

Securities Appellate Tribunal

Sebi vs Shri Samir C. Arora on 24 September, 2003

Bench: T Nagarajan

JUDGMENT T.M. Nagarajan, Member 1.0 Alliance Capital Mutual Fund (ACMF) is a mutual fund registered with SEBI. It has been sponsored by Alliance Capital Management Corporation of Delaware, USA, whose parent company is Alliance Capital Management LP (ACM), USA. Alliance Capital Asset Management (India) Ltd. (ACAML) is the Asset Management Company of ACMF. ACAML is the subsidiary of Alliance Capital (Mauritius) P Ltd. (ACMPL), whose parent is also ACM.

2.0 During mid January 2003, various news items appeared in the print media inter alia to the effect that:

- a) ACM had decided to sell its stake in their Indian subsidiary.
- b) Shri Samir Arora, the Fund Manager of the ACMF and his Research team would exit from it.
- c) ACMF was facing redemption pressure.
- d) The Assets Under Management (AUM) of ACAML had fallen by around Rs. 1000 crores.
- e) The prices of certain scrips such as Balaji Telefilms Ltd. , United Phosphorous Ltd. , Hinduja TMT Ltd. , Digital Globalsoft Ltd. and Mastek Ltd. had fluctuated substantially consequent to the rumors and uncertainty created about the sale of stake of ACAML.
- f) ACM issued a press release on February 3, 2003 stating that they had completed the review of the strategic alternative for ACAML and they would retain their ownership in the ACMF.
- g) Following the decision of not pursuing the sale of stake by ACM, the prices of the aforementioned scrips bounced back.

3.0 In the above background, Securities and Exchange Board of India (SEBI), in the interest of investors, ordered on June 6, 2003, an investigation into the affairs of ACAML and more particularly to ascertain the violation, if any, of the provisions of the SEBI Act, Rules and Regulations made thereunder.

3.1 Investigations revealed that Shri Samir C Arora, Head- Asian Emerging Markets at ACMSL was taking all investment decisions of the equity and balanced schemes of ACMF and was also managing the Indian allocation of Asian Funds of ACM, besides allocations for some other Asian countries.

3.2 In the course of investigations, it transpired that when ACM decided to sell its stake in ACAML, Shri Arora had reached an understanding with Henderson Global Investors for the purchase of the stake of ACM in ACAML and that his actions / inactions seemed to have been calculated to bring down the valuation of ACMF. It was found that the conduct of Shri Arora was not in consonance with the high standards of integrity, fairness and professionalism expected of a fund manager.

Further, the timing and manner of disposal of ACMF's entire holdings in Digital Globalsoft smacked of Shri Arora's dealing in the security while in the knowledge of unpublished price sensitive information. Thus, there was a prima facie case of insider trading in terms of SEBI (Prohibition of Insider Trading) Regulations, 1992, by Shri Samir C Arora. It was also viewed that, Shri Arora being the fund manager at ACMF and FIIs/sub-accounts of ACM, was responsible for the non-disclosures and wrong disclosures under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992.

4.0 In view of the above, SEBI formed a prima facie opinion that Shri Samir C. Arora's continued association in the securities market in any capacity would be prejudicial to the interests of the investors and the safety and integrity of the securities market. In view of the grave emergency to save the investors and the securities market from further acts of Shri Samir C Arora, therefore, a preemptive interim Order dated August 9, 2003 was passed by the undersigned, directing Shri Samir C Arora not to buy, sell or deal in securities, in any manner, directly or indirectly, till further orders.

4.1 In consonance with the principles of natural justice and the provisions of Section 11(4)(b) of SEBI Act, 1992, Shri Samir Arora was, however, given an opportunity to file objections, if any, to the said Order within a period of 15 days from the date of the Order and also an opportunity of personal hearing, if he so desired, at 11:30 a.m. on August 28, 2003.

5.0 Pursuant to the said Order, Shri Samir C. Arora through his Advocates Doijode Phatarphekar & Associates (hereinafter referred to as "the Advocates") vide letter dated August 18, 2003 sought inspection of the documents, data and material relied upon by SEBI for reaching the prima facie conclusion as stated in the Order.

5.1 In response, SEBI vide letter dated August 19, 2003 advised the Advocates of Shri Samir C. Arora to come for inspection of documents and for collecting copies, if any, on August 22, 2003. On August 22, 2003, the Advocates of Shri Samir C. Arora inspected the relevant documents at SEBI. Further, on August 25, 2003, photo copies of various documents as desired by the Advocates of Shri Samir C. Arora were also handed over to them by SEBI.

5.2 The Advocates of Shri Samir C. Arora vide letter dated August 25, 2003, requested for details regarding mid cap companies and of the persons referred to as the senior management of the companies as referred to in paragraph 13 of the Order and also any other document, information or data relied upon by SEBI for reaching the said conclusion. SEBI vide its letter dated August 27, 2003 replied that the information as sought by the Advocates of Shri Samir C. Arora was already available in the copies of the documents taken by them during inspection.

5.3 Shri Samir C. Arora filed his objections to the Order dated August 9, 2003 through his Advocates on August 27, 2003. The post decisional hearing granted to Shri Samir C. Arora was availed by him on August 28, 2003, which was attended by him and his Advocates. During the hearing, Advocates of Shri Samir C. Arora made detailed submissions on the factual as well as the legal issues involved in the matter, basically along the lines of their written objections.

6.0 ISSUES FOR CONSIDERATION 6.1 I have carefully considered the findings of the investigation, interim Order dated August 9, 2003, material inspected by Shri Samir C. Arora, written objections and the submissions made on behalf of Shri Samir C. Arora by his advocates during the hearing.

6.2 The following issues arise for consideration:

- i) Whether there was an emergency to pass an ex parte interim Order against Shri Samir C. Arora?
- ii) Whether there is a prima facie case against Shri Samir C. Arora for passing such an Order?
- iii) Whether the interim Order dated August 9, 2003 requires to be confirmed or not?
- iv) Whether the issue of accountability of the Board of Directors of ACAML and the Trustees of ACMF should be looked into or not?

CONSIDERATION OF ISSUES 7.0 First Issue Whether there was an emergency to pass an ex parte interim Order against Shri Samir C. Arora?

7.1.1 Shri Samir C Arora contended that "No case whatsoever exists or has been made out in the impugned order, for taking any emergent, ex parte action under section 11(B) read with 11 (4) (b) to direct Shri Samir C. Arora "not to buy, sell or deal in securities in any manner, directly or indirectly, till further orders" without giving Shri Samir C. Arora an opportunity of rebutting and explaining the charges material alleged against him". Further "Para 18 of the present order merely refers to "the grave emergency to save the investors & the securities market from further acts of Shri Samir C. Arora." It is submitted that no such emergency existed."

7.1.2 I do not find merit in the contention of Shri Samir C Arora that no case whatsoever exists or has been made out in the impugned order. A prima facie case has been made out in the order dated August 9, 2003 and the same is evident from the following contents of the order viz.

"..... if Henderson was successful in acquiring the stake, Shri Arora would have got immediate personal gain of approximately Rs. 10 crore and another Rs. 20 crore or more in another five years. It was therefore in his personal interest that none of the other bidders buy the mutual fund..... By his aforementioned conduct he also brought down the value of the mutual fund so that he and Henderson could acquire the mutual fund at a cheaper price.....It was found in the investigations that Shri Arora played a pivotal role in thwarting the plan to sell the stake of ACM, which by and large contributed to the fall of approximately Rs. 1300 Crores in the AUM of ACMF and also inflicted loss to the investors due to the resulted fall in the NAV of the schemes..... Further, it was found that Shri Arora and his team maintained close rapport with such companies and their senior management for extracting crucial un-published price sensitive information and used such information for making investment decisions..... Shri Arora's arrangement with Henderson Global Investors for the purchase of the stake of ACM in ACAML was in conflict with his interest as a fund manager"

Further "..... I find that, prima-facie, the conduct of Shri Arora is not in consonance with the high standards of integrity, fairness and professionalism expected from a fund manager. His conduct erodes the investors' confidence and is detrimental to their interests as well as the safety and integrity of the securities market. His association in the securities market in any capacity is prejudicial to the interests of the investors and the safety and integrity of the securities market."

Further it was inter-alia noticed from the press reports in Economic Times dated August 6, 2003 that "Shri Samir C Arora, the-high profile, Singapore-based fund manager of Alliance Capital Asset Management Co has quit the fund. Mr. Arora is setting up a new asset management business in India, in association with Sabre Capital Worldwide, a private equity fund founded by Rana Talwar, the former CEO of Stan Chart plc." Further, the said fund was expected to become functional in the next five - six months.

It is relevant to note that small and retail investors who do not have professional expertise to invest in the equity market rely on mutual funds as a vehicle to invest their hard earned savings and gain a reasonable return.

In view of the aforesaid, prima facie findings of SEBI against Shri Samir C Arora and since he was in the process of setting up a new asset management business in India, there was an urgent need to take an emergent preventive action by SEBI to restrain Shri Samir C Arora from further dealing in the securities market and not to permit him to perpetrate / repeat his aforementioned conduct to the detriment of safety and integrity of securities market and the interest of investors.

Regarding exercise of powers by SEBI under Section 11(B) & 11(4)(b) , it may be mentioned that SEBI, entrusted with the responsibility to protect the interest of the investors, has to act swiftly to curb further mischief and to take such action as is necessary, in its opinion, to sustain public confidence in the integrity of capital markets.

It may be stated that in terms of Section 11(4) (b) SEBI may, inter alia, in the interests of investors or securities market, restrain any person from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities pending investigation or enquiry or on completion of such investigation or inquiry. Further section 11 (4) provides that " the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned."

In the case of Shri Anand Rathi v. SEBI [2001] 32 SCL227 (BOM), the Hon'ble Bombay High Court has observed that Sec 11 B is an enabling provision enacted to empower SEBI Board to regulate securities market in order to protect the interest of investors. Such an enabling provision must be so construed as to sub serve the purpose for which it has been enacted. SEBI is fully competent and is empowered by Sec 11 & 11 B to pass interim orders in aid of the final orders.

With regard to the contention that the order has been passed without giving Shri Samir C. Arora an opportunity of rebutting and explaining the charges and material alleged against him, it is relevant to note the verdict of the Hon'ble Supreme Court in the case: Karnataka Public Service Commission

v. BM Vijaya Shankar (1992) 2 SCC 206, where the Hon'ble Court has, observed, inter alia, that though the procedure of affording hearing is as important as decision on merit, yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter require to be dealt may serve interest of justice better by denying an opportunity of hearing and permitting the person concerned to challenge the order itself on merit not for lack of hearing to establish bonafides or innocence but for being otherwise arbitrary or against the rules.

The present case fits into the category of absence of any punishment where pre-action natural justice stand excluded. The said order has been passed based on the findings of the investigation in progress and the material available with SEBI, by way of interim measure, in order to safeguard the interest of the investors and the safety and integrity of the securities market. It is not always necessary to grant prior opportunity of hearing when ad interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given, that too, if demanded. In the instant case, the Order itself provided for an opportunity to file objections and also a post decisional hearing which was availed by Shri Samir C. Arora.

7.2.1 Shri Samir C Arora argued that "The power to issue such directions under Section 11(B) & 11(4)(b) is a drastic power having serious civil consequences on the repute and livelihood of those against whom it is directed. Such directions may be issued ex parte only to cope with an "emergency" situation & the order must itself set out the emergent circumstances requiring such drastic ex-parte action."

7.2.2 The argument regarding serious civil consequences on the repute and livelihood of Shri Samir C. Arora does not hold good as the impugned order is interim in nature and has been passed in accordance with law in view of the grave emergency. It may be emphasized that protection of the safety and integrity of the securities market and the interest of investors should be the paramount consideration of a Regulator, notwithstanding inevitable civil consequences, if any, on the reputation or livelihood of any individual arising out of his own conduct or action.

7.3.1 I have noted the contention of Shri Samir C Arora that "The material disclosed / made available by the SEBI during inspection, does not warrant the initiation of proceedings or the findings contained in the Order, and clearly does not justify the making of ex parte directions against Shri Samir C. Arora."

7.3.2 The contention that the material disclosed / made available by SEBI during inspection, does not warrant the initiation of proceedings or the findings contained in the Order is untenable for the reasons stated in the subsequent paragraphs. Further, whether the initiation of the proceedings is warranted or not would fall within the realm of judgment of the Regulator.

7.3.3 In view of the foregoing, I find that there was an extreme urgency to pass an ex-parte interim order against Shri Samir C Arora as an interim measure in order to safeguard the interest of the investors and the safety and integrity of the securities market.

8.0 Second Issue Whether there is a prima facie case against Shri Samir C. Arora for passing such an Order?

8.1.1 Shri Samir C Arora submitted that he " was employed by ACMSL the Singapore based associate of ACM and was the Head-Asian Emerging Markets looking after ACMs equity funds in nine countries including India. Shri Samir C. Arora was never employed by ACAML (India) although he was the Chief Investment Officer & Fund Manager of ACAMLs Equity Funds". Further Shri Samir C. Arora submitted that he" has not been acting (buying or selling stocks) on his own account but as an officer of ACMSL & for ACMSL/ ACM/ ACAML."

8.1.2 It is observed that

a) Key Information Memorandum and Common Application Form (a publicly available document) of ACMF under the Title 'Asset Management Company' listed Shri Samir C. Arora as one of the principal officers of the ACAML. It also states Shri. Samir C. Arora as the fund manager for various schemes of ACMF.

b) The Confidential Information Memorandum of ACAML dated November 2002 prepared by the Blackstone group contained (as submitted by Shri Samir C Arora in his reply) under 'Management and Employees' the organization chart of ACAML listed Shri Samir C. Arora, Sr. Vice President Head - Asia Emerging Markets reporting to the ACAML board.

c) Press release dated February 3, 2003 issued by Alliance Capital states "Samir Arora will continue to act as Chief Investment Officer of Alliance Capital's Indian operations....." Commenting on the occasion, Shri Samir C. Arora stated "I am pleased to continue my deep involvement in the Indian markets as Portfolio Manager for Alliance Capital's Indian equity investments".

d) Shri Samir C. Arora has on June 20, 2003 stated under oath that he is the portfolio manager for all the equity funds of ACAML.

e) ACAML has also submitted that Shri Samir C. Arora, a key personnel of ACAML is its Chief Investment Officer and Fund Manager for Equity and Balanced Funds.

f) Shri Samir C. Arora in his written submissions has himself submitted that he "is responsible only for the equity fund management operations of ACMF", his "role was purely that of Fund Manager".

From the aforesaid facts it is clear that Shri Samir C. Arora was one of the key personnel of ACAML and in his capacity as fund manager he was managing the equity and equity portion of balanced schemes of ACMF. Further, the aforesaid status of Shri Samir C. Arora was also disclosed to the unit-holders at large by way of Key Information Memorandum and Common Application Form. It is also observed from the organizational structure of ACAML as given in Confidential Information Memorandum, November 2002 (which was given to the prospective bidders) as submitted by Shri Samir C. Arora I find that Shri Samir C. Arora was reporting to ACAML board.

Hon'ble Supreme Court in the case of Chintaman Rao v. State of M.P. AIR 1958 SC 388 has, inter-alia, stated that the concept of employment involves three ingredients: (1) employer (2) employee and (3) the contract of employment. The employer is one who employs i.e. one who engages the services of other persons. The employee is one who works for another for hire. The employment is a contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision.

Further, as per Black's Law Dictionary, Employee means 'A person who works in the service of another person (the employer) under an express or implied contract of hire under which the employer has the right to control the details of work performance.' In Multinational corporate practice, it is not uncommon that one person provide services to more than one company belonging to the same group situated in different countries.

I find that ACAM Trust Company Pvt. Ltd. , the Trustee Company of ACMF has stated that "It is the global practice at Alliance Capital that employees are paid their salaries by their relevant Alliance Capital subsidiary/affiliate, in the country in which such employees are located. However, Alliance Capital employees may continue to act as officers of the various Alliance Capital subsidiaries/affiliates around the world for which they have been allocated responsibilities as necessary and appropriate."

In view of the aforesaid facts I do not find any merit in Shri Samir C Arora's submissions that he was not an employee of ACAML.

I also observe that the interim order was passed directing Shri Samir C Arora "Not to buy, sell or deal in securities, in any manner, directly or indirectly" for his unprofessional misconduct and prima facie violation of SEBI (Prohibition of Insider Trading) Regulations, 1992. Therefore, Shri Samir C Arora is also personally liable for action.

8.2.1 Shri Samir C Arora stated that "On November 28, 2002 after considerable deliberation and persuasion, Shri Samir C. Arora agreed to join hands with Henderson in an MBO and bid for the purchase of ACMF. Shri Samir C. Arora agreed to pay for 6.67 per cent of the total bid amount upfront, in return for proportionate equity in ACAML. It was also further agreed that Shri Samir C. Arora would get a further 13.33 per cent in the form of sweat equity, over a phased period, subject to Shri Samir C. Arora continuing to work for ACMF for at least four years. If this bid had come through Shri Samir C. Arora would have had to resign from ACMSL & relocate from Singapore to India to manage the assets of ACMF". Further "the Order projects an incorrect picture of personal aggrandisement on the part of Shri Samir C. Arora. It is clarified that Shri Samir C. Arora was to pay for 6.67% of the total bid amount of Henderson at the initial stage & was to receive a proportionate share/ interest in ACMF. Thereafter for continued performance and loyalty to the mutual fund over the next four years, Shri Samir C. Arora was to receive 13.33% shares in the form of sweat equity."

8.2.2 In this context it is observed that on June 20, 2003, Shri Samir C Arora while giving his statement on oath before SEBI, had inter-alia, indicated that he would get about 6% of the stake of the new Indian Company as soon as it is formed and another 13% over a period of 5 years. He also

mentioned that the 6 % mentioned aforesaid was a sort of joining fees as asked for by Henderson and 13% as mentioned was to be an incentive for him to continue with the new Indian Company. Therefore, if Henderson was successful in acquiring the stake Shri Samir C Arora would have got immediate personal gain of approximately Rs 10 crore and another 20 crore or more in another 5 years.

Now I find that Shri Samir C. Arora has contended that he was to pay for 6.67% of the total bid amount of Henderson at the initial stage instead of receiving the same as stated by him earlier. Even if it is assumed that Shri Samir C Arora was to pay for 6.67% of the bid amount, still he would have admittedly got 13.33% shares in the form of sweat equity. Therefore there is no question of personal non-aggrandisement on the part of Shri Samir C. Arora. Further bare analysis of the facts and subsequent events of the instant case, suggest that it was in the personal interest of Shri Samir C Arora to create uncertainty to suppress the value of the ACMF so that he would have been required to pay a lower amount towards his upfront contribution of 6.67% of the bid amount as agreed to by Shri Samir C Arora with Henderson. The events leading to huge redemptions and sharp fall in AUM of ACMF lend credence to the aforesaid.

8.3.1 Shri Samir C Arora had denied that he "had ever informed the management of ACM (when it was in negotiations with the bidders, for the sale of its stake in ACAML) that he did not intend to work for any bidder other than the Henderson Global investors. Shri Samir C. Arora denies that he had made it known to the public that he would be exiting from ACAML's mutual funds after the sale."

8.3.2 It is observed from the submissions of Shri Samir C. Arora elsewhere that he was from the very beginning opposing the idea of the proposed stake sale and it was made known to the management of ACM. Further, he had also proposed alternate plans to sell the Mauritius Company owning the shares of ACAML to Henderson. It is also observed that there were incessant rumors and speculations about Shri Samir C. Arora and his team of analyst exiting ACMF. However, he had not made any denial of the reports of rumors about his exit. His non-denial of the persistent reports about his exit indicates that the possibility of his being responsible for the rumors can not altogether be ruled out.

8.4.1 I have noted the contention of Shri Samir C Arora that "The Order is also erroneous inasmuch as it wrongly relates the purported decision of two analysts not to work for any winning bidder other than Henderson, to the decision of Shri Samir C. Arora to tie up with Henderson to bid for ACMF..... Should any analyst have expressed any intent not to work for ACMF should it end up in the hands of any bidder other than Henderson, it would purely be a decision of such analysts alone. At no time did the Shri Samir C. Arora or Henderson extend any job offer to any analyst working with ACMF."

8.4.2 I find that the two analysts who were a part of Research team led by Shri Samir C Arora wrote to the management that they would resign unless the ACMF is sold to Henderson. It may be mentioned that as per press reports, "Even as presentations are made to the short listed bidders for Alliance Capital some senior equity analysts of the MF have aligned with Mr. Samir Arora..... Two

senior equity analysts with the fund - Mr. Dinshaw Irani and Mr. Dhawal Mehta - informed the Blackstone group, the merchant banker for the sale of stake that they have aligned with Mr. Arora. They have also indicated that they are not interested in working with the others. Sources say top management of Alliance in India, except Chief Executive Nikhil Johri, has expressed support for the buy-out by Mr. Arora. Sources said the management is unlikely to support other bids, and would not work for other firms, if its bids go through. Mr. Arora is likely to resign from Alliance shortly if the Henderson bid does not go through." This was apparently done at the behest of Shri Samir C Arora to pressurize the management and also to create uncertainty and panic.

8.5.1 Shri Samir C Arora has denied that "transparently & openly submitting a joint bid for the acquisition of ACMF & the assets of ACAML was in conflict with his interest as a fund manager." Further he stated that "Shri Samir C. Arora signed a memorandum of understanding with Henderson towards the end of November 2002 and transparently informed the Alliance management regarding the proposal on December 6, 2002. The preliminary proposal sent to Mr. John Carifa by Henderson also clearly spelled out that Henderson was bidding jointly with Shri Samir C. Arora. Therefore, at all points Shri Samir C. Arora kept the key personnel at Alliance Capital fully informed about his proposed association with Henderson, and the Alliance Capital senior management kept the entire bidding process confidential and fair and refrained from showing any special dispensation for Shri Samir C. Arora."

8.5.2 I find that there is an inherent flaw in the contention that there was no conflict of interest as the bidding was done by Shri Samir C Arora transparently and after informing the management of Alliance Capital. The same is evident from the fact that as a Fund Manager it was paramount responsibility of Shri Samir C. Arora, to enhance the AUM of the mutual fund for the benefit of the Unit holders. However, in contrast, in his role as a bidder, his interest would have been to acquire the fund at the cheapest possible price. From the subsequent events it is observed that by his actions/inactions, Shri Samir C Arora has let the AUM fall, knowing that the valuation of the AMC depend on AUM, so as to achieve his selfish objective of acquiring the fund along with Henderson at a lesser price and in the process he has compromised his position of fiduciary responsibility with unitholders and the sponsor. Therefore, in view of the aforesaid, there can be no doubt that the acts of Shri Samir C. Arora were directly in conflict with his interest as a Fund Manager.

In consonance with the well recognized ethical principles, Shri Samir C Arora should have resigned as Fund Manager of ACMF before proceeding to bid for buying the stake in ACMF thereby avoiding any conflict of interest.

The Board of Directors and Board of Trustees of ACAML had not insisted on resignation of Shri Samir C Arora before bidding for buying a stake in ACMF. This raises a corporate governance issue.

8.6.1 Shri Samir C Arora has stated that "there was no conflict situation whatsoever, since all the bidders were fully aware that Shri Samir C. Arora was not part of the business that they were intending to purchase. Therefore, there was no question of Shri Samir C. Arora creating any uncertainty or speculation with regard to the future of ACMF"

8.6.2 On perusal of the Confidential Information Memorandum of November 2002, of the Blackstone Group it is observed that Shri Samir C Arora's name figured in the organizational chart of ACAML under the heading Management and Employees. I do not find any express clause in the Confidential Information Memorandum indicating that he was not part of the business that they were intending to purchase. Therefore, I do not find any merit in the contention that all the bidders were fully aware that Shri Samir C. Arora was not part of the business that they were intending to purchase.

8.7.1 Shri Samir C Arora maintained that "large scale redemptions from ACMF in Nov 2002 to Jan 2003, the consequent forced selling by ACMF & the reduction of the value / NAV of ACMFs schemes was in any way caused / created by Shri Samir C. Arora is ex facie incorrect." Shri Samir C Arora further submitted that "Even prior to 28 Nov 2002 the ACAML / ACMFs had seen large redemptions - caused largely by uncertainty as to the new holder buyer & his ability to manage the funds. The short-listed potential bidders came with their respective weaknesses. For instance, AIG had no experience in the Indian equity market, Sun F&C was itself not doing well at the relevant time, HSBC had raised less than a total of Rs. 35 crores in its initial equity fund and was a novice in the market."

8.7.2 I find, while in support of the argument, names of AIG, SUN F&C and HSBC have been quoted, the name of HDFC has been conveniently avoided. HDFC which was the forerunner, with a pre-emptive bid, is perceived as a strong Mutual Fund. I do not therefore, agree with the contention that the bidder's perceived weakness was responsible for redemption pressures.

8.8.1 Shri Samir C Arora stated "the fall in assets under management of ACMF during the phase of the intended change in control over ACMF was primarily in the form of redemption in the debt schemes". Further Shri Samir C. Arora stated that he "manages only the equity assets of ACMF and not the debt assets of ACMF."

8.8.2 It is relevant to note that Shri Samir C Arora was the Chief Investment Officer for ACMF. It was a known perception that Alliance Mutual Fund and Shri Samir C Arora were almost synonymous. Hence, the un-denied rumors / reports of his impending exit from ACMF would have led to redemptions in the fund either from debt or from equity schemes. Further from the presentation made by Blackstone group to the bidders I find that the image of the debt schemes was dominated by equity schemes which were managed by Shri Samir C. Arora. It follows that any fall in AUM of equity schemes would have consequent effect on the AUM of debt schemes also. Therefore, the contention of Shri Samir C. Arora that he was managing only the equity assets of ACMF and not the debt assets of ACMF and therefore any fall in debt assets cannot be attributed to him is not tenable.

8.9.1 Shri Samir C Arora denied that he "in any way brought down the value of the mutual fund and further stated that "the allegation that he allegedly brought down the value of the fund so that he and Henderson could acquire the mutual fund at a cheaper price, is ex facie absurd, and totally incorrect & unwarranted."

8.9.2 It is observed that Shri Samir C Arora had not cared to deny the rumors about his possible exit from ACMF or clarified the doubts in the minds of the public so as to avoid the redemption pressure. In fact, in reply to a query, Shri Samir C Arora responded to the effect that he could not have had a conference call with big corporates to persuade them not to redeem their units "since there was no assurance that Henderson will be the successful bidder".

8.10.1 Shri Samir C Arora contended that "the net asset value (NAV) of various schemes of ACMF did not change in any abnormal pattern and were consistent with normal performance benchmarks. There was no extraordinary fall in the NAV during the relevant period that could be attributed to Shri Samir C. Arora, leave alone, the redemptions in the wake of market reaction". Further "A fall in assets under management is an accepted consequence/ trend whenever there is a change in ownership of an Asset Management Company / Mutual Fund. This is a consequence of the uncertainty that such transactions generate in the minds of the investors. Invariably, such fall in the assets under management occurs as new investors stop making fresh investments into the schemes of funds which are expected to undergo a change in management / ownership while some existing investors start pulling out money. To cite an example, when Zurich India Mutual Fund was taken over by HDFC Mutual Fund during broadly the same period under consideration, the assets under management of Zurich India Mutual Fund fell by Rs. 1, 872 crores."

8.10.2 It is observed that there was a decline in NAV in four equity schemes of ACMF during the period December 2002 to January 2003. I find the NAV of some of the equity schemes of ACMF had declined by as much as 7% to 10% during the said period thereby causing loss to unit-holders of ACMF. I find that in Equity Fund scheme of HDFC Mutual Fund, there was an increase of over 6.5% in the NAV during the corresponding period. Similarly, there is an increase of over 4% in the NAV of K Balance Fund of Kotak Mahindra Mutual Fund during the corresponding period. Therefore the fall in the NAV of various equity schemes of ACMF is found to be not normal and the same was the result of actions/inactions of Shri Samir C Arora, as stated hereinbefore.

Further, I have noted the contention of Shri Samir C. Arora that when Zurich India Mutual Fund was taken over by HDFC during broadly the same period under consideration the assets under management by Zurich India Mutual Fund fell by Rs. 1872 corers. In this context, I find that the example cited is not comparable. The agreement of takeover of Zurich India Mutual Fund was entered into on March 31, 2003 and the merger really took place in the month of June 2003. The AUM of Zurich as on March 31, 2003 was Rs. 2685.91 crores and the AUM on May 31, 2003 was Rs. 3312.98 crores. In the instant case, I find that the fall in the AUM of Alliance Capital during the month of January 2003 alone was Rs. 873.67 crores on the base of Rs. 3370.99 crores i.e. 26%. In the case of Zurich, the merger actually happened and in the post decision the AUM increased. Therefore the argument that fall in AUM is an accepted consequence and the fall in NAV cannot be attributed to Shri Samir C Arora is not tenable as the facts of the instant case speak otherwise.

8.11.1 Shri Samir C Arora submitted that "the decline in the assets under management lowered the value of the company. However, this decline in value happened for all the bidders and not just for Henderson and no special advantage accrued to Henderson. In fact this completely belied by the fact that Henderson / Shri Samir C. Arora opted out of the bidding process and did not even conduct due

diligence, which was done by all the four other bidders. Therefore, it is absolutely wrong to say that Shri Samir C. Arora brought down the value of the fund to enable Henderson to buy it cheaply." He denied that he played any role in thwarting the plan to sell the stake of ACM.

8.11.2 I observe that one of the bidders i.e. HDFC indicated a preliminary purchase price of US Dollars 42 to 50 million based on the then prevailing AUM. Therefore it is apparent that any fall in the AUM will also result in lowering of the bid amount automatically. From the facts of the case it is observed that Shri Samir C Arora did not want any bidder, other than Henderson, to succeed. It is observed that Henderson indicated a price of US Dollars 30 to 33 million only. Therefore it did behave Shri Samir C Arora to bring down the AUM.

Further I do not find merit in the contention that because of the decline in assets under management, Shri Samir C. Arora and Henderson opted out of the due diligence process and did not attempt to match the pre-emptive bid. In this regard, it is observed that there was no need for Shri Samir C Arora to conduct any due diligence as he had been closely associated with the fund since its inception. I find that even during the last week of January 2003, Shri Samir C. Arora was attempting to rope in a large corporate house as a minority stakeholder in conjunction with Henderson and was very much involved in the bidding process.

8.12.1 Shri Samir C Arora contended that "There is absolutely no basis for arriving at finding /leveling an allegation that funds were managed in a non-transparent manner. The investment by ACMF in any stock was backed by detailed research into the stock by in-house and external analysts. The rationale for making investments was also clearly recorded internally and SEBI is quite aware of the standard of compliance in this regard..... Therefore, ACMF and ACM have always had full and complete knowledge of every single transaction, and there is no question of any non transparency towards them. All portfolios are disclosed monthly to the investors so there is non transparency vis a vis them. All securities are registered in the names of the relevant funds so there is no non transparency vis a vis the investee companies."

8.12.2 I observe that though the Trustees of ACMF and the Board of Directors of ACAML were aware about the holding of ACMF in the various scrips, the purchase and sale of securities of the respective scrips done by Shri Samir C. Arora for the sponsor / associate funds do not appear to have been made known to them. This could be one reason as to why the mutual fund failed to meet the disclosure requirements of their combined holding along with the persons acting in concert viz. ACM as per SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992.

a) On examination of the trading pattern of ACMF and funds belonging to ACM which were managed by Shri Samir C Arora, in the scrips of Mastek Ltd. (Mastek), United Phosphorous Ltd. (UPL) and Balaji Telefilms Ltd. (BTL), it is found that on August 14, 2002, ACMF held 10, 11, 453 shares of Mastek. Shri Samir C Arora has sold 2, 75, 000 of these shares held by ACMF over 3 trading days till August 23, 2002. On August 23, 2002, he has purchased 2, 50, 000 shares for The Asia Technology Fund (Mauritius) Ltd. (ATF), a sub-account belonging to ACM. It is noticed that on August 23, 2002 while he was making purchases for ATF, he was selling 50, 000 shares belonging to

ACMF.

b) On October 10, 2002, Shri Samir C Arora has sold 2, 83, 801 shares of UPL on behalf of ACMF while simultaneously purchasing 1, 00, 000 shares on behalf of India Liberalisation Fund (ILF), a sub-account belonging to ACM. On January 21, 2003, ACMF held 12, 69, 778 shares of UPL representing 4.98% of the paid up capital of UPL. Shri Samir C Arora progressively reduced the holding by ACMF and by January 29, 2003, ACMF's holdings had declined to 12, 07, 278 shares. On February 3, 2003, Shri Samir C Arora has purchased 1, 30, 000 shares on behalf of ILF.

c) On October 24, 2001, ACMF held 5, 97, 178 shares of BTL. On the same day all the funds managed by Shri Samir C Arora (including ACMF) together held 9, 76, 996 shares (representing 9.48% of the paid up capital of BTL). By October 31, 2001, Shri Samir C Arora has sold 3, 74, 818 shares of BTL held by ACMF and the FII funds. Consequently their combined holding has declined to 5.84% by October 31, 2001. On November 2, 2001, Shri Samir C Arora has purchased 3, 68, 000 shares on behalf of ACMF, ILF and Northern Trust Co. , another FII managed by Shri Samir C Arora and their combined shareholding has increased to 9.42% which further increased to 10.39% on November 8, 2001 on account of purchase of 1, 00, 000 shares on behalf of ILF. On June 5, 2003, Shri Samir C Arora has sold 2, 18, 082 shares of BTL on behalf of ILF and 1, 70, 084 shares of BTL on behalf of NTC. Thus, the holding of BTL shares by ILF and NTC declined to Nil. After the above transactions, Shri Samir C Arora has sold 2, 00, 000 shares of BTL belonging to ACMF on June 9, 2003. Thus, the sale on behalf of FII funds has preceded those on behalf of ACMF. The aforesaid nature of sale and purchase of shares of various companies reveals a peculiar trading pattern which needs to be enquired into.

Shri Samir C. Arora was managing the funds belonging to the equity and balanced funds of the ACMF and also the Indian allocation of the sponsor. I note that Shri Samir C Arora had complete authority with respect to taking all investment decisions pertaining to all equity schemes of ACMF. There was no investment committee in the Indian Asset Management Company and all purchase and sale decisions in Indian equities were taken by Shri Samir C Arora in line with the standard operating procedure in Alliance Capital globally. During the board meetings of both AMC and trustee companies, Directors were briefed by Shri Samir C. Arora on the state of equity market and the performance of equity funds managed by him.

I also find that Shri Samir C Arora was the only person who was aware about the combined share-holding of ACMF and ACM in various companies. Further, it is also observed that Shri Samir C Arora has failed to disclose the combined share-holding of ACMF and funds belonging to ACM to ACAML. The aforesaid failure on the part of Shri Samir C Arora has resulted in inadequate disclosures by the ACAML in terms of SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992. It hardly needs to be emphasized that Shri Samir C. Arora being key personnel of a mutual fund should conduct himself professionally and comply with the Mutual Fund Regulations in letter and spirit. Therefore, in view of the aforesaid, the contention of Shri Samir C. Arora that all the transactions were done in a transparent manner is not tenable.

8.13.1 Shri Samir C Arora contended that "As regards investment in companies with low floating stock, no inference whatsoever can be raised from any such investment. The investment strategy of ACMF to participate in a few small, mid-cap stocks was with the full knowledge and approval by the Trustees and the Board of Directors. The investment rationale of the ACMF was to concentrate on large-cap stock while discovering through intense research under-priced small-cap stocks."

Shri Samir C Arora also contended that "The strategy to invest in certain small/mid cap stocks was recognized by all at Alliance Capital."

Shri Samir C Arora further stated that "ACMF and ACM have raised and invested large amounts of money for investment in the Indian equity market. Therefore, their investments in the favoured stocks are by definition larger than that of many other funds who may be smaller in absolute size. This cannot be viewed negatively. In fact, the large-cap blue chip stocks have been the mainstay of the investment portfolios of the funds under the management of Shri Samir C Arora. Therefore, it is wrong to allege that there was significant exposure to mid-cap stocks without considering the scale of operations of ACMF and ACM."

8.13.2 In this regard, I find that in terms of clause 2 of Seventh Schedule (pertaining to Restrictions on Investments) to SEBI (Mutual Fund) Regulations, 1996 "No mutual fund under all its schemes should own more than 10% of any company's paid-up capital carrying voting rights". The intention behind this provision is that the mutual fund should avoid excessive concentration in any company's equity and the mutual fund should not have undue influence over the management of the company. Further, in terms of regulations 2(1) (e) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, "persons acting in concert comprises" :-

1.

2. without prejudice to the generality of this definition, the following persons will be deemed to be person acting in concert with other persons in the same category, unless the contrary is established :

(i)

(iv) mutual fund with sponsor or trustee or asset management company;

(v) foreign institutional investors with sub-account(s);"

From the reading of the aforesaid provisions, it is clear that mutual fund along with its sponsor or asset management company or Trustee are persons deemed to be acting in concert. Further foreign institutional investors along with sub-accounts are also persons deemed to be acting in concert. Therefore, ACMF, ACM and the sub-accounts belonging to / managed by ACM are persons deemed to be acting in concert.

It is observed that Shri Samir C Arora managed the said funds, under his command, in such a manner that he could hold the equity in certain mid-cap companies in excess of the stipulated 10%

by circumventing the provisions of the law. For example, the equity portfolio of ACMF and the Indian allocation of FII of ACM held more than 10% of the paid up capital of various companies like Balaji Telefilms Ltd. and Mastek Ltd. etc. I find that certain equity schemes of ACMF had invested a large portion of their corpus in five mid-cap scrips namely; Balaji Telefilms Ltd. , DGL, Mastek, United Phosphorous and Hinduja TMT Ltd. For instance, on December 31, 2002, about 43% of the corpus of Alliance New Millennium Fund (ANMF) was invested in the said five scrips. Even a diversified equity scheme like Alliance Equity Fund (which was the largest equity scheme of ACMF as on December 31, 2002 with a corpus of Rs. 433.13 crores) had invested more than 20% of its corpus, as on December 31, 2002 and February 10, 2003, in the said five scrips. About 13-14% of the corpus of Alliance Frontline Equity Fund was invested in these five scrips as on December 31, 2002 and February 10, 2003. A95 a diversified equity scheme with a large corpus (Rs. 283 crores as on December 31, 2002 and Rs. 229 crores as on February 10, 2003) had invested 15-16% of its corpus in these five scrips. Therefore, the contention that ACMF did not have significant exposure in mid cap companies is not correct.

Further as stated hereinbefore, as sole fund manager for equity portfolio of ACMF and the funds belonging to ACM, only Shri Samir C Arora is aware of the combined holdings of these entities in various companies. I find that Shri Samir C. Arora has kept ACAML and ACM in dark about the combined shareholding of ACAML and ACM in various companies. Such inaction of Shri Samir C. Arora has resulted in inadequate disclosure by ACAML. Therefore the argument that all investments were done by Shri Samir C Arora in few small mid cap stocks with the full knowledge and approval by the Trustees and the Board of Directors is not tenable.

8.14.1 Shri Samir C. Arora contended that "being based in Singapore he does not meet the managements of investee companies as often as other fund managers of other mutual funds based in India. In any case, any meet with managements are normally held at investor conferences or road shows organized by reputed brokers and such meetings are also invariably attended by personnel (analyst/salesperson) of these brokers. No material whatsoever has been provided by SEBI during inspection, based on which SEBI could have come to a finding that Shri Samir C. Arora regularly met with the management of companies with mid-sized capital or extracted unpublished price-sensitive information from the management of such companies."

8.14.2 In this context it is observed that Shri Samir C Arora in his statement recorded under oath on June 20, 2003 has himself stated in a response to a pointed query "Whether you interact directly with the company people, discuss their future programs, plans etc.?" Mr. Arora replied "Yes". He also added "we do sometimes visit plants, managerial persons and other facilities."

It is observed that in a self-appraisal report (for the period November 2000 to October 2001) of Shri Bhaskar Laxminarayan, an equity analyst and part of the team led by Shri Samir C Arora, which is annexed to Shri Samir C Arora's submission that "The Indian portfolios have needed a number of stocks to be maintained under secondary coverage.... I do spend time in maintaining upto date files and having regular management meetings with these companies. Digital and Hughes were names in the secondary coverage that had significant impact on our portfolios."

From the aforesaid it is clear that Shri Samir C Arora and his team used to interact with the management of the companies.

8.15.1 Shri Samir C Arora argued that "There is also no basis for alleging that Shri Samir C Arora appeared in the electronic media and made discretionary statements about the investment potential in the mid stocks. Neither during the inspection nor otherwise has SEBI brought any material on record to support such statement. Most of the electronic media appearances of Shri Samir C Arora were primarily in special news programmes relating to the mutual fund industry."

8.15.2 It is observed that Shri Samir C Arora on May 5, 2003 in an interview with Business Standard in a response to a query "What's your allocation to tech-stock and how do you find the valuations?" inter-alia replied "Digital Globalsoft - as per market rumors - may merge with HP ISO in India, which will make it the sole subsidiary of a US \$70 billion plus IT company and therefore be the obvious beneficiary of all the business that the parent can send to India, plus its normal business." From the aforesaid statement it is clear that on May 5, 2003, Shri Samir C Arora made a positive statement about the prospects of DGL in light of the impending merger of DGL. But the subsequent conduct of Shri Samir C Arora in off-loading the entire shareholding of DGL in the fund along with sponsor in four consecutive trading days starting from May 8, 2003 to May 13, 2003 is contrary to the statements made by him in the interview on May 5, 2003.

8.16.1 Regarding the allegation of Insider Trading Shri Samir C Arora has inter-alia contended as below:

a) No allegation of the nature contained in the Order can be levelled. The allegations regarding insider trading are required to be strictly made and found and cannot be made on the basis of surmise or conjecture.

b) Regarding allegation of Insider Trading in the securities of DGL it is stated that on May 7, 2003, the price of DGL shares reached Rs. 597.25- up by 7.8%. On May 8, 2003, since the price moved up, Shri Samir C. Arora sold some shares to book a profit against the backdrop of the poor guidance given by Infosys and Mastek. The profit-booking in the DGL counter was considered advisable. On May 8, 2003, ACMF sold 119, 000 shares of DGL while ACM sold 2, 18, 400 shares .On May 9, 2003, the stock was downgraded by the internal analyst(Mr Bhaskar Lakshminarayan) and therefore Shri Samir C Arora was unhappy about continuing to hold the stock. On the same day, CLSA Emerging Markets, a reputed international broking firm also put a SELL" recommendation on the stock - a marked shift from their previous BUY". Shri Samir C Arora in fact held a conference call with the CLSA team of Mr. Ravi Iyer and Mr. Aniruddha Dange to discuss this recommendation.

c) On May 12, 2003 ACMF sold 334, 562 DGL shares while ACM sold 250, 000 DCL shares. On May 13, 2002, the funds of ACM managed by Shri Samir C. Arora sold 1, 73, 478 shares, while funds managed by another fund manager of ACM Mr. Manish Singhai sold 38, 000 shares. Both Shri Samir C. Arora and M Manish Singhai were selling stock on the basis of the same research and available to ACM and ACMF and both sold 100% of their fund holdings during this period.

d) Since the Order accuses the Shri Samir C. Arora of having sold all shares held in DGL after the date of submission of the valuation report by Mr. Banshi Mehta and before the valuation report was made public by DGL, the relevant time frame to consider for this charge is May 7, 2003 (when the envelope was issued by the valuer in a sealed envelope) and before June 7, 2003 when the report became public after the Board accepted the merger ratio report. The only sales effected by the funds managed by Shri Samir C. Arora were between May 8, 2003 and May 13, 2003.

e) The only way in which Shri Samir C. Arora could have obtained access to the price sensitive information of the merger ratio -prior to May 12, 2003 (US time) or May 13, 2003 (India market hours) -would be for Mr. Banshi Mehta to disclose the valuation report to him. It is clear that even the Directors of DGL were unaware of the valuation proposed by the independent valuer until May 12, 2003, when they opened the envelope in US time (after close of Indian market hours).

f) Shri Samir C Arora has never spoken, met or even acquainted or been introduced to Mr. Banshi Mehta.

g) Merely because it was found that the ratio report was submitted on May 7, 2003, all the sales made after that date and prior to June 7, 2003 cannot be considered to be insider trading. There were more than 10 crore shares traded between the time of submission of the report and the time it became public. Several other mutual funds also sold DGL stock during the month of May and ought to be equally considered to be violating the law on insider trading.

h) There is absolutely no truth in the allegation that Shri Samir C Arora had any unpublished price sensitive, privileged information regarding the merger ratio. The stock was sold solely on the basis of analysis, down grade of stock by both internal and external analysts and avoidance of risk akin a lottery. At that point in time, there was no clarity on the merger, timing structure or even the exact entities that would be involved, as is evident from the statements and press releases made by DGL and its senior officials in the media and to the investment community on May 13th after all selling by ACMF and ACM was completed.

i) Another factor that clearly shows that no inference of any insider sharing information with Shri Samir C Arora or any of the analysts is that the action of ACMF and ACM complained of, is the sale of shares of DGL. An insider would have little interest or incentive to share negative/ adverse news ahead of time with outsiders, leave alone, large, professional and institutional investors. Such insiders may normally have stock options which impact their own personal networth. Any large selling ahead of publication of adverse news would only accelerate the fall in their networth. In any event, it is clear from SEBI's own records that the insiders in DGL did not have access to the ratio report prior to May 12, 2003, for such information to be shared.

j) The public statements and press releases by Mr. Som Mittal and DGL clearly indicate that as of May 13, 2003, the company did not have any firm idea regarding the exact structure, the route forward or even an exact time table regarding the merger or otherwise of DGL with HP entities in India. Since all the sales of the shares happened on or prior to May 13, 2003, there is no question of us having received any information on the merger ratio as alleged.

8.16.2 In connection with the contention of Shri Samir C Arora that he sold the shares in DGL based on analyst's report and not based on any unpublished price sensitive information, it may be pertinent to advert to following events:

a) Pursuant to the merger of Hewlett Packard and Compaq Worldwide, the process of de-merger of ISO division of Hewlett Packard India (HPI) with DGL, initiated in October 2002. The impending de-merger was known to the market since that date.

b) The DGL board appointed a committee of independent Directors in April 2003 to finalize the de-merger issue.

c) DGL appointed Bansilal S Mehta & Co. , Chartered Accountants (BSM) on May 2, 2003 to suggest a de-merger ratio. DGL had informal discussions with BSM on the valuation issue prior to the assignment given through a letter. BSM had several previous assignments with DGL in the past. The appointment was more of informal in nature.

d) Shri Som Mittal, President and CEO of DGL met Shri Bansilal S Mehta before the assignment was given and thereafter had regular discussions on the projections and estimates of the company.

e) BSM completed the valuation and arrived at the merger ratio in a matter of 3-4 days. The main interactions were with DGL only. BSM did not make any changes but relied upon the projections and estimates made by DGL for the purpose of arriving at the merger ratio. BSM computed the valuation as per the Supreme Court case in Hindustan Lever as had been their practice. Given the data and other information, any other audit firm would have arrived at a similar ratio.

f) On May 5, 2003, Mr. Arora in an interview given to Business Standard talked positively about the DGL scrip. Particularly, he mentioned that the proposed merger is going to immensely help DGL due to the additional projects it is going to get from HP.

g) On May 7, 2003, BSM submitted the de-merger ratio to DGL.

h) On May 8, 2003 the following reports appeared in Economic Times "Digital Globalsoft, the 51% Indian software subsidiary of the Technology giant, Hewlett Packard (HP), vaulted 9.9% at Rs. 609 following talks of a consolidation with Hewlett Packard Indian Software Operation (HPISO), 100% subsidiary of HP. Market Players expect the company to report a more than 50% jump in the profit for the quarter ended March 2003 of Rs. 38-40 crores. Speculation is also rife with regard to the new \$ 3 billion order received by HP worldwide from the US-based consumer major Procter & Gamble. Market players expect Digital Globalsoft's volume to benefit from the order, though the exact nature of the benefit could not be ascertained. The company may announce a dividend of Rs. 30-40 per share. It had cash per share of Rs. 50 as on March 2002. It is likely to grow to Rs. 70 per share."

i) On May 8, 2003, ACMF sold 119, 000 shares of DGL while ACM sold 2, 18, 400 shares of DGL. The reasons as noted by Shri Samir C. Arora when he took the decision to sell the DGL shares "Price

has rallied nicely - taking profits"

j) With reference to the news article appeared on May 8, 2003, BSE issued a news release dated May 9, 2003 stating that the company has informed that following global merger between Hewlett Packard and Compaq, the future business and operating structure of Digital Globalsoft is currently under consideration. However, no decision in this regard has been arrived at. Until such time that a conclusive decision is taken, the Digital Globalsoft Board has officially indicated that the company's business will continue as usual.

k) On May 9, 2003 ACMF sold 334, 562 DGL shares while ACM sold 250, 000 DGL shares. The reasons as noted by Shri Samir C. Arora when he took the decision to sell the DGL shares - "Event risk in Digital is too high - getting nervous. Reducing exposure"

l) On May 11, 2003 the Hindu Businessline inter-alia, reported that "The Digital May futures topped the list with active trading ahead of the company's Q4 financial performance announcement on Monday."

m) The merger ratio was scheduled to be discussed / approved at the board meeting scheduled to be held on May 12, 2003 in which the financial results for financial year 2002-2003 was also to be finalized.

n) DGL did not inform the stock exchange about the agenda of de-merger matter.

o) On May 12, 2003 the results for the quarter ended March 2003 were approved by the DGL board in its meeting held at USA. The board accepted the valuation submitted by BSM. However, no final decision was taken.

p) On May 12, 2003 ACMF sold 334, 562 DGL shares while ACM sold 250, 000 DGL shares. The reasons as noted by Shri Samir C. Arora when he took the decision to sell the DGL shares "Event risk from tomorrow's announcements/results is too high. Bipolar situation but we do not like to take such risks post very high volatility in technology stocks around results/corporate issues."

q) The results of DGL meeting were known to the market on May 13, 2003 which was very much in line with the market expectations.

r) May 13, 2003 at 9:17:22 AM - The corporate announcement as per BSE news release - "Digital Globalsoft announces Q4 & FY-03 results"

s) On May 13, 2003 ACM sold 211, 478 DGL shares.

t) On May 30, 2003 DGL appointed Deolitte Haskins Sells (DHS) for a fairness opinion. DHS also affirmed the fairness of the de-merger ratio recommended by BSM.

u) DGL Company announced the de-merger ratio on June 7, 2003. The ratio was perceived as unfavourable by the investors of DGL as well as by Shri Arora. The market fell by about 26% on June 7, 2003.

From the aforesaid sequence of events, it is clear that the market information did not indicate any adverse factor which could have prompted Shri Samir C. Arora to off-load 14, 66, 140 shares in four consecutive trading days starting from May 8, 2003. It is observed that there was increase in price from the closing price of Rs. 537.55 on May 2, 2003 to Rs. 597.25 at the close of business on May 7, 2003; an increase of 11.12%.

Thus the reason for the sale of shares, as noted by Shri Samir C. Arora could have been only "Event Risk in Digital is too high- getting nervous" and "Event Risk from tomorrow's announcements'. The said event risks from tomorrow's announcement was known to Shri Samir C. Arora but not known to the market. What could be these event risks from tomorrow's announcement (i.e. May 12, 2003)? It definitely cannot be the favourable Q4 & FY-03 results of DGL. In this context it will be pertinent to advert to the following facts which came to light during the investigations viz.

? That Shri Som Mittal knew Shri Samir C. Arora for the past 5-6 years. Shri Samir C. Arora and his analyst used to make regular visits and interaction with the management and senior officials and discuss the performance and future plans of the companies in which they invest. It is also observed that Shri Bhaskar Laxminarayan who has been tracking DGL for several years and 'maintaining up-to-date files and having regular management meetings with DGL' purportedly send an email to Shri Samir C Arora recommending to reduce position in DGL. The message inter alia mentioned 'valuation are capped unless unexpectedly favorable scenario'.

a) Mr. Samir Arora, was solely taking all investment decisions of the equity and balanced funds of ACMF and the Indian allocation of ACM and their FII and sub-accounts. The funds held 14, 66, 140 shares of DGL which constituted about 4.45% of the total paid up capital of DGL. The fund had been holding the said shares since February 2001.

b) The funds managed by Shri Arora was the single largest shareholder group of DGL after Compaq Computer Holdings Ltd. The funds were holding nearly 10% of the total paid up equity capital of DGL for several months (from January 2002 to January 2003) and therefore ACM had a special interest in DGL and vice versa.

c) The coincidence of dates of submission of report by BSM to DGL and the sudden start of offloading of shares (which were held for past 2 years) by Shri Samir C Arora and the completion of offloading of all the shares of DGL in four consecutive trading days starting from May 8, 2003 to 13 May, 2003 i.e. the day on which the outcome of the Board meeting of DGL held on May 12, 2003 at San Francisco in USA, became public in India..

The aforesaid circumstantial evidences are enough to indicate that, prima facie Shri Samir C Arora sold the shares of DGL while in the knowledge on unpublished price sensitive information, related to merger.

The argument that on May 9, 2003 the shares of DGL were sold by Shri Samir C Arora based on the recommendation of, the internal analyst, Mr Bhaskar Lakshminarayan and also on the recommendation of CLSA Emerging Markets, a reputed international broking firm, does not hold much water and is an afterthought. It is observed that recommendation by Mr. Bhaskar Lakshminarayan, the said internal analyst, was given on May 9, 2003 at 5.42 PM i.e. after the market hours that too only for reducing position in DGL and no such reasons, as are sought to be suggested now, were recorded by Shri Samir C Arora when he sold shares of DGL.

Further I find that on May 5, 2003, Shri Samir C Arora had a very positive opinion about the benefits of the impending merger of HP-ISO with DGL. From the sequence of events I find that Shri Samir C Arora has off-loaded his entire share-holding in DGL in four consecutive trading days i.e. from May 8, 2003 to May 13, 2003. The contradiction between the statement of Shri Samir C Arora on May 5, 2003 and the subsequent act of off-loading the entire share-holding points to two hypothesis.

The first hypothesis is that Shri Samir C Arora genuinely believed that the impending merger of HP-ISO with DGL would be beneficial to DGL and it would be advisable for any investor to remain invested in the shares of DGL. However, from the subsequent events, as stated hereinbefore, certain developments contrary to his earlier belief transpired between May 5, 2003 and May 8, 2003 which prompted Shri Samir C Arora to off-load his entire share-holding in DGL in four consecutive trading days i.e. from May 8, 2003 to May 13, 2003.

The second hypothesis is that Shri Samir C Arora, had decided on May 5, 2003 to off-load his shareholding in DGL and with a view to mislead or misguide investors made a positive statement about the benefits of the impending merger of HP-ISO with DGL, so as to exit at a higher price subsequently.

However, the sequence of events confirms the first hypothesis.

8.17.1 Regarding the allegation of wrong disclosures and failure to make disclosures Shri Samir C Arora stated that "the same is an unsustainable allegation against Shri Samir C Arora. It is very clear that the role of Shri Samir C Arora was not that of compliance and that mutual funds are highly regulated and they necessarily are required to ensure compliance by appointing independent compliance officers. " Further, Shri Samir C Arora has stated that "he cannot in any manner be held responsible for statutory reporting requirements since that was not his role at all". Further "SEBI does not seem to have even enquired with the persons making such declarations as regards these alleged mistakes, but has instead assumed that Shri Samir C Arora should be held liable for compliance related lapses. Therefore, it is grossly unfair and arbitrary to allege that Shri Samir C. Arora was responsible for any declaration under the Takeover Code or other regulations prescribed by SEBI. Significantly the notice and action is directed on the basis only against Shri Samir C Arora and not against ACAML or ACM whose responsibility it is to file such declarations under Regulations 5, 7 & 13(3)".

8.17.2 I agree that in terms of the regulations the onus of making disclosures is on the mutual fund its Asset Management Company and the sponsor. It is stated that the action is not directed only against Shri Samir C Arora. Adjudication proceedings have been initiated against others concerned.

8.18.1 Shri Samir C Arora has denied "that ACMF, FIIs and sub accounts of ACM can, should or are treated as persons acting in concert or that their holdings can or should be aggregated on that basis. The shares acquired and held by such different funds, AMCs and FIIs are only for the purpose of investment and do not come within the purview of Regulation 2(e) of the Takeover Regulations".

8.18.2 I find that in terms of regulations 2(1) (e) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 as stated hereinbefore ACMF and ACM are persons acting in concert. Further, I also find that Shri Arora manages the funds belonging to the ACMF and ACM. Therefore, their shareholding in various companies are to be aggregated inter alia for the purposes of disclosure requirements under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992. Further it is wrong to contend that shares held by ACAML and ACM are only for purposes of investment and hence out of the purview of Takeover Regulations, since Takeover Regulations do not make an exception in case of investments by Mutual Funds / FIIs as far as disclosure obligations are concerned.

From the aforesaid it is observed that the ACMF and ACM failed in maintaining arms-length relationship in managing their investments and making proper disclosures under the SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations, 1992. 8.19.1 Shri Samir C Arora has contended that "Without prejudice to the above and in any view of the matter there cannot be any direction or order under Section 11B of SEBI Act without following the procedure prescribed under the SEBI Act and the Regulations framed thereunder. The said Order dated 9th August 2003 does not disclose any provision under which investigation was conducted by SEBI against Shri Samir C. Arora. It appears from the said Order that SEBI has concluded the investigation against Shri Samir C. Arora. Shri Samir C. Arora never received any notice or intimation regarding investigation against him. On the contrary, Shri Samir C. Arora was issued a summons under Section 11(3) of SEBI Act to appear in person before the investigating authority in connection with the investigations instituted by SEBI into the affairs of Alliance Capital Asset (India) Pvt. Ltd. Pursuant to the said summons, Shri Samir C. Arora was asked to depose before the investigating officer on 20th June, 2003, which Shri Samir C Arora did and his statements were recorded. At no point of time, was Shri Samir C Arora either informed or summoned in the matter of any investigation against him."

8.19.2 In this context, it is stated that the issuing of notice to Shri Samir C. Arora regarding the initiation of investigation does not arise as admittedly the investigation was conducted into the affairs of ACAML. During the course of investigations SEBI found incriminating material against Shri Samir C. Arora and accordingly SEBI is well within its powers to initiate action against him for the violations of the SEBI Act and the Regulations framed there-under. It may also be mentioned that such action need not necessarily be preceded by separate investigation. Therefore, the investigation and the order dated August 09, 2003 are not bad in law, illegal and against the principles of natural justice as contended. In any case only an interim order was passed in view of

grave emergency and the investigations including against Shri Samir C Arora is in progress.

From the aforesaid it is evident that there was a prima facie case against Shri Samir C. Arora for passing such an Order.

9.0. Third Issue Whether the interim Order dated August 9, 2003 requires to be confirmed or not?

The aforesaid facts, circumstances and observations establish the prima facie involvement of Shri Samir C. Arora in activities which are detrimental to the interest of securities market and the investors. Therefore, the order dated August 9, 2003 is justified and I have no hesitation in confirming the same.

10.0 Fourth Issue Whether the issue of accountability of the Board of Directors of ACAML and the Trustees of ACMF should be looked into or not?

10.1.1 Shri Samir C Arora has contended that "The Trustees and the Board of Directors too are kept regularly updated and informed on both strategy and the details of the stocks purchased by the fund can be sought by them at will."

10.1.2 The aforesaid submission of Shri Samir C Arora raises the issue of accountability of Board of Directors of ACAML and the Trustees of ACMF. While the Fund Manager or the Chief Investment Officer of a Mutual Fund may be given professional freedom of day to day operations, the Board of Directors of Asset Management Company should ensure that he functions under the Board's overall control, direction and supervision. In the instant case, a periodical diligent review of the style and strategy of the Fund Manager could have enabled the Board of ACAML/ Trustees of ACMF to take necessary remedial action. In any case, in terms of Regulation 25(3) SEBI (Mutual Fund) Regulation 1996, the Asset Management Company shall be responsible for the acts of commission or omission by its employees or the persons whose services have been procured by the Asset Management Company. It is observed that following SEBI's order dated August 9, 2003, Alliance Capital has suspended Shri Arora from research and portfolio management activity. It is also observed that Shri Arora would continue to be paid through late September 2003 as previously agreed to, after which time his employment will end. This action on the part of Alliance Capital however, will not mitigate the need to go into the issue of accountability of the Board of Directors of ACAML / Trustees of ACMF and on conclusion of the investigation, appropriate actions shall be taken against them for any violations of SEBI Act and the Regulations made therein.

11.0 DIRECTION 11.1 In the light of the above and in exercise of the powers conferred on me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11B and 11(4)(b) of SEBI Act, 1992, I hereby confirm the order dated August 09, 2003 and direct that Shri Samir C. Arora not to buy, sell or deal in securities, in any manner, directly or indirectly, till further orders.

11.2 The investigating officer is also directed to complete the investigation expeditiously.