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

MISCELLANEOUS APPLICATION NO. 48 OF 2019

Jyoti H. Mehta ... Applicant

vs.

The Custodian ... Respondent

WITH

MISCELLANEOUS APPLICATION NO. 49 OF 2019

Ashwin S. Mehta ... Applicant

vs.

The Custodian ... Respondent

Mr. Ashwin S. Mehta for the Applicants.

Mr. Gandhar Raikar a/w. Ms. Shilpa Bhate i/b, Leena Adhvaryu & Associates for the Custodian.

CORAM : A.K. MENON, J.
Judge, Special Court
Date : 11th DECEMBER 2020

P.C. :

1. The applicants in these two miscellaneous applications seek the following directions :

(i) to release 65,000 shares of BSE Ltd along with dividends accrued thereon to accounts to be specified by the applicants.

(ii) to offer all the equity shares of BSE Ltd under a buy back announced by BSE Ltd at Rs.680/- per share.

(iii) consequential relief in terms of (i) above in respect of shares that have not been bought back and dividend thereon.

2. The applicant in the first of these applications is the widow of Harshad Shantilal Mehta (HSM). The applicant was notified on 8th June, 1992 and upon her notification all her assets stood attached with effect from 8th June 1992. As a result of this the Custodian was empowered to deal with the assets as directed by this Court.

3. In the second application the applicant is Ashwin S. Mehta-brother of HSM. The number of shares held by the two applicants are the same, the difference being number of shares offered for Buy Back and those retained by the Custodian. Vide orders dated 6th September, 2019 and 13th September, 2019 shares were permitted to be offered to BSE Ltd under a Buy back scheme. Pursuant to these orders BSE Ltd has remitted the amounts to the Custodian which now lie invested in attached accounts. For the purposes of these applications, the facts as narrated in first of these applications of Jyoti H. Mehta ("the applicant") are being referred to. The applications are otherwise identical in terms of relief and the issues involved.

4. The applicant was at all material times sole proprietor of M/s. J. H. Mehta a stock broking firm since about 11th April, 1991. She was said to have been an active member till her membership was suspended by the BSE as it then was in second week of May, 1992. It is the applicants' case that the BSE suspended membership of three sole proprietor investors firstly that of M/s. Harshad Shantilal Mehta, M/s. Ashwin Mehta and that of the applicant M/s. J. H. Mehta.

The suspension continues till date. No application has been made for setting aside suspension or withdrawing the suspension. None, if any, has been brought to my attention. The applicant believes she has a case for revocation of the suspension. She makes a grievance that the BSE Ltd has during the last 27 years not reviewed its decision to suspend the applicant. The applicant has contended that she intends to take steps for revoking the said suspension since the suspension has been in force indefinitely. Considering the fact that the applicant has not admittedly questioned the suspension till date it is not necessary to deal with this aspect on merits for the purposes of the present application.

5. The applicant has contended that she was an accused in CBI Special Case no. 1 of 1993 but before charges could be framed she came to be discharged vide order dated 26th October, 1994 passed in M.A. No. 27 of 1994 inter alia observing that there was no material on record against the applicant. Since her discharge in that case, no other criminal case has been filed against her. In view thereof she believes that her continued suspension is unsustainable and therefore seeks direction to release 65,000 shares of BSE of face value of Rs.2/- each along with all dividends accrued thereon which at the time of filing her application is stated to be Rs.1,16,13,200/-. She seeks transfer of these shares to her demat account and all the dividend to her savings bank account. Pending the decision in the application she sought leave to offer shares for Buy back.

6. The BSE Ltd had offered a premium of 28% over the market price then prevailing while buying back the shares. While all shares were offered for Buy back the BSE had reserved its rights to accept Buyback offer partially. Since part of these shares have already been bought back the application survives to the extent it seeks release of shares remaining with the Custodian. Exhibit E to the application sets out particulars of dividends that were accrued on the shares. The shares thus came to be issued pursuant to a scheme for Corporatisation and demutualisation duly approved by the Securities Exchange Board of India ("SEBI") as a result of which the applicant became entitled to 10,000 shares of BSE of Re. 1/- each. According to the applicant the Custodian not having taken any steps she and her family entered into correspondence with BSE Ltd as also filed three M.A. Nos. 52 to 54 of 2007 inter alia seeking sale of shares under the scheme devised by BSE. These applications were rejected on the ground that the base shares had not been issued to the applicants. Subsequently the applicant filed M.A.No. 50 of 2015 before this Court seeking a direction to BSE to allot 10,000 shares and to allot 1,20,000 bonus shares as also dividend on the aforesaid cumulative amount of 1,30,000 shares. Vide order dated 27th November, 2015 passed in M.A.No. 50 of 2015, partial relief was granted. Custodian then filed a Report no. 25 of 2016 for leave to make payment of outstanding dues to the BSE that came to be allowed on 21st July, 2016. In 2016 BSE Ltd converted face value of the shares to Rs. 2/- each and as a result the shareholding of the applicants stood reduced to 65,000 shares of Rs. 2/- each.

BSE Ltd thereafter sought suspension of voting rights and all corporate benefits with respect to the shares of BSE to be allotted to the applicant by filing MA 61 of 2016. This MA was dismissed on 9th June 2017. It is thereafter that the Buyback came to be announced.

7. According to Mr. Mehta while disposing M.A. No. 50 of 2015 the Court had effectively declared that 65,000 shares of BSE are not attached property under section 3(3) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (" Special Courts Act / TORTS Act"). Mr. Mehta placed reliance on the decision of the Apex Court in *Vinay Bubna vs. Stock Exchange, Mumbai and Ors.*[1] and *Stock Exchange, Ahmedabad vs. Assistant Commissioner of Income Tax, Ahmedabad*[2] These judgments hold that membership of Stock Exchange could not be attached since they constitute a personal privilege. The suspension in the meanwhile continued even after corporatisation of BSE Ltd. The suspension was temporarily lifted for the purpose of issuing shares and accrued benefits. The Court found ratio of the judgment in the case of *Vinay Bubna (supra)* and *Stock Exchange, Ahmedabad (supra)* were applicable to the facts of the applicant and as a result the Miscellaneous application came to be allowed subject to conditions applicable in other matters forming part of the group.

[1](1999) 6 SCC 215
[2][2001] 3 SCC 559

8. According to the applicant and as canvassed by Mr. Mehta these shares in question are not attached property under the Special Courts Act and must therefore be released to the applicant. The applicant was notified on 8th June, 1992 when she was registered member of the BSE and had enjoyed the privilege of membership which was not her asset. In this respect reliance is placed on Rule 5 of the Rules, Regulations and Bye-laws governing BSE which specified that membership shall constitute a personal permission from the Exchange to exercise rights and privileges attached thereto and subject to the Rules, Bye-laws and Regulations of the Exchange. According to the applicant the order passed in M.A. No. 50 of 2015 had since been complied by the BSE and the Custodian, the Custodian made payment to BSE and BSE allotted the shares in the name of the applicant and delivered them to the Custodian which have since been dematerialized and consolidated into shares of Rs.2/- each.

9. In paragraph 10 of that order the Court observed that the issue whether "the said assets are future assets or not" (reference being had to the shares) is a question which was premature and was to be answered only after suspension of the notified party is revoked and the Court therefore did not decide the issue whether the shares of BSE were future assets and therefore beyond the purview of section 3(3) of the Special Courts Act. Liberty was reserved to the notified party to raise the issue at the appropriate stage. Paragraph 11 of that order recorded that till the question of suspension was decided the shares would have

to be kept in the Custody of the Custodian along with all benefits by way of bonus shares, rights shares and dividends. It was clarified that the suspension may be temporarily lifted only for the limited purpose of issuing the shares along with accrued benefits for the said limited period. BSE Limited obliged. The Custodian was directed not to sell any of the shares or create third party rights in the shares. The applicants have now invoked the liberty granted by the Court and has filed the application for release of the shares. In other words, according to the applicants this is the appropriate time to seek release of the shares.

10. The applicant has contended that the decision of the Supreme Court in the case of *Vinay Bubna (supra)* and also *Stock Exchange, Ahmedabad (supra)* are binding in nature and there cannot be any doubt that membership of the Stock Exchange was a personal privilege and could not be attached and in that view of the matter the shares which were issued as a result of such membership could not be considered attached property under Section 3(3) of the Special Courts Act and that the Special Court would not have jurisdiction under the Act over the subject shares and the dividend paid. The applicant has also placed reliance on observations of the Supreme Court in *Canbank Financial Services vs. Custodian*[3] where the Supreme Court clarifies that the properties of the notified party did not vest in the Custodian who is not a Receiver as

[3](2004) 8 SCC 355

contemplated under the Code of Civil Procedure or the Official Liquidator or the Official Assignee under insolvency laws. Office of the Custodian is also not akin to that or the official liquidator and his rights are same that of the notified party.

11. Mr. Mehta has in the course of his submission invited my attention to paragraph 80 and 91 of that judgment in support of his contention that the applicant had locus to maintain the present application. If one accepts the contention of Mr. Mehta that these shares issued to the notified parties were beyond purview of the self-operative attachment under section 3(3) of the Special Courts Act then the question is whether Custodian had any right to deal with the said shares or whether the Special Court had jurisdiction to direct management of these shares. In the present case the notified party has approached this Court pursuant to the jurisdiction vested in the Court by virtue of the Special Courts Act to seek relief against BSE Ltd in relation to the very shares which the applicant now contends is not attached property. Then the question is whether the jurisdiction of this Court can now be questioned. This aspect I shall advert to shortly.

12. In the case of one Bhupen C. Dalal ("B.C. Dalal") in M.A. 283 of 2008 membership rights were sought to be treated as attached property, but this Court had correctly held that the decision of the Supreme Court in *Vinay Bubna (supra)* would govern the issue. The applicant has contended that in

the case of one Shrenik Jhaveri as in the case of B.C. Dalal it has been found that membership is a personal privilege was not attachable. The attempt of the Custodian to contend that the membership rights were attached property had been rejected with the orders in the case of Shrenik Jhaveri and B. C. Dalal. Having attained finality, it would be futile for the Custodian to not accept this position. According to Mr. Raikar however the shares are attached property

13. Mr. Mehta contends that this Court has "*already held that the shares of BSE are not attached property and therefore applicant cannot be denied the freedom of dealing with the shares by continuing to have the shares under the control of the Custodian.*" *(emphasis supplied)*. It is the case of the applicant in the first application that there are no decrees against her. She is not subjected to any criminal charges, was not required to undergo trial and in these circumstances she should not be deprived of her right to the shares. According to the applicant she proposes to use shares, the value thereof and the dividends for discharging her obligation incurred during the last 27 years to defend her interest and to meet her medical expenses. The applicant has no other income and has to deal with volumes of litigation with no financial assistance forthcoming. In support of the plea of Buy Back, several other instances of other companies Castrol India Ltd., Bharti Telecom Ltd were referred to. These are not relevant since the Court has already permitted Buy Back of shares as desired by the notified party and in that sense prayer clause (b) does not survive today

because shares have already been offered and some have been bought back. Lastly it is contended if the Court is of the view that that there is a delay in filing the application the delay may be condoned.

14. In the course of submissions, he relied upon decision in the case of *T.B Ruia (supra)* and in particular paragraph 5 to 9 and submitted that membership cannot be attached. He submitted that the shares were not his asset as on 8th June, 1992 on the date when he was notified. The shares were not then in existence and membership was not attached. Even if the shares were to be linked to membership and treated as a usufruct, these shares could not be attached since membership itself was not attachable. According to Mr. Mehta the Custodian has no reason to be in-charge of the shares since these do not constitute attached property they cannot be retained by the Custodian. There is a surplus of assets and according to Mr. Mehta the TORTS Act does not even provide for making available funds to the notified parties for the purposes of their maintenance. The shares are equity that has arisen from the membership and the notified party is entitled to utilise the same and exploit the benefit of shares. Mr. Mehta further submitted there is no nexus between attached assets and shares. The shares are their accruals but are not necessary for meeting any liability. He submits that what cannot be done by the Custodian directly is sought to be done indirectly and the Custodian cannot dictate how the BSE shares are to be dealt with. Mr. Mehta further submitted

since prayer (b) have been partially worked out by virtue of Buy Back being permitted, the 50,659 shares remaining with the Custodian may be released forthwith. He submits that he has written two letters to the Custodian to act fairly and justly but the Custodian has failed to do so. Mr. Mehta relies upon the fact that in the case of *Vyomit (supra)* shares were released pursuant to the orders of this Court. The Custodian has now sought to widen the scope of TORTS Act beyond its object and has exceeded his authority. According to Mr. Mehta it is a fraud on the statute and cannot be countenanced. He relied upon the decision of the Supreme Court in the *State of Andhra Pradesh vs. Suryachandra Rao (supra)* in this behalf.

15. Mr. Mehta's submissions have been noted during the hearing on Video Conference. However, on 17th September, 2020 Mr. Mehta has sent in a written request to the registry contending that on account of disturbances during the video conference on 11th September, 2020 his submissions were not clearly conveyed. He has annexed a set of propositions which he describes as 'brief propositions' which are no less than 33 in number. In view of the facility to file pleadings by email that was permitted during the lock down, upon the receipt of this email, though belated, I have taken into consideration these submissions as well. It is necessary therefore to briefly set out these submissions. Many of these are repetitive and seek to canvass the very same points. For ease of reference and brevity I have set out these out in a tabulated form below :

Proposition no.	
1	The Supreme Court in *Vinay Bubna* case held conclusively the fact that membership is not attachable property under section 3(3) stands established.
2	By order dated 27th November, 2015 passed in M.A. 50 of 2015 the Court held that BSE membership of Applicants are not attached property under the Torts Act. This order has not been challenged by the Custodian and hence has attained finality and binding.
3	The only issue that was kept open to be decided by the Court on the earlier occasion was whether shares of BSE and dividends paid thereon constitute future assets. The present applications are moved in view of the liberty reserved to raise this issue at the appropriate time.
4	When the two applicants in the above matters were notified the membership of the Stock Exchange was not capable of being attached and therefore shares are liable to be treated as future unattachable assets.
5	The Custodian having filed two affidavits has not disputed these facts and therefore not having traversed the averments in this application, the shares are now bound to be released to the applicants.
6	Repeats that the shares are future assets which are not capable of being attached.
7	The provisions of sections 3(3) of the TORTS Act as interpreted by the Court in the decisions referred to therein are reiterated.
8	Paragraph 6 from decision of the Supreme Court in the case of *T.B. Ruia (supra)* is reproduced.

9	Seeks to suggest that if this Court holds that the shares are to be treated as attached assets, the same would amount to legislation which is not permissible.
10	Seeks to canvas that the law laid down in *T.B. Ruia (supra)* clearly sets out that cut-off date for attachment of property is the date of notification and since the shares have come into existence later they clearly cannot be attached property.
11	Shares issued 23 years after notification cannot be treated as attached property under section 3(3) of the TORTS Act.
12	Even if the shares are to be treated as a usufruct of membership of the Stock Exchange since membership is itself not attachable, the shares cannot be attached and are therefore liable to be released.
13	Challenges the jurisdiction of this Court to issue directions to deposit the shares and dividends and the proceeds of the buy back with the Custodian. According to Mr. Mehta this Court has the jurisdiction only to deal with transactions undertaken between 1st April, 1991 and 6th June, 1992. In other words, Mr. Mehta suggests that this Court has no jurisdiction to pass any orders seeking to exercise control over the shares in the hands of the Custodian.
14	Mr. Mehta alleges that the Custodian has achieved the illegal object of securing custody of shares allotted to all notified parties without the issue of the feasibility of attaching shares being considered and in the face of the contention that this Court has no jurisdiction to pass any order in that regard.
15	The issue of jurisdiction be decided as a preliminary issue .
16	The Custodian cannot keep custody of unattached assets of a notified party following the law laid down in *Can bank Financial Services(supra).*

17	BSE Limited has no role to play in the matter of the shares that has been issued to it by notified parties and BSE Limited cannot be compelled to participate in the present proceedings for want of locus since it is now a corporate entity of which the applicants are shareholders.
18	This Court does not have the power to adjudicate upon the issue of suspension of the applicant.
19	Dwells upon the aspect of suspension with which we are not presently concerned.
20 & 21	Seeks to deal with the applicants' relationship with the BSE Limited and how the applicants cannot be punished under the Rules, Regulations and bye-laws of the BSE. The allotment of shares itself is delayed for about 10 years despite which shares and the dividend have been retained by the Custodian thereby leading to discrimination against the applicants vis-a-vis other notified parties, the challenge being on the basis of alleged violation of fundamental right under Article 14 and 19.
22	Shares of BSE limited and dividend received under the buyback of shares are not liable to be used for the purposes of any distribution under section 11(2) of the TORTS Act.
23	Seeks to urge that the applicants' constitutional rights under Article 300 A to enjoy the assets "belonging to them" are to be protected.
24	*T.B.Ruia (supra)* lays down that scope of section 3(3) of the Act would have to be restricted in its application, inasmuch as and that the property that was to stand attached would be restricted to those belonging to the notified party on the date of notification.

25 & 26	The shares and the monies received on buy back are future assets which have no nexus with monies belonging to banks and financial institutions and hence no restraint could be placed on the aforesaid shares. It is therefore suggested that these amounts lying with the Custodian be released forthwith since according to the applicants claims under section 11(2)(a) and 11(2)(b) have been fully met and refunds of several thousand crores has become due to them. (This is however is to be read with the fact that appeals challenging the assessments orders are still pending.)
27	Monies accruing from the shares of BSE Limited including dividend are not acquired from the monies belonging to banks and as such should be remained unaffected by the TORTS Act.
28	Reiterates Mr. Mehta's submission that the Custodian has played a fraud on the statute mainly by widening its scope and seeking attachment of the shares.
29	Challenges notification of the applicants since according to them they had not undertaken any transaction in securities and no offence had been made out against them.
30	The Custodian is "State" within the meaning of Article 12 of the Constitution of India and must therefore act fairly and reasonably.
31	Seeks to rely upon the decision of this Court in the order passed by this Court in M.A. no. 60 of 2016 in the case of *Vyomit (supra)* inasmuch as this Court has rejected the Custodian's submission that the shares ought not to be released since they may become the assets of the notified party H. K. Dalal
32	In *B.C. Dalal (supra)* vide order dated 25th February 2010 the Custodian's submissions were rejected while directing the Custodian not to sell any of the shares in question. That order

	also records that the Court had not decided the issue whether the shares of BSE were future assets and therefore beyond the purview of section 3(3).
33	Lastly Mr. Mehta has contended that what cannot be done directly should not be done indirectly and therefore the shares cannot be treated as attached property.

16. In support of the applicants' case Mr. Mehta relied upon the following decisions.

1. *Vinay Bubna vs. Stock Exchange, Mumbai and Ors.*[1]
2. *Stock Exchange Ahmedabad vs. Assistant Commissioner of Income Tax, Ahmedabad*[2]
3. *Bombay Stock Exchange vs. Kandalgaonkar and Ors.*[3]
4. *SEBI vs. Vyomit Share, Stock & Investment Pvt. Ltd.*[4]
5. *Vyomit Share, Stock & Investment Pvt. Ltd vs. Custodian*[5]
6. *Kudremukh Iron Ore Co. Ltd. vs. F.F.S. Ltd & Anr.* [6]
7. *Tejkumar Balakrishna Ruia vs. A. K. Menon, Custodian & Anr.*[7]
8. *Harshad S. Mehta vs. Custodian and Ors.*[8]
9. *Canbank Financial Services Ltd. vs. Custodian & Ors.*[9]
10. *L.S. Synthetics Ltd. vs. F.F. S. Ltd & Ors.*[10]

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[1](1999) 6 SCC 215
[2](2001) 3 SCC 559
[3](2015) 2 SCC 1
[4]M.A.60 of 2017 in M.P. 15 of 2007
[5]M.P. no. 1 of 2017
[6](1994) 4 SCC 246
[7](1997) 9 SCC 123
[8](1998) 5 SCC 1
[9](2004) 8 SCC 355
[10](2004) 11 SCC 456

11. Tax Recovery Officer, Central Range-1 vs. Custodian and Ors.[11]

12. Jyoti Mehta & Ors. vs. Custodian and Ors.[12]

13 Murablack (India) Ltd. vs. Fairgrowth Financial Services Ltd & Ors.[13]

14. Jagir Singh vs. Ranbir Singh and Anr.[14]

15. Dadu Dayalu Mahasabha Jaipur (Trust) vs. Mahant Ram Niwas and Anr.[15]

16. Rajasthan State Road Transport Corporation and Anr. vs. Bajrang Lal[16]

17. Jaspal Kaur Cheema and Anr. vs. Industrial Trade Links and Ors.[17]

18. CBI vs. K. Margabanthu and Ors.[18]

19. State of Andhra Pradesh and Anr. vs. T. Suryachandra Rao[19]

20. Balvant N. Viswamitra and Ors vs. Yadav Sadashiv Mule (Dead) through LRS andOrs.[20]

21. Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavalli and Ors.[21]

22. Gian Chand and Brothers & Anr. vs. Rattan Lal alis Rattan Singh[22]

23. Roger Shashoua vs. Mukesh Sharma[23]

24. Administrator, Unit Trust of India vs. B. M. Malani and Ors. [24]

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[11](2007) 7 SCC 461
[12](2009) 10 SCC 564
[13]M.A. No. 453 of 2002 in M.P. No. 9 of 1992
[14](1979) 1 SCC 560
[15](2008) 11 SCC 753
[16](2014) 4 SCC 693
[17](2017) 8 SCC 592
[18]M.A. No. 27 of 1993 in Special Case No. 1 of 1993
[19](2005) 6 SCC 149
[20](2004) 8 SCC 706
[21](2007) 6 SCC 81
[22](2013) 2 SCC 606
[23](2017) 14 SCC 722
[24](2007) 10 SCC 101

17. On behalf of the Custodian an affidavit of one Valsan Kumar, Officer on Special Duty has been filed denying the contentions of the applicant. The deponent has relied upon order dated 13th September, 2019 which while permitting buy back had clarified that the sale proceeds be maintained in a separate account by the Custodian to be invested in appropriate fixed deposit following usual procedure after ascertaining highest rate of interest and lowest premature encashment levy. That this order even otherwise was without prejudice to the contention of the Custodian that the applicant was not entitled to release any of these shares or the proceeds of the buy back by the BSE Ltd. That of the 65000 shares 14,341 shares were bought back and the sale proceeds received from BSE limited was deposited in the attached account of the applicant and invested. This has since been re-invested. The balance of 50,659 shares are held in the attached demat account of the applicant. In the case of B.C.Dalal in M.A. No. 283 of 2008 and Miscellaneous petition no. 1 of 2010 in the case of *Custodian vs. Bombay Stock Exchange* it was held that the applicant therein B.C Dalal was entitled to allotment of shares upon temporarily raising suspension for purposes of allotment. This Court also decided that till the question of suspension was not decided by the appropriate forum the shares would be kept in the safe custody of the Custodian with all benefits. Thus the very issuance of the shares has occasioned by virtue of order passed by this Court.

18. Mr. Raikar invited my attention to the orders at Exhibit "I" and "J" and in particular drew my attention to paragraph 5 of the order in the case of B.C. Dalal. The order is passed in M.A. No. 283 of 2008 along with M.P. No. 1 of 2010. M.A No. 283 of 2008 was filed by the said B.C. Dalal against the BSE and M.P. No. 1 of 2010 was filed by the Custodian against the BSE. The notified party B.C. Dalal in that case sought a direction from the Court to the BSE to allot 10,000 shares of Re.1/- each along with accrued benefits. In the alternative, a direction to the BSE to allot shares which had accrued on the shares to the Custodian on behalf of the applicant. Thus the notified party in that case was clearly of the view the shares were not to be allotted to him in personal capacity but would have to be allotted in favour of the Custodian Account B. C. Dalal. The Custodian's control was therefore clearly contemplated in that application. In that case Mr. B.C. Dalal was appearing in person and had contended that the membership card of the Stock Exchange is a personal privilege and therefore could not have been attached by the Custodian under section 3(3) of the Special Courts Act.

19. On behalf of the Custodian Mr. Raikar has contended that the issue of the shares being current or future assets cannot be gone into at this stage. That issue is premature and the notified parties who have been allotted shares by the BSE and who are still facing suspension will have to at first get the suspension revoked. He submitted that reliance placed by the applicants in the

case of *Shrenik Jhaveri (supra)* was not correct because when the order was passed in his case Mr. Jhaveri was not a notified party. The order was passed in June, 2001 whereas his notification took place on 6th October, 2001. The facts in the present case are different. A Decree was sought to be executed against membership card in that case is not relevant for the purpose of the present application. Likewise in the case of *Vinay Bubna (supra), .Ahmedabad Stock Exchange (supra)*and the case of *Kandalgaonkar (supra)* these were not notified parties and those matters were not within the ambit of the TORTS Act. In MA No. 50 of 2015 the order records that the question whether the shares are present assets or future assets could not be gone into at that stage being premature to do so. In my view the position today does not appear different. The Applicants have still not challenged their suspension. The Order passed in M.A. No. 50 of 2015 has been accepted by the Applicants but they urge that the shares must now be adjudged not attachable.

20. Without prejudice to the aforesaid submission Mr. Raikar submitted that even if the suspension is lifted there is nothing to prevent the Custodian from claiming that the shares are attached assets and not future assets. He recalled that in MA No. 50 of 2015 the Court directed payment of subscription monies from attached account and when the subscription money was paid BSE Ltd. had informed the Custodian that other dues were pending and to release these dues of the Stock exchange which are in relation to the membership card. The

Custodian had then filed a report which was allowed and those dues were also paid from the attached accounts and not from the personal accounts of the notified party. Adverting to the facts in the case of *Vyomit (supra)* the subscription money was paid by Vyomit and not by H. K Dalal. Vyomit was not a notified party and even otherwise the money was paid from assets which were not attached. If the applicants claim that BSE shares are future assets, the applicants are bound to show and must be put to terms to establish that they had paid for it and not the Custodian. In the present case that is clearly not so since the monies have been paid from the attached assets.

21. It is further contended on behalf of the Custodian that in MA no. 283 of 2015 counsel for the Custodian argued that the assets whether the shares were attached or not is a question to be left open. In any event it is contended the fact that membership is a privilege and not attachable is not in dispute. However whether the shares issued pursuant to membership are current assets or future assets as on date of issuance has not been decided. The question is as to the nature of allotment or the demutualisation. In the case of Bombay Stock Exchange the Association of persons was converted to a Corporate entity and this has since been known as BSE Limited. Mr. Raikar submitted The shares were allotted in lieu of the membership card. "In lieu of" would suggest that it is "instead of" and in fact it is an addition to the membership card. The shares are an accrual or an accumulated right in the form of an asset which is in

addition to and alienable from the privilege of membership and therefore it cannot be said that if the privilege of membership is not attachable or the shares allotted in addition to the membership is also not attachable.

22. Mr. Raikar submitted that when the BSE was converted from an Association of Persons to a Limited company three options were available. Firstly to surrender membership and receive shares without any trading rights. Secondly accept monetary compensation for the value of membership and thirdly membership and trading rights would continue and in addition BSE Limited would allot shares. In the case at hand it is evident that BSE Ltd has continued the membership albeit its suspension and shares were not initially offered and was kept in abeyance and it is only after the Special Court directed issuance of shares that they were allotted. It was in this manner that the applicant has benefited. He submitted that the applicants' contentions that the shares had been allotted in exchange of surrendering membership is incorrect since membership continues to be valid although it is presently suspended. Shares have been allotted not as a result of surrender of membership but in addition to it. Reliance placed on the decision of *T.B Ruia (supra*) and paragraph 9 thereof is material. He submitted that the shares in the present case is not a usufruct of the membership card because when one examines the meaning of the expression "usufruct" it means only a temporary right to use and the expression is incapable of being effectively used in the

present case to arrive at a decision. The shares allotted to the applicants are clearly not a usufruct. The scheme of demutualisation dated 20th May, 2005 provided for voting rights, trading rights and clause 2.2 dealt with a trading member. The other relevant clauses are 3.1, 3.2, 5.1. 5.2, 5.3 and 8. It is seen that there is clear separation of trading member and shareholder. Clause 2.6 defines who is a member. This read with clause 2.2 and 2.4 provide the necessary clarity that you may continue as trading member without shares. In the present case the Custodian and the Special Court can deal with attached assets alone. However since the applicants' membership continue to remain suspended from the date of notification the question is whether the shares also would form part of the attached assets. According to Mr. Raikar the application for release of shares is premature and cannot be made unless suspension is lifted.

23. Mr. Raikar next submitted that in order for the applicants to establish that the BSE shares were a future asset it is necessary to show that the shares were purchased from independent income unrelated to acts during the window period and that the funds have no connection whatsoever with the notification. In this respect I may observe that the fact situation in *T.B Ruia(supra)* was quite different. T. B Ruia has been engaged as Advisor and was earning salary on account of such vocation. The ruling is to the effect that the income earned by him from exercising his vocation was not an attached

property. Mr. Raikar further submitted that non-joinder of BSE was material inasmuch as the applicants had been contending that suspension of membership was illegal and by virtue of said suspension prejudice has been caused to the applicants. However the applicant has deliberately not impleaded BSE which was a necessary party. He further submitted that in the case of *Vinay Bubna (supra), Kandalgaonkar (supra)* as also *Vyomit (supra)* the fact situation was quite different and these are not decisions in the context of the present case. Mr. Raikar further submitted that the applicants have approached this Court without any challenge to the suspension and the shares would have to be retained by the Custodian till the aspect of suspension was decided and it is only then a proper decision could be taken as to whether shares constituted future assets.

24. By way of rejoinder Mr. Mehta submitted that all three proprietary concerns M/s Ashwin S. Mehta, M/s. Harshad S. Mehta and M/s. Jyoti H. Mehta were suspended before notification. The suspension did not occur due to notification but suspension and notification were preventive measures of some sort. According to Mr. Mehta the Custodian's submissions are not supported by the averments in two affidavits dated 16th October, 2019 and 20th December, 2019 filed by the Custodian. According to Mr. Mehta it is no answer to say that issue is premature and that the time is not right for deciding the issue. Furthermore he submits that the decision in *Vinay Bubna (supra) and*

Ahmedabad Stock Exchange(supra) are both binding. Mr. Mehta submits that BSE shares are not a usufruct of membership and even if they were, it is not attachable because membership itself is not attachable. In *T.B Ruia (supra)* he relies upon paragraph 5 to 8 and the interpretation of section 3(3) of the TORTS Act which specifically provides that the only assets attached are those which belong to notified parties as on date of attachment. The date of attachment in the instant case would be 8th June, 1992 and by that reasoning the issue is clearly covered in paragraph 5 and 8 of the judgment of *T.B.Ruia (supra)*. The shares have been allotted 23 years after attachment and the Custodian was heard in both these cases of *T.B Ruia (supra)* and *B. C. Dalal (supra)*. Mr. Mehta reiterates that *T B Ruia (supra)* has laid down only those assets belonging to notified party as on 8th June, 1992 fall within the purview of section 3(3). He submits that since the shares are not attached property, the Custodian is bound to hand it over and this Court will have no jurisdiction to continue to monitor the activities of the Custodian to the extent it relates to the shares. Mr. Mehta then submitted that the Custodian's contention that the application for release of shares is premature and that it could be made only after suspension is lifted is incorrect since the order dated 27th November, 2015 in MA no. 50 of 2015 grants liberty to make an application to this Court. In the case of *B.C.Dalal (supra)* also the application was considered premature. The twin issues of jurisdiction and the aspect whether shares are attached or not have to be considered. The Custodian cannot retain shares and claim that

the property under the shares stand attached. With Specific reference to the order passed in M.A. No. 50 of 2015 Mr. Mehta's contends that the Custodian cannot claim that the shares are attached property merely because the Custodian believes that the issue is to be decided in future.

25. I will now proceed to consider the decisions relied upon by Mr. Mehta in support of his case in the course of submissions. Only those considered below have been pressed into service.

(a) *Vinay Bubna (supra)* analyses BSE's bye-laws, rules and regulations and in particular membership as provided under Rule 5 and it is clear from the aforesaid rule that membership is a personal permission from the exchange to exercise certain rights and privileges attached thereto and it is not a private asset. On a fair reading itself it is clear that membership is not private asset that is transferable. Furthermore it records that a membership card is not the personal property of a member it cannot be sold to fund creditors and no interest can pass to an assignee of such a card. *Vinay Bubna* proceeds on the basis that the membership is not transferable, not personal asset and therefore cannot be attached. In my view it is important to consider that the BSE was established as per Rule 4 which provides the object of supporting and

protecting, in the public interest, the character and status of brokers and dealers. It is to further their interests and to maintain the high standards of commercial honour and integrity of members. In the present case the applicants have been suspended for obvious reasons. The suspension continues. The applicants have chosen not to challenge the suspension till date and in the circumstances it is obvious that the status of the applicants was found wanting inasmuch as they prima facie had not maintained the high standards of commercial honour and integrity that the exchange contemplated. It is in these circumstances that one must view the decision of the exchange to suspend the applicants. All that has been done in the course of events that have taken place is that the suspension was temporarily lifted in order to provide a window of opportunity to the applicants and other notified parties who may if they succeed in setting aside suspension may be entitled to exploit the benefits accruing from the scheme of corporatisation and demutualisation but upon their denotification. *Vinay Bubna* having held that the membership is a privilege and not a personal asset, the applicants can derive no further benefit from that decision and in respect of the shares in question.

(b) The next decision that Mr. Mehta pressed into service is *Stock Exchange Ahmedabad (Supra)* which holds that after the demise of a member the heirs and legal representative or nominees have no interest therein. Membership being a personal privilege, it is non-transferable and not capable of alienation. In other words membership is not "property" of the assessee. Similarly, in *Kadalgaonkar (supra)*, State was held to not have any precedence over a pledgee of movable property. The pledgee being a secured creditor could not be deprived of the benefit of membership of the stock exchange being pledged to him. In this respect rules 5, 9 and 16 are called into for consideration. Sale proceeds of the membership card of defaulter could not be attached by the income tax department. A membership card confers no property upon the member In *Kandalgaonkar (supra)* the Stock Exchange had dues which made it a secured creditor and thus the claim of the Government towards income tax dues was denied since the Income Tax Act does not provide for paramountcy of income tax dues over those of a secured creditor.

(c) In the case of *Vyomit (supra)* it was clear that the shares were held not by the individual Haresh K. Dalal but by the

Company and by virtue of its separate legal existence the transfer was found to be valid and the attachment claim to the shares by SEBI was permitted. In that case the second respondent H. K. Dalal was member of the Stock Exchange. His individual membership was converted to corporate membership in 1999. On 4th May,1995 the company Vyomit Shares, Stocks and Investments Pvt. Ltd. was incorporated. Haresh K. Dalal was notified under the Special Courts Act only on 20th November 2011 and the company had filed an application before the Stock Exchange on 26th August, 2005 seeking allotment of shares under the scheme. Despite this the stock exchange did not issue the shares. The Court found that the shares allotted to Vyomit subsequently could not be considered as shares belonging to Haresh K. Dalal who was the notified party. Allotment of the shares to Vyomit as a corporate entity was therefore unquestionable and it is on this basis that the shares were found to have been transferable and Company as holder of shares was therefore found entitled to deal with the same.

(d) Reliance placed by Mr. Mehta on *Kudremukh Iron Ore (supra)* is in relation to the jurisdiction of this Court in respect

of properties belonging to the notified party inter alia holds that a stranger to a consideration in relation to transactions between notified party and third party cannot seek enforcement of its obligations. Inter alia it is held that the foundation of jurisdiction under section 11 to deal with any such property is that it should have been property under attachment. The question whether this Court has jurisdiction or not to consider the aspect whether the shares are attached property or otherwise cannot be a matter of contest inasmuch as the parties have submitted to its jurisdiction and this Court certainly has the jurisdiction to entertain all applications in relation to such shares and its disposal through the Custodian's office. The decision in *Kudremukh Iron Ore (supra)* therefore is of no assistance. So also, in the case of *T. B. Ruia (supra)* the analysis of section 3, I am of the view that the contention of the applicants that by entertaining applications pertaining to the shares and treating them as attached property would be widening the scope of section 3(3) does not commend itself to me. Reliance on the observation of the Court in paragraph 5 to 7 that widening the scope of section 3(3) would reduce a notified party to beggary is not relevant in the present case. The shares are in the account of

the notified party with the Custodian. They are not being disposed and indeed cannot be disposed without orders of this Court. In the meanwhile, at every possible occasion the Courts jurisdiction has been invoked in order to secure benefit for the notified party such as by way of buy back which has resulted in substantial gain. Likewise the decision in *Harshad Shantilal Mehta (supra)* is of no assistance since the aspect of discharge of liability is yet to arise.

(e) The decision of the Supreme Court in *Canbank Financial Services (supra)* is of no assistance to the applicants. On the other hand, the test applied in that case pertains to ownership of property, the resulting trust arising in favour of one person who has paid the purchase money. It deals with the concept of resulting Trust as applicable, before the Trust Act, 1882 came into force. No doubt it is reiterated that a Custodian appointed under the Special Court Act is not a Receiver as contemplated under the CPC or an Official Assignee nor a Liquidator under the Companies Act. The properties do not vest in the Custodian but at distribution, the notified parties may benefit.

(f) The decision in *Murablack (India) Ltd (supra)* will not further the cause of the applicant. In support of Mr. Mehta's submission membership not being attachable, that the Custodian cannot take away his right to the shares indirectly because he could not do so directly by attaching membership. In *Dadu Dayalu (supra)* save and except for the analysis of what constitutes 'ratio decidendi' no further support can be drawn from this judgment. Mr. Mehta also seeks support from *Rajasthan Road Transport (supra), BPCL (supra) and Gian Chand (supra)* to highlight the fact that the Custodian had not dealt with several of the averments and that in the absence of specific pleadings the Custodian's submission ought not be taken into consideration. In the instant case Mr. Mehta submitted that whatever has been argued on behalf of the Custodian does not find place in the pleading and hence must be discarded. Having considered this aspect I find no merit in the submission that in the absence of pleadings, submissions the Custodian cannot be considered. The applicant seems to have lost sight of the fact that the Special Court is not bound by provisions of the CPC. Proceedings are to be conducted on the basis of rules of natural justice. It is open to the Custodian to urge the material aspects of the case

especially on matters of his powers and jurisdiction of this Court. Furthermore, the submissions on behalf of the Custodian are based on the legal position and not on the factual elements. In that view of the matter I am of the view that no benefit can be arrived from the aforesaid judgment.

(g) Mr. Mehta also placed reliance on the *State of A.P(supra)* in support of his contention that the Custodian had played a fraud upon the Court by suppressing material information. I am unable to find any merit in the aforesaid submission and the reliance placed on the judgment is of no assistance to the applicants. Although it is the case of Mr. Mehta that the Custodian has practiced of fraud it is necessary to observe that while fraud and collusion vitiate the most solemn of proceedings I find no evidence of fraud or collusion in the instant case. Black's Law Dictionary defines fraud as follows :

> *"Intentional perversion of the truth for the purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right"*

In the present case none of these elements are present. The Custodian does not appear to have made any wrong representation much less a false one.

(h) Mr. Mehta has placed reliance on *Balwant Viswamitra (supra)* in support of his case that the BSE was not necessary party and that there is a distinction between necessary and proper party. This aspect does not require to be agitated any further since it is well settled that necessary party is one without whom no order can be made effectively and a proper party in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved. The presence of the BSE therefore was not in my view absolutely essential.

(i) Reliance placed on the judgment in *Roger Shashoua (supra)* is once again of no avail to the applicants because it concerns the foreign seat arbitration and implied exclusion of Part I of The Arbitration and Conciliation Act. The applicant can derive no benefit from this judgment.

(j) In *Administrator Unit Trust of India (supra)* the Court was concerned with the reasonableness and fairness in action on

the part of the State and Statutory authority. In that case UTI which was required to have acted reasonably and fairly and in terms of the contract. Mr. Mehta's attempt to draw parallel in present case does not commend itself to me. In conclusion it is evident that the applications that have now been filed and urged are no different from earlier applications seeking liberty to deal with shares and in particular *M.A.No. 52 and 54 of 2007 (supra).*

(k) Although Mr. Mehta has placed considerable reliance upon *B.C.Dalal's case (Supra)* I am not convinced that decision is in any way useful to the present applicant. Firstly, because this Court has already held that the shares would remain with the Custodian, secondly the BSE had in no uncertain terms contended that till the issue of suspension was decided shares could not have been issued. The Court however permitted the issuance of the shares but on condition that these were retained with the Custodian. The Custodian's case being that the shares would ultimately could be sold and the monies utilised for distribution under section 11. Thirdly the Court had decided that till the question of suspension is decided the shares would be kept with the Custodian and all benefits

accruing thereon would also be retained by the Custodian. The suggestion that the suspension could be temporarily lifted for the purpose of issuing the shares was then accepted by the BSE and the shares came to be issued. In this light the contention of Mr. Mehta that this Court had already decided that the shares are not attached property is incorrect. In the order this Court has clearly observed that in view of the provisions of clause 5.3. of the scheme the question whether the shares are attached assets or future assets is not a question to be decided at that stage since it was premature and that would have been to be answered only after suspension was revoked. The notified party has not challenged this order.

26. In conclusion I find that none of the judgments relied upon by the Custodian will assist him in these applications. Having considered the contentions of the Applicants and the Custodian's response, I am firmly of the view that the shares are attached assets or deemed to be so attached.

27. The principal submission on behalf of the applicants is that the BSE shares allotted to the applicants is not a usufruct of any attached asset and therefore it constitutes an unattached future asset. Membership was always a privilege prior to and after 8th June, 1992 and therefore shares are a future

asset. According to Mr. Mehta the scheme under which the shares were allotted has no co-relation with the membership of the Stock exchange. BSE Limited cannot decide on the issue of shares. Mr. Mehta submitted that the suspension of membership was a punitive measure, harsh and arbitrary and without a speaking order. No disciplinary proceedings had been held. However, the right to receive the shares had not been extinguished. In any event he submits that the issue of suspension is a matter between the applicants and BSE Limited. Mr. Mehta submitted that the suspension was lifted temporarily in order to facilitate the issuance of shares and the shares were issued as a direct result of membership.

28. I must now consider the aspect of payment of subscription money and whether the property can be said to be attached as a result of payment of subscription money. Mr. Mehta submitted in 2006 he had addressed a letter to Bombay Stock Exchange and in M.A. No. 50 of 2015 in paragraph 13 the applicants had expressed willingness to pay out of monies that were not attached but in paragraph 17A the Court directed payment out of attached funds. Mr. Mehta contends that the notified parties were always willing to make payment out of private funds which are not attached assets. There appears to be some substance in this submission because one of the prayers in M.A. No. 50 of 2015 indicates a request to allow the applicants to pay for the shares but that was not allowed. In relation to the amounts paid toward the dues of BSE Mr. Mehta had contended that mere payment of those amounts

from attached account is of no consequence since these amounts were pertaining to the notified period and had nothing to do with the payment for the shares. He admitted that the issue of jurisdiction was never raised earlier but contends that it can be raised at any time. The fact remains that the notified parties in these applications have at all times been benefited from the actions of the Custodian firstly in having brought to the attention of this Court the fact that there is a buyback offer, secondly having applied for shares and then having paid for them. It is in this background that one has to view the applications. None of these actions suggest that the Custodian has acted adversely to the interest of the notified party. Mr. Mehta submits that the contention of the Custodian that the BSE ought to have been joined as party to these applications has no merit since no relief has been sought against BSE Ltd. Mr. Mehta is thus of the view that shares are not attached property and the Custodian has not proceeded on the basis that they are attached property.

29. Section 3(3) of the TORTS Act clearly provides that the Act and its mechanisms will work only in relation to attached assets. According to Mr. Mehta the shares not being attached, the Court had no jurisdiction to consider the manner in which the shares will have to be dealt with. It is contended that the shares have been wrongly deposited with the Custodian. In my view release of the shares at this stage would be to reward the notified party even during a suspension. No prejudice is being caused to the applicants as a result of the

non-release of the shares or non-payment of accruals or sale proceeds. All benefits are being recovered wherever due, just and proper. Moreover no damage has been caused to the notified party pending suspension. In my view release of the shares has already been considered when the order dated 27th November, 2015 was passed. There is no challenge to that order and that order has for all practical purposes attained finality. BSE Limited's requests for suspension of voting rights and corporate benefits was also rejected on 9th June 2017. These are all aspects which clearly indicate that Custodian has worked for the benefit of the notified parties and actions of the Custodian have only augured for the benefit of the notified parties.

30. It is not possible to agree with the contention that the order disposing M.A. No. 50 of 2015 would mean that the BSE shares are not attached assets. In my view that is a conclusion that the applicants have drawn but I am unable to agree. The contention on behalf of the applicants that the Special Court had no jurisdiction has no merit. The record indicates that the shares were allotted on an application and order passed on that application by the Special Court. The very allotment of the shares has taken place due to the intervention of the Custodian and the orders passed by this Court. The share application money and the purchase price were released from attached funds and therefore the issue of shares was facilitated by the attached assets. Consideration has flown from the attached assets and the shares are therefore deemed to be attached. In

the normal course, had it not been for these applications the fate of shareholding whether the shares are attached property or not would have been considered only upon revocation of suspension. The applicant has enjoyed the benefit of the attached assets to acquire these shares, therefore the shares cannot be self-acquired property. If the shares are to be considered a future asset it would have to be "acquired" after date of notification. The contention on behalf of the applicant that he had offered to pay for these shares is of no consequence. The fact remains that the Custodian applied for the shares and the Court after hearing parties permitted use of the funds lying in the attached accounts for paying over to BSE Limited. This has only benefited notified party since the Custodian is not the owner of the shares nor do the shares vest with the Custodian. The Custodian gains or derives no benefit from these transactions.

31. The decisions in the case of *Shrenik Jhaveri (supra)* and *B. C. Dalal* (supra) do not prevent the Custodian from retaining the shares. The Custodian is not challenging the decisions in *Shrenik Jhaveri* or *B. C. Dalal* but he is not bound to handover these shares. The BSE could have offered shares directly to the notified parties but that has obviously not been done in view of the suspension and in view of their having been notified. This court has not held that the shares are the property of the notified party and that they are not attached assets although the applicants have contended so. The applicants'

plea that they have no other income and require release of shares to meet medical expenses is no ground to release the shares. Lack of funds and inability to pay for medical expenses of the applicants must be made out and none of the materials on record support this submission on behalf of the notified parties. Moreover, one wonders why shares are to be released for such expenses, if any and not money.

32. The Custodian, in my view, by approving the buyback of shares has acted in the best interests of the notified parties. He has facilitated the sale of the shares and invested the monies received without any protests from the notified party. Ultimately whether these are monies that can be utilised for the purposes of distribution or not will have to be considered only if the shares are declared free of attachment and are released to the notified parties. In the case of *B. C. Dalal* shares were kept in the safe custody till the question of suspension is decided. Moreover it is evident that in the case of *B. C. Dalal* the shares were admittedly sought to be issued in favour of the Custodian account notified party and not in a personal capacity. Retention of shares by the Custodian was clearly contemplated at all stages and it is not possible to accept the contention on behalf of Mr. Mehta that the shares are now required to be immediately released to the notified parties. As in the case of *B. C. Dalal* application for shares was made on behalf of the notified party and has not been questioned on that ground. In my view the liberty granted by this Court

to the applicants has been prematurely exercised and there is no occasion for grant of any relief in this application.

33. At this stage it would be appropriate to deal with the developments leading upon to the present applications in chronological order. The applicants became members of the Bombay Stock Exchange through their sole proprietary concern on 11th April, 1991 and 10th April, 1989 respectively. Their membership was suspended sometime in the second week of May, 1992 indefinitely. Along with their membership the membership of M/s. Harshad S Mehta a sole proprietary firm of late Harshad S Mehta was also suspended. In September, 1997 membership rights of one Shrenik Jhaveri to the Bombay Stock Exchange were attached pursuant to the order passed by the Special Court in M.A. no. 63 of 1997 in M.A. No. 100 of 1994. In June, 2001 the Bombay Stock Exchange filed an application in this Court challenging the order of attachment of membership of Shrenik Jhaveri. The attachment was lifted in pursuance of two judgments of the Supreme Court in *Vinay Bubna(supra)* and *Ahmedabad Stock Exchange(supra)* whereby it was held conclusively that membership of the Stock Exchange is personal privilege and therefore not attachable property.

34. On 20th May, 2005 the SEBI issued an order allowing a scheme announced by the Bombay Stock Exchange for its corporatisation and demutualisation. This scheme was known as corporatisation and

demutualisation Scheme 2005" . 30th May, 2005 was fixed as a record date for determining the members who will be entitled to shares since under that scheme shares of the Stock exchange were to be issued to its members . On 31st March, 2006 the Custodian called upon the Bombay Stock Exchange to inform the Custodian if shares were proposed to be issued or issued to any of the notified parties. This was apparently done in view of the automatic attachment of assets of notified parties pursuant to the operation of section 3(3) of the TORTS Act. On 21st June, 2006 BSE informed the Custodian of the identity of members of the BSE who are notified parties and who are entitled to allotment of 10,000 shares each of face value Re.1/-. BSE clarified that it had not issued or allotted shares to any individual or corporate which was a notified party but also mentioned that should shares be issued that would be freely transferable.

35. On 20th September, 2006 Jyoti H Mehta in her individual capacity and as legal heir of Harshad S Mehta addressed a letter to Bombay Stock Exchange requesting them to forward 10,000 shares to the Custodian. The applicant in the second application Mr. Ashwin S Mehta also addressed a similar letter to request BSE to forward the shares to the Custodian. This is material for our purposes, inasmuch as, on date of issuance of shares it was clearly understood that the shares were to be sent to the Custodian. If the applicants believed this not be so they would have contested the suggestion that the Custodian would take control of the shares. On 3rd October, 2006 the Custodian replied to the

BSE informing them that it should not entertain any application from notified parties for issuance of said shares since the shares are to be treated as attached assets. BSE should not allot any shares or transfer shares without the order of the Special Court. This development was duly conveyed by the BSE to the applicant's herein.

36. Meanwhile in M.A. No. 52 of 2007 to M.A. No. 54 of 2007 the Special Court rejected a request on behalf of Harshad S Mehta, Ashwin Mehta and Jyoti H Mehta seeking permission to offer the same for sale. This order came to be passed on 8th March, 2007 because as on that date shares had not been issued. In that very year BSE issued 1,20,000 bonus shares on 10000 original shares to which notified parties were said to be entitled to. In April, 2008 the Special Court granted certain relief to one Vyomit Stocks, Shares and Investment Private limited in M.P No. 15 of 2007 regarding the allotment of BSE shares. Similar reliefs were granted in MA no. 283 of 2008 to one Bhupen C. Dalal vide order dated 25th February, 2010 and M.P. No. 1 of 2010. Likewise one Jitendra R Shroff also benefited from allotment of shares pursuant to order dated 13th November, 2010 passed in MA. No. 183 of 2010. On 25th February, 2010 an order came to be passed in M.A. no. 283 of 2008 filed by Bhupen Dalal and in M.P. No 1 of 2010 filed by the Custodian. both of which sought relief against the Bombay Stock exchange directing allotment of shares of the BSE. The Custodian's case was that the shares of BSE could not be treated as a future

asset since it arose out of membership rights which stood attached. However the attachment of membership right itself had meanwhile been rendered ineffective in view of the decisions of *Vinay Bubna (supra)* and *Ahmedabad Stock exchange(supra)*. The issue whether the shares of BSE constituted an asset which came into existence "in future" had not be decided and the Court held that question would have to be answered only after suspension of the notified party was revoked. Liberty was reserved to the applicants to apply at the appropriate stage. These applications have been filed for calling upon this Court to rule upon the aspect of the nature of the asset comprising shares whether they would constitute attached assets or future assets beyond the scope of attachment under section 3(3) of the TORTS Act, despite the fact that order dated 25th February, 2010 had made it clear that this issue would be decided only after suspension would be revoked.

37. It is the case of the applicants that suspension notwithstanding, the shares did not constitute assets which were attachable and hence could be released notwithstanding the continuation of suspension I am unable to agree for reasons set out herein. In the meanwhile, it was clarified that the shares when issued would be retained by the Custodian and the Custodian would not sell any of these shares. It is only when the buyback was announced that the notified parties were keen offering the shares owing to the attractive price offered and had approached the Court by filing applications on which

appropriate orders have since been passed. The Buy Back being an attractive offer the Custodian felt that it was an opportune moment to sell the shares back to BSE and collect the sale proceeds so that the same may be invested by the Custodian ultimately to be used at the stage of distribution. None of these steps taken by the Custodian were opposed by the notified parties. In fact the notified parties eagerly supported the application since the buyback was at a commercially attractive rate.

38. In M.A. No. 50 OF 2015 on 27th November, 2015 the Special Court permitted allotment of shares of the BSE to the applicants in the above matter along with all bonus shares and dividend declared till date. Although initially the BSE opposed the application on the ground that the applicants were not entitled to hold the shares in view of the judgment of the Supreme Court in *Vinay Bubna(supra*) and *Ahmedabad Stock Exchange (supra),* the Special Court held that membership was only privilege and not an attachable asset and the issue whether the shares would be a future asset or not would be decided later. It is in that manner that the applicants came to benefit from the allotment of shares. The Custodian has since contended that the shares could be retained and treated as attached asset in order to meet liability in future.

39. M.A. No. 61 of 2016 was meanwhile filed by BSE seeking freezing of voting rights and corporate benefits on the shares allotted to the applicants. This application was rejected by the Special Court on 9th June, 2017. It is in

these circumstances that the present application has been filed seeking release of the shares and dividends and in the alternative to permit buy back of the shares as announced by the BSE. The buyback has since been permitted and in this manner all benefits accruing to the notified parties the applicants here in have been protected and it has been ensured that no loss is caused to them by virtue of their continuing notification and continuing suspension.

40. It will be appropriate to make reference to clause 5.3 of the scheme which contemplates allotment of shares to a member who is suspended by the Stock Exchange. In the case of both applicants suspended allotment of shares was required to be kept in abeyance in accordance with clause 5.3. It would be useful to reproduce the said clause 5.3 which reads as follows :

> *"Clause 5.3 : Bombay Stock Exchange Limited shall allot the equity shares to the entitled members or their nominees, as the case may be, by the due date.*
>
> *Provided that allotment to a member suspended by BSE shall be held in abeyance till the suspension continues."*

41. From a fair reading of clause 5.3. it is evident that the notified parties who are suspended by the Stock Exchange and whose suspension continues would not have been entitled to receive shares in the first place had it not been for the order passed by this Court. In other words, if the Special Court was not

to lift the suspension temporarily and BSE/SEBI agreeing to it the shares would not have been allotted at all and they would continue to be held in abeyance. The reason why this suspension was temporarily lifted also provided the opportunity to utilise the benefit accruing from the shares for the purpose of discharging liabilities under section 11. If this Court had no jurisdiction in the first place there was no question of approaching the Special Court in order to temporarily lift the suspension. If the suspension was lifted by an order of Special Court and agreed to by the Stock Exchange and with knowledge of the applicant as evident from the facts of the present case there is no question of this Court not having jurisdiction to entertain the plea of the Stock Exchange and of the notified parties qua the shares to be issued by the Stock Exchange. If the Court had no jurisdiction it was open to the notified party to apply to the appropriate forum for an order against the BSE and mount a challenge to clause 5.3. of the scheme. This was admittedly not done, clearly recognising the fact that the applicant could not have approached any other forum at the material time by virtue of the disability and attachment of all his assets. The question remains as to whether there is a link between the membership which is incapable of attachment and the shares which were capable of attachment. The membership issue is distinct and separate from the issue pertaining to shares. The scheme provides that a person holding membership would be also allotted equity shares. The words in clause 5.3 are "the entitled members or their nominees" inasmuch as a member could have nominated a third party

in order to receive the shares. This clearly indicates that it had nothing to do with a person continuing to be a member in order to receive the shares. The nominee could be anyone who is not member of Stock Exchange. In these circumstances the intention of the stock exchange seems to have been to reward a member with his/her "ownership" right pursuant to the scheme for corporatisation and demutualisation.

42. The issue of jurisdiction must be decided against the applicant. The jurisdiction of this Court has been invoked not only by the Bombay Stock Exchange but also by the notified parties themselves. The notified parties have benefited from the exercise of jurisdiction by this Court inasmuch as shares were got allotted. The allotment having been finalised the applicants have also sought to exercise the right of buy back which was offered by the Stock Exchange and this buy back was permitted by this Court once again in exercise of its exclusive jurisdiction. In my view the applicants and all other members who are notified parties have submitted to the jurisdiction of this Court unconditionally and without any reservations. To urge today that this Court has no jurisdiction to entertain the application of the Custodian or issue directions in relation to the said shares is of no avail at all. Indeed, even the applications at hand seek to invoke the jurisdiction of this Court. In this background I am clearly of the view that this Court had the jurisdiction to entertain and decide all of the aforesaid applications against and by the BSE /

BSE Ltd. This aspect also appears to have been considered in M.A. no. 52 of 2007 and M.A. No. 54 of 2007 filed by the very same applicants and which were disposed by an order dated 8th March, 2007.

43. I may also observe that while disposing M.P.no. 15 of 2007 filed by Vyomit Shares, Stocks and Investments Pvt. Ltd. and in terms of minutes then agreed between the parties it was made clear that the petitioner was required to issue the cheque to the BSE towards payment of the shares and that the parties were at liberty to seek declaration including one that the shares are not attached property. Furthermore, in the case of Jitendra R Shroff in M.A. No. 183 of 2010 the stock exchange agreed to temporarily lift suspension in order to have the shares allotted to the applicant in that case. This was permitted by the Court for the limited purposes of enabling allotment and release of corporate benefits. One of the conditions imposed at that time was the shares and accruals would be transferred to the Custodian and held in a separate account.

44. Reliance was placed on the decision of the Supreme Court in the case of *Stock Exchange, Ahmedabad (supra)* and *Vinay Bubna (supra*). It was the notified party's contention in that case that membership being a personal privilege and not being subject to attachment, any shares that would have accrued to the notified party by virtue of such membership would not be attached assets inasmuch as they may constitute future assets. Meanwhile in

M.P. No. 1 of 2010 the Custodian had sought a direction from this Court to the Stock Exchange to allot the shares in favour of the Custodian A/c. B.C. Dalal and to handover the shares along with all benefits which have accrued thereon. The Custodian had then contended that their Miscellaneous Petition should be treated as an application on behalf of the notified party. The notified had not contended to the contrary. The judgments relied upon by notified party were not relevant including one pertaining to the future assets in the case of *Tejkumar Balkrishna Ruia Vs A.K Menon & Others.*[4] The Custodian had then contended that the judgments referred to above were in cases of members who were either defaulters or in cases where membership had come to an end as a result of death of a member. It was further submitted that the shares could be attached and sold so that sale proceeds could be used for distribution under section 11 of the Special Courts Act.

45. Furthermore, it was contended that the ratio in *Tejkumar (supra)* would not apply since the income or usufruct of attached property is also attached property and only income generated by the notified party by his own labour would fall outside the scope of section 3(3). Meanwhile on behalf of the BSE Ltd. counsel submitted that the suspension of the membership would continue to be effective under the scheme of Corporatisation and Demutualisation and by virtue of clause 5.3 the shares could not be allotted in the name of the

[4](1997)9 SCC 123

notified party. It was also contended that the members in question had no right of nomination. The Special Court then observed that the decisions in the case of *Vinay Bubna (supra) and Stock Exchange, Ahmedabad (supra)* being binding membership rights cannot stand attached by virtue of the notification under section 3(3) of the Special Courts Act. Membership being a personal privilege there was no question of subjecting it to the rigors of attachment under the Act. The Court then concluded the question whether the assets are future assets or not has been raised at premature stage since question were to be answered only after suspension is revoked.

46. In the facts at hand it is evident that the BSE was not allotting shares. It is the Special Court which ordered it to allot the shares and permitted the shares to be kept with the Custodian. The shares were issued not because notified party was necessarily entitled to them but because if they were to be monetized it could be to be attached and used for distribution. This fact cannot be denied and notwithstanding the opposition it will have to be considered at the appropriate time i.e. at the time of considering denotification. Shares can therefore only be dealt with in accordance with the mechanism under the TORTS Act.

47. In the instant case, the shares have been acquired out of funds in the attached accounts. It is not possible to hold today that the shares have been "acquired" by the notified party subsequent to notification. For the present it is not possible to hold that the shares are not to be dealt with by the Custodian

and that the Custodian has acted without jurisdiction or the Court has acted without jurisdiction. It is not in dispute that the Special Courts Act provides for attachment of properties of the notified party under section 3(3) with the intention that such properties can be applied towards discharge of his liability in terms of section 11. The Courts have already held as in the case of *L.S. Synthetics (supra*) that section 9A is not to be read down to mean that properties arising out of transactions in securities alone must stand attached. The shares in question are not admittedly property which arises out of transaction in securities. However, whether or not the shares can constitute attached properties is a matter that remains to be tested considering the fact that these shares have accrued by virtue of the applicants' membership and that the scheme of corporatisation and demutualisation initially prohibited the issuance of shares to members who are suspended. It is under the orders of this Court acting under section 9A that the shares were in fact allotted, but for the orders of this Court the shares would continue to be held in abeyance and it was open for the applicants to have let the shares to be held in abeyance.

48. It is by now well settled that the jurisdiction of the Special Court is not restricted to illegal transactions in securities and properties acquired by a notified party from and out of such illegal transaction it applies to all properties of the notified parties that stand attached. It is also been held that the operation of section 9A is of the widest amplitude and there is no question of reading down the section. Once a statutory attachment comes into force the same is

subject to the control of the Custodian and under orders of this Court. The shares in the instant case have been allotted pursuant to order of this Court and are presently under the control of the Custodian subject to further orders that can be passed. These are aspects that *L.S. Synthetics (supra)* has conclusively laid down. *Jyoti Harshad Mehta (supra)* considered the scope of attachment of properties. It holds that attachment of properties in terms of Section 3(3) has a cut-off date being date of notification under the Act and on and from the said date all properties of the notified person stand automatically attached irrespective of whether they had been acquired before, during or after the statutory window period. It is only property acquired subsequent to notification under the TORTS Act that does not come within the purview of section 3(3). In the instant case it cannot be said that the property in the shares was "acquired" by the applicants after the notification. The requirement of acquiring property in the instant case would require the applicants to engage in a positive act of acquisition. The shares in question have been allotted by the BSE in keeping with its scheme of corporatisation and demutualisation. It is not possible to hold today that the shares are property acquired by the notified party and in that context the application cannot succeed.

49. The SEBI Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations 2018 which contemplates "a fit and proper person" for persons eligible to hold shares of recognised stock exchange. This clause reads as follows :

"Eligibility for acquiring or holding shares

19(1) No person shall, directly or indirectly, acquire or hold any equity shares or voting rights of a recognised stock exchange or recognised clearing corporation unless he is a fit and proper person.

Provided that the onus shall be on the recognised stock exchange / recognised clearing corporation to ensure that all its shareholders are fit and proper person :

Provided further that such a requirement to ensure that all its shareholders are fit and proper persons shall not be applicable to a listed recognized stock exchange for shareholding of a person who directly or indirectly, acquires or holds less than two percent equity shares or voting rights of such listed recognized stock exchange.

Regulations 19(1) of Securities Contracts (Regulations) (Stock Exchanges and Clearing Corporations) Regulations 202 ("SECC Regulations") effective from 20th June, 2012 states that "No person shall, directly or indirectly, acquire or hold equity shares of a recognized stock exchange or recognized clearing corporation unless he is fit and proper person.

20 (1) for the purposes of these regulations, a· person shall be deemed to be a fit and person if-

a) such person has a general reputation and record of fairness and integrity, not limited to

(i). financial integrity;

(ii) good reputation and character; and

(iii) honesty;

b) such person has not incurred any of the following disqualifications

(i) the person, or any of its whole-time directors or managing convicted by a court for any offence involving moral turpitude or offence or any offence against the securities laws;

(ii) an order for winding up as been passed against the person;

{iii) the person, or any of its whole-time directors or managing declared insolvent and has not been discharged;

(iv) an order, restraining, prohibiting or debarring the person, or any of its whole directors or managing partners, from dealing in securities or from accessing securities market, has been passed by the Board or any other regulatory and a period of three years from the date of the expiry of the period the order has not elapsed;

(v) any other order against the person, or any of its whole-time directors or partners, which has a bearing on the securities market, has been passed Board or any other regulatory authority, and a period of three years from of the order has not elapsed;

(vi) the person has been found to be of unsound mind by a court of jurisdiction and the finding is in force; and

(vii) the person is financially not sound

(2) If any question arises as to whether a person is a fit and proper person, the decision on such question shall be final.

50. In the present case as well, the question is whether the applicants were fit and proper persons as laid down in the regulations is an aspect which may be taken into consideration at the time of any application for revocation of suspension. In MA 63 od 2019 filed by Shrenik Jhaveri seeking allotment of shares, BSE Ltd has opposed allotment citing the aforesaid regulations. In that context if BSE Ltd is of the view that the applicants are not fit and proper persons the question of their exercising right as shareholders may be called into question when considering the aspect of suspension. This court had suggested lifting of the suspension temporarily only to facilitate the allotment of shares which would again be subject matter of decisions of this Court since the entire exercise of having allotted shares has been undertaken by the Stock Exchange and with the consent of the notified party within the umbrella of the Special Courts Act. For this reason as well the applicants have clearly acquiesced in the jurisdiction of this Court.

51. Having considered all aspects urged before me, in order to understand the genesis of shares being issued by the erstwhile Bombay Stock Exchange after it converted itself into BSE Limited it will be necessary to examine the scheme of Corporatisation and Demutualisation. In order of time, membership enjoyed by the notified parties did not have an element of shareholding as separate and distinct from it. The scheme is known as "BSE (Corporatisation and Demutualisation) Scheme 2005". The scheme

came into effect after its publication under sub-section 4 of section 4(B) of the Securities Contracts (Regulation) Act, 1956. ["SCRA"] It sets out the process by which the BSE would be corporatised and demutualised under section 4A of the SCRA. Before analysing the Scheme, it will be useful to consider some terms defined thereunder;

> *2.2* ***BSE****" means the stock exchange also known as "The Stock Exchange, Mumbai", an unincorporated association of persons having its principal place of business at Phiroze Jeejeebhoy Towers, Dalal Street, Fort, Mumbai, which has been recognized by the Central Government under the Securities Contracts (Regulation) Act, 1956 by and under notification No. 17/2/56- SE/EAD dated August 31, 1957, and whose name has been changed to BSE pursuant to the approval granted by SEBI by its letter No.SMD/SEAID-I/BSE/592/02, dated 10th January, 2002.*
>
> *2.3* ***Due Date*** *means the date, as may be determined by the Governing Board of BSE, which shall not be later than 3 months from the date of publication of the order under sub-section (7) of section 4B of the Securities Contracts (Regulation) Act, 1956.*
>
> *2.6.* ***Member*** *means a person who is a member of BSE as per the register of members maintained by BSE under Rule 64 of the Rules, Bye-Laws and Regulations, 1957 and does not include a Limited Trading Member of BSE.*
>
> *2.7.* ***"Record Date"*** *means the date, prior to the Due Date, fixed by the Governing Board of BSE for determining the Members who will be entitled to shares of Bombay Stock Exchange Limited pursuant to clause 5 of this Scheme.*

2.8. ***Rules, Bye-Laws and Regulations, 1957****" means the Rules, Bye-laws and Regulations, 1957 of BSE on the day preceding the Due Date.*

*2.11. "**Shareholder**" means a person who holds any equity share(s) of Bombay Stock Exchange Limited.*

*2.12. "**Trading Member**" means a stock broker or trading member or clearing member of any segment of Bombay Stock Exchange Limited and registered with SEBI as such under the SEBI (Stock Brokers and Sub-Brokers) Regulations 1992:*

Provided that Bombay Stock Exchange Limited shall not have clearing members after the clearing function is transferred to a recognized clearing corporation under clause 13.1 of this Scheme.

52. At the material time, BSE was an un-incorporated Association of Persons whose name has been changed pursuant to approval granted by SEBI. Due date is defined as the date to be determined by the governing board of BSE which would be not beyond three months from date of publication of the order under the SCRA. Record Date is defined as the date prior to the due date fixed by the governing board for determining members who will be entitled to shares. The applicants therefore qualified as registered members.

53. Trading member is defined as a stock broker or trading member or clearing member of any segment of Bombay Stock Exchange Limited and registered with SEBI as such under the SEBI (Stock Brokers and Sub-Brokers) Regulations Stock Exchange or trading member.

54. What is more material for us to consider today is Clause 5 of the Scheme which reads as follows :

> *5. Allotment of Shares of Bombay Stock Exchange Limited*
>
> 5.1. *Every Member or his nominee, as the case may be, (other than the First Shareholders) as on the Record Date shall be entitled to 10,000 fully paid-up equity shares of the face value of Re.1/- each for cash at par of Bombay Stock Exchange Limited.*
>
> 5.2. *Every Member or his nominee, as the case may be, who has more than one membership card as on the Record Date, shall be entitled to additional 10,000 fully paid-up equity shares of face value of Re.1/- each for cash at par for every additional membership card held by him*
>
> 5.3. *Bombay Stock Exchange Limited shall allot the equity shares to the entitled Members or their nominees, as the case may be, by the Due Date.*
> *Provided that the allotment to a Member suspended by BSE shall be held in abeyance till the suspension continues.*
>
> 5.4. *The invitation to subscribe to, and the offer, issue and allotment of equity shares of Bombay Stock Exchange Limited pursuant to this clause shall not be considered as being an invitation, offer, issue or allotment to the public.*

55. Clause 5 provides for allotment of 10000 fully paid equity shares of face value of Re.1/-shares to all members or their nominees. Any member having more than one membership card on the Record Date would be entitled to additional 10000 shares. Likewise, for every additional card a further 10000

shares would be allotted. Clause 5.3 contemplated keeping in abeyance allotment of shares to a member suspended by the BSE as long as suspension continues. Meaning thereby that the allotment would not take place at all until the suspension was revoked or set aside. This clause was diluted in the case of some notified parties when the suspension was temporarily lifted in order to enable the allotment to take place.

56. Trading right of a member or a limited trading member are separately dealt with in clause 8. This right if any would therefore stand suspended even today. Clause 9 provides for demutualisation and clauses 9.1 and 9.2 clarify that a trading member may or may not be shareholder and a shareholder may or may not be a trading member. Clause 10 provides for voting rights which the Exchange was keen on withholding as far as the notified party is concerned and that application as we have already seen was rejected by the Special Court. The Scheme came into force only upon SEBI approving it as seen from the order dated 20th May, 2005 notified in the Gazette of India Part II Section 3-Sub-Section(ii). The SEBI approved the scheme vide an order under section 4B(6) read with Section 4B(7) of the SCRA. BSE had vide letter dated 9th March, 2005 submitted the Scheme for approval of SEBI which communicated certain observations .These observations were considered during meetings with relevant officials and thereafter SEBI's recommendations were incorporated by BSE as it then was and the Scheme was resubmitted for consideration. The

Scheme so modified was approved vide SEBI's order dated 20th May, 2005. On considering the order read with the scheme it is obvious that the shares would constitute attached assets.

57. This conclusion is easily derived from a reading of clause 3.5 of the order. Clause 3.5 reads as follows :

> *Clause 3.5. Uniform standards :*
>
> *Demutualisation means segregation of membership into ownership right and trading right. The members would become shareholders of the demutualised exchange and may also become trading members. The trading rights of these shareholders who are also trading members should rank pari passu with the trading rights of any other trading member. After Corporatisation and Demutualisation, there will be only one class of trading members with similar rights and privileges. Any additional privileges given to existing members who become trading members would create value to the trading rights of such members. Therefore, uniform standards should be followed in terms of capital adequacy, deposits, fees, etc while admitting any person as a trading member or accepting his surrender. Though all members must have similar rights and privileges, keeping in view the submissions of BSE and for limited purpose of facilitating the smooth transition, the Scheme is modified to allow additional privileges to the existing members with the prior approval of SEBI.*

58. On an analysis of the aforesaid Order of SEBI it is clear that what BSE and SEBI contemplated by demutualisation was the segregation of membership into 'Ownership Right' and 'Trading Right'. A decision on the nature of the shares need not await a decision on revocation of suspension. It is on account of segregation that equity shares came to be issued in relation to the Ownership right. Suspension of membership meant that the trading right would stand suspended. However, by allotting and issuing shares the Stock Exchange recognised ownership right that attached to the membership which stood suspended. It is clarified by clause 3.5 that members who become shareholders of the BSE Limited may also become trading members inasmuch as trading rights of shareholders who are also trading members would rank pari passu with trading rights of any other trading member. The applicant could therefore seek continuation of trading rights if the suspension is revoked.

59. Useful reference may be made to clause 9 of the scheme which provides that a trading member need not be a shareholder and vice versa and in that sense a trading member with trading right need not hold shares. Those who hold shares have an ownership element in the newly formed corporation. Thus, it is evident that the element of ownership always subsisted and although membership was not attachable the ownership right which came along with membership upon its segregation was clearly attached property and/or is deemed to be attached. In my view the expression future right in relation to

shares may not be appropriate inasmuch as the right of ownership always subsisted as part of membership. It was intertwined with membership. However, upon the scheme being formulated the demutualisation contemplated separation of the component of ownership into Ownership rights represented by the shares and a Trading right which now remain suspended. If that were not so there was no question of BSE limited buying back the shares and paying the buyback price. Thus, Ownership right was recognised and honoured by the Stock Exchange by permitting Buy Back. Ownership right has therefore been recognised separately as on date but was always part of the membership that the Custodian sought to attach. On account of there have been no segregation at the relevant time the shares could not have been separately attached. However, the concept of membership being a privilege remains unaffected since a trading right would still be available to a member of Stock Exchange irrespective of whether or not he held shares.

60. In my view therefore analysis of the Scheme read with the order of SEBI clearly indicates that ownership rights were always available, were separable and are deemed to be attached property. In fact vide prayer clause (e)in MA 50 0f 2015 these very applicants have sought a direction that the Custodian be asked to disclose reasons for not seeking allotment of shares and to account for the shares "in the assets of the applicants". In these circumstances I have no hesitation in holding that although the membership was not attachable the

ownership element was prima facie attachable and stood attached. Accordingly, I am unable to hold in favour of the applicant that the shareholding is independent, a future asset which came into existence after notification. This read with the fact that the shareholding was not acquired after notification in the sense of actual purchase would clinch the issue. In the result the applications must fail.

61. I find no reason to grant any relief in the present application. I therefore pass the following order :

(i) Applications are dismissed.

(ii) No order as to costs.

(A. K. MENON, J.)

Rajeshwari R. Pillai

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Date: 2020.12.11 14:56:34 +0530