

"Order passed by Hon'ble Supreme Court approving the scheme governing sale of shares by laying strong emphasis on maximizing the realization from sale of shares, by widening the number of bidders and giving flexibility to the Special Court of resorting to 2 more options of effecting sale of shares to maximize the realization."

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7629 OF 1999

525590

Apollo Tyres Ltd.

..Appellant(s)

vs.

A.K. Menon, Custodian & Ors.

..Respondent(s)

(with Civil Appeal Nos. 7630/1999 and 5813-5814/2000)

O R D E R

Civil Appeal Nos. 5813-5814/2000

Certified to be true copy

Balau
Assistant Registrar (Jud.)

.....*S. V. Mehta*.....
Supreme Court of India

In these appeals, the only question relates to the Scheme devised by the Special Court for the sale of shares of the appellant-Apollo Tyres Ltd.

The shares of the appellant had allegedly been purchased by Harshad Mehta who was a party notified under Section 3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short "the Special Court Act"). By virtue of Section 3(3) of the Special Court Act, all the movable and immovable assets of the notified party stood attached. One of the assets which was stated to be there were the shares of the appellant-Company. Pursuant to some disclosures which have been made by Harshad Mehta, it seems that there are in total 46.56 lakh unregistered shares stated to be belonging to him. In addition thereto, there are about 15.98 lakh shares which have been registered in the name of Harshad Mehta and there are also some other benami/mutilated shares. As yet, it is not

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clear as to what is the total number of shares in question of the appellant-Company with Harshad Mehta but the total number could be about one crore shares in number.

By the impugned judgment, the Special Court categorised the shares into three classes - one was the routine shares, second was the bulk shares and third was the controlling block of shares. The Special Court constituted a Disposal Committee and with regard to routine shares, it directed that the Disposal Committee shall dispose of the said shares. For the bulk shares, namely, those whose market value exceeded Rs. 5 crores as on the date of the judgment, i.e. 17th August, 2000, the norms which were laid down (called the "2nd method" for sake of convenience) by the Special Court were as follows :

"After demating the registered shares, the Custodian will offer the Bulk Shares to institutional buyers like LIC, GIC, UTI, etc. The offers will be invited in sealed cover. The offers shall be placed before the Court. The Custodian can also invite offers from foreign institutional investors. The Court, however, shall reserve its rights to accept or reject the highest offer or bid that may be received by it for purchase of shares without assigning any reason whatsoever. This process will initially apply, as stated above, to all registered shares in possession of the Custodian. At this stage, the Court is confining the offers only to institutional buyers. If no offers are received from institutional buyers or if best possible price is not likely to come in, then the Court shall consider other alternate options at the relevant time."

Controlling block of shares were those which exceeded 5 per cent of the paid up capital of the Company. Norms in respect

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of the sale of controlling block of shares laid down by the Special Court (referred to hereinafter as the "3rd method") were as follows :

"After completion of demat procedure for registered shares, the Custodian will give public advertisement in the newspapers inviting bids for purchase of Controlling Block of Shares. The offers should be for the entire block of registered shares. The offers should be accompanied by a Demand draft/Pay Order/Bankers cheque representing 5% of the offered amount in cases of thinly traded shares of companies like Killick Nixon whereas in cases of highly valued shares like Apollo Tyres, the offers shall be accompanied by Demand Draft/Pay Order/Bankers cheque representing 2% of the offered amount. The said Pay Order/Demand Draft/Banker's cheque should be drawn in favour of the Custodian A/c - name of the notified parties say Dhanraj Mills. The offers can be made by individuals as well as by corporate and other entities. The offerer, whose offer is accepted by the Court, will be required to make payment within 15 days from the date of acceptance of the offer by the Court. Here also, the Court reserves its rights to accept or reject any of the highest offer or bid that may be received by the Court without assigning any reason whatsoever. Once the highest offer is ascertained, the management of the company should be given an option to buy the shares. This is to avoid destabilization of the company. The purchaser(s) shall comply with all regulations including the Take Over Regulations of SEBI. In cases where the Custodian finds that as on the relevant date, he does not possess shares of a company to the extent of 5% or above, but he anticipates that in near future, the limit is likely to reach with the other shares coming in, then the Custodian shall submit his report to the Court for keeping aside such shares of a notified party for future disposal. However, public financial institutions will not be required to make any deposit along with their offer(s)."

In respect of routine shares, norms were laid down (referred to as the "1st method") but with respect thereto there is no controversy.

The whole emphasis, and in our opinion rightly so, of the Special Court has been to ensure that maximum price is realised from the sale of the said shares. Keeping this in view, we do not find that the Special Court has erred in issuing the aforesaid directions. After hearing the counsel for the parties, we affirm the said directions with minor changes.

In respect of bulk shares, the Special Court has directed that the offer will first be made to the institutional buyers. With the change which has taken place in the financial market, it would be more appropriate that the offer be not restricted only to the institutional buyers and the non-institutional buyers including the Management of the Company may also be offered the sale of such shares of the appellant-Company. In this way, the best price would hopefully be realised. No other change in respect of the sale of bulk shares is called for.

In respect of the sale of controlling block of shares the only method laid down by the Special Court is to offer the sale of shares in a composite block. It is not known whether such a sale will get the best price in respect thereof. We, therefore, direct that it will be open to the Special Court to decide whether to have the sale of the controlling block of

shares either by inviting bids for purchase of controlling block as such or by selling the said shares according to the norms fixed for the sale of bulk shares or by the norms fixed in respect of routine shares. The object being that the highest price possible should be realised, it is left to the Court to decide what procedure to adopt.

If the Court thinks that it is best to adopt the norms laid down by it for sale of controlling block of shares (the 3rd method) then when highest offer is received and the Management of the Company is given an option to buy those shares at that price, then if the Management so desires the Court should give the Company an opportunity to buy back the shares at the highest price offered by complying with the provisions of Section 77A of the Companies Act. In other words, on the receipt of the offer for the sale of the controlling block, the Court will give an opportunity, if it chooses to consider the offer, to the Management to buy or to the Company to buy back under Section 77A of the Companies Act. No other change in the Scheme as formulated by the Special Court is called for.

It is made clear that in respect of the controlling block of shares the third method will first be adopted, namely, the norms for sale of controlling block of shares; and it is only if the Court is satisfied that by adopting that method the highest price is not available then it will have an option to follow the 2nd method relating to sale of bulk

shares. Further, if the 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 routine shares (the 1st method).

These appeals are disposed of in the aforesaid terms.

Civil Appeal Nos. 7629/1999 and 7630/1999

We have heard the counsel for the parties.

We see no reason to interfere with the judgment of the Special Court. These appeals are, therefore, dismissed.

Sd/-
.....J.
(B.N. KIRPAL)

Sd/-
.....J.
(SHIVARAJ V. PATIL)

Sd/-
.....J.
(P. VENKATARAMA REDDI)

New Delhi;
August 23, 2001.