

IN THE SPECIAL COURT AT BOMBAY

Constituted under the Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992

SPECIAL SUIT NO.1 OF 2013

Santosh Ghanshyamdas Biyani,]
of Bombay, Indian Inhabitant,]
residing outside the Fort of Bombay,]
at 14, Trupti Society, Parleshwar Road,]
Vile Parle (East), Mumbai – 400 057.] ...Plaintiff

Versus

1. Harshad S. Mehta (*Since Deceased*),]
Through Legal Heirs :-]
1A. Jyoti Mehta]
1B. Rasila Mehta]
1C. Atur Mehta]
Defendant Nos.1A to 1C all Indian]
Inhabitants, having their office at]
Maker Chamber No.6, 1205,]
12th Floor, Nariman Point, Mumbai]
and residing at Madhuli, Dr. Annie]
Besant Road, Worli, Mumbai – 400 018.]
]]
1B. Rasila Mehta (*Since Deceased*),]
Through Legal Heirs :-]
[1.1.1] Ashwin S. Mehta]
[1.1.2] Dr. Hitesh S. Mehta]
[1.1.3] Sudhir S. Mehta]
[1.1.4] Bhavna Manish Shah]
Defendant Nos.[1.1.1] to [1.1.3]]
R/at 32, Madhuli Apartments,]
Dr. Annie Besant Road, Worli,]

Mumbai – 400 018.]	
Defendant No.[1.1.4] residing at]	
4A, Sambhav Tirth, 2A,]	
Bhulabhai Desai Road, Haji Ali,]	
Mumbai – 400 026.]	
]	
2. Tata Steel Ltd.]	
(Formerly known as The Tata Iron &]	
Steel Co. Ltd.) having its registered]	
Office at Bombay House, Homi Mody]	
Street, Fort, Bombay – 400 023 and]	
its Share Department at Army & Navy]	
Building, Fort, Bombay – 400 020.]	
]	
3. The Custodian,]	
Appointed under the provisions of the]	
Special Court (Trial of Offences Relating]	
to Transactions in Securities) Act, 1992,]	
having its office at 10 th Floor, Nariman]	
Bhavan, 227, Vinay K. Shah Marg,]	
Nariman Point, Mumbai – 400 021.]	...Defendants

Mr. Pradeep Sancheti, Senior Advocate, with Ms. Pallavi Bali, i/by Mr. Dinesh Guchiya, for the Plaintiff.

Mr. Vivek Sharma for Defendant Nos. 1A, 1B and 1C.

None for Defendant No.2-TSL.

Mr. J. Chandran, with Ms. Shilpa Bhate, i/by Leena Adhvaryu & Associates, for Defendant No.3-Custodian.

CORAM : A.K. MENON, J.
JUDGE, SPECIAL COURT

RESERVED ON : 11TH JUNE, 2021.

PRONOUNCED ON : 23RD JULY, 2021.

JUDGEMENT :

1. The plaintiff seeks a decree against the original 1st defendant–Harshad Mehta, now represented by legal heirs – defendant nos.1A to 1C and defendant nos.[1.1.1] to [1.1.4], being legal heirs of deceased defendant no.1B–Rasila Mehta.

- (i) To handover to the plaintiff 5,350 shares of Tata Iron & Steel Co. Ltd., now known as Tata Steel Ltd.; more particularly set out in Exhibit–B to the plaint. Exhibit–B contains particulars of the 5,350 shares with distinctive numbers and number of shares in the name of the plaintiff alone and the plaintiff jointly with other family members. The plaintiff is the first holder.
- (ii) A declaration that the plaintiff was and continues to be the owner of these shares and the defendants or such of them, who are in possession of the shares and/or accretions thereto by way of dividend and bonus shares be ordered and directed to forthwith handover the same to the plaintiff.

- (iii) In respect of 850 shares, the plaintiff seeks a direction against defendant no.2 to issue duplicate shares along with accretions thereto since distinctive numbers of these shares are also provided.
- (iv) In the interregnum, the plaintiff seeks a permanent injunction against the defendants from transferring the shares to original defendant no.1 or presently to defendant nos.1A to 1C;

An interim injunction is operating against the defendants.

2. Two other similar Suits have been filed by other family members of the plaintiff. Evidence to some extent is common.

3. The plaint proceeds on the basis that one Ramesh G. Biyani, a member of the plaintiff's family and engaged in dealing in stocks and shares by way of investment, being familiar with the business of stocks, was known to several brokers. Ramesh Biyani transacted business for the family inter alia through original defendant no.1-Harshad S. Mehta (*hereinafter referred to as "HSM"*). The suit shares are shares of defendant no.2-company and hence defendant no.2 has been impleaded. HSM died on 31st December 2001 and legal heirs have

since been brought on record. The plaintiff claims that on 19th December 1990, plaintiff through Ramesh Biyani handed over and entrusted 11,500 shares of defendant no.2-company, belonging to the members of the plaintiff's family, to HSM. Ramesh Biyani, acting as an agent of the plaintiff and other members of the family, was given a memo signed by HSM acknowledging receipt of the shares. According to the plaintiff, the shares at item nos.4 and 6 to 12 in the said acknowledgment, constituting 5,350 shares, were thus handed over to HSM for the purposes of being sold. Shortly thereafter, HSM apparently advised the plaintiff through Ramesh Biyani that the gulf war, which was then raging, would soon end and as a result therefore the prices of the 2nd defendant's shares were bound to rise. HSM therefore did not sell the shares, as required, but kept holding on to them. Despite repeated demands by the plaintiff through Ramesh Biyani, these shares were not sold.

4. The shares were given along with the transfer forms signed in blank by the plaintiff/shareholders, as was then the practice and therefore the plaintiff was under an apprehension that HSM was likely to seek transfer of the shares in his own name or that of his nominees. The Plaintiff therefore addressed a letter to the defendant no.2-company on 14th March 1991 to not to act upon any request for transfer from HSM. A legal notice was sent by the plaintiff's Advocate on the same date to the defendant no.2-company recording the fact

that the suit shares have been wrongly retained by HSM and that they should see that no illegal transfer of the shares is allowed in HSM's name or to any other person. The said letter to the defendant no.2-company is annexed at Exhibit P-2 to the plaint. The demand notice is annexed at Exhibit P-3 to the plaint. An acknowledgment was obtained by the plaintiff's Advocate on 15th March 1991. The same is marked as Exhibit P-4. Plaintiff therefore claimed that shares and transfer forms were liable to be returned because if HSM transfers the shares to himself or to third-party, the plaintiff would suffer harm and injury which cannot be compensated in terms of money. The shares were then valued @ Rs.8,39,850/- for the purposes of the suit. An injunction and appointment of Receiver were sought. At that time, the suit lay on the Original Side of the High Court and hence a Notice of Motion was filed and an injunction was obtained on 23rd November 1993. The company was not represented but HSM was represented. HSM did not file a written statement.

5. A written statement on behalf of defendant nos.1A to 1C is on record. Defendant nos.2 and 3 have not filed written statements. Defendant no.1A, who is the widow of the original defendant no.1-HSM, has sought to deny the plaintiff's claims. She contends that she is the only legal heir of the original defendant no.1, who was concerned with the suit claims, since the others, being defendant nos.1B and 1C, have no claim. It may be appropriate to mention that

defendant no.1B has also since passed away and heirs of defendant no.1B have been brought on record as defendant nos.[1.1.1], [1.1.2], [1.1.3] and [1.1.4]. In effect, they too have not contested the suit and are formal parties. As defendant no.1A contended that since original defendant no.1 is no longer alive, the only person who could have thrown light on the transactions and the true facts was one Ramesh Biyani, to whom the plaintiff had handed over shares and that he was necessary and proper party and the suit cannot be decided without him. She claims that the defendant nos.1A to 1C have no knowledge about what has transpired between them. The defendant nos.1A to 1C have attempted to ascertain the facts from books of accounts of the deceased defendant no.1-HSM, but they were unable to find any transaction with the plaintiff or with Ramesh Biyani. Hence, they contend that Ramesh Biyani was a necessary party.

6. Defendant no.3-the Custodian has filed a written statement, in which he states that he was not a party to the suit as originally filed. The suit has been transferred to the Special Court since. The Custodian has filed Miscellaneous Application No.309 of 1997 seeking directions pertaining to transfer of 19,788 unregistered shares belonging to various entities of the Harshad Mehta Group and that the suit shares form a part of those unregistered shares. The Custodian confirms that 4,500 shares of the 2nd defendant form part of the said Miscellaneous Application No.309 of 1997 and had not been transferred by the

share transfer agents since the High Court had granted injunction on 23rd November 1993 in the suit. As far as the remaining 850 shares are concerned, these suit shares were reportedly lost by Harshad Mehta. This loss was reported by him to the Custodian vide letter dated 12th April 2000. These facts are not disputed. The Custodian meanwhile submits to the orders of the court.

7. Defendant no. 2 – TISCO has not entered appearance. The court is informed that defendant no. 2 was duly served with the writ of summons. The record indicates that, after service of summons on defendant no.2-TSL, the company had on 24th October 1991 vide letter informed the Registrar of the Bombay High Court, where the suit was first filed, that having received the summons to appear in court on 26th November 1991, the company do not wish to contest the suit and will not be able to present themselves. Thus, there is no opposition to the prayers from defendant no.2-TSL.

8. In this factual background, the following issues came to be framed on 12th January 2018 :-

- 1. Whether the 5350 shares of Tata Steel Limited (TSL) were handed over for sale to one Mr. Ramesh Biyani in his capacity as agent/broker for the plaintiff, who, in turn, entrusted these shares of TSL to original defendant no.1 ?*

2. *Whether original defendant no.1 handed over to the said Mr.Ramesh Biyani an acknowledgment of shares for sale and delivery, as set out in paragraph 5 of the plaint ?*
3. *Whether the suit is bad for non-joinder of Mr. Vinod Biyani and Mr. Ramesh Biyani ?*
4. *Whether Mr. Harshad S. Mehta and/or Mr. Ashwin S. Mehta had paid consideration for the suit shares of TSL to Mr. Vinod Biyani on behalf of the plaintiff, as contended in paragraph 9 of the written statement of defendant nos. 1A to 1C ?*
5. *Whether the suit shares were handed over to the original defendant no.1 against any purchases made by defendant no.1, as contended in paragraph 18 of the written statement of defendant no.1A ?*
6. *Whether plaintiff is the owner of suit shares ?*
7. *If answer to issue number 6 is in the affirmative, whether original defendant no.1 held and presently defendant nos. 1A to 1C hold the suit shares in trust for the plaintiff and are in wrongful possession of the said shares ?*

8. *If answer to issue no.6 is in the affirmative, whether the plaintiff is entitled to receive dividend on the suit shares and all accretions thereto?*
9. *What order ? What reliefs?*

9. The plaintiff deposed in support of his case, so did the said Ramesh Biyani. Thereafter, witness summons was issued to the Bombay Stock Exchange (BSE) for production of records. Two witnesses of the BSE were so summoned and examined. Defendants examined two witnesses – Ashwin S. Mehta, the brother of original defendant no.1-HSM and one Vinod Biyani, who was summoned at the instance of defendant nos.1A to 1C. The witnesses, except those from the BSE, were cross-examined by the other parties. The 5,350 shares forming subject matter of the present suit were part of an aggregate of 11,500 shares of the 2nd defendant-company handed over to defendant no.1-HSM. These 5,350 shares are believed to have been belonging to the plaintiff. HSM had acknowledged receipt of the same. Despite enquiries about the status of the shares, which were required to be sold, HSM had responded while claiming that the opportune time to sell the shares would be after cessation of the war in the Middle East. Since the plaintiff has entrusted these shares for sale through Ramesh Biyani, HSM informed Ramesh Biyani that the sale would be executed

soon after the war ends. Since HSM had not sold the shares for a long time, the plaintiff through Ramesh Biyani sought return of the shares; however, HSM did not comply.

10. In view thereof, Notice of Motion No.690 of 1991 was filed in the suit. On 15th March 1991, the plaintiff's Advocate also sent a telegram to HSM recording the fact that a demand notice had been sent on 14th March 1991 to the office of HSM, but the same has been refused. The plaintiff's Advocate then instructed his clerk to deliver a letter at the HSM's Nariman Point office, where he was then present; yet, did not acknowledge receipt of the letter, but a member of the staff accepted the letter and acknowledged receipt thereafter. He invited my attention to Exhibit P-4 in this behalf. The learned counsel for the plaintiff then submitted that since HSM had not returned shares despite demand, Notice of Motion No.690 of 1991 came to be filed and ad-interim and interim reliefs were sought. On 21st March 1991, one Krishnakant A. Shah, Advocate, has entered appearance on behalf of HSM. The court granted an ad-interim injunction. On the same day, the plaintiff's Advocate informed the defendant no.1-HSM and defendant no.2-company of the injunction granted. No replies were filed. Notice of Motion was not contested and as a result, on 2nd December 1993, Notice of Motion No.690 of 1991 was made absolute in terms of prayer clauses (a), (b) and (c), thereby restraining the defendant no.1-HSM

from selling and restraining the defendant no.2-company from transferring the suit shares to any third-party.

11. A true copy of the telegram certified by the Postal Department, Kalbadevi is on record at Exhibit P-5(2). A request was made for true copy of the telegram by the plaintiff's Advocate. The receipt therefor is on record at Exhibit P-5(1). It is dated 16th March 1991. On the same day, a true copy was issued by the Postal Department, which is on record at Exhibit P-5(2). An office-copy of the said telegram, along with the acknowledgment, is at Exhibit P-5(3). To complete the chain of documents, I may observe here that the plaintiff has also produced in evidence a letter dated 15th March 1991 addressed by the plaintiff's Advocate to the Kalbadevi Post Office. The same is marked as Exhibit P-6. On 21st March, 1991, the plaintiff's Advocate is seen to have addressed a communication to defendant no.2-company (Exhibit P-7) intimating them of the injunction issued by the High Court.

12. Thereafter, the suit remained pending and during the pendency of the suit, on 2nd May, 2011, the plaintiff's Advocate enquired with defendant no.2-company as to the status of the shares. In response to the plaintiff's Advocate's letter dated 2nd May, 2011 requesting status of the suit shares, one TSR Darashaw Ltd., Registrar and Share Transfer Agent of the 2nd defendant-

company informed the plaintiff's Advocate of the fact that of 5,350 shares, 4,500 shares were lodged with the Registrar on 29th April, 2005 for transfer in favour of "Custodian A/c. - Harshad Mehta Group", but these were returned under objection in view of these suits that were pending. The agent also confirmed that 850 shares bearing the distinctive numbers mentioned in the letter were reportedly lost by Harshad Mehta. The original letter received by the plaintiff's Advocate is on record in evidence at Exhibit P-10. Thereafter it appears that the office of the Custodian addressed a letter to the said Registrar on 29th March 2012 seeking current status of the unregistered shares and accretions thereto; however, it appears that no response has been received.

13. Mr. Sancheti appearing for the plaintiff submitted that the shares in respect of which the suit has been filed were owned by the plaintiff and are reflected in his statements of assets and liabilities, as seen from Exhibits P-8 and P-9. In the circumstances, there was no doubt about the ownership of the shares, nor the fact that the shares were handed over to HSM. Mr. Sancheti has taken me through the defence of defendant nos.1A to 1C, according to Mr. Sancheti. The evidence of defendants 1A to 1C demonstrated that the plaintiff has conclusively established ownership and entrustment of the shares; in particular, by leading evidence of both the plaintiff himself and the said Ramesh Biyani. On the other hand, he submitted that the evidence on behalf of the

defendant 1A to 1C does not establish the truth of their case. Mr. Sancheti submitted that issue nos.1, 2, 6 and 7 stands proved and as a consequence, the plaintiff is entitled to receive dividend on the suit shares and all accretions thereto.

14. On behalf of defendants 1A to 1C, Mr. Sharma submitted that the plaintiff has failed to establish his case. According to Mr. Sharma, the suit was bad for non-joinder of Vinod Biyani and Ramesh Biyani. He submitted that the written statement of defendants 1A to 1C correctly states that Ramesh Biyani was a necessary and property party, since, according to him, the shares had been sold to original defendant no.1-HSM and/or Ashwin S. Mehta, the brother of HSM and that consideration had been paid in respect of the shares of defendant no.2 to Vinod Biyani, who received the same on behalf of the plaintiff. In this behalf, he has relied upon the averments in the written statement that HSM had received the shares against certain purchases.

15. The plaintiff was not a client of the brokerage firms forming part of Harshad Mehta Family, namely, M/s. Harshad S. Mehta, M/s. Ashwin Mehta and M/s. J.H. Mehta. There was no privity of contract between the plaintiff and the aforesaid stock broking firms. The plaintiff was himself a member of family of stock brokers, namely, Ghanshyamdas Biyani, and there was no reason for the

plaintiff to deal with the defendants' brokerage firms. Moreover, the plaintiff could not seek recourse to the HSM in his individual capacity since he would be required to contract only through the brokerage firms. Mr. Sharma submitted that Ghanshyamdas Biyani, father of the present plaintiff and who had been undertaking large volume of shares' transactions through his nephew one Vinod Biyani, had fallen on bad times and had sought financial assistance from HSM and his younger brother Ashwin Mehta. Ghanshyamdas Biyani having sought financial assistance from HSM and his brother, had effected sale of the suit shares through Vinod Biyani. Ashwin Mehta had purchased a very large quantity of shares from Vinod Biyani in comparison with the shares now claimed by the plaintiff.

16. My attention was invited to the written statement of defendants 1A to 1C and in particular paragraph 18 thereof, in which the defendants 1A to 1C have contended that the shares were handed over to HSM against the purchase of shares by HSM. Mr. Sharma submitted that the books of accounts of the three firms of Harshad Mehta family members were audited by the firm of Chartered Accountants appointed by the Custodian. The Chartered Accountants had scrutinized the records and according to Mr. Sharma, the extract of the accounts will reveal payment towards purchase of shares of defendant no.2-TSL. and ACC Ltd. These payments had been made to Vinod Biyani. Bank statements are sought

to be relied upon, which are annexed as Exhibits 5, 6 and 7 to the written statement of defendants 1A to 1C. According to Mr. Sharma, the suit shares had been purchased by HSM against consideration paid to Vinod Biyani and therefore the plaintiff should file a suit against Ramesh Biyani or Vinod Biyani, if he seeks relief. The injunction issued by the High Court is therefore required to be vacated.

17. Mr. Sharma submitted that having led evidence of Ashwin Mehta, who deposed on behalf of defendant nos.1A to 1C, and that of Vinod Biyani, the defendant nos.1A to 1C have established the fact that the suit shares had been purchased by original defendant no.1-HSM and that consideration in this respect had been paid through the said Vinod Biyani. According to Mr. Sharma, the plaintiff has failed to establish that he is the owner of the suit shares and in that light, this suit must fail.

18. Although the written statement dated 29th July 2016, filed by defendant nos.1A to 1C contains Exhibits 3, 4, 5, 6 & 7, none of these documents have been proved. No evidence has been led to substantiate the contents of any of these documents and they are not admitted in evidence and cannot be read in evidence.

19. Mr. Sharma submitted that if Harshad Mehta was to receive only brokerage, the shares could not have been handed over to him and could have been delivered directly to Ramesh Biyani. Harshad Mehta had helped Ghanshyamdas Biyani financially to the knowledge of Ashwin Mehta, who has deposed in support that they had advanced monies to Ghanshyamdas Biyani as otherwise delivery memos would not have been issued at all. Delivery memos were issued and the shares delivered since the monies have been paid to Ghanshyamdas Biyani. There is no justification in having delivered the shares in advance especially since when Harshad Mehta was to only receive brokerage and normally it is only after the settlement completed and shares are delivered. This indicates that the transaction was one as pleaded by defendant nos. 1A to 1C in order to assist Ghanshyamdas, monies were advanced and these shares were purchased through Vinod Biyani and monies paid over through Vinod Biyani. Furthermore, if the shares were to be delivered by the plaintiff, it could have been issued on his letter-head. The market practice was that shares were never handed over in advance.

20. On the basis of these submissions, I have proceeded to examine the pleadings and the evidence on record, both documentary and oral, and have considered the issues as under :-

Issue No.1 : Whether the 5350 shares of Tata Steel Limited (TSL) were handed over for sale to one Mr. Ramesh Biyani in his capacity as agent/broker for the plaintiff, who, in turn, entrusted these shares of TSL to original defendant no.1 ? and;

Issue No.6 : Whether plaintiff is the owner of suit shares ?

21. In this behalf, issue nos.1 and 6 can be dealt with together. Both these issues are answered in the affirmative for the following reasons.

22. As far as issue no.1 is concerned, the fact that the suit shares were handed over to HSM is not in dispute. In fact, it is admitted. The plaintiff was required to establish that the suit shares were handed over to Ramesh Biyani, who admittedly handed it over to HSM in or about 19th December, 1990. Once that aspect is established, the question is for what purpose these shares were handed over. The passing of shares from plaintiff to HSM through Ramesh Biyani is not in doubt. HSM has claimed that the shares of the plaintiff were purchased by him. Thus, at the relevant time, ownership of the suit shares is also admitted. The question that remains is whether the suit shares were handed over to Ramesh Biyani for sale or whether they were purchased for sale through HSM as broker

or whether HSM or his firm purchased the suit shares for consideration. I have therefore proceeded to assess the evidence on these aspects.

23. In his affidavit in lieu of examination-in-chief dated 6th March 2018, Santosh Biyani – the plaintiff has deposed that he has delivered 5,350 shares of defendant no.2-Tata Steel Ltd. (“TSL”) to his brother Ramesh Biyani along with the signed transfer deeds for being sold in the market. Ramesh Biyani was working in the stock market and was familiar with the brokers including HSM. These 5,350 shares of defendant no.2 along with the 6,150 shares, also of defendant no.2 but belonging to the plaintiff’s mother, aggregating to 11,500 shares, were handed over to HSM on 19th December 1990 vide two memos being Memo Nos.301 and 302. Memo No.301 pertained to 5,350 suit shares. Memo No.302 also evidences delivery of 750 shares of defendant no.2-TSL to HSM. Memo No.302 is also tendered in evidence, proved and is marked as Exhibit P-13(2). Together Memo Nos.301 and 302 evidence delivery of 11,500 shares. Memo No.302 also bears an acknowledgment of HSM’s brokerage firm no.241.

24. Likewise, the Advocate’s letter, the demand notice, its acknowledgment, the true copy of the telegram requested for and collected by the then Advocate for the plaintiff, have all been proved and were marked as Exhibits P-1 to P-6.

Documents were marked in evidence during examination of the witnesses in this Suit and in Suit No.2 of 2013. Some of the evidence on both sides was led in common in the three Suits. The description of the documents marked to be read in evidence can be conveniently set out in the following tables :-

Documents marked during examination and cross-examination of the Plaintiff		
<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Affidavit in lieu of examination-in-chief of the plaintiff – Santosh Ghanshyamdas Biyani.	6 th March, 2018	P-1
Original letter addressed by the plaintiff's Advocate Ramesh Shah to defendant no.2-TISCO.	14 th March, 1991	P-2
Original letter addressed by the plaintiff's Advocate Ramesh Shah to original defendant no.1-HSM.	14 th March, 1991	P-3
Original acknowledgment on the letterhead of plaintiff's Advocate Ramesh Shah.	15 th March 1991	P-4
Original Receipt No.022 issued by Department of Telecommunications in the name of Mr. Ramesh C. Shah, Advocate for the plaintiff, towards charges for certified true copy of the telegram dated 15 th March 1991.	16 th March 1991	P-5(1)

<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Original Certified True Copy of the Inland Telegram sent by Mr. Ramesh Shah, Advocate for the plaintiff, to defendant no.1-HSM.	15 th March 1991	P-5(2)
Original receipt for inland telegram sent to HSM and received by Mr. Ramesh Shah, Advocate for the plaintiff.	15 th March 1991	P-5(3)
Original letter addressed by Mr. Ramesh Shah, Advocate for the plaintiff, to the Telegraph Master, Kalbadevi Post Office, Mumbai, requesting for certified copy of the telegram sent to HSM.	15 th March 1991	P-6
Original letter addressed by the plaintiff's Advocate Mr. Ramesh Shah to the TISCO.	21 st March 1991	P-7
Balance Sheet and Profit & Loss A/c. of the Plaintiff for the Assessment Year 1990-91.	31 st March 1990	P-8
Balance Sheet and Profit & Loss A/c. of the Plaintiff for the Assessment Year 1991-92.	31 st March 1991	P-9
Original letter addressed by TSR Darashaw Ltd. to Mr. D.P. Guchiya,	30 th May 2011	P-10

Advocate for the plaintiff.		
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<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Copy of the letter issued by Custodian's Office to TSR Darashaw Ltd.	29 th March 2012	P-11
Affidavit in lieu of examination-in-chief of Mr. Ramesh Biyani.	6 th March 2018	P-12
Counter-foil / Carbon-copy of Share Delivery Memo Nos.301 and 302 issued by Mr. Ramesh Biyani in respect of 11,500 shares of TISCO.	19 th December 1990	¹ *P-13(1) & *P-13(2)
Original letter addressed by Mr. Ramesh Biyani to the Bombay Stock Exchange.	26 th February 2018	P-14
Deposition of Mr. Hemant Vasant Dharap (PW-3)	20 th April 2018	P-15
Copy of the letter addressed by the Bombay Stock Exchange to Mr. Ghanshyamdas B. Biyani.	10 th August 1988	P-16
Copy of writing addressed by the Secretary, Bombay Stock Exchange to the Members of BSE.	7 th January 1993	P-17

¹
17(2) in Suit No.2 of 2013.

**These two exhibits have been marked as Exhibits P-17(1) and P-*

Documents marked during examination and cross-examination of the Defendants		
<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Deposition of Mr. Vinod Biyani.	9 th August 2018	D-1/1
True copy of the extracts of Statement of Accounts of Vinod Biyani (H.S. Mehta)	Apr-90 to Mar-91	D-1/2
True copy of the extracts of Statement of Accounts of Vinod Biyani (Ashwin Mehta)	Apr-90 to Mar-91	D-1/3
Affidavit in lieu of examination-in-chief of Mr. Ashwin Mehta on behalf of Defendant Nos.1A to 1C.	27 th October 2018	D-1/4
Copy of the order passed by this court in this suit (previously numbered as Suit No.855 of 1991)	20 th March 1991	D-1/5(1)
Copy of the order passed by this court in Notice of Motion No.691 of 1997 in this suit (previously numbered as Suit No.855 of 1991)	30 th June 1993	D-1/5(2)
Copy of the order passed by this court in Notice of Motion No.691 of 1991 in this suit (previously numbered as Suit No.855 of 1991)	23 rd November 1993	D-1/5(3)

<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Certified copy of the order passed by this court in Notice of Motion No.691 of 1991 in this suit (previously numbered as Suit No.855 of 1991)	3 rd December 1993	D-1/5(4)
Original Vakalatnama filed by Mr. Krishnakant A. Shah on behalf of defendant no.1-HSM in Suit No.855 of 1991. (Suit No.2 of 2013).	21 st March 1991	D-1/6
Original Vakalatnama filed by Mr. Krishnakant A. Shah on behalf of defendant no.1-HSM in Suit No.854 of 1991 (Suit No.1 of 2013).	21 st March 1991	D-1/7
Original Vakalatnama filed by Mr. Krishnakant A. Shah on behalf of defendant no.1-HSM in Suit No.856 of 1991 (Suit No.3 of 2013).	21 st March 1991	D-1/8

25. On 21st March 1991, the plaintiff's Advocate is seen to have written to defendant no.2 intimating them about the injunction order passed in Notice of Motion No.690 of 1991. The office-copy of the said letter is marked as Exhibit P-7. Furthermore, the plaintiff has produced in evidence the true copies of the Balance Sheets for the Financial Years 1989-90 and 1990-91, i.e. for Assessment Years 1990-91 and 1991-92, which were certified by the

Chartered Accountants as true copies and witness has deposed that they are to his knowledge, prepared on his instructions and correct. The same are marked as Exhibits P-8 and P-9. The witness has also produced the original letter dated 30th May 2011 addressed to the plaintiff's Advocate by TSR Darashaw - Share Transfer Agent of defendant no.2 informing the plaintiff's Advocate that the shares, subject matter of the letter, have been sent to the "Custodian A/c. - Harshad Mehta Group". The said letter is marked as Exhibit P-10. He has also produced letter addressed by the Custodian to the office of the Share Transfer Agent - TSR Darashaw Ltd., copy of which is marked as Exhibit P-11. These documents have not been disputed.

26. On 23rd March 2018, prior to cross-examination of Santosh Biyani - the plaintiff, Ramesh Biyani was interposed as plaintiff's witness no.2 for the purposes of proving the contents of Share Delivery Memo No.301 as also for tendering his affidavit-of-evidence. The affidavit in lieu of examination-in-chief of Ramesh Biyani is marked as Exhibit P-12. Ramesh Biyani had supported the plaintiff's case by filing his affidavit-of-evidence dated 6th March 2018, in which he deposed that some of his family members, including the plaintiff, were desirous of disposing shares through him and he had entrusted the suit shares to HSM. This fact was duly acknowledged by staff member of HSM by affixing a seal of the firm of HSM and signing the counter-foil. Ramesh Biyani had asked

HSM to sell the shares, but HSM had not done so, then contending that upon cessation of the gulf war, prices of steel would be much higher and hence the price of shares would rise. Soon thereafter, the war ended and the witness has asked HSM to proceed with the sale, but he did not comply. Thereupon, the witness sought return of the shares and transfer forms from HSM, but once again HSM did not comply. He has also deposed to the fact that the shares were delivered to HSM for sale to the stock market and the said shares were not sold to HSM. No contract note has been issued by HSM for purchase of the shares, nor was any payment made by HSM to the plaintiff or to Ramesh Biyani in respect of the alleged purchases.

27. Ramesh Biyani was examined on oath on 23rd March 2018, when he affirmed the contents of his affidavit in lieu of examination-in-chief dated 6th March 2018. A minor correction was also allowed in paragraph (2) of the affidavit. He deposed to the truth of the contents of the share delivery memo nos.301 and 302 and the acknowledgments thereon issued at the instance of the defendant no.1-HSM. Ramesh Biyani deposed that the Share Delivery Memo No.301 was a carbon-copy of the original, by which the suit shares of defendant no.2 and other shares had been delivered to HSM. According to the witness, the memos were signed either by Ramavatar Sharma or by Pradeep on his behalf, who were the two employees engaged in his office. The originals of the share

delivery memo were handed over to HSM. The contents of the share delivery memo were said to be correct since he had personally identified these prior to issuing Exhibit P-13(1). Ramesh Biyani has also deposed that his father Ghanshyamdas Biyani had been expelled from the BSE w.e.f. 11th August 1988. He denied that suit shares were handed over to HSM on account of Vinod Biyani. That till 1992, Ramesh Biyani was looking after his family's investment and stock market affairs. Although he became a member of BSE in 1990, he was allowed to trade only w.e.f. 8th January 1993. According to him, he had received a communication from the BSE to that effect confirming his entitlement to trade as a broker. The original of the letter had been misplaced and in the meantime, he has requested the BSE to issue a certified copy of the said letter. The Share Delivery Memo No.301 was thus proved and marked as Exhibit P-13(1). He also deposed that he had written to the BSE vide Exhibit P-14 requesting for a certified copy of the letter dated 8th January 1993. He deposed that the document at Exhibit P-14 is a letter issued by him to the Bombay Stock Exchange, now known as BSE Ltd., in relation to his capacity to trade as a broker and in this behalf at the instance of the plaintiff, the BSE Ltd. was summoned.

28. On 20th April 2018, the BSE Ltd. deputed one Hemant V. Dharap, who responded to the summons and stated that he was not aware of the letter dated 10th August 1988, which was marked as X-2 for identification, issued by the

BSE, which related to the expulsion of Ghanshyamdas Biyani. He was examined on behalf of the plaintiff and called upon to identify the letter at Exhibit P-14, to which the witness responded by stating that the Membership Department of the BSE would be aware of the same. Thereupon, the summons was once again issued to the BSE Ltd. and on 12th July 2018, one Johnson Joseph Chiriyath answered the witness summons dated 3rd July 2018. Upon being given some time, on 2nd August, 2018, he produced a photocopy of a writing dated 7th January 1993 bearing reference no.151/93, whereby members of the stock exchange were informed that Ramesh Biyani would commence business in the market in his own name with effect from 8th January 1993. Ramesh Biyani had been given clearing no.768. The witness confirmed that such a letter had been issued. In view thereof, the copy of the said letter was marked as Exhibit P-17. Since evidence has been led in common, the deposition of Johnson Joseph Chiriyath would also be read in other suits as well since it pertains to a document which is common in all the three Suits.

29. Mr. Sharma on behalf of defendant nos.1A to 1C had cross-examined both Santosh Biyani and Ramesh Biyani. In response to question no.21, Santosh Biyani deposed that if there were transactions between Vinod Biyani and HSM, the plaintiff's shares would not be involved. He denied a suggestion that suit shares were part of some arrangement between Ghanshyamdas Biyani, Vinod

Biyani and HSM, which concerned repayment of monies allegedly owing from Ghanshyamdas Biyani to HSM. In my view, the defendants 1A to 1C have not been able to establish that Ghanshyamdas Biyani had sought financial assistance or that the plaintiff had dealings with Vinod Biyani or that Biyani was suppressing books of accounts. In effect, the plaintiff's witness' testimony has not been shaken. The witness – Ramesh Biyani was asked whether he was attending his late father Ghanshyamdas's office, to which the witness replied that the family had business of manufacturing plastic products in the factory at Bhayandar, which he used to visit frequently. At times, he would attend his father's office. He deposed that he was not receiving any dividend on the shares, which have been retained by the defendant no.2-company. He deposed to having consulted his Advocate Ramesh Shah and giving instructions to issue demand notice, which is marked as Exhibit P-3. He admitted to knowing Vinod Biyani, who was his cousin, while denying that the suit shares were part of the transaction between Vinod Biyani and HSM.

30. Ramesh Biyani was examined and cross examined in all three Suits i.e. in above Suit and in companion Suit Nos.2 of 2013 and 3 of 2013; whereas, he has filed separate affidavits-of-evidence-in-chief, at the request of Mr. Sharma, learned counsel for defendant nos.1A to 1C in all three Suits and on behalf of defendant no.5 in Suit Nos.2 of 2013 and 3 of 2013, cross-examination was

conducted in common. Ramesh Biyani's cross-examination commenced on 13th April 2018, in which he admitted to be engaged in the trading of shares and investments since 1990 through some brokers. He admitted that Vinod Biyani was his cousin, who was also a broker, but he had no recollection of having dealt with Vinod Biyani. His attention had been drawn to Delivery Memo No.306, marked as Exhibit D1(1)² wherein he identified his father's name as G.B. Biyani. According to him, that delivery memo and other delivery memos [Exhibits D-1(2), D-1(3) and D-1(4)] were prepared by mistake, but Delivery Memo No.317 [Exhibit D-1(5)] was not prepared by mistake and it was delivered to the addressee Ramesh M. Damani. In relation to the suit delivery memos, the witness admitted that settlements would normally happen every 15 days and delivery of shares would have to be effected upon expiry of 15 days. He deposed that issuance of delivery memo would also depend on relationship between the client and the broker. In some cases, the deliveries were made in advance and in some after settlement. He admitted dealing with HSM, but did not recollect any contract note having been issued. The witness admitted having bought and sold shares through HSM, but he could not recollect the particulars or any specific transaction. He agrees that pursuant to their sale, shares would be delivered to persons named as the shareholder.

31. In relation to Exhibit P-17(1), the witness stated that normally there was an agreement prior to delivery, but in case of shares listed in Exhibit P-17(1), sale was to take place after the delivery memo. The witness agreed with the cross-examiner that since shares were not sold, delivery was not necessary; however, the witness has also deposed that he had asked HSM to sell the shares but was advised by HSM against selling at that point in time as set out. Further cross-examination resumed on 20th April 2018. The witness stated that he agreed that if the shares were sold, as contended by the plaintiff in this Suit, HSM would only earn brokerage. There was no benefit in handing over shares in advance; except that it was due to the relationship between the parties, the shares were handed over. He did not recall in which office of HSM, the shares were handed over. He also deposed that in all 123 transfer deeds were handed over to cover 6,150 shares of TISCO (now Tata Steel Ltd.). For avoidance of doubt, I may observe that reference is made herein to the cross-examination of Mr. Ramesh Biyani is only to the extent relevant for the purpose of this suit. Since a cross-examination is common across three Suits, there are some aspects which do not concern the claim or the defence in the present suit. In answer to question no.48, the witness deposed that he had personally asked HSM to sell the shares or return the shares, but has not made a written request.

32. Rest of the cross-examination pertains to the witness's brother Shrikant

Biyani, who is plaintiff in Suit No.3 of 2013; hence, not directly relevant in this suit. The witness has deposed that Vinod Biyani has no connection with the suit transactions. On being called upon, the witness produced balance sheets and profit & loss account for the assessment years 1990-91 and 1991-92. These were marked as ^{3*}Exhibits D-1(7) and D-1(8). The witness refuted a suggestion that ^{4*}Exhibits D-1(7A) and D-1(8A) were fabricated. An attempt to challenge the veracity of the witness's deposition qua the engagement of the Chartered Accountant M/s. S.K. Rathi & Co. has been repelled. To my mind, nothing material has been brought out in the cross-examination of Ramesh Biyani to establish the case of the defence.

33. In view of the aforesaid, I hold that the plaintiff has proved that 5,350 shares of defendant no.2-TSL were handed over by the plaintiff, who was the owner of the shares, to Ramesh Biyani and who entrusted the same to HSM to sold in the market on behalf of the plaintiff and for those reasons, Issue nos.1 and 6 are answered in the affirmative.

Issue No.2 :- Whether original defendant no.1 handed over to the said Mr. Ramesh Biyani an acknowledgment of shares for sale and delivery, as set out in paragraph 5 of the plaint ?

³

Marked as Exhibits in Suit No. 2 of 2003

⁴

34. As far as issue no.2 is concerned, it is clearly seen from Exhibit P-13(1) that HSM had acknowledged receipt of the shares from Ramesh Biyani. His acknowledgment at Exhibit P-13(1) has not been disputed. The rubber-stamp of "Harshad S. Mehta 241" is not disputed, nor are the signatures of the staff member who acknowledged receipt. In the course of further examination-in-chief, Ramesh Biyani was asked as to why Exhibit P-13(1) bears a rubber-stamp of "Harshad S. Mehta 241" on the right hand corner of the counter-foil as well when the acknowledgment already appears on the left side, to which the witness deposed that the acknowledgments appear to have been affixed by mistake under his name, but he confirms the correctness of the contents of Exhibit P-13(1) since he had personally verified the same. Thus, in view of the undisputed acknowledgment of receipt of shares, issue no.2 is answered in the affirmative.

*Issue No.3 :- Whether the suit is bad for non-joinder of
Mr. Vinod Biyani and Mr. Ramesh Biyani ?*

35. As far as issue no.3 is concerned, the suit contemplates recovery of shares of the plaintiff, whose ownership has been established. The defendant no.1 (now defendant nos.1A to 1C) has admitted receipt of the shares. Vinod Biyani and Ramesh Biyani cannot be considered as necessary parties. The plaintiff has examined Ramesh Biyani as a witness and the defendant nos.1A to 1C have

examined Vinod Biyani as one of their witnesses. These witnesses have deposed, they have been cross-examined by the Advocates on both sides and, in my view, the defendants 1A to 1C have been unable to demonstrate that the suit is bad for non-joinder of these two persons. Impleading these persons as defendants would not in any manner assist the court or the parties at the trial. Issue no.3 is therefore answered in the negative.

36. Issue nos.4 and 5 can be considered together.

Issue No.4 :- Whether Mr. Harshad S. Mehta and/or Mr. Ashwin S. Mehta had paid consideration for the suit shares of TSL to Mr. Vinod Biyani on behalf of the plaintiff, as contended in paragraph 9 of the written statement of defendant nos.1A to 1C ? and;

Issue No.5 :- Whether the suit shares were handed over to the original defendant no.1 against any purchases made by defendant no.1, as contended in paragraph 18 of the written statement of defendant no.1A ?

37. The burden of proving issue no.4 lay upon the defendant nos.1A to 1C. In the written statement, it is the contention of these defendants that HSM had paid consideration for the suit shares to Vinod Biyani on behalf of the plaintiff/Ghanshyamdas. Issue no.5 also is effectively flows out of issue no.4 as to whether the suit shares were handed over against the purchase of the same by

HSM.

38. The said defendants have sought to discharge their burden by leading evidence of Ashwin S. Mehta and Vinod Biyani. Ashwin S. Mehta was not party to this suit, but claims an interest in the suit shares on the basis of a defence set up by defendant nos.1A to 1C viz. purchase of the shares. HSM did not file a written statement. It is only the legal heirs, who have done so. In the written statement of defendant nos.1A to 1C, while contending that there was no privity of contract between plaintiff and the three firms forming part of the Harshad Mehta family, in paragraph 6, it is stated as follows :-

“6. That be that as it may, this Defendant takes this opportunity to disclose the following facts and evidence in her possession in respect of the shares of TISCO and ACC as transacted by M/s. Ashwin Mehta and M/s. Harshad Mehta during the relevant period with aforesaid M/s. Vinod Biyani. That Shri Ghanshyamdas Biyani sought financial assistance from Shri Harshad Mehta and Shri Ashwin Mehta and effected through M/s. Vinod Biyani sale of shares of TISCO and ACC which were duly purchased by M/s. Ashwin Mehta in much larger quantity from M/s. Vinod Biyani as compared to the quantity of shares disclosed by the Plaintiff.”

39. It is on this basis that Ashwin S. Mehta as Proprietor of M/s. Ashwin Mehta contends that large quantities of shares of defendant no.2-TSL and that of ACC Ltd. were purchased by M/s. Ashwin Mehta and that those purchases

includes the suit shares. These purchases are said to have been effected through Vinod Biyani and that consideration for purchase of the aforesaid shares, including the suit shares, “already stands paid” to M/s. Vinod Biyani on behalf of the plaintiff. Therefore, it is contended that the plaintiff should proceed only against Ramesh Biyani or Vinod Biyani and that the injunction restraining transfer of shares is required to be vacated.

40. The written statement of defendant nos.1A to 1C also proceeds on the basis that Ramesh Biyani is the only person who can throw light on these transactions. The evidence of Ramesh Biyani has already been dealt with above. The defendant nos.1A to 1C have stated in their written statement that they have tried to ascertain facts from the books of accounts of the deceased defendant no.1-HSM, but they were unable to find the transactions. It is contended that Ramesh Biyani would be able to throw light on these factual aspects but the cross-examination of Ramesh Biyani has not elicited any answers supportive of the defence. The case of the plaintiff is denied. A specific defence is that Vinod Biyani had already received value for the shares and there is no question for the plaintiff asking sale of the shares or the shares and accretions thereto. The plaintiff is said to be aware that transactions existed between Ramesh Biyani and HSM, but had suppressed this fact. In paragraph 21 of the written statement, while denying the plaintiff’s case in paragraph 8 of the plaint, it is denied that

HSM was withholding the shares. On the contrary, it is pleaded as follows :-

“21. With reference to paragraph 8 of the Plaint it is denied that the deceased Defendant No. 1 is holding the said shares and the transfer forms in trust for the plaintiff as alleged. It is further denied that the deceased Defendant No.1 was wrongfully withholding and/ or refusing to return the same to the plaintiff. It is respectfully stated that since the firm of Defendant No.1 and M/ s. Ashwin Mehta have already paid valuable consideration for the shares being the subject matter of the suit the deceased Defendant No. 1 and M/s. Ashwin Mehta were entitled to deal with the shares as he wanted.”

41. The defendants 1A to 1C therefore having contended that the suit shares in fact have been purchased by HSM / M/s. Ashwin Mehta and that the consideration has been paid through Vinod Biyani. Defendants 1A to 1C examined the concerned persons, namely, Ashwin Mehta and Vinod Biyani, but defendant no.1A, who claims knowledge, did not depose. Ashwin Mehta in his affidavit in lieu of examination-in-chief dated 27th October 2018 has deposed that the Mehta family had three proprietary concerns, namely, M/s. Harshad S. Mehta, M/s. Ashwin Mehta and M/s. J.H. Mehta. M/s. Harshad S. Mehta was in business since 1984; M/s. Ashwin Mehta since April, 1989 and; M/s. J.H. Mehta since April, 1991. Prior to his becoming a member, M/s. Ashwin Mehta was a sub-broker of M/s. Harshad Mehta. He was fully conversant with the business of M/s. Harshad S. Mehta and that the brokerage firm of M/s. Ashwin Mehta was

engaged in substantial business in the capital market in coordination and in consultation with late Harshad Mehta and for that reason, the witness claims that he was familiar with what had transpired between Ghanshyamdas Biyani and Harshad Mehta. Ashwin Mehta claims that he had witnessed the transactions undertaken by Ghanshyamdas Biyani and Harshad Mehta since part of these were undertaken through M/s. Ashwin Mehta. It is in this light that the deposition of Ashwin Mehta is to be considered.

42. Although Ashwin Mehta claims personal knowledge of these transactions between Ghanshyamdas Biyani and Harshad Mehta, no particulars whatsoever are forthcoming. In paragraph 10 of his affidavit, the witness states that 3,00,800 shares of defendant no.2-TSL and 4,000 shares of ACC were sold by Ghanshyamdas Biyani to HSM through the brokerage firm of Vinod Biyani, nephew of Ghanshyamdas Biyani. The 4,000 shares of ACC were sold by Vinod Biyani to Ashwin Mehta; however, particulars of shares of the 2nd defendant are not forthcoming. Several parts of the affidavit, as originally filed, were struck off by the said witness and are not part of the record since these were admittedly not to his personal knowledge. Thus, having considered his evidence as a whole, in my view, the evidence does not contain any particulars as to how, if at all, M/s. Ashwin Mehta or M/s. Harshad Mehta or Harshad S. Mehta purchased these shares through Vinod Biyani.

43. Ashwin Mehta was cross-examined on 5th April 2019; however, prior to that, at the request of the defendants 1A to 1C, Vinod Biyani was examined and cross-examined. Vinod Biyani was summoned at the instance of the Advocate for defendants 1A to 1C and on 9th August 2018, Vinod Biyani was examined-in-chief by Mr. Sharma. He was asked whether he could produce a ledger account in respect of M/s. Harshad S. Mehta and M/s. Ashwin S. Mehta in respect of financial year 1st April 1991 to 31st March 1992, which the witness answered were not in his possession. He also deposed that he did not have any dealings with these two firms or their proprietors between 1st April 1991 and 31st March 1992; however, for the prior financial year i.e. 1st April, 1990 to 31st March, 1991, he had dealings with these concerns / their proprietors. He was called upon and did produce extracts of statements of accounts, which are marked as Exhibits D-1/2 and D-1/3. To a query whether contract notes of the transactions referred to the statements available, the witness initially stated that he would have in his possession bills pertaining to these transactions and that he would produce those at a later date. On 23rd August 2018, the witness deposed that having searched his records, he could not find these bills, which he believed could be linked with the ledger accounts. No further evidence in chief was led. Thus, the only evidence brought on record on behalf of the HSM is the two

ledger account statements Exhibits D-1/2 and D-1/3. In my view, considering the defence in the written statement and the deposition of Ashwin Mehta in examination-in-chief, the evidence of Vinod Biyani was crucial to establish that they had purchased shares of defendant no.2 and ACC and paid consideration therefor, but defendants 1A to 1C have not established their case. In other words, the defendant nos.1A to 1C claimed title. Indirectly, Ashwin Mehta, who is the witness for defendant nos.1A to 1C, also claims title, which is being set up as a defence, but these defendants have failed to prove that they had purchased the shares.

44. Exhibit D-1/2 introduced in evidence through Vinod Biyani is the statement of accounts for the period April, 1990 to March, 1991 of "H.S. Mehta" in the books of Vinod H. Biyani. In this statement, several debit and credit entries are seen. Many of the credit entries are mirrored by the debit entries, but all of these pertain to a period prior to the entrustment of the suit shares pleaded by the plaintiff. Since it is the plaintiff's case that the shares were handed over by him to Ramesh Biyani only on 19th December, 1990, the defendants 1A to 1C have not proved that the payments referred to by Vinod Biyani in the statement of accounts of HSM pertain to these transactions pleaded by defendants 1A to 1C.

45. Exhibit D-1/3 is a statement of accounts for April, 1990 to March, 1991 of Ashwin Mehta in the books of Vinod H. Biyani. This statement also contains several debit and credit entries. The entries after 6th December 1990 are only five in number. It contains three credit entries of Rs.20,000, Rs.60,000 and Rs.18,000 on 6th December, 1990, 6th January 1991 and 31st January 1991. It contains two debit entries of Rs.60,000/- and Rs.18,000/- on 8th February 1991 and 18th February 1991. None of these have been established as payments made for the suit shares. In fact, no attempt has been made to link these payments. The witness – Vinod Biyani has clearly stated on 23rd August 2018 that contract notes and bills are not available. I have therefore proceeded to consider the cross-examination of Vinod Biyani on behalf of the plaintiff. The witness deposes in his cross-examination that he has registered as a broker since 1989. When asked to identify transactions in Exhibit D-1/2, which reflect trades on the stock exchange, the witness admitted that he cannot identify the trades carried out in exchange. He admits that he did not have financial dealings with HSM after 16th November 1990. He admits that if the transactions were carried out on the stock exchange, delivery and payments would be through the exchange and in respect of the transactions not carried on the stock exchange, delivery and payments during April, 1990 to March, 1991 would be directly between him and the party concerned.

46. Vinod Biyani also admitted that normally in an off-market transaction, delivery would be effected within 4 to 5 working days and it would generally follow the time taken in the case of market trades. To a pointed question whether in case of off-market trades, the suit transaction pertains to the account of his clients, he could not recall details of the transactions for the period 1990-91, but stated that there were both off-market trades and transactions of squaring-off. He did not have any details or documents, based on which he could identify transactions carried out by him on behalf of or at the instructions of any of the plaintiffs in the above suit and in two companion suits viz. Suit Nos.2 of 2013 and 3 of 2013.

47. I may reiterate that common evidence has been led in these three suits (*See order dated 23rd August, 2018 in Suit Nos. 2 and 3 of 2013*). Attention of the witness was invited to Exhibit D-1/3 and he was asked whether any of the transactions was carried out on behalf of or on the instructions of the plaintiffs in these three suits, the witness did not answer the question. The witness stated that since the entries pertain to April, 1990 to March, 1991, he could not answer the question. Vinod Biyani further admitted that although during the period April, 1990 to March, 1991, in relation to the statements at Exhibits D-1/2 and D-1/3, deliveries effected were to be recorded in his office, those records were maintained but he does not have them now. He volunteered that

record would be manual but the manually maintained record is not available. An office-copy of the delivery sheet is maintained in his own name, but records are not available. He was shown Share Delivery Memo at Exhibit P-13(1) marked in the above suit, as deliveries were made over on third-party memos like Exhibit P-13(1). He admitted that no deliveries in respect of the transactions carried out to his office were made on delivery memos of any other parties. In other words, delivery memos in respect of the transactions carried out by Vinod Biyani's office would always bear his firm's name. Certain entries mentioned in the statement of accounts were identified as Valan numbers and bill numbers. He admitted that deliveries would normally take place between 10 to 15 days after the transactions were carried out.

48. Vinod Biyani had no knowledge of whether Ghanshyamdas Biyani had sought financial assistance from Harshad Mehta or Ashwin Mehta in their individual capacities or as proprietors of the two concerns, namely, M/s. Harshad Mehta and M/s. Ashwin Mehta. With reference to a query on an entry of Rs.50 lakhs paid on 17th September 1990 and as reflected in Exhibit D-1/2, witness could not identify the description of the entry. He however admitted that in off-market transactions between Harshad Mehta and Ashwin Mehta and himself, payments would be made against delivery of the shares. Thus, it is seen that the witness has not identified any payments made against delivery of any of

the suit shares. Since the evidence is in common, the defendant nos.1A to 1C have not established that payments have been made for purchase of the suit shares through Vinod Biyani.

49. I will now assess the evidence of Ashwin S. Mehta. Ashwin Mehta was cross-examined on 5th April, 2019 i.e. after the examination and cross-examination of Vinod H. Biyani. His evidence was restricted to the affidavit in lieu of examination-in-chief dated 27th October 2018. In cross-examination, he admitted that he became aware of the suit only when it was listed on the board of the Special Court. Defendant no.1-HSM had never informed him of the details of the suit claim, but HSM had made reference to Ghanshyamdas Biyani, whom he had helped. Particulars of the suit and the transactions were not discussed by Harshad Mehta with the witness. He was not aware that HSM had engaged Krishnakant Shah, Advocate, to appear in the suit, when it was in the High Court. He was shown certified copies of the orders passed in Suit No.855 of 1991, where Harshad S. Mehta and others were defendants and Krishnakant Shah had appeared for said Harshad S. Mehta. He was not aware as to who Krishnakant Shah or K.P. Shah were. Certified copies of those orders were marked as Exhibits D-1/5(1) to D-1/5(4). He was also not aware whether any affidavit-in-reply has been filed by HSM to the notice of motion in the suit, nor did he know the reason why the reply was not filed. He volunteered that there

was a break down in his business as a result of which in several matters, they were not represented. Ashwin Mehta was also not aware why reply was not filed prior to 1992, since the break-down occurred in 1992. He admitted that the orders in the motion dated 23rd November 1993 and 3rd December 1993 were not challenged i.e. the orders at Exhibits D-1/5(3) and D-1/5(4) were not challenged, but attributed it to the break-down in his business.

50. He was also unaware whether any written statement was filed by HSM in the above suit. I may observe here that defendants' evidence and to some extent plaintiff's being in common, the cross-examination is also recorded in common and it equally apply in other suits. No separate evidence is led by the defendants and both the parties have proceeded on the basis of evidence being in common. He admitted that he had consulted Jyoti H. Mehta prior to filing written statement in the above suit, contents of which he has approved. All information was provided to him by Jyoti H. Mehta and the same is being incorporated in the written statement. In fact the written statement is verified by Smt Jyoti H. Mehta. Thus he does not have personal knowledge of many aspects he has deposed about. Pertinently, he admitted that M/s. Harshad Mehta and M/s. Ashwin Mehta maintained separate books of accounts and not in common. When asked about reason for not filing written statements in the suit between 2005 and 2016, he submitted that defendant no.1A, being a widow, did not

have personal knowledge and that defendant nos.1B and 1C are not concerned with the payments, but clearly defendant no.1A has instructed the witness in the matter. They are not claiming any interest in the assets of Harshad S. Mehta. He disputed a suggestion that he had no knowledge of having financially assisted Ghanshyamdas Biyani; yet, contended that the transactions happened in his presence and both M/s Harshad Mehta and M/s. Ashwin Mehta have assisted Ghanshyamdas Biyani. Documentary evidence was sought to be brought on record in support of these contentions, but the attempt to introduce 9 documents in a compilation has not succeeded since they have not been proved and cannot be read in evidence. No attempt was made to prove these documents. He disputed a suggestion that the plaintiff had not delivered any of the suit shares to Ghanshyamdas Biyani.

51. Ashwin Mehta also disputed a suggestion that the plaintiff had delivered the suit shares to Ramesh Biyani in his capacity as mercantile agent or broker. Yet, persisted in his answer that consideration had been paid for the suit shares. His attention was invited to paragraph 12 of his affidavit-in-evidence, in which he has deposed that the plaintiffs had willingly executed transfer deeds along with the shares standing in their names and delivered them to Ghanshyamdas Biyani and Ramesh Biyani. Both of them were mercantile agents and were members of the Bombay Stock Exchange and that consideration had been paid

for these shares by M/s. Harshad Mehta and M/s. Ashwin Mehta. No direct dealings had taken place between plaintiffs and the aforesaid brokerage firms. He was therefore asked whether any documents have been introduced in evidence in support of these contentions, to which he identified Share Delivery Memo at Exhibit P-13(1) as the relevant document. This document, as we have seen, is the memo in respect of which Ramesh Biyani has already deposed. Cross-examination of Ramesh Biyani does not support the case of defendants 1A to 1C.

52. The witness however volunteered that the said exhibits specify that the shares listed therein of defendant no.2 and ACC Ltd. are delivered by Ramesh Biyani to Harshad Mehta towards purchase of shares by him. This however is not borne out by the document or the evidence in cross-examination of either Santosh Biyani or Ramesh Biyani. This has not been brought out in the evidence of Vinod Biyani, who is said to be instrumental in the alleged transaction of purchase. Thus, in my view, the defendants 1A to 1C have not been able to establish that the suit shares were handed over to original defendant no.1-HSM against purchases made by HSM, as contended in paragraph 18 of the written statement of defendant no.1A, nor are the defendants able to establish that M/s. Harshad Mehta or M/s. Ashwin Mehta or Mr. Harshad Mehta and Mr. Ashwin Mehta had in their individual capacities or as proprietors of their brokerage

firms paid consideration to Vinod Biyani on behalf of the plaintiff, as stated in paragraph 9 of the written statement of defendant nos.1A to 1C. For the aforesaid reasons, issue nos.4 and 5 are answered in the negative.

53. In conclusion, I find that issue no.6 having been answered in the affirmative above, the answer to issue no.7 must be in the affirmative. The plaintiff has established that defendants 1A to 1C were in wrongful possession of the shares, which are presently held by the Custodian in “Custodian A/c. – Harshad Mehta Group”. Defendant nos.1A to 1C have not established that they are entitled to hold the shares as part of the estate of HSM. Even taking notice of the fact that in the written statement, defendant nos.1B and 1C have contended that they have no claim in the estate of HSM, it must be held that the suit shares were held in trust for the plaintiff. Issue no.7 is therefore answered in the affirmative and as a consequence, issue no.8 must be answered in the affirmative as well, inasmuch as, the plaintiff is entitled to receive the suit shares and also the delivery and accretions thereto from the defendants 1A to 1C. Defendant no.2-TSL has confirmed through its share transfer agents vide Exhibit P-10 that 4,500 shares detailed therein are lodged with them for transfer in favour of the “Custodian A/c. – Harshad Mehta Group”, (which are presently with the Custodian and have been handed over under objection, duly transferred to the name of HSM A/c. Custodian) and have since been returned to

the Custodian. These shares are now required to be transferred by defendant no.2-TSL in favour of the plaintiff. The defendant no.2 is also liable to issue 850 duplicate shares, as particularized in the suit and in Exhibit P-10. The Custodian is also required to do all the things necessary to ensure that the transfer takes place.

54. In view of the above, I pass the following order :-

- (i) Suit is decreed in terms of prayer clauses (a), a(i), a(ii) and a(iii).
- (ii) Custodian is directed to release the shares and transfer them to the account of the Plaintiff.
- (iii) Defendant no. 2 - Company shall pay over to the plaintiff all dividend remaining unpaid on the Suit shares viz. 5350 shares described in Exhibit 'B' and the 850 duplicate shares to be issued in terms of prayer a(iii).
- (iv) All accretions in terms of bonus shares shall also be issued in the name of the plaintiff and in accordance with Exhibit-B to the plaint.
- (v) Dividend accrued shall also be paid to the plaintiff, as recorded in the records of the company.

(vi) Plaintiff shall comply with all formalities in this respect, as
and when called upon by the Company and the Custodian.

(vii) No order as to costs.

[A.K. MENON, J.]