engaged in trading of stocks/shares on behalf of their clients. Subject shares were not acquired by respondent No.3 and respondent No.4, on proprietary basis, but rather for and on behalf of their clients. Subsequently, the clients of respondent Nos.3 and 4 sold those shares in the market.

9. Referring to a series of correspondence between Custodian and ATL – R1, it was contended that ATL had called upon the Custodian to issue instructions as regards the subject shares in respect of which stop transfer instructions were issued by the Custodian. However, neither the Custodian nor the notified parties have produced any proof of the ownership of the

subject shares. In contrast, many third parties have laid claim over the subject shares. Therefore, ATL – R1 contends, it would be grossly unfair, unjust and inequitable to the third parties/shareholders to permit transfer of their legitimate holdings in the shares without the Custodian establishing a *prima facie* right of the notified parties with respect to the said shares. ATL – R1, therefore, prayed that the transfer of the subject shares to the Custodian can only be considered upon the notified parties producing evidence to substantiate their claim over the subject shares. In the event of the failure of the notified parties to produce evidence in the nature of share certificates, transfer deeds, proof of purchase etc., the stop transfer directions given to the ATL – R1 be forthwith withdrawn.

10. R1 has opposed prayers of the Custodian for transfer of the shares as the said prayer of the Custodian is stated to be in teeth of the provisions contained in Section 56 of the Companies Act, 2013 and the Articles of Association of ATL – R1.

11. ATL – R1 claimed to have carried out reconciliation exercise in respect of the shares claimed by Cascade – respondent No.3 and Fortune – respondent No.4. ATL – R1 contends that even the matched shares do not reflect the genuineness of the claim as the matching has been done only on the basis of distinctive numbers. There are counter claims of various shareholders in respect of matched shares also by way of transfer/demat request.

12. ATL – R1 further contended that it has received various claims from third parties in respect of the subject shares. Physical share certificate with respect to 1,58,520 shares out of 1,75,350 shares claimed by Cascade – respondent No.3, and 1,74,250 shares out of 2,27,250 shares claimed by Fortune – respondent No.4, have been lodged for transfer of the said shares. ATL – R1, therefore, apprehends that there might be many more such claims. Thus, in the event the subject shares are transferred to the Custodian, the ATL may be exposed to unwarranted claims and litigation.

13. ATL – R1 claims that there have been no accruals on the subject shares from the date of notification till date. With regard to the dividend accrued on the subject shares from the year 2001 – 2002 to 2008 – 2009, it is claimed that, a sum of Rs.14,45,319/- has been transferred to IEPF - respondent No.5 and dividend accrued on the subject shares from the financial years 2009 – 2010 to 2017 – 2019 mounting to Rs.52,73,200/- has been kept in abeyance.

14. Without prejudice to aforesaid contentions, ATL – R1 has further asserted that a general public notice be issued about the transfer and issuance of duplicate shares to the Custodian by ATL – R1 and no transfer of the said shares be permitted to be done in the Custodian account of Harshad Mehta so as to protect the interest of ATL as well as genuine shareholders.

15. In response to the aforesaid affidavit-in-reply, the Custodian vide rejoinder has taken a cautious and restrained stand. It is asserted the premise on the basis of which the Custodian has sought to recover the subject shares is

not acceptable to ATL – R1. Referring to the categorical contentions in the affidavit-in-reply of ATL – R1, the Custodian claims that it had little no or information with regard to the dealings of the notified parties. In the wake of the rival contentions as regards the proprietary title over the subject shares, the Custodian has expressed his inability to either accept or deny the contentions raised and statements made in the affidavit-in-reply of ATL – R1. Thus, the Custodian prays the notified parties may be called upon to prove their ownership over the subject shares and, in the meanwhile, the subject 4,02,600 shares of Rs.1 face value may be directed to be kept in the custody of ATL – R1 under the seal of the Custodian.

16. Jyoti Mehta – respondent No.2(a) filed an affidavit-in-reply primarily to highlight the alleged dereliction of duty on the part of the Custodian. It was alleged that the Custodian has not deliberately effected the recovery of the attached assets. The delay on the part of the Custodian in filing the instant application seeking recovery of the attached assets is pressed into service as a pointer to the deliberate inaction on the part of the Custodian. Allegations of collision between the Custodian and the promoters of ATL – R1 are made and sought to be substantiated with reference to the documents and orders passed by this Court and Supreme Court.

17. The conduct of the ATL – R1 in taking an adversarial stand qua the notified parties has also been criticized. ATL has allegedly taken side and stepped into shoes of alleged genuine shareholders. ATL – R1 has dealt with

attached shares and accruals and transferred those shares to third parties or issued duplicate certificates to the third parties with a view to defeat the rights of the notified parties. The actions of ATL in transferring the share or issuing duplicate share certificate and transferring the dividend amount to respondent No.5 were in breach of the mandate contained in TORT Act, 1992 and the various orders passed by the Special Court. Thus, while supporting prayers in the application of the Custodian, respondent No.2(a) has questioned the role of the Custodian and the actions of ATL - R1.

18. The affidavit-in-reply on behalf of respondent Nos.3 and 4, by and large, proceeds on identical lines. Allegations are made against both Custodian and ATL - R1.

19. Refuting the contention of ATL - R1 that Cascade - respondent No.3 and Fortune - respondent No.4 had not acquired the shares on proprietary basis, it is contended that respondent Nos.3 and 4 had purchased the subject shares by engaging the services of the brokerage firms, outside the Harshad Mehta Group. Those shares purchased by respondent Nos.3 and 4 and not sold by them, still constitute attached assets under Section 3(3) of the TORT Act, 1992. The acquisition of the said shares is substantiated by the reports of the Chartered Accountants appointed by the Special Court. It is asserted the books of accounts drawn by the Chartered Accountants reveal that the subject shares were purchased by respondent Nos.3 and 4. The transactions with

outside brokerage firms are supported by corresponding payments or receipts through the bank as is recorded in the Chartered Accountant's Report.

20. Respondent Nos.3 and 4 further contended that ATL – R1 has no *locus standi* to challenge the title of respondent Nos.3 and 4, over the subject shares. ATL – R1 is stated to be a party in default, as it had issued several duplicate shares and transferred the shares in flagrant violation of the automatic attachment envisaged by Section 3(3) of the TORT Act, 1992. ATL – R1, according to respondent Nos.3 and 4, has been acting *mala fide*. With the aforesaid contentions, respondent Nos.3 and 4 have supported the prayers in the application of the Custodian.

21. Further additional affidavits and affidavit-in-rejoinder were also filed on behalf of respondent Nos.3 and 4.

22. The Custodian filed a further affidavit-in-rejoinder reiterating the contentions in the affidavit-in-rejoinder dated 27th February, 2019. The various allegations, especially in the affidavits on behalf of respondent No.2(a) and respondent Nos.3 and 4, were stated to be not germane to the issues which arise in this application. Adverting to the affidavits filed on behalf of the parties, especially the affidavits on behalf of ATL – R1, the Custodian contends that 4,02,600 shares of respondent Nos.3 and 4 which are available with ATL – R1 and the transfer in which has been stopped by ATL – R1, be declared as the attached assets of respondent Nos.3 and 4 and ATL be directed to issue letters to the third parties/shareholders, who had lodged original share certificates

with ATL – R1 to file requisite application before the Special Court praying for lifting of attachment on those shares in accordance with the well established procedure for certification of shares.

23. In the backdrop of the aforesaid pleadings, on 6th March, 2020 a submission was made on behalf of the Custodian that, the Custodian has found, upon reflection, that ownership of the subject shares has not been established by respondent Nos.3 and 4. There are no documents evidencing title to the subject shares such as share certificates, contract notes and proof of payment and transfer deeds. Taking note of the aforesaid contention of R1, and the attendant facts and circumstances, the Custodian is of the view that the prayers in the application cannot be prosecuted.

24. The aforesaid stand of the Custodian was stoutly resisted on behalf of respondent Nos.2 to 4 – the notified parties and the prayer for withdrawal of the application was vehemently opposed.

25. It is in this backdrop, I have heard Mr. Daruwalla, the learned Senior Advocate for the Custodian, Mr. Cooper, the learned Senior Advocate for ATL - R1 and Mr. Ashwin Mehta, the learned Counsel for the notified parties. With the assistance of the learned counsel for the parties, I have perused the material on record.

26. Mr. Daruwalla, learned Senior Advocate for the Custodian submitted that there can be no dispute about the role of the Custodian in the matter of recovery, preservation, augmentation and subsequent application of the

attached assets, pursuant to the directions of the Special Court. The Custodian is fully conscious of its statutory responsibility. Nonetheless, if in the facts of a given case, the Custodian is not in a position to pursue its claim for recovery of the attached assets, it is the duty of the Custodian to take a fair stand and refrain from a fruitless exercise. Mr. Daruwalla would urge that the case in hand is one of such cases where the Custodian cannot prosecute the recovery, though the Custodian had initially preferred the application for recovery.

27. Mr. Mehta, learned Counsel for the notified parties stoutly resisted the aforesaid submissions on behalf of the Custodian. At the outset, it was urged that the claim of the Custodian that he does not wish to prosecute the application is in the teeth of the stand taken by the Custodian in various proceedings on an affidavit that the Custodian has been diligently pursuing the recovery and augmentation of the attached assets.

28. Mr. Mehta would further urge that the instant application cannot be considered in isolation. The application came to be preferred in pursuance of the orders passed by this Court and also in compliance of the undertakings given by the Custodian that he would pursue his statutory duty to recover the attached assets.

29. The stand of the Custodian, especially in this case, that there is no material to substantiate the claim that the subject shares belonged to the notified parties is against the weight of the material on record. It was urged that there is voluminous material which unmistakably indicates that the subject

shares were acquired by Respondent Nos.3 and 4. The reluctance of the Custodian to recover the subject shares, Mr. Mehta would urge, is another instance of the Custodian deliberately not effecting recovery of the attached assets to cause prejudice to the notified parties and firmly establishes the collusion between the office of the Custodian and ATL – R1, which notified parties have been consistently alleging.

30. Amplifying the aforesaid broad submissions, Mr. Mehta would urge that it is inexplicable as to how the Custodian could ever urge in the instant case that there is no material to substantiate the claim of the notified parties. On the one hand, there is correspondence which indicates that the Custodian himself had shared the details with ATL – R1, like the distinctive numbers, transfer forms and bills, etc. The Custodian in pursuance of the order passed by the Special Court in MP No.88 of 2000 had categorically advised ATL – R1 that the said order governed the subject shares as well, and, therefore, ATL – R1 shall stop the transfer of the subject shares. It was urged that the order passed by the Special Court in MP No.88 of 2000 is a complete answer to the objection now sought to be raised on behalf of ATL – R1.

31. In any event, according to Mr. Mehta, there is adequate material in the form of bills, bank statements and Chartered Accountant reports which establish beyond cavil that Cascade and Fortune had purchased the subject shares. Special emphasis was laid by Mr. Mehta on the CA reports whereby the

statements of accounts of the notified parties, including Cascade and Fortune were drawn.

32. In addition, there is material to indicate that the Respondent Nos.3 and 4 had addressed letters to the brokers from whom the shares were purchased to furnish the bills of those shares and even instituted Petition in this Court seeking direction against those brokers to furnish the requisite bills in respect of the shares of ATL – R1, which Respondent Nos.3 and 4 had acquired.

33. Mr. Mehta submitted that the endeavour of ATL – R1 to now question the title of the notified parties is actuated by an oblique motive to defeat the rights of the notified parties. At no point of time, Mr. Mehta would urge, proof of title of notified parties was insisted while taking tracing and recovery action. Even otherwise, according to Mr. Mehta, it is not open for ATL – R1 to raise the said contention. Disguised as a concern for the small share holders, ATL – R1 desires to usurp the legitimate holding of Respondent Nos.3 and 4.

34. Mr. Mehta would further urge that as this Court has introduced a mechanism of certification of shares, the alleged genuine investors have a remedy of approaching this Court for certification of shares. Nobody has questioned the title of the Respondent Nos.3 and 4 over the subject shares, nor approached this Court for certification of the shares, which found their way. Therefore, ATL – R1's stand that it has received requests from number of genuine shareholders to transfer the shares cannot be countenanced to defeat the rights of the notified parties in the attached assets.

35. Lastly, Mr. Mehta submitted that the very facts that substantial number of shares matched with the particulars furnished by the notified parties and dividend on the shares that was withheld, has been transferred to the Custodian, point to the inherent contradictions in the claim of ATL – R1. It was submitted that the letter of ATL – R1 dated 7 January 2014 that after removal of overlapping /mismatch, etc., there were 227250 matched shares in respect of Fortune and 175350 match shares in respect of Cascade, clinches the issue and, at that stage itself, the subject shares should have been straightaway recovered by the Custodian.

36. Mr. Mehta placed reliance on a number of judgments to lend support to the submissions regarding the automatic and simultaneous attachment of the property of the notified parties, the role and the duties of the Custodian and the pivotal importance, in the scheme of the TORT Act, 1992, to the recovery of the attached assets. Reference to relevant judgments would be made while considering the submissions.

37. Mr. Cooper, learned Senior Advocate for the R1 – ATL submitted that the very premise of the Custodian’s application that the subject shares belonged to the notified parties is factually unsustainable and legally unsound. It was strenuously urged that the expression “belong to” cannot be considered equivalent to “claimed by”. There must be material to show that the property which is proposed to be pursued against, belonged to the notified parties.

38. In the case at hand, according to Mr. Cooper, apart from the self-serving statements and documents sought to be pressed into service by the notified parties, there is not even a prima facie material to show that the subject shares belonged to Cascade and Fortune.

39. As a second limb of this submission, Mr.Cooper would urge that the Custodian did not resort to the provisions of Section 4 of the TORT Act, 1992, which empowers the Custodian to cancel the contract and agreement which has been fraudulently entered into, during the statutory period. In the absence of such action on the part of the Custodian, a bald assertion that the subject shares belonged to the notified parties is of no consequence, urged Mr. Cooper.

40. Mr.Cooper strenuously submitted that the claim of the notified parties that Cascade and Fortune had acquired humongous quantity of shares, worth crores of rupees, falls flat if considered in the light of material on record. Cascade – Respondent No.3 and Fortune – Respondent No.4, Mr. Cooper would urge, were straw and paper companies. Paid up capital did not exceed hundreds of rupees. The Chartered Accountant’s Reports indicate that there was no material to substantiate the claim of acquisition of such huge quantity of shares. Laying emphasis on the findings recorded by the CA, Mr. Cooper submitted that apart from paper entries, no document which would substantiate the claim of purchase, like brokers note, receipts, bills, and contract note were forthcoming. CA have categorically stated that they were unable to certify the correctness of the assets and liabilities. Even otherwise,

according to Mr. Cooper, CA report by themselves do not constitute proof of acquisition of lakhs of shares.

41. Mr. Cooper would further urge that the claim on behalf of the notified parties that ATL – R1 had stated that certain quantity of shares had matched with the unregistered shares, claimed by the notified parties, is inherently flawed. The response of ATL – R1 that certain quantity of shares matched does not imply that ATL – R1 admitted the ownership of the notified parties. The exercise of matching was done based on distinctive numbers. The notified parties did not produce any deeds of transfer to substantiate their claim that they had purchased the subject shares. Share certificate is prima facie evidence of title to the shares. The parties in whose name the shares stood registered, cannot be deprived of their right on the basis of the unsubstantiated claim of the notified parties that they had purchased the shares.

42. Mr. Cooper would urge, a heavy onus lay on the notified parties to establish that the persons in whose name the shares were registered were not the true and beneficial owners of the said shares. The material on record would indicate that there is not a shred of evidence to establish the fact that the notified parties had acquired the subject shares.

43. Mr. Cooper submitted that ATL – R1 owes a duty to its bonafide share holders. Therefore, the submission on behalf of the notified parties that ATL – R1 cannot espouse the cause of the registered shareholders cannot be countenanced. Small shareholders cannot be expected to and may not have the

means to approach this Court for certification of the shares. In any event, ATL - R1 does not stand to gain out of its resistance to the transfer of the subject shares to the Custodian. If the stop transfer instruments are lifted, ATL - R1 would transfer the shares in the name of the persons who have sought the transfer of the shares. The resistance of the ATL - R1 does not stem from the desire to have unjust benefit but rests on a matter of substance that the shares simply do not belong to the notified parties, and, therefore, ATL - R1 is within its right in resisting the claim of the notified parties.

44. Before advertent to consider the aforesaid rival submissions, in the light of the principles which govern the controversy sought to be raised in this application, especially in the context of the stand of the Custodian that the application does not deserve to be pursued as there is no supporting material to substantiate the claim, it may be apposite to have clarity on facts.

45. The genesis of the instant application appears to be in the letter dated 28 June 1995 addressed by late Harshad Mehta to the Custodian asserting, inter alia, that large quantities of shares were seized by CBI at the premises of Mr. Mohanlal Khandelwal at New Delhi between 16 June 1992 to 29 June 1992. Vide communication dated 18 January 1996, late Harshad Mehta furnished particulars of unregistered shares seized by CBI. It was, inter alia, asserted that there were 780990 unregistered shares of ATL - R1. Thereupon, the Custodian vide letter dated 29 February 1996 called upon ATL - R1 not to deal with those shares in any manner, including transfer, pledge or issue of

duplicate shares. ATL – R1 was called upon to keep in abeyance all rights, interest dividend, bonus etc., accruing on those shares till the Custodian obtained orders from the Special Court.

46. On a deeper analysis of the facts, I find that the aforesaid correspondence does not significantly bear upon the controversy at hand. The order passed by this Court on 19 November 1995 in MP No.123 of 1995 and MA No.475 of 1996 makes the position abundantly clear. The said order refers to 740,000 shares delivered to the Custodian by CBI, which formed the subject matter of MA No.475 of 1996. By the said order, MA No.475 of 1996 was disposed of by this Court to the extent of registration of 740,000 shares of ATL which were seized by CBI. This implies that the issue regarding 39,16,000 unregistered shares which were then in possession of the notified parties and 740,000 shares of ATL – R1 which were seized by CBI, and, subsequently, handed over to the Custodian, stood concluded by the said order dated 19 November 1999, save and except the liberty granted to the Custodian to trace and recover the lost benefits i.e. bonus, rights and dividends in respect of the said shares from the registered shareholders.

47. The claim is essentially based on the letter dated 1 September 1999 addressed by the Custodian to ATL – R1. By the said letter, the Custodian informed ATL – R1 that firm of Chartered Accountants appointed by the Special Court to examine the accounts of the notified parties of Harshad Mehta group, has addressed a letter to the Custodian to the effect that the

books of accounts of Fortune Holding Pvt. Ltd. - Respondent No.4 indicated that the Respondent No.4 was holding 14,17,000 shares of ATL - R1 as of 31 March 1992 and 8 June 1992, the date it was notified. ATL - R1 was thus called upon to furnish particulars with regard to the distinctive number, certificate number and folio numbers of the shares held by Respondent No.4 as of 31 March 1992 and 8 June 1992.

48. A lengthy correspondence was exchanged between the Custodian and ATL - R1. As of 5 March 2001, it was the stand of the Custodian that the details were required to be furnished by ATL - R1 regarding 401,379 shares of Cascade - Respondent No.3 and 506,954 shares of Fortune - Respondent No.4. Post the order passed by the Special Court in MP No.88 of 2000, the Custodian addressed a letter to ATL - R1, on 15 May 2001 informing that where the shares continued to stand in the name of registered shareholders as on the date of notification i.e. 8 June 1992 and till the date of the order i.e. 5 May 2001, the stop transfer directions given by the Custodian will continue to operate and, in such cases, the purchasers of the shares will have to approach the Special Court for certification.

49. By a further letter dated 14 June 2001, the Custodian instructed ATL - R1 that the aforesaid directions in MP No.88 of 2000 would be applicable even to the shares claimed by Cascade and Fortune.

50. On the part of ATL -R1, a communication was addressed on 21 March 2013 freezing the number of shares in which transfers were stopped qua

Cascade at 175,350 and qua Fortune 227,250/-. The Custodian was also requested to advise ATL – R1 as regards the future course of action and as to whether the decision in MP No.88 of 2000 was to be followed.

51. Moving forward directly to the affidavit in reply of ATL – R1, it is necessary to note that ATL – R1 contended that third parties had lodged 158,500 physical shares for transfer out of the 175,350 shares claimed by Cascade – R3 and and 174,250 shares were lodged for transfer out of 227,250 shares claimed by Fortune – Respondent No.4.

52. It would be contextually relevant to note, as regards the dividend, ATL – R1 claimed that a sum of Rs.14,45,390/- has been transferred to IEPF – R5 towards the dividend for the financial year 2000-01 to 2008-09 and the dividend accrued on the said shares from the financial year 2009-10 to 2017-18 in the sum of Rs.52,75,000/- was kept in abeyance.

53. In the light of the aforesaid facts, I propose to approach the core controversy in four parts. First, the role of the Custodian under the TORT Act, 1992; the nature of the duties the Custodian is expected to discharge under the TORT Act, 1992. Second, the nature and contours of the jurisdiction exercised by the Special Court. Third the object of the enactment of TORT Act, 1992. Fourth the resolution of the controversy by applying the principles which emerge under the aforesaid broad heads.

The role and duties of the Custodian under the TORT Act,

1992:

54. At the outset, it must be mentioned that the aspect of the duties and functions of the Custodian under the TORT Act, 1992 assumes special significance in these cases, as the Custodian seeks to withdraw this application.

55. Under Section 3(2) of the TORT Act, 1992 the Custodian is empowered to notify a person upon being satisfied that such person is involved in any offence relating to transactions in securities within the statutory period.

Under Section 4 of the Act, the Custodian is empowered to cancel any contract or agreement entered into during the statutory period in relation to any property of a notified person if he is satisfied that such transaction has been entered into fraudulently or defeat the provisions of the TORT Act, 1992.

Under Section 3(4) the Custodian is enjoined to deal with attached property only in such manner as the Special Court may direct.

56. The statutory scheme is such that though the Custodian has the power to attach the property of a person by notifying him under sub-section (2) of Section 3 if he is satisfied about his involvement in any offence relating to the transactions in securities yet the Custodian has not been vested with any authority to deal with the attached assets on his own. Nor the attached assets vest in the Custodian. Section 11 of the TORT Act, 1992 makes the position further clear by providing that the Special Court may make such order as it

may deem fit directing the Custodian for the disposal of the property under attachment.

57. The role of Custodian was expounded by a Three-Judge Bench of the Supreme Court in the case of *Canbank Financial Services Limited vs. The Custodian and others*¹

“ROLE OF CUSTODIAN UNDER THE ACT:

69. The Custodian has three main functions to perform:

(i) He has the authority to notify a person in the Official Gazette, on being satisfied on information received that he has been involved in any offence relating to transactions in securities during the period 1-4-1991 to 6-6-1992.

(ii) He has the authority to cancel any contract or agreement relating to the properties of the notified persons which, in his opinion, has been entered into fraudulently or for the purpose of defeating the provisions of the Act as specified in Section 4.

(iii) He is required to deal with the properties in the manner as directed by the Special Court.

70. The properties of a notified person do not vest in the Custodian. He is not a receiver within the meaning of the provisions of the Code of Civil Procedure or an Official Receiver or an Official Assignee under the Insolvency laws. He is also not an Official Liquidator under the Companies Act. His right is same as that of the notified person. Only when the notified person had a subsisting right in a property, the same being subject to statutory attachment, the custodian can approach the special court for an appropriate direction in relation thereto. In other words, the custodian is not permitted to deal with any property which did not belong to the notified person on the relevant date.

(emphasis

supplied)

1 (2004)8 SCC 355.

58. In the case of *L. S. Synthetics Limited vs Fairgrowth Financial Services Limited and another*² another three Judge Bench of the Supreme Court emphasized that the Custodian is required to deal with the properties in the manner as directed by the Special Court.

59. In the case of *Asea Brown Boveri Ltd. vs. Industrial Finance Corporation of India and others*³ the Supreme Court after referring to the decision in the case of *B.O.I. Finance Ltd. vs. Custodian and others*⁴ observed that the Custodian under the Act is required to assist in the attachment of the notified person's property and to manage the same thereof. The properties of the notified persons, whether attached or not, do not, at any point of time, vest in him. He is merely a Custodian and not a receiver nor is he a final liquidator so as to enjoy control over the properties. In other words, the position of the Custodian is the same as that of the notified person himself. The Custodian remains bound by the obligations incurred by the notified party itself, if not incurred fraudulently or to defeat the provisions of the Act.

60. In the case of *Ashwin S. Mehta and others vs. Union of India and others*⁵, the Supreme Court had an occasion to deal with the exercise of authority by Custodian, which was purportedly without authorization by the Special Court. In that context, the Supreme Court observed, *inter alia*, as under:

2 (2004) 11 SCC 456.

3 (2004) 12 SCC 570.

4 (1997) 10 SCC 488.

5 (2012) 1 Supreme Court Cases 83.

“38. As aforesaid, so far as issue of notification in terms of Section 3(2) is concerned, the Custodian derives his power and authority from the Special Court Act but his jurisdiction to deal with property under attachment, flows only from the orders which may be made by the Special Court constituted under the said Act. It is obligatory upon the Custodian to perform all the functions assigned to him strictly in accordance with the directions of the Special Court. In the present case, although we do not find any material on record which may suggest any malafides on the part of the Custodian yet we are convinced that by inviting Apollo to bid, vide letter dated 28th April, 2003, the Custodian did exceed the directions issued to him by the Special Court. However, we feel that this being in the nature of a procedural omission, the alleged violation is not per se sufficient to nullify the sale of shares.”

(emphasis supplied)

61. The aforesaid enunciation of law makes it abundantly clear that the Custodian is enjoined to deal with the attached properties only in the manner directed by the Special Court. In a sense, the Custodian stands in the shoes of the notified parties. The rights of the Custodian appear to be co-extensive with that of the notified parties and the obligations incurred by the notified parties bind the Custodian, unless the Custodian invokes the power under Section 4 of the TORT Act, 1992. The necessary corollary of the aforesaid enunciation is that the Custodian does not enjoy any authority to deal with the attached assets independent of the direction that may be issued by the Special Court in the matter of recovery, application and/or disposal of the attached assets.

62. It can, thus, be safely inferred that the Custodian is not a party who can claim that he is *dominus litis* and can withdraw the proceedings involving

attached assets, at his choice. The functions and duties of the Custodian are circumscribed by the provisions of the TORT Act, 1992. Conscious of these constraints the Custodian has chosen to make a submission before the Court that, upon reflection, the Custodian finds that this application does not merit prosecution. Whether this stand of the Custodian is justifiable is the question which wrenches to the fore.

Nature of the jurisdiction exercised by the Special Court:

63. The purpose and object for which the TORT Act, 1992 was enacted was not restricted to punish the persons found guilty in any offence in relation to the transactions in securities but also to ensure that the properties movable or immovable or both belonging to the notified persons were recovered, appropriated and disposed of for the discharge of the liabilities to the banks, financial institutions, State and other creditors. Section 9A of the TORT Act, 1992 thus provides that on and from the commencement of the Amendment Act, 1994, the Special Court shall exercise all jurisdiction, powers and authority as were exercisable immediately before such commencement by any Civil Court in relation to any matter or claim relating to any property standing attached under sub-section (3) of Section 3. The expression, “in relation to any matter or claim” widens the province of the jurisdiction of the Special Court and emphasises that the Special Court shall have power and authority in relation to any matter or claim relating to any property attached under sub-section (3) of Section 3 and to pass such order as it may deem fit directing the

Custodian for disposal of the property under attachment, subject to the priorities ordained in sub-section (2) of Section 11 of the TORT Act, 1992.

64. The nature of the jurisdiction exercised by the Special Court was elucidated by the Supreme Court in the case of *L. S. Synthetic* (supra) as under:

“18. The jurisdiction of the Special Court is of wide amplitude. Subject to a decision in appeal therefrom, its decision is final.

.....

20. The debt in question is capable of being attached being a property belonging to the notified party and upon such attachment the consequences provided therefrom would ensue and in that view of the matter the Special Court will have jurisdiction to pass an appropriate order in relation thereto by issuing appropriate directions in terms of the provisions of the said Act. As the Special Court had the requisite jurisdiction to deal with the attached property, it is immaterial whether the factum of the statutory provisions is brought to its notice by the notified party himself or by the Custodian. The Court has the requisite jurisdiction; nay a duty to apply itself to the said question once the matter is brought to its notice.

21. The jurisdiction of the Special Court, it is not correct to contend, is confined only to the illegal transactions in securities and properties acquired by the notified person out of the same. Once the properties are attached under Sub-section (3) of Section 3, the Custodian has no other option but to apply the same in such a manner as the Special Court may direct.”

(emphasis supplied)

65. The aforesaid enunciation is of material significance in the facts of the case at hand. The Supreme Court has clarified in emphatic terms that it is not

correct to contend that the jurisdiction of the Special Court is confined only to the illegal transactions in securities and properties acquired by the notified persons out of the same. Once the properties are attached under sub-section (3) of Section 3, the Special Court has the requisite jurisdiction nay a duty to apply itself to the question of application of the attached properties.

Object of Tort Act, 1992 and nature of Attachment:

66. At this stage the purpose for which the attachment of the properties of the notified parties is statutorily provided for, by the TORT Act, 1992, also deserves to be kept in view. The statutory attachment was envisaged as a measure to recover the amounts which were siphoned off from the banks and the financial institutions. The disposal of the attached assets is primarily for the purpose of the discharge of the liabilities towards the said banks and financial institutions. For this purpose, the sub-section (2) of Section 11 mandates the priorities in which the attached assets are to be applied.

67. The nature of attachment and its purpose was explained by the Supreme Court in the case of *Kudremukh Iron Ore Co. Ltd. V/s. Fairgrowth Financial Services Ltd. and Anr.*⁶ The Supreme Court expounded that Section 11 of the TORT Act, 1992 exclusively empowers the Special Court to give directions in the matter of the property of a notified person. The jurisdictional fact for exercise of the power under Section 11 of the TORT Act, 1992 to deal with the property is that it should have been the property under attachment. It

6 (1994) 4 SCC 246

is with respect to the attached property that powers under Section 11 of the Act, 1992 can be exercised by the Special Court.

68. In the case of *Tejkumar Balakrishna Ruia V/s. A.K.Menon and Anr.*⁷, the Supreme Court observed that under sub-Section (3) of Section 3 of the Act, 1992, the property that belongs to a notified person stands attached simultaneously with the notification that makes him a notified party. The words “on and from the date of notification” indicate the point of time at which the attachment takes effect; this is reiterated by the words “shall stand attached simultaneously with the issue of the notification”. This also indicates that no separate notification or order in regard to the attachment is necessary.

69. In the case of *Solidaire India Ltd. V/s. Fairgrowth Financial Services Ltd. and Ors.*⁸ the Supreme Court approved the following statement of law propounded by the Special Court in the case of *Bhoruka Steel Ltd. V/s. Fairgrowth Financial Services Ltd.*⁹:

“Under Section 3 of the 1992 Act, all property of notified persons is to stand attached. Under Section 3(4), it is only the Special Court which can give directions to the custodian in respect of property of the notified party. Similarly, under Section 11(1), the Special Court can give directions regarding property of a notified party. Under Section 11(2), the Special Court is to distribute the assets of the notified party in the manner set out thereunder. Monies payable to the notified parties are assets of the notified party and are, therefore, assets which stand attached. These are assets which have to be collected by the Special Court

7 (1997) 9 SCC 123

8 (2001) 3 SCC 71

9 (1997) 89 Comp Cas 547

for the purposes of distribution under Section 11(2). The distribution can only take place provided the assets are first collected. The whole aim of these provisions is to ensure that monies which are siphoned off from banks and financial institutions into private pockets are returned to the banks and financial institutions. The time and manner of distribution is to be decided by the Special Court only.”

70. The effect of statutory attachment, without any requirement of a formal order of attachment, is that the capacity of the person, in whose hands attached property is found, loses significance. Whomsoever may be the person in whose hands the property belonging to the notified person is found, it stands attached. The knowledge of attachment is not the necessary ingredient for the validity of the attachment. At the same time, neither the attached property vests in the Custodian, nor the rights of the third parties therein are extinguished.

71. In the case of *Harshad Shantilal Mehta vs. Custodian and ors.*¹⁰ the Supreme Court expounded the purpose of the final disposition of the attached assets under Section 11 of the Act, 1992. The Court observed ‘considering that the Act has been passed because of diversion of funds from the banks and financial institutions to the individual account of certain brokers, the implication of Section 11(2)(b) clearly is, that after the discharge of the liabilities under Section 11(2)(a), the amounts which are paid to the banks would probably be those funds which were diverted from the banks by reason of malpractice in the security transactions’. These observations emphasise the

10 (1998) 1 SCC 1.

underlying object of the enactment of TORT Act, 1992 and the special machinery and regime thereunder.

72. Again in the case of *Ashwin Mehta* (supra) the Supreme Court reiterated the object of the TORT Act, 1992 from the perspective of the recovery of the attached assets for discharge of the liabilities of the State, banks and financial institutions. The observations in paragraph 33 read as under:

“33. It is plain that the Special Court Act which is a special statute, is a complete code in itself. The purpose and object for which it was enacted was not only to punish the persons who were involved in the act of criminal misconduct by defrauding the banks and financial institutions but also to see that the properties, movable or immovable or both, belonging to the persons notified by the Custodian were appropriated and disposed of for discharge of liabilities to the banks and financial institutions, specified government dues and any other liability. Therefore, a notified party has an intrinsic interest in the realisations, on the disposal of any attached property because it would have a direct bearing on the discharge of his liabilities in terms of Section 11 of the Special Court Act.”

(emphasis supplied)

73. If the aforesaid object of the TORT Act, 1992 is kept in view, in the facts of the case, the submission on behalf of the ATL - R1 that the notified parties are trying to enrich themselves unjustly by insisting for recovery of the subject shares, does not merit acceptance, unreservedly. It is true it is conceivable that, post final distribution of the assets of the notified parties and discharge of all their liabilities, there might be surplus, over which the notified parties may lay claim. Yet, at this stage, the primary object of the TORT Act,

1992 cannot be lost sight of. The recovery of the attached assets is to be effected for the purpose of the discharge of the liabilities as envisaged by Section 11 of the TORT Act, 1992. If viewed through this prism, if the properties, which belong to the notified parties and constitute attached assets, are not recovered, that would defeat the provisions of the TORT Act, 1992 as the ultimate loss would be of the instrumentalities of the State, Banks and Financial Institutions for the discharge of whose liabilities the attached assets are required to be recovered, preserved and augmented.

74. The controversy, thus, boils down to the pivotal question as to whether the subject shares bear the character of attached property ?

75. The thrust of the submission canvassed on behalf of ATL – R1 was that there was no evidence in support of the claim that Cascade and Fortune had proprietary title over the subject shares. The share certificates were not registered in the name of Cascade and Fortune. There were no transfer deeds. Cascade and Fortune had not lodged the shares for transfer with ATL – R1. There was no proof of acquisition of shares. Neither the claim was based on proprietary title, nor on possessory title.

76. The aforesaid submissions bring to the fore the nature of the property in the shares. Under Section 82 of the Companies Act, 1956, shares or debentures or other interest of any member in a company shall be moveable property, transferable in the manner provided by the Articles of the company. Sub-section (1) of Section 84 of the Act, 1956, declares that the certificate

under the common seal of the company certifying any shares held by any member shall be prima facie evidence of the title of the member to such shares.

77. Under sub-Section (2) of Section 84, a certificate may be renewed or a duplicate of a certificate may be issued if such certificate is proved to have been lost or destroyed, or having been defaced or mutilated or torn is surrendered to the company. Sub-Section (3) of Section 84 punishes fraudulent renewal of a certificate or issue of a duplicate certificate by a company. Sub-Section (4) of Section 84 envisages prescription of rules to regulate, inter alia, issue of a duplicate certificate.

78. Sub-Rule (3) of Rule 4 of the Companies (Issue of Share Certificates) Rules, 1960, as it then stood, provided that no duplicate share certificate shall be issued in lieu of those that are lost or destroyed, without the prior consent of the Board or without payment of such fees, if any, not exceeding Rs. 2 and on such reasonable terms, if any, as to evidence and indemnity and the payment of out of pocket expenses incurred by the company in investigating evidence, as the Board thinks fit.

79. Section 27 of the Securities Contracts (Regulation) Act, 1956 provides that it is the holder of any security whose name appears in the book of the company who should receive the dividends.

80. In the light of the aforesaid statutory regime, which then prevailed, the challenge to the claim of the notified parties based on the failure to lodge the share certificates along with the transfer deeds for registration by the notified

parties deserves to be considered. At the same time, the distinction between the effectiveness of the transfer as between the transferor and transferee of share and qua the company also deserves to be kept in view.

81. In the case of LIC of *India V/s. Escorts Ltd.*¹¹ the aforesaid distinction was expounded by the Supreme Court, as under :

“A share is transferable but while a transfer may be effective between transferor and transferee from the date of transfer, the transfer is truly complete and the transferee becomes a shareholder in the true and full sense of the term, with all the rights of a shareholder, only when the transfer is registered in the company’s register. A transfer effective between the transferor and the transferee is not effective as against the company and persons without notice of the transfer until the transfer is registered in the company’s register. Indeed, until the transfer is registered in the books of the company, the person whose name is found in the register alone is entitled to receive the dividends, notwithstanding that he has already parted with his interest in the shares.”

82. In the aforesaid case, the Supreme Court has postulated that the right of the transferee to get on the register must be exercised with due diligence and the principle of equity which makes the transferor a constructive trustee does not extend to a case where a transferee takes no active interest to get on the register.

83. The inaction on the part of the notified parties in asserting the title to the subject shares is indeed a relevant factor. Yet the fact that the genesis of these transactions is allegedly in the scam which was perpetrated by the brokers in connivance with the officials of the bank and financial institutions, cannot be lost sight of. Therefore, the object and purpose of enactment of TORT Act, 1992 and the overriding effect of the provisions of the TORT Act,

11 AIR 1996 SC 1370

1992 deserve to be kept in view while appreciating the aforesaid submissions.

84. The controversy, therefore, cannot be resolved by merely answering the question as to whether the notified parties had lodged the shares along with the transfer deeds for registration. Such approach may be in order where the Court were to resolve the controversy between the conflicting claims over the shares in ordinary transactions between the traders. The Court is, therefore, required to take an over all view of the matter considering the circumstances which then prevailed and necessitated the enactment of TORT Act, 1992.

85. As is evident, the claim of the notified parties primarily rests on the books of accounts and the reports submitted by the CA pursuant to the orders of this Court. It is a matter of record that this Court had appointed firms of Chartered Accountants to examine the accounts of the notified parties and draw books of accounts. As noted above, the letter dated 8 September 1999 was addressed on the basis of the entries found in the books of accounts of Fortune.

86. Mr. Cooper would urge that, firstly, the books of accounts in themselves, do not support title of notified parties. Secondly, instead of supporting the case of the notified parties, the CA reports demolish the case of the notified parties. Mr. Cooper extensively took the Court through the reports of the CA.

87. I have perused the reports of the CA as well as the material in the form of ledger accounts placed on behalf of Respondent Nos.3 and 4 to support the claim of acquisition of huge quantity of shares. At this stage, however, the reports of the CA are required to be read as a whole. The report of the CA in respect of Cascade – Respondent No.3 (Exhibit Q – page 2248) indicates that during the year ended 31 March 1992, Cascade has entered into transactions of purchase and sale of shares/bonds and of ATL – R1 and there was a balance of 659,250 shares. The CA had sought information from the brokers through whom these transactions were entered into. Except M/s. Jayantilal Kantilal and Sons, no other broker responded.

88. What is of material significance is the fact that the CA found that all the transactions, other than those with M/s. Harshad Mehta, M/s. Ashwin Mehta and M/s. Jyoti Mehta, the brokerages firms of Harshad Mehta group, were supported by corresponding payments or receipts through banks. Indeed in paragraph 4.1.3, CA have observed that they were unable to comment whether the transactions which were apparently beyond the financial capabilities of the companies were entered into by way of journal entry represented the actual transactions or whether the company was acting only as an intermediary for recording transactions of the group.

89. In respect of Fortune Holdings – Respondent No.4, CA reported that on a miniscule paid-up capital of Rs.200/-, the company had traded in shares and securities and undertaken transactions worth crores of rupees, including

the transactions in respect of 14,17,600 shares of ATL – R1 worth Rs.26.58 Crores. The report adds that in respect of transactions through brokers, other than those of Harshad S. Mehta group, the company made payment to such brokers by receiving funds mostly from Harshad S. Mehta. The report goes on record the irregularities which were found, and concludes that the CAs were unable to certify the correctness of assets and liabilities of the company as of 8 June 1992.

90. At this stage, when the Court has to form a tentative opinion as to whether the action for tracing and recovery initiated by the Custodian should be dropped or the matter be pursued in respect of the shares in which stop transfer instructions have been in operation, since the year 2000, the circumstances in which the alleged transactions were entered into, cannot be lost sight of. The notified parties, at least in the estimation of the Custodian, were involved in offences relating to transactions in securities. The notified parties were allegedly involved in malpractices and siphoning off the funds from the banks and financial institutions. The illegalities and irregularities pointed out by the CAs are required to be seen through this prism.

91. The contemporaneous conduct of the notified parties may also have a bearing. The notified parties had called upon the brokers to furnish the details for being submitted to the CAs. There is material to indicate that the notified parties had approached this Court seeking directions against the brokers to furnish the proof of delivery of the shares which they claimed to have

purchased from them. The ledger accounts, copies of which are placed on record of the Court by the notified parties do reflect the transactions, which they claimed to have entered in respect of the shares of ATL – R1. This contemporaneous material cannot be brushed aside as self-serving documents, at this stage.

92. The situation which thus emerges is that :

(1) out of the huge quantity of shares, post reconciliation exercise and after removal of overlappings and mismatch, ATL – R1 has stopped transfer in 17,535 (pre-split) shares of Cascade and 22,700 (pre-split) shares of Fortune.

(2) The stop transfer instructions are in operation since the year 2000.

(3) ATL – R1 has credited a part of the dividend to the Respondent No.5 and the dividend for subsequent years has been kept in abeyance.

(4) ATL – R1 claims that it has received request for transfer of 174,250 shares of Cascade and 158,350 shares of Fortune.

(5) ATL has furnished all those particulars along with an affidavit in reply at Exhibit E.

(6) There is prima facie material in support of the claim of notified parties that they had purchased large quantity of shares of ATL – R1.

93. In these circumstances, shall the Court permit the lifting of the stop transfer instructions by dismissing the application or further probe into the

matter in respect of those shares in which stop transfer instructions are in operation, is the moot question ?

94. If the aforesaid facts are cumulatively considered, in the backdrop of the object of the provisions of the TORT Act, 1992, release of the subject shares, over which the restraint on transfer operates since the year, 2000, without examining the genuineness and *bona fide* of the claims of the persons who have lodged the shares for transfer as claimed by ATL - R1, and, resultantly, the assets which might be the one statutorily attached, would defeat the object of the TORT Act, 1992.

95. In my view, the appropriate course would be to continue with the restraint on the transfer, while allowing the parties liberty to approach this Court for certification. Since a grievance is made regarding the inconvenience, trouble and expenses to which the bonafide shareholders may be put to, by asking them to approach this Court, in the peculiar facts of the case, as the entire documentary material with regard to a substantial number of shares is stated to be available with ATL - R1, I deem it appropriate to allow ATL - R1 to approach this Court by an appropriate application and satisfy this Court that the persons who have lodged the shares for transfer are the bonafide owners of the subject shares and the notified parties do not have any right, title and interest therein. This course would equip the court to decide even on the basis of few of the illustrative cases, which may be filed before this Court, in pursuance of the aforesaid liberty to the parties, as to whether a direction for

transfer of the subject shares to the Custodian are required to be given or ATL - R1 be permitted to deal with the subject shares in accordance with the governing statutory provisions.

96. A reference to the few orders of this Court would be necessary. In MA/194/1993 and the connected matters while attaching the *benami* shares of the notified parties at the instance of the Income Tax Department, this Court had directed the Income Tax Department to publish the said order and issue a notice to state that any person who wishes to apply for release of his shares from attachment can make an application to the Special Court within a period of 16 weeks from the date of publication of the said notice. Secondly, in an order dated 8 April 2003 in MP No.99 of 1998, this Court had directed that a public notice shall be issued by the Custodian listing the names of the entities then declared to be benami along with the folio and number of shares as per Exhibit (H-1). Thirdly, in MP/88/2000 while maintaining stop transfer directions in respect of cases where shares continue to stand in the name of the registered holder as on the date of the notification i.e. 8th June, 1992 till the date of the said order i.e. 5th May, 2001, this Court directed that the purchasers of the shares will have to approach the Special Court for certification and thereupon the Court will examine such cases individually on the basis of *bona fide* of the transaction as well as the proof of payment.

97. I am, therefore, not inclined to dismiss the application on the basis of the stand of the Custodian that the application does not merit prosecution. Instead, directions are required to be issued on the aforesaid lines.

98. At this stage, the Court must clarify that the claim of the Custodian with regard to subject shares gets crystallized and restricted to 1,75,350 shares claimed by Cascade and 2,27,000 shares claimed by Fortune as post an elaborate exercise of reconciliation, ATL - R1 has stopped that quantity of matched shares. This order, therefore, may not be construed as recognition of any claim of Cascade - R3 and Fortune - R4 beyond the shares in respect of which the Court proposes to issue directions. Suffice to note, the delay and inaction on the part of the notified parties was at their own peril. Therefore, any of the notified parties of Harshad Mehta Group cannot lay any claim in respect of the shares over and beyond the shares for which the Court proposes to issue directions. Save and except, the following directions and the consequential orders which may be passed in further proceedings, the prayers in the Custodian's application shall stand rejected.

99. Hence, the following order :

ORDER

1. The stop transfer instructions in respect of 1,75,350 shares (17,535 pre-split shares) claimed by Cascade Holdings Private Limited (R3) and 2,27,000 shares (22,700 pre-split shares) claimed by Fortune Holdings Private Limited (R4) shall continue to operate till further orders.

2. The Custodian to publish a public notice containing the list of the aforesaid shares in the Times of India and Indian Express to state that any person who claims to be bonafide owner and/or claim to have purchased any of those shares shall apply to this Court for certification of the shares within a period of ten weeks from the date of the publication of the notice.
3. Apollo Tyres Limited -R1 shall also give notice to the persons who have lodged the shares for transfer and/or requested for dematting of the shares and, where no such requests have been received, to the registered share holders that they may approach this Court for certification of the shares within ten weeks of the publication of the notice by the Custodian.
4. Apollo Tyres Limited -R1 is also at liberty to file an application before this Court and seek the lifting of stop transfer instructions. In the event such an application is filed, the Court will consider the prayers for lifting of stop transfer instructions on the basis of the material which Apollo Tyres Limited - R1 tenders before the Court.
5. Depending upon the outcome of the certification application and/or the application which Apollo Tyres Ltd. R1 may file, this Court would decide as to whether the subject shares or any part thereof deserve to be transferred to the Custodian for the account of the notified parties or released from restraint on transfer.
6. The Custodian may file an appropriate report seeking further directions.

7. Save and except the above directions and the consequential orders which may be passed in further proceedings, the prayers in this application stand rejected.

[N. J. JAMADAR, J.]