

“Shri Ashwin Mehta and Smt Deepika Mehta filed Written Submissions opposing the sale of shares of ATL at a deep discount when the company was doing so well and when Controlling Block of shares was supposed to fetch substantial premium and when Hon’ble Supreme Court had expressly directed to maximize the realization. The offers were not received because of the stringent conditions and the bidder requiring to make open offer to purchase 35.1% of the equity capital. That combined offer could not be accepted which was violative of Condition 7 of Terms & Conditions. That shares should be offered to the creditors at market price.”

To

The Officer on Special Duty
Special Court (TORTS Act),
Mumbai.

URGENT

Re: Written Submissions by notified persons Mr. Ashwin S. Mehta and Mrs. Deepika A. Mehta opposing the purchase of Apollo Tyres Ltd. (ATL) shares by ATL Company and its Management.

The notified parties oppose the sale of shares of ATL at the offered prices on following amongst other grounds, which are set out without prejudice to each other

- a) That the offer price by Punjab National Bank as well as by the promoters of ATL and the ATL company are extremely low as compared to the prevailing market price of Rs.120/- ATL had earlier even recorded a price of around Rs.150/- in the recent past and the current prevailing price of Rs.120/- itself is much lower. To sell the lot at a further deep discount of Rs.30/- to Rs.40/- per share could entail a loss of about Rs.15 crores to 25 crores, which is not justifiable on any grounds. In fact, the average share price of ATL for post one year period comes to Rs.116/- and the book value of ATL shares is about around Rs.100/-. Hence, the offers may be kindly rejected.
- b) The ATL as a company is doing extremely well. The management has stated that the turnover of the company, which is around Rs.2000 crores is targeted to rise to about Rs.5000 crores in the next two years. Accordingly, the profits of the company are also witnessing a sharp rise and the prospects are extremely bright. In last two years therefore reflecting the above the stock prices have been going up despite very depressed stock market. Any postponement in sales of shares would logically fetch only better prices.
- c) The scheme of sale of shares as approved by the Hon’ble Special Court and subsequently also approved with some modifications by the Hon’ble Supreme Court of India envisaged that the management blocks such as in the case of ATL would normally fetch substantial premium over the prevailing

market price. The Hon'ble Supreme Court of India had in fact modified the scheme by its order dated 23rd August, 2001 in Civil Appeal No.7629 of 1999 (Apollo Tyres Ltd. Vs. The Custodian & ors.) wherein with a new view to maximize the realization it had laid down that if best value is not received under the procedure governing sale of management block then the Hon'ble Special Court could consider sale of the shares even under the bulk category or under the normal scheme. It is therefore submitted that this Hon'ble Court is bound by the procedure prescribed by the Hon'ble Supreme Court of India and with a view to secure the best possible price make more efforts to sell the shares of ATL in the alternative manner as prescribed by the Hon'ble Supreme Court of India. It is submitted that since the offers that have come before the Hon'ble Special Court are not leading to best realization, the procedure prescribed by the Hon'ble Supreme Court of India may be adhered to.

d) It is submitted that while the notified party are opposed to sale per se but are surely opposed to selling of shares at deep discount of well performing companies such as ATL with bright prospects and having a management block which ought to fetch premium. It is submitted on without prejudice basis that the above shares have been attached as they are suspected to be public money then utmost care ought to be exercised while selling the same and the sale ought to be made following a reasonable and a prudent manner or as a public institution would sell these shares. The notified party also agreed to sale of the above shares under the normal scheme over a period of time as opposed to selling them at a deep discount.

e) It is urged to the Hon'ble Special Court that unlike in the past several cases the offer for purchase of ATL shares at market related or better price was not received in view of a stringent and onerous condition laid down requiring the offerer to bid for the entire lot of 15% shareholding of the company. It is submitted that any offerer bidding for the entire above lot would be required under the SEBI takeover code to make open offer for a further purchase of 20% equity capital of the company from the general public through the mechanism of the open offer. Thus, the decision entailed purchase of 35.1% equity capital of the company, which would almost be equal to the present equity holding of the management of ATL. Any

person/institution desirous of making an investment in the shares of ATL may not necessarily be interested in such a large number of shares who may otherwise be capable of purchasing a large investment block and not want to purchase a management block. It is submitted that therefore under the terms of the offer a large number of genuine and serious parties wanting to purchase the ATL shares are virtually disqualified to participate in the process of sale of shares. It is submitted that the notified party is aware of many willing participants who could not participate because of the above stringent conditions and it is only and only because of this that no serious or proper offer has been received. It is therefore submitted to the Hon'ble Special Court to relax the above condition and once again invite the offer so as to maximize the sale proceeds.

f) The notified party also prays to this Hon'ble Court to grant it some time of just a few days to secure better offers as the notified party had done in past instances. In the case of Ranbaxy Laboratories Ltd. for a sale of a value greater than the above ATL offer the notified party had succeeded in getting the offer at the market price on the day of offer. It is submitted that at least a better offer for a reasonably large chunk of shares could be procured in this manner.

g) It is submitted that this Hon'ble Court in past cases had sought almost a normal prevailing market price while disposing off large chunk of shares and that a similar approach may be taken even in this instance going by the past precedence.

h) It is learnt during the course of argument that the management contemplated making two offers, one on behalf of the company and another on behalf of the management. This would obviously be in violation of condition no.7 of the Terms of offer read as follows.

7. The Bids are to be submitted for the entire lot of shares of the Company viz 54,88,850 shares. Bids in part (less number of shares than total) shall not be considered.

The management and the corporate offers being two separate offers, are in violation of the above condition and on this ground the offers ought to be rejected.

i) It is submitted that the Custodian or the Disinvestment Committee who has the knowledge about the offers have not recommended the sale of shares obviously because of the deep discount being sought by the bidders which is not justifiable.

j) Last but not the least it is urged that so far as the above two notified entities there is no bank liability or any other pressing liability establishing any urgency for sale of shares.

k) It is submitted that the entire lot at or around market prices may be offered to the creditors of Late Mr. Harshad S. Mehta in lieu of amounts owed to them as and by way of a set off and by giving a suitable credit between M/s Harshad S. Mehta and other notified parties. It is submitted that earlier the Supreme Court of India has in fact, offered a large quantum of money market bonds and assets to the State Bank of India against the amounts owed to that Bank. It is submitted that obviously any creditor like State Bank of India would be very keen to purchase the block as the same would lead to recovery of outstanding dues. This would also fulfil the very objective for which the Hon'ble Special Court is set up.

l) It is prayed that at the least an opportunity may be granted to the notified party to obtain an improved offer.