

IN THE SPECIAL COURT

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

MISCELLANEOUS APPLICATION (L) NO. 49 OF 2019

Bimla Devi Agarwal  
Bimla Apartment, 4<sup>th</sup> Floor  
FC-50 Narayantaka (West)  
Baguihati, North, Parganas  
Kolkata-700 059

... Applicant

vs.

- 1 The Custodian  
10<sup>th</sup> Floor, Nariman Bhavan  
227, Vinay K. Shah Marg  
Nariman Point, Mumbai-400 021
- 2 Tata Global Beverage Limited  
Tata Consumer Products Limited 1  
Bishop Lefroy Road  
Kolkata – 700 020
- 3 Legal Heirs of Late Harshad S. Mehta  
Smt Jyoti H. Mehta  
Residing at 32, Madhuli,  
Dr. Annie Besant Road  
Worli, Mumbai-400 018
- 4 Shankar Lal Chokhany  
5, Clive Row, Room No. 3  
Kolkata
- 5 Late Radhe Shyam Agarwal  
Bimla Apartment, 4<sup>th</sup> Floor  
FC-50 Narayantaka (West)  
Baguihati, North, Parganas  
Kolkata-700 059

6 Calcutta Stock Exchange  
6, Iyonse Range  
Kolkata-700 001

... Respondents

Mr. Muttahar Khan i/b. Mr. Sukrut Mhatre, Mr. Jitendra Sarda and Mr. Sanjay Jadhav for the Applicant.

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

Mr. Ashwin Mehta for the Notified party.

CORAM : A.K. MENON, J.  
Judge, Special Court  
Date : 3<sup>rd</sup> DECEMBER, 2021

**P.C. :**

1. This is an application seeking certification of shares filed by the applicant, an individual, resident of Kolkata. As originally filed, respondent no. 1 is the Custodian, Respondent no. 2 is Tata Global Beverages Ltd., Respondent no. 3 is a Share broker, Respondent no. 4 was intended to be legal heirs of late Harshad S. Mehta. The application was filed in person on or about 20<sup>th</sup> September, 2019 but was found to be containing blanks in several paragraphs. It was not correctly affirmed but merely signed by the applicant, an individual. The applicant was permitted to file a Supplementary Application after an Advocate practicing in this Court has entered appearance. The application duly completed was then lodged on 29<sup>th</sup> April, 2021. Although it is described as a Supplementary Application the array of parties has undergone a minor change inasmuch as the company whose

shares the applicant claims is now respondent no. 2, Jyoti Mehta legal heir of Harshad S Mehta is respondent no. 3 and the broker respondent no. 4. The applicant has impleaded her late husband as respondent no. 5 and the Calcutta Stock Exchange is respondent no. 6.

2. It is case of the applicant that as on date she is entitled to 15,750 shares of respondent no. 2 -Company. According to her on or about 26<sup>th</sup> August, 1986 her late husband Radhe Shyam Agarwal purchased 500 shares of Tata Tea now known as Tata Global Beverages Ltd ("the Company")- respondent no. 2 from the respondent no. 4 – a broker for consideration of Rs.26,515/-. She has relied upon photocopies of original share certificates, contract notes, bill / receipt issued by the broker and proof of payment. On 27<sup>th</sup> January, 1989 she claims to have received 200 bonus shares of the company. Bonus shares were issued by the company in the ratio of 5:2 and accordingly the applicants shareholding increased to 700 shares. She has relied upon the bonus share certificates copies of which are annexed.

3. Her late husband passed away of 15<sup>th</sup> November, 1996 and on 8<sup>th</sup> April, 2004 she claims to have addressed a letter to the company requesting transmission of the shares held in the name of her husband to her name. On 23<sup>rd</sup> August, 2004 and 24<sup>th</sup> August, 2004 the company and the Registrar and Transfer Agents of the company TSR Darashaw Ltd. (hereinafter referred to as "Registrar") informed the respondent that the shares in question

formed part of 1,22,881 shares which a Harshad Mehta entity had apparently purchased before 8<sup>th</sup> June, 1992 and accordingly the company informed the applicant that she should approach the office of the Custodian.

4. It seems thereafter nothing was done by the applicant till 22<sup>nd</sup> November, 2010 when the applicant addressed a letter to the Registrar requesting issuance of duplicate shares in the name of the applicant. In this letter the applicants Advocate contended that the applicant was owner of 700 equity shares of Tata Tea Ltd. she was entitled to get bonus shares on the shares held by her but has not received any letters from the Office of the Custodian. Therefore they sought issuance of duplicate shares. By letter dated 24<sup>th</sup> December, 2010 (Exhibit I) the Registrar replied informing the applicant that the matter has been referred to the Custodian and it has been clarified that 700 shares form part of the 1,22,881 shares. This correspondence is on record. Thereafter once again there has been no communication or action from the side of the applicant till 17<sup>th</sup> September, 2018 when she addressed a letter to Registrar. She claimed personal difficulties and she sought issuance of dividend in her favour. She relied upon copy of the purchase bill and copy of death certificate of her deceased husband.

5. On 12<sup>th</sup> December, 2018 the Registrar is seen to have addressed a letter to the applicant once again advising her to approach the office of the

Custodian. The Registrar provided details of the bonus shares and split shares from the year 1986 to 2018 which were all held under the folio of her late husband Radhe Shyam Agarwal. Details revealed that under folio no. TFR 0006641 and under Share Certificate no. 2527, a total of 15,750 shares were now available. Copy of this letter is at Exhibit K to the present application.

6. Thereafter on 11<sup>th</sup> March, 2019 the Advocate for the applicant addressed a letter to the Custodian claiming that she is a lawful and bonafide holder of 15,750 shares. Processing of the shares and issuance of duplicate shares in favour of the client and requesting information on compliance of further formalities. On 28<sup>th</sup> May, 2019 the Office of the Custodian informed the applicant that she was required to submit several documents and also file an application before the Special Court. A specimen of the certification application was also said to be available on the website of the court. Once again vide letter of 14<sup>th</sup> March, 2020 the applicant wrote to the Custodian annexing therewith copies of certain documents such as the contract note, brokers bill, proof of payment and brokers receipt while contending that the original share certificates were lying with the company. It is in this background that the applicant has approached this court seeking certification and claiming to be sole owner.

7. As is customary, the Custodian has filed a certification report dated 15<sup>th</sup> October, 2020. In paragraph 9 of the report the Custodian has observed

that the applicant has submitted photocopies of the 500 shares and 200 bonus shares of the company. She informed the Custodian that the original share certificates are retained by the Registrar. The original memo of confirmation of shares dated 14<sup>th</sup> August, 1986 evidencing the purchase of 500 shares has also been submitted. She has also submitted a bill of 26<sup>th</sup> August, 1986 evidencing purchase of 500 shares of the company. As and by way of proof of payment an acknowledgment of payments being made as of 3<sup>rd</sup> September, 1986 has also been submitted.

8. The Custodian has on scrutiny observed that the applicant had not submitted proof of delivery in the Stock Exchange and price not being lower than the lowest ruling price as on date of purchase in the relevant stock exchange. The Custodian has thereafter filed a second certification report, since the first report was filed during the peak of the pandemic and via email. The Additional Certification report is dated 31<sup>st</sup> October, 2020. This was also filed by email but has subsequently been replaced with a hard copy duly signed on behalf of the Custodian. The records indicates that there after a further Additional Certification report was filed on 30<sup>th</sup> June, 2021 pursuant to order passed in this Court on 18<sup>th</sup> June, 2021. This is in the light of objections raised by the notified party who had by then filed an affidavit in reply of Jyoti H Metha on 3<sup>rd</sup> August, 2021. In her reply the notified party had contended that the application lacks any material particulars, the identity of the shares was not known and the application continued to be on the

lodging number for want of removal of office objections. This affidavit in reply is dated 23<sup>rd</sup> November, 2020 and was to be treated as preliminary affidavit.

9. In the second certification report of 30<sup>th</sup> June, 2021, the Custodian has stated that pursuant to an order passed on 29<sup>th</sup> November, 2020 the Registrar had filed copies of the share certificates via email and the Custodian had verified the scanned copies of the share certificates and it was found that 15 share certificates and transfer deeds for 650 shares showed they had been transferred to Radhe Shyam Agarwal on 19<sup>th</sup> December, 1986. The Registrar also stated that they were not in possession of the three share certificates of the remaining 50 shares. A list showing 1575 shares was appended as Annexure A to the communication. These 1575 shares were thereafter canceled and 15,750 shares of Re.1/- each were issued. These bear distinctive nos. 3954051 to 3969800 all in the name of Radhe Shyam Agarwal under one Share certificate no. 00002527. This came to be issued in July 2010. Thus a consolidated share certificate is now said to be in the possession of the Registrar.

10. Registrar, it appears retained the certificate and did not transfer the shares to the name of the applicant at the material time. The Custodian has in paragraph 5 of his report confirmed that of the pending documents proof of delivery to the Stock Exchange was not applicable since the shares were

evidently purchased from a broker, a fact that is not disputed and proof of price being not lower than the lowest ruling price on date of purchase is also submitted for verification. In this view of the matter it appears that the application was a bonafide application but a more detailed scrutiny has been undertaken because the notified party has raised objections.

11. Of the various annexures to the certification report, Mr. Raikar learned counsel for the Custodian has invited my attention to a tabulated statement at page 236 of the second certification report in which the particulars of 13 share certificates have been provided with names of the transferees, certificate numbers and distinctive numbers. Apparently this information was provided by the Registrar to the Custodian. It inter alia records that 50 shares were not available with the Registrar and this had been returned to the lodger. Of these 700 shares said to be lost 600 shares had been retained with the Registrar. A break up of the 15750 shares has also been provided. Computation of 15,750 shares is explained in a tabulated form inasmuch as in 1992 the bonus issued in the ratio of 2:1 resulted in 350 shares being issued. According to the report in 1994 a further bonus issue of 2:1 resulted in an additional 525 shares being issued. The total shareholding thus was 1575 shares of Rs.10/- each. This came to be sub divided into shares of Re.1/- each resulting in 15,750 shares .



12. As of 2010 the company is seen to have issued a Sub division Advice dated 3<sup>rd</sup> July, 2010 which bears reference No. TFR0006641 which is addressed to Radhe Shyam Agarwal informing him that as a result of sub division of shares of Rs. 10/-, 1575 shares held as on record date of 2<sup>nd</sup> July, 2010 had been sub-divided to 15750 shares. Thus these continued to be retained by the Registrar. A copy of this memo is seen at page 297 of the second certification report dated 30<sup>th</sup> June, 2021.

13. For the sake of completeness the Custodian has also annexed copy of M.P. 88 of 2000 filed by the Custodian against HSM inter alia in the matter of the benami shares which were transferred to various parties. The list of missing shares formed part of this Miscellaneous petition included 1,22,881 shares of Tata Tea Limited, save and except for these 30 number of shares M.P.88 of 2000 made reference to various other shares which were said to be missing. But most of these references are not relevant to the facts of the present case. What is material is that vide an order dated 5<sup>th</sup> May, 2001 the Special Court recorded that it had vide order dated 28<sup>th</sup> April, 2001 indicated that the Custodian had informed 90 companies not to effect transfers in view of the complaint filed by the Harshad Mehta group. That 27 lakh shares had allegedly been stolen. The Court proposed to pass an order with regard to directions given to the Custodian to the companies and this became necessary because large number of small investors had purchased shares and it would be necessary to have two distinct categories of transfer. Firstly there were

cases of successive transfers after 8<sup>th</sup> June, 1992 and secondly there are cases where there are no transfer in the books of the companies since 8<sup>th</sup> June, 1992 and the shares continued to stand in the names as on of 8<sup>th</sup> June, 1992. The Custodian was directed to inform the companies that they were free to dematerialise 27 lakh shares whose particulars were given in Exhibit G to the petition except those shares which have not been transferred in the books of the company till today since 8<sup>th</sup> June, 1992. The order recorded that in case of successive transfer after 8<sup>th</sup> June, 1992 the stop transfer direction of the Custodian to the companies was vacated. In all other cases where the company had not transferred the shares, the purchasers were required to approach the Special Court for certification and the cases were to be examined individually on the basis of the bonafides of the transaction and the proof of payment. Copy of this order was directed to be provided to all 90 companies.

14. Mr. Raikar therefore submitted that the present set of shares are good for certification since the applicant had provided the necessary materials to enable the Custodian to form an opinion on the veracity of the transfer and having found that the purchase was bonafide and that Radhe Shyam Agarwal was entitled to these shares. it was contended by the Custodian that there is no occasion to now decline to certify these shares.

15. In the light of this it becomes necessary to examine the opposition on behalf of the notified party. Jyoti H Mehta has after filing the affidavit dated 1<sup>st</sup> December, 2020 is seen to have filed a further affidavit dated 3<sup>rd</sup> August, 2021. In this affidavit the deponent has contended that the application is not maintainable since it is barred by the law of limitation. Radhe Shyam Agarwal having lodged a claim in 1993 in the City Civil Court at Calcutta and also before the District Consumer Redressal Forum and not having taken any steps for more than 25 years. Even otherwise the application suffers from serious defects. According to the deponent the applicant had not established her right to represent the legal interest of Radhe Shyam Agarwal. The applicant did not produce a Will nor Succession Certificate to prove that she is the sole legal heir of her husband and had no locus to represent Radhe Shyam Agarwal. It is to cover up these shortcomings that an application for certification has been filed.

16. According to Mr Mehta who represents the notified party the applicant seeks certification without following the proper procedure, since the procedure for certification is only applicable to a bonafide purchasers of shares for value without notice and which have been sold by notified entities and which bear the stamp of the brokerage firm of the notified entities. That the base shares have been purchased by the applicant in 1986 and it was already got registered in the name of Radhe Shyam Agarwal in 1986 and

hence it did not qualify for the process of certification devised in the year 1992. The application is vague and belated.

17. Reference is made to correspondence as between the Custodian and the Registrar and the Advocate for the applicant to which I have already made reference. According to Mr. Mehta the evidence provided by the Registrar reveals that the applicant had vide letter of 8<sup>th</sup> April, 2004 sought transmission of the shares which was denied by the Registrar. That the sub transfer issued by the Custodian on the basis of the order passed on 5<sup>th</sup> May, 2001 in M.P. 88 of 2000 continues to operate and there is no challenge to that order. According to Mr. Mehta of the total shares of which the applicant seeks transfer Radhe Shyam Agarwal had sold 650 shares in 1991-92 itself. He seeks to rely upon transfer deeds in respect of 350 shares. It is contended by Mr. Mehta that from the scrutiny of the transfer deeds made available by the Registrar it is revealed that Radhe Shyam Agarwal had sold 650 shares from the 700 shares of Tata Tea Limited in 1991-92. The transfer deeds in respect of the 350 shares bears the date of 1991-92 and the copies reveal that 50 shares were lodged by Unit Trust of India on 20<sup>th</sup> February, 1992. That Unit Trust of India had paid transfer stamps on or about 6<sup>th</sup> June, 1992. Thus these 300 shares of the company were lodged for transfer by one Haresh Avlani also with share transfer forms of 1991-92 and the stamp appearing there on is of 10<sup>th</sup> June, 1992. That Haresh Avlani has already been declared as benami shareholder of Harshad S Mehta and in M.A. 194 of 1993 the

name of Haresh Avalani had been disclosed as benami shareholder of Harshad S. Mehta.

18. Once again in the Income Tax department's M.A. 424 of 1994, the name of Haresh Avlani is shown as benami shareholder. Mr. Mehta therefore submits that the objections raised by the Registrar in respect of transfer of shares is because of signature of Radhe Shyam Agarwal being different and if he had affixed his proper signatures the 650 shares which were lodged for transfer would have got transferred and from this it becomes obvious that Radhe Shyam Agarwal after selling the shares did not affix proper signatures on the transfer form and has since taken advantage of this position by claiming these shares. What this contention overlooks is the fact that Radhe Shyam Agarwal has never claimed these shares. He has died in the year 1996 and it is his widow who has since realised that the shares were lying without being transferred and apparently attached.

19. Mr. Mehta contended that evidence that has emerged reveals that as a result of non registration of the shares of HSM, Radhe Shyam Agarwal continued to receive benefits of the dividends even on the bonus shares of 1992 issued by Tata Tea Ltd. and has taken advantage of the situation in 1993 and sought to claim the shares back and it is for this purpose that he seems to have imitated proceedings before the City Civil Court in Calcutta bearing Title Suit no. 705 of 1993. In the same year the Agarwal approached the

District Consumer Redressal Forum and filed Case no 2652 of 1993. Facts have emerged from documents of 1997 disclosed by Registrar and which has been provided along with their email on 17<sup>th</sup> June, 2021 and the material facts that have now come to light reveal that these aspects have been suppressed by the applicant in both the main and the supplementary application and hence the application should not be allowed. Liberty granted by this Court has been abused by the applicant by not coming clean and despite opportunity given. It is contended that the Miscellaneous application has been lodged after 15 years after the receipt of the first letter from the Registrar and 9 years after the applicants Advocate received the letter from Registrar. The application is thus said to be time barred.

20. The Custodian it is stated has a duty to defend the orders passed in M.P. 88 in 2000 and opposed the contention that the Custodian is bound to question the bonafides of the applicant. Mr. Mehta summarised his opposition on the basis that Radhe Shyam Agarwal claims to have received 200 bonus shares as a result of which his share holding increased to 700 shares but no facts have been pleaded by the applicant to establish the fact of custody of these 700 shares. After demise of the applicants husband in 1996 it was only in 2004 that she raised the issue of the shares and sought transmission of the shares. Copy of the letter dated 8<sup>th</sup> April, 2004 said to be addressed to the Registrar has not been disclosed nor has the applicant disclosed the fact of physical custody of the shares which were not in the

possession of the applicant while seeking transmission and the fact that the applicant does not have custody of the 700 shares would justify an adverse inference being drawn against the applicant. Radhe Shyam Agarwal had allegedly sold the 700 and odd shares and received consideration therefor.

21. It is further contended that the bonus issues also would fall to the share of the purchasers of the shares and could not have been claimed by Mr. Agarwal. Mr. Mehta then contended from the evidence disclosed by the Registrar it is evident that the 50 shares out of 700 shares were lodged for transfer by Unit Trust of India. These are tendered in the market by broker Hazarimal Sohanlal & Sons but the transfer was rejected on the ground that the signature differed. 300 shares were lodged by one Haresh Shantilal Avlani alleged benami holder for late Harshad S. Mehta and copy of a single transfer deed has been enclosed in support of his contention that the transfer did not go through since the signatures differed.

22. Furthermore 250 shares were lodged for transfer in the year 1997 by an entity known as 20/20 Fund which transfer was once again rejected on the ground that 'signature differs'. The balance 50 shares were lodged by one Kanwarlal Chachra. These attempted transfers have all been rejected. In view of these rejections it is contended by Mr. Mehta that these shares were sought to be transferred but deliberately improper signatures were affixed and in the meanwhile the notified party Harshad S Mehta had already made a

claim of 1,22,881 shares of Tata Tea Limited which were purchased by him. That physical custody was lost and an attempt at matching the particulars of the shares such as quantity and distinctive number and certificate number has revealed that these shares belong to the notified parties. That the Custodian is bound to recover these shares and furthermore it is to be noted that 300 shares were also claimed by Hareesh Avlani. Remaining 300 were not claimed by any party. None had approached the company to pursue the transfer of the shares and accordingly the Custodian it is submitted must be directed to recover these shares. Interestingly the deponent states that she is contesting the application only to the extent of 600 base shares of Tata Tea Limited which are now equivalent to 13,500 shares. According to him the applicant has failed to establish any locus or entitlement and is not entitled to any relief.

23. Faced with the affidavit in reply the applicant has filed an affidavit in rejoinder which reiterates the case of the applicant and it categorizes the reply as misleading and untenable. That the shares forming subject matter of the application have stood in the name of the deceased husband of the applicant prior to the date of notification. The shares were purchased through his broker Shankarlal Chokhany in August, 1986. The allegation that the applicant had no right over the shares is misconceived and that the shares of which certification is sought would have to be considered in the light of the orders passed by the Special Court in M.P. 88 of 2000 and in particular



the orders dated 20<sup>th</sup> April, 2001 and 5<sup>th</sup> May, 2001 to which I have made reference.

24. As far as the opposition on the ground of limitation is concerned, the deponent has stated that the demise of her husband and the resultant attempts to get control of her husband affairs with her deteriorating health and despite responsibility to look after the family is sufficient justification for the delay in approaching the Court. The shares were undoubtedly held in the name of the husband and hence she cannot be deprived of the benefits of the shares. She has denied any suppression of fact and reiterated that she had sought transmission of the shares vide letter dated 8<sup>th</sup> April, 2004. It is at that stage that the Registrar informed the applicant of the fact that the shares would form part of the 1,22,881 shares said to have been purchased by Harshad S Mehta group. Thereafter the applicant has approached the office of the Custodian and provided details which include the particulars of the original share certificate, contract note and bill issued by the broker. As a result it was found that the case of the applicant called for certification in accordance with the procedure devised by the Court and she contends that she has established her bonafides as true owner being widow of Radhe Shyam Agarwal.

25. Allegations in the reply have been dealt with specifically and the contentions that the shares were sold by Radhe Shyam Agarwal to Harshad S

Mehta all benami entities cannot be sustained. If Radhe Shyam Agarwal had intended to sell the shares there was no question of affixing wrong signature resulting in mismatch in every case that Mr. Mehta has sought to demonstrate. This itself shows that the opposition of the respondent has no factual basis.

26. To my mind it is not clear as to why the seller of shares would not affix the correct signatures, if indeed he had sold the shares for consideration, for value received. It is not an inadvertent change in the signature, difference in the signature is sought to be obvious and factual in each of these cases. Moreover the applicant cannot be faulted in her attempt to obtain transmission of the shares. No malafides are attributed to the applicant by the notified party. If indeed the shares were purchased by benamidars there is no reason why the signatories would be improper. Moreover if the shares were indeed purchased by the benamidars and those referred to in the affidavit in reply, surely these parties would have come forward to claim these shares. What must be noted however is that if the shares were stolen how they could have reached the Registrar is a mystery. Assuming the theft did occur the persons responsible may have submitted forms with forged signatures. This however takes us to the realm of probability and it is not appropriate to take that path.

27. Prima facie the contention of the notified party does not appeal to me. Undoubtedly these shares have since multiplied owing to the two bonus issues and then the splitting up of the shares. The shares have not been transferred yet and there is nothing to indicate that the original shareholder Radhe Shyam Agarwal had sold these shares or has been paid consideration for the shares. The question that really arises is whether the shares are liable to be now "certified" and to that extent there is some merit in Mr. Mehta's objections as to the attempt of the present applicant to secure transfer of the shares. Mr. Mehta's contention that there is no right of legal representation that has been established, even the relationship has not been established and hence no relief ought to be granted is worthy of consideration but the opposition on the basis that the notified party Harshad S Mehta had purchased the shares in my view has not been established. This contention of the notified party lacks merit. Whereas on facts it is obvious that the shares are still held in the name of Radhe Shyam Agarwal and the share holding has now risen to 15750 shares as evident from the records of the Registrar. Particular reference being had to the Sub division Advice which is issued as late as 3<sup>rd</sup> July, 2010 in the name of Radhe Shyam Agarwal. Mr. Mehta's version that Radhe Shyam Agarwal sold the shares forming subject matter of the present application has not been established.

28. Mr. Mehta's opposition is on the basis of a vague assertion that some shares have been purchased by a benamidars of HSM. Some others have

been purchased by third parties such as Unit Trust of India and 20/20 Fund. These are aspects that may fall for consideration in an appropriate application by the notified party, if such concrete evidence is available. However considering the fact that the shares are still in the name of Radhe Shyam Agarwal and there being no evidence that these are the very shares that have been acquired by notified parties, there is no reason to deprive the applicant of these shares by the Custodian retaining control of the same. If these were in fact bonafide sales in favour of the notified parties or the benamidars there is no reason why signatures would have differed. Assuming that these shares were stolen from the notified parties once again there is no reason why the transferee would be benamidars of the notified party. These are all contentions which are substantially vague and in my view unsustainable.

29. The issue to be considered is also whether shares are required to be certified under the scheme of certification and to that extent the present application is different from the regular cases of certification that come before the Special Court pursuant to orders passed in M.P. 88 of 2000 and in this behalf I am of the view that it is sufficient if the Custodian gives up the objections to the proposed transmission of shares and it is left to the applicant to pursue the transmission of shares in her favour, if the company is satisfied with the bonafides of her application. In my view the Custodian cannot object to the transmission of share in view of the material that has been placed on

record which include the document of purchase, brokerage records, the bills and receipts for payments that has been filed in these proceedings. Clubbed with the fact that the original shares have since benefited from accretions all of which are retained by Registrar there is no reason for the Custodian to retain his claim to the shares.

30. In the course of submissions Mr. Mehta relied upon the decision of the Supreme Court in *Standard Chartered vs. Andhra Bank Financial Services Ltd. and Ors.*<sup>1</sup> in support of his contention that handing over of physical share certificates along with share transfer forms duly signed by the transferor would be sufficient to effect transfer. In that case the Supreme Court was considering the mode of transfer permissible for transfer of securities and the formalities necessary to effect the transfer. In the facts of that case it was held that Standard Chartered Bank relying on cost memo signed by Andhra Bank Financial Services Ltd. naming Standard Chartered Bank as a transferee and indicating the details of the bonds, the amount of consideration and the mode of payment and delivery of a bankers receipt was sufficient for it to claim ownership of the bonds. The court held that it was wholly unnecessary for Standard Chartered Bank to prove further discharge of the Bankers Receipt or how the original letter of allotment went out of its possession. The bank's claim in that case was that the letter of allotment was lost by the bank whereas ABFSL had issued Bankers Receipt for an amount of

1 (2006) 6 SCC 94

50 crores being the face value of the bonds, undertaking to deliver the bonds when ready in exchange for the Bankers Receipt duly discharged. The Supreme Court inter alia recognised that the market practice for transfer of securities included delivery of securities accompanied by blank transfer deeds.

31. It was further observed that property in securities can only be transferred if there is bonafide purchase of the same for the value. In the instant case it is sought to be contended that Radhe Shyam Agarwal had sold the shares and had not affixed his proper signatures on the share transfer form as a result of which the transfer stood rejected. This is an aspect which in my view the notified party has not been able to establish. If in fact the shares had been sold, there was no reason for Agarwal to have not affixed his proper signature. On the other hand the Registrar has not recognised the claim of the notified party. This is not a case where the notified party had sold shares and those shares having been held to be questionable certification was called for. The decision *Standard Chartered Bank (supra)* also held that in order to establish ownership mere possession of original share certificates would not lead to an inference of ownership and in the facts of that case the party had been able to prove purchase of the securities on the basis of cogent evidence and therefore retain title to the same.

32. Furthermore alluding to Section 108 of the Companies Act 1956 it was held that only a party who had legitimately acquired ownership by reason of transfer from antecedent owner of securities would be entitled to place his name as registered holder thereof in the register of shareholders and title of any person acquiring property would depend on the antecedent title of the person from whom the property is acquired. In the instant case I do not see how this judgment will come to the assistance of the notified parties since these shares have not been purchased from notified parties. The shares were at all times held by Radhe Shyam Agarwal. The purchase by Agarwal is not in doubt. The only question is whether Radheshaym Agarwal had sold it and the notified party had purchased the shares. This casts the burden on the notified party to establish a bonafide purchase which has not occasioned in the present case.

33. Moreover Mr Mehta's reliance on the order passed on 27<sup>th</sup> July, 1992 in MP 1 of 1992 and M.P. 2 of 1992 by the Special Court also will not come to his assistance. By that order the Special Court had approved of the scheme of certification and observed there on the basis of formula worked out by the then learned Attorney General in consultation with the parties which included the Custodian and Stock Exchanges and the Income Tax department. A transaction in sale of securities **by a notified person**, either as a registered holder by himself or along with others or as a intermediary purchaser would be deemed to be bonafide provided the transaction was effected through a

member of the stock exchange in accordance with rules of the stock exchange and at a sale price which was not lower than the lowest ruling price for which such securities were traded on the date of the transaction except in case of discount given on bulk purchases by institutions and lastly payment of the full sale price had been proved to have been received by the notified parties. This scheme in the present context does not arise since the transaction is not one where the notified party has sold the shares nor has it been conclusively established that the shares were purchased by the notified party as an intermediary. The claim is merely on the basis of a communication dated 6<sup>th</sup> October, 1999 whereby Harshad S Mehta had addressed a letter without prejudice to the Custodian seeking tracing and recovery of shares of Tata Tea Ltd. In that letter the notified party had contended that the entire lot of shares was missing and forms part of the attached assets and requiring the Custodian to intimate the company to treat these shares as attached assets pending further investigation and not to effect transfer thereof. The letter was written on the basis of records at the notified parties end by taking into account inflow of shares minus outflow of shares and other rough sheets and records that they had in possession. Evidently there was no specific record to indicate that the shares that are now subject matter of the present application were purchased. All it says is that the shares might have been purchased by the three brokerage firms M/s. Harshad S. Mehta , M/s. Ashwin Mehta and M/s. J. H. Mehta or any other related



notified entities or family members directly or through outside brokerage firms. That a separate exercise is underway to determine the actual flow of the shares and that might take sometime. Sufficient time has gone by but there is no evidence to back up such a claim. The letter also includes a disclaimer that data furnished along with the letter is “subject to errors” and “omissions” or “some duplication”. The request was to take steps to recover the shares.

34. Mr. Mehta has also relied upon particulars of these shares now claimed by the applicant and sought to co-relate it with the particulars of missing shares of Tata Tea Ltd which is an an enclosure to letter dated 6<sup>th</sup> October 1999 but there is absolutely no evidence to support the contention that these shares were in fact purchased by the three brokerage firms or the other entities. Absent such indication I am afraid there is no occasion for the Custodian to retain control over the shares or claim these shares on behalf of the notified parties. Even assuming Haresh Avlani was declared benamidar of the notified party, the material on record is not sufficient to hold that these shares belong to the notified parties. On the other hand the material on record suggest that the signature of Radhe Shyam Agarwal on the shares was not valid. There is nothing to indicate on how and why these shares were sent for transfer. In fact the evidence suggest that the shares were bonafide purchased by Agarwal at the material time and several shares were sought to be transferred after demise of Agarwal as set out in a tabulated form in page

236 to the third certification report. Acquisition of the base shares not being in dispute transfer to Mr Agarwal is seen to be recorded on the reverse of the share certificate on various dates on or about 19<sup>th</sup> December, 1986. Thus Radhe Shyam Agarwal is seen to be the last holder of these shares. The signatures on share transfer forms are admittedly not matching with that of Radhe Shyam Agarwal, the shareholder and hence the shares continued to be in the name of late Radhe Shyam Agarwal. Transmission has been sought by his widow and no claimant has made any attempt to seek transfer of these shares on the basis of the alleged share transfer forms. The purchasers / transferee named in the share transfer forms which have been filed in the third certification report have not claimed these shares. On the basis of a probable claim of a notified party claiming that certain shares of Tata Tea Ltd were missing, I am not satisfied that the shares claimed by the applicant should be retained by the Custodian.

35. Thus in conclusion I find that the shares claimed are not ones purchased from the notified party. On the other hand it is the claim of the notified party that some shares were missing and the particulars of these shares provided in an unverified computer generated statement cannot enure to the benefit of the notified party. The claim of the notified party is in my view a long shot. The applicant has prima facie established that the shares stood in the name of Radhe Shyam Agarwal and continues to be held in

that name. All accruals also have allotted to Radhe Shyam Agarwal and the company is presently holding the shares only on the basis that the shares may be belonging to notified party. There being no semblance of evidence in support of such a claim it is appropriate that the Custodian releases the shares but short of certification.

36. It will be open in my view for the applicant to approach the company and satisfy the company that she is entitled to transmission of these shares on such terms that the company may deem fit. All that can be said is Custodian shall not hold back these shares and they shall stand released from attachment. The certification contemplated under the scheme cannot be applied entirely to the facts of the present case and the facts at hand have thrown up a different set of circumstances and which would require this court to hold that the Custodian cannot lay a claim to these shares and accordingly I pass following order

- (i) The Custodian shall convey to the company that he has no claim to the 15,750 shares presently forming subject matter of the Sub Division Advice dated 3<sup>rd</sup> July, 2010 under Folio no. TFR0006641 under Share Certificate no. 00002527 in respect of share bearing distinctive no. 3954051 to 3969800.

(ii) The applicant is at liberty to approach the company for transmission of these shares subject to compliance of all requirements to be specified by the company and their Share Registrar and Transfer Agent.

(iii) The company Tata Global Beverages Limited and its Transfer agents are permitted to consider an application for transmission of shares if made by the applicant and subject to due compliance of all requirements of the company and the transfer agents.

(iv) It is made clear that the court has not “certified” these shares under the scheme of certification.

(v) The application is disposed in the above terms.

**(A.K. MENON, J.)**