

IN THE SPECIAL COURT (TRIAL OF OFFENCES RELATING TO
TRANSACTIONS IN SECURITIES) ACT, 1992
MISCELLANEOUS PETITION NO. 92 OF 1996
WITH
EXECUTION APPLICATION NO. 418 OF 2003
WITH
MISCELLANEOUS APPLICATION NO. 08 OF 2018

A. K. Menon, the Custodian appointed under the
Special Court (Trial of Offences relating to
transactions in Securities Act, 1992) and having
his office at 9th floor, Nariman Bhavan, Nariman
Point, Mumbai-400 021

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Petitioner

Versus

1 Acharya Arun Dev of Delhi, Indian
Inhabitant residing at 7, Doctor
Lane, Gole Market, New Delhi-110 001

Legal heirs of Respondent No. 1

1(a) Aruna Parwal

1(b) Amit Parwal
Residing at 7A, Doctors Lane,
Gole Market, New Delhi- 110 001.

1(c) Mamta G. Nathany
Residing at D-244, Devi Marg
Bani Park, Jaipur-302 016

- 2 Arun Bhaiya, residing at MIG
Colony, Gandhi Nagar, Bandra (East),
Mumbai-400 051
- 3 The Asian Stocks and Securities
Ltd., having its office at
- (i) A-29, Vishal Market, Vishal
Enclave, New Delhi-110 027
- (ii) III Sector A, Pocket 'C',
Vasant Kunj, New Delhi
- (iii) 40/B, Kiran Industrial Estate,
M.G. Road, Goregaon (West),
Mumbai-400 062
- (iv) 507 Prakash Deep, 7 Tolstoy Marg,
New Delhi-110 001
- (v) 217 Ekta Nagar Housing Soc.,
Charkop, Kandivli (West),
Mumbai-400 067
- 4 Sheela A. Shah
Prop. M/s. Divine Investments,
Hermes Classic, D Wing, 4th Floor,
Mangaldas Road, Pune
- 5 M/s. Divine Investments,
having its office at Hermes Classic,
D Wing, 4th Floor, Mangaldas Road, Pune

- 6 Sandeep Ashok Tate of Bombay
Indian inhabitant residing at
302, Jyoti Niwas, Plot No. 186,
Sher-e-Punjab Colony,
Andheri (East), Mumbai-400 069
Or
101 Sandeep Park, 1st Floor,
Chembur, Mumbai
- 7 Ramesh M. Joshi residing at
202, Neminath Apartments
Devchand Nagar, Near Jain Mandir
Bhayandar (West), Thane
- 8 Subalaxmi Mercantile Ltd
having its office at 7, Doctor Lane,
Gole Market, New Delhi-110 001
- 9 Devang H. Vyas, residing at
61, IRIS Cuffe Parade
Mumbai-400 005
- 10 Mega Corps Leasing Finance Ltd
having its office at Co-operative
Insurance Building
5th Floor, Sir P. M. Road, Fort,
Mumbai-400 001
- 11 Senior Management Consultants Pvt. Ltd.
having its office at
220/2, Panditia Road Extension
Calcutta-700 029

- 12 T. K. Doshi, Share and Stock Broker
having his office at
26-A, Khatau Building, 2nd Floor
Marina Street, Mumbai- 400 023
- 13 Shrenik Shah, having his office at
39, Khatau Bldg, 2nd Floor
Alkesh Dinesh Modi Marg,
Fort, Mumbai – 400 023
- 14 Kishor N. Amerchand having
his office at Raja Bahadur Compound
Building No. 5, 1st Floor, Opp. Allahabad
Bank, Bombay Samachar Marg,
Mumbai-400 023
- 15 Messrs V. Navnitlal & Company
having its office at 527 Rotunda, 5th Floor,
Bombay Samachar Marg,
Mumbai-400 023
- 16 Tushar Bedi, Share & Stock Broker
having its office at 103, Bombay
Samachar Marg, Opp, Bharat House, Fort
Mumbai- 400 001
- 17 Susheela N. Rungta. having her office at
32, Bombay Samachar Marg, Fort
Mumbai-400 023

- 18 Bhupendra M. Bheda, having his office at
P. M. 14, Stock Exchange
Rotunda, Ambalal Doshi Marg,
Mumbai-400 023
- 19 Sham Lall Laha & Co., Stock and
Share Broker, having his office at
Stock Exchange Building,
7 Lyons Range, 3rd Floor, Room No. 6
Calcutta-700 001
- 20 The Commissioner of Income Tax
Central Circle XXXI, Range 7 having his
office at CGO Building Complex, 7th Floor,
M. K. Road, Mumbai-400 023
- 21 The Bombay Stock Exchange
having its office at Dalal Street,
Mumbai-400 023
- 22 The Calcutta Stock Exchange
Association Ltd, having its office at
7, Lyons Range
Calcutta-700 001
- 23 Harshad S. Mehta of Bombay
Indian Inhabitant residing at
Madhuli, Dr. Annie Besant Road,
Worli, Mumbai-400 018
(since deceased through LRS)
- 23(a) Rasila Mehta
(since deceased through LRS)

- 23(a-1) Late Harshad S. Mehta
i) Jyoti H. Mehta
ii) Aatur Mehta
- 23(a-2) Ashwin S. Mehta
- 23(a-3) Dr. Hitesh S. Mehta
- 23(a-4) Sudhir S. Mehta
All Residing at 32, Madhuli, Dr. Annie
Besant Road, Worli, Mumbai-400 018
- 23(a-5) Bhavna Manish Shah
4A, Sambhav Tirth, 21 Bhulabhai
Desai Road, Haji Ali,
Mumbai-400 026
- 23(b) Aatur Mehta
- 23(c) Jyoti Mehta
All are individuals and residing at
Madhuli, Dr. Annie Besant Road
Worli, Mumbai 400 010
- 24 Sudhir S. Mehta of Bombay,
Indian Inhabitant, residing at
Madhuli, Dr, Annie Besant Road,
Worli, Mumbai-400 018
- 25 Growth Techno Projects Ltd
A Company incorporated under
the Companies Act, 1956
having its Registered Office
at 7-A, Doctor's Lane, Gole Market
New Delhi – 1

26 The Commissioner of Income Tax
Having his office at
Maharashi Karve Road,
Marine Lines, Mumbai-400 020 ... Respondents

Mr. Hormaz Daruwalla a/w. Ms. Shilpa Bhate i/b. M/s Leena Adhvaryu & Associates for the Petitioner-Custodian.

Mr. Aseem Naphade a/w. Mr. Ravi Goenka i/b. Goenka Law Associates for Respondent nos. 1(a), (b) and (c).

Mr. Anant Narayanan for Respondent no. 2.

Mr. Vipul B. Joshi a/w. Mr. Prasad Das and Ms. Dinkle Haria for Respondent nos. 4, 5 and 12.

Mr. Sagar Ghogre a/w. Mr. Ajay Panicker i/b. M/s. Ajay Law Associates for Respondent nos. 9

Mr. Deepak Pandey for Respondent no. 15.

Mr. Dinesh Purandare a/w. Ms. Niyati Kalra, Ms. Rujuta Patil, Ms. Sonu Bhasi i/b. Negandhi Shah & Himaytullah for Respondent no. 16.

Mr. Ranit Basu for Respondent nos. 20 and 26 – Income Tax Authority

Mr. Ashwin Mehta for Respondent nos. 23 a-1(i), a-1(ii), 23(a-4), 23(a-5) and 24.

Mr. Ajay Panicker i/b. M/s. Ajay Law Associates for Respondent nos. 25

CORAM : A.K. MENON, J.
Judge, Special Court
Reserved on : 8th JANUARY, 2021
Pronounced on : 9th APRIL, 2021

JUDGMENT :

1. The petitioner in the present case is the Custodian appointed under the provisions of The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 ("The Special Courts Act"/ "The Act"). The respondent no. 1 late Acharya Arun Dev ("Dev") was at all material times a property dealer and also believed to be trading in shares. He is said to have introduced a large number of "*Benami shares*" into the share market. These shares were believed to be belonging to original respondent no.23. Original respondent no. 23 was late Harshad S. Mehta ("HSM") (and his group of individuals and concerns all of whom are notified parties). Shares were said to be introduced into the market after 8th June, 1992 which is the date of promulgation of the ordinance. Respondent no. 2 (Arun Bhaiya) was also involved in the introduction of these shares into the market.

2. Respondent no. 1- Dev expired on 4th February, 2007 and respondent nos. 1(a) to 1(c) are the legal heirs (herein after referred to as "the legal heirs") representing the estate of the Dev. Respondent no. 23 meanwhile expired on 31st December, 2001. Respondent nos. 23(a), 23(b) and 23(c) were the legal heirs of original respondent no. 23. Respondent no. 23(a) being the mother of original respondent no. 23 passed away on 26th

April, 2020 bringing on record legal heirs being respondent nos.23(a-1) to 23(a-5) and therefore respondent nos.23(a-1) to 23(a-5), 23(b) and 23(c) represented the estate of the original respondent no. 23-HSM.

3. Respondent no. 3 (“Asian Stocks”) is a limited company and also involved in introducing Benami Shares into the market. The said company is said to have been controlled and owned by Dev. Respondent no. 4 – Sheela S Shah is said to be sub-broker of respondent no. 12-T.K.Doshi-Share and Stock Broker. Respondent no. 5 (M/s. Divine Investments) is said to have introduced Benami Shares through respondent no. 4 and 6 (Mr. Sandeep Ashok Tate) into the market. Respondent no. 6 likewise introduced the Benami shares on behalf of respondent no. 3 and through respondent no. 4. Respondent no. 7 (Ramesh M. Joshi) is a sub-broker of respondent no. 14 (Kishore N. Amerchand). Respondent no.8 (Subalaxmi Mercantile Ltd) is a corporate entity controlled by Dev. Respondent no.9 (Devang Vyas) is director of respondent no. 10 (Mega Corps Leasing Finance) who also introduced benami shares into the market. Respondent no. 11(Senior Management Consultants) is a sub-broker of respondent no.19 (Mr. Sham Lall Laha & Co). Respondent no. 12 to 18 are all said to be brokers and members of the Bombay Stock Exchange which is impleaded as respondent no. 21. Respondent no. 19 is a Stock broker and member of respondent no. 22 which is the Calcutta Stock Exchange. Respondent nos. 20 and 26 are

the Commissioner of Income Tax. Respondent no. 21 and 22 as stated above are Stock Exchanges at Mumbai and Calcutta.

4. Original respondent no. 23-HSM was believed to be the main player responsible for the stock market scam and resulting in his being notified under the Act. Respondent no. 24-Sudhir S. Mehta is the brother of respondent no. 23 and is said to be responsible for supervising the preparatory steps for introduction of the shares into the stock market.

5. Respondent no. 25 is stated to be a "front company" of respondent no. 1-Acharya Arun Dev. The corporate veil of this company was proposed to be lifted pursuant to an order passed on 10th March, 2004 in M.P.No. 53 of 2004.

6. On 8th June, 1992 respondent nos. 23 and 24 were notified under the Special Courts Act. All the properties in the hands of these two respondents stood attached and only the petitioner-Custodian was empowered to deal with these properties including the said shares described as benami shares. Any other person dealing with the property would be doing so illegally. All such transactions would be illegal and unauthorised. The persons so dealing with any attached property are said to be liable to be proceeded against in Contempt of Court.

7. It is case of the Custodian in the present petition that all these respondents are liable to be proceeded against for Contempt of this Court in having dealt with attached shares and facilitated introduction of these shares into the stock market at different periods of time after the attachment of these shares.

8. The Commissioner of Income Tax (Investigations) conducted a survey into the affairs of HSM-respondent no. 23 sometime in October, 1992. It transpires that HSM asked three former employees who are named in the records of the Income Tax department to help in transferring a large number of shares which were in the custody of HSM. The aforesaid three persons named Rasik Wadiwala, Jagdish Bhatt and one Kailash Kumar Gupta who are believed to have filled in several transfer forms in the names of the Benami entities and that this task was carried out at a flat premises provided by HSM. The transferees of these shares are believed to be friends, relatives and other companies within the control of HSM. The shares and the forms were thereafter lodged with the companies in question. The work of preparing the transfer forms and entering the details is believed to have been supervised by respondent no. 24 who is the brother of late HSM. The transferred shares were believed to have been handed over to one Vinod Mehta for sale in the market. The information is based on statements made by the Income Tax authorities. According to the record of the Income Tax authorities many shares were illegally transferred. In this

petition reference is made to Exhibit A to an M.A. No. 194 of 1993 which contains a list of benami shareholders.

9. A large quantity of the shares were seized by the Custodian and HSM handed over the Benami shares. As of December, 1995 these shares were said to be valued at Rs.176.85 crores. On 19th October, 1993 an order came to be passed in M.A.No.194 of 1993 by the Special Court directing the Custodian to trace the persons involved. The Court directed that it would not be appropriate to attach the shares in the hands of bonafide purchasers and on 20th September, 1993 the attachment order came to be vacated. By a separate order of 21st September, 1993 the Income tax department also vacated the attachment. The Income Tax department was permitted to restrict transfer of the shares only temporarily for the purposes of enabling an inventory, carrying out inquiry, and/ or verification in respect of the shares. The Court directed the Custodian and the Income Tax department to trace the first person who acquired the shares before the shares were introduced into the market. Therefore shares claimed to have been purchased bonafidely and through a stock exchange were required to be certified in consultation with the relevant stock exchange with the concurrence of the Custodian's representative. The scope of this verification was to ensure that the person claiming to be bonafide purchaser had in fact purchased shares through either member of the Stock Exchange in accordance with the rules and/or a sub-broker at a price not lower than the

lowest price for which securities were traded on the date of the transaction. Bulk purchases were not to be verified on the basis of price not being lower than the lowest price ruling on the date of the transaction for the simple reason that bulk purchases often recorded discounted price.

10. The other factor to be considered by the Custodian and the Income Tax department is whether the full price had been paid for the shares and to a person who was not a notified party or a benamidar listed in annexure to Exhibit A-2 to M.A. No. 194 of 1993. If the shares had been purchased through a sub-broker the application for certification was required to be made through a member of the Stock Exchange with whom the sub-broker was associated and after scrutinising the books of the sub-broker. After this order of 19th October, 1993 was passed the record indicates that 10944 applications for certification were submitted to the stock exchanges. It covered about 1,05,965 shares valued at Rs.1,444.70 crores. Of these 88,818 shares were certified. This petition relates to the part of 1,05,965 shares and other shares sold through the exchange. Further investigations revealed that a large number of shares believed to be Benami were introduced into the market by respondent nos. 1 to 19. Respondent no. 1 meanwhile wrote a without prejudice letter dated 9th April, 1994 admitting complicity and offering to pay a sum of Rs.9,67,12,125/- on account of 56,065 shares of ACC and a sum of Rs.27,75,000/-for 6,600 shares of ITC. This offer to pay aforesaid two amounts was in full and final settlement of

all claims in relation to the Benami shares and as specified against the names of various parties in M.A No. 282 of 1993.

11. The Custodian has contended that he learnt from correspondence received from the Bombay Stock Exchange that

(a) Respondent no.1 had introduced 29,550 shares of ACC into the market all of which were Benami shares. These were delivered to respondent no. 2 for sale to different parties in the name of respondent no. 3 with instructions not to reveal respondent no. 1's-Dev's name as source of the shares.

(b) Respondent no. 1 informed respondent no. 16 that he had sold and introduced 22,870 benami shares of ACC and 6,600 shares of ITC on his own account but in the name of respondent no. 8.

12. Payments were made by various sub-brokers in different names as required by respondent no. 3. In some cases the sale prices had been adjusted by purchase of shares of Jaiprakash Industries Limited, Brooke Bond India Limited and Mazda Industries. The Custodian had written to respondent no. 3 in this behalf but there was no response. This led the Custodian to believe that respondent no. 3 was a sham, bogus and a non-existent entity with a fictitious address. This was further supported by a communication from respondent nos. 12 and 13 who contended that respondent no. 1-Dev was the owner of respondent no.3. This

communication is to be found at Exhibit-C to the petition. Meanwhile the Custodian had not been able to trace respondent no. 2 at the material time. Today however the position is different. Respondent no.2 has appeared before this Court and has filed an affidavit in reply. The Custodian's analysis of the correspondence shows (a) that respondent no.1 delivered 9,955 shares of ACC Ltd. to respondent no. 2 with an instruction not to disclose name of respondent no.1. (b) Respondent no. 2 in turn delivered these shares to respondent no. 4. (c) Respondent no. 4 and respondent no. 5 were said to be connected with each other and shares in question were shown as delivered to respondent no. 5 by respondent no.3. Respondent no. 4 is believed to be sub-broker of respondent no. 12 through whom the shares were sold. The payment for the aforesaid quantity of 9,955 shares was adjusted against purchase of 82,500 shares of Jaiprakash Industries. Respondent no. 3 had a credit of Rs.60,000/-in books of respondent no. 5. Respondent no. 5 meanwhile sold 1,420 shares of ACC Ltd. and the bills were made in 13 different names.

13. According to the Custodian respondent no. 6 appears to have been introduced by respondent no. 2 and the communication sent to respondent nos. 3 and 5 at their known address received back unserved but respondent no. 1-Dev had admitted to respondent no. 12 the main broker of respondent no. 4 to having sold 9,955 shares of ACC through respondent no. 2 (Arun Bhaiya) but it did not cover the 1420 shares of ACC.

14. Further inquiries revealed that 7,525 ACC shares which were then worth about Rs.1.35 crores were delivered by respondent no. 2 (Arun Bhaiya) on behalf of respondent no. 3 (Asian Stocks) to respondent no. 13 (Shrenik Shah). That payments had not been made by respondent no. 13 to respondent no. 3 (Asian Stocks) but 1,03,000 shares of Jaiprakash Industries and 2,800 shares of Brooke Bond Ltd. were delivered to respondent no.3 -Asian Stocks in lieu of payment. Dev had informed respondent no. 13 (Shrenik Shah) that he had instructed respondent no. 2(Arun Bhaiya) to sell 7,800 shares of ACC on his personal account without revealing his name.

15. Further inquiries reveal that 9,070 shares of ACC were delivered by respondent no. 2 (Arun Bhaiya) on behalf of respondent no. 3 (Asian Stocks) to respondent no. 7 (Ramesh Joshi) who was sub-broker of respondent no. 14 (Kishor N. Amarchand), but no payment was made directly to respondent no. 3. Payment of Rs. 15 lakhs was made to respondent no. 13 (Shrenik J. Shah). The sale proceeds of the aforesaid shares were apparently adjusted against Jaiprakash Industries, Mazda Industries and Mazda Packaging. Respondent no. 1 – Dev had admitted selling 9,070 ACC shares in his individual capacity through the concerned broker. Correspondence in this regard is relied upon.

16. Meanwhile Bombay Stock Exchange informed the Custodian that 3,020 shares of ACC were sold by respondent no. 3(Asian Stocks)

represented by respondent no. 2 through respondent no. 15 (V. Navneetlal). Sale proceeds were apparently adjusted against 45,000 shares of Jaiprakash Industries Ltd, then worth Rs.41.12 lakhs. The balance was adjusted against speculative losses and reimbursement of bad deliveries. Respondent no. 1- Dev on the other hand contended that he had sold only 3000 shares as 20 shares had been returned as bad delivery. Respondent no.1 had admitted then selling 3,000 shares through respondent no. 2 as suggested by respondent no. 15 to BSE.

17. Meanwhile respondent no. 8 (Subalaxmi Mercantile) a firm under control of respondent no. 1 delivered 22,870 shares of ACC and 6600 shares of ITC through respondent no. 16 (Tushar Bedi) for sale. The proceeds of the sale were apparently adjusted against the delivery of 5.53 lakhs shares of Jaiprakash Industries. This fact has been confirmed by Dev in correspondence at Exhibit – H (colly).

18. Respondent no. 3 (Asian Stocks) represented by respondent no. 2 (Arun Bhaiya) delivered 3,350 shares of ACC and 5,000 shares of Tata Tea Ltd. to Respondent no. 17 (Susheela N. Rungta) who stated that respondent no. 2 was introduced to him by by respondent no.13. The shares were apparently applied against speculative losses incurred by respondent no. 17.

19. In another transactions 9,995 shares of ACC worth Rs.95,87,545/- were reportedly purchased by respondent no. 9 (Devang Vyas) represented by Mr. Ghogre from respondent no. 3 and cheques were issued in favour of respondent no. 3. But according to respondent no. 9, respondent no. 3 wanted to buy shares of respondent no. 10 (Mega Corps) in which respondent no. 9 (Devang Vyas) was a director . Shares of respondent no. 10 (Mega Corps) was sold to respondent no. 3 in lieu of payment and the cheques issued were cancelled. These shares were then sold for Rs. 96 lakhs through respondent no. 18 (Bhupendra Bheda). Payment of which was received by respondent no. 10 as consideration of shares issued as above. Mega Corps had been meanwhile restrained by Income Tax Department from delivering these shares.

20. Meanwhile 3,400 benami shares of ACC were delivered by respondent no. 11 (Senior Management Consultants) to respondent no. 19 for sale. Payment was received by respondent no. 11 from respondent no. 19 by way of cheques. Respondent no. 11 claimed these shares pertain to respondent no. 3 (Asian Stocks) and payment was made to respondent no. 3 by demand draft no. 679177 dated 14th May, 1993 for Rs.37,99,775/- and demand draft no. 004081 dated 14th August, 1994 for Rs. 14,00,000/- That inquires made with respondent no. 3 in this behalf has not elicited any reply. Thus the Custodian concludes all the aforesaid parties are responsible for introduction of benami shares into the market including

introducing brokers who are illegally dealing with and disposing attached properties and these are offences punishable under Contempt of Courts Act.

21. The Custodian claims that various other offences under Section 206, 207, 421, 423, 424 of the IPC are also seen to have been committed for fraudulent removal or concealment of property to prevent seizure of shares besides Section 3 of the Benami Transactions (Prohibition) Act, 1988. The Custodian contends that all dealings in attached property in the shares are illegal null and void and the respondents are bound and liable to return these shares along with rights, bonus and dividends that have accrued after 8th June, 1992. In the alternative they are liable to pay money value of these shares. The Custodian seeks an order directing these respondents to be committed to civil prison. Reliefs are thus claimed against each of these entities in respect of the specific number of shares and an order is sought directing respondent nos. 1(a) to 1(c) to respondent no. 5 and/or respondent no. 12 to return diverse shares and the other respondents to return diverse shares to the extent referred to below.

PARTICULARS OF SHARES TOGETHER WITH RIGHTS, DIVIDENDS AND BONUSES ACCRUED AND OR MONETARY VALUE CLAIMED BY THE CUSTODIAN.

Respondent Nos.	Name of the Company	No. of shares	Rights, Dividends Bonus 24% interest from 8th June, 1992
1(a) to 1(c)/2/ 25	ACC ITC	56,065 6,600	Exhibit -L
1(a) to 1(c) / 2/ 3/ 4/5/12/25	ACC	9,955	Exhibit -M
2/4/5/6/12	ACC	1420	Exhibit-N

1(a) to 1(c) 2/3/13/25	ACC	7525	Exhibit-O
1(a) to 1(c) 2/3/7/14/25	ACC	9070	Exhibit-P
1(a) to 1(c) 2/3/15/25	ACC	3000	Exhibit-Q
1(a) to 1(c) 8/16/25	ACC ITC	22,870 6,600	Exhibit-R
2/3/17	ACC Tata Tea	3,350 5,000	Exhibit-S
3/9/10/18	ACC	5995	Exhibit-T
03/11/19	ACC	3400	Exhibit-U

22. According to the Custodian since respondent no. 1- Dev expired on 4th February, 2007 the legal heirs are bound to honour the commitment to pay the amount of Rs. 10 crores and that respondent no. 1- Dev was liable to pay Rs. 9,67,12,125/- towards shares of ACC and Rs. 25,75,000/- towards shares of ITC. To recover this amount Execution Application no. 418 of 2003 had been filed. Respondent nos. 1(a) to 1(c) (the legal heirs) have contended that they do not have any moveable or immovable property belonging to respondent no. 1 in their hands. However, one property at Goregaon had been disclosed which has since been sold.

23. In the meanwhile in M.A. No. 92 of 2004 the Custodian had secured an order impleading respondent no. 25 (GTPL) in the present petition since respondent no. 25(GTPL) was believed to be a "front" company of respondent no. 1-Acharya Arun Dev. Respondent no. 25 had also filed M.A. No. 53 of 2004 in this Court seeking payment of certain monies from

Fairgrowth Financial Services Ltd. ("FFSL") another notified party. Dev was the only person behind respondent no. 25 and the corporate veil was required to be lifted. According to the Custodian the corporate veil was lifted by the court vide order dated 10th March, 2004.

24. While disposing M.A. No. 53 of 2004 and M.A. No. 92 of 2004, the Court directed a sum of Rs. 2 crores to be payable to respondent no. 25 to be deposited with the Custodian and to await the ultimate decision in this matter. Respondent no. 25 has contended that the veil has not been lifted and the issue is yet to be decided.

25. The Custodian amended the petition to seek direction for depositing of monies respondent no. 25 received from FFSL to the credit of this petition. That claim of respondent no. 25 against FFSL was crystallised in consent terms filed in two different suits and it attained finality when the Supreme Court vide order dated 28th November, 2003 disposed both suits. Respondent no. 25 became entitled to Rs. 2 crores with interest from FFSL.

26. In the meantime Murablack Limited a creditor of respondent no. 25 also pursued a claim against respondent no. 25 as a result Rs. 1. 50 crores was available to respondent no. 1 on the basis that respondent no. 25 is owned and controlled by respondent no. 1-Dev. This amount has since been deposited with the Custodian pursuant to the orders passed in this

petition. The Custodian therefore seeks various reliefs set out below in a tabulated form.

Prayer	Relief			Against Respondents
a	Respondent be committed to civil prison for contempt of Court having dealt with the shares.			2 to 19, 23 to 25
Prayer	Relief	Company	No. of shares	Respondent
b	Return of shares with all accruals and dividends	ACC	56,065	1(a) to 1(c)/ 25
		ITC	6,600	
c		ACC	9,955	1(a) to 1(c) / 2/ 3/ 4/5/12/25
d		ACC	1420	2/4/5/6/12/25
e		ACC	7525	1(a) to 1(c) 2/3/13/25
f		ACC	9070	1(a) to 1(c) 2/3/7/14/25
g		ACC	3000	1(a) to 1(c) 2/3/15/25
h		ACC	22,870	1(a) to 1(c) 8/16/25
		ITC	6,600	
i		ACC	3,350	2/3/17
		Tata Tea	5,000	
j	ACC	5995	3/9/10/18	
k	ACC	3400	03/11/19	

27. Prayer clause K (i) to K (vii) contains various prayers relating to the sum of Rs. 1.50 crores held in the attached account of respondent no. 25 to be appropriated against the sum of Rs. 10 crores required to be deposited by Acharya Arun Dev pursuant to the order of 10th July, 2003. For directions relating to the property at B-10, Kishan Industrial Estate, M. G. Road, Goregaon (West), Mumbai (since sold), For a direction to attach property at 7A Doctors' Lane and to apply the sale proceeds towards satisfaction of a sum of Rs. 10 crores due from Acharya Arun Dev, For direction to carry out verification and collection of evidence relating to ownership of property at 7B, 7C, 7D Doctors' Lane, Gole Market, New Delhi. In the meantime to restrain respondent nos. 1(a) to 1(c) from creating third party right in the property and direct the companies claiming ownership of 7B, 7C and 7D Doctors' Lane not to dispose/create third party right of the property till the petition is finally decided. The record does not indicate that any orders were sought in respect of last of these prayers. However, one fact is evident that by virtue of order dated 10th July, 2003 the contempt petition was pressed only against respondent nos. 1, 2 and 24.

At one stage the matter was listed for issues by consent of parties it was taken up for final hearing and disposal save and except that evidence was allowed to be led on behalf of the heirs of original respondent no. 1.

Submissions of Counsel

Custodian's Submissions

28. On behalf of the Custodian Mr. Daruwalla submitted that respondent no. 1 was bound to comply with the order dated 10th July, 2003. He submitted that there is a history leading up to the order directing the deposit. In M.A. No. 194 of 1993 the Special Court raised attachment levied by the Income Tax department on the basis of an agreement between all parties to that application. It was necessary to identify monies that passed through notified parties via benami transactions in shares and attachment of shares which are already in possession of bonafide purchasers for value without notice would not be appropriate. On this basis, subject to certification of these shares as provided for in orders passed in M.A. Nos. 194 of 1993, 53 of 1994, 92 of 1994, 93 of 1994 and 424 of 1994 several shares were declared as attached assets.

29. All those applications have been filed by the Income Tax department. The Custodian was already then in possession of several shares. The balance shares had to be recovered from benamidars. If benamidars were not found, the Custodian was to apply for duplicate shares. The original respondent had sold the shares and those shares did not come into the hands of the Custodian and therefore duplicates could not have been applied for in accordance with the order of the Supreme Court dated 19th October, 1993. In accordance with the aforesaid order Dev - respondent no. 1 was a

benamidar for notified parties to whom notified parties sold attached shares. The Custodian believes that the consideration ultimately reached notified parties. Although HSM and the individuals and entities forming part of the group had not disclosed these shares they were at all times attached property pursuant to the provisions of the Act.

30. Respondent no. 1-Dev had vide letter dated 9th April, 1994 and an affidavit in reply of 16th December, 1997 taken up certain contentions. However he then admitted liability to pay Rs. 10, 00, 00,000/- along with interest. Although initially Dev agreed to pay this amount subject to conditions, the Special Court rejected these conditions. Being aggrieved Dev filed an SLP which came to be rejected. The order attained finality. No application for review was filed. Thus respondent no. 1 having been liable, respondent nos. 1(a), 1(b) and (1c) being legal heirs are liable to the extent of the estate of the original respondent no.1.

31. The case of Custodian is that the Dev had means to pay but he deliberately did not. Disclosure affidavits were filed in January, 2004 in M.A. No. 418 of 2003 and those assets could have been liquidated to pay the amount to the Custodian but he did not. Later on Dev who owned properties in Delhi had transferred the properties to his wife and son through company owned and controlled by his son respondent no. 1(b). This was done soon after interim order dated 10th July, 2003 was passed and few months prior to demise of respondent no. 1.

32. According to Mr. Daruwalla it has been established by the Custodian's affidavit filed in M.A. No. 418 of 2003 even if the properties were transferred prior to passing of order dated 10th July, 2003 the transfers must be held to be fraudulent. This is the primary basis on which Custodian seeks relief in relation to the immovable property in Delhi.

33. As far as the immovable property in Mumbai is concerned it was sold and the sale proceeds are lying deposited / invested. What now remains to be attached are certain amounts received by respondent no. 25 as dividend and interest thereon since those amounts though prima facie paid over to respondent no. 25 in effect is for the benefit of original Dev and his estate and the Delhi property. Mr. Daruwalla therefore submitted that the amounts ought not to be paid over to respondent no. 25. Respondent no. 25 is liable to the extent it holds the assets. It is submitted that the corporate veil shields respondent no.25. Dev held an absolute majority in excess of 83.586% and his HUF holds further 0.07%. Effectively it was respondent no. 1 who held all the benefits. That upon the veil being lifted these monies can be attached. According to the Custodian veil has been lifted vide order dated 10th March, 2004 and monies invested are liable to be paid over to the attached accounts and appropriated accordingly. Mr. Daruwalla therefore submitted that the amounts already recovered and lying deposited may be directed to be paid over. He further submitted that respondent nos.

1, 2 and 24 are still answerable to the Court and are liable for contempt and hence appropriate orders be passed in respect of the assets of Dev.

Submissions on behalf of Respondent nos. 1(a), 1(b) and 1(c)

34. Mr. Naphade has made three submissions. Firstly referring to the case on behalf of respondent nos. 1(a) to 1(c)-the legal heirs of respondent no. 1 to the extent it concerns the shares. Secondly relating to proposed recovery of the amount from property at 7A Doctors Lane, Gole Market, New Delhi and thirdly he seeks to assail the interim order dated 10th July, 2003.

35. In the aforesaid factual background the main contestants are respondent nos. 1(a), 1(b) and 1(c) who are the legal heirs of the original respondent no.1 who is alleged to have dealt with the benami shares and having traded in the shares by himself and through respondent no.3. Only respondent nos.1 (a) to (c), 2, 4 & 5, 9, 12, 15, 16, 20, 23 a-1(i),a-1(ii), 23(a-2), 23(a-4), 23(a-5), 24, 25 and 26 appeared at the hearing. Mr. Naphade led the arguments on behalf of respondent nos. 1(a) to 1(c). His submissions have been canvassed under seven different heads. I will briefly set out these heads before dealing with these contentions:

- (i) Shares claimed by the Custodian are already in the Custodian's possession.
- (ii) The Custodian has failed to discharge the initial burden of proof.

- (iii) The petition is based on a without prejudice offer contained in letter dated 9th April, 1994 which is not admissible in evidence.
- (iv) Even otherwise admission is neither clear nor unequivocal to make it actionable.
- (v) The shares that original respondent no. 1 dealt with were not in the names of the notified parties. Therefore he did not introduce shares in the market.
- (vi) Under section 65 of the Contract Act respondent no. 1 has no liability towards Custodian but only against purchasers of shares from him.
- (vii) Interim order dated 10th July, 2003 is sub silentio / per incuriam.

36. Briefly expanding these heads of argument, Mr. Naphade submitted that the 56,065 shares of ACC and 6600 shares of ITC are already in the Custodians possession. The Custodian does not plead that any of the notified parties names were appearing on the share certificate. He makes a reference to the affidavit filed by respondent nos. 1 to 17 and respondent no. 23-HSM. According to Mr. Naphade respondent no. 1-Dev had purchased large quantity of shares of Jaiprakash Industries, Mazda Industries, Mazda Packaging Limited and Brooke Bond Ltd. sometime in 1993. Lacking finances he was unable to take delivery of these shares. Apparently respondent no. 1 and his father one Pralhad Parwal had entered into speculative transactions in shares with one Manu Maneklal who owed large sum of monies to Dev. These were adjusted by Maneklal by delivering

shares of ACC and ITC to Dev. In turn Dev used these shares too as consideration for taking delivery of shares. Dev claimed to be a bonafide purchaser of benami shares since they were received in satisfaction of the debt Maneklal owed to him. The benami shares not being in the name of notified parties, Dev claimed to have disclosed broker-wise transactions details in his affidavit dated 16th December, 1997 all of which indicates that the shares were not in the name of the notified parties when they were handed over for taking possession of the purchased shares.

37. According to Mr. Naphade the case of the Custodian in this petition are similar to the pleadings in M.A. No.282 of 1993 i.e. shares being handed over to the Custodian by the Income Tax department. He contends that at the time of disposal of M.A. No. 282 of 1993 the order records that respondent had already handed over shares to the applicant/Custodian. Liberty was reserved for the Custodian to file a fresh application as and when necessary.

38. Mr. Naphade attempted to demonstrate that the averment in this petition and M.A. No. 282 of 1993 are similar by drawing a comparison between various paragraphs of these two applications.

Comparative table of SPMP No. 92 of 1996 and SPMA No. 282 of 1992

Particulars of shares of ACC Ltd	SPMP-92-1996	SPMA-282-1993
First Tranche	7525	7525
Second Tranche	9070	9070
Third Tranche	3020	3020
Fourth Tranche	9955 + 1420	11375
Fifth Tranche	22870	21700
Sixth Tranche	3350	
Total	57,210	52,690

A total of 52,690 shares of ACC all were the part of the Custodian's claim in M.A. No.282 of 1993. The attempt was to show that out of 56,065 shares of ACC, 52,690 shares was accounted for. Order dated 13th March, 1997 passed in M.A. No. 282 of 1993 records that the shares are with the Custodian. As far as the differential of 3,355 shares (56,065-52,690) of ACC and 6600 ITC shares are concerned these were not covered by M.A. No. 282 of 1993 but substantially majority of the shares were already with the Custodian and therefore no relief can be claimed. More particularly the Custodian has not denied having received these shares from the Income Tax department.

39. In this behalf reference is made to the fact that after the petition was filed the Custodian has filed four affidavits dated 9th April, 2001, 1st June,

2005, 19th August, 2013 and 14th December, 2017. None of these affidavits deny that the shares were received by the Custodian from the Income Tax department. He contended that the details of shares received from the Income Tax department would falsify the Custodian's case. He submitted that no denial on the assertion of the respondent no. 1 would amount to an admission of Order VIII Rules 3 to 5 of the Code of Civil Procedure and effectively the Custodian was duplicating the claim by asking for money equivalent to the shares.

40. Mr. Naphade submitted that repeated requests were made by Dev to the Custodian to reveal exact number of tainted shares or benami shares in the Custodian's possession and exact number of shares certified and given to bonafide holders. Further information was sought in respect of which Custodian had obtained duplicate share certificates from the companies and also calling upon details of investigation carried out by the Custodian and the findings about the shares received by the Custodian from the Income Tax department. He reiterated that in accordance with orders dated 8th April, 2003 passed in M.P. No. 99 of 1998 and 10th September, 2003 passed in M.A. No. 66 of 1998 a large number of shares had been received by the Custodian. If the details of these were disclosed the Custodian's case would be falsified. In view of the reluctance of the Custodian to provide these details, an adverse inference ought to be drawn against the Custodian under

Section 114 of the Evidence Act. Thus on the ground of non-traverse under Order VIII Rules 3 to 5 an adverse inference is sought.

41. Mr.Naphade's second submission is that the Custodian has failed to discharge initial burden of proof. The Custodian has led no evidence to prove that the shares of ACC Ltd. and ITC Ltd. were benami and that the shares received from the Income Tax department are not the shares in respect of which Custodian now claims. He relied upon communication dated 20th January, 2004 from the Custodian signed by one Gangadharan, Officer on Special Duty wherein the said Officer had admitted that 56,065 shares of ACC Ltd. and 6600 shares of ITC Ltd. had been handed over by the Income Tax department. Considerable stress is laid on this communication and hence this communication is being reproduced below:

*Office of the Custodian
The Special Court (Trial of Offences
relating to transactions in Securities) Act,
1992 Banking Division (Department of
Economic Att Ministry of Finance
10th Floor Nariman Bhawan
227 Vinay K Shah Marg
Nariman Point, Mumbai-400 021*

*To,
M/s. Markand Gandhi & Co.
Advocates, Solicitors & Notary
2nd Floor, Bhagyodaya
70, Nagindas Master Road
Mumbai-400 025*

20th January, 2004

Sub : Misc. Petition No. 92 of 1996

Sir,

Reference may please be made to your letter dated 13th October, 2003 addressed to our Solicitors. Your office had requested for details of copies of documents, applications and orders passed by the Hon'ble Special Court in respect of 56065 ACC shares and 6600 shares of ITC handed over by Income Tax Department.

In this connection this office has to state that pursuant to orders dated 8th April, 2003 in Misc. Petition No. 99 of 1998 and Order dated 10th September, 2003 in Misc. Application No. 66 of 1998 the Hon'ble Special Court directed the Companies concerned i.e. ITC Limited and ACC Limited respectively to rectify their register, cancel the share certificate and dematerialise the shares to Demat account name as "Custodian A/c- Harshad Mehta Group benami shares".

Pursuant to above orders this office had handed over Benami shares belonging to Harshad Mehta Group for obtaining Demat Credit including Benami shares handed over by Income Tax Department vide above orders the Hon'ble Special Court also orders sale of such dematerialized shares following the procedure laid down in order dated 17th August, 2000 in Misc. Petition No. 64 of 1998 and these shares stands sold by the Custodian as on date.

Copies of the Hon'ble Special Court Orders dated 8th April, 2003 and 19th September, 2003 are enclosed.

As regards the particulars of benami shares that have been handed over to the third parties as bonafide purchasers for value after certification procedure, it is stated that the details of Benami shares introduced in the market or sold by Respondent No. 1 are not available with the Custodian. You may therefore advice you client to approach the concerned Stock Exchange to have the information/details for the shares that have been handed over to the third parties as bonafide purchasers for value after certification procedure.

Yours faithfully

sd/-

(P. GANGADHARAN)

Officer on Special Duty (emphasis supplied)

Mr. Naphade submitted that this letter makes it clear that Custodian has no details of these shares dealt with by Dev. These shares were received by the Custodian from the Income Tax department, had been dematerialised and credited to the account of "Custodian A/c- Harshad Mehta Group Benami Shares" and were sold in the market. He also sought information about benami shares which were certified and given to bonafide purchasers, particulars of which were therefore not available with the Custodian. According to Mr. Naphade the petition is the result of investigation carried out, as a result of which the Custodian found large number of shares were introduced in the market by respondent nos. 1 to 19 and in the light of the fact that the shares had already been received by the Custodian by filing the present petition, Custodian was taking a chance since there was no evidence at all to prove the case of the Custodian.

42. Mr. Naphade then submitted that reading of the Custodian's affidavits of 1st June, 2005 and 19th August, 2013 reveal that the said benami shares were standing in the name of persons who were declared benamidar by the Court. Only 29 persons of the many who were dealt with by Dev were declared benamidars. That the shares dealt with by Dev and the 29 benamidars amounted to 39,242 ACC Ltd. shares and 1300 ITC Ltd. shares. The remaining shares were not in the name of the notified parties nor in the name of benamidars. He further submits that 1128 shares of ACC Ltd. and 5300 shares of ITC Ltd. dealt with by Dev where all persons

were non-benamidars and hence he claims to be entitled to return of all these shares.

43. Mr. Naphade reiterated the fact that the Custodian had not controverted the statements made by Dev. Having contended that 52,690 shares of ACC Ltd and 1300 shares of ITC Ltd had been accounted for Mr. Naphade submitted that the Custodian is required to disclose whether the differential shares i.e. 3355 shares of ACC Ltd and 5300 shares of ITC Ltd. had been received from the Income Tax department. If so whether these shares were certified and given to the bonafide shareholders and whether if at all Custodian had obtained duplicates shares from the company, the lack of response of the Custodian Mr. Naphade attributed to the weakness of the Custodians case.

44. Mr. Naphade sought to place reliance upon compilation of documents which he believed to be filed in the matter which allegedly contained an affidavit dated 1st June, 2005. The said compilation is not on record and was never a part of the record. It appears to have been prepared by the Advocates who were advising Dev in the past. In any event Mr. Naphade's attempt to refer to such documents is of no avail since the legal heirs whom he represents were not party to the proceedings then and they have no personal knowledge of these aspects.

45. Mr. Naphade then submitted that the Custodian has not established ownership of the ACC Ltd. and ITC Ltd shares belonging to HSM group or that Dev acted as an agent of HSM group and the shares dealt with by Dev were either in the names of notified parties or in the name of benamidars. Since no evidence is led on this aspect there is no proof at all of the Custodian's contention which therefore cannot be believed.

46. Mr. Naphade then contended that the letter dated 9th April, 1994 which is basis of the present petition was a without prejudice proposal and offering a settlement. That such an offer was made on condition that no evidence be given of it or any circumstances from which one can infer that parties agreed that no evidence be given. This submission is based on Section 23 of the Evidence Act. According to him the offer contained in the letter falls within the first part of Section 23 which provides:

"In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given."

He does so in view of the without prejudice nature of the offer. In my view it is appropriate that the contents of letter dated 9th April, 1994 be reproduced for ease of reference.

WITHOUT PREJUDICE

April 9, 1994

To,
The Custodian

Re : Petition No. 282/1993

Dear Sir,

1. I am making this Without Prejudice offer for arriving at a solution in respect of 56,065 shares of ACC Ltd. and 6,600 shares of ITC Ltd. standing in the name of the parties specified in your Petition and which according to you belongs to Harshad Mehta or any other Notified Parties.

2. I am agreeable to pay to you a sum of Rs. 9,67,12,125/- on account of ACC shares and Rs. 27.75 lakhs towards ITC shares in full settlement of all claims in relation to the above shares on the basis that my title to the said shares as purchasers is acceptable by yourself and on the basis that your contention that the shares belongs to the Notified Parties is accepted by the Court and on the basis that in turn the purchasers of the above shares from me have got good title and on the basis that direction is given by the Court to the two companies to register the above shares from the name of the original holders (who according to you are nominees of Harshad Mehta and other parties) to either my name or to the names of my purchasers. If this offer is acceptable by you in principle, then a suitable draft consent terms can be prepared and, if it is approved by the Court, then appropriate Order can be passed whereby on one hand you on behalf of Notified Parties get the above amount and the title to the above shares in my favour is accepted and confirmed.

3. If the above offer is not acceptable to you, then in the alternative I am willing to identify the Brokers with whom the above shares at present must be lying or they must be lying with the Companies and my alternative offer is that I am willing to give-up all my claims as Purchaser on the basis that you take the physical possession of the above shares and take order from the Court for transfer of the shares to the name of such notified parties as your consider proper and there should be no other claim either by you or by notified Parties or by Registered Holders of the above

shares against me. In this event, I will be free to settle with my brokers and purchasers from me and this will be a matter of account between myself and the parties with which you will not be concerned. If the second alternative is acceptable to you in principle, then suitable consent terms can be prepared and if it is approved by the Court, then appropriate order should be obtained from the Court.

Yours sincerely,

sd/-

ACHARYA ARUN DEV

According to Mr. Naphade the letter is clearly marked without prejudice and the contents leave no manner of doubt that no evidence is to be given of this letter. Mr. Naphade then submitted that the letter being conditional is not a clear or unequivocal admission and it does not contain detail of the shares which Dev dealt with. In the absence of such details the claim is based on conjecture and surmises and the resulting ambiguity must augur in favour of Dev.

47. In his next submission Mr. Naphade contended that the shares dealt with by Dev were not in the names of notified parties. Therefore Dev did not introduce shares. He was not first seller who introduced shares in the market. He submitted that he was introduced first seller as contemplated in order of the Special Court dated M.A. No. 194 of 1993 dated 19th October, 1993 in which the Court observed that the goal of the agencies was to trace the first persons who introduced shares in the market. Respondent no. 4 had made reference to an affidavit made on behalf of BSE which refers to joint meetings of the Custodian, SEBI, Income Tax department and Stock

Exchanges wherein they unanimously decided that tracing the first seller of the shares was crucial and that bonafide investors should not be penalised. He submitted that the Custodian has pleaded that Dev - respondent no. 1 was the person who introduced benami shares in the market but there is no pleading to the effect that persons whose names appeared in the share certificate when Dev dealt with were notified parties.

48. Mr. Naphade then made reference to pleading of respondent nos. 1, 4, 9, 12, 15 to 17 all of whom had filed affidavits of various dates to support his case that shares dealt with by them were not in the name of notified parties. These averments of 8 respondents and that of Dev had not been controverted by the Custodian's affidavit. Therefore the Custodian had failed to make out a case that the shares were in the name of notified parties. At best Custodian's statement is that only 29 persons out of numerous persons with whom Dev had done business in ACC Ltd and ITC Ltd shares were benamidars. In any event Dev was not the first person to introduce shares in the market.

49. The next contention canvassed by Mr. Naphade is relating to Dev's obligation to purchasers of shares from him. It is contended that Custodian cannot maintain a claim for money when the shares are in his possession. Mr. Naphade relied upon Section 65 of the Contract Act to submit that when contract becomes void as in the case of Dev his only liability is to return monies / shares to the purchasers and not to the Custodian. That the

Special Court Act does not contain any provision for attaching the monies generated from the sale of benami shares. It is only shares of notified parties that can be attached. Section 65 would necessarily be attracted notwithstanding provision of the Special Courts Act because according to him unlike Prevention of Money Laundering Act (PMLA) or Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) the TORTS Act does not empower the Special Court to attach properties which are created using attached properties. Hence it is contended that no money can be attached in the hands of Dev.

50. According to Mr. Naphade the Custodian's claim was based on interim order dated 10th July, 2003 directing Dev to deposit Rs. 10 crores. According to him order of 10th July, 2003 is only interim order which expresses a prima facie view. Focusing on the interim the order dated 10th July, 2003 Mr. Naphade had submitted the order does not prevent any of the respondents from raising an appropriate defence although Supreme Court vide order dated 26th September, 2003 had dismissed SLP against them the doctrine of merger would not be attracted. The order continued to be an interim order and subject to further orders that need to be passed. The contention on merits would therefore have to be considered afresh and no attachment can be levied without considering the defence on merits. Mr. Naphade therefore urged me to consider the submission on merits of the order itself. He submitted that these specific aspects are in contemplation

while considering the effect of the order dated 10th July, 2003. The order ignores the averment in M.A. No. 282 of 1993. The contention being that several averments in M.A. No. 282 of 1993 have been ignored by the Custodian since the Custodian was claiming shares of several persons apart from respondent no. 1- Dev. Shares were being claimed for Respondent nos. 2/4., 2/13, 2/3/7, 2/15 and respondent nos. 9/10 as detailed below :

Respondent No.	No. of shares
2 / 4	11,375
2 / 13	7,525
2 / 3 / 7	9,070
2 / 15	3,020
9 / 10	5,995

51. Mr. Naphade submitted that the letter of 9th April, 2004 is undoubtedly conditional and no reliance can be placed on it since according to him the offer for settling a claim cannot be taken into consideration while deciding merits of the case. He submitted that presently Dev's legal heirs have contended that no part of the assets of Dev had come into their hands and on merits there is no case against them. In particular the Custodian has never contended that the shares dealt with by Dev were in the name of notified parties. Mr. Naphade submitted that the order dated 10th July, 2003 does not take into consideration Section 23 of the Evidence Act or the fact that the letter dated 9th April, 1994 does not contain any clear or unequivocal admission and therefore it is not admission under

Section 17 of the Evidence Act. According to Mr. Naphade the order did not consider the fact that the Custodian already has possession of the shares. Under Section 65 of the Contract Act, Dev's liability is towards purchasers and nobody else. The shares claimed by the Custodian, being in his hand has been ignored by this Court. Custodian has admitted that he does not have any details of the shares dealt with by Dev and how they belonged to HSM Group. These aspects have not been considered by the Court and therefore the order is sub silentio/ per incuriam and would not be binding even if it is considered to be final order.

52. Mr. Naphade has on behalf of respondent nos. 1(a) to 1(c)-the legal heirs of Dev led evidence and attempted to establish that the property at 7A, Doctors Lane, Gole Market, New Delhi which the Custodian proposes to attach in execution of the order dated 10th July, 2003 is not property of Dev. Inviting my attention to prayer clause K (iv) and K (v) of the petition he submitted that the Custodian's attempt to seek attachment and sale of 7A, Doctor's Lane property cannot succeed since it was not property of Dev. Reference is made to the fact that the Custodian has relied upon due diligence carried out the case and has sought to be made out that property at 7A to 7D, Doctor's Lane were all properties of Dev and were transferred to various entities in order to save them from attachment. He has taken me through the various transactions in relation to the properties.

53. The deed of conveyance dated 23rd November, 2006 appears to be the culmination of series of transactions which started in 1986 prior to the securities scam. A Family settlement was signed about nine years ago on 14th September, 1994 prior to the order sought to be enforced in this petition. An Arbitral Award was also of 6th July, 1998 and 5 years prior to order passed in this petition. The Agreement of Sale of 29th January, 1996 records that the vendor executed four of the properties in favour of the nominees. This agreement was executed 17 years before interim order. There is no fraudulent transfer that had taken place. As far as property at 7B, 7C and 7D Doctor's Lane were concerned these were also conveyed on the same date in accordance to prior documents.

54. The execution of the conveyance in relation to 7A Doctor's Lane alone was not a solitary event to deliberately avoid compliance with the order. Mr. Naphade then submitted that on the legal front the Custodian had not sought any declaration that the transfer was fraudulent in terms of Section 53 of the Transfer of Property Act, 1882 read with Section 31 and 34 of the Specific Relief Act which required the necessary averment and that the Custodian had not sought any relief in relation to the deed of conveyance but only seeks attachment of the property. In the absence of any challenge to the family settlement or the Arbitral Award being fraudulent there was no occasion to assail the documents of transfer of these four properties referred in affidavit dated 11th January, 2012.

Furthermore it is contended that the deed of conveyance is dated 23rd November, 2006 and the Custodian has failed to seek any relief in relation thereto within three years from knowledge.

55. In conclusion Mr. Naphade submitted that the Custodian's contention that the shares were owned by notified parties is incorrect since Dev had already disclosed in his affidavit of documents dated 19th November, 2001 that the persons in whose names shares stood were notified parties. The Custodian has not controverted this. Thus in view of Section 17 and 23 of the Evidence Act and Section 65 of the Contract Act there was no occasion to hold Dev and his estate or legal heirs liable. In support of his aforesaid contentions he has relied upon the following judgments:

- (i) *Superintendent Central Excise vs. Pratap Rai*¹
- (ii) *Union of India vs. Shew Bux Satyanarayan*²
- (iii) *Gopal Krishnaji Ketkar vs. Mohamed Haji Latif*³
- (iv) *Union of India vs. Ibrahim Uddin*⁴
- (v) *Anil Rishi vs. Gurbaksh Singh*⁵
- (vi) *Sambhaji Laxmanrao Pawar vs. Abdul Wahed s/o. Rahmatullah*⁶

¹ (1978) 3 SCC 113.

² (AIR 1965 Cal 636)

³ (1968) 3 SCR 862).

⁴ (2012) 8 SCC 148

⁵ (2006) 5 SCC 558.

⁶ (1995) 1 Bom CR 668.

- (vii) *M/s. Shantez vs. Applause Bhansali Films Pvt. Ltd*⁷
- (viii) *Ramji Batanji vs. Manohar Chintaman*⁸
- (ix) *Jahed Shaikh vs. Kamalesh Chandra Das*⁹
- (x) *Harshad Mehta vs. Custodian*¹⁰
- (xi) *L. S. Synthetics vs. Fairgrowth*¹¹
- (xii) *Hitesh Mehta vs. Union of India*¹²
- (xiii) *Canbank Financial Services Ltd. vs. Custodian*¹³
- (xiv) *Municipal Corporation of Delhi vs. Gurnam Kaur*¹⁴
- (xv) *Kunhayammed vs. State of Kerala*¹⁵
- (xvi) *Chogmal vs. Deputy Commissioner*¹⁶
- (xvii) *Ratan Devi Moondara vs. Jawarmal Sultanmal*¹⁷
- (xviii) *Jamila Begum vs. Shami Mohd*¹⁸.
- (xix) *Bina Manohar vs. Major Verma*¹⁹

Submissions on behalf of Respondent no. 2

56. On behalf of respondent no. 2 Mr. Narayan learned Advocate submits that respondent no. 2 was only employee of respondent no.1. Although

⁷ (2009) 4 Bom CR 799

⁸ AIR 1961 Bom 169.

⁹ (1958 SCC Online Cal 157).

¹⁰ (1998) 5 SCC 1

¹¹ (2004) 11 SCC 456

¹² (1992) 3 Bom CR 716

¹³ (2004) 8 SCC 355

¹⁴ (1989) 1 SCC 101

¹⁵ (2000) 6 SCC 359.

¹⁶ (1976) 3 SCC 749

¹⁷ (AIR 1972 RAJ 67)

¹⁸ (2019) 2 SCC 727

¹⁹ (2007) (5) Mh.LJ 224

prayer (c) to (g) and (i) are directed towards him, he had no role to play except for being salaried employee. There is no delivery of shares in his name. He earned no commission or any brokerage. He is not responsible for actual introduction of the shares in the market. In any event he has not committed any contempt of Court and therefore submits that the application be dismissed against respondent no.2.

Submissions on behalf of Respondent nos. 4 and 5

57. Mr. Joshi appearing on behalf of respondent nos. 4 and 5 submitted that his clients had no role to play in wrongful acts, if any, committed by the notified party and respondent no. 1- Dev. Respondent no. 4 is sole proprietor of respondent no. 5. The contention of the Custodian is that respondent no. 4 being sub-broker to respondent no. 12 had introduced benami shares into the market through respondent nos. 5 and 6. Mr. Joshi submitted that respondent nos. 4 and 5 cannot be held personally responsible since they were only acting in the normal course of business. Respondent nos. 4 or 5 were not liable to return the 1420 shares of ACC or any right shares, dividends or bonus since none have accrued to them.

58. According to Mr. Joshi the transactions entered into by his clients were bonafide transactions and his clients did not deal in any shares where the name of any notified party was appearing. He submitted that there is no

question of his client being in contempt and the shares were introduced into the market by his clients. He submitted that his clients have no other role to play. Not being liable for contempt, the petition is liable to be dismissed as against respondent nos. 4 and 5. There was also no occasion for the Custodian to hold respondent nos. 4 or 5 liable to pay any monetary value. Mr. Joshi therefore submits that the prayers in the present application as against respondent nos. 4 and 5 may not be granted.

Submissions on behalf of Respondent no. 9.

59. On behalf of respondent no. 9 Mr. Ghogre contended that in the present petition the Custodian has claimed that his client had dealt with 5995 shares of ACC. None of these shares were belonging to notified parties. He submitted that in his affidavit in reply he had given names of holders of these shares. They were five in number as tabulated below:

Name of the Holder	Quantity of shares
Santosh Impex Pvt. Ltd.	1240
Latika Holding Pvt. Ltd.	1005
Iceland Holding Pvt. Ltd.	5
Latika Holding Pvt. Ltd.	1000
Ninad Holding Pvt. Ltd.	1725
Anurag Impex Pvt. Ltd.	20

According to him respondent no. 9 has set out in paragraph 12 (I) (ii) of his affidavit that none of the parties were holding shares for notified parties and the Custodian had not denied this contention. Hence it is submitted

that there is no case of contempt that could be made out against respondent no. 9.

60. He further submitted that 5995 shares of ACC did not form part of 56065 shares of ACC with which the Custodian was now concerned. In that view of the matter there will be no case whatsoever against respondent no. 9. He submitted that the contempt petition has not been pressed against respondent no. 9 as evident from the order dated 10th July, 2003 and as seen from the Custodian's affidavit dated 14th December, 2017. Since there is no allegation of civil contempt against respondent no. 9, the present petition is required to be dismissed. He submitted that contempt petition cannot take place of execution proceedings and no execution proceeding can be initiated or continued against respondent no. 9 since 5995 ACC shares were not attached property at all. Mr. Ghogre then submitted that the contempt petition was in any case barred against Contempt of Court Act beyond the period of one year from the alleged breach of the order. He also submitted that any attempt to recover compensation is also barred against Section 3 of the Limitation Act read with Section 17 and Article 69 and 91 (B) since the 5995 shares were purchased by his client on 16th June, 1993.

61. Mr. Ghogre next submitted that the respondent no. 9 has otherwise adopted submission made on behalf of respondent nos. 1(a) to 1(c) by Mr. Naphade. In short the shares claimed by the Custodian are already in the possession of the Custodian. There is no denial that the Custodian received

these ACC shares. There is also no denial of the fact that the shares were not in the name of the notified parties.

62. On the issue of jurisdiction Mr.Ghogre submitted that the Special Court lacked jurisdiction to entertain the claim against his client inasmuch as the property in question should stand attached under Section 3(3) and should arise out of transactions in securities entered into after 1stApril, 1991 and before 6th June, 1992 and in which transaction a party notified under section 3(2) was party, broker or intermediary. As stated above the shares were purchased from five entities none of whom were notified parties and furthermore the purchase of these shares was not within the window period of 1st April, 1991 and 6th June, 1992. The Custodian's case therefore had no foundation.

63. Non-existence of jurisdictional facts was canvassed on the basis that these shares in question were not property attached under Section 3(3) nor were the shares subject matter of transactions in securities entered into between 1st April, 1991 and 6th June, 1992 wherein the Notified Parties was broker, intermediary or a party to the transaction. Mr. Ghogre therefore submitted that the application cannot succeed. Respondent no. 9 was a bonafide purchaser for value without notice who had purchased shares of Jaiprakash Industries Ltd. and ACC from respondent no. 9. He relied upon sale note issued by Asian Stocks and Securities Ltd. ("Asian

Stocks") dated 1st June, 1993, 4th June, 1993, 16th June, 1993 and 17th June, 1993 which were allegedly issued by authorised signatory on behalf of Asian Stocks. He submitted copies of these have been filed along with his additional affidavit. He submitted that out of total of 6000 shares of ACC purchased as aforesaid he had received only 5995 shares and the only relief being sought in this contempt petition was in relation to these 5995 shares.

64. Respondent no. 9 vide letter dated 29th July, 1993 addressed to Asian Stocks had acknowledged liability to pay Rs.4,01,60,000/- towards the price of the shares purchased but had offered a barter by transferring 10,00,000 shares of Mega Corps at Rs. 40/- per shares. Asian Stocks had accepted this offer vide letter of 30th July, 1993 and accordingly these transactions of purchase of ACC shares was squared off. According to Mr. Ghogre this arrangement was followed up by respondent no. 9 instructing one Jamnadas & Co. to transfer 4000 shares of ACC to Mega Corps. Likewise on 5th July, 1993 respondent no. 9 asked one Bheda and Co. to transfer the sale proceeds of 5995 shares of ACC directly to Mega Corps. He has further made submission on the internal arrangement between respondent no. 9 and Mega Corps with which we are not concerned.

65. Mr. Ghogre has attempted to disprove the Custodians case relying heavily on the arrangement between Mega Corps and respondent no. 9 whereby Mega Corps issued 10,00,000 shares to respondent no. 9 and issued ten separate allotment advices dated 10th September, 1993 allotting

these shares but respondent no. 9 had instructed Mega Corps to deliver these share certificates to Asian Stocks in view of the arrangement (*supra*). The transaction leading to respondent no. 9 being impleaded came about by virtue of Mega Corps Leasing Finance Ltd. ("Mega Corps") Mr. Ghogre contends that Mega Corps provided all documents to the Custodian on 24th July, 1995 confirming issuance of 10,00,000 shares. Respondent no. 9 and Bheda & Co. also confirmed this arrangement and had written letters confirming which have not been denied by the Custodian. In this manner Asian Stocks delivered to respondent no. 9, 5995 shares of ACC and other transfer shares executed by the existing shareholders with purchasers name being blank in accordance with the prevailing practice then and these transactions were clearly recorded in respondent no. 9's books of accounts, balance sheet and Income tax returns. In short Mr. Ghogre submitted that the respondent no. 9 had no knowledge of the ACC shares being connected with any notified party. The Custodian has not denied any of the averments in the affidavit filed by respondent no. 9 and nor imputed any knowledge to respondent no. 9. He therefore submitted that the absence of jurisdictional facts and no factual accuracy in the Custodians submissions the application is liable to be dismissed as against respondent no. 9.

66. Incidentally Mega Corps is respondent no. 10 in the petition and Asian Stocks were not separately impleaded, although the original respondent no.1 Dev was its proprietor. In brief the submission of

respondent no. 9 is that the shares claimed by the Custodian are already in possession of the Custodian thereby supporting arguments of Mr. Naphade. The Custodian has never denied having received the shares and thirdly that the shares that were dealt with by respondent no. 9 were not in the names of notified parties. Dev was not the first seller either.

67. In support of his contention Mr. Ghogre relied on the decision of the Privy Council in *Maneckji Pestonji Bharucha and Anr. vs Wadilal Sarabhai And Company and Anr. (1926) 51 MLJ 1* which held that under the Indian Contract Act property of shares is sold based on delivery of the certificate and blank transfer forms. He relies upon this in support of his plea that in the present case as well property in 5995 shares passed upon delivery of these shares and blank transfer forms and likewise shares of Mega Corps also stood transferred in this manner.

Submissions on behalf of Respondent no. 15

68. On behalf of respondent no. 15 Mr. Pandey submitted that he has filed an affidavit dated 6th September, 2003. The shares that respondent no. 15 introduced in the market were not in the name of any notified party and the names of the entity in which the shares were held is set out in paragraph 22 of the affidavit with regard to 3020 shares of ACC Ltd. His clients are not first introducers of the shares and dealt with shares without any knowledge of the activities of respondent no.1. Respondent no. 15 has

not received any dividend or any accruals. He was a sub-broker of respondent no.21 and dealt with the shares in the ordinary course of business and bonafidely. He had no other role to play.

Submission on behalf of Respondent no. 16

69. On behalf of respondent no. 16 Mr. Purandare invited my attention to paragraph 21 of the Miscellaneous Petition and submitted that the only allegation against his clients are to be found in paragraph 29, 33, 35 and 42. The allegation being that respondent no. 16 had illegally dealt in the shares. The prayers sought against his clients are in terms of paragraph 51 (a) and (h). Firstly to hold his client liable for contempt of Court having dealt with shares said to have been attached to jointly and severally reported 22870 shares of ACC and 6600 shares of ITC with all accruals dividend and bonus since 8th June, 1992.

70. Mr. Purandare submitted that his clients were not responsible for any wrongful acts. They had merely acted in the normal course of business and traded in shares. Respondent no. 16 had sold 3000 shares of ACC on behalf of respondent no. 2 and not 3020 shares. Respondent no. 16 also purchased on behalf of respondent no. 2 shares of Jaiprakash Industries Limited at the request of respondent no. 2 acting on behalf of respondent no.3. He also referred to a copy of the letter dated 2nd November, 1993 from Dev declaring that he had asked respondent no. 2 to sell shares through respondent no. 16 and instructed him not to reveal the name of

respondent no. 1 at the time. Respondent no. 2 had introduced the shares in the name of respondent no. 3. Respondent no. 1 confirmed delivery of 30,200 shares of ACC. He also confirmed that he had purchased 45,000 shares of Jaiprakash Industries through respondent no. 16 and respondent no. 1 had claimed these shares through settlement of accounts. There was debit balance of Rs.31,800/- which respondent no. 3 confirmed to respondent no. 16 is revealed from Exhibit H to the Miscellaneous Petition. Furthermore, respondent no. 16 had also written letter dated 3rd December 1993 Exhibit H confirming that he had no dealing with notified persons, respondent no. 1 or respondent no.8.

71. Mr. Purandare submitted that there is no substance in the claim against his clients that money or proceeds of the shares should be collected from persons who received them bonafidely. There is no averment or mail to show that respondent no. 16 was liable. In these circumstances it also appears that shares of ACC and ITC have since been certified and no cause has been made out against his client who is not liable in damages.

Submission on behalf of Respondent nos.23 a-1 (i), a-1 (ii), 23(a-4), 23(a-5) and 24.

72. Original Respondent no. 23 – late Harshad S Mehta had in his affidavit dated 2nd December, 1999 contended that the petition does not disclose any cause of action against him but he has already disclosed that he had already identified

names of 130 companies and has been regularly disclosing information available with him. He has denied that he has asked his former employees to transfer a large number of shares. He does not deal with several aspects to avoid incriminating himself.

73. Respondent no. 24- Mr. Sudhir S. Mehta has in his affidavit dated 3rd December, 1999 denied that he was involved in supervision of transfer of shares. He denies having committed contempt of Court and/or that he has fraudulently dispossessed of attached property to make gains.

74. Mr. Mehta on behalf of respondent nos. 23 a-1 (i), a-1 (ii), 23(a-4), 23(a-5) and 24 submitted that these respondents are not liable to be proceeded against in contempt nor are they in any manner responsible for payment of these amount that the Custodian seeks to recover. He relied upon affidavits dated 25th February, 1994 and 9th August, 1994 in M.A. No. 194 of 1993 and M.A. No. 53 of 1994 filed by late HSM to emphasize that the so called benami transactions are an unfortunate occurrence for which deponent was not responsible. He only speculated how the transaction could have happened but he was advised against making any statement since there were criminal proceedings against him and therefore he was advised against deposing in relation to these facts. He however relied upon statement of shares and debentures which he had compiled and would submit at a later date. That there were minor discrepancies in the list prepared and that he would provide further intimation.

75. Mr. Mehta contended that the Assistant Commissioner of Income Tax had not furnished particulars of shares said to have been seized. According to him respondent nos. 23 (a) to (c) and 24 are not in any manner liable. He further submits that in order dated 10th July, 2003 in the above petition the Court had clearly observed that the contempt he sought to be restricted to respondent nos. 1, 2 and 24. He submitted that in view of what is set out in the affidavit and the affidavit of HSM and that of respondent no. 24 – Sudhir S. Mehta dated 18th June, 2010 and 24th June, 2010 show cause notice against respondent no. 24 has been disposed as recorded in order dated 19th December, 2014.

Submissions on behalf of Respondent no. 25.

76. On behalf of respondent no. 25 Mr. Panicker submitted that respondent no. 25 was incorporated as a Public Limited Company on 16th November, 1985 in the share holding pattern of the Company and the Company was closely held. Respondent no. 1 Acharya Arun Dev held 83.586% of the shares. Remaining 16.414% shares were held by other promoters, mutual funds, banks and financial institutions, private, corporate bodies, NRI's, Indian Public. The public shareholding was only 2.862 %. As and by way of factual background one Fairgrowth Financial Services Limited (FFSL) owed a sum of Rs. 2 crores and interest thereof towards M/s. Murablack Ltd (Murablack). FFSL was a notified party under the Special

Courts Act as a consequence of which Murablack filed M.P.No. 9 of 1992 for Rs. 2 crores and interest. A consent order was passed whereby sum of Rs. 2 crores was treated as simple loan and the exact amount to be returned. Interest was to be decided at a later date since respondent no. 25 had business relations with Murablack. Murablack owed respondent no. 25 more than Rs.3.75 crores in discharge of this debt. Murablack agreed to assign the right, title and interest in the decree that may be passed in their favour in M.P. No. 9 of 1992 and entered into an agreement of assignment dated 27th June, 1995.

77. Murablack meanwhile filed a Suit No. 50 of 1999 in this Court against respondent no. 25 claiming specific performance of the assignment. M.P. No. 9 of 1992 was then decreed in 2002 for a principal sum of Rs. 1 crore and interest on the balance Rs. 1 crore at 24% p.a. Respondent no. 25 then sought to be substituted in place of Murablack in M.P. No. 9 of 1992 and claimed the 25% dividends declared by this court to the credit of FFSL. The Special Court had rejected this application on 22nd August, 2002 then filed Civil Appeal no. 5870 of 2002. The Supreme Court dismissed the SLP but granted plaintiff the liberty to approach the Civil Court. Pursuant to the rejection defendant no. 1 took out a Notice of Motion No. 2638 of 2002 in Suit no. 50 of 1999 restraining the Custodian from paying the dividends @ 25%. The notice of motion was rejected resulting in an Appeal. The Appeal also came to be rejected. Thereafter an SLP came to be filed on 21st January,

2003 in the Supreme Court. The parties arrived at an amicable settlement and filed consent terms under which Murablack assigned all benefits of the decree dated 2nd May, 2002 passed in M.P. No.9 of 1992 handed over to respondent no. 25 and in this manner respondent no.25 was substituted in place of Murablack.

78. M.P. No. 53 of 2004 was then filed in this Court seeking release of the dividend declared by this Court. The Custodian took out a M.A. No. 92 of 2004 seeking a declaration that respondent no. 25 was his front company and seeking to raise the corporate veil and for appropriating money receivable under SLP (Civil) No.4154 of 2003. Both applications were heard and disposed on 10th March, 2004. This Court held that this Miscellaneous Petition is appropriate proceeding in which the question of lifting the corporate veil of the company would be considered only at the final hearing and till such time the dividends payable would be decided. The order dated 10th March, 2004 was challenged in SLP before the Supreme Court. The appeal was heard and disposed on 1st February, 2007 directing the Special Court to dispose the same within a period of six months. Surprisingly none of the parties thereafter appeared to have moved the Special Court for a long period of time and it is only now that the suit has been taken up for hearing.

79. According to Mr. Panicker the corporate veil has not been lifted. Mr. Panicker submitted that the issue of lifting of the veil not having been finally decided but is still open and that respondent no. 25 has an arguable case. Respondent no. 25 had not dealt with any property which were attached, had not misused the corporate structure of respondent no. 25 to carry out any fraudulent transaction in respect of shares belonging to notified parties. That it is a publicly listed company with a separate identity and lifting of the veil would not be justified only because respondent no. 1 was a majority shareholder. It is contended that the claim against respondent no. 25 was barred as per law of limitation and that respondent no. 25 is entitled to receive the decretal amount.

80. Mr. Panicker further submitted that a fair reading of the order dated 10th March, 2004 would reveal that respondent no. 25 was required to be added as party to this petition and dividend payable to respondent no. 25 and the order directing the dividend payable to respondent no. 25 to be withheld indicates that the veil had not been lifted and the present miscellaneous petition was to be directed to be disposed within six months by the Supreme Court. This itself would establish that all aspects were open for consideration. That respondent no. 25 having been made a party had filed affidavit in reply dated 18th December, 2008 to which a rejoinder was filed in 27th February, 2009 and the issue of whether the corporate veil is required to be lifted is still alive.

81. Mr. Panicker invited my attention to the definition of “decree” under section 2(2) of the Civil Procedure Code as also definition of the term “Order”. Later the order dated 10th March, 2004 was only a formal expression of the Courts decision and which is not a decree. That Miscellaneous Petition no. 92 of 1996 does not seek lifting of the veil and therefore petition was required to be dismissed.

82. Mr. Panicker's next submission is that no contempt had been committed by respondent no.25. It had not dealt with any shares or any property that is attached. There is no allegation against respondent no. 25 to that effect. His third submission is that the Custodian had failed to prove that respondent no. 1 used respondent no. 25 and its corporate structure to carry out fraudulent transactions in shares belonging to the notified parties. The petition does not contain any such allegation of fraudulent transactions. Effectively there is no claim against respondent no. 25.

83. According to Mr. Panicker the Custodian's only contention is that the veil has been lifted since the order dated 10th March, 2004 did contemplate lifting the veil and attached some of the assets however absent in prayer in petition for lifting veil absence and in oral and documentary evidence Mr. Panicker submitted that the petition is liable to be dismissed.

84. Mr. Panicker then submitted that respondent no. 25 is not liable to make any payments to the Custodian. There is no decree against respondent

no. 25 which directs lifting of the veil. That it is for the purposes of considering lifting of the corporate veil that respondent no. 25 was impleaded. He relied upon contents of affidavit in reply dated 18th December, 2008 in this respect. According to Mr. Panicker the order dated 10th March, 2004 is an interim order and therefore cannot be executed as a decree. He therefore submits that Execution Application no. 418 of 2003 filed against respondent no. 25 is premature. According to him respondent no. 25 was to pay a sum of Rs. 2 crores with interest in accordance with the consent terms filed in SLP Civil no. 4154 of 2003 and the order dated 28th November, 2003. Pursuant to which all right, title, interest and benefits of decree dated 2nd May, 2002 passed in M.P no. 9 of 1992 is to be paid to respondent no. 25. That respondent no. 25 is entitled to receive money from the Custodian which is due under the consent terms. Custodian is holding an amount of Rs. 1.5 crores and interest thereon as Trustee.

85. Mr. Panicker relied only upon the following decisions of the Supreme Court and the Special Court.

1. *Bishundeo Narain and Anr. vs. Seogeni Rai and Jagernath*²⁰
2. *Aron Salomon vs. Salomon & Co. Ltd.*²¹
3. *Bacha G. Guzdar, Bombay vs. Commissioner of Income Tax, Bombay*²²

²⁰ (1951 SCR 548)

²¹ (House of Lords (1897) A.C. 22)

²² (AIR 1955 SC 74).

4. *Balwinder Rai Saluja vs. Air India*²³
5. *Indowind Energy Limited vs. Wescare (India) Limited*²⁴
6. *Lufeng Shipping Company Ltd. vs. M. V. Rainbow Ace*²⁵
7. *Ashwin S. Mehta vs. Custodian*²⁶
8. *Custodian vs. Mid East Engineering (Bombay) Pvt. Ltd.*²⁷
9. *Growth Techno Projects Ltd. vs. Murablack India Ltd.*²⁸
10. *Kudremukh Iron Ore Co. Ltd. vs. Fairgrowth Financial Services Ltd*²⁹
11. *Tejkumar Balakrishna Ruia vs. A. K. Menon*³⁰
12. *Sushil Kumar Mehta vs. Gobind Ram Bohra*³¹
13. *Pandurang Dhondi Chougule vs. Maruti Hari Jadhav*³²

Mr. Panicker has also relied upon the following orders

1. Order dated 19th October, 1993 in M.A. No. 194 of 1993.
2. Order dated 28th November, 2003 in SLP Civil no. 4154 of 2003.
3. Decree dated 2nd May, 2002 passed in M.P no. 9 of 1992
4. M.A. No. 53 of 2004 in M.P. No. 9 of 1992 and the Custodian filed M.A. 38 of 2004 dated 10th March, 2004.

²³(2014) 9 SCC 407.

²⁴(2010) 5 SCC 306)

²⁵(2013 SCC Onl Line Bom 733).

²⁶(2006) 2 SCC 385.

²⁷(2019 SCC OnLine Bom. 156).

²⁸[Special Court Order dated 22.08.2002 passed in Miscellaneous Application no. 453 of 2002]

²⁹(1994) 4 SCC 246.

³⁰(1997) 9 SCC 123)

³¹(1990) 1 SCC 193.

³²(1966) 1 SCR 102

5. Miscellaneous Application no. 453 of 2002 in M. P. No. 9 of 1992

6. Civil Appeal no.4408 of 2004.

86. The record indicates that certain other parties who had been appearing had filed their affidavits. Since the petition being is disposed finally it is appropriate that their contentions be taken into account. Respondent nos. 3, 7, 10, 11, 18, 19, 21 and 22 have not filed any affidavits. Respondent no. 6 has vide his affidavit dated 6th January, 1997 stated that he was never connected with transaction forming subject matter of the petition. He is not aware that respondent no. 4 was a sub broker of respondent no. 12 or respondent no. 5 introduced benami shares through respondent no.4. He denies that he was responsible for introduction of benami shares. That apart he states that he has never introduced any benami shares in the market. He does not know respondent nos. 4 or 5. He has put the Custodian to strict proof. With specific reference to all records of name "Mr. Sandeep" in a letter, he submits that he is not that person and he is not concerned with the shares in question. He has not committed any act rendering him liable for punishment and seeks dismissal of the petition against him.

87. Mr Pushpakar Divekar authorised signatory of respondent no. 8 has also filed affidavit dated 19th January, 1999. According to the deponent respondent no. 8 is not liable to be proceeded against. He denies that any

shares were introduced by respondent no. 8 in the market nor has he handed over any shares to any broker. The deponent also denies that respondent no. 8 had delivered 22,870 ACC shares and 6,600 ITC shares and that too no question of making any payment to any person. Respondent no. 8 has nothing to do with the shares in question or the transaction forming subject matter of the petition. In those circumstances deponent has denied liability to return 22,870 ACC shares or 6,600 ITC shares with dividend, bonus or accruals or that is he liable to pay monetary value of these shares. He too seeks dismissal of the petition against him.

88. On behalf of respondent no. 12 proprietress of M/s. T. K.Doshi Share & Stock Broker has filed affidavit dated 12th April, 2001 in which she confirms transaction carried out by respondent no. 4 her sub broker. Respondent no. 4 was proprietress of respondent no. 5 M/s. Divine Investment. That the deponent had no connection with the shares sold by her sub broker respondent no. 4 and respondent no. 4 had explained the transactions in her affidavit. In view thereof the deponent seeks to be relieved in this petition.

89. Respondent no. 13 Mr Bhupendra Bheda has filed his affidavit dated 21st January, 2020 in which he pleads that the petition is bad for misjoinder. He is concerned with 5,995 shares sold by respondent no. 9 – Mr. Devang Vyas through him. The amounts realised were paid to Mega

Corp-respondent no. 10 as per instruction of respondent no. 9. He states that neither he nor his firm are connected with the transactions in the petition. The deponent states that he has all time acted in good faith and he is not in contempt. Apart from his firm there were other brokers involved in respect of sale of ACC shares and in respect of Devang Vyas and they were not parties to the petition. He alleges the Custodian is favourably inclined towards these brokers. He has listed names of 21 other brokers. Many of them I find are already parties to the petition. In any event he has provided details of sales effected along with contract notes and delivery of shares by Devang Vyas. He has identified names of parties in whose names that shares are standing. None of those five parties were notified parties. He reiterates that he has acted in good faith. He denies that he has dealt with attached property and states that payments of three amounts were made to Mega Corps as per direction of respondent no. 9. Having acted bonafide he seeks to be relieved of the proceedings and denies allegation of contempt.

90. Respondent no. 14- Kishore N. Amerchand has also filed affidavit dated 2nd July, 2003 in which the deponent has stated that none of the shares received by him were standing in the name of notified parties and hence no restrictions on dealing with shares. The claim against him is barred by limitation and hence respondent no. 14 had no title in the shares. There is no question of paying the monetary value. As far as he was concerned, 9,070 ACC shares were standing in the name of six entities and

he had sold these shares in the usual course of business as a bonafide transaction. Respondent no. 14 dealt with only Asian Stocks and Securities and not with respondent no. 3, hence there is no claim against respondent no. 3 but some payments were made by respondent no. 13 on behalf of respondent no.1. Respondent no. 1 had purchased shares of Jaiprakash Industries, Mazda Industries and Mazda Packings towards consideration of which sales proceeds of 9,070 shares of ACC were adjusted. Respondent no. 1 had admitted sale of 9,070 shares of ACC. As far as he was concerned he had dealt with shares bonafidely and has not committed any illegality nor is he liable for contempt as alleged. He denied allegations of contempt. In corrigendum dated 9th July, 2003 certain errors which crept into his affidavit of 2nd July, 2003 are sought to be corrected.

91. Respondent no. 17- Ms. Sushila Nirmal Kumar Rungta has also filed affidavit dated 6th March, 2000 and she contends that the petition is misconceived. She was concerned with 3,350 ACC shares and 5,000 shares of Tata Tea Limited. She is not concerned with any of the respondents and neither she nor her firm are concerned with transactions alleged. She is not guilty of contempt since she has not committed any contempt. According to her the petition is vague and does not mention particulars of the alleged contempt committed by her. She claims to be unaware of any attachment. The shares were not in possession of any notified party or the Custodian. She makes reference to M.A. No. 282 of 1993 and submits that in view of

the earlier petition filed the present petition is barred by principles of resjudicata. As a stock broker she was approached by Shrenik Shah, member of Bombay Stock Exchange and who introduced her to respondent no.2, who was acting on behalf of Asian Stocks and Securities. Since Shrenik Shah had already exhausted permissible limits of business due to restrictions imposed by Bombay Stock Exchange, he requested respondent no. 17 to carry out these transactions under instructions of respondent no.2. Several shares were purchased in respect of which deponent had made out contract notes but respondent no. 2 did not take delivery of the shares purchased by the deponent. She therefore carried forward these purchases on Badla basis. Respondent no. 2 meanwhile claimed liquidity issues and contended that he would offer shares of ACC and Tata Tea as security and take delivery of the shares purchased by the deponent. Later in order to square off these accounts fresh transfer forms were called for in respect of shares of ACC and Tata Tea Limited which were submitted by respondent no.2. The deponent claimed that she suffered losses in the transaction. Later, to cover up losses further shares were provided but none of these shares were in the names of notified parties. In the meantime she had sold 3,350 shares of ACC and 5,000 shares of Tata Tea in the market. She had acted bonafidely, believing in the representation of respondent no.2. That the transactions have been entered into as a member of Bombay Stock Exchange in the ordinary course of any business and as per rules and regulations of the Bombay Stock Exchange. She had no reason to suspect

any wrongdoing on the part of respondent no.2. Having been provided copy of affidavit provided by respondent no. 1 she realised that respondent no. 1 had delivered the shares through respondent no.2. She had no knowledge of the same prior to seeing the affidavit. In any event she is not guilty of any wrongdoing. Disposal of the shares by her was to recover monies owned by her. She is not guilty of contempt and she seeks dismissal of the petition against her.

92. On behalf of respondent no. 26 affidavit dated 16th August, 2011 is filed by Bhushan D. Dhongde Tax Recovery Officer, Central Range-7, Mumbai. He has clarified that the immovable property at B-40 Kiran Industrial Estate. M. G. Road, Goregaon (West), Mumbai stood in the name of original respondent no.1. Acharya Arun Dev which came to be attached vide notice dated 20th September, 1995 by the Tax Recovery Officer since Acharya Arun Dev had failed to pay assessed taxes. The property was then standing in the name of Acharya Arun Dev as of 23rd July, 2010. The society had confirmed this aspect. This property has since been attached and sold and amount of sales proceeds have been recovered.

93. Having considered the contentions raised on behalf of the respondents Mr. Daruwalla submitted that the contention that the shares which is already sold in the market has been recovered by the Custodian is not correct. There was no reason for Dev to have offered to deposit any

amounts if the shares had been recovered / pay any amounts to the Custodians. He contended in my view correctly that Dev had reiterated this offer that the shares are with brokers of the company and if the shares were already with the Custodian there was no occasion for him to so contend.

94. Dealing with the contentions of Dev that the present application is a replica of M.A. No. 282 of 1993 Mr. Daruwalla submitted that M.A. No.282 of 1993 dealt not only with the current set of shares which the respondent no. 1 had dealt with but various other shares and that the present M. P. No. 92 of 1996 was in fact filed before M.A. No. 282 of 1993 was disposed i.e. on 13th March, 1997. That order permitted the Custodian to apply for further reliefs and it is in respect of the current set of 56,065 shares of ACC Ltd. and 6600 shares of ITC Ltd that this Miscellaneous Petition has been filed in context of the subject matter of M.A. No. 282 of 1993. The admission of Dev having sold the shares would clearly establish that those shares are not with the Custodian. This Court had already observed that the Custodian does not have the shares in question.

95. When passing order dated 10th July, 2003 in M.A. No. 282 of 1993 read with the fact that order of 19th October, 1993 in M.A. No. 194 of 1993 the Court had clearly contemplated that shares in the hands of bonafide purchasers without value and without notice be left undisturbed. Hence in this case the shares would never have been with the Custodian.

Even otherwise, I am of the view what is sought to be recovered is an amount admitted by Dev. Dev has not been heard at the final disposal, it is only his legal heirs. They did not claim to have any personal knowledge and indeed they cannot. Their role is restricted to attempting to satisfy the Court that none of the assets of the original respondent no. 1- Dev have come into their hands. Thus the issues would have to be decided based on affidavit filed by Dev during his life time. No doubt, I have permitted the heirs to lead evidence at their request since they wish to establish that the immovable property in Delhi at 7A Doctor's Lane was not part of the estate of the deceased respondent no.1- Dev. That an attempt has been made with all the consequences we will shortly examine.

96. As far as shares are concerned, the contention of Mr. Naphade is merely based on what the heirs believed may have happened. That the Custodian has admitted being in possession of the shares to be restricted to those shares which had been sold by the benamidars to unsuspecting third parties. All that could have come to the possession of the Custodian are those shares which are not been purchased by bonafide purchasers for value and without notice. There is no doubt that respondent no. 1 sold these shares and generated sale proceeds which he offered to pay over to the Custodian.

97 I have already dealt with the aspect that after unsuccessfully challenging the order dated 10th July, 2003 and in a subsequent order dated 10th March, 2004 passed in M.A. No. 53 of 2004 in M. P. No. 9 of 1992 this Court has observed that the order of 10th July, 2003 / (26th September, 2003 passed in Special Leave Petition No. 16163 of 2003)had become final and therefore the submission on behalf of the legal heirs of Dev to the extent it concerns the obligation of the original respondent no. 1- Dev to remit the sum of Rs. 10 crores is not relevant. In any event it is the case of these respondents that the shares are already with the Custodian and hence no money is required to be paid. What is implied in that contention is the wrong doing by Dev and that the shares which were subject matter of such wrong doing were recovered by the Custodian and therefore no monies is required to be paid over. These submissions cannot hold water in view of the fact that the monies were admittedly payable and were quantified in specific amounts. It is thereafter that Dev expressed inability to pay these amounts owing to various financial troubles. Thus the shares sold by Dev have not been seized by the Income Tax Authority from the purchasers of the shares through the vendors, brokers and sub-brokers who are respondents. Those shares are obviously transferred to various purchasers. To that extent the request by Dev that the purchasers be left alone appears to have been met.

98. Respondent no. 1 having contended that the shares are with the Custodian had filed M.A. No. 173 of 2004 and 174 of 2004 seeking details in respect of the said shares said to have been certified. These Miscellaneous Applications were disposed on 19th December, 2014. The legal heirs of Dev were also represented then and have accepted that order. Having done so there is no substance in now claiming that Dev had no liability and it is not for the legal heirs to claim and urge Dev's case about liability which was admitted by Dev. Submissions of the legal heirs of Dev cannot be considered for reversing that admission or avoiding the obligation of Dev to remit those funds, presently an obligation of his estate.

99. Mr. Daruwalla had submitted that similarity of pleadings in M.A. No. 282 of 1993 and M.P. No. 92 of 1996 is of no consequence. He further submitted that the Dev's contention that the Custodian had not discharged his burden is without merit. In view of admission by Dev, the legal heirs of Dev cannot avoid effects of this admission. Admission of liability attached thereto is final and the burden of the Custodian stands discharged.

100. With specific reference to the letter dated 20th January, 2004 it is contended that the respondents are trying to misconstrue the contents of letter addressed by Mr. Gangadharan. That letter does not contain any admission that all the shares were with the Custodian. On the other hand the shares not being with the Custodian, it is clearly stated that no details are available. It is soon after this letter that Dev filed M.A. No. 173 and 174

of 2005. This was filed on or about 21st April, 2004. These applications were disposed on 19th December, 2014. No relief was granted and this aspect has not been contested. The question of the Custodian having these shares therefore does not arise and is not relevant since the funds generated out of sale is the real issue.

101. At the outset although it is not for the legal heirs of Dev to take up this contention but since a submission has been advanced, I have taken this into consideration. I am in agreement with Mr. Daruwalla that reliance upon Section 23 of the Evidence Act is misconceived. For ease of reference Section 23 of the Evidence Act is reproduced below

23. Admissions in civil cases, when relevant.—

In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Section 23 forms part of Chapter II of the said Act dealing with relevancy of facts and admissions. It is dedicated to admissions in civil cases, in which an admission is not relevant if it is made by the express conditions that evidence is not to be given or admissions made under circumstances leading the Court to urge that evidence is not to be given. The substance of Section 23 is clear if an admission is made on express condition that evidence of it is not to be given the admission would not be relevant. Alternatively, it is for the Court to infer whether or not evidence of it is to be given. In my view neither of these situations arise in the present case. Respondent no. 1 admitted that he had sold the shares. He further offered to pay certain sums of money which he believed to be the consideration for sale. To that extent he admits that the sale took place and it was wrongful. He does not claim that he was legally entitled to sell the shares. His case is that he had sold the shares. The shares had a particular value and he had offered to deposit that value provided the purchasers were left untouched. In other words he admitted to wrong doing but contends that the beneficiaries may be left alone, meaning thereby in relation to the attached shares that were sold, the title of purchasers of attached shares should not be effected. The order in M.A. no. 194 of 1993 protects all shares that have been purchased for value and without notice. Thus there was no question of accepting this condition qua these shares.

102. However as regards the shares which were not certified as contemplated in that order in M.A. No. 194 of 1993 the condition proposed by Dev may have been applicable. However it is pertinent to note that the Court rejected this condition on 10th July, 2003 itself and in further orders were passed on 10th March, 2004 in M.A. No. 92 of 2004. Thus the rejection of this condition has not been disturbed since SLP was rejected and there was no review. The order attained finality and for that matter this Court cannot now infer that the parties agreed together that evidence of the offer should not be given.

103. It is pertinent to note that this admission is contained in a letter addressed to the Custodian. The Custodian did not agree that evidence of it should not be given. Section 23 contemplates an agreement between parties who *"agreed together that evidence of it should not be given"*. In the present case there is no such agreement and the condition sought to impose has been rejected. I therefore find no reason to draw any inference that there was an agreement between Dev and the Custodian that the evidence of it would not be given. The admission in my view must be held against Dev and presently his property. Mr. Naphade's contention based on Section 23 of the Evidence Act is therefore required to be rejected.

104. Furthermore it is not for the legal heirs to urge what original respondent no. 1- Dev may have had in mind when the admission was made and the letter was written. One other submission of Mr. Naphade was

that the shares introduced by Dev into the market were not in the name of the notified parties. The legal heirs of Dev had no knowledge of these aspects. Dev had clearly admitted that he had sold benami shares/assets. He did not at any time establish this as fact in respect of the shares, it is but a bald statement which is now being repeated on behalf of his legal heirs. No particulars whatsoever has been placed before this Court. These shares sold by Dev were apparently unregistered shares transferred to benami names and then sold in the market. This submission is therefore required to be rejected coming from Dev's legal heirs who do not profess to have any personal knowledge of these transactions.

105. Further submissions are sought to be made on behalf of Dev to the effect that under section 65 of the Contract Act Dev was liable only towards purchasers. The fact that respondent no. 1 has sold the shares which were attached assets is not in dispute. Section 65 of the Contract Act is reproduced below for ease of reference.

65. Obligation of person who has received advantage under void agreement, or contract that becomes void.—When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. —When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it."

Section 65 of the Contract Act pertains to performance of contracts and contracts that need not be performed. Section 65 provides that if a contract of agreement becomes void a person received benefit under that is bound to restore it or compensate for it to the person from whom he received. In the present case it is sought to be contended by Mr.Naphade that if the shares were benami shares and they were sold by Dev, Dev is answerable only to the purchasers. This submission also cannot come to the assistance of the legal heirs or the estate of the Dev. First because all shares that have been transferred to bonafide purchasers without value and without notice are unaffected. What Dev has admitted to is to pay over the amount that he has admittedly collected, generated and/or received. There is no question of being obliged to pass on these benefits to the purchasers since these were attached assets in the first place.

106. By the order dated 19th October, 1993 in M.A. No. 194 of 1993 the intention was to identify monies generated out of benami transactions and which had passed to notified parties. It is the amounts that are generated from the sale of the shares that are to be recovered by the Custodian. Dev could not contend that he is answerable only to the purchasers of shares he had clearly dealt with benami shares and was obliged to pay over Rs.10 crores to the Custodian. The legal heirs of Dev, whom Mr. Naphade represents certainly cannot be heard to argue that Dev is not liable. These are not submissions that can be taken into consideration while deciding this

application since we are concerned only with the estate that comes into the hands of the legal heirs. The attempt on behalf of the legal heirs of Dev is to justify non-payment by the original respondent no. 1- Dev is not an option that is now available since all these submissions are what Dev could have urged. Legal heirs cannot be held liable for contempt and to that extent no action in contempt can be initiated against the legal heirs of Dev, but the Custodian has retained the amounts that have come into his possession through sale of assets of Dev and amounts that were collected by respondent no. 25.

107. The order dated 10th July, 2003 was passed on the basis of admission of original respondent no. 1 is not open for the heirs to question that order. The submission is to the effect that by not considering Section 17 and 23 of the Evidence Act to the extent it concerns admission and reliance upon a without prejudice communication and Section 65 of the Contract Act the order of 10th July 2003 is passed sub silentio/ per incuriam. Mr. Naphade's contention that the order dated 10th July, 2003 is "sub silentio/per incuriam" not having considered Section 23 of the Evidence Act or Section 65 of the Contract Act has no merit in view of what I have already set out above.

108. Furthermore Mr. Naphade had contended that the shares had already been handed over to the Custodian by the Income Tax department and the Custodian representative had on 20th January 2004 admitted. This

contention also has no merit. The shares in question which were sold by Dev could not have been with the Custodian since it is admittedly sold and the letter of 9th April, 2004 itself contemplates that purchasers title must not be affected. Those purchasers may have applied for certification. For these reasons the contention that the shares are with the Custodian and therefore no occasion arises to recover the sum of Rs. 10 crores is baseless and in any event the admission have not held against these respondents. There is no merit in the legal heirs contention.

109. Mr. Daruwalla submitted that Dev in affidavit dated 3rd October, 2003 had expressed his inability to pay in compliance of the order dated 10th July, 2003. Custodian then filed Execution Application No. 418 of 2003 on or about 21st November, 2003. On 6th January, 2004 in Execution Application No. 418 of 2003 Dev filed an affidavit disclosing certain properties in Goregaon and shares of respondent no. 25. He claimed that he had no other assets but in fact he may have suppressed that he had rights over property No. 7A, Doctor's Lane, Gole Market, New Delhi, Share in ancestral property at Rajasthan, tenancy right in property J-2 -78 Sujan Singh Park, New Delhi. A further affidavit came to be filed on 21st January, 2004 wherein Dev claimed that the Income Tax department had attached his bank accounts at that stage.

110. The Custodian had filed M.A. No. 92 of 2004 against respondent no. 25 for lifting the corporate veil. Meanwhile in M.A. No. 92 of 2004 and

M.A. No. 53 of 2004 a sum of Rs. 1,50,00,000/- was permitted to be paid over to respondent no.25. In M.A. No. 92 of 2004 the Court observed that respondent no. 25 appeared to be 'front' of Dev and that the issue would be decided in this petition. The amount of Rs. 1, 50, 00,000/- was directed to be held by the Custodian to the credit of the petition. In a further affidavit dated 21st April, 2004 Dev contended that he had purchased shares of Jaiprakash Industries Ltd from various brokers and was trying to make payment for the same when Manu Maneklal a share broker delivered shares forming subject matter of this petition in order to help Dev. He also contends in that affidavit that Manu Maneklal owed large sums of money to him. This led to the Custodian coming to the conclusion that Dev misled the Court by taking different stands. Dev had failed to show he had legitimately purchased the shares of ACC Ltd and ITC Ltd and could not do so because the shares were attached property and were surreptitiously obtained and sold.

111. The Custodian had in his affidavit of 1st June, 2005 shown that the shares were benami shares. It is in the meantime that Dev passed away on 4th February, 2007 and the legal heirs of Dev were brought on record. They were directed to file affidavits of disclosure. On 10th August, 2007 they did file separate affidavits in which they have contended they have neither inherited nor do they have property of Dev. The Custodian had meanwhile

come to learn that the property at 7A Doctor's Lane belonged to Dev and that has been passed on to his widow – respondent no 1(a)- Aruna Parwal .

Execution Application no. 418 of 2003

112. Execution Application no. 418 of 2003 has been filed in M.P. No. 92 of 1996. After several amendments were carried out vide order dated 19th December, 2014 the hearing of Execution Application no. 418 of 2003 is to be disposed along with M.P.No. 92 of 1996. In the meantime show cause notice no. 21 of 2004 addressed to defendant nos. 1, 2 and 24 was disposed. In effect nothing survives on the aspect of contempt.

113. On 10th March, 2017 this Court recorded that in Execution Application no. 418 of 2003 a direction was sought to Dev to deposit a sum of Rs. 10 crores with interest alternatively to disclose all assets. Pursuant to such disclosure a property at Goregaon was sold. The said heirs were directed to disclose all assets movable and immovable that had come into their hands. In the meantime they were restrained from disposing such assets. It is pursuant to this order that these shares in respondent no. 25 have now been attached. At the hearing of the Execution Application, the respondent nos. 1(a) to 1(c) wished to lead evidence to establish that the property at Doctor's Lane, New Delhi was not the property of Acharya Arun Dev.

114. Respondent no. 1(b)-Amit Parwal has filed an affidavit of evidence. He is the son of the deceased Acharya Arun Dev and director of Mercury Consultants Private Limited which company was a tenant in respect 7D Doctor's Lane property. It is stated that the property a 7A Doctor's Lane is owned solely by his mother under deed of conveyance dated 23rd November, 2006. Respondent no. 1(b) had on behalf of the company Mercury Consultants Pvt. Ltd. signed the deed of conveyance as a confirming party. Respondent no. 1(b) has deposed to the constitution of AOP known as B. D. Developers Project II his mother had acquired ownership rights in the property and she was tenant in respect of the first floor since 27th September, 1986. Reference is made to the lease deed dated 2nd January, 1987.

115. Respondent no. 1(b) has deposed to the passing of Award for Rs. 1.20 crores in favour of his mother- respondent no. 1(a). The Award was later subject matter of Suit No.711-A of 1989 and has since been made a rule of the Court by order dated 11th October, 1990. He has described as to how out of sum of Rs.1.20 crores respondent no. 1(a) deposited Rs. 50 lakhs in Samata Sahakari Bank, Ltd., Andheri, Mumbai and was getting regular interest.

116. An affidavit has been filed by respondent no. 1(c)-Ms. Mamta G. Nathany dated 5th April, 2017 daughter of deceased respondent no. 1 who

has stated that she is not aware of any of the dealings of respondent no.1. She further states she has not inherited anything from respondent no.1.

117. Prior to the ownership rights crystallizing, the property known as 7 Doctors' Lane was agreed to be divided under an agreement dated 24th January, 1993 into four parts. The owners were not party to this agreement which was internal between the prospective purchasers. Although he had no personal knowledge he has gathered the fact and the documents inter alia signed by his father-Acharya Arun Dev whose signature he has identified. Respondent no. 1(b) had borrowed against the fixed deposit owned by his mother- respondent no. 1(a).

118. He has deposed to disputes between his parents and the demise of his uncle. His father was apparently in the habit of gambling and in this background it was decided to have a family settlement which took place in 1994. An Arbitral reference was made to settle the dispute between his parents. An Award was passed on 6th July, 1998 entitling respondent no. 1(a) to acquire conveyance of the property. By virtue of the Award original respondent no. 1 ceased to have any right, title and interest in the property. The deponent is said to have been handling respondent no. 1(a)'s affairs and has therefore learnt of these developments. Later it transpires that the loan was repaid by respondent no. 1(a). The property is reflected in respondent no. 1(a)'s Income Tax records.

119. Amit Parwal –Respondent no. 1(b) was cross examined extensively. In answer to question no. 16 he has admitted that the property at 7, Doctors' lane was divided into four units in 1986. B.D. Developers Project II the purchasers was an Association of Persons. His late father Acharya Arun Dev was member of the AOP. The record indicates that disputes arose between said AOP and one Ishwar Industries Ltd. The AOP was disbanded and Dev alone continued the project of development which was later transferred to respondent no. 25 (GTPL). It transpired that tenancies were created in respect of the units at Doctors' Lane by lease deeds. Later disputes arose in relation to units 7B and 7C they were settled when the allotment of the units used Piyosh Leasing and Ltd, M/s. B.D. Steel Castings Limited sold them to one Malang Singh. It appears that Mercury Consultants Pvt. Ltd. became entitled to the property on account of nomination by B. D. Developers Project II whereby nomination in respect of 7A to 7D Doctor's Lane were made under the deed of family settlement.

120. Amit Parwal produced a lease deed of assignment dated 27th September, 1990 between late Acharya Arun Dev and Growth Techno Projects Limited. He also produced other documents such as Memorandum and Articles of Association of Mercury Consultants Pvt. Ltd., certified in his capacity as director. As far as the division of Doctors Lane property is concerned, the witness deposed that the division was in force as between the lessors but there was no formal division till execution of the document

marked Exhibit R-12. Although there was a map annexed to Exhibit R-12 this map was unavailable, a photocopy of the map was produced later.

121. The witness admitted that Acharya Arun Dev had acquired a controlling stake in Cassia Chattels Pvt. Limited. Although he did not have particulars of shareholding Cassia Chattels Pvt. Ltd. had apparently failed to pay the sum of Rs.1.20 crores to Aruna Parwal–respondent no. 1(a). The witness was not aware of the date when this amount was paid. Dev was admittedly director of Cassia Chattels Pvt.Ltd. but witness was not in a position to provide the details. However, it appears that M/s. Shaw Wallace & Co. took over the property of Cassia Chattels Pvt. Ltd, paid over consideration to Cassia Chattels Pvt. Ltd. who then paid over the amount of Rs. 1.20 crores to Respondent no. 1(a) sometime in 1989.

122. To a specific question in relation to when property at 7D Doctors Lane was assigned to Mercury Consultants Private Ltd., the witness deposed that the assignment had taken place on 11th August, 1997. The witness denied a suggestion that the property at 7A and 7D Doctors Lane were belonging to Dev but was transferred by a series of fraudulent transactions. Several other aspects of the financial arrangement between Jatinder Singh Saundh, payment of consideration to Jatinder Singh Saundh have also come on record. In my view the cross examination does not reveal that the

property at Doctor's Lane was transferred on the name of these entities to avoid execution and or attachment of these properties.

123. In Execution Application no. 418 of 2003 Mr. Daruwalla claims to have demonstrated that the entire property belongs to the estate of Dev and the sale deed dated 23rd November, 2006 to transfer sale of property to Dev is only method of frustrating the attempt at execution. Meanwhile I must observe that it is contention of the legal heirs that the agreement at Doctor's Lane property was always subject to an agreement dated 29th January 1986.

124.. According to Mr. Naphade on 21st January, 1986 an Agreement of Sale was entered into between members of Dayal family as Vendors and B. D. Developers as purchasers under which Dayal agreed to sell 7, Doctor's Lane property to B.D. Developers-Project II which was an Association of Persons consisting of B.D. Castings Limited, Piyoosh Legal & Finance Ltd., Acharya Arun Dev and Jatinder Saundh. The property had been agreed to be sold for Rs.62 lakhs for which Rs. 5 lakhs have been paid. Rs. 35 lakhs was to be paid on 28th February, 1986. The balance of Rs. 22 lakhs was to be paid at the time of execution and registration of valid conveyance. Some tenancy was to be created in favour of the purchaser's nominee. The transaction was to be completed by 15th April, 1986. Vendor had thereafter executed four sale deeds. On 27th December, 1986 Dayal's granted lease in favour of one Mercury Consultants Pvt. Ltd. for nine years and 11 months

permitting Mercury Consultants Pvt. Ltd. to reconstruct on the plot and with option to renew the lease for a period of two years.

125. Reference is also been made to order passed by the Delhi High Court in Suit No. 711-A/89 making an Award passed by the Sole Arbitrator an order of the Court. The Award reveals that one Cassia Chattels Pvt. Ltd. had entered into an agreement with the owners of property at 7, Hailey Road, New Delhi of which Aruna Parwal was in occupation of 2000 sq.mtrs. That disputes arose between parties as regards to compensation payable and ultimately Arbitrator awarded a sum of Rs.1.20 crores to Aruna Parwal. The Delhi High Court then made the Award a rule of the Court. Later it transpires that on 24th November, 1993 the AOP was dissolved and parties had settled accounts. On 14th September, 1994 it appears a family settlement deed was entered into by Acharya Arun Dev, Aruna Parwal, Mamta Parwal and Master Amit Parwal represented by his mother Aruna Parwal. This became necessary according to Mr. Naphade because relations between Acharya Arun Dev and Aruna Parwal were not good. Dev was a habitual gambler, was unable to pay loan to banks and allegedly responsible for Aruna Parwal's brother committing suicide in the property no. 7A, Doctor's Lane in 1989. Mr. Naphade submitted that although Amit Parwal deposed in this case he was not cross examined on this aspect. The transaction between parties were explained by Mr. Naphade. The family arrangement had been acted upon and given effect to. The Award of the

Arbitrator records the family settlement as binding pursuant to which Aruna Parwal became entitled to deed of conveyance in respect of the property at 7A, Doctors Lane. Dev ceased to have any right in the property. Dev also agreed to relieve Aruna Parwal of guarantee from Samata Sahakari Bank and agreed to pay damages to Aruna Parwal of Rs.50,000/- per month till she was relieved of the guarantee and the fixed deposit receipt of Rs. 40 lakhs paid by Aruna Parwal was returned. This led to the settlement so concluded on 29th August, 1998 when the fixed deposit was adjusted by the bank.

126. On 11th September, 1997 the aforesaid Jatinder Saundh who was member of the AOP assigned his right, title and interest to Mercury Consultants Pvt. Ltd. Finally on 23rd November, 2006 deed of conveyance was entered into by members of Dayal family as Vendor, Aruna Parwal as Purchaser and Dev was Confirming Party. Custodian assailed this transaction as having been taken place after order dated 10th July, 2003 and during the pendency of the present petition. However the fact remains that Custodian took no steps to prevent the aforesaid steps from being taken to enforce the family settlement. No attempt appears to have been made to attach the property in question.

127. Although the Custodian contended that if the AOP known as B.D. Developers Project II was formed in order to prevent the property from

being sold in execution from the order dated 10th July, 2003. I am unable to accept the contention that this was pre-planned from 29th January, 1986. Prima facie it does appear that the AOP was formed as contemplated between Acharya Arun Dev and B. D. Developers Limited, Piyoosh Leasing and Finance Ltd. and one Jitendra Saundh. Consideration was also mentioned in the agreement for sale. Part payment of Rs. 5 lakhs was made to the owners the Dayal family, HUF and the balance was to be payable thereafter in instalment against certain milestones mentioned therein. The transaction was intended to be completed by April 1986 but apparently was not.

128. A building agreement came to be entered into. Respondent no. 1(a) was stated to be in occupation of the tenant or part of the premises. The building agreement was entered into with one Cassia Chattels Private Limited but there was no information they have as to who was behind this entity. The contention of the Custodian being that the property was being deliberately transferred in different names to avoid execution against being levied against all these separate units of the Doctor Lane property does not commend itself to me inasmuch as there is an agreement of 1986 which contemplates transfer.

129. A further agreement of lease entered into between Mercury Consultants Pvt Ltd and the original owner Dayal Family HUF is also of December, 1986. It may be true that this lease agreement does not refer to

Agreement for Sale which is prior at point of time, but the fact remains that these are transactions of 1986 and are admittedly not attached property and are now intended to be attached in an attempt to recover the sum of Rs. 10 crores which Dev had promised to pay and which the he is bound to pay. The legal heirs have led evidence and this is an aspect that I have considered.

130. The transactions in relation to Doctor's Lane property itself "went through various process" in 1986 -1990 and finally in 1990 it was made an Award. In 1988 reference was made to Arbitration in which Aruna Parwal received certain amounts and award came to be passed against aforesaid Cassia Chattels Private Limited. The details of the Award and the Arbitral process are sought to be questioned. However, it is not in dispute that the Award was made the rule of the Delhi High Court on 15th December, 1998.

131. The Custodian is not in my view in a position to seek setting aside of this transaction in execution. The evidence will reveal these are independent transactions and the only aspect in my view that is required to be considered is whether respondent no. 1(a) holds property that belongs to original respondent no. 1-Dev. In my view this aspect has not been established, although the Custodian had laid considerable stress on the fact that it is after 1992 that and pending the sale of Doctor's Lane property to B. D. Developers Project II the association of persons consisting of respondent

no. 1, B.D. Steel Castings Limited, Piyooch Lease and Finance Limited and Jitendra Saundh was dissolved and Doctor's Lane property was divided. The transfer/lease etc. does appear to be in breach of any injunction so as to render it void.

132. Mr. Daruwalla has invited this Court to proceed to attach these properties since according to the Custodian it is an indirect way of transferring assets of Dev. A single property was divided with four persons / entities being granted rights only in order to benefit the legal heirs of Dev. Considerable efforts has been put into this by both sides on this aspect and I may observe that Dev in 1994 and the current legal heirs had signed a deed of family settlement under which respondent no. 1(a) continued to retain the entire first floor. She was to pay to respondent no. 1 a sum of Rs. 20,50,000/- which she had apparently paid to acquire the property and pay over the balance to the owner upon conveyance deed being executed. Respondent no. 1(a) nominated Dev to seek conveyance of the Doctor's Lane property and the arbitration clause contained therein was invoked. According to the Custodian respondent no. 1(a) was nominated by Dev for obtaining the deed of conveyance of 7A Doctor's Lane against respondent no. 1(a) paying to respondent no. 1 only Rs.20,56,000/- although this was agreed but the amount was never paid. Moreover the deed is assailed as an unregistered document.

133. Meanwhile arbitration proceedings were invoked in 1998 and award passed which records no reason for Aruna Parwal – Respondent no. 1(a) to be declared as being entitled to property at 7A Doctor's Lane. The Award has no mention of any amount being paid by Aruna Parwal to Acharya Arun Dev. Certain other aspects of the Award which Mr. Daruwalla sought to canvass would be relevant because ultimately the Award has been made Rule of the Court and that is binding. Thus the Custodian will have no locus to challenge that order or the Award for that matter. The connected loan transaction between Samata Sahakari Bank and respondent no. 1(a) seems to have been settled with funds sourced through Dev. The Custodian made no efforts to prevent execution of these further documents if at all he believed these to be property of Dev alone and that the various transactions and funds and documents executed were merely an attempt to avoid liability. One thing is clear, that Doctor Lane property was never attached property and could not be attached property under the Act and there was nothing preventing the parties from dealing with the property in the absence of a restraint order. The fact that the conveyance was executed eight years after the Award is something that the Custodian cannot today complain about since existence of the property came to the knowledge of the Custodian earlier. The contention of the Custodian that a chain of transactions were all made up only to frustrate the Custodian's attempt at execution of the order dated 10th July, 2003 has not been made out. There

could be various reasons for these transactions to be so structured, including reasons of taxation etc.

134. I am unable to come to the conclusion that the Custodian invites the Court to draw namely that the various agreements and transactions in relation to Doctor Lane property from 29th January, 1986 were all engineered to avoid execution. That is highly improbable. Furthermore the Custodian has not moved any application for attachment of these properties or any part thereof after it came to learn of this property at the relevant time. Nothing on record suggests that the Custodian was unable to take steps. Having perused the evidence of Mr.Amit Parwal the documents tendered in evidence I am of the view that no case is made out for restraining the respondent nos. 1(a) to 1(c) from dealing with or disposing the property at 7 Doctors Lane muchless there is no justifiable reason for attaching that property or any part thereof. In my view the controversy must rest there since the Award was admittedly made a rule of the Court. and the sale transaction that lay beneath is not something that the Custodian can effectively set aside at this point of time. Meanwhile, the Custodian sold the Goregaon property and recovered Rs. 58 lakhs which is invested. Thus all that remains now to be attached are the property at Rajasthan in which Dev had undivided interest and tenancy right in the premises in New Delhi. The legal heirs of Dev have not made any claim to this.

135. Mr. Daruwalla has raised certain doubts as to the bonafides of the transactions. He submits that these transactions have been entered into only to avoid execution. He has pointed out inconsistencies in the evidence of the respondents witness. There is nothing to show that the Custodian has possession of the shares as suggested by Dev. If the shares have been sold in the market by respondent no. 1- Dev they could have been purchased by bonafide purchasers for value without notice and as per order dated 19th October, 1993 the ownership claims of these purchasers cannot be questioned. The Custodian would therefore not have possession of these original shares or duplicates. According to Mr. Daruwalla there is no satisfactory answer that the witness could provide as to how he came to have ownership of shares in the possession of Mercury Consultants Pvt. Ltd and GTPL.

136. As far as GTPL are concerned the shares have now been attached and Mr. Naphade has submitted that the legal heirs of Dev have not sought transfer of these shares from name of Dev. Name of Dev continued as shareholder in that respect. These shares now cannot be transmitted to the legal heirs since they now stand attached. Transmission can occur only if attachment is lifted. It is therefore necessary to investigate into the affairs of respondent no. 25.

137. Mr. Daruwalla in the course of submission made reference to the mystery behind the holding in Piyooosh Leasing and Finance Ltd. which currently holds property bearing no. 7B and 7C Doctor's Lane. Certain doubts are also sought to be cast upon tenancies of Aruna Parwal to property at 7A, Doctors Lane and Hailey Road. (A)

138. Mr. Daruwalla, Mr. Naphade, Mr. Ghogre and Mr. Panicker have all made their detailed submission in M. P. No. 92 of 1996 and in that respect they had no further submissions to make in Execution Application No. 418 of 2003.

I will now consider with the law cited by Mr. Naphade and Mr. Panicker.

139. Mr. Naphade relied upon decision of *Superintendent Central Excise (supra)* and *Satyanarayan (supra)* in support of his contention that use of the expression "without prejudice" is to enable the disputants to engage in discussions to arrive at terms of settlement and a statement made without prejudice should not be used as an admission. This judgment also holds that there can be no dispute that the without prejudice offers and proposals are to be generally excluded from the consideration on merits. Relying on these decisions Mr. Naphade has submitted that the petition is based only on this letter of 9th April, 1994 and does not qualify as evidence for deciding the case on merits.

140. On the aspect of drawing adverse inference against Custodian that no details were being shared with Dev despite multiple demands calling upon the Custodian to disclose shares received from the Income Tax department and in view of the Custodian's non-compliance an adverse inference must be drawn. To this effect he drew support from *Gopal Krishnaji Ketkar (supra)* which holds that the Court may draw adverse inference if parties withhold important documents. In the case of *Ibrahim Uddin (supra)* in which Supreme Court held that the drawing of adverse inference is to be taken into consideration if the Court directs production of a document and they fail, the Court may draw an adverse inference. This judgment also observed that all pros and cons must be observed before an adverse inference is drawn since the Custodian is neither party who is interested in litigation and does not gain to benefit from non-disclosure. Furthermore in the light of the admission that the particulars are not available as recorded in letter of 20th January, 2004 there is no question to the Custodian providing these details or any adverse inference being drawn on the Custodian's failure to do so. The submissions on adverse inference do not commend itself to me.

141. Mr. Naphade then relied upon judgment of the Supreme Court in *Anil Rishi (supra)* in support of his contention that the initial burden of proof has not been discharged by the Custodian by leading evidence under Section 101 of the Evidence Act and in terms of Section 102 initially the

onus is always on the plaintiff and only when he discharges that onus, the onus shifts to the defendants. This once again is not of assistance to the legal heirs of Dev since Dev had admitted dealing with the shares. In view of that unconditional admission there is no occasion to impose any burden upon the Custodian, besides the Custodian is not a contesting party. He is merely acting for the notified party and in view of the obvious disabilities of the notified party. The Custodian is not a party to be placed in the position of the plaintiff under the Code of Civil Procedure. The Custodian does not seek relief for himself and the present petition invokes the contempt jurisdiction and along with the execution application seeks enforcement of the orders of this Court. The provisions of the Civil Procedure Code do not apply to proceedings under the Special Courts Act. The powers and duty of the Special Court under the Act are quite obvious. The Court has exclusive jurisdiction to consider matters such as this. The Custodian is obliged to recover all monies that he can under the provisions of the Act. The obligations of a plaintiff cannot be thrust upon the Custodian. Hence the argument of burden of proof being on the Custodian is required to be rejected. Thus it is duty of the Custodian to bring all necessary facts before the Court and that the Custodian has achieved to some extent but this petition is proceeding on the basis of an admission by Dev that he dealt with shares. The fact that the shares were in the custody of the Custodian does not take away the fact that Dev did trade with the shares. He did offer these shares as consideration for him to acquire /purchase shares and to that

extent he has derived benefit. No further proof is called for as far as quantification of the shares is concerned. Dev himself has quantified the value of the shares at Rs.10 lakhs. The fact that the offer being without prejudice does not in any manner dilute the admission that the shares had been traded by him and/or his concerns or nominees and several of the admissions on record by way of affidavit indicate that the brokers were asked not to reveal the name of Acharya Arun Dev in their dealings. That part of the admission is not without prejudice. The Custodian is not for a moment claiming any amounts beyond the sum of Rs. 10 crores. Computation of Rs. 10 crores is therefore not a without prejudice computation and in that light of the matter the contentions of Dev which are now being pressed by his legal heirs cannot be countenanced.

142. Similar is the case of non-traverse of material fact. The attempt of respondent nos. 1 to 3 rely upon Order VIII Rule 3, 4 and 5 and the decision of *Sambhaji Laxmanrao Pawar (supra)* will not come to the assistance of Mr. Naphade. The Custodian disputes that the shares were handed over to the Income Tax department. In fact Mr. Naphade has placed reliance on the Custodian's letter dated 20th January, 1994 which allegedly contains an admission that the shares have been handed over. These are matters which fell for consideration in M.A. No. 282 of 1993. In the present petition the Custodian is concerned with recovery of Rs. 10 crores which Dev promised to pay. There is no occasion for the Custodian to once again deal with the

aspect of the shares being handed over by Income Tax department. The fact remains that Dev dealt with these attached shares and generated funds and diverted funds by using proceeds as consideration to pay for purchase of shares. Dev has not denied having acquired/ purchased shares and to that end he has benefited. It is quantification of Rs. 10 crores that is unconditional. His only request in letter of 9th April, 2004 was that the purchasers of the shares from him be recognized. That is an aspect for the purchasers to canvas since Dev has expired. The obligation to pay a sum of Rs. 10 crores however subsists and has been acted upon by the Custodian. Some properties have been attached and sold and some other monies have been deposited in this Court. His demise does not relieve his estate from that liability nor can the legal heirs question such liability. Thus rules of pleadings under CPC cannot be strictly applied to the fact of the present case and for that reason as well Mr. Naphade's submission cannot be accepted.

143. To my mind even the case of *Ramji Batanji (supra)* is of no assistance since the admission is clear and far from vague or ambiguous. As regards Mr.Naphade's contention that Section 65 of the Contract Act obliges Dev to answer to his purchasers and his submission that the Custodian cannot keep the shares and claim monies, is also, liable to be rejected since the monies that are being claimed are admittedly generated by dealing with attached properties the shares. The shares being with the Custodian is a non-issue.

It is duty of the Custodian to recover all funds that are proceeds of transaction in securities covered by the Act. These transactions entered into by Dev indeed were transactions in securities covered by the Act. These transactions generated funds which Dev estimated at Rs. 10 crores (Rupees ten crores only). It is these funds that are sought to be collected and in that respect the basic premise of the legal heirs of Dev is that the Custodian cannot keep shares and claim the monies is erroneous. The claim for money is independent and separate for e.g. could there have been multiple transactions in the very same shares all funds derived / generated from these transactions would attract a claim by the Custodian.

144. Thus the reliance by Nr. Naphade on observation in *Jahed Shaikh (supra)* does not come to his assistance. The rule of English Law forming subject matter of the decision in *Reynell vs. Srye (1) (1852) 1 De G.M. & G. 600 (679)* will not be of any assistance since Custodian cannot be said to be in pari delicto.

145. Specific reference to the decision in *Harshad Mehta (supra)* and in particular reference to paragraph 4, 11 to 14 and 18 the emphasis of Mr. Naphade's submission is that what is sought to be recovered is property which is attached and that the property should be belonging to the notified person. That right of a third party cannot be extinguished, however third party has no property right therein. In the present case Dev admitted the transaction in dealing with tainted shares and in my view income generated

from such assets would have to be recovered and therefore is susceptible to attachment. The income generated by transacting in properties which were otherwise attached including tainted shares can also be subjected to orders of attachment under the Special Courts Act.

146. Mr. Naphade's contention that the purpose of attachment of properties under Section 3(3) is for discharging liabilities is not one that the heirs of Dev can now make. Mr. Naphade holds no brief for Dev but seeks to protect the interest of legal heirs in attempting to demonstrate that none of the properties of Dev have come into their hands. In this behalf I find that there is an attempt to suppress information pertaining to the shareholding of Dev in respondent no. 25 Growth Techno Projects Ltd. ("GTPL") wherein Dev had 86.53% shares. This will call for separate consideration. It is not possible to accept Mr. Naphade's contention that since there are no other persons claiming money from Dev it can be inferred that claims of the purchasers of Dev are settled. That there are no liabilities to be discharged. Inherent in this submission is admission of the fact that without prejudice offer was not in fact a conditional offer since purchasers of Dev appear to have no claims against him.

147. Reliance on *L. S. Synthetics (supra)* judgment does not come to the assistance of Mr. Naphade since there is no doubt that the attachment sought to be levied and the attempt to collect amount of Rs. 10 crores based on the undertaking was for the purpose of discharging liability of the

notified parties and the tainted shares which were introduced by the notified parties in factual circumstances set out in M.A. No. 194 and M.A. No. 282 of 1993.

148. Similarly the judgment in *Hitesh Mehta (supra)* also will be of no assistance since nexus between tainted shares and Dev cannot be denied. He admitted dealing with the shares and has benefited from these dealings to acquire shares for himself by offering the tainted shares and by transacting in tainted shares. The legal heirs of Dev are not in position to seek release of properties since none of their properties have been attached. The estate is however answerable and presumably every attempt is to show that estate of Dev has not passed into the hands of the legal heirs.

149. The other contention of Mr. Naphade that the Custodian cannot claim a right higher than that of notified party is once again of no assistance to Mr. Naphade. Mere receipt of the shares from Income Tax department is of no consequence. The heirs of Dev in their attempt to avoid liability of the estate have attempted to justify Dev's conduct in having generated monies with the tainted shares. Mr. Naphade's contention that the Custodian cannot claim monies and the shares generated in the interregnum inherently admits of generation of funds using the attached assets. The Custodian's obligation to collect monies/proceeds of trading in the tainted shares is very much part of his duty and authority under the Act. His right is same as that of the notified party and the notified party in the instant case has facilitated

the trade and the fund generated from such will have to be administered by the Custodian. For that purpose vesting of the property is not required and the legal position in that behalf is well settled.

150. The decision in *Canbank Finance (supra)* will not assist the respondents in this respect. As far as Mr. Naphade's submission that the order dated 10th July, 2003 is sub silentio/per incuriam, I am unable to agree that the order was passed in ignorance of terms of the Statute viz. Section 17 and 23 of the Evidence Act and/or Section 65 of the Contract Act. There was no occasion for the Court to consider these aspects in view of the unqualified admission of Dev having traded in shares and have repeatedly sought time to pay the amount. There is no challenge to the attachment or sales and in any event these are not submissions that the heirs of Dev can now take up in the absence of Dev himself. There is no challenge to the power and duty of the Custodian to recover the amount of Rs. 10 crores. The order dated 10th July, 2003 virtually holds Dev liable to pay the sum of Rs. 10 crores, part of which has been recovered by proceedings in execution including this Miscellaneous Petition.

151. Reliance by Mr. Naphade on the decision of *Kunhayammed (supra)* will not come to his assistance. Mere absence of merger will not relieve the estate. Mr. Naphade's submission that finality of the order of 10th July, 2003 is an interim order is susceptible to further challenge on merits and disposal of this petition has also been considered on merits. I am satisfied that the

amount can be recovered from the estate. The attempt of the heirs to resist execution would be restricted to preventing their personal assets from being attached and nothing beyond.

152. The decision in *Chogmal (supra)*, *Ratan Devi Moondara (supra)* and *Jamila Begum (supra)* will have a bearing only if there is a finding of fraudulent transfer. The foundation of the defence in the present case is to establish that the Doctor Lane property cannot be subjected to any attachment in an attempt to recover the sum of Rs. 10 crores and that will now have to be restricted to property bearing no. 7A in respect of which Dev had dealings by relinquishing his right in favour of Aruna Parwal. Question is whether that transaction would amount to fraudulent transfer. Having considered the chronology of events I am unable to hold that the transfer to Aruna Parwal was fraudulent for reason set out elsewhere in this judgments.

The Veil

We shall now consider the contention of Respondent no. 25 that the lifting of the veil is not justified.

153. Mr. Panicker relied upon a decision of the Supreme Court in *Bishnudeo Narain and Anr. vs. Seogeni Rai and Jagernath (1951 SCR 548)* in support of his contention that general allegations are not enough to prove fraud, undue influence or coercion that respondent no. 25 cannot be

made liable for personal acts and liability of its director who was a majority shareholder. There is no claim against respondent no. 25 and shareholding of respondent no. 1 cannot be reason to penalise respondent no.25. Lifting of the corporate veil would be justified only when the director indulged in fraudulent activity resulting in Company or directors misappropriation of funds. It is reiterated that respondent no. 25 did not owe any monies to respondent no.1. The veil therefore cannot be lifted for taking of assets of the company.

154. Mr. Panicker's next submission that this Court did not have jurisdiction to deal with any property of respondent no. 25 which did not belong to notified party. That the jurisdiction of the Court would be restricted to assets belonging to notified party had stood attached under Section 3(3) of the Special Courts Act. In the absence of such attachment this Court has no powers to attach third party assets and distribute the same. Respondent no. 25 has not had any transaction in securities in the window period. Its Assignment Agreement with Murablack is of no consequence. Amounts of respondent no. 25 which are lying with the Custodian has no connection with notified parties. The Court therefore does not have jurisdiction in the matter. The conditions stipulated under section 9A were absent in the present case and hence no occasion arises to lift the corporate veil.

155. Mr. Panicker submits that in *Kudremukh Iron Ore (supra)* the Supreme Court had held where a party has no connection with a notified party or attached property of notified party this Court would have no jurisdiction in respect of such property. Moreover in *T B Ruia (supra)* it was held that property acquired by notified party by his own labour could not form part and parcel of assets.

156. In *Sushil Kumar (supra)* the Supreme Court had observed that a Court has jurisdiction to a decree passed by that Court and therefore alluding to the facts of the present case Mr. Panicker submitted that even in M.A. No. 453 of 2002 filed by respondent no. 25 the Custodian declared dividend of 25% against the principal sum . Respondent no. 25 had filed M.A. No. 9 of 1992 seeking an order substituting of original petitioner with respondent no. 25 which was beyond the powers of the Special Court.

157. Mr. Panicker's next submission is to the effect that the claim against respondent no. 25 is barred by the law of limitation. He submits, quoting from paragraph 19 and 20 of the petition that the Custodian admits that the investigation relating to the benami shares being introduced in the market by respondent were pursuant to order dated 19th October, 1993 in M.A. No. 194 or 1993 that Acharya Arun Dev had without prejudice offered Rs. 9,67,12,125/-crores in April, 1994. The petition contained no allegation against respondent no. 25 and hence there is no cause of action against

respondent no. 25. He submits thus no reason for impleading respondent no. 25 in these proceedings. The petition would not be maintainable against respondent no. 25 merely because Custodian contends that this impleadment may be deemed to have taken effect upon filing the petition. On the other hand respondent no. 25 was impleaded only in March, 2004 clearly beyond the period of limitation. All claims against respondent no. 25 were therefore unsustainable. Furthermore since there is no contempt that has been alleged against respondent no. 25 those prayers are not relevant.

158. While it is true that in *Mid East Engineering (supra)* this Court has already held that the Limitation Act would apply the context was that the Court could not recover amount under Garnishee proceedings if it were barred by time as against the garnishees. In my view the decision of *Mid East Engineering (supra)* would not assist respondent no. 25. Since factual basis of the present case is unique and not comparable with those in *Mid East Engineering (supra)*.

159. In *Bishundeo Narain and Anr. (supra)* the Supreme Court observed that fraud would have to be pleaded with material particulars. General allegations would not be sufficient. The reason why respondent no. 25 appears to have relied upon this decision is the allegation of fraudulent conduct on behalf of respondent no. 25. The fact that a company has existence independent of shareholders is well settled and it need not be

laboured any further. Plethora of decisions have reiterated this principle right from the House of Lords' decision in *Salomon and Salomon (supra)* to *Pandurang Dhondi Chougule (supra)*. The Supreme Court in *Bacha F. Guzdar (supra)* has also observed that shareholders of a company could not be compared to partners in partnership firm. That the analogy is wholly inaccurate as seen from Halsbury's Laws of England, Vol 6 (3rd Edn). The Supreme Court reiterated the principle that shares only offer right to shares rather than right to specific shares in company along with accompanying rights and liabilities while the company is going concern and its winding up shares constitute personal estate of the member and the company.

160. In *Balwant Rai Saluja (supra)* the Supreme Court quoting from *Ben Hashem v. Ali Shayif (2008) EWHC 2380 (Fam)* reproduces six principles formulated by Munby, J. which will be useful for us to consider:

- (i) *Ownership and control of a company were not enough to justify piercing of the corporate veil;*
- (ii) *The Court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice.*
- (iii) *The corporate veil can be pierced only if there is some impropriety;*
- (iv) *The impropriety in question must be linked to the use of the company structure to avoid or conceal liability.*

(v) *To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and*

(vi) *The company may be a “facade” even though it was not originally incorporated with any deceptive intent, provided that is is being used for the purpose of deception at the time of the relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.*

These principles were reiterated by the Supreme Court in *Prest vs. Petrodel Resources Ltd. (2013) 2 AC 415* which reiterated that if a person deliberately evades enforcement of an obligation or liability by interposing a company under its control, the Court may pierce the veil and “deprive the company or its controller of the advantage that they would otherwise have obtained by the company’s separate legal personality”.

161. In *LIC vs. Escorts Ltd. (1986) 1 SCC 264* the Court observed in paragraph 90 thus:

“90... Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in

reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.”

162. In the facts of the present case one has to consider whether the Special Court Act contemplates lifting of the veil if fraud or improper conduct is intended to be prevented or where associated companies are inextricably connected has to be in reality part of one concern. The Constitution bench was of the view that the decision whether or not to lift the veil would depend on the relevant statutory authority and provision and objects sought to be achieved.

163. In the present context the aforesaid pronouncements would entail that lifting of the veil would have to be considered in the factual background of the case at hand and the purpose of the special enactment and the public interest involved. In my view if these concepts achieve a critical mass, so to speak, it would pierce the veil and this Court would be entitled to ignore the separate existence of the corporate structure and hold persons exercising real control of the corporate body responsible. The Constitution bench was mindful of the fact that lifting of the veil should be resorted to only *“in scenario wherein it is evident that the company was a*

mere camouflage or sham deliberately created by the persons exercising control over the company.” That the principle could be invoked in peculiar facts and circumstances of each case. This is certainly one case justifying piercing the veil.

164. *Indowind Energy Limited (supra)* involved two corporate bodies Subuthi Finance Ltd. and Indowind Energy Limited. Each company was a separate and distinct legal entity and merely having common shareholders or common board of directors would not make one liable for action of the other. In *Lufeng Shipping Company Ltd. (supra)* a Division Bench of this Court reiterated this principle. Common shareholders and their holdings in two different companies are common / identical would not make the two companies one and the same entity. There can be no quarrel with these principles.

165. In *Ashwin S. Mehta & Anr. (supra)* the Supreme Court observed that a transaction of benami indisputably can be a subject-matter of a lis in terms of Section 4(1) of the Act. It further observed that nexus between several persons dealing with the matter may be established by the Custodian. In the instant case we are obliged to consider whether the Custodian has made out a case. Respondent no. 25 has also placed reliance upon this Court’s decision in the case of *Mid-East Engineering Company Ltd. (supra)* wherein I have observed that reliance by the Custodian upon

Delhi Development Authority vs. Skipper Construction Company (P) Ltd (2014) 2 SCC 465 is misplaced. That aspect I propose to consider separately. In the course of deciding *Mid-East Engineering (supra)* the decision in *Balwant Rai Saluja (supra)* and *Lufeng Shipping Company Ltd. (supra)* were already been dealt with.

166. In *Skipper Construction Company (P) Ltd. (supra)* a fraud was played on Delhi Development Authority. In the present case we are not concerned with different companies having a common board of directors or shareholders. There are situations where respondent no. 1 has acted in his personal capacity as an individual and as sole proprietor of respondent no. 3 (Asian Stocks) and as a shareholder to respondent no. 25 by an overwhelming majority. The question that falls for consideration is whether the corporate veil is to be lifted to attach property of respondent no. 25. The attempt of the Custodian is to recover Rs. 10 crores which respondent no. 1 offered to and is bound to pay. No doubt the offer to pay came with conditions but those conditions were rejected by this Court on 10th July, 2003 itself. A challenge to that order was rejected and the order attained finality. Liability to pay Rs. 10 crores is therefore absolute. In fact I am of the view that the deposit was not subject to any condition but was absolute. It is only appropriation of that amount that remained on account of the subsequent failure to deposit the amount, the Custodian had to adopt for the proceeding to which I will shortly advert.

167. Meanwhile it would be appropriate to observe that reliance placed by Mr. Panicker on the decision of *Kudremukh Iron Ore Co. Ltd (supra)* and *Tejkumar Balakrishna Ruia (supra)* is not relevant on the issue of lifting of the veil. In the present case respondent no. 25 has not dealt with the attached assets but is said to hold monies under the control of respondent no. 1 which the respondent no. 1 was to pay over pursuant to order dated 10th July, 2003. The attached property were the shares which late HSM offloaded in the market through respondent no. 1. We have to therefore consider the lifting of the veil in that context.

168. Mr. Panicker's reliance on *Sushil Kumar Mehta (supra)* is also not appropriate. His reliance on the principle of *Coram Non Judice* is not relevant to the facts of the present case nor is the decision in *Pandurang Dhondi Chougule and Ors (supra)* which reiterates that the plea of limitation or plea of res judicata is a plea of law and a finding thereon in favour of a party raising it ousts the jurisdiction of the Court.

169. Mr. Panicker invited me to hold that the present claim is barred by limitation since respondent no. 25 has been impleaded only on 10th March, 2004 although the present Miscellaneous Petition was filed in the year 1996. What the defence has lost sight of is that respondent no. 25 came forward as an applicant only in the year 2004 when they filed M.A. No. 53

of 2004 in M.P. No. 9 of 1992 and the Custodian filed M.A. No. 453 of 2002 against respondent no. 1 and respondent no. 25. Moreover the amount that is secured in this Court came about pursuant to an order of the Special Court passed on 22nd August, 2002 when Miscellaneous Application no. 453 of 2002 in M. P. No. 9 of 1992 which was filed by respondent no. 25 and respondent. 1 for substituting of name of respondent no. 25 in place of one Murablack under Order 22 Rule 10 of the CPC. It is pertinent to note that respondent no. 1 was the moving force behind respondent no. 25 and dealt with Murablack. Respondent no. 1 is therefore clearly aligned with respondent no. 25 actively espousing the case of respondent no. 25 and identified himself with respondent no.25.

170. In this background considering observation in *LIC vs. Escorts Ltd (supra)*. I am clearly of the view that respondent no. 1 by avoiding his obligation of depositing the sum of Rs. 10 crores despite the ruling against him pleading lack of funds and attachment by revenue and assessment under the revenue, at the same time actively pursuing the lis with Murablack resulting in respondent no. 25 gaining an advantage of which respondent no. 1 would be alone the beneficiary in practical terms. This is evident from the fact that 83.586% continues to be held in the name of respondent no.1. There are no claimants to these shares although it is submitted across the bar by Mr. Naphade shares are lying as they were in the name of respondent no.1. and continues to be so.

Relevance of Miscellaneous Application no. 453 of 2002

171. In M.A. No. 453 of 2002 Dev the original respondent no. 1 herein filed M. A. No. 453 of 2002 as Applicant no. 2 in the capacity as shareholder and director of applicant no. 1 Growth Techno Projects Limited and have claimed that the applicants are entitled to receive the assigned amount of Rs. 2 crores and that the entire interest liability of the applicants had been satisfied. The address in the cause title of that applicant indicates that the applicant no. 2 Acharya Arun Dev was resident of 7, Doctor's. Lane, Gole Market, New Delhi.

172. In paragraph 12 of that application the applicants there in namely respondent nos. 25 and respondent no.1 stated that due to certain technical facility cheque of Rs. 2 crores given by applicant no. 1 (respondent no.25-GTPL) to the petitioner Murablack was agreed to be replaced by a pay order from the account of Applicant no 2-Acharya Arun Dev and after the cheque of Rs. 2 crores was returned by Murablack to those applicants, it is Applicant no. 2 – Acharya Arun Dev who made payment of Rs. 2 crores. Thus it is seen that respondent no. 1 herein has acted for respondent no. 25 in personal capacity as an alter ego of GTPL. Respondent no. 1 had therefore so closely identified himself with respondent no. 25 and is seen to be inextricably involved in the business of respondent no. 25. The applicants therein have stated as follows :

*"14. The Applicants acted upon the said Agreement to Assign dated 27/06/1995, by making the payment towards the vested right of Petitioner for the principal(*sic) sum of Rs. 2 crores and by keeping the security by way of Shares in Applicant No. 1 company worth the value more than the entire future entitlement of interest to be decided by this Hon'ble Court, the Applicants herein became entitled to the benefit of the said Agreement to Assign dated 27th June, 1995. The Applicants further submit that in view of the consideration of Rs. 2 crores towards the Principal amount in the above petition being received by the Petitioner from the Applicants, the Assignment Agreement is enforceable to the extent of the said sum of Rs. 2 crore. In any event the Applicants are having charge and/or lien to the extent of the said sum of Rs. 2 crore paid by the Applicants to the Petitioner, and therefore, they are entitled to claim the same from this Hon'ble Court, pursuant to the said Agreement to Assign dated 27/06/1995.*

Thus respondent no. 25 jointly with respondent no. 1 claims all the benefits. These are evident from the statement made on oath and in M.A.No. 453 of 2002 and on the basis of which they seek to contend that the petitioner therein Murablack have fraudulently induced the applicant to part with monies promising stake in the joint venture. The Special Courts Act is a legislation which contemplates remedying improper conduct on the part of the notified parties and in this case the notified party has facilitated transactions post notification in the benami shares through Acharya Arun Dev and respondent no. 25 is clearly seen to be the alter ego of Dev.

173. I find that respondent no. 25 along with respondent no. 1 are thus clearly inextricably connected in reality as part of one concern and to that

extent the lifting of the veil is permissible and justified. Mr. Panicker was right in his statement that the lifting of the veil had not been finally decided on 10th March, 2004 and that issue is yet to be decided. This view is strengthened by the fact that the legal heirs of Acharya Arun Dev were called upon to disclose on oath assets that had come into their hands. The fact that the amount of Rs. 2 crores was paid over by respondent no. 1 Dev to Murablack is also recorded in the judgment dated 22nd August, 2002 which dismissed the M.A. No. 453 of 2002 since it was found that the Special Court had no jurisdiction. We are however not concerned with the merits of the case except for taking note of the fact that respondent no. 1 – Dev had identified himself with respondent no. 25 not only as director but as a person so closely associated with respondent no. 25 that payment on behalf of respondent no. 25 were in fact been made personally by respondent no. 1 – Acharya Arun Dev, although the Agreement to Assign dated 27th June, 1995 was between Murablack India Ltd and GTPL. Thus respondent no. 1- Dev had clearly acted as if respondent no. 25 and he were one and the same and respondent no. 25 by taking benefit of the amount of Rs. 2 crores paid for it by Dev also conceded this fact. Thus I have no doubt that although Dev in his capacity as shareholder may appear to be a separate and distinct from the company, in the present state of facts there is certainly evidence of impropriety in using company structure, misusing the company as a facade to conceal the fact that Dev was otherwise, especially when he had pleaded financial difficulties, in his

individual capacity, he made payments for and on behalf of respondent no. 25. In fact but for his total control over the affairs of respondent no. 25 such payments would not have been effected. Respondent no. 1 and 25 have thus collectively and fraudulently sought to evade the obligation of Acharya Arun Dev to bringing the amount of Rs. 10 crores which he admitted and offered to pay. Dev suppressed that Respondent no. 25 was a company under his absolute control and demonstrably his alter ego.

174. In my view the facts of the present case reveal that Court must separate legal personality of respondent no. 25. Dev -respondent no. 1 was the only one in the control of respondent no. 25 and the fact that the shares being lying in his name after the demise of Dev is indicative of this fact. We are not concerned with interfering in the affairs of the company except for the recovery of amounts that remain payable by Dev.

175. In my view the test laid down in *Ben Hashem (supra)* and *LIC vs. Escorts (supra)* being cases which justify the lifting of the veil have been met. The Custodian seeks to recover an amount of Rs. 10 crores. This aspect was in M.A. No. 92 of 2004 wherein the Custodian had reiterated that a sum of Rs. 10 crores was left to be paid pursuant to the order dated 10th July, 2003. An SLP filed against that order came to be dismissed. Custodian had paid Rs. 50 lakhs as interim dividend @ 25% in the name of Murablack. The Custodian had sought appropriation of amount receivable

by Dev – respondent no. 1 herein and respondent no.25 in partial satisfaction of the amount of Rs. 10 crores.

176. In *Tata Engineering Limited Co vs. State of Bihar (AIC 955 SC 40)* the Court had observed that *“it would not be possible to evolve a rational consistent and inflexible principle which may invoke to determine the question whether the veil should be lifted”*. The Supreme Court also observed that the concept of corporate entity was to promote trade and commerce and not to promote illegalities and defraud. In paragraph 15 of that order the court held prima facie that the share holding pattern of respondent no. 25 that it is nothing but a “front” company of respondent no.1 who had refused to comply with order of the Court which is binding on him, under the pretext that he does not have funds. On the other hand he was attempting to recover amount recovered as dividend while using corporate character of respondent no. 25 and that if the veil is not lifted it may result in injustice. Intention being the interest on administration of justice. The Court rejected the ground by respondent no. 25 required monies to pass the bills against Income Tax authorities. The Court observed that the order dated 10th July, 2003 was final after the Supreme Court had dismissed the SLP. Prima facie case for lifting of the veil was made out to see the real character of the company, but it was held that the question of lifting the veil would be finally decided in this application and when this Court found it is not possible to recover the entire amount which

respondent no. 1 was required to pay. It is in these circumstances that the Court passed the following order on 10th March, 2004.

16. Therefore, taking overall view of the matter; therefore, in my opinion following order would meet the ends of justice:-

i) Miscellaneous Application No. 53 of 2004 is granted in terms of prayer clause (a). It is held that the Company Growth Techno Projects Ltd. is entitled to the amount of dividend.

ii) The Custodian is however, not to pay that amount to the Company Growth Techno Projects Ltd. The Custodian shall hold that amount to the credit of Miscellaneous Petition No. 92 of 1996 subject to further orders that may be passed by the Court in the execution proceedings taken out against Mr. Acharya Arun Dev.

iii) The Custodian is permitted to join the company as Respondent in the Execution proceedings taken out by the Custodian for executing order dated 10/7/2003.

iv) The disposal of that amount which is permitted to be withheld by the Custodian, shall be decided by the Court either by an order passed in Execution proceedings taken out by the Custodian against Mr. Acharya Arun Dev for executing the order dated 10/7/2003 or in Miscellaneous Petition No. 92 of 1996.

v) The Custodian is permitted to join M/s. Growth Techno Projects Ltd. as Respondent in Miscellaneous Petition No. 92 of 1996.

vi) It is further directed that in case any further amount of dividend is found payable to the company by the Custodian, the Custodian shall not make payment of that amount without putting report to the Court and seeking appropriate orders in that regards.

At this stage, request is made on behalf of Mr. Acharya Arun Dev and M/s. Growth Techno Projects Ltd. for stay of the operation of this order.

This is an order only for adjustment of the amounts and therefore, in my opinion no useful purpose would be served by granting stay of operation of this order.

It is pursuant to this order GTPL was impleaded and application for stay of the order was rejected. The Civil Appeal then came to be filed being Civil Appeal no.4408 of 2004. That came to be rejected. Respondent no. 25 was at all material times and is clearly a facade for activities of Dev. According to Mr. Naphade the shares have been delisted. However it is not known whether the company has any assets other than the amounts secured with the Custodian. It would be therefore appropriate to proceed further in execution against respondent no. 25 since I am of the view that the corporate veil should be lifted. For all the aforesaid reasons I am of the view that the veil is required to be lifted and I hold that respondent no. 25 Growth Techno Projects Limited is an alter ego of Acharya Arun Dev and can be proceeded against in execution for recovery of Rs. 10 crores and interest thereon. .

177. Save and except the above decisions relevance of other decisions filed in the compilations have not been canvassed. The Court has had no occasion to examine the individual set of shares in which respondent nos. 1 to 19, 23 and 24 are said to have traded in and nothing contained herein shall be construed as approval of the transactions involving each of these respondents and the shares involved.

178. As far as the issue of contempt is concerned this is an aspect that met its fate when the order dated 10th July, 2003 was passed. That order

provided that the contempt proceeding would survive only against respondent nos. 1, 2 and 24. Show Cause Notices came to be issued to respondent nos. 1 and 24. As far as respondent no. 1 is concerned the question of contempt does not now arise since he expired on 4th February, 2007. Order dated 19th December, 2014 records that respondent no. 2 was an employee of respondent no. 1 and respondent no. 24 Sudhir Mehta who has filed affidavit dated 18th June, 2010 and 24th June, 2010 denying the allegations in the Show Cause Notice. Learned counsel for the Custodian on that date had submitted that on account of explanation given by Sudhir Mehta the Show Cause Notice no. 21 of 2003 may be disposed. Accordingly Show Cause Notice no. 21 was disposed.

179. In view of the above I pass the following order :

- (i) The Miscellaneous Petition as far as it seeks initiation of action against the respondent under the Contempt of Courts Act is rejected.
- (ii) It is declared that Respondent NO. 1 is liable to pay to the Custodian Rs. 10 crores pursuant to the order dated 10th July, 2003.
- (iii) It is declared that Respondent no. 25 was at all material times the alter ego of original Respondent no. 1 – Acharya Arun Dev and all assets of respondent no. 25 shall stand attached till recovery of Rs. 10 crores along with interest thereon @ 6% from the date of this order.

(iv) Miscellaneous Petition no. 92 of 1996 is allowed in terms of prayer clause k(i). Respondent nos. 1(a) to 1(c) are hereby restrained from in any manner dealing with, alienating or creating third party rights or otherwise the shares held by respondent no. 1 Acharya Arun Dev and Growth Techno Projects Ltd. Registrar of Companies New Delhi is directed to make note of the above and not permit any change in the constitution of the Corporate structure.

(v) Execution application no. 418 of 2003 is made absolute in terms of prayer clause (a). The Custodian shall appropriate the amount of Rs.1,50,00,000/- along with accrued interest thereon towards liability of original respondent no. 1 pursuant to order dated 10th July, 2003. Upon transfer of the amount in partial satisfaction of sum of Rs. 10 crores amount shall be invested in a nationalised bank for a period of one year and for such other reliefs.

(vi) All shares held by Acharya Arun Dev in Respondent no. 25 shall be deposited with the Custodian. Respondent nos. 1(a) shall ensure compliance within a period of two weeks from today.

(vii) In the event of non compliance of point no. (v) Respondent no. 25 shall cancel those shares and issue duplicate shares in lieu thereof which shall be deposited with the Custodian. This shall be done within a period of six weeks from today.

(viii) Respondent no. 25 shall within two weeks from today file an affidavit of its director Amit Parwal disclosing on oath all the following :

- (a) Assets, properties and receivables of respondent no. 25.
- (b) All bank accounts of Respondent no. 25 held over
- (c) Legal proceedings, if any, pending against the company.

The affidavit of disclosure shall be comprehensive and complete in all respects supported by documentary evidence wherever available in the separate compilation and shall be filed within four weeks from today.

(ix) Respondent no. 1(A) - Mr. Amit Parwal Director of respondent no. 25 - Growth Techno Projects Limited - respondent no. 1(A) shall within four weeks from today file with the Custodian a compilation of the following documents :

- (a) True copies of Memorandum of Understanding and Articles of Association;
- (b) List of shareholders.
- (c) Folio numbers and distinctive number of all issued subscribed and paid up shares
- (d) Copy of Title deeds of all assets
- (e) List of all receivables along with supplementary documents.
- (f) Balance sheet and profit and loss for the last 7 years.
- (g) Names and addresses of all debtors and creditors of the company.
- (h) True copies of minutes book in respect of Board meeting from 10th July, 2003 till date.

- (x) As far as the remaining properties at J-2 -78 Sujan Singh Park, New Delhi and ancestral property at Rajasthan is concerned respondent nos. 1(a) to 1(c) shall furnish more and better particulars by filing all documents indicating rights of the late Acharya Arun Dev in the said two properties.
- (xi) Respondent no. 25 is restrained from disposing or otherwise alienating, creating third party rights in its Registered Office 3917, Ganesh Building, Nai Sarak, Roshan Pura, Delhi-110 006 or any other property it owns.
- (xii) In the meanwhile Respondent no. 25 is restrained from taking any action for its winding up.
- (xiii) Miscellaneous Petition no. 92 of 1996 are dismissed as against respondent nos. 2 to 24 (both inclusive) and respondent no. 26.
- (xiv) Miscellaneous petition no. 92 of 1996 and Execution Application no. 418 of 2003 are disposed in the above terms. Miscellaneous Application no. 8 of 2018 is now rendered infructuous and is therefore disposed.
- (xv) Liberty is reserved to the Custodian to file fresh Execution upon any other assets of original respondent no. 1 or respondent no. 25 being revealed.

(A. K. MENON, J.)