

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

MISCELLANEOUS APPLICATION NO.250 OF 2003

IN

MISCELLANEOUS PETITION NO.61 OF 1992

SBI Capital Markets Ltd.	Applicant
V/s.		
1. The Custodian		
2. Jyoti Harshad Mehta		
3. Aatur Harshad Mehta		
4. Rasila Shantilal Mehta (<i>Since Deceased</i>)		
4(A). Ashwin S. Mehta		
4(B). Aatur Harshad Mehta		
4(C). Dr. Hitesh Mehta		
4(D). Sudhir S. Mehta		
4(E). Bhavana M. Shah	Respondents

Mr. T. Cooper, Sr. Advocate, a/w Aditya Singh & Ms. Devanganna Dossa i/by Little & Co., for the Applicant.

Mr. Hormaz Daruwalla, a/w Ms. Shilpa Bhate for Respondent No.1–Custodian.

Mr. Aseem Naphade, i/by Mr. Vivek Sharma, for Respondent Nos.2, 3 and 4(A) to 4(E).

Mr. B. M. Chatterji, Sr. Advocate, a/w Ms. Kavita Singh i/b. Ranit Basu for Income Tax Department.

CORAM : A.K. MENON, J.

JUDGE, SPECIAL COURT

RESERVED ON : 27TH AUGUST, 2021

PRONOUNCED ON : 4TH DECEMBER, 2021

P.C. :

1. The applicant, which is a subsidiary of a State Bank of India, seeks (i) to recover a principal sum of Rs.16,25,00,000/- and interest thereon. When this application was filed, the principal sum and interest was collectively Rs.45,96,80,387/-. (ii) Further interest was sought from 7th July 2003 @ 15% p.a. (iii) A direction is also sought to permit the applicant to withdraw amounts lying with the Custodian.

2. The application is the consequence of the decree passed in Miscellaneous Petition No.61 of 1992 by the Special Court on 25th June 2003, whereby the court decreed the petition in a sum of Rs.16.25 crores. Interest claimed was @ 25% p.a. The court reduced the interest to 15% p.a. and clarified that for executing the decree, only the estate left behind by the deceased respondent no.1-Harshad S. Mehta (**HSM**) would be considered. Respondent nos.2 to 4 were the legal heirs of HSM. Respondent nos.2 and 3 are the widow and son, respectively, of HSM. Respondent no.4 was the mother of HSM. Respondent no.4-Rasila Mehta expired during the pendency of the application and as a result, respondent nos.4(A) to 4(E) have been joined as legal heirs of deceased respondent no.4. Although the decree provided for considering only the estate of respondent no.1-HSM, it is the case of the applicant that the assets of the Harshad Mehta Group as a whole must be considered for the purposes of execution of the current decree in view of the fact that all family members and

entities controlled by the family, whose assets have been attached, were found to be part of the Harshad Mehta Group and were beneficiaries of funds generated by HSM.

3. As it stands today, the principal sum of Rs.16.25 crores has already been received by the applicant pursuant to an order passed by the Supreme Court in Civil Appeal No.6326 of 2010. Today the claim survives only to the extent of interest @ 15% p.a. on Rs.16.25 crores. The application is opposed not only by the notified parties but also by the Income Tax Department, which has sought to and has been allowed to intervene. Before I deal with the submissions of the notified party, it is appropriate that we consider the contentions of the Income Tax Department (*Department*). The department has filed an affidavit of Lata Sunder, Deputy Commissioner of Income Tax dated 2nd April 2009. That affidavit states that by a Judgment dated 3rd December 2008¹, the Supreme Court directed the applicant to prove nexus between the decretal amount and the income included in the assessment of notified persons for statutory period and to prove whether the decrees dealt with oversold security and, if so, whether there is any duplication of amount while scaling down tax liability. Mr. Chatterji learned Senior Advocate for the Income Tax Department has adopted his detailed submissions in MA-211 of 2003.

4. On behalf of the notified parties, respondent no.2-Jyoti Mehta has filed

¹ *Deputy Commissioner of Income Tax Vs. State Bank of India, (2009) 2 SCC 451*

an affidavit dated 26th November 2009 contending that the decree passed is a nullity and that she had filed Miscellaneous Petition No.7 of 2009 to declare the decree a nullity. As a legal heir of HSM, she is of the view that the decree was passed on the basis of misrepresentation and by parties acting in collusion and therefore fraudulent. The decree is also ex-parte. She has been advised that the decree can be resisted even at the stage of execution and therefore she seeks dismissal of this application. She seeks an opportunity to resist the "false decree" even at this stage.

5. The facts reveal that in Miscellaneous Petition No.61 of 1992, the respondent no.1-HSM did appear on 6th January 1993, 5th February 1993, 21st October 1999 and 26th February 2002, but not thereafter. Rasila Mehta filed an affidavit on 18th October 2002 in MP/61/1992 stating that she has no personal knowledge of the issues in the suit. She was not claiming any share in the estate of HSM. She states that by his Will, HSM bequeathed all his estate to his widow - Jyoti Mehta and therefore did not represent the estate of HSM. Respondent no.1(b)-Aatur Mehta has likewise, in a similar affidavit also dated 8th October 2002, disclaimed personal knowledge and stated that he does not claim any interest in the estate of HSM. Interestingly, HSM had personally filed an affidavit on 14th June 1993, in which he states that the applicant-SBICAPS had filed an FIR against him and the CBI had registered a case, as a result of which he was being investigated and he cannot be compelled to deal with the contents of the

petition. HSM contended that the matter be adjourned sine die. Although he made a claim of Rs.3.69 crores, no particulars are given. Thus, even otherwise, there is no dispute about the fact that Rs.16.25 crores appear to have been due but he had a counter claim, which should be decided before the other claims. No counter claim was thereafter filed. The only other contention is that under Section 11(2) of the Special Court Act, the applicant cannot claim priority in payment to the other creditors including the Income Tax Department. On facts, as on date, the notified parties claim that the Income Tax Department has no valid claims. On the other hand, large sums are due to the notified parties by way of refunds.

6. I may mention here that Miscellaneous Petition No.7 of 2009 has already been heard and dismissed on 8th June 2010 and an appeal was filed from that order is pending with no interim relief. In any event, there is no appeal filed against the decree as such and the decree stands sans a challenge. One of the legal heirs of HSM viz. respondent no.4(A)-Ashwin Mehta has filed a "combined affidavit" for self and as legal heir of deceased respondent no.4-Rasila Mehta and respondent no.2-Jyoti Mehta. None of the other respondents are contesting this application. In fact, Rasila Mehta and Aatur Mehta, the mother and son of the HSM, disclaimed any right to the property of HSM. In this combined affidavit, the deponent has placed reliance on the following affidavits filed in MA/205/2003 in Suit No.41 of 1995; MA/211/2003 in MP/63/1992 and;

MA/438/2003 in MP/14/1995 to oppose execution of the decree. These affidavits are dated 17th March 2021, 22nd February 2021 and 10th March 2021 respectively. It is contended that since the facts are substantially similar, “to avoid duplication and repetition”, the respondents–notified parties are adopting grounds and reasons urged in opposition to the aforesaid applications. It seeks to contend that the court has set a precedent, including in the case of HSM, awarding interest only @ 6% p.a. and only upto the date of notification. It is stated without prejudice to their rights and contentions that the decrees are not executable.

7. Mr. Cooper, learned Senior Advocate appearing in support of the application submitted that the decree for Rs.16.25 crores carries interest @ 15% p.a. The principal sum of Rs.16.25 crores was received on 17th January 2018. As of February, 2021, interest amounted to Rs.62,85,65,751=76. There are two components to this; the first being the interest upto 6th June 1992, which is Rs.38,31,162=38, and thereafter from 7th June 1992 till date of receipt of principal sum being 17th January 2018 in a sum of Rs.62,47,34,589=38. Mr. Cooper submits that there is no defence to the claim for interest. All submissions made in defence in MA/211/2003 have been adopted by the respondents and as such for the prior period till 6th June 1992, interest is payable under Section 11(2)(b) of the Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992 (*TORTS Act*) in terms of the judgment of

the Supreme Court in the case of *Standard Chartered Bank and Ors. Vs. Custodian and Ors.*² and the remainder is payable under Section 11(2)(c) of the said Act. All legal contentions have already been argued in reply to MA/211/2003 and in the present application, no other facts have been pleaded. There is no challenge to the decree as such, but an appeal is filed against dismissal of the application to set aside the decree on the grounds which I have adverted to above.

8. Mr. Naphade submitted that the decree is obtained by fraud. He adopted the arguments in MA/211/2003 and sought to dispute interest computation in the present application. He has relied on the affidavits filed in other three MAs being MA/205/2003, MA/211/2003 and MA/438/2003. Effectively, the defence is identical to the defence in MA/211/2003, namely, this application cannot proceed since there are stay orders passed by the Supreme Court, which have only been partially vacated to enable payment of principal sum(s). Hence, it is contended as far as interest is concerned, the stay operates. The allegation of fraud in obtaining the decree is restricted to MA/211/2003, wherein specifics of fraud are sought to be pleaded.

9. In the present case, there are no particulars whatsoever of alleged fraud. The details of fraud alleged in MA/211/2003 pertain to allegations against the Custodian of not giving credit to the sums already recovered. That is not the case

² (2001) 4 SCC 424

in the present application and hence that defence is not relevant.

10. The third defence is that the stage of distribution of interest has not been reached and priority of payments under Section 11(2) of the Special Court Act would permit distribution of interest only at the stage of final distribution. In this regard, reliance is placed on the judgments of this court in *Harshad Shantilal Mehta Vs. Custodian and Ors.*³ and *Standard Chartered Bank and Ors. Vs. Custodian and Ors.*⁴. The fourth defence that the applicant had not given credit to HSM for holding certain securities, also does not apply in the present case and lastly Mr. Naphade's submission that the group theory had not been finally concluded is in my view incorrect. The group theory has clearly been upheld by the Supreme Court and hence this contention is of no assistance to Mr. Naphade.

11. Mr. Chatterjee, the learned Senior Advocate for the department has stressed upon the dues payable to the Income Tax Department as in the earlier matters and submitted that nothing should be paid unless dues of the Income Tax Department have been paid.

12. Mr. Cooper has on the other hand reiterated that tax dues are not final. He relies upon the fact that the Supreme Court has also conclusively approved the group theory, that the assets of all the notified parties forming part of HSM

³ (1998) 5 SCC 1

⁴ (2001) 4 SCC 424

Group and the entities, which have been controlled by the members of the HSM family may be utilized for the purposes of paying dues of the banks and financial institutions. He therefore submits that there is no impediment in allowing the present applicant's request.

13. Having examined the factual aspects, I am of the view that there is no doubt that the decree continues to operate and there is no doubt that the bank is entitled to interest. One has to consider whether the direction in the decree that *"only the estate left behind by the deceased respondent no.1-HSM can be considered"* is required to be followed now or whether on account of the group theory having established, the estate of any of the notified parties can be liquidated to make payments to the banks and financial institutions. According to me in view of the Supreme Court's binding decision approving group theory, amounts can be paid out from the attached assets of notified parties across the group wherever required. This view is reaffirmed later as emphasized in paragraph 15 below. As far as the defence of respondent no.2-Jyoti Mehta (i) that the decree is obtained by fraud is a nullity, (ii) that the assets of HSM are greater than the liabilities on HSM or (iii) liabilities of HSM are greater than his assets are concerned, these are all aspects that could have been raised at the time of final hearing of the suit. Those contentions have already been dealt with in MP/7/2009 and the same have been rejected. Now there is an appeal pending against the rejection, but there is no appeal against the decree on merits.

14. Mr. Naphade appearing on behalf of the notified parties could provide no justification for filing such affidavits, which run into hundreds of pages, annexing documents all prior to the decree and describing the progress of various connected proceedings and various orders passed by this court, the Supreme Court and the Income Tax Department. In defence, Mr. Naphade has not relied upon any of those averments save and except to place general reliance upon the pending civil appeals and his key arguments in MA no.211 of 2003. The defence of the status-quo however cannot help the notified party to obstruct enforcement of the decree at hand. I am therefore not required to consider the factual aspects on the basis of which the voluminous affidavits in MA/205/2003, MA/211/2003 and MA/438/2003 have been filed, which set out innumerable factual aspects, all of which are redundant as far as the applications are concerned.

15. The applicant-bank has set out the computation of interest and in the present application, it is quite straightforward. I find that the Supreme Court had vide its order dated 2nd May 2017 finally disposed Civil Appeal No.6326 of 2010 made it clear that the directions in that order being peculiar to the facts of the present case would not be treated as a precedent. However, it would be useful to reproduce that order for the purposes of the present application.

“1) We have heard Ms. Kamini Jaiswal, learned counsel appearing for the appellants and Mr. K.K. Venugopal, Mr. Subramonium

Prasad, Mr. C.A. Sundaram, Mr. Beni Chatterji, learned Senior Counsel appearing for the respondents at considerable length.

- 2) *During the course of hearing, we have been handed over a report including a chart, a perusal whereof would show that refund of tax due to the assessee amounts to Rs.192.54 crores.*
- 3) *Therefore, we direct the Income Tax Authorities to pay the said amount of Rs.192.54 crores to the Custodian with interest at the rate of 18% from the date of passing of the refund order within a period of 12 weeks from today.*
- 4) *It is made clear that this direction has been given, having regard to the peculiar facts of this case, and shall not be treated as a precedent.*
- 5) *The orders (Ninety) which have already been passed by the ITAT directing the Revenue to re-frame the assessment by taking into account the evidence of books of accounts should be decided by the Assessing Authority within a period of 12 weeks from today.*
- 6) *Insofar as the “group issue” is concerned, we find that it is covered against the appellants by this court in Rasila S. Mehta and Others vs. Custodian, Nariman Bhavan, Mumbai, (2011) 6 SCC 220. [Emphasis supplied]*
- 7) *Insofar as the flats in question are concerned, no steps including selling of the same shall be taken until final distribution is made by the Custodian.*
- 8) *The status-quo orders passed by this court in C.A. No.2579/2011 dated 14.03.2011, C.A. No.8437/2011 dated 30.09.2011 and C.A. No.2563/2012 dated 24.02.2012 stand vacated at this stage insofar as it pertains to the amounts due and payable to the banks as per chart submitted in the court,*

excepting Canfina, which is reproduced hereunder :

“The total Principal Decree amount that is yet to be disbursed/released/distributed to the Banks/FIs is Rs.639.09 crores.

- | | | |
|-----------|---------------------------------|----------------------|
| <i>1.</i> | <i>Standard Chartered Bank</i> | <i>Rs.506.53 Cr.</i> |
| <i>2.</i> | <i>State Bank of India-Cap.</i> | <i>Rs.16.25 Cr.</i> |
| <i>3.</i> | <i>State Bank of India</i> | <i>Rs.91.31 Cr.”</i> |

- 9) The Custodian is directed to disburse the said amounts to the banks, subject to the usual affidavit-cum-undertaking stating therein that the concerned bank(s) shall bring back the amount or any part thereof, if so directed by the concerned court, on such terms and conditions as may be directed.*
- 10) The appeal is disposed of in the above terms.”*

16. The aforesaid order dated 2nd May 2017 passed in Civil Appeal No.6326 of 2010 came to be modified, as regards the directions given in paragraphs 3 and 5, by order dated 8th May 2017 and a new para 9A came to be incorporated, which reads as under :-

- “1)*
- 2)*
- 3) Therefore, we direct the Income Tax Authorities to pay the said amount of Rs.192.54 crores to the Custodian with interest at the rate of 18% p.a. from the date of passing of the refund order within a period of 12 weeks from today.*

- 4)
- 5) *The orders (Ninety) which have already been passed by the ITAT directing the Revenue to re-frame the assessment by taking into account the evidence of books of accounts should be decided by the Authority within a period of 12 weeks from today.*
- 6)
- 7)
- 8)
- 9)
- 9A) *The Custodian is directed to take appropriate steps to recover the assets of the appellants."*

17. Perusal of the order reveals that the court proceeded on the basis of a chart, which included the refund of tax due to the respondent no.2-Jyoti Mehta and others. A sum of Rs.192.54 crores was directed to be refunded to the Custodian with interest @ 18% p.a. from the date of passing of the refund order. Thus, the appellants therein, i.e. respondents herein, have been put to benefit. In the same breath, the Supreme Court observed that the group issue stands covered against the appellants by the decision in *Rasila S. Mehta and Ors. Vs. Custodian, Nariman Bhavan, Mumbai*⁵. No doubt, the Supreme Court did observe that status-quo orders passed in C.A. Nos.2579/2011, 8437/2011 and 2563/2012 stand vacated except in the case of Canfina insofar as it pertained to amounts due to the banks.

⁵ (2011) 6 SCC 220

18. Item 2 of paragraph 8 of the aforesaid order dated 2nd May 2017 provides for payment to the present applicant-SBICAPS of the decretal sum of Rs.16.25 crores. Thus, the decree has been upheld. Once the decree is upheld, the question is whether the part of the decree, which grants interest, can be ignored? Civil Appeal No.6326 of 2010 makes no reference to the interest. The status-quo order was not passed in Civil Appeal No.6326 of 2010.

19. I am informed that the subject matter of these orders are not the decrees since principal amounts have now been paid. The relevant portion of the order dated 16th February 2018 passed in Interim Application No.108420/2017 in C.A. No.2579 of 2011 reads as follows :-

“The Special Court, by its judgment dated 20.04.1995, passed a decree on admission insofar as the Canbank Financial Services Limited was concerned, for an amount of Rs.25 Crores with interest at the rate of 7% p.a. versus Ashwin S. Mehta, Respondent No.9, stating at that point of time, that it was a creditor under Section 11(2)(c) of the Special Courts Act.

At that point of time, on 25.02.2011, an order was passed in which Rs.25 crores was stated to be payable pending appeal in this court. By an order dated 14.03.2011, this court in C.A. No.6670 of 2011 stayed the amount of Rs.25 crores, which was in Standard Chartered Bank’s appeal, for the reason that at that

point of time, it was thought that the applicant would have to stand in line under Section 11(2)(c).

Subsequently, however, by a judgment of this court on 06.05.2011, the applicant was held to be a financial institution within the meaning of Section 11(2)(b). This was again held by an order dated 10.06.2011 by this court. On 02.05.2017, this court granted three financial institutions payment of a sum of Rs.639.09 crores, which was the principal owing to them and at that point of time, the applicant stood excluded.

We find no reason to so exclude the applicant in view of the subsequent judgments of this court and, therefore, direct that the principal sum of Rs.25 crores will be paid to them within a period of eight weeks from today on the usual undertaking.

Application stands disposed of accordingly."

20. In C.A. No.6326 of 2010, the Custodian was directed to disburse the amounts to the banks on providing the usual affidavit-cum-undertaking to bring back the amounts, if so directed by the concerned court and on terms and conditions. There is no reason why the same principle should not apply to the present application in the event I come to the conclusion that the amounts with interest are payable / recoverable by the banks and financial institutions. The present status of the three appeals with which we are now concerned are said to

be pending.

21. In C.A. No.4785/1998 filed by Standard Chartered Bank the Supreme Court held on 17th April 2001 that interest falling within the notified period would have to be paid under Section 11(2)(b) and for the period outside the notified period to be paid under Section 11(2)(c) of the Special Court Act. The Custodian has called upon the applicant to provide break-up of these amounts and that has since been done. One has to now consider whether there is any change in this position in view of subsequent decisions of the Supreme Court. It is in this background that I am required to consider whether interest is now liable to be paid.

22. Even otherwise, the opposition is on behalf of the notified parties on the basis that the decrees were ex-parte decrees passed against HSM, who could not contest the matters. The decrees were allegedly obtained by fraud and also by the Custodian colluding with the applicant-bank resulting in fraud. It is also contended that the applicant-bank cannot recover monies from any of the other notified parties other than HSM; thus, from not other members of the group. The notified parties also contend that the decrees are not executable since a civil appeal against the orders declining to set aside the decrees as a nullity is still pending. The affidavit-in-reply also sets out that there are various counter claims that HSM had against the applicant-bank. The bar against paying out

interest prior to the stage of final distribution has also been urged and therefore the payments are premature. That apart, it is contended that further distribution is stayed by the Supreme Court. I must observe that Civil Appeal No.6326 of 2010 came to be filed against an order which permitted the Custodian to proceed to sell properties of the notified parties including residential properties. That order came to be passed on two reports filed by the Custodian, The order dated 9th September 2011 passed in common in two reports of the Custodian being Report No.9 of 2010 and Report No.14 of 2011.

23. Having considered the contentions of the respondents, it is obvious for the reasons stated above that there is no stay of execution/ distribution in accordance with law. No case has been made out for resisting payment of interest on the basis that HSM could not contest the petition and that the decrees were passed on the basis of fraud perpetrated by the applicant-bank in collusion with the Custodian. It is pertinent to note that the aspect of collusion has already been set out by the notified parties in MA/185/1993, in which the notified party alleged collusion between the applicant-bank and the Custodian. MA/185/1993 was withdrawn and withdrawal was permitted. A further challenge was initiated in MP/10/2009, once again seeking to set aside the decree. MP/10/2009 was dismissed on 8th June 2010. An appeal against that order has been filed and in that appeal, an application for stay has been filed seeking following reliefs :-

- (i) Stay operation of the order dated 8th June 2010 in MP/10/2009.
- (ii) Stay distribution of assets of HSM under Section 11(2) of the Special Court Act.

24. Till date, no stay has been granted against distribution in favour of the applicant-bank. It is not known whether the applicant did in fact apply for a stay and if so, with what consequence. Suffice it to state that as on date, the respondents-notified parties have not been able to demonstrate that further distribution remains stayed.

25. Mr. Cooper submitted a fresh computation of interest due under the decree. According to the applicant, interest was payable on the principal sum of Rs.16.25 crores @ 15% p.a. from the date of filing of suit i.e. 12th November, 1992 till the date of decree viz. 25th June, 2003. The amount of interest is computed at Rs.2,40,16,393/-; thus resulting in a total decretal sum of Rs.18,65,16,393/-. Interest is computed on the aforesaid sum from the date of filing of suit till 16th January, 2018 @ 15% p.a., i.e. for 9,197 days, amounting to Rs.70,49,55,314=97. On 17th December, 2018, the applicant is said to have received the principal sum of Rs.16.25 crores. Thus, from 17th January, 2018 interest is computed upto 13th August, 2021 @ 15% p.a. in a sum of Rs.1,28,70,154=71.

26. Mr. Naphade fairly admitted that there is no dispute as to the computation of interest but submitted that the decree has been passed only against the estate of Harshad S. Mehta and the decretal sum, if any, can be recovered only from the estate of deceased late Harshad S. Mehta and not from other family members. Relying on the provisions of Section 50 of the Code of Civil Procedure, 1908, Mr. Naphade submits that since Harshad Mehta had died before the decree has been satisfied, the holder of the decree can apply for execution against the legal representative, who will be liable only to the extent of property coming into their hands and the court should not permit execution beyond. He therefore submitted that the assets of other notified parties, being family managers and controlled by them in the hands of the Custodian, ought not to be used therefor. The heirs cannot be made liable.

27. On scrutiny of the claims of the income tax department presented to court during the hearing of these Miscellaneous Applications, particular reference was made to a chart prepared by the department in opposition to MA-211 of 2003. That chart was tendered in court on 3rd July, 2021. This is a chart revealed a priority demand of Rs.17980,22,39,711/- in the case of late Harshad S. Mehta for Assessment Years 1992-93 and 1993-94. The department meanwhile filed a SPMP(L) no.32 of 2021 which is seen to be affirmed on 8th July, 2021 in which the department has claimed the outstanding as on 7th July,

2021 being a priority demand in a sum of Rs.14637,72,23,435/-. The prayer in this application seeks release of the amount as interest under Section 234-A, 234-B, 234-C, 234-D and Section 220(2) along with penalty and that too under Section 11(2)(c). The penalty column is blank in this table. It therefore becomes evident that the departments contention of there being an ascertained liability of taxes due is difficult to accept.

28. On facts, I find that after the decree was passed, reports were filed by the Custodian seeking distribution of amounts under Section 11 of the Special Courts Act. The Court directed release of a sum of Rs.16.25 crores in favour of the present applicant on the undertaking to bring back the amount. Thereafter in Civil Appeal No.6326 of 2010, the Supreme Court passed an order directing the Custodian to release a sum of Rs.16.25 crores in favour of the applicant. However, since the name of the applicant was inaccurately mentioned in the order, further clarification was sought by the Custodian from the Supreme Court, which the Supreme Court clarified on 4th January, 2018. It is pursuant to this clarification that the amount of Rs.16.25 crores was paid over to the applicant-bank. Although the decree dated 25th June, 2003 specifies that the decretal sum shall be paid only from the estate left behind by HSM, the group theory having found acceptance in the Supreme Court, funds I am told have been sourced from attached assets across accounts of all heirs/entities. In conclusion, I find that the interest is payable and shall be distributed in two

phases. Firstly, the amount found payable as interest for the statutory period has been quantified at Rs.38,31,162.38. This sum shall be got verified by the Custodian prior to effecting payment. This payment will qualify under Section 11(2)(b). In the second phase, interest for the non statutory period till 16th January, 2018 shall be paid under Section 11(2)(c).

29. I therefore pass the following order;

- a) Custodian shall pay over to the applicant interest on the principal sum of Rs.16,25,00,000/- at the rate of 15 % per annum for the statutory period 1st April, 1991 to 6th June, 1992 under Section 11(2) (b).
- b) The computation of interest shall not include compound interest. The applicant shall within four weeks from today compute interest as aforesaid and submit the same to the Custodian who shall have the computation verified by an empanelled auditor. In the event of any variation Custodian shall submit such alternate computation to the applicant. In event of any disagreement liberty is reserved to the Custodian to apply.
- c) Upon the amount being determined, the same shall be paid within a further period of four weeks against the applicant furnishing an undertaking of the bank through an authorised

officer to bring back the amounts with interest from date of receipt if the Supreme Court so directs in any proceedings pending before it or any appeal that may be filed against this order.

- d) For the remainder of the period from 7th June, 1992 till 17th January, 2018 being the date of receipt of the principal sum under the decree, interest shall be paid @ 15% per annum at the time of final distribution under Section 11(2)(c).
- e) No costs.

After this order was pronounced, Mr. Chatterji representing the income tax department and Mr. Naphade and Mr. Sharma representing the notified parties seek stay of operation of this order. I am not inclined to stay the operation of the order. However, the Custodian is directed not to act upon this order for a period of eight weeks from the date it is uploaded.

[A.K. MENON, J.]