

“Mehtas filed detailed Written Submissions to oppose sale of shares of ACC to LIC at a deep discount of 25% instead of realizing premium for Controlling Block of shares as 14.9% shareholdings of Tatas in ACC was sold at a premium @ of Rs.370/- against market price of Rs.280/- per share commanding 32.14% premium. In view of the bright future of the company and since the liabilities were yet not crystallized the sale may not be made particularly because the demands raised by the department were high-pitched.”

Written submissions in matter of sale of shares of ACC Ltd.

We oppose sale of shares of ACC Ltd. on several legal and factual grounds which are set out hereinafter and the submissions are made without prejudice with each other.

1. The sale as is being proposed to be effected is in complete violation of the order of the Hon'ble Supreme Court of India as well as this Hon'ble Court. In Civil Appeal No.7629 of 1999 on 23rd August 2001 the Hon'ble Supreme Court of India approved the scheme of sale of shares devised by this Hon'ble Court with a modification. The Hon'ble Supreme Court of India has upheld creation of three categories of shares being the Controlling Block, the Bulk shares valued above Rs.5 crores and the third category being routine shares. The Hon'ble Supreme Court of India also upheld that the emphasis in its opinion has to be to ensure that maximum price is realized from the sale of the said shares. The Hon'ble Supreme Court of India has laid down that if maximum price is not obtained under the category of Controlling Block of shares then the Hon'ble Special Court can follow the second method of sale of Bulk shares and further that if the Hon'ble Court is satisfied that by following any of the above two methods the highest price is not available then it will have an option to follow the norms as laid down for sale of routine shares. It is humbly submitted that at least in case of two companies the cumulative holding of the Mehta family constituted Management Block viz. ACC Ltd. and Apollo Tyres Ltd. The sale of Apollo Tyres Ltd. was made at a deep discount of about 25% to the then prevailing market price causing a loss of about Rs.16.16 crores. An Appeal was therefore preferred before the Hon'ble Supreme Court of India on various grounds and the same stands admitted by an order dated 29/05/2003. The above two orders of the Hon'ble Supreme Court of India are enclosed for ready reference. It is humbly submitted that even this Hon'ble Court while approving the scheme of sale of shares had created the above category of Management Block on a rationale that such blocks ought to command a very good premium over the prevailing market price. It is humbly submitted that in view of the above this Hon'ble Court ought to reject any offer which is not made with a premium over the prevailing market price. The prevailing market price of ACC Ltd. is around Rs.210/-. It is humbly submitted that in accordance with and as laid down by the Hon'ble Supreme Court of India this Hon'ble Court may explore other alternative options to secure better price.

2. That we have preferred an Application to this Hon'ble Court being Misc. Application No.316 of 2003, Misc. Application No.319 of 2003 which is set for hearing in another few days. In the above Application we have sought the relief of lifting the attachment on the shares of ACC Ltd. which are proposed to be sold on at least two grounds. In the first ground it is urged that these shares are liable to be released from attachment as they have been purchased prior to 1st April 1991, the period set out in the Special Courts Act. In support of this ground we have relied upon two judicial pronouncements being one of the Bombay High Court and one being of the Hon'ble Supreme Court of India. These two judgments are dated 24th July 1992 in Writ Petition No.1547 of 1992 and judgment dated 13th May 1998 in Civil Appeal No. 5326 of 1995 being "Harshad Shantilal Mehta v/s The Custodian & Ors." respectively. In the alternative, it is prayed that sale of ACC Ltd. shares may not be proceeded with as the current liquid balance as well as the receivables are far greater than my actual liability and the sale is therefore not justified nor warranted. The above Application is pending hearing and if the sale is proceeded with then they will be rendered infructuous. It is humbly prayed that this Hon'ble Court may first determine the above Application before proceeding with the sale as the same would meet the ends of justice. It is humbly submitted that if the sale is proceeded with then irreparable harm would be caused to our interest.
3. It is humbly submitted that the scheme as it is designed is not suitable to secure the best price. It is submitted that this Hon'ble Court may appoint some Merchant Bankers to secure premium for the strategic holding. It is submitted that there are innumerable precedents where large management blocks have commanded premium. It is submitted that in the case of ACC Ltd. itself a sale of 14.9% of Tata's made in two tranches itself commanded a price of Rs.370/- per shares while the then prevailing market price was about Rs.280/-. The purchaser of this lot has not claimed to be in the management though such a large premium has been paid. The other major flaw in the scheme which is inhibiting the discovery of best price is the condition that the bidder should bid for the entire lot. This discourages any competition and actually shoos away any buyer of a smaller lot at a higher price. The notified parties do not gain by such a condition but the same works to the advantage of the buyer who has very huge availability of funds which in Indian conditions could only be LIC or

some Banks. The sale of large chunk of shares is thus at their mercy and the past precedents of several sales made at discount discourage them from offering a proper price in their bids. In fact, all bulk buyers are secure in a belief that only they would in a position to purchase the shares and therefore they invariably ask for a large discount. It is respectfully submitted that in a situation of run away boom in the stock market there is no justification for selling large chunks of heavily traded blue chip shares at discounts or deep discounts more particularly as they have been held for almost 12 years whereas a gradual sale may take a few months.

4. The present is not an opportune time for sale of any shares in general and blue chip shares in particular. The notified parties have been making submissions of postponing the sale for some time on this ground amongst other grounds. As against this the Custodian and the Disposal Committee has invariably been showing undue haste in recommending selling of shares. In fact, the results of the above sale of shares is available. We are pleased to enclose a chart giving the performance of sale of about 20 instances where on a sale of about Rs.590 crores the notified parties in a brief period of maximum 10 months incurred a loss of about Rs.345 crores. It is respectfully submitted that in view of the above loss this Hon'ble Court may review the entire selling procedure particularly the functioning of the Disposal Committee and critically evaluate the timing of the sale of shares. It is respectfully submitted that all the more since the loss is being caused to the alleged public money.
5. It is respectfully submitted that merely forming of scheme of sale does not ipso facto mean that all shares have to be sold irrespective of the state of the market and the performance of the company. It is submitted that the Disposal Committee has failed in laying down any objective criteria for the decision making of sale of shares though they claim to be receiving expert advice from the research of the two brokerage firms. It is submitted that otherwise they would not have ended up recommending sale of each and every share or ended up with above performance.
6. It is respectfully submitted that the time for sale of the shares have not arrived as the liabilities have not been ascertained or crystallized. We are aggrieved that sale of our assets must be undertaken after final determination of our liabilities. The Revenue has made exaggerated claims and their absurdity is visible on the very size of demand and the

sheer sweep. The Revenue has conceded before the Hon'ble Supreme Court of India that any high-pitched demands made by them ought to be ignored which has been duly recorded by the Hon'ble Supreme Court of India in their judgment dated 13th May 1998 in Civil Appeal No. 5326 of 1995 being "Harshad Shantilal Mehta v/s The Custodian & Ors.". It is respectfully submitted that the shares are being sold at the instance of Revenue so that the monies realized from the sale of shares are handed over to them. It is respectfully submitted that this Hon'ble Court is set up primarily to secure the interest of the Banks and Financial Institutions but unfortunately not a single rupee has been given to them. The false demands made by the Revenue are being contested and they are not automatically entitled to receive the sale proceeds from shares. The notified entities and the Banks and Financial Institutions are thus suffering at the hands of Revenue who have patently made illegal demands to exploit the priority given to them in the Special Courts Act. It is respectfully submitted that at least now no further sales may be made just to serve the interest of Revenue. It is respectfully submitted that in the judgment even the Hon'ble Supreme Court of India has laid out circumstances under which the revenue demands have to be examined. I respectfully submit that thus the sale of largest chunk of shares of ACC Ltd. may not be resorted to.

7. It is respectfully submitted that the stock market is currently witnessing an unprecedented boom. Recently, the Hon'ble Finance Minister made a statement that the present boom is genuine and real. The SEBI has also given a similar finding. India has become a haven for investment and monies are pouring in, in droves. The stock prices are rising at a very rapid pace. The corporate performance is excellent. It is almost a universal view that the markets are set to be on a path of a long-term boom. These are in fact, times to buy shares but unfortunately the Disposal Committee is not sharing this universal opinion. The shares of ACC Ltd. are also rising. We are pleased to enclose a chart giving the historical price data for the past three months which indicate that the share prices are constantly improving. The Country is emphasising on the growth of infrastructure and Road and Housing sector in particular and it is very easy to conclude that the demand for cement would rise sharply and the cement prices would also improve thereby making ACC Ltd. far more profitable. There is no negative factor in sight. It is respectfully submitted that in view of the above the sale of shares of ACC Ltd. may be

deferred until all the liabilities are crystallized and only if sale of this asset becomes imperative to meet the crystallized final liability.

8. It is respectfully submitted that even the Hon'ble Supreme Court of India has admitted the Appeal against the sale of shares of Apollo Tyres Ltd. effected by this Hon'ble Court in which almost and in an identical fashion the above grounds have been urged. The Hon'ble Supreme Court of India has directed the purchaser of shares of Apollo Tyres Ltd. to not further alienate them and to that effect an undertaking has been taken. This Hon'ble Court may therefore favourably consider my above grounds.

For **Ajay Khandar & Co.**

Ajay N. Khandhar

(Advocate for below mentioned Notified Parties)

1. Ashwin S. Mehta
2. Deepika A. Mehta
3. Growmore Research & Assets Management Ltd.
4. Growmore Leasing & Investments Ltd.
5. Growmore Exports Ltd.
6. Harsh Estates Pvt. Ltd.
7. Pallavi Holdings Pvt. Ltd.
8. Topaz Holdings Pvt. Ltd.
9. Aatur Holdings Pvt. Ltd.