Working Paper

A REQUIEM FOR SHAREHOLDERS?
THE ACC TAKEOVER AND THE ISSUES IN PERSPECTIVE

By

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ABSTRACT

The acquisition of a large block of shares owned by the Tata group in the cement giant The Associated Cement Companies Limited (ACC) by the Gujarat Ambuja Cement group (GACL) in December 1999 has kicked up a major controversy. This is on account of the view taken by GACL and confirmed by the Securities and Exchange Board of India (SEBI) that the acquisition does not attract the public offer provisions of SEBI's Takeover Regulations. Consequently ACC's public shareholders have been left with no exit route. The paper argues that the Takeover Regulations and SEBI's decision in the instant case are flawed and anti-investor. The paper goes on to examine the role of the ACC Board and the financial institutions in the context of the need to protect investor interests, and offers some suggestions for legislative changes.

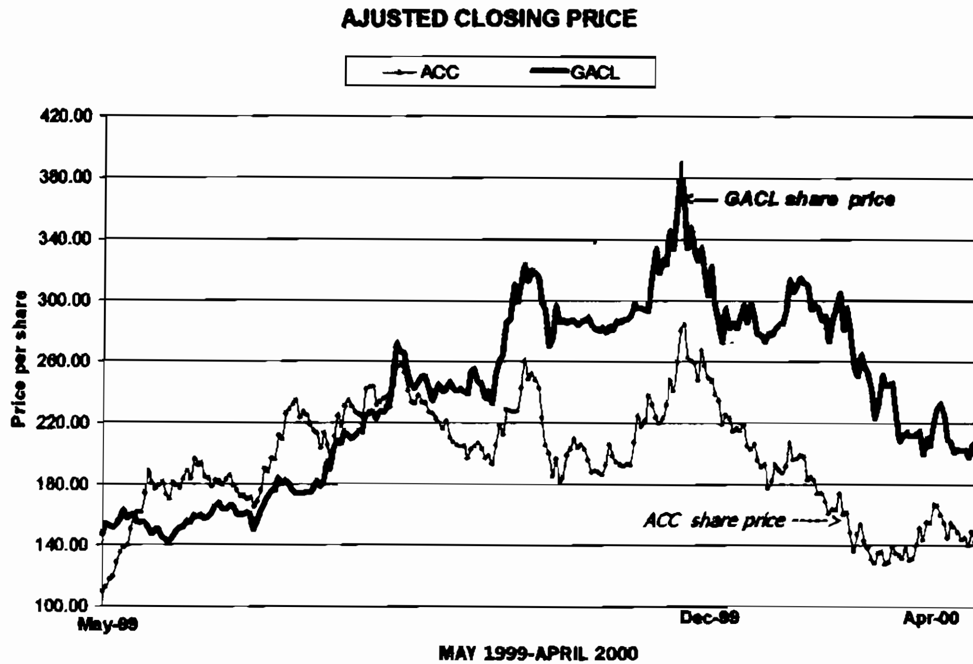
A REQUIEM FOR SHAREHOLDERS ?

THE ACC TAKEOVER AND THE ISSUES IN PERSPECTIVE

The *de facto* takeover of the cement giant Associated Cement Companies Limited (ACC) by the Gujarat Ambuja Cement (GACL) group is a case study of how every single agency involved saw to it that the investors are kept out of the party. Even more importantly the ACC case underscores the serious shortcomings of the existing takeover regulations in ensuring a fair deal to the retail investors. Rather than quickly stepping in to amend the takeover regulations to make it more shareholder friendly, the Securities and Exchange Board of India (SEBI) is reportedly toying with the idea of doing just the opposite by incorporating in the takeover regulations its controversial decision in the ACC case.

To recapitulate the facts, the GACL group acquired - through one of its group companies - half of Tata group's 14.4% holdings in ACC at a price of Rs. 370/- per share in the third week of December 1999 with an option to acquire the remaining 7.2% at the same price. Almost immediately ACC's board of directors was reconstituted with the induction of GACL's Managing Director Mr. Narotam Sekhsaria and its wholetime director Mr. A.L Kapur into the ACC board. In January 2000, Mr. Sekhsaria was appointed as the Deputy Chairman of ACC. According to reports, the domestic investment and financial institutions holding about 25% to 30% of ACC shares, after some initial hemming and hawing, gave in to the *fait accompli.* Mr. Shapoorji Pallonji Mistry, ACC's Chairman and long-serving director (also the largest shareholder of the apex Tata holding company, Tata Sons Limited) resigned in April, along with Dr. S. Ganguly, ACC's Vice-Chairman. Mr. Tarun Das, Secretary General of the Confederation of Indian Industry (CII) was appointed as the Chairman of the ACC board. In the third week April, 2000 SEBI which had earlier initiated a *suo moto* probe, announced that the GACL's acquisition of the block of ACC shares does not attract the mandatory public offer provisions of its Substantial Acquisition of Shares and Takeovers Regulations, 1997 (hereinafter referred to as the Regulations). Shortly thereafter GACL completed the acquisition of another 4.1% of the ACC holdings

from the Tatas at the same price of Rs. 370 in exercise of its options. The total consideration for the acquisition of the entire 14.4% of ACC shares from the Tatas would amount to about Rs. 910 crores, making it amongst biggest acquisitions, and certainly the largest cash deal for a listed company, in India. However non-institutional public shareholders holding about 35% (excluding the Scam-tainted shares-see below) of the ACC's capital are not to get an exit route. This was because of the view no public offer was required thanks to the generous trigger threshold of 15% under the Takeover Regulations and SEBI's own findings that there was no change in control of ACC warranting public offer. GACL's acquisition price of Rs. 370 represented a near 55% premium over the ACC share price one day before the announcement, and a hefty 93% over the price of Rs. 192, prevailing some three weeks before i.e., at the end of November, 1999. It is also pertinent to point out that the highest closing price of ACC's share since January 1996, *prior to the GACL acquisition* was about Rs. 260 in October1999. The public investors must have been throwing up their hands in despair as the ACC share price has since fallen to Rs. 110-130 levels, some 65% to 70% discount to the GACL's acquisition price of Rs. 370. Even on December 22 and 23, 1999 when ACC share price shot up in response to the announcement, the price could increase only by a maximum of 8% per day thanks to the daily circuit-breakers imposed by SEBI. In the end, the highest level ACC share touched was just about Rs. 303 on December 24 before closing substantially lower when doubts about public offer may have begun to surface. The following chart captures the behaviour of the price movements of ACC and GACL shares between May 1999 and April 2000.



The dust may have settled down, at least for the time being, on the GACL takeover of ACC. Nonetheless the entire episode does leave behind uneasy feelings about the basic *raison d'tre* of the Takeover Regulations, the role of SEBI and domestic financial institutions and the responsibility of the target company's board (ACC in this case) in protecting the interest of investors at large.

Takeover Regulations[1]

It may be recalled that clause 10 of the Regulations was amended in October, 1998 increasing the threshold limit to trigger public offer to 15% from the previous 10%. The amended *Regulation 10* reads as under:

> "*No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert*

*with him) entitle such acquirer to exercise **fifteen** per cent or more of voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations".*

It may be noted that under Regulation 21, the minimum quantum of shares to be acquired as aforesaid is 20% of the voting capital of the target company. In as much as GACL's acquisition of (14.4%) ACC shares from the Tatas, when completed, would still below the stipulated 15% limit, the provisions relating to public announcement/ public offer as detailed in Regulations 13 to 29 are *prima facie* not attracted.

However it must be noted that reportedly about 10% of ACC's shares are estimated to be "tainted" because of Harshad Mehta-association in the Securities Scam of the early nineties. What is not clear is the correct position regarding voting rights in respect of these shares. While the economic rights in respect of these shares may have been currently vested with the Custodian operating under the supervision of the Special Court, for all practical purposes voting rights attached to these shares stand frozen. Thus in an operational sense the effective voting rights currently in force on ACC shares might stand reduced to about 90% of the nominal voting rights represented by its entire outstanding equity shares. In such circumstances even 14.4% of the nominal voting rights would amount to more than 15% of the effective voting rights currently in force, in which case the public offer provisions are clearly attracted. It is not clear if this angle has been specifically examined by SEBI. It does appear, however, that when SEBI carried out its reported enquiry on the GACL acquisition, only the first block of 7.2% of ACC shares had changed hands.

Regulation 12 of the Take-over Regulations explicitly brings within the ambit of the public announcement/public offer provisions cases involving change in control

notwithstanding the fact that no shares or voting rights might have changed hands. Reg. 12 states:

"Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such a person makes a public announcement to acquire shares and acquires such shares in accordance with the Regulations.

Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a resolution passed by the shareholders in a general meeting."

According to Clause (c) of Reg. 2,

"Control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholdings or management rights or shareholder agreements or voting agreements or in any manner."

The basic question to be addressed is whether the GACL's acquisition of 14.4% of ACC shares amounted to the former acquiring "control" over ACC. SEBI which had reportedly *suo moto* examined the issue had come to the conclusion that the GACL's acquisition of ACC shares does not *ipso facto* confer on GACL the right to appoint *majority* of directors or to *control the management or policy decision.* Hence SEBI has reportedly taken the view that transfer of stake does not amount to change of control or even sharing of management control. On the face of it, the SEBI decision cannot be faulted, as, in a strict legal sense, "control" (as understood in this context) can only be exercised by some one holding majority (i.e., fifty plus percentage) voting rights.

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On the appointment of Mr. Tarun Das, the Secretary General of CII as the new ACC Chairman following the resignation of Mr. Shapoorji Pallonji Mistry, SEBI Chairman has been quoted as saying:

> "We do not see [the recent board changes] as a change in control. Das is an outside director and there has been no change in control as far as the board is concerned."[2]

Even more importantly SEBI Chairman has been further quoted as stating that [the ratio of] SEBI's decision in the ACC case could be duly incorporated in the Take-over Regulations.[3]

We believe that SEBI has taken is somewhat narrow view that ignores the ground realities of corporate control practices in India. With the exception of government companies, multi-national subsidiaries and the newly spawn knowledge-based companies, most of the Indian companies are *de facto* controlled by persons or groups that do not have any where near majority holding in them. And since directors are to be elected individually, 50 plus percentage is required for "the right to appoint majority of the directors", something few Indian companies could lay claims to. Again in most cases, the concept of "control" is highly circumscribed by the covenants and conditions imposed by financial institutions in their loan agreements. Yet the ground reality is that one does effectively "control" a company, whether by influencing the constitution of the board or by formulating key policies, even with as low a shareholding as 10% or 15% even though the legal test of "control" would not be met. Not long ago, even the with less than 10% holdings the Tatas were certainly in "control" of Tata Steel. This being the case, SEBI's self-satisfying conclusion GACL has not acquired control of ACC appears to be somewhat facile. Rather, SEBI ought to have taken due cognisance of the following facts.

- GACL is amongst the top cement producers in the India and has been locked in intense jockeying with other leading players for leadership position in the industry.

- The speed with which two senior directors of GACL were inducted into the ACC board. While one of them is a promoter and Managing Director of GACL, the other is a wholetime director and was, it is pertinent to note, the Director (Finance) and later a wholetime director in ACC itself a few years ago.

- The alacrity with which GACL's Managing Director was appointed as the Deputy Chairman of ACC.

- The initial claims made by GACL that along with ACC, GACL now would control some 20 million tonnes of cement capacity. To quote from a GACL's press release, "... *The proven track record of Ambuja Cement, together with the manufacturing and distribution strengths of ACC will create a formidable strength and will make them jointly the largest cement producers in India totalling totaling to over 20 million tonnes per annum*".[4] Reportedly GACL had also factored in the ACC capacity in its own growth projections in recent presentations to the financial institutions.

- Even if it is accepted that there was no outright change in control, there can be little doubt about sharing of control, given the facts in this case.

Once it was known that SEBI would be examining the case, it does appear that the obvious motives for GACL's acquisition were quickly downplayed. The ACC acquisition was being couched under the more felicitous expression of strategic alliance and the fact that both the companies would operate independently (at least in the foreseeable future) was also being emphasised. It was even suggested that the role of the GACL nominees would be confined to attending [ACC] board meetings. It is difficult to persuade oneself that a strategic investor

with a Rs. 900 crore investment would be merely content with a hands-off policy. Mercifully no body has yet come up with a facile clarification that GACL's Rs. 900 crores investment was in the nature of a portfolio investment! Even if SEBI had come to the conclusion that GACL had not acquired "control" of ACC at the time when it did, how could it ensure that that GACL would have no role whatsoever in influencing in any manner future policy decisions and strategic direction of ACC? Could it be that we would have soon an exemption clause in the Regulations for "creeping control" similar to creeping acquisition?

It would be big blow to the fledgling corporate governance movement in the country if a leading company like ACC is managed by back seat driving, rather than in a coherent and transparent way.

Role of the ACC Board

What is the role and responsibility of the ACC's Board of Directors vis-à-*vis public shareholders* in a situation like this? Just nothing, so it seems. Other than acting quickly to induct GACL's representatives into the Board, ACC Board has done little by way of detailed communication to the shareholders as to what this meant for them. After all, the Tata-GACL deal was not just another share transfer; it would certainly be a harbinger of a major strategic change for the company. It may be argued that neither the Companies Act nor the Takeover Regulations spells out any specific role for the Board's vis-à-vis the shareholders in takeover situations. Even in the case of Reliance group's recent tender offer for 20% of BSES, BSES Board seemed to have taken the same "it-does-not-concern-us" view. The Boards in both the cases typically seemed to have taken the convenient stand that these are purely transactions between the acquirers and a group of existing shareholders and the Board has little role other than take note of the same. Elsewhere in the world the entire battle for corporate control is fought on the platform of shareholder value. The Board of target companies in countries like the UK and the US (and increasingly even in continental Europe) typically takes a

view on the adequacy of the price and seeks from the acquirers their own post-acquisition strategic plans for the target and evaluates the shareholder value implications thereof. The Board stays in constant communication with the shareholders with their own recommendations and alternatives being pursued including its own defence strategy, if any. While the legal framework in India may take some time to catch up, good corporate governance practice warrants that the Board negotiates a satisfactory deal and equal treatment to non-promoter shareholders. The Board of ACC does not seem to have taken their shareholders into confidence, let alone managed to extract a fair and equal treatment for them. Rather, they were quick to induct GACL's representatives into the ACC Board. It was even rationalised at the time that the GACL Managing Director was being nominated as the ACC Deputy Chairman for "being a noted cement industrialist".It is, however, a moot point if the ACC Board would have accepted GACL with open arms, if the latter had ventured to acquire shares from the market and not from the Tatas, the implicitly understood promoters of ACC. It was also being reiterated that the GACL representatives on the ACC board would have no executive responsibilities in ACC and that both the companies would continue to remain independent and competitors in the market place. Even assuming that GACL is not in a position to influence ACC's policy decisions, how does it help ACC's cause if two senior executive directors of one of its most aggressive and formidable competitors are made privy to key strategic and competitive issues coming up before the ACC board?

It may again be argued that the GACL nominees on the ACC board could play their twin roles without any serious conflict of interest. A similar argument in support of the controversial role of an investment bank in a takeover situation was dismissed by a US Court with a curt observation that [such an argument] "represents an epistemological leap of heroic proportions".[5]

ACC's latest Directors' Report states matter-of-factly: "Consequent upon the acquisition of the Equity Shares of the Company ...., Mr. N. S.

Sekhsaria was invited to join the Board".[5] Does it mean that ACC Board will have no problem in sending invitation to a future acquirer who might acquire 10%, or to be more precise 11.3%, of the company's shares?

This is not to say that no benefit could flow to ACC from the GACL's acquisition. There is certainly potential for cost savings for both the companies through exercise of greater bargaining power on suppliers of inputs and services. What is not so clear is the managing of what appears to be "co-operative competition" or "competitive co-operation" in the marketing front that may not be that "win-win" a situation for both. The inherent conflict of interest is certainly far too serious to paper over. It may be recalled that even the Aditya Birla companies of Grasim and Indian Rayon with more coherent ownership and clearer control structure could not manage the problems of intra-group competition in cement, leading to the eventual consolidation of the cement business under one roof, Grasim.

The role of the Financial Institutions

It has been our ungainly experience in the past that the public investment and financial institutions (PIFI) generally do not come out with glory in most corporate controversies. And the ACC episode is no exception. It may be recalled that the PIFI were widely reported to have objected to the Tatas claiming promoter status for ACC and had stalled a preferential allotment to them in ACC a couple of years ago, something scores of other company promoters have done. The Tatas reportedly peeved at the rigid institutional stand exited at the first opportunity at what is certainly a very attractive price. The institutions no doubt have managed to find themselves with eggs strewn all over their faces.

Given their claim that the ACC was not a "promoter-managed" company and considering their own nearly 25% holding in ACC and a couple of their own nominees on the ACC Board, the institutions should have been able to persudate GACL to extend the same terms to other shareholders including themselves. Not

only that they were out-manoeuvred, they also found themselves slapped with a *fait accompli* of GACL Chairman being appointed as the ACC Deputy Chairman. If the reports that they were not consulted on this appointment *ex-ante* are true, it speaks volumes about their ability and/or willingness to exercise some reasonable control over their investee companies. And as has happened so often in the past they made suitable noises in the beginning that became increasingly muted and predictably they ended up approving the entire sequence of transactions. It is doubtful whether any public interest or their own financial or investor interest was served by their failure to extract a good deal. One would also be watching institutional response to any possible and logical moves by GACL at a later stage.

The Tata Group

Having failed to get institutional blessings earlier for a preferential allotment in ACC, the Tatas had possibly exited in a huff. It could well be argued that Tatas could have easily increased their stakes either through secondary market purchases and/or through tender offer, similar to the Reliance's offer for BSES, if they were more forthright and decisive vis-à-vis ACC. It must be noted that for a good part of 1998 and 1999, ACC share price was trading in the Rs. 80-150 range, not very much off the planned preferential allotment price. Unfortunately the Tatas themselves have been ambivalent about ACC and perhaps were not convinced about the company's competitive vibrancy in the face of the onslaughts by more cost-efficient and agile competitors. It is also possible that both Tata Chemicals and Tata Tea that were the vehicles holding the ACC shares were in need of funds in their core business. And keeping Rs. 900 crore worth ACC shares as investments in their books were certainly not shareholder value enhancing. Perhaps having been denied of the promoter status by the institutions, the Tatas did not find themselves obliged to carry ACC's public investors with them. Despite the ambiguity about the promotership, ACC was generally perceived to be a Tata company by the investor community at large,

thanks to the Tata group's role in its formation some 64 years ago and the active, decades-long association of several senior Tata directors with ACC. Ideally the Tata group ought to have gone through a more transparent process of inviting bids for the divesting their stakes. Given the extreme sensitive nature of the transaction and the need to avoid any prolonged, demoralising uncertainties for ACC managers and employees, one could appreciate the manner of their quiet exit. While there is every reason to believe that Tatas had probably negotiated a good price for themselves, it is possible that they were keen to divest in favour of an Indian group rather than to a potential foreign buyer. The unseemly controversies kicked up during TOMCO's merger with HLL in 1993 might be still rankling them.

Gujarat Ambuja's strategy for ACC

Gujarat Ambuja certainly has established an enviable track record in the industry in less than a decade and is a genuine claimant for a leadership slot. It has raced ahead of the pack through sound strategy formulation, excellent project implementation and consistent achievement of high levels of operating efficiency in its plants. The ACC acquisition was certainly opportunistic, greatly aided by its financial flexibility to raise large funds at short notice. However its plans for ACC remain less coherent and have not been articulated at all. ACC shareholders who attended the Annual General Meeting held on the 19th July 2000 may not have been any wiser as to what was in store for them. One could visualise several possible scenarios for ACC under the GACL stewardship in the coming months.

- In the worst case, GACL could simply view ACC as a defensive acquisition in the sense of having been able to frustrate the same being acquired by a stronger MNC like Lafarge. Under this scenario, one may not expect any major changes in ACC except that it might be expected to accept in some form the dominance of GACL. The latter could evoke strong resentment from ACC managers and strident protests from shareholders.

- GACL could, after a few months, up its ACC stake through a combination of market purchases and public offer, particularly if ACC's share price remains at the current depressed levels. However GACL has a difficult tightrope-walking to do. If GACL is able to ramp up ACC operations in the near term, that would have a favourable impact on ACC share price, which may not be in the group's interest if they have plans to hike their stakes! On the other hand, if ACC's operations and share price continue to remain weak they would have more explaining to do before ACC's and perhaps GACL's own shareholders. So it could be a case of "damned if you do, and damned if you don't". In any event GACL would certainly need to beef up its finances to be able to indulge in another round of cash purchases.

- Sooner or later sheer industrial logic points to GACL initiating legal merger with ACC. How and when this is likely to be structured remains unclear particularly because the ACC investment is currently parked in its 60% subsidiary Ambuja Cements India Limited (ACIL) and also because the group might feel compelled to increase its ACC holding.

- GACL also has to sort out the eventual role of ACIL particularly because 40% of the latter's capital is held by international investors who would be in need of a profitable exit route. There are reports that ACIL might be taken public. This would only compound the problems of perceived cannibalisation in the market place and potential conflict of interest involving three listed cement companies GACL, ACIL and ACC belonging to the same group. ACIL may also have to justify the meagre returns on the large ACC investments in its books.

- Perhaps GACL management may have to carry out a far deeper restructuring. The GACL group has now ended up with a complex structure of "Chinese Boxes" whereby companies are controlled through a cascading chain of holding-subsidiary companies. Besides GACL, ACIL and ACC, there are two

other cement companies in the Ambuja group viz., Ambuja Cement Rajastan Limited (ACRL) and Ambuja Cement Eastern Limited (ACEL), both coming to the group's fold through acquisitions. While GACL owns 42% of ACRL (formerly DLF Cement Limited), ACIL owns 93% of ACEL (formerly Modi Cement Limited), besides the 11.3% of ACC[6]. Such group structures have become increasingly discredited as being opaque and of questionable shareholder value consequences. Companies are under pressure to unwind such structures and unlock shareholder value in favour of all the shareholders. In the current system of 20% dividend tax on distributed profits in India, this ownership structure would also be tax-inefficient. GACL management could come under increasing pressure to simplify the group structure by consolidating the entire cement business under one single entity through an eventual merger of all the companies including ACC. Such a merger could lead to some form of dilution in the Ambuja promoters' holdings in the post-merger entity. Since some restructuring of the ownership appears to be inevitable to avoid this, the complete consolidation could be a few years away and could be implemented only in stages. A merger of this magnitude, while likely to be welcomed by the stock market, is certainly bound to kick up new controversies, particularly if it includes ACC.

What is in store for ACC shareholders in the interim? Perhaps a long haul until GACL addresses these issues at its own pace and on the basis of its own priorities. By acquiring about 15% of ACC shares and having got 2 seats on the Board, GACL has managed to have more than foot at the ACC door. At the very least this would deter any potential acquirer to come up with a tender offer. Even more handicapped would be the multinational cement companies on the prowl such as Lafarge or Blue Circle that might require approval by the Foreign Investment Promotions Board (FIPB) for acquiring ACC shares. FIPB could insist on a "no-objection" from the ACC Board, which GACL nominees and other born again Swadeshis could easily deny. No MNC may like to go through another rerun of the ICI-Asian Paints episode.

All this could change if the Custodian of the Scam-tainted shares decides to sell out with the permission of the Special Court in the foreseeable future, and there are already reports to this effect. One would expect the Custodian and the Court to go through a transparent auction process to sell the estimated 10% of ACC shares vested with the Custodian. If foreign companies are NOT excluded from participating in the bid, there is good chance that a Lafarge or a Blue Circle would be back in the reckoning. This is because GACL may not be able to match their bid for financial reasons. Since any further acquisition of ACC shares by GACL would trigger the provisions relating to public offer in the Takeover Regulations, GACL would have to acquire another 20% from the public at the same price sharply increasing GACL's financial burden beyond what appears to be currently feasible levels. An MNC could, for sound strategic reasons, outbid any Indian player barring perhaps Reliance, and would be even willing to make a public offer for an additional 30% or 40% of ACC shares. If that were to happen, ACC's Board and the financial institutions would come under spot and their bluff could be called. ACC shareholders may still get a decent exit route. Unfortunately going by the experience so far, one could safely assume that no efforts would be spared to curb the enthusiasm of the Custodian and delay the sale. This would leave ACC shareholders to where the are - nursing their wounds.

Take-over Regulations: fears confirmed.

It is evident that the ACC takeover is an eminently forgettable episode for the investor. The ACC case has confirmed the fears expressed earlier [7]that the 1998 amendments to the Regulations raising the trigger-limit of public offer to 15% were patently investor-unfriendly. If the underlying rationale for the 15% threshold is that any such shareholder could effectively control the affairs of a company, there is no reason to believe that a 14.4% shareholder could do any less - particularly in the absence of any other large non-institutional shareholder as in the instant case. There is now the new danger that the "ACC model" would

be further finetuned and replayed *ad nauseum* by investment bankers and their corporate clients for gainful exits by promoters. This could typically happen through classic two-stage offers. After buying out under 15% from existing promoters by front loading the price and possibly picking up a couple of seats on the board of the target companies, the "acquirers" could squeeze out the public shareholders with a delayed public offer at a lower price.

As can be seen, the entire takeover regulations and the administration thereof seem to have the effect of making public offer a rarest of rare event, an exception rather than the rule. The increased threshold limit of 15% and the minimum public offer limit of 20% deny the investors satisfactory exit route, even though promoters could do so conveniently. Similarly the 1998 amendments also increased the annual exemption limit through the so-called creeping acquisition route to 5% per cent per annum from the earlier 2%. This, if any, gives every incentive to company management to keep the share prices depressed! Needless to reiterate all these provisions would only go to perpetuate the status quo of helping promoters control large corporate resources with minimal resources of their own, i.e., our version of capitalism without capital! In stead of compounding these already-existing flaws in the Regulations by incorporating its questionable decision in the ACC case, SEBI should quickly amend the same tightening the norms. It should, for example, revert the public offer trigger limit to 10% and mandate full-scale (100%) bid instead of the existing 20%. The entire concept of promoter-perpetuation is anachronistic and the host of public-offer exemptions linked to promoters (including the one arising from creeping acquisition) should be scrapped, particularly because promoters seem to have been conferred with plenty of rights, but no responsibilities vis-à-vis shareholders. Rather than taking an unrealistically technical view of "control", it should be provided that any (largest) holder holding at least 10% of voting rights is deemed to be in control. SEBI should remind itself that its primary responsibility is towards the public, non-institutional investors and its role in take-over situations is to ensure transparency and equal and fair treatment to *all* shareholders. Development of a

free, fair and active market for corporate control is an inseparable part of a healthy capital market and a cornerstone of a sound corporate governance system for building investor confidence.

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1 Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997, *http://www.SEBI.gov.in*

2 "Guajarat Ambuja_ACC verdic may go into takeover code", *Business Standard,* Weekend 2-21 May, 2000.

3 Guajarat Ambuja_ACC verdic may go into takeover code", *Business Standard,* Weekend 2-21 May, 2000.

4 "Gujarat Ambuja acquires shares of ACC", *http://www/gujaratambuja.com/*

5 UPR's assertion that [Smith Barney] 'litigation consultants" would be able to 'segregate mentally' confidential information when they switch into their role as 'financial consultants' is, in my opinion, an epistemological leap of heroic proportions-Chancellor William Chandler III *in Pennzoil Vs. Union Pacific Resources Inc.* in order dated October 27, 1997.

6 The Associated Cement Companies Limited, 64th Annual Report 1999-2000, Directors' Report pp 8.

7 See for details "A letter to shareholder" (from the Managing Director) in http://gujaratambuja.com/

8 N. Venkiteswaran, PM's pep package - Investors left out in the cold, *The Hindu Business Line,* October 30, 1998.

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