

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

MISCELLANEOUS APPLICATION (L) NO.36 OF 2019

Surendra Kumar Somani

.. Applicant

Vs.

- 1) The Custodian
- 2) Reliance Petrochemicals Ltd.
- 3) Reliance Industries Ltd.
- 4) Karvy Computershare Private Limited
- 5) Bajrang Lal Bajaj
- 6) Vijay Nangalia
- 7) Nupur Nangalia
- 8) Ashwin S. Mehta
- 9) Mrs. Deepika A. Mehta &
- 10) Calcutta Stock Exchange Ltd.

.. Respondents

Mr. S.K. Somani in person.

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

Mr. Vipul Shukla for respondent nos.2 and 3.

Mr. Ashwin Mehta for respondent no.8 & 9.

**CORAM : A. K. MENON,
JUDGE, SPECIAL COURT
DATED : 27TH NOVEMBER, 2020.
(THROUGH VIDEO CONFERENCE)**

P.C. :

1. This is an application seeking certification of shares of Reliance Petrochemicals Limited ("RPL"). The applicant claims to have

purchased 300 equity shares of the said company from respondent nos.5, 6 and 8. Respondent no.5 is a stock and share dealer and broker carrying on business at Kolkata who is said to have sold 300 shares of RPL to one Vijay Nangalia (Respondent no.6) acting for and on behalf of minor Nupur Nangalia (Respondent no.7). Nupur Nangalia and Vijay are arrayed as respondent no.6 & 7. Respondent nos.8 and 9 are notified parties. Respondent no.10 is the Kolkata Stock Exchange.

2. According to the applicant, the 300 equity shares were comprised in 3 share certificates nos.05107425 to 05107427 and bearing distinctive numbers 232185975 to 232186274. The shares were under folio no.59344018. The purchase price was paid in favour of Nupur Nangalia, minor in a sum of Rs.6120 by cheque drawn on Allahabad Bank, Brabourne Road, Kolkata. The applicant claims to have sent the shares to the aforesaid company for transfer but these were returned since they were said to be tainted shares. The applicant then approached respondent no.5 who caused the shares to be sold to him only to be told that the respondent no.4 viz. the share transfers agents of the company were unable to process the

transfer through the exchange. The applicant therefore seeks certification of the shares for transfer of the shares to his name along with all accruals till date. The applicant has sought condonation of delay in filing the application. As a bonafide and small investor he claims to have been unaware of the procedure required to be followed, the application is filed on 29th June, 2019.

3. The Custodian has filed a certification report dated 3rd February, 2020. He has also filed an additional certification report dated 2nd November, 2020. This became necessary in view of certain objections based by the notified party, Mr. Ashwin Mehta who has filed an affidavit in reply dated 9th March, 2020. The reply is filed by Mr. Ashwin Mehta in his individual capacity. Apart from the opposition by Mr. Ashwin Mehta, no other party has objected to the application. According to him, the Custodian has dealt with attached properties without any authority and has sold shares without orders of this Court. He is however agreeable in principle and supports the present application to the extent it seeks certification of 300 shares but is opposed to payment of any

accruals as contemplated by the Custodian since according to Mr. Mehta the method adopted in determining the accruals is not justifiable. Mr. Mehta has vigorously opposed the application to the extent it seeks accruals on the shares. He has also invoked the bar of limitation. According to Mr. Mehta since he got notified on 8th June, 1992, the application is filed belatedly. There is no evidence to prove the case of the applicant. According to him even assuming the law of limitation is no bar, the applicant has failed to establish that he is entitled to the shares in accordance with the scheme of certification.

4. In view of the opposition, I have proceeded to consider the case of Mr. Mehta since the certification report is otherwise supporting the applicant's case. In his affidavit, Mr. Mehta states that the Custodian's recognition of his having received 30 shares of Reliance Industries against 300 shares of RPL is not justified. He has required the applicant and the Custodian to bring on record evidence in support of delivery of 30 shares of Reliance Industries Ltd. against 300 shares of RPL purchased by the applicant. According to him there can be no presumption that such delivery had been made and the

Custodian and the Company RIL have failed to disclose any evidence forwarding the shares. He therefore puts the Custodian to strict proof of fact that 30 shares of RIL were issued in exchange for the 300 shares of RPL. He relies upon the decision of the Supreme Court in a case of *SBI v/s. NHB [(2013) 16 SCC 538 paragraph 30 and 48]* and *C. Mackertich and Company & Anr. v/s. Custodian in Civil appeal 6493 of 2008*. Mr. Mehta has contended that the Custodian has failed to produce evidence of such shares having been issued. According to him, the Custodian has merely relying on letters received from respondent no.4 Share Transfer Agent without any opportunity of contesting the computation and enabling Mr. Mehta to cross examine the said transfer agents. According to him, the transfer agents do not possess any records of shares of RIL sold by the Custodian after notification and the Custodian seeks to rely upon evidence of a third party who is incapable and incompetent to produce such evidence. Moreso, since the shares of RIL have been dematerialized and there can be no tracing back those shares.

5. In a widely worded sweep Mr. Mehta contends that instead of

following due process and defending the interest of notified persons, the Custodian has in violation of his duties revised the procedure to maximize rewards and payments to people like the applicants at the cost of the notified parties. That a large quantity of shares of RIL had been sold since 1995 and these sales have occasioned without orders of the Court. The Custodian has withheld and suppressed crucial information of shares sold at throw away prices. Yet, the Custodian now seeks to reward the applicant by presuming that shares of RIL belonging to the applicant and received by the Custodian had not been sold. On the basis of such a presumption, Mr.Mehta contends that a huge benefit is being offered to the applicant 28 years after notification. He therefore opposes payment of any accruals beyond the sale value of the shares. According to Mr. Mehta, the Custodian is seeking to cause damage notified parties like him. In the course of his opposition, he has relied upon the decision of the Supreme Court in *Civil Appeal No.4236 of 2006 in the case of Vinod Baid and Co. v/s. Custodian*. The Supreme Court in that case had permitted only payment of sale value of the shares and in the present case he submits that the same principle should be applied. Mr. Mehta

relies upon statements made by the Custodian on oath to the effect that he always deals with attached property under orders of the Court and not by himself. In the present case, however, it is the case of Mr. Mehta as canvassed before me that shares have been sold at throw away prices and the 300 shares of RPL upon merger with RIL would result in 30 shares. The sale value of the shares sold according to Mr. Mehta, during March 1995 was about 279 per share and that would entitle the applicant to payment of Rs.8370/- for the 30 shares of Reliance but instead of doing so, the Custodian is seeking to deliver 240 shares of RIL, 60 shares of Reliance Communications Ltd., 3 shares of Reliance Capital Limited, 4 shares of Reliance Infrastructure Ltd., 15 shares of Reliance Power Ltd. and 3 shares of Reliance Home Finance Limited in lieu of the 300 shares. According to him, the market value of the 240 shares of RIL alone is in excess of Rs.3,00,000/- and therefore, the applicant cannot be rewarded in this fashion.

6. Mr. Somani, the applicant is also present on this Video Conference. He has supported his application and opposed the contentions of Mr. Mehta. He submits that all the pre-

requisites have been complied with and documents submitted in that view of the matter, he states that the application may be allowed. The Custodian represented by Mr. Raikar has also supported the application. He has taken me through in detail to the said certification report and the additional report which was required to be filed in view of the objections raised. It is a matter of record that the procedure for certification was set out in the Special Court's order dated 5th April, 1995 in Misc. Application no.133 of 1995 whereby applications were required to be filed seeking certification of shares by the Court. In the present case, such an application was filed initially in the year 2003 but that application was not registered or listed on board for non-compliance with certain requirements. It thereafter seems that the office of the Custodian has informed the applicant that the requisite documents may be furnished along with an application to be made in this Court.

7. The report has referred to the initial application made by the applicant which is to be found is part of the Exhibit "C" Colly. It transpires that an application for release of the shares was made on 11th August, 2003. That was addressed to the office of the Custodian along with a covering letter dated 13th August,

2013 addressed by the applicants Advocate to the officer on Special Duty. The records indicates that on 7th August, 2002 the applicant had addressed a letter to the Special Court contending that he had received a letter dated 31st July, 2002 regarding the shares that he had sought release of. This process was initiated by the office of the Custodian vide its letter dated 10th May, 2002 addressed to the applicant brought to his attention that the Custodian had come to learn of the fact that the applicant had lodged certain shares for transfer during 1992-93 and that these shares were found to be standing in the name of notified parties. Particulars of the 30 shares were provided in that letter and the applicant was called upon to surrender the shares to the Custodian's office along with all benefits accrued till date, if any.

8. The applicant acknowledged receipt of the letter dated 10th May and informed the Custodian that 300 shares of RPL had been purchased which were later merged with Reliance Industries Ltd. and which resulted in issuance of 30 shares of RIL. The 300 shares of RPL were purchased from Ashwin Shantilal Mehta jointly with Deepika Ashwin Mehta, that the shares were returned by the company's transfer agents on the

ground that they were subject matter of attachment. When he contacted the Kolkata Stock Exchange, he was told that the time for applying for transfer had expired and therefore he had kept the shares with him. After receiving the letter dated 10th May, 2002 the applicant has surrendered the share certificate of the Custodian, 3 share certificates were enclosed along with his letter. Thereafter that vide letter dated 7th October, 2002 the Custodian provided copies of bills of purchase, proof of payment and also informed the Special Court that the shares had not been purchased directly from the broker and therefore there was no delivery note. The office of the Special Court thereafter informed the applicant that he is required to file a Misc. Application in compliance with the procedure for certification. This was done vide letter dated 22nd October, 2002. Therefore it is seen that the application dated 11th August, 2003 has its genesis in the letter dated 10th May, 2002. The applicant has already made his submissions on the aspect of delay at the material time inasmuch as the shares had been lying with him having been told Stock Exchange that the transfer could not be carried out at that since the time had expired. The applicant also seems to have

written to the Custodian on 30th March, 2004 reminding him of the request for release of the shares. It appears that the application dated 13th August, 2003 was not pursued inasmuch as there appears to have been shortfall in compliance. The applicant thereafter had not pursued the matter till a fresh application was filed along with his Advocate letter dated 27th May, 2019 which is now numbered as Misc. Application (Lodging) No.36 of 2019. The applicant has filed numerous documents such as copies of the share certificate, transfer deeds, bill, proof of payment, receipt of payment, and other documentation which indicates a summary of payments / settlements during 1992. All of these documents were relied upon in an attempt to establish that the applicant was a bonafide purchaser in respect of the 300 shares and that the shares may be released. It is pursuant to this more detailed application along with annexures that the Custodian has scrutinized the application and filed his report.

9. This application as filed lacked certain material particulars and in August 2019 the applicant sought further time to comply with office objections. This having been done. The Custodian has filed a certification report dated 4th February, 2020. The

Custodian has set out the fact that original share certificates have already been submitted in June 2002, photocopies had been once again submitted. The applicant had also submitted the contract note, photocopies of bill issued by Bajrang Lal Bajaj and the bill issued by Nupur Nangalia who was the sub-broker acting through her father Vijay Nangalia. Proof of payment has also been submitted to the Custodian so also the proof of delivery of the shares to the Stock Exchange by the broker Bajranglal Bajaj had been submitted. Proof of price not being lower than the lowest rolling price on the date of price had also been submitted. In this respect, the Custodian has observed on scrutiny that the applicant had purchased the shares from Nupur Nangalia and had paid vide cheque drawn on Allahabad Bank dated 22nd February, 1992 prior to the appointed date of the notification. This is the first factor in favour of the applicant. The Custodian goes on to say that the 300 shares resulted in 30 shares of RIL which later issued bonus shares in the ratio 1:1 in 1997, 2009 and 2017, as a result, the 30 base shares of RIL became 240 shares in 2017.

10. The Custodian's report records that as against the 30 original

base shares issued in lieu of 300 shares of RPL, the bonus shares issued in 1997 on 1:1 basis resulted in a total holding of 60 shares in Reliance Industries. Thereafter in January, 2006 it transpires that in addition to the 60 shares of RIL. The company issued shares in 4 resultant companies in the declared ratio 1:1. These companies are Reliance Capital Ventures Ltd., Reliance Energy Ventures Ltd., Reliance Natural Resources Ltd. and Reliance Communications Ltd. These underwent further conversions and mergers as set out in the report and finally as of 2018-19 the 30 base shares of RIL have resulted in the following shares:

Description	No. of Shares Dematerialized
Shares of M/s. Reliance Industries Limited	30
Bonus shares issued in 1997	30
Bonus shares issued in 2009	60
Bonus shares issued in 2017	120
Total shares of M/s. Reliance Industries Limited	240
Shares of Resultant Companies	
Reliance Communications Limited	60
Reliance Capital Limited	03
Reliance Infrastructure Limited	04
Reliance Power Limited	15
Reliance Home Finance Limited	03
Total shares in Resultant Companies	85

Dividend Amount (1993-94 to 2018-19)	Rs.17,474/-
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11. Thus, it is submitted by the Custodian that in addition to the base shares further bonus shares issued in 1997, 2009 and 2017 each on the ratio 1:1 results in a total of 240 shares of RIL and 85 shares of the resultant companies as set out in the table above, dividend amount paid between 1993-94 to 2018-19 amounts to Rs.17,474/-. This data is collected by the Custodian from the registrar and share transfer agents. Copy of a communication dated 6th November, 2019 is relied upon. Reference to that communication reveals that specific mention is to be found to the Folio number in respect of 300 shares of RPL. The name of the notified parties are also mentioned so are the distinctive number and certificate numbers. All of these match with the original share certificates submitted by the applicant to the office of the Custodian in 2002 itself. The share transfer agents have given the history of the transformation of 300 shares into the 240 shares of RIL and 85 shares of the resultant companies.
12. The computation of accruals has also been provided by the said registrars. It is arrived at by a simple method of extracting the

monetary value of dividend that is attributable to 30 shares upto 1997, 60 shares thereafter from 1997 to 2008-09 subsequent to the bonus issue, the shares double to 120 shares and dividend has been computed on these 120 shares upto 2016-17. Thereafter bonus shares from 2017-18 and 2018-19. The further bonus shares issued at the ratio of 1:1 resulted in 240 shares. Percentage of dividend declared in each of these years from 1993- 94 to 2018-19 have also been provided. It is on this basis that the value of admissible amount of dividend of tax has been computed, the total of which is arrived at and included in the certification report. Thus, the total dividend payable is Rs.17,474/-. For ease of reference, the computation of dividend is set out. Paragraph 5 of the letter dated 6th November, 2019 from the registrars and forming part of Exhibit "E" of the certification report. The total number of shares to be certified in accordance with the scheme of demerger as a result of the 300 initial shares held in RPL is also provided in paragraph 7. The tabulated particulars in respect of these two paragraphs are reproduced below for ease of reference;

"5. The dividend for the year 1991-92 and 1992-93 in respect of 30 shares of Reliance Industries Ltd. allotted in lieu

of the subject 300 shares in Reliance Petrochemicals Ltd. had been credited / deposited with the Office of the Registrar of Companies at Mumbai.

The dividends in respect of the referred 30 shares in Reliance Industries Ltd. and bonus shares thereon declared during the years 1997, 2009 and 2017, for the years 1993-94 to 2018-19 had been deposited with the Office of Custodian / respective bank for crediting to concerned attached account, as per the details given below.

Year	% of Dividend	Warrant / DD Number	Total Amount (Rs.)	Admissible Shares	Admissible Amount after tax (Rs.)
1993-94	51%	061574	1,70,327.70	30	122.00
1994-95	55%	0599199	20,334,177.00	30	132.00
1995-96	60%	0005010	20,21,360.00	30	135.00
1996-97	65%	0136846	28,72,343.50	30	195.00
1997-98	35%	0136858	30,00,158.00	60	210.00
1998-99	37.5%	2550387	30,69,405.00	60	225.00
1999-00	40%	0300019	15,61,556.00	60	240.00
2000-01	42.5%	1662051	31,97,436.50	60	255.00
2001-02	47.5%	1259253	28,41,434.00	60	255.00
2002-03	50%	2434945	29,77,730.00	60	300.00
2003-04	52.5%	1872937	29,29,899.00	60	315.00
2004-05	75%	1679053	40,66,920.00	60	450.00
2005-06	100%	1453285	52,62,260.00	60	600.00
2006-07	110%	1309634	57,03,456.00	60	660.00
2007-08	130%	1254739	67,12,498.00	60	780.00
2008-09	130%	1222494	66,29,168.00	60	780.00
2009-10	70%	1361621	70,93,464.00	120	840.00
2010-11	80%	1293826	78,95,136.00	120	960.00
2011-12	85%	1343026	83,63,083.00	120	1020.00
2012-13	90%	1291798	88,43,868.00	120	1080.00
2013-14	95%	1287122	92,84,844.00	120	1140.00
2014-15*	100%	5807779	8,49,540.00	120	1200.00
2015-16*	105%	5760923	9,44,727.00	120	1260.00
2016-17*	110%	5675981	12,50,480.00	120	1320.00

2017-18*	60%	5670242	13,64,160.00	240	1440.00
2018-19*	65%	5681436	14,77,840.00	240	1560.00

**Dividend paid on shares held in electronic form, under the above referred demat account."*

"7. We are giving below the working of the total shares in Reliance Industries Ltd. (RIL) and in the resultant Companies as per the scheme of the de-merger, accrued in respect of the subject 300 shares in Reliance Petrochemicals Ltd. (RPCL).

Sr. No.	Description		No. of Shares
1	Reliance Industries Ltd. (break-up as under)		240
	i) Shares allotted upon merger of RPCL with RIL	30	
	ii) Bonus shares of 1997	30	
	iii) Bonus shares of 2009	60	
	iv) Bonus shares of 2017	120	
2	Reliance Communications Ltd.		60
3	Reliance Capital Ltd.		03
4	Reliance Infrastructure Ltd.		04
5	Reliance Power Ltd.		15
6	Reliance Home Finance Ltd.		03

13. The fact that these shares were available in physical form is not in dispute. Mr Mehta's contention that only the value of the shares then accruing to the applicant should be paid over has no substance inasmuch as the shares were sent for dematerialization only in March 2015. The purchase of the shares is admittedly prior to the appointed date and what is material to note is that the notified parties have not questioned

all other factual aspects of the computation except that the benefit of the enhanced number of shares ought not to be derived by the applicant. This in substance is the objection on behalf of one of the notified parties.

14. I may mention here that it is only one of the joint holders who have opposed an application. The affidavit filed is of Mr. Ashwin Mehta for self and not jointly on behalf of shareholders. It is pertinent to note that the affidavit itself in paragraph 3 states that "in principle" he is agreeable with the certification of the shares of RPL. If that be so, the question is whether the accruals on the 300 shares of which certification had sought can in any manner be denied to the applicant. In my view the answer is an emphatic no. The notified parties cannot seek to claim the benefit of any accruals in respect of the shares which had been sold by the notified party well before the appointed date. In this case the shares were purchased sometime in February 1992 as evident from the documentation annexed. The purchase price was also seen to have been paid on or about 22nd /27th February, 1992. Incidentally the shares were purchased from Mr. Ashwin

Shantilal Mehta and Deepika Ashwin Mehta. The purchaser transferee is the applicant as seen from share transfer form which is dated 22nd February, 1992. The transfer is also through the delivery broker which is M/s. Ashwin Mehta.

15. After having considered the affidavit in reply of Mr. Ashwin Mehta, an additional certification report has been filed by the Custodian. The applicant is also vide letter dated 24th October, submitted that Exhibit "F" to the certification report is a transaction statement wherein it is clearly recorded that shares in the name of Custodian account Ashwin Shantilal Mehta/Deepika Ashwin Mehta were dematerialized on 5th March, 2015 and that the shares were thus clearly identified since the 240 shares would clearly be forming part of the 7040 shares referred to therein in the transaction statement. The share registrars have also confirmed that 30 shares of RIL were issued in lieu of the 300 shares of RPL and that shares were dematerialized only on 5th March, 2015. The transaction statement at Exhibit "F" to the certification report records the various transactions in relation to shares of RIL. The name of the beneficiary account is shown as Custodian A/c Ashwin

Shantilal Mehta / Deepika Ashwin Mehta. This fact must be read with the contents of the additional certification report filed by the Custodian. This report was filed in view of the Custodian's Advocates having received a letter dated 23rd October, 2020 from Mr. Ashwin Mehta recording the fact that several shares of RIL had been dematerialized between 6th March, 2001 and 21st September, 2017. The Custodian has after considering the contents of the letter stated in the additional report that 3 certificates of 100 shares each which have been surrendered by the applicant in the office of the Custodian on 28th June, 2002. An acknowledged copy of the forwarding letter is annexed at Exhibit B to the report, so are photocopies of the 3 share certificates showing the folio number, distinctive numbers and certificate numbers. Each of these are for 100 shares.

16. When one examines the correspondence of the material time, it is seen that vide a letter of 31st July, 2002, the office of the Custodian acknowledged receipt of letter dated 28th June, 2002 along with 3 share certificates of RPL which match the folio number, certificate numbers and distinctive numbers covering

the 300 shares. It is these very certificates that have subsequently been sent for dematerialization as set out in the letter of the registrars addressed to the Custodian at Exhibit "D" Colly., to the additional certification report. 30 shares in question are clearly identified in the tabulated statement at Annexure 1 to the letter issued by the share registrars. The Custodian has reported that he has forwarded 71700 shares of RPL to the share registrars along with letter dated 4th December, 2014. These included 17600 shares under Folio no.59344081 in the name of Ashwin Mehta and Deepika Ashwin Mehta, the notified parties. The 300 shares forming subject matter of the application were part of the 17600 shares under that folio. They have relied upon the relevant page of the annexure that accompanied the shares from which it is evident that the 300 shares are clearly shown against the 3 certificate numbers, folio number as well as the distinctive numbers. The name of the registered holder is also seen to be Ashwin Mehta and Deepika Ashwin Mehta. In this view of the matter, and in the clear unequivocal statements in the Certification report duly supported by the documentation on record it is clear that the 30 base shares and all accrual thereof

arose from physical share certificates which had already been tendered to the Custodian as early as June 2002. For all the aforesaid reason, I find no difficulty in allowing the present application. The contentions of the notified party that only the value of the original shares can be paid over has no merit. The base shares admittedly belong to the applicants a fact that is not disputed by the notified parties. Accruals therefore cannot belong to anyone but the applicant.

17. In that view of the matter, I pass the following order;

- (i) Application is allowed in terms of prayer clauses (a) and (b).
- (ii) Misc.Application is disposed in the above terms.
- (iii) This order shall be digitally signed by the Personal Assistant of this Court.

(A. K. MENON, J.)