

**IN THE SPECIAL COURT AT BOMBAY**

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

**SPECIAL SUIT NO.2 OF 2013**

Smt. Hiramani Ghanshyamdas Biyani, ]  
of Bombay, Indian Inhabitant, ]  
residing 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, ]  
12<sup>th</sup> 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 – 400 001.                    | ] |               |
|  | ] |               |
| 3. Associated Cement Company Ltd.,                   | ] |               |
| having its registered office and also its            | ] |               |
| Share Department at Cement House,                    | ] |               |
| Queen’s Road, Churchgate, Mumbai – 400 020.          | ] |               |
|  | ] |               |
| 4. 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 <sup>th</sup> Floor, Nariman | ] |               |
| Bhavan, 227, Vinay K. Shah Marg,                     | ] |               |
| Nariman Point, Mumbai – 400 021.                     | ] |               |
|  | ] |               |
| 5. Deepika Ashwin Mehta,                             | ] |               |
| “Madhuli” Building, Dr. Annie Besant Road,           | ] |               |
| Worli, Mumbai – 400 018.                             | ] | ...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, 1C and 5.

None for Defendant No.2-TSL.

Mr. Satish Shah for Defendant No.3-ACC.

Mr. J. Chandran, with Ms. Shilpa Bhate, i/by Leena Adhvaryu & Associates, for Defendant No.4-Custodian.

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

**RESERVED ON** : 11<sup>TH</sup> JUNE, 2021.

**PRONOUNCED ON** : 23<sup>RD</sup> JULY, 2021

**JUDGEMENT** :

1. The plaintiff, an individual, seeks a decree against original defendant no.1 (since deceased), now his legal heirs viz. defendant nos.1A to 1C, and defendant no.5, all of whom are notified parties and represented by defendant no.4-the Custodian directing the handing over of 6,150 shares of defendant no.2-Tata Iron & Steel Company Ltd. (*TISCO*), now known as Tata Steel Ltd. (*TSL*), and 695 shares of defendant no.3-Associated Cement Co. Ltd. (*ACC*), as set out in the plaint.

2. The plaintiff's son Ramesh Biyani (*Ramesh*) was a stock and share broker. He entered into various transactions in shares and stocks on behalf of his family

members including the plaintiff. It is the plaintiff's case that she had through Ramesh entrusted shares of defendant no.2-TISCO and defendant no.3-ACC with defendant no.1-Harshad S. Mehta (*HSM*) along with blank signed transfer forms with the intention of selling them. HSM retained these shares over a long period of time for the reasons best known to him. 6,150 shares of TISCO belonging to the Plaintiff have been handed over on 19<sup>th</sup> December 1990. Along with the suit shares, certain other shares had also been handed over by other members of the Biyani family. HSM is said to have handed over to Ramesh a memo acknowledging receipt of 11500 shares including the suit shares. A copy of the memo is annexed at Exhibit-A to the plaint.

3. It is the plaintiff's case, as canvassed by Mr. Sancheti, that on 20<sup>th</sup> December 1990, the plaintiff handed over 695 shares of ACC to HSM through Ramesh. HSM executed another memo bearing no.311 dated 20<sup>th</sup> December 1990 on that day in relation to the ACC shares, copy of which is annexed at Exhibit-B to the plaint. HSM is believed to have advised the plaintiff that the sale would be effected at the best price possible, but he kept postponing the sale. Later, the gulf war having broken out, HSM contended that after the war, prices of steel and cement would rise and hence it was advisable that these shares are sold when the prices were more attractive. HSM thus held on to these shares. Eventually, the plaintiff called upon HSM through Ramesh Biyani to return these

shares but the shares were not forthcoming. The plaintiff then suspected that HSM was likely to transfer the shares to himself and hence vide two letters dated 14<sup>th</sup> March, 1991, annexed at Exhibit-D and Exhibit-E to the plaint, the plaintiff called upon her Advocates to inform TISCO and ACC that HSM is likely to misuse transfer forms in his possession and seek transfer of the suit shares to himself. The companies - TISCO and ACC were instructed not to honour any such requests. By a third letter of the same date, HSM was called upon to cease and desist from using the blank transfer forms entrusted to him. The plaintiff valued the shares as on date of the suit i.e. 18<sup>th</sup> March 1991 at Rs.20,82,750/- and since HSM was holding on to the shares contrary to the plaintiff's instructions, the suit came to be filed seeking the aforesaid decree and injunction restraining defendant no.2-TISCO and defendant no.3-ACC from honouring the transfer and restraining the defendant no.1- HSM and subsequently his heirs viz. defendant nos.1A to 1C from transferring the suit shares. Two other similar Suits have been filed by other family members of the plaintiff. Evidence to some extent is common.

4. In the meanwhile, it seems that 695 shares of ACC had already been transferred to defendant no.5-Deepika Mehta. The plaintiff claims she was unaware of this till receipt of a letter dated 5<sup>th</sup> September 2011 from the defendant no.3-ACC informing the plaintiff's Advocate that ACC shares were

transferred to the name of defendant no.5 on 28<sup>th</sup> February 1991. Later, the plaintiff came to learn from the defendant no.4-Custodian that these were attached shares pursuant to defendant no.1-HSM being notified. The plaintiff has since by amending the plaint, contended that in the event 695 ACC shares had been sold by the Custodian, the sale proceeds and interest accrued thereon and all accretions by way of dividend etc. be paid over to her. As far as TISCO shares are concerned, the plaintiff has by way of an amendment to the plaint sought a declaration that she was and continues to be the owner of 6,150 shares of TISCO and for a direction to handover all accretions, dividend, bonus shares etc. A further direction is sought against defendant no.2-TISCO to issue 1,700 duplicate shares in lieu of original shares bearing distinctive nos.167810451 to 167812150. It is with this set of prayers that the suit has gone to trial.

5. Original defendant-HSM did not file a written statement. Defendant nos.1A to 1C, 3 and 4 have filed written statements. Defendant no.4-Custodian has also filed an additional written statement. Defendant no. 2 (TISCO) and defendant no.5 did not file written statements. Defendant no.2-TISCO has not entered appearance. The record indicates that, after having received the summons to appear in court on 26<sup>th</sup> November 1991, TISCO informed the registry that they 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.

6. It is therefore appropriate that we consider the defence before dealing with the issues. The legal heirs viz. defendant nos.1A to 1C have in their joint written statement contended that the suit is bad for non-joinder of necessary parties and mis-joinder of parties. Defendant no.1A claims to be the sole heir of original defendant no.1-HSM; the others are not. Therefore defendant nos.1B and 1C viz. mother and son of defendant no.1, respectively, have not claimed any interest in the estate of HSM. It is contended that the case in the plaint is dishonest. The plaintiff is the widow of one Ghanshyamdas Biyani, a leading broker and speculator in the stock market. Ramesh is the son of Ghanshyamdas and the plaintiff. Ghanshyamdas had entered into transactions through his nephew Vinod Biyani, who was also member of the Bombay Stock Exchange (*BSE*). At the material time, Ghanshyamdas was facing acute financial stringency and had sought the help of defendant no.1-HSM and his brother Ashwin. This fact has not been disclosed in the plaint. HSM, his brother Ashwin and present defendant no.1A-Jyoti H. Mehta all had proprietary stock broking firms by name M/s. Harshad Mehta, M/s. Ashwin Mehta and M/s. J.H. Mehta. The plaintiff had not entered into any transaction with these three persons or their firms and the plaintiff, belonging to a family of stock brokers, knew this very well.

7. According to defendant no.1A, shares of ACC and TISCO held by the

plaintiff were dealt with by M/s. Ashwin Mehta, M/s. Harshad Mehta and Vinod Biyani. Ghanshyamdas having sought financial assistance from defendant no.1-HSM and his brother Ashwin, had sold the suit shares through Vinod, which was purchased by Ashwin Mehta from Vinod. The quantities are alleged far higher than what has been disclosed in the plaint. It is contended that accounts of the three brokerage firms, as aforesaid, have been drawn up pursuant to orders of this court, which disclosed that there were transactions between HSM Mehta and Ashwin Mehta on one hand with Vinod Biyani on a client-to-client basis. The sale proceeds and consideration for purchase of TISCO and ACC shares had been paid for, the remittances were made to Vinod. Consideration for purchase of the shares was thus paid and no injunction was required to be granted. The written statement goes on to state that defendant no.1 having expired, Ramesh Biyani was a necessary and proper party and the suit cannot be decided without Ramesh especially since the suit is based on the Memo Nos.301 and 302 dated 19<sup>th</sup> December 1990 and Memo No.311 dated 20<sup>th</sup> December 1990, annexed at Exhibits A & B to the plaint. It is contended that Ramesh is required to be impleaded in the suit since several of these transactions were to his knowledge and he alone could reveal the facts presumably owing to the demise of defendant no.1-HSM, apart from the several defences that the plaintiff has not come with clean hands. The written statement contains a para-wise denial of the plaintiff's claim on the aforesaid basis. Defendant no.1A therefore



contends that the suit shares were purchased by the brokerage firm and consideration was paid by way of arrangement entered into at the instance of Ghanshyamdas. It is therefore submitted that the plaintiff has no case and the suit is liable to be dismissed.

8. In the written statement filed on behalf of the 3<sup>rd</sup> defendant-ACC, it is contended that prior to filing of the present suit, 695 shares of ACC were lodged for transfer in the normal course and were transferred to defendant no.5 on 28<sup>th</sup> February 1991. The suit, as we have seen, was filed on 18<sup>th</sup> March 1991. It is contended that this court would have no jurisdiction since the suit was filed in High Court and was transferred to this court only in 2013. Meanwhile, defendant no.5 was notified under Special Courts [Trial of Offences Relating to Transactions in Securities] Act, 1992 on 8<sup>th</sup> June 1992 and all her properties stood attached as part of the HSM Mehta Group.

9. The plaintiff filed Notice of Motion No.691 of 1991 after filing the suit and obtained an ad-interim injunction only on 3<sup>rd</sup> December 1993 in terms of prayer clauses (a), (b) and (c) of the motion. On 20<sup>th</sup> March 1991, the order was passed and later the notice of motion was made absolute on 23<sup>rd</sup> November 1993 and 3<sup>rd</sup> December 1993. ACC could not be represented on that day since they had no records but it is their contention that the shares had already been transferred to defendant no.5 on 28<sup>th</sup> February 1991. In 1999, ACC subdivided

equity shares of Rs.100/- each into 10 shares of the face value of Rs.10/- each. As a result, in the case of defendant no.3-ACC, 695 shares translated into 6,950 shares under Folio No.D-15312 bearing distinctive nos.11901711/4760 and 11904761/8660. ACC then deposited these 6,950 shares with the Custodian. A grievance is made that though the shares were reportedly dematerialized on 14<sup>th</sup> September 2001. For 20 years, the plaintiff did not take any action despite knowing that defendant nos.1 and 5 were notified parties. It is only on 2<sup>nd</sup> May 2011 that the plaintiff's present Advocate enquired about the shares and requested ACC to inform him of the present status of the shares, which ACC did. It is on 21<sup>st</sup> November 2011 that the plaintiff's Advocate informed ACC of this suit and the ad-interim injunction dated 21<sup>st</sup> March, 1991.

10. ACC also informed that the suit shares were transferred to defendant no.5 on 28<sup>th</sup> February 1991 under Folio No.D-15312. The transfer pre-dated filing of the suit and passing of the injunction order. Later it transpires that a representative of ACC visited the Custodian's office and briefed the Custodian of these developments. ACC then set out all facts in a letter dated 5<sup>th</sup> February 2012, annexing therewith copies of share transfer forms, share certificates and dematerialization request forms. The Custodian informed ACC that the shares will be attached assets since the transfer to defendant no.5 had taken place prior to her being notified. Thus, ACC has contended that it is not bound by the

injunction since the shares had already been transferred on 28<sup>th</sup> February 1991 in normal course and there was no occasion to refuse transfer in view of Section 22A of the Securities Contracts (Regulation) Act, 1956. Defendant no.3-ACC has thus sought dismissal of the suit against it since the suit discloses no cause of action.

11. In his written statement dated 13<sup>th</sup> July 2016, the Custodian has confirmed that the suit came to be filed in the Bombay High Court and was transferred to this court only in 2013. The suit shares were part of unregistered shares belonging to various group members of late Harshad S. Mehta and received from the Income Tax Authorities. The Custodian was not party to the suit when it was pending before the High Court. Later, the Custodian, by filing Miscellaneous Application No.309 of 1997, sought directions from the Special Court pertaining to transfer of unregistered shares belonging to various entities of Harshad Mehta group. This application was allowed. According to the Custodian, 4,450 shares of TISCO and 695 shares of ACC were not transferred by the share transfer agency owing to an injunction granted on 23<sup>rd</sup> November 1993. As regards the balance 1,700 shares of TISCO, they could not be transferred since they were reportedly lost by HSM, which was reported vide letter dated 12<sup>th</sup> April 2000 addressed by defendant no.1 to the Officer on Special Duty in this court. Thus, 4,450 shares of TISCO are presently held by the

company and the fate of the balance 1,700 shares will be subject to orders of this court.

12. As far as ACC is concerned, the Custodian confirms that 695 shares were transferred. In an additional written statement filed pursuant to amendment to the plaint, the Custodian has contended that 4,450 shares of TISCO and 695 shares of ACC were handed over by the Income Tax Department to the Custodian pursuant to order dated 2<sup>nd</sup> February 1994. The 1,700 TISCO shares were also reportedly missing. Upon receiving 4,450 shares of TISCO and 695 shares of ACC and other shares, the Custodian had filed Miscellaneous Application No.309 of 1997 seeking various orders extending validity of transfer forms, directions to the company to make the transfer disclosing on affidavit as to exact entity of Harshad Mehta Group to which these shares pertain. The Custodian also sought several other reliefs. Miscellaneous Application No.309 of 1997 was allowed and disposed by the order dated 7<sup>th</sup> October 1997, whereby the Special Court allowed the Miscellaneous Application, directed extension of validity of transfer forms in respect of 19,788 shares and respondent no.1-TISCO has been directed to transfer the shares in favour of Mehta Group of entities. Parties were directed to do all things required to effect the transfer. The applicant-Custodian was also permitted to trace and recover lost benefits of these shares. According to the Custodian, the shares had

already been transferred to the account of defendant no.5 and a total of 58,660 shares were dematerialized in the account of defendant no.5 on or about 14<sup>th</sup> September 2001. According to the Custodian, communications from ACC did not then indicate whether 695 shares were part of the 58,660 shares or whether a separate demat account identity exists. As far as ACC is concerned, it is contended that 6,950 shares have been dematerialized. The dematerialized shares were sold @ Rs.170/- per share on 13<sup>th</sup> October 2003. A sum of Rs.11,81,500/- was realized and credited to the account of defendant no. 5. The demat account statement of defendant no.5 reflects the aforesaid sale. In paragraph 14 of the additional written statement, the Custodian has set out the account's statement, which shows that in respect of shares of TISCO, 4,450 shares remained in physical form and that 1,700 duplicate shares are required to be issued. Dividends had been kept in abeyance.

13. Defendant no.5-Deepika Mehta who is said to be the transferee of the suit shares. She is the wife of Ashwin Mehta, brother of HSM and one of the heirs of late Rasila S. Mehta. These shares have since been sold by the Custodian. Defendant no.5 has not contested the suit. No written statement has been filed and no submissions have been made by Mr. Vivek Sharma, who appears for her. In effect, she has effectively submitted to the orders of the court. It is in this background that we have to consider the issues.

14. The following issues were framed on 12<sup>th</sup> January 2018 :-

1. *Whether the 695 shares of ACC Ltd. and 6,150 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 ACC Ltd. and 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 ACC Ltd. and 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 ?*
- <sup>1</sup>\*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 and if so from whom ?*
9. *What order ? What reliefs?*

15. Both plaintiff and defendants 1A to 1C have filed affidavits-of-documents and compilations. The said defendants have not proved the documents disclosed by them. None of those were in original. No attempt was made to lead secondary evidence. The plaintiff's documents have been marked. Some are in common with those disclosed in other two Suits. Documents were marked in evidence during examination of the witnesses in this Suit and some in Suit No.1 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.

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<sup>1</sup>\*Issue No.8 corrected on 11<sup>th</sup> June, 2021 along with other two Suits viz. Suit No.1 of 2013 and Suit No.3 of 2013.

<b>Documents marked during examination and cross-examination of the Plaintiff</b>		
<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 – Hiramani Ghanshyamdas Biyani.	6 <sup>th</sup> March, 2018	P-1
Further affidavit-of-evidence of the plaintiff-Hiramani G. Biyani.	5 <sup>th</sup> April 2018	P-2
Affidavit in lieu of examination-in-chief of Mr. Shrikant G. Biyani.	9 <sup>th</sup> April 2018	P-3
Original letter addressed by Advocate Ramesh Shah to Mr. Harshad Mehta.	14 <sup>th</sup> March 1991	P-4(1)
Original acknowledgment to letter addressed by Advocate Ramesh Shah to Mr. Harshad Mehta.	15 <sup>th</sup> March 1991	P-4(2)
Original letter addressed by Advocate Ramesh Shah to TISCO.	14 <sup>th</sup> March 1991	P-5(1)
List of 6,150 TISCO shares enclosed with the letter addressed by Advocate Ramesh Shah to TISCO.	14 <sup>th</sup> March 1991	P-5(2)
Original letter addressed by Advocate Ramesh Shah to ACC Ltd.	14 <sup>th</sup> March 1991	P-6(1)
List of 695 ACC shares enclosed with the letter addressed by Advocate Ramesh Shah to ACC Ltd.	14 <sup>th</sup> March 1991	P-6(2)
Original letter addressed by Advocate Ramesh Shah to ACC Ltd.	21 <sup>st</sup> March 1991	P-7



<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Original letter addressed by Advocate Ramesh Shah to TISCO.	21 <sup>st</sup> March 1991	P-8
Original letter addressed by Advocate Ramesh Shah to ACC Ltd.	15 <sup>th</sup> January 1992	P-9
Original letter addressed by ACC Ltd. to Advocate Ramesh C. Shah	22 <sup>nd</sup> January 1992	P-10
Original letter addressed by TSR Darashaw Ltd. to Mr. Dinesh Prakash Guchiya, Advocate for the Plaintiff	30 <sup>th</sup> May 2011	P-11
Original letter addressed by ACC Ltd. to Mr. D.P. Guchiya, Advocate for the Plaintiff	5 <sup>th</sup> September 2011	P-12
Copy of the letter addressed by the Custodian's Office to Mr. D.P. Guchiya, Plaintiff's Advocate	29 <sup>th</sup> March 2012	P-13
Copy of the letter addressed by the Custodian's Office to Mr. D.P. Guchiya, Plaintiff's Advocate	30 <sup>th</sup> March 2012	P-14
Copy of the letter addressed by the Office of the Custodian to TSR Darashaw Ltd.	29 <sup>th</sup> March 2012	P-15
Affidavit in lieu of examination-in-chief of Mr. Ramesh G. Biyani.	6 <sup>th</sup> March 2018	P-16

<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
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 <sup>th</sup> December 1990	<sup>2</sup> *P-17(1) & *P-17(2)
Counter-foil / Carbon-copy of Share Delivery Memo No.311 issued by Ramesh Biyani in respect of 695 shares of ACC Ltd.	20 <sup>th</sup> December 1990	P-18
Balance Sheet and Profit & Loss Account of the Plaintiff for the Assessment Year 1990-91.	31 <sup>st</sup> March 1990	P-19(1)
Balance Sheet and Profit & Loss Account of the Plaintiff for the Assessment Year 1991-92.	31 <sup>st</sup> March 1991	P-19(2)

<b>Documents marked during examination and cross-examination of the Defendants</b>		
<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Share Delivery Memo No.306 issued by Ramesh Biyani in respect of shares of The Premier Automobiles Ltd.	20 <sup>th</sup> December 1990	D-1(1)
Share Delivery Memo No.303 issued by Ramesh Biyani in respect of shares of Reliance Industries Ltd.	20 <sup>th</sup> December 1990	D-1(2)

<sup>2</sup> \*These two documents have also been marked as Exhibits P-13(1) and P-13(2) in Suit No.1 of 2013.

<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Share Delivery Memo No.304 issued by Ramesh Biyani in respect of shares of Indian Rayon & Industries Ltd.	20 <sup>th</sup> December 1990	D-1(3)
Share Delivery Memo No.305 issued by Ramesh Biyani in respect of shares of Indian Rayon & Industries Ltd.	20 <sup>th</sup> December 1990	D-1(4)
Share Delivery Memo No.317 issued by Ramesh Biyani in respect of shares of Tata Steel.	21 <sup>st</sup> January 1991	D-1(5)
Share Delivery Memo No.312 issued by Ramesh Biyani in respect of shares of Tata Steel.	20 <sup>th</sup> December 1990	D-1(6)
Copy of Balance Sheet and Profit & Loss Account of Ramesh Biyani for the Assessment Year 1990-91.	31 <sup>st</sup> March 1990	D-1(7)
Original Balance Sheet and Profit & Loss Account of Ramesh Biyani for the Assessment Year 1990-91.	31 <sup>st</sup> March 1990	D-1(7A)
Copy of Balance Sheet and Profit & Loss Account of Ramesh Biyani for the Assessment Year 1991-92.	31 <sup>st</sup> March 1991	D-1(8)
Original Balance Sheet and Profit & Loss Account of Ramesh Biyani for the Assessment Year 1991-92.	31 <sup>st</sup> March 1991	D-1(8A)
Affidavit in lieu of examination-in-chief of Mr. Ashwin Mehta on behalf of Defendant Nos.1A to 1C.	27 <sup>th</sup> October 2018	D-1(9)

16. I will now consider issue nos.1 to 3, which can be conveniently considered together.

*Issue No.1 : Whether the 695 shares of ACC Ltd. and 6,150 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 ACC Ltd. and TSL to original defendant no.1 ?*

*and*

*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 ?*

*and*

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

17. The plaintiff had initially filed an affidavit-of-evidence dated 6<sup>th</sup> March 2018. Contents of this affidavit were duly interpreted and explained to the plaintiff and the said affidavit was taken on record and marked as Exhibit P-1. A further affidavit dated 5<sup>th</sup> April 2018 was filed on 13<sup>th</sup> April 2018 and was marked as Exhibit P-2. Although plaintiff had filed an affidavit-of-evidence on or about 9<sup>th</sup> March 2018, the suit transactions had been carried out by her sons Ramesh and Shrikant. The contents of her affidavit are based on the information

given by the said persons, who were fully conversant with the facts. This was indicative of the plaintiff not having personal knowledge.

18. In a further affidavit, the plaintiff has deposed that 6,150 shares of TISCO and 695 shares of ACC (now 6,950 shares) were owned by her and are reflected in the balance sheets for the years 1989-90 and 1990-91 and thereafter from year to year. The plaintiff was further examined-in-chief on 13<sup>th</sup> April 2018. Only paragraph 1 and a small portion marked "A" were taken on record as evidence. Rest of the contents were excluded from the deposition. Her further affidavit of 5<sup>th</sup> April 2018 was taken on record and marked as Exhibit P-2 on the basis of her oral deposition on that day. She has produced balance sheets for the years 1989-90 and 1990-91, which were duly certified by the Chartered Accountants. However, those were marked for identification because the witness stated that her accounts were looked after by her son Ramesh.

19. The plaintiff was cross-examined by Mr. Satish Shah, learned counsel on behalf of defendant no.3-ACC, when the witness confirmed that her husband and the Chartered Accountant was M/s. S.K. Rathi & Co. were looking after financial matters during the period 1991-92 including filing of income tax returns. Incidentally, these are the accounts which were certified the balance sheets. Mr. Vivek Sharma on behalf of defendant nos.1A to 1C cross-examined

the plaintiff. She confirmed that Ghanshyamdas did handle the transactions in this suit. Ghanshyamdas expired in 2002. After his demise, her son Ramesh has been handling these matters.

20. The plaintiff has also led evidence of her son Shrikant, who has deposed that the transactions in relation to the suit shares were carried out by him on behalf of his mother – the plaintiff. All legal proceedings were looked after by him and his brother Ramesh. He has affirmed that on 19<sup>th</sup> December 1990, he had delivered 6,150 shares of TISCO to Ramesh along with the signed transfer deeds on behalf of the plaintiff. Ramesh is believed to have delivered these shares along with 5,350 shares belonging to his other brother Santosh, totaling to 11,500 shares of TISCO, to defendant no.1 under Memo Nos.301 and 302 dated 19<sup>th</sup> December 1990, which are marked as Exhibit P-17(1) and Exhibit P-17(2). Shrikant has deposed to delivery of these shares by Ramesh to defendant no.1. He has produced memo nos.301 and 302 issued by Ramesh and identified by him bearing acknowledgment of the defendant no.1 with brokerage firm's seal and clearing number. Memo no.311 is in relation to delivery of 695 ACC shares, which is also produced on record and marked as Exhibit P-18. The witness has deposed to the fact that these shares were handed over to defendant no.1 for sale, which he did not execute on the pretext that higher prices could be obtained upon cessation of the gulf war. The plaintiff had requested for

return of these shares. The witness has deposed to the fact that upon failure to sell the shares and failure to return the shares, legal notices were issued. Office copy of the legal notice dated 14<sup>th</sup> March 1991 has been marked in evidence as Exhibit P-4(1). Acknowledgment for legal notice signed on behalf of defendant no.1 is marked as Exhibit P-4(2).

21. Shrikant Biyani was further examined on 13<sup>th</sup> April 2018, when he deposed to the contents of his affidavit dated 9<sup>th</sup> April 2018 and three letters dated 14<sup>th</sup> March 1991, three letters dated 21<sup>st</sup> March 1991, 15<sup>th</sup> January 1992, 22<sup>nd</sup> January 1992, 30<sup>th</sup> May 2011, 5<sup>th</sup> September 2011, 29<sup>th</sup> March 2012 and 30<sup>th</sup> March 2012. He has identified documents, which have been marked to be read in evidence. Exhibits P-4(1), P-4(2), P-5(1), P-5(2), P-6(1) and P-6(2) are thus on record. The documents at Exhibits P-5(1) and P-5(2) have already been marked in evidence in Suit No.1 of 2013 and are to be read in evidence in this suit as well.

22. The witness-Shrikant has identified carbon-copy being counter-part of the letter dated 21<sup>st</sup> March 1991 addressed by the plaintiff's Advocate to ACC Ltd., which is marked as Exhibit P-7 above. Similar letter addressed by the plaintiff's Advocate to TISCO is at Exhibit P-8. The witness has deposed to the correspondence exchanged between the plaintiff's Advocate, ACC Ltd., TSR

Darashaw Ltd. – the Registrars and Share Transfer Agents and TISCO, all of which are described above.

23. In the meanwhile, I may observe that the witness was cross-examined on behalf of defendant nos.1A to 1C. Alluding to his age in 1990, the witness deposed that he was 19 years of age, a student, but was attending his father Ghanshyamdas' office. He confirmed that his father was not a registered broker, but he did deal with the shares. The witness's brother Ramesh was also dealing in the shares. Vinod Biyani was identified as his cousin, who was a share broker, but the witness was unaware whether Vinod was registered as a share broker in 1990. He had not dealt with Vinod Biyani in relation to investment in shares. He re-affirmed his deposition in the affidavit that he had delivered the suit shares to Ramesh on behalf of his mother – the plaintiff. In answer to question no.21, the witness confirmed that all transactions in the suit have been carried out on behalf of the plaintiff only by his brother Ramesh, who was personally aware of these transactions. On behalf of defendant no.3-ACC, Mr. Shah has cross-examined the witness. The witness has no explanation for the delay in amending the plaint after defendant no.1 died in 2001. Advocate Ramesh Shah ceased to represent the plaintiff in the suit since 2005. He however confirmed having instructed the Advocates on record for the plaintiff at the material time to file the suit.



24. Ramesh Biyani was examined on oath on 23<sup>rd</sup> March 2018, when he affirmed the contents of his affidavit in lieu of examination-in-chief dated 6<sup>th</sup> 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. He deposed that the document at Exhibit P-14 is a letter issued by him to the Bombay Stock Exchange in relation to his capacity to trade as a broker and in this behalf at the instance of the plaintiff, the BSE was summoned. On 13<sup>th</sup> April 2018, Ramesh has deposed to the correctness of the narration of facts pertaining to handing over of shares to defendant no.1, failure to sale the shares and reluctance of defendant no.1 in returning the suit shares. He has deposed to issuance of the legal notice dated 14<sup>th</sup> March 1991, marked in evidence as Exhibit P-4(1). The witness confirms that in 1990-92, he was looking after the investments and stock market dealings for members of the family. He became a member of the Bombay Stock Exchange in 1990, but he could trade only from 8<sup>th</sup> January 1993, having requested the Stock Exchange for a confirmation of his authorization to trade. He relies upon a certified copy of the letter dated 8<sup>th</sup> January 1993 issued by the BSE since the original was not traceable. He has deposed that although the suit shares were delivered by him personally and in original to defendant no.1, those shares have not been sold to

defendant no.1. No contract note for purchase by defendant no.1 was issued. No payment was received by the deponent or the plaintiff.

25. On 20<sup>th</sup> April 2018, the BSE deputed one Hemant V. Dharap of the Bombay Stock Exchange, who responded to the summons and stated that he was not aware of the letter dated 10<sup>th</sup> August 1988, which was marked as X-2 for identification, issued by the BSE, which related to the expulsion of Ghanshyamdas Biyani. Dharap 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 and on 12<sup>th</sup> July 2018, one Johnson Joseph Chiriyath answered the witness summons. Upon being given some time, on 2<sup>nd</sup> August, 2018, he produced a photocopy of a writing dated 7<sup>th</sup> 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 8<sup>th</sup> January 1993. Ramesh Biyani had been given clearing no.768. The witness confirmed that such a letter had been issued. In view thereof, the said letter 'X-2' was marked as Exhibit P-17 in Suit No.1 of 2013. Since evidence has been led in common, the deposition of Johnson Joseph Chiriyath would be read in other suits as well since it pertains to production of a document which is common in all the three Suits.

26. Ramesh Biyani was cross-examined by Mr. Vivek Sharma, learned counsel on behalf of defendants 1A to 1C and 5 on 13<sup>th</sup> April 2018, which was concluded on 20<sup>th</sup> April 2018. In addition to the documents marked above, he identified Articles X-1 and X-2 as copies of the balance sheet and profit & loss account maintained in respect of his mother's account. These were therefore marked in evidence as Exhibits P-19(1) and P-19(2). The witness confirmed that the balance sheet and profit & loss account were prepared by M/s. S.K. Rathi & Co. In relation to share delivery memo no.306 dated 20<sup>th</sup> December 1990, the witness's attention was invited to the 5<sup>th</sup> and the 7<sup>th</sup> entries. The witness admitted that the shares listed against those entries belonged to his father Ghanshyamdas, but these shares were never delivered. Although certain other names appeared in these entries, those shares were also not delivered, reason being that the original memo was still in the book and that is evidence of the fact that the memo was never parted with to any person. According to the witness, this Memo no.306, which came to be marked as Exhibit D-1(1) in this Suit, appears to have been prepared by mistake. The witness was then shown Share Delivery Memo nos.303, 304, 305 and 317, all of which forms part of the same book and were available in original and in carbon-copy. According to the witness, Memo nos.303, 304, 305 were prepared by mistake, but Memo no.317 admits of delivery to one Ramesh M. Damani. The shares under delivery memo

no.317 had been delivered to Mr. Damani, as recorded in the original memo, of which no carbon-copy was prepared. These are marked as Exhibits D-1(2) and D-1(3), D-1(4) and D-1(5). The witness confirms that after 1991, he continued to trade in shares.

27. In further cross-examination, the witness-Ramesh admitted that during 1990-91, settlements were arrived at every 15 days and delivery of shares would have to effect on expiry of 15 days. The witness confirmed that upon sale of shares, delivery memos would have to be issued and that would depend on the relationship between the client and the broker. The witness had been meeting HSM – original defendant no.1 since 1986 off and on. He could not recall whether in 1990 he had met defendant no.1 or issued any contract note, but in 1986, there were occasions where defendant no.1 had bought and/or sold shares to the witness and Biyani family members. Referring to the shares covered under Exhibits P-17(1) and P-17(2) and P-18, against remark “shares as delivery against purchase”, the witness confirms that these shares were delivered for sale to the persons named as shareholders. In respect of shares under memo no.301, the sale was to take place after the date of the delivery memo. In answer to question no.29, the witness confirmed that the shares need not be delivered prior to sale. The question no.29 and answer thereto are reproduced below for ease of reference.

*“Q.29. Would it be correct to say that since no sale was effected it was not necessary to deliver the shares in advance ?*

*A. Yes that is correct. In the case of shares covered by share memo no. 301 I had asked Mr. Harshad S Mehta to sell of these shares. however he advised me against selling it at that point of time and suggested that if I had waited these shares would fetch a better price because of the oil crisis then prevalent.”*

28. The witness–Ramesh has thus reiterated his case that the shares covered under delivery memo nos.301 and 302 i.e. Exhibits P-17(1) and P-17(2) had not been sold for the reasons set out. The witness was also unaware whether the price of the suit shares increased or decreased between 18<sup>th</sup> December 1990 to 31<sup>st</sup> December 1990. In further cross-examination, the witness has deposed that the suit shares were handed over to defendant no.1 in advance. If these shares were sold, defendant no.1 would have received brokerage and nothing more, but the shares had been handed over in advance due to the relationship between the parties. Upon being asked, the witness was unaware at which office the defendant no.1 has delivered these shares. He did remember that there were 123 transfer deeds along with 123 share certificates covering 6,150 TISCO shares. In relation to 695 ACC shares, the witness stated that there were 139 transfer deeds, but was not sure of the number of share certificates. The witness

confirmed that copies of the transfer deeds and/or share certificates are not in his possession. The witness further deposed that the plaintiff has signed in Hindi since she never signs in English. He deposed to having personally enquired with defendant no.1 as to why suit shares have not been sold, although nothing was recorded in writing. He had also orally asked defendant no.1 to return those shares. He fairly admitted that issuance of legal notices through Advocate Ramesh Shah was initiated by his brother Shrikant and not by him. The witness deposed that he knew defendant no.1 at-least for five years, was aware of his address at Cama Building and had provided the same to Shrikant, who corresponded with defendant no.1 at the said address. He had provided Shrikant with all the addresses of defendant no.1, but became aware of defendant no.1's Maker Chamber's address only after the suit was filed.

29. As far as the first issue is concerned, the fact that 695 shares of ACC and 6,150 shares of TISCO were handed over to Ramesh Biyani, who, in turn, entrusted these shares to defendant no.1 cannot be seriously disputed. The evidence of the plaintiff in no uncertain terms establishes that these shares were standing in the name of the plaintiff and were handed over to Ramesh Biyani. Dealings between defendant no.1 and Ramesh Biyani is admitted in evidence on behalf of defendant no.1. The affidavit-of-evidence of Mr. Ashwin Mehta in paragraph 12 admits dealings only with Ramesh Biyani but not with the

plaintiff individually. Thus, read with memo nos.301, 302 and 311 (Exhibits P-17(1), P-17(2) and P-18 respectively), all bear the acknowledgment of defendant no.1. The first two memos also have acknowledgments, which are dated 19<sup>th</sup> December 1990 and Exhibit P-18 is dated 20<sup>th</sup> December 1990. The counter-foils of the original memos bearing the acknowledgments with rubber-stamp of defendant no.1 along with the firm's code 241 affixed with its rubber-stamp at the bottom is evident. These counter-foils are from the original memos bearing the same numbers and this can easily be verified from the documents itself. If the shares were to be sold to defendant no.1, there was no need for these memos to be executed because only signed transfer forms would have been sufficient. Thus, to my mind, the fact that the suit shares were entrusted to defendant no.1, as set out in the plaint, stands proved beyond doubt and issue no.1 is thus answered in the affirmative.

30. Issue no.2 also stands proved from the fact that these acknowledgments in original are now attached to Exhibits P-17(1), P-17(2) and P-18. The fact that the shares were received by defendant no.1 is also not disputed in the evidence of Ashwin Mehta, who claims that the shares were purchased by defendant no.1 in relation to the alleged transaction between defendant no.1 and Ghanshyamdas Biyani acting through Vinod Biyani. The alleged purchase in my view has not been established. Evidence of Vinod Biyani is of no assistance

at all to establish the defendant's case, nor has defendant nos. 1A to 1C been able to establish this transaction of purchase from the plaintiff as part of the transaction with Ghanshyamdas Biyani. It is apposite to mention that defendants' witness admits that defendant no.1 has not met the plaintiff and had no direct dealings with the plaintiff. Purchase of these suit shares have clearly not been established. If purchase is not established, read with the fact that the suit shares were handed over to him along with the memos, there is no reason to disbelieve the plaintiff's evidence and that of Ramesh Biyani, Shrikant Biyani and effectively the case in the plaint. Since defendant no.1 did not file a written statement, none of these statements in the plaint have been controverted by defendant no.1 at the material time. Issue no.2 is therefore answered in the affirmative.

31. I shall now deal with issue no.3 as to whether the suit is bad for non-joinder of Vinod Biyani and Ramesh Biyani. In my view, the answer must be in the negative since it is the plaintiff's case that the suit shares were entrusted to defendant no.1 through Ramesh Biyani. Ramesh Biyani has deposed in support of the plaintiff's case and has been cross-examined extensively. The witness-Ramesh denied that the suit shares had any connection with the transactions of Vinod Biyani because if they did, Vinod Biyani's Share Delivery Memos would have been issued and not the suit memos issued by the witness. Ramesh Biyani



deposed that the plaintiff had never engaged in delivering shares since she did not even know defendant no.1 and that is the reason why has the witness-Ramesh was in contact with defendant no.1. The plaintiff did not maintain a share delivery memo book since all transactions were carried out through the deponent. Till 1993, the witness-Ramesh had not issued contract notes since he was not a broker, who could trade on the exchange, at that time and till 1993. However, the delivery books were maintained for the records in order to enable him to instruct share brokers and specify which shares would have to be sold under different names. He has identified the columns in Exhibits P-17(1), P-17(2) and P-18 in which the shares that were to be sold are mentioned. When queried as to when his father Ghanshyamdas was a broker of the exchange, the witness could not remember but he did confirm that he had started independent dealings in 1986. His father was meanwhile expelled due to trading beyond permissible limits and despite certain letters of warning issued to him. He denied having engaged in Vyaj Badla transactions.

32. Ramesh Biyani denied that the suit transactions were relating to trades between defendant no.1 and Vinod Biyani. He re-affirmed that Vinod Biyani had no connection with the suit transactions nor did Vinod Biyani received any consideration for the suit shares from defendant no.1. He denied a suggestion that the suit should have been filed against Vinod Biyani because defendant no.1

had paid monies to Vinod Biyani. The witness could not recall any dealings with his family members and Vinod Biyani. Witness was called upon to produce some books of accounts for the period 1<sup>st</sup> January 1990 to 31<sup>st</sup> March 1992 in respect of the transactions between the witness and various brokers, but these were not in his possession. He did however have the balance sheet and profit and loss account for the aforesaid period. He was then called upon to produce these balance sheet and profit and loss account for the period 1<sup>st</sup> January 1990 to 31<sup>st</sup> March 1992, as also contract notes and ledger accounts in respect of the transactions between the witness and the said Vinod Biyani for the aforesaid period.

33. On 27<sup>th</sup> April 2018, the witness–Ramesh produced the balance sheet and profit and loss account for the said period. These were copies of the balance sheet and profit and loss account as of 31<sup>st</sup> March 1991 for assessment year 1991-92 and certified by M/s. S.K. Rathi & Co. It contained annexures comprising statement of total income, share investment account, debenture investment, statement of gains on sale of shares, details of dividend warrants and interest account. He did not however have copies of contract notes or ledger accounts in relation to the transactions with Vinod Biyani despite a search for such documents. The certified copies of balance sheet and profit & loss accounts were marked as Exhibits D-1(7) and D-1(8) and he admitted that while the

other documents sought by the cross-examiner were not available, the certified copies of the balance sheet and profit & loss account were sourced from the Chartered Accountants and were received on 23<sup>rd</sup> / 24<sup>th</sup> April 2018. He denied a suggestion that documents at Exhibits D-1(7) and D-1(8) were fabricated. When called upon to identify registration numbers of motor cars owned by him in 1991-92, the witness did not remember. There were certain signatures on the documents at Exhibits D-1(7) and D-1(8), which were different but the witness confirmed both his signatures, some of which were in Hindi and some in English. The signature is said to be the same as appearing on the balance sheet even today. The witness volunteered that his Aadhar Card also bears the same signature. Upon being called upon to produce the original office-copies of the documents at Exhibits D-1(7) and D-1(8), the witness did produce on the same day and these originals were marked as Exhibits D-1(7A) and D-1(8A). Once again, he denied a suggestion that these were fabricated since it did not bear signatures of the Accountants, but deposed that the documents are sourced from the custody of the CAs, which is the reason why they were certified by the Accountants. He reiterated it is a statement pertaining to originals of these documents and in further cross-examination has stated that the Accountant had not retained supporting documents for preparing these balance sheets and profit & loss accounts. M/s. S.K. Rathi & Co. had been handling accounts from the inception of the witness' business and that of his father Ghanshyamdas. He

reiterated that these are being certified at his request in the usual course. There is no further challenge to this testimony.

34. The witness-Ramesh was also briefly cross-examined by Mr. Satish Shah on behalf of the 3<sup>rd</sup> defendant, during which he confirmed that the witness' father was advising the plaintiff and the witness was handling the plaintiff's accounts. His brothers Santosh and Shrikant had been consulting Advocate Ramesh Shah and he was aware that they have consulted other Advocates as well.

35. Non-joinder of Ramesh Biyani cannot non-suit the plaintiff. In fact, Ramesh Biyani admits having handed over the suit shares to defendant no.1. He was not a necessary party nor was Vinod Biyani. This becomes clear from the evidence on record and as dealt with in some detail in answer to Issue No.1. It is not the plaintiff's case that transactions between plaintiff and defendant no.1 were carried out through Vinod Biyani, Vinod Biyani is neither necessary nor proper party. Hence, there is no merit in the contention that Vinod Biyani and Ramesh Biyani were necessary and proper defendants. Vinod Biyani has been summoned as a witness for the defence and he has been examined and cross-examined, in respect of which I have already made my observations above. The plaintiff as dominus litus can decide on who should be impleaded as a party.

36. The suit as originally filed was filed as a High Court Suit. Order I Rule 3 of the CPC provides that all persons may be joined in one suit as defendants where any right to relief in respect arising out of a transaction or series of transactions is alleged to exist against such person jointly, severally or if separate suits were to be brought against such persons, a common question of law or fact would arise. In the present case, there are no claims or reliefs sought against Vinod Biyani or Ramesh Biyani and as such, they were not required to be joined as defendants. Even otherwise, this principle may be followed even in the Special Court Suits de hors the CPC. While it is true that a defendant need not be interested in the relief claimed, in the present case, no relief is claimed either against Ramesh Biyani or Vinod Biyani and there can be no reason whatsoever for impleading them as defendants. Even otherwise, non-joinder will not defeat a suit since the court is required to deal with the suit and matters in controversy between the parties before it and non-joinder of either of these parties cannot affect the fate of the suit. As can be seen from the evidence discussed in the course of answering Issue No.1, that Ramesh Biyani was examined and was cross-examined at length. Vinod Biyani was summoned by the defence and he has also deposed. They are neither necessary nor proper parties. Thus, issue no.3 is answered in the negative.

37. Issue nos.4 and 5 can be dealt with together.

*Issue No.4 : Whether Mr. Harshad S. Mehta and/or Mr. Ashwin S. Mehta had paid consideration for the suit shares of ACC Ltd. and 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 ?*

38. On behalf of the defendant nos.1A to 1C, only defendant no.1A was contesting the suit, but the affidavit-of-evidence is filed by Ashwin S. Mehta, brother of original defendant no.1. Evidence on behalf of the defendant nos.1A to 1C has been led in common and on behalf of the defendants 1A to 1C, Mr. Ashwin Mehta has deposed by filing similar affidavits in all the three suits, several portions of which have already been struck out as not being to his personal knowledge. Defendant no.1A, who is the only legal heir claiming to the estate of HSM has not led any evidence. I may mention here that she is the proprietor of M/s. J.H. Mehta, Stock Brokers. In his deposition dated 27<sup>th</sup> October, 2018, the deponent-Ashwin Mehta has deposed to three proprietary brokerage firms being in existence, which I have named above. The original

defendant no.1- HSM was a member of the BSE. The deponent has acted as his sub-broker and badge holder in the brokerage firm of M/s. Harshad S. Mehta. In the year 1999, Ghanshyamdas Biyani was a leading speculator and had undertaken speculative trades in the shares of TISCO. Ghanshyamdas had a good relationship with HSM, but never had any client-broker relationship with M/s. Mehtas' firms. According to the deponent, during 1990, Ghanshyamdas ran into financial difficulties, wanted funds and in the presence of the deponent, Ghanshyamdas requested HSM for financial assistance. Ghanshyamdas was willing to sell shares of TISCO and ACC on spot basis and also through the brokerage firm of M/s. Vinod Biyani. In order to provide financial assistance to Biyani, presumably Ghanshyamdas, "they agreed between themselves" that HSM would purchase ACC and TISCO shares standing in the name of Biyani family members (presumably Ghanshyamdas).

39. The witness-Ashwin Mehta deposed that about 3,00,800 shares of TISCO and 4,000 shares of ACC were sold by Ghanshyamdas to HSM through brokerage firm of Vinod Biyani. 4,000 shares of ACC were sold by Vinod Biyani to the deponent's brokerage firm, against which payment of Rs.72 lakhs was made vide credit slip issued by defendant no.1-HSM through Vinod Biyani in a settlement bearing no.12. A credit kapli was given on 5<sup>th</sup> October 1990 to Vinod Biyani. According to the deponent, the plaintiffs in all the three suits willingly

executed transfer deeds and delivered them to Ghanshyamdas Biyani and Ramesh Biyani, both of whom were mercantile agents and members of the BSE. The consideration towards the shares of TISCO and ACC has been paid for by HSM and Ashwin Mehta and no direct dealings took place between the plaintiff and two brokerage firms of HSM and Ashwin Mehta. The payment of these suit shares have been made to M/s. Ramesh Biyani and M/s. Vinod Biyani and books of accounts maintained by the Mehtas' firms reflects the true picture. The witness has sought to produce the extract of the ledger account of M/s. Ramesh Biyani and M/s. Vinod Biyani in the books of HSM and the relevant extracts of ledger account of Vinod Biyani in the books of M/s. Ashwin Mehta. These documents are sought to be tendered in evidence along with the copies of bank statements said to be certified under the Bankers' Books Evidence Act, 1891 as proof of payment. According to the deponent, the transactions in the suit shares were undertaken with M/s. Ramesh Biyani and M/s. Vinod Biyani as brokers acting as clients and commonly known as "broker to broker direct transactions" on client basis. This is sought to be explained by using a separate code assigned by HSM to Ramesh Biyani and a separate code to Vinod Biyani by HSM and Ashwin Mehta. According to the deponent, the plaintiffs *"have recourse only to Shri Ghanshyamdas Biyani, Shri Ramesh Biyani and M/s. Vinod Biyani"*. He has further deposed that barring Ramesh Biyani, the other plaintiffs have neither met HSM nor have they handed over delivery of their shares to him and



therefore their claim is not correct. One thing is clear from this affidavit-of-evidence that Ramesh Biyani did meet HSM for the purpose of the suit transaction and to that extent, the case of the plaintiff that the suit shares were handed over to defendant no.1- HSM through Ramesh Biyani cannot be disputed. The admission of the defendants' witness therefore to this extent is relevant.

40. The cross-examination of Ashwin Mehta was common in the three Suits. The contents of all the three affidavits are set out above. However, prior to Ashwin Mehta being cross-examined, Vinod Biyani was summoned as the defendants' first witness. Vinod Biyani's examination commenced on 9<sup>th</sup> August 2018. Upon being called upon to produce ledger accounts in respect of M/s. Harshad Mehta and M/s. Ashwin Mehta for financial year 1<sup>st</sup> April 1991 to 31<sup>st</sup> March 1992, he did not have the ledger accounts in his possession, he stated that he had no dealings with the two firms during 1<sup>st</sup> April 1991 to 31<sup>st</sup> March 1992; however, during financial year April, 1990 to March 1991, he had dealings with these two firms. Although the witness had stated that he may have in his possession bills pertaining to the transactions for the aforesaid period and sought time to produce the same, when the witness appeared on the adjourned date, he deposed that he could not find the bills which he expected to link with the ledger accounts. Thus, examination of Vinod Biyani did not benefit the

defendants 1A to 1C. Vinod Biyani was called upon to produce a ledger account of HSM and Ashwin S. Mehta. These have come on record as Exhibits D-1(2) and D-1(3) in Suit No.1 of 2013. It shows an opening balance as of 7<sup>th</sup> July 2019 in a sum of Rs.91 lakhs. The amount is debited on 19<sup>th</sup> July 1990. Five further credit entries are to be found. They are transaction descriptions referred to these credits as A09-0107, A11-0124, and two debits towards cheques. There are matching credits for every debit entry. In the case of Ashwin Mehta, there are few additional entries, however, none of these entries can be linked in the case of Ashwin Mehta for the period 30<sup>th</sup> March 1990 till 18<sup>th</sup> February 1991. There are several debit and credit entries, but none of these were co-related by the witness or by the defendants with the transactions pertaining to the suit shares. Thus, in my view, the evidence of Vinod Biyani does not come to the assistance of the defendants 1A to 1C. In fact, even during submissions, no attempt has been made to link any of these entries to the payments for the suit shares and on one hand, it is the case of Ashwin Mehta that certain credit entries were issued for adjustments, these are also not brought on record. No references to these transactions have been pointed out in these accounts and thus Vinod Biyani having stated on 23<sup>rd</sup> August 2018 that he has no contract notes or bills, no benefit can be derived by the defendants 1A to 1C from the deposition of Vinod Biyani.

41. Vinod Biyani did not have in account, ledger accounts for two account firms and claiming that he had possession of bills relating to transactions referred to in Exhibits D-1(2) and D-1(3). No such bills could be produced by him. On the other hand, in relation to the transactions after 16<sup>th</sup> November 1990, the witness stated that they have not entered into any financial dealings during April, 1990 to March, 1991 with late HSM after 16<sup>th</sup> November 1990. When shown Exhibit D-1(2), the witness could not identify trades carried out from the exchange, whereas he had deposed in answer to question no.10 that if trades are carried out on the stock exchange, delivery and payment would be through the exchange and only if the transactions are not on the stock exchange, would delivery and payment be direct. He had no details and hence no answer to the queries relating to the transactions carried out by him on instructions of the plaintiffs in the three suits and during the period April, 1990 to March, 1991. Even in relation to Exhibits D-1(2) and D-1(3), he claimed that written record used to be maintained, but not any longer. He further deposed that the transactions carried out to his office were made on delivery memos bearing his name and not on delivery memos bearing names of other parties. This clearly contradicts the 1<sup>st</sup> defendants' case qua the plaintiff and Ramesh Biyani's role. Thus, Exhibits P-17(1), P-17(2) and P-18, which the plaintiff has established as pertaining to the suit transactions, are not part of any of the

transactions that the defendants 1A to 1C have attributed to Vinod Biyani and/or Ghanshyamdas Biyani.

42. Attention of the witness -Vinod Biyani 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 the records would be manually maintained but the record is not available. An office-copy of the delivery sheet is maintained in his own name, but back-up 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 by 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 and not of Ramesh Biyani. 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.

43. Vinod Biyani had no knowledge whether Ghanshyamdas Biyani had sought financial assistance from HSM 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 17<sup>th</sup> 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 HSM 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.

44. I find that Ashwin Mehta was cross-examined on 5<sup>th</sup> April, 2019, after Mr. Vinod Biyani was cross-examined. One would have expected that Ashwin Mehta would have produced appropriate evidence in support of the defendants' case, but in the cross-examination, it became evident that Ashwin Mehta became aware of the suit transactions after the suit was listed on board. He stated that defendant no.1 had not informed him of the suit claims, but a vague

reference is made to having helped Ghanshyamdas Biyani. Ashwin Mehta's evidence was restricted to the affidavit in lieu of examination-in-chief dated 27<sup>th</sup> 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 referred to Ghanshyamdas Biyani, whom he had helped. Particulars of the suit and the transactions were not discussed by HSM 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 HSM and others were defendants and Krishnakant Shah had appeared for said HSM. 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) in Suit No. 1 of 2013. 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 23<sup>rd</sup> November 1993 and 3<sup>rd</sup> 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.

45. Ashwin Mehta was not aware 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 applies 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. Ashwin Mehta admitted that he had consulted Jyoti H. Mehta prior to filing the written statement in the above suit, contents of which she had approved. All information was provided to him by Jyoti H. Mehta and the same is being incorporated in the written statement. The fact that Jyoti Mehta did not depose despite being in the know of facts is material. Thus, Ashwin Mehta 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 did not have personal knowledge and that defendant nos.1B and 1C are not concerned with the payments. They are not claiming any interest in the assets of HSM. 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.

46. 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.



47. Ashwin Mehta 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 HSM towards purchase of shares by him. This however is not borne out by the documentary or oral evidence 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.

48. Issue no.4 required defendants 1A to 1C to establish that they had paid consideration for the suit shares to Vinod Biyani. This has not been established, as seen from analysis of the depositions of Ashwin Mehta and Vinod Biyani above. Although Vinod Biyani was summoned as a witness, no attempt has been made to seek confirmation of the transactions, as pleaded by the defendant nos.1A to 1C. In fact, there has been no attempt, not even the slightest attempt,

to establish payment either from Harshad S. Mehta or Ashwin S. Mehta or their respective proprietary concerns to Vinod Biyani or for that matter Ghanshyamdas Biyani. In the light of the aforesaid, there being no evidence of any consideration having been paid for the suit shares by HSM or Ashwin Mehta to Vinod Biyani, Issue No.4 is answered in the negative.

49. Issue no.5 can be answered along with issue no.4 inasmuch as there is no evidence to show that shares were handed over to defendant no.1 against any purchase made by defendant no.1. If the purchase has been made by defendant no.1 to his own account, share transfer forms would not be in blank, the fact that is not disputed by defendant no.1 or on his behalf. In effect, purchase has not been established. Payment of consideration has also not been established even assuming that there was a valid purchase of these shares. Hence, Issue No.5 is safely answered in the negative and against the defendants 1A to 1C.

50. Issue nos.6, 7 and 8 can be considered together.

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

*Issue No.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?*

51. The defendants 1A to 1C contend that the shares were purchased as part of a transaction under which the defendant nos.1A to 1C and the firms of Harshad Mehta and Ashwin Mehta and probably J.H. Mehta helped Ghanshyamdas Biyani to tide over financial difficulties. There is no evidence whatsoever about how this financial assistance was rendered but it is claimed that these shares were purchased by the defendants 1A to 1C at the behest of Ghanshyamdas or at his instance or on his say so, but there is no disputing the ownership of the shares. Hence, the shares stood in the names of the plaintiff. The fact that the plaintiff was the holder of these shares has not been disputed by the companies. On the other hand, the written statement of defendant nos.3 shows that the plaintiff's 695 ACC shares were transferred to defendant no.5. Name of defendant no.5 was entered apparently at the instance of defendant no.1. The transfer having taken place from the plaintiff, the title of the plaintiff can hardly be questioned. Hence, Issue no.6 must be answered in the affirmative. Having answered issue no.6 in the affirmative, the plaintiff was at all material times the owner of the suit shares and defendants 1A to 1C and 5 having failed to establish purchase, the original defendant no.1 could not have held the suit shares and claimed title contrary to that of the plaintiff. The

defendant no.1, in my view, was clearly entrusted with the shares for sale in the market and not for appropriation or by way of sale to defendant no.1. Issue No.7 therefore must be answered in the affirmative.

52. Issue no.8 is required to be considered in view of the altered factual position, because defendant no.5 is now claiming 695 shares of ACC as a purchaser. Defendant no.5 has not filed any written statement and the 695 ACC shares are presently standing in the name of defendant no.5 represented by Mr. Vivek Sharma. No submissions have been made in this behalf. Thus, the question is whether defendant no.5 not having contested the suit and being a notified party, the Custodian having recorded that the 695 shares of ACC have already been sold, the issue that arises is as to the relief that the plaintiff can claim. Defendant no.5 claims through defendant no.1 and has not set up any independent defence.

53. Having answered issue nos.6 and 7 as above, issue no.8 must be answered in the affirmative. The plaintiff is in my view entitled to the suit shares and/or the sale proceeds and accretions and dividends thereon. In conclusion, the plaintiff is entitled to succeed. In view of the Custodian having filed an additional written statement, Mr. Sancheti on behalf of the plaintiff submitted that the shares of ACC are said to have been sold, as set out by the Custodian and

as confirmed by the company. The notified parties and the company have not disputed the fact that the shares of ACC were sold. Since the accruals would include the bonus and rights shares, Mr. Sancheti contended that all accruals would have to be given to the plaintiff. It is however contended on behalf of the notified parties that even assuming the plaintiff's case is proved, the plaintiff would not be entitled to rights shares since they were paid for by the Custodian from funds of the notified parties. Likewise, accruals on the rights shares by way of dividend and bonus also cannot be claimed by the plaintiff. Mr. Sancheti rested his case by contending that rights shares would also fall within the entitlement of the plaintiff.

54. While considering the reliefs to be granted in the facts at hand, I find that the suit shares have been misappropriated by defendant no.5 with the assistance of defendant no.1. Defendant no.5 has not filed any written statement in defence. Thus, defendant no.5 has not established entitlement to these shares in any manner. No submissions have been advanced by the defendant no.5. The plaintiff having established that the suit shares were never intended to be sold to the defendant no.1 or defendant no.5, it is obvious that entitlement to the rights shares could not have been usurped by these defendants. Rights shares were applied for and issued to the Custodian by the company. The monies were paid for by the Custodian from the accounts of the notified parties.

55. Rights' shares offered to the existing shareholders of the company, who as on date of the offer are equity shareholders. In the present case, the rights shares were issued to defendant no.5 on the application of the Custodian. The Custodian has so applied in the belief that the original shares handed over by the plaintiff to the defendant no.1 were part of attached property. However, it is now proved that the shares in question were not forming part of the assets of the notified parties. If these shares were still existing and were being held by the Custodian in the account of the notified parties, it could have been contended by the notified parties to the effect that they were "existing shareholders" as on date the rights issue was announced and to which the Custodian subscribed and those circumstances would require this court to consider whether the notified parties' claim of being "existing" shareholders as on date of rights issue and the subscription amount having been paid from the attached accounts, they could be deprived of these shares. However, in the case at hand, that issue will not arise since the shares have admittedly been sold for value recovered by the Custodian. Having sold these shares, the question that arises is whether the monetary value equivalent to the number of rights shares could be claimed by the plaintiff. The value of the rights shares cannot, in my view, be claimed by the plaintiff.

56. One other aspect to be considered is whether the notified parties can benefit by reason of the plaintiffs having omitted to claim rights shares and / or the difference between buying and selling prices. In my view, the entire value of the rights and bonus thereon cannot be paid over to the plaintiffs even if they succeed. The difference in buying and selling price payable would in my view be payable to the plaintiffs as otherwise it would amount to unjust enrichment in the hands of the notified parties. This is for the reason that payment for the rights shares has been made from the accounts of the notified parties. In my view the plaintiff has made out a case for payment of the upside if any between the price at which the shares were purchased and the price at which they were sold.

57. The record of the Special Court indicates that defendant no.5-Deepika Mehta filed Miscellaneous Application No.128 of 1995 against ACC Ltd. and the Custodian, wherein she sought (i) an order directing the Custodian to release Rs.27,39,000/- towards the application money in order to enable her to apply for equity shares of ACC Ltd. on rights entitlement basis; (ii) to direct sale of shares and debentures belonging to the defendant no.5 to the extent required to provide for the application money and; (iii) in the meantime, to keep the rights shares' entitlement in abeyance under Section 206(A) of the Companies Act, 1956, without forfeiting the same. On 23<sup>rd</sup> February 1995, an order came to be

passed by this court in terms of the Minutes of Order signed by counsel for the parties, whereby the Applicant therein was directed to furnish Stockinvest (a mode of payment then prevalent) for the application money and recorded the manner in which the monies would be paid.

58. Further, Miscellaneous Application No.420 of 1999 came to be filed seeking directions against ACC Ltd. (i) to disclose holding of the applicant and the rights entitlement; (ii) to furnish letters of offer; (iii) to direct the company to keep the rights entitlement offer in abeyance and; (iv) also for this court to sanction or release of moneys for subscription amount for the rights entitlement. A direction was also sought against the Custodian to compute the amount required to be paid. By the Minutes of Order, the applicant-Deepika Mehta was directed to furnish Stockinvest to the extent of the application money and State Bank of Mysore was directed to issue them necessary numbers of Stockinvest. Allotment and call money were to be paid to the company on the undertaking reflected therein being fulfilled.

59. Later it appears that, vide Miscellaneous Petition No.119 of 1999, the Custodian sought permission to apply for rights issues of ACC Ltd. in relation to the holdings of various notified parties including defendant No.5-Deepika Mehta and a direction against her to do all things necessary for the purpose of



applying for the rights issue, for permission to release funds from the attached accounts of the respective notified parties and for permission to dispose of rights entitlement of the shares. In respect of benami shares, a direction was sought against ACC Ltd. to issue rights shares and execute relevant documents for the same or for renouncing the same, as the case may be. Pending determination of ownership of benami shares, the Custodian sought permission to release funds from the attached accounts of respondent no.2-Harshad S. Mehta.

60. In the alternative, leave was sought to dispose the rights entitlement of the benami shares in the market and deposit sale proceeds in a suspense account. In the meanwhile, in respect of unregistered shares, a direction was sought against ACC Ltd. to keep the rights issue in abeyance. On 2<sup>nd</sup> August, 1999, the Miscellaneous Petition No.119 of 1999 was allowed by the Special Court in terms of prayer clause (a), granting permission to the Custodian to apply for 1,31,897 shares of Rs.10/- each of ACC Ltd. on rights basis and to release a sum of Rs.72,54,335/-. The 1,31,897 shares included the rights shares entitlement accruing from the suit shares.

61. It is in the aforesaid manner that the rights entitlement was subscribed and the shares allotted. The question to be considered is whether the plaintiff would be entitled to the sale proceeds of the rights shares? It would perhaps be

argued by the notified parties that the rights offered could not have been availed of by the plaintiff since the shares were by then transferred to defendant no.5 and were paid for from the accounts of the notified parties. Although the plaintiff could claim these shares subject to the notified party defendant no.5 being compensated for the price paid and some interest thereon, this issue will not arise in the present set of facts since the shares have been sold. Having sold the shares, it is only the sale proceeds that are now lying invested by the Custodian and since all the shares have been sold at the same price (the original 695 shares of ACC and the rights entitlement), the notified parties would be entitled to the monetary value of those shares they had paid for. The plaintiff cannot claim the monetary value of the rights shares or bonus shares on the rights shares. The plaintiff could possibly have claimed only the shares, provided they had paid for it. Not having paid for the shares and the shares having been sold, the monetary value of the rights entitlement, which was subscribed, would have to be retained by the notified parties.

62. Thus, considering the alternative submission of Mr. Sancheti that the shares having been liquidated, the sale consideration should be paid over to the plaintiff, that submission cannot be accepted in its entirety. Relief can however be granted in respect of all the TISCO shares and the original 695 ACC shares and the bonus shares, since I find that the plaintiff has established that she was

owner of the suit shares. The bonus shares would straightaway be part of the entitlement of the plaintiff. Thus, in my view, the Custodian will have to be directed to transfer all the TISCO shares and that company will be required to issue 1700 duplicate shares, accretions in any and pay over accruals. Custodian will be required to pay over dividend if any received. As far as ACC shares are concerned the Custodian must pay over the value of the 695 shares which are now sub-divided and bonus shares issued on those 695 shares and dividend thereon till date of sale of the shares. Pro-rata interest on the sale proceeds and dividend, if invested will also have to be paid.

63. The Rights shares have not been subscribed by the Plaintiff but by the notified party. These shares have also been sold. Even assuming the notified party stands to gain in the price difference between subscription of rights shares and its sale, the plaintiff has not led any evidence in relation thereto. There is nothing on record which would justify payment of such amount, however the Custodian shall verify whether the notified party has benefited from price differential and if so, make an appropriate report to deal on that aspect in due course. Since the plaintiff has not invested any monies in the rights shares, nor has he applied to court at the material time, there is no occasion to grant any relief in that respect to the plaintiff.

64. I therefore pass the following Order;

- (i) Suit is decreed in terms of prayer clauses (a), a(ii), a(iii) restricted to dividend on original 695 shares and bonus shares on 695 shares of face value of Rs.100/- and as sub-divided till date of sale.
- (ii) Suit is also decreed in terms of prayer (a) (iv) and decreed in terms of prayer a(v) to the extent of sale proceeds of the shares as decreed vide (a) above.
- (iii) Defendant no.2 and 3 shall pay over to the Custodian unpaid dividend, if any, on the suit shares within four weeks of service of a request from the Custodian.
- (iv) No costs.

**[A.K. MENON, J.]**