

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

CUSTODIAN'S REPORT NO.20 OF 2018

RE : MAKING PAYMENT TO NATIONAL HOUSING BANK

ALONG WITH

CUSTODIAN'S REPORT NO.23 OF 2018

**RE: MAKING PAYMENT TO NATIONAL HOUSING BANK FROM
ATTACHED ACCOUNT OF MEMBERS AND ENTITIES OF HARSHAD**

MEHTA

IN

MISCELLANEOUS APPLICATION NO.62 OF 2016

Mr. J. Chandran a/w Ms. Shilpa Bhate i/b. Leena Adhvaryu & Associates
for the Custodian.

Mr. Ashwin Mehta for the Notified Party.

Mr. Sharan Jagtiani Sr. Advocate a/w. Ms. Rujuta Patil i/b. M/s. Negandhi
Shah & Himayatullah for NHB

**CORAM : A. K. MENON,
JUDGE, SPECIAL COURT.**

DATE : 23RD JULY, 2021

(THROUGH VIDEO CONFERENCE)

P.C. :

1. On 31st August, 2018, Misc. Application no.62 of 2016 was allowed in terms of prayer clause (a) as a result of which National Housing Bank ('NHB') was set to receive a sum of Rs.94,19,41,381/- along with interest. The Custodian has since filed Report no.20 of 2018 in connection with making payment to

NHB from the attached accounts of members and entities of the Harshad Mehta Group, the Custodian sought permission to utilize the monies on pro rata basis from the accounts of the notified party of the Harshad Mehta Group. The pro-rata appropriation was questioned by Mr. Mehta on behalf of Jyoti Harshad Mehta & Others and NHB also sought to question the basis of the computation. As a result, on 26th October, 2018 the Custodian was directed to file a Supplementary Report setting out the basis of computation in Annexure-B of Report no.20 of 2018. NHB also provided a computation of interest to the Custodian.

2. A Supplementary Report has since been filed. Meanwhile, the notified party filed a Civil Appeal in the Supreme Court which came up for admission on 25th March, 2019. According to counsel for NHB the Supreme Court had then requested the bank not to precipitate matters. At the request of parties, the report was adjourned to 5th April, 2019. It has been pending since. While the Supplementary Report dated 11th December, 2018 came to be filed seeking leave to withdraw revised amounts from 27 Harshad Mehta Group entities on pro rata basis, the notified party sought was permitted inspection of documents relied upon by the

Custodian. In the meantime, the deposits which were proposed to be used for making remittance to NHB were renewed.

3. In furtherance of the Supplementary Report no.23 of 2018, an updated report has been filed which is dated 8th July, 2021 and which seeks leave to remit amounts. Alternative computations seek to remit Rs.434,23,56,685/- or Rs.428,98,44,605/-. In the meantime the Civil Appeal came up for hearing on various dates. The Appeal came to be admitted on 30th September, 2019 and was to be taken up for final hearing in January 2020. Thereafter for obvious reasons and restrictions on working due to the pandemic, the Appeal could not be heard

4. No orders have been passed on the reports since the Civil Appeal was being listed. When the Civil Appeal no.3241 of 2019 was listed on 9th July, 2021 an application for stay of the impugned order was made. However, the Supreme Court observed that the apprehension of the appellant that coercive action is likely to be taken against the appellant while implementing the impugned order was misplaced and even if the impugned order was acted as between the Custodian and NHB, it would be subject to final

orders in the appeal. The order specifically records that the Appellant had no role to play in implementation of the order,.

5. I may observe that on behalf of the notified party, voluminous affidavits have been filed in the Reports, seeking to oppose implementation of the order. However, those are not relevant now in view of the order of the Supreme Court dated 9th July, 2021. Hence it is not necessary to deal with those affidavits as far as implementation is concerned. Based on the updated report dated 8th July, 2021, Mr. Chandran on behalf of the Custodian submitted that the Custodian be permitted to release a sum of Rs.434,23,56,685/-. Mr. Jagtiani on the other hand appearing on behalf of NHB submitted, after having considered the updated computation, that the lower figure of Rs.428,98,44,605/- would be accurate.

6. Mr. Mehta however, contended that no amount should be paid except the principal sum of Rs.94,19,41,381/- along with interest upto date(s) when some deposits were encashed for payment to the Income Tax department. His contentions go to the merit of the matter and on which an order has already been passed. I am not persuaded to revisit those aspects. Suffice it to say that the Civil

Appeal is pending and all of the appellant's contentions and the order that I propose to pass would be subject to the outcome of the appeal.

7. In view thereof, I pass the following order;

- (i) Custodian is permitted to remit sum of Rs.428,98,44,605/- as proposed in the Report no.20 of 2018 read with Report no.23 of 2018 as updated vide report dated 8th July, 2021.
- (ii) The remittance shall be made by the Custodian only against an undertaking to be filed on behalf of the NHB through its Director and authorized by a resolution of its Board of Directors to bring back the amounts to be disbursed to them, if so directed by the Hon'ble Supreme Court. Needless to mention the remittance would be subject to the outcome of the Civil Appeal no. 3241 of 2019.
- (iii) SPCR 20 of 2018 and SPCR 23 of 2018 are disposed in the above terms.

8. At this stage, Mr. Mehta requests that the order be stayed. The request is declined.

(A. K. MENON, J.)