

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

MISCELLANEOUS APPLICATION (L) NO. 8 OF 2019

Mukesh M. Lalka .. Applicant
v/s.
The Custodian & Ors. .. Respondents

None for the applicant.

Mr. Gandhar Raikar i/b. Leena Adhvaryu Associate for the Custodian-respondent no.1.

Mr. Jayesh R. Vyas i/b. Vipul Shukla for respondent nos.2 & 3.

**CORAM : A. K. MENON,
JUDGE, SPECIAL COURT
DATED : 26TH FEBRUARY, 2021**

P.C. :

1. By this Misc. Application, the applicant an individual seeks certification of 10 shares of respondent no.2 company under Folio no.92062406 of Reliance Industry Ltd. It is the case of the applicant that having purchased 10 shares of respondent no.2 from S.K. Investment payment, therefor was made in a sum of Rs.9000/- on 8th April, 1992. Thereafter the shares were sent for transfer to the company but were returned as the shares were 'tainted shares'. The applicant claims to be a small investor not

aware of the procedure of this Court and hence no application was filed at the relevant time. He has annexed copies of (a) counter foil of a card seeking specimen signature of the applicant under the said folio dated 10th June 1994, (b) Broker's bill no.4 dated 8th April, 1992 issued by respondent no.4 S.K. Investment for Rs.9000/-, (c) confirmation memo in respect of 200 shares of one Reliance Petrochemicals Ltd. and (d) certain correspondence.

2. As per usual practice a Certification Report has been filed by the Custodian dated 13th November, 2019. The report reveals that the applicant had not in fact purchased 10 shares of respondent no.2 Reliance Industries Ltd. but had purchased 200 shares of one Reliance Petrochemicals Limited (RPL). 100 shares of RPL were transferred to his name but the other 100 shares were returned since they were said to be tainted shares being registered in the name of Hitesh S.Mehta and Pratima H. Mehta both notified parties. The applicant did not have original transfer deed which he contended was not traceable since he has shifted office in 1998. Having written to the Registrar and Share Transfer Agents requesting the copy of the share transfer deed, the share transfer agent replied on 16th September, 2019 stating that the share certificate is not available with the company. The company was

unable to provide a copy. Later, the Custodian vide a letter dated 24th May, 2019 requested M/s. Karvy Computershare Private Limited – respondent no.3, the Registrar and Share Transfer Agents to furnish details of payment of dividend. Meanwhile, against 100 shares of RPL, 10 shares of Reliance Industries Limited (RIL) came to be issued under certificate no.10925413 and folio no.64353705 these were transferred to the name of the applicant.

3. Vide reply dated 17th September, 2019 respondent no.3-Karvy informed the Custodian that the certificate number mentioned by the applicant was not correct. It was only cover note number and that 100 shares remaining to be transferred actually had certificate no.005157658 and distinctive nos. 0237209250 to 0237209349. Details of the shares approved including bonus and dividend were also furnished. Shares had been issued on account of merger of RPCL with RIL.
4. Subsequently, it appears that some bonus shares came to be issued. As a result of 10 base shares of RIL became 80 base shares of RIL. As a result of subsequent demerger, 20 shares of 4 other entities were issued as listed in the report. As a result of merger

and these de-mergers effectively, the claimant-applicant would become entitled to the resultant shares and 80 shares of RIL and 28 shares of 5 other entities as set out in paragraph 12(i) of the report.

5. The application though supported in principle by the notified parties there is opposition to the accruals and bonus being issued to the applicant. Thus, in effect the additional 70 shares of RIL and 28 shares of other entities cumulatively are being contested. The main reason for the contest is to be seen in affidavit in reply filed of Mr. Ashwin Mehta dated 4th December, 2020. After dealing with the correspondence that had been initiated by the notified parties. It is contended that a sum of the shares may have been sold by the Custodian and if they have been sold the applicant could not receive all the sale consideration of the 10 shares and not all the accruals. Karvy was called upon to confirm about the physical shares were being held since the Custodian did not claim holding of physical shares issued in lieu of the 10 physical shares of RIL. On 6th November, 2020 the Custodian contended that the share was still in the Custodians custody and control. The Custodian relied upon the correspondence with Karvy who vide letter dated 17th September, 2019 had confirmed

that the applicants had submitted 100 shares to RPL for transfer. They set out the various accretions thereto concluding amounts of dividend declared.

6. In view of the lack of clarity, the company was directed to file an affidavit setting out the correct facts. Two affidavits have been filed one by Sangam Sahasrabudhe, the constituted attorney of company dated 3rd February, 2020 in which the deponent has confirmed that the applicant had submitted 100 shares of RPL which were returned to him and corresponding 10 shares of RIL had been issued and are presently in favour of the 'Custodian Government of India Account' under folio no.790000001. Bonus shares issued in 1997, 2009 and 2017. That the 10 shares and bonus shares are in physical form and held to the account of the Custodian but the registrars had not issued certificates but kept them in abeyance. The copy of the "Holding Master" record of the company has been annexed.
7. An affidavit on behalf of respondent no.3 Karvy is affirmed by one S.P.Venugopal who also confirms that in lieu of the 100 shares returned has tainted shares 10 shares of RIL are available/presently to the credit of Custodian Government of India

Account under folio no.790000001. He confirms what is stated by Mr. Sahasrabudhe on behalf of the company that no physical shares have been issued since they were kept in abeyance.

8. The basic objection on behalf of the notified parties that the shares may have been sold and if so only the money value could be issued to the notified parties to that extent the notified parties supports the application for certification. In contrast, the deponents of the affidavits confirm that the benefits and accruals on the 10 shares have already been furnished to the Custodian vide letter dated 17th September, 2019 and that appears to be available with the notified party as well and annexed to notified parties affidavit in reply.

9. In view of the opposition and after obtaining the clarifications of respondent nos.2 & 3, the Custodian has filed a Supplementary Certification Report dated 9th December, 2020 in which the Custodian has confirmed that 10 shares of RIL are registered in favour of the 'Custodian Government of India Account' in physical form though the actual issue has been kept in abeyance along with accruals.

10. Mr. Raikar on behalf of the Custodian points out that the facts are similar to that of the case of Surendra Kumar Somani who had filed the Misc. Application (L) no.36 of 2019 which came to be disposed vide order dated 27th November, 2020. He submitted that the objections raised in the present case are identical. The submission of Mr. Raikar appears to be correct since in Misc. Application (L) no.36 of 2019 as well the notified party has objected to the applicant being giving the benefit of the accruals on the shares and the dividend paid. The contention of Mr. Mehta is that the shares may have been sold but is unable to establish that shares were sold. I am unable to accept that is the reason for denying the claim of the applicant since the record of the share transfer agent as appearing from the correspondence that the affidavits filed on their behalf and on behalf of the company to which I have made reference indicate otherwise. The objections raised by Mr. Mehta on the aspect of allowing the applicants to the benefits of accruals and accretions have already been duly considered in detail in Misc. Application (L) no.36 of 2019. The Custodian has placed reliance on the communication received from the share transfer agents which indicate that the applicant would be entitled to the benefit of the accruals and

accretions. In the circumstances, I find no merit in these objections.

11. I am therefore of the view that the application is liable to be allowed and I pass the following order;

- (i) Application is allowed in terms of prayer clauses (a) and (b) except that reference to certificate no. 00250514 shall stand deleted.
- (ii) No costs.

(A. K. MENON, J.)