

Securities Appellate Tribunal

Sebi vs Shri Samir C. Arora on 9 August, 2003

Bench: T Nagarajan

ORDER T.M. Nagarajan, Member

1. SEBI conducted investigations into the management, conduct and other affairs of the Alliance Capital Asset Management (I) Pvt. Ltd. (ACAML).
2. On the basis of the investigations conducted by SEBI it was found that Alliance Capital Management L.P. (ACM) of USA is the parent company of Alliance Capital Management Corporation of Delaware, USA, the sponsor of Alliance Capital Mutual Fund (ACMF). ACAML is the Asset Management Company of ACMF. ACAML is the subsidiary of Alliance Capital (Mauritius) P Ltd. whose parent is ACM. Hence ACM is the ultimate parent of ACAML also.
3. During the course of investigations, it was found that in October 2002, ACM confidentially invited bids for sale of its stake in ACAML, the aforesaid Asset Management Company of ACMF from the potential acquirers. Newspapers and electronic media reported this impending sale during mid January 2003 and reported a fall in Assets Under Management (AUM) of ACAML by around Rs.1000 crores.
4. It was observed that ACM issued a press release on February 3, 2003, stating inter-alia that after evaluating all options it had decided to retain its ownership interest and would continue to manage and support ACAML as an on-going asset manager in the Indian market place. The release also mentioned that Samir Arora would continue to act as Chief Investment Officer of Alliance Capital Indian operations and would remain the head of Asian Emerging Market Equities for Alliance Capital globally.
5. During the investigation it was submitted on behalf of ACM that out of 11 initial bidders 5 were selected for second round negotiations between January 13 2003 and January 29, 2003. It was revealed that during the week beginning January 13, 2003, one of the bidders approached ACM for preempting the bidding process and proposed to proceed immediately to a final agreement. It was further observed that while the negotiations were in progress, the ACMF experienced large scale redemptions, which resulted in fall in NAV of certain schemes of ACMF.
6. It was found in the investigations that Shri Samir C Arora, Head- Asian Emerging Markets at Alliance Capital Management (Singapore) Ltd. 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 the allocations for some other Asian countries.
7. It was found during the investigations that Shri Arora and two equity analysts of his team had informed the management of ACM (when it was in negotiations with the bidders, for the sale of its stake in ACAML) that they did not intend to work for any bidder other than the Henderson Global Investors. Investigations revealed that Henderson was one of the bidders with which Shri Arora had worked out a joint venture arrangement for acquiring ACAML.

8. Shri Arora came to know of the sale of stake in October 2002. According to Shri Arora when Henderson Global Investors approached him, he agreed to work full-time for the new company leaving ACM. He mentioned that the understanding with Henderson was that if he joined them he would have received 6% share of the new company immediately and another 13% over a period of 5 years and Henderson was interested in bidding the company only if Shri Arora joined them. He has further stated that the bid made by Henderson was for an absolute sum of US\$36 million.

9. Therefore, 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. In order to achieve his selfish objective Shri Arora made it known to the public that he would be exiting from the mutual fund. The equity analysts working with him also followed suit. According to Shri Arora, the equity analysts of the department also informed the management that they did not envisage working for other bidders (other than Henderson) in case they won the bid but would negotiate with the other bidders separately. This created uncertainty and speculation with regard to the future of the mutual fund.

10. The fund experienced large scale redemption pressure forcing the fund to liquidate substantial assets under its portfolio. Given the circumstances of forced selling, the most liquid scrips which make the least price impact are sold first. Such forced selling causes poor price discovery resulting fall in NAV. The quality of asset portfolio will also diminish. Examination of the redemption records reveal that the major proportion of the redemptions were made by corporate and high net-worth unit-holders, leaving the small investors with the fund at a loss. Those unit-holders who redeemed their units also incurred redemption losses/charges due to premature redemption.

11. From November 2002 till January 2003, the AUM of ACMF at the end of each month declined sharply from Rs.3706.91 crores to Rs.2408.78 crores i.e. a decline of about 35% in a period of 2 months. This denotes a decline of Rs.1332.32 crores during the time period the bidding process were active and the negotiations were on. Such fall was unprecedented and specific to ACMF. 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.

12. 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.

13. Investigations further revealed that Shri Arora was managing funds belonging to ACMF, ACM - the ultimate parent of ACMF which is a SEBI registered FII and its sub-accounts. It was found that Shri Arora had managed this significantly large amount of funds under his direct control in a non-transparent manner. He invested significant portion of funds in certain mid-cap companies with low floating stock. 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. Further, it is

observed that Shri Arora regularly appeared in electronic media and made discretionary comments on the investment potential or otherwise of these companies wherein he had invested in large proportions.

14. ACMF, FIIs and sub-accounts of ACM, being persons acting in concert (PAC) - (funds under the management of Shri Arora) - did not make declarations to the respective companies when their shareholding crossed the threshold limit of 5% in case of Balaji Telefilms Ltd. (BTL), Digital Globalsoft Ltd. (DGL), Mastek Ltd.(MAstek), Hinduja TMT Ltd. (HTMT) and United Phosphorous Ltd. (UPL) as required under Regulation 7 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 and Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992. In some instances they have made wrongful disclosures under the said Regulation 7 possibly to mislead the investors and the public at large. ACMF and PACs also did not make declarations to the respective companies, being a substantial shareholder (holding more than 5% of the equity share capital of a company), when their shareholding changed 2% or more in case of BTL, DGL, Mastek, HTMT and UPL as required under Regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992. In some instances they have made wrongful and misleading disclosures under the said Regulation 13(3).

15. It was revealed by the investigation that Shri Arora has disposed off the entire holdings of 14.66 lakhs shares of DGL, on behalf of ACMF and ACM, immediately after the independent valuer submitted his report and prior to the announcement of merger ratio for the de-merger of HPS-ISO Division of Hewlett Packard India with DGL. The merger ratio was perceived as adverse by Shri Samir Arora as well as the market. Incisive analysis of the circumstantial evidences corroborate that Shri Arora has traded in the scrips of DGL on the basis of unpublished price sensitive information obtained due to his close nexus with the insiders of the company and thereby averted losses to the tune of approximately Rs.24 crores for the funds managed by him.

16. I find from the investigations that there is a prima-facie case of Insider Trading by Shri Samir C Arora. Shri Arora being the fund manager at ACMF and FIIs/sub-accounts of ACM was responsible for the alleged non-disclosures and wrong disclosures under the SEBI(Substantial Acquisition of Shares and Takovers) Regulations and SEBI(Prohibition of Insider Trading) Regulations. Apart from this, 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.

17. In the light of the above, 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.

18. In view of the grave emergency to save the investors and the securities market from further acts of Shri Samir C Arora, I, in exercise of the powers delegated to me by the SEBI Board in terms of Section 19 of the Securities and Exchange Board of India Act 1992 read with Section 11B and 11(4)(b), hereby direct Shri Samir C Arora not to buy, sell or deal in securities, in any manner,

directly or indirectly, till further orders. He may file his objections, if any, to this order within a period of 15 days from the date hereof and also avail personal hearing, if he so desires, at 11:30 a.m. on August 28, 2003 at the Securities and Exchange Board of India, Head Office, First Floor, Mittal Court 'B' Wing, Nariman Point, Mumbai 400 021, failing which it shall be presumed that he has nothing to say in the matter.

This order shall come into force with immediate effect.