

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/s. SNOWCEM INDIA LIMITED UNDER REGULATION 11 OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 READ WITH SECTION 11 AND 11B OF THE SEBI ACT, 1992

1. M/s. Snowcem India Ltd. (hereinafter referred to as 'SIL') was incorporated on January 28, 1959, as a private limited company having its registered office at Killick Estate, Baji Pasalkar Marg, Chandivali, Mumbai - 400 072. It was originally promoted by M/s. Killick Industries Ltd. and Shri Geoffrey P Stevens. In March 1961, it became a deemed public limited company. Shri Geoffrey P Stevens sold his holdings to M/s. George Lillington & Company, U.K. in April 1965 and M/s. Killick Industries Ltd. sold its holdings to M/s. Kosha Investments Ltd (for brevity's sake, hereinafter referred to as 'KIL') in 1988. 'SIL' came out with a public issue in the year 1995 at a price of Rs. 100/- (Rs. 10/- + Rs. 90/- towards premium) and the paid up capital of 'SIL' after the public issue was Rs 10,50,00,000/- .
2. As per the distribution schedule submitted by 'SIL' to the Securities and Exchange Board of India (for brevity's sake, hereinafter referred to as the SEBI) on September 23, 1999, the break up of its share-holding was as follows:

Distribution Schedule as on September 23, 1999:

Shareholding of value (Rs.)	Number of shareholders	% of Total	Amount (Rs.)	% of Total
Up to 5000	8633	93.39%	1,49,12,000	14.19%
5001-10000	356	3.85%	32,63,000	3.11%
10001-20000	93	1.01%	15,19,000	1.45%
20001-30000	34	0.37%	929,000	0.88%
30001-40000	18	0.19%	6,59,000	0.63%
40001-50000	17	0.18%	809,000	0.77%
50001-100000	31	0.34%	25,56,000	2.43%
100001 & above	162	0.67%	8,04,34,000	76.54%
Total	9244	100.00%	10,50,81,000	100.00%

Share-holding pattern as on September 23, 1999:

No.		Category	No. of Shares	Percentage (%)
1	A	Foreign Collaborators	30,24,000	28.78%
	B	Non-resident Indians	2,000	0.02%
2		Govt./ Govt. Sponsored Financial Institutions		
	A	GIC & its subsidiaries	-	-
	B	Nationalised Banks	17,200	0.16%
	C	Mutual Funds	5200	0.05%
3		Other Body Corporates	36,34,300	34.58%
4		Directors and their relatives	8,200	0.08%
5		Top 50 Individual shareholders	1532700	14.59%
		Total	82,23,600	78.25%

Thus from the distribution schedule and share-holding pattern as shown above, more than 60% shares of 'SIL' was held by 2 categories, namely, other body corporates and foreign collaborators.

3. The shares of 'SIL' are listed for trading on the Stock Exchange, Mumbai, the Madras Stock Exchange, the Delhi Stock Exchange and the Ahmedabad Stock Exchange (for brevity's sake, hereinafter referred to as 'BSE', 'MSE', 'DSE' and 'ASE' respectively) apart from trading under the permitted category at the National Stock Exchange (hereinafter referred to as the 'NSE')

A substantial spurt in the price of the scrip of 'SIL' was noticed at both BSE & NSE during the period from June 1999 to August 1999. During the aforesaid period, a spurt in the volumes was also noted as compared to the period prior to June 1999 when it was observed that the scrip of 'SIL' was not very liquid.

4. Consequently SEBI called for the trading details from all the exchanges where the scrip is listed, namely MSE, DSE, ASE and BSE apart from NSE. No trades in the scrip of 'SIL' were reported at DSE and MSE during the said period. At ASE, only one trade in the scrip was reported. Since trading in other exchanges was not significant, details were collected from the members of BSE and NSE in the scrip during the relevant period of time. It was noted that at BSE and NSE, the maximum trades had taken place in the scrip during the relevant period of time. The price of the scrip of 'SIL' at NSE, during the period June 3, 1999 to August 10, 1999 ranged between Rs.55/- to Rs.127/-. Further, the trading in the scrip was found to be very infrequent before the period abovementioned, as evidenced from the trading statistics shown below:

Period	Avg. trades per day	Avg. Quantity Per day
March to May 99	3	12,521
June to August 99	173	68,370

5. From an average daily volume of 12,521 shares during the period from March to May 1999, the volumes started rising and were in the range of 60,000 - 65,000 shares per day till August 1999.

6. NSE conducted an internal investigation in the scrip of 'SIL' for the period June 3, 1999 to August 10, 1999 and submitted its report to SEBI

8. From an analysis of the trading details of the various members as well as their clients who had traded in the scrip of 'SIL', as brought out in the report, it was observed that some entities associated/close to 'SIL' had been actively involved in trading of its shares during the relevant period of time, resulting in an unusual spurt in prices and traded volumes. It was also observed that in some settlements, their contribution was as high as over 90% of the total market activity.

9. Thereafter, SEBI vide order dated June 18, 2001 ordered an investigation into the alleged price manipulation in the scrip of 'SIL'. Summons were issued under section 11(3) of the SEBI Act, 1992 (hereinafter referred to as the 'Act') to the clients, brokers as well as the personnel of 'SIL' to appear before the investigating authority and furnish various details like share transfer records, book closure, major public announcements made by 'SIL' during the calendar year 1999 i.e. from January 1999 till December 1999. Details of loans/ advances/ inter-corporate deposits (ICDs) availed by 'SIL' from the private parties/ individuals/ corporates and also sanctioned by it to various parties were collected along with details of the flow of funds from the bank accounts of 'SIL' to different entities and vice versa. Upon analysis of the same, it was inter alia found that 'SIL' had re-issued forfeited shares which were then allotted to one Shri Sourabh Bora (hereinafter referred to as 'SB') whose name along with KIL, figured among the top clients dealing in the scrip of 'SIL' during the relevant period of time.

10. These details along with the trading details of the relevant entities were analyzed. It was noted that there were major fund transfers from the account of 'SIL' to the account of KIL and from the books of KIL to the accounts of various brokers/sub brokers. Through transfers were not mere loan transactions/ICDs, but a process whereby 'SIL' transferred funds to the account of KIL, which were then utilised by it to meet its settlement obligations with various brokers/sub brokers (towards the shares of 'SIL' that were purchased by it). Thus these entities had formed a cartel, and traded substantially in the scrip, either through their own card and/or through some other brokers of BSE/ NSE (by enrolling as clients to them) and had employed manipulative tactics, either to maintain the scrip price and/or to increase the price drastically, and also create artificial volumes by continuously funding the trades. 'SIL', had used KIL as a "front entity" to jack up the price of its shares in the market.

11. In view of the findings of the investigation, SEBI issued a notice dated September 16, 2002 to 'SIL' asking it to show cause as to why suitable directions should not be issued debarring / prohibiting it from dealings in the securities market for a period of two years under section 11B of the SEBI Act, 1992 read with Regulation 11 and 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (for brevity's sake hereinafter referred to as 'the Regulations'). The company was directed to reply to the said notice within 21 days of the receipt thereof and it was also indicated that if 'SIL' failed to furnish its reply within the stipulated time, it would be presumed that it had nothing to say in the matter and SEBI would be free to take such action as deemed fit.

12. On receipt of the same, 'SIL', vide letter dated November 22, 2002 while denying all the allegations contained in the said notice, inter alia submitted that the notice was illegal, arbitrary and bad in law and issued without any application of mind in as much as the allegations raised therein was based on mere surmises and conjectures without taking into consideration the various submissions made on its behalf. 'SIL' submitted that it was a market leader in exterior paints controlling over 30% of the exterior paints market and that between June to August 1999, there were various favourable reports in the press relating to its performance and business plan, which had possibly fueled the investor interest in its scrip of 'SIL'. 'SIL' further submitted that during the relevant period, it had announced its plans to double its turnover by augmenting its manufacturing facilities and its impressive performance could be gauged from its net profits which went up by approximately 175%. 'SIL' stated that the ISO certification process was under way and consequently thus any one of the above factors could have resulted in the increased volumes and / or the price of the scrip of 'SIL'. It was stated that disregarding these factors, SEBI while investigating the alleged market manipulation of the scrip of 'SIL' arrived at certain findings which were based on preponderance of probability that were totally divorced from ground realities and on this ground alone, the show cause notice ought to be withdrawn.

13. Referring to the substantial rise in the price and volume of the scrip and the charge that KIL had substantially traded in the scrip during the relevant period of time with an intention to artificially raise the price of the scrip while acting in collusion with other entities including SB, 'SIL' submitted that the said allegation was not directed against it but KIL, and hence any reply from 'SIL' was unwarranted. It was stated that 'SIL' was unaware about the activities of KIL, SB or any other entity who had allegedly traded in its scrip and that it had acquired knowledge of trading activity in the scrip only when the shares were lodged with it for transfer in the name of the transferee. It was submitted that both 'SIL' and KIL are two separate and distinct identities under the management of their respective Board of Directors and none of the directors of 'SIL' are directors on the Board of KIL. Consequently, 'SIL' could not exercise any control on KIL's activities or business decisions and merely because KIL was one of the promoter of 'SIL', there was no basis to conclude that 'SIL' ought to have had knowledge of KIL's activities.

14. 'SIL' further submitted that being a public listed company with more than 45% of its shares held by the public, it had no control or knowledge as to how each and every of its shareholders dealt with the shares held by them in its capital. 'SIL' denied the allegation that it had lent monies to KIL to purchase its shares and stated that the area of business, the constitution of its Board of Directors, pattern of shareholding and ownership, etc. in respect of KIL are different and distinct from that of 'SIL'.

15. With reference to the allegation of the constant transfer of funds from the account of 'SIL' into the accounts of KIL and SB and back to the account of 'SIL', it was submitted that 'SIL' had, in the normal course of transaction, lent and advanced monies to KIL and continued to do so either in the form of loans and / or ICDs. Referring to a statement giving particulars of the loans / ICDs given by it to KIL, during the period 1st April 1999 to 31st March 2000, SIL stated that it had never concerned itself as to the manner in which KIL utilized the funds and that an attempt was now being made to interpret out of context the few loan transactions entered into between them and impute motives to the reasons for advancing the said loans. 'SIL' further denied the charge that the said amounts were given to KIL to purchase back its shares.

16. Denying the allegation that 'SIL' had irregularly issued and allotted 4,38,600 shares to SB, during the year 1999-2000, unaccompanied by any infusion of funds from its account. 'SIL' submitted that at a meeting of the Board of Directors held on July 28, 1999, it had passed a resolution that 4,38,600 equity shares forfeited by 'SIL', be disposed off at the price of Rs.75 per share to SB. Thereupon the company secretary was authorized to obtain from SB, a commitment, within a period of 15 days from the date of intimation, to complete the deal on or before September 30, 1999. Pursuant to the said resolution, a firm commitment was obtained from SB in the first week of September and thereafter the forfeited shares were allotted to SB on or about September 28, 1999. Subsequently the cheques issued on that behalf by SB, were duly encashed by 'SIL'. In support of the said contention, while enclosing a copy of the said resolution, 'SIL' reiterated that it had complied with the requisite legal provisions relating to the re-issue of the forfeited shares and denied that there was no infusion of funds from the account of Bora to its account against the said allotment. 'SIL' stated that SB gave his commitment to accept the allotment of the forfeited shares and had simultaneously issued cheques for the sum of Rs.3.75 crores in favour of 'SIL', which had been duly encashed by 'SIL' upon the completion of the allotment process in terms of the commitment given by SB. It was further submitted that since the banks were closed for public transaction on September 30, 1999 on account of half yearly closing, the cheques were cleared on October 1, 1999.

17 'SIL' further submitted that the ICD granted by it and allegedly paid by KIL to SB were lent by it in the normal course of business and that it was unaware of the end usage of the funds by KIL. 'SIL' stated that the cheques received by it in the first week of September 1999, were realized on October 1, 1999 and the same were unrelated to any money transfers alleged to have taken place between KIL and SB.

18 On the basis of the above submissions, 'SIL' denied that it was responsible for aiding and abetting KIL, creating a false / artificial market for the scrip or buying back its shares by funding KIL in violation of Section 77 of the Companies Act, 1956 and denied that it had violated the provisions of Regulation 4(a), (b) and (d) of the Regulations. SIL submitted that, consequently no directions were warranted against it and SEBI was not entitled to pass directions against it, prohibiting it from dealing in the securities market since it was a public listed company and such an order/direction would be against the interests of the investing public.

19 'SIL' further stated that although the show cause notice pertained to alleged substantial spurt in volumes and the rise in the scrip price for the period from June 1999 to August 1999, the allegations contained therein related to the period that was not the investigation period. Hence the notice ought to be withdrawn as there was no nexus between the investigation period and the charges levelled against it.

20. On the basis of the above, 'SIL' requested that the proceedings initiated against it be dropped and further requested for a personal hearing. Accordingly, 'SIL' was advised to appear before me for a personal hearing held on September 2, 2003. However, upon its request the hearing was adjourned and rescheduled for September 17, 2003. On the said date, 'SIL' represented by Ms Girija Balakrishnan and Mr Omkar Gupte from M/s.Malvi Ranchhoddas & Co., Solicitors and Mr B M Jhaveri, the Company Secretary, reiterated the submissions made earlier. Subsequently, vide letter dated September 24, 2003, 'SIL' reiterated the submissions made earlier vide their letter dated October 29, 2002, and further submitted that the loan transactions between KIL and 'SIL' during the investigation period were in ordinary course of business and the monies advanced by 'SIL' to KIL were not, as alleged, meant for market manipulation. 'SIL' submitted that the loan transactions had to be viewed in totality without imputing motives to the clients where none existed.

21. 'SIL' submitted that the Regulations required mens rea to be established but since the said condition was not satisfied, in their case, they could not be proceeded against on the basis of mere probability.

22. I have taken into consideration the facts and circumstances of the case and the material available on record which includes the facts leading to the investigation, submissions made on behalf of 'SIL', the findings of the investigation, the show cause notice dated September 16, 2003 and the replies of 'SIL' to the same.

23. From the distribution schedule of 'SIL' as on May 31, 1999, I have noted that KIL is holding approximately 21 Lac shares of 'SIL' constituting around 21% of its paid-up capital, although from these records, I have noted that KIL in its sworn statement, had stated that they were holding approximately 32% of the paid-up equity capital of 'SIL' as on April 1, 1999, if the shares pledged by it for availing loans/ ICDs/ advances from various parties were also to be taken into account. There is however no dispute as regards KIL being one of the Indian promoters of 'SIL'. In terms of the distribution schedule of 'SIL' dated September 28, 1999, the name of SB appears in the list of top 50 shareholders. I have also taken note of the fact that SB was one of the top 5 clients who had traded in the scrip of 'SIL' during the period under investigation and that SB had financed several deals for 'SIL' and KIL during the said period.

24 To examine the correlation of the parties involved in the case, I have examined the details of the transactions, the bank accounts, the flow of funds between KIL, SB and 'SIL' and noted that all the three, maintained bank accounts with the same banks/ branches viz, Oman International Bank, Nariman Point Branch, (CA91 - 122598 - 01), Global Trust Bank, Nariman Point Branch, (2000101699) and the United Western Bank Ltd., Fort Branch, (CA 0002 - 0000 - 004879) From an examination of the following bank accounts viz, Oman International Bank, Fort Branch, 91 - 303339 - 20, Global Trust Bank, Fort Branch, 1900101797, ABN Amro, Nariman Point Branch and Bank of America, Nariman Point Branch, I have noted that 'SIL' entered into a lot of transactions with both KIL and SB on a regular basis, especially during the investigation period and that a large number of loan transactions were executed between SB and KIL. A summary of their transactions during the year 1999-2000 (April 1, 1999 to October 1, 1999) is as under:

Name of Bank	Instrument No.	Date	Amount recd. From KIL	Amount Paid to KIL
Oman International Bank	578372	3.4.1999	3,,65,000	
- do -	578373	5.4.1999	15,000	
- do -	578376	6.4.1999	60,000	

- do -	569998	7.4.1999		6,00,000
- do -	578382	9.4.1999	50,000	
- do -	578387	10.4.1999	50,000	
- do -	570012	13.4.1999		3,00,000
- do -	570011	13.4.1999		1,00,000
- do -	570020	16.4.1999		4,00,000
- do -	570021	16.4.1999		2,00,000
- do -	595560	20.4.1999	65,000	
- do -	592565	21.4.1999	35,000	
- do -	570022	21.4.1999		10,00,000
- do -	570023	22.4.1999		9,00,000
- do -	570042	27.4.1999		1,00,000
- do -	592577	29.4.1999	50,000	
- do -	592578	29.4.1999	50,000	
- do -	592580	4.5.1999	2,00,000	
- do -	584667	4.5.1999		2,00,000
- do -	584668	4.5.1999		1,00,000
- do -	592596	6.5.1999	2,00,000	
- do -	592597	7.5.1999	35,000	
- do -	584680	7.5.1999		10,00,000
- do -	592599	11.5.1999	20,00,000	
- do -	592603	13.5.1999	25,000	
- do -	592638	15.5.1999	15,000	
- do -	592640	18.5.1999	8,000	
- do -	592642	21.5.1999	50,000	
- do -	592648	26.5.1999	29,25,000	
Allahabad Bank	337868	27.5.1999		10,00,000
Oman International Bank	597515	28.5.1999	20,00,000	
- do -	597522	29.5.1999	30,000	
- do -	597530	31.5.1999	5,25,000	
- do -	584773	31.5.1999		20,00,000
- do -	By letter	1.6.1999		12,00,000
- do -	584782	4.6.1999		8,00,000
- do -	584781	4.6.1999		2,00,000
- do -	597559	5.6.1999	5,000	
- do -	584831	17.6.1999		10,00,000
- do -	584832	17.6.1999		3,00,000
- do -	584833	21.6.1999		4,00,000
Global Trust Bank	303014	1.7.1999		22,00,000
- do -	303013	1.7.1999		20,00,000
- do -	303015	1.7.1999		5,00,000
Oman International Bank	600997	1.7.1999	12,000	
- do -	600999	2.7.1999	1,47,000	
- do -	600998	5.7.1999	40,000	
Global Trust Bank	341632	5.7.1999	1,05,000	
Oman International Bank	601002	7.7.1999	7,000	
- do -	601006	7.7.1999	55,000	
- do -	602574	12.7.1999		3,00,000
- do -	601017	23.7.1999	1,00,000	
Allahabad Bank	340450	26.7.1999		20,00,000
Oman International Bank	602579	26.7.1999		14,50,000
- do -	601024	28.7.1999	1,15,000	
- do -	602589	29.7.1999		30,00,000
- do -	602590	29.7.1999		2,00,000
- do -	601029	30.7.1999	5,45,000	
Allahabad Bank	340452	30.7.1999		20,00,000
Oman International Bank	601031	31.7.1999	1,000	
- do -	601036	4.8.1999	2,000	
- do -	602599	5.8.1999		2,50,000
- do -	602600	6.8.1999		5,00,000
Allahabad Bank	340712	9.8.1999		9,38,264

Oman International Bank	601074	11.8.1999	2,90,000	
- do -	602604	12.8.1999		15,00,000
- do -	601093	14.8.1999	2,15,000	
- do -	602640	17.8.1999		12,00,000
- do -	601095	21.8.1999	2,00,000	
- do -	601097	23.8.1999	14,000	
- do -	602657	24.8.1999		5,00,000
- do -	602657	25.8.1999		2,00,000
- do -	602661	28.8.1999		3,00,000
- do -	By letter	1.9.1999		2,00,000
- do -	601114	1.9.1999	1,00,000	
- do -	602664	2.9.1999		25,00,000
Allahabad Bank	341245	6.9.1999		5,00,000
Oman International Bank	602670	7.9.1999		6,00,000
- do -	602679	10.9.1999		21,00,000
- do -	607208	16.9.1999	50,000	
- do -	601129	16.9.1999	8,00,000	
- do -	602684	24.9.1999		45,00,000
- do -	607338	28.9.1999	3,00,000	
- do -	607339	28.9.1999	4,00,000	
- do -	607340	28.9.1999	9,20,000	
- do -	602705	29.9.1999		3,00,000
- do -	602711	1.10.1999		75,00,000
- do -	602712	1.10.1999		75,00,000
- do -	602713	1.10.1999		75,00,000
- do -	602709	1.10.1999		74,32,500
- do -	602708	1.10.1999		73,35,000
- do -	602715	1.10.1999		45,00,000
- do -	602710	1.10.1999		32,33,000
- do -	607409	1.10.1999	60,000	
Total up to 1.10.1999			1,32,36,000	8,65,38,764
Total up to 31.3.2000			25,06,39,107	14,55,03,764

25 I have also perused the statement of the bank accounts of 'SIL' and ledger of KIL which indicate that KIL had a debit balance of Rs.12.24 Cr. in the books of 'SIL' and at the end of September 30, 1999, KIL owed 'SIL' Rs. 15.17 Crores. Upon examination of the bank records of KIL and 'SIL', I find that 'SIL' had transferred money to the account of KIL. The fact that these amounts were utilised by KIL towards purchase of the shares of 'SIL' from the open market is evident from the fact that the funds given by 'SIL' were utilized towards either financing the trades or carrying out the trades in the scrip of 'SIL'. To exemplify the matter, I have noted that on an occasion where KIL received Rs.1.41 Cr. from 'SIL', either on the very same day, or within next 1-2 days, KIL used the same funds to make payments to various brokers through whom it traded in the scrip. The chronological flow of funds in some such instances is given in the table below:

Date'1999	Cheque No.	Amount	Particulars
Jun 1, 99	-	12,00,000	Received by KIL from the company
Jun 1		12,00,000	Paid by KIL to Bishwanath Murlidhar (net purchase position)
Jun 3		20,00,000	Received by KIL from the company
Jun 3	P/O	28,00,000	Paid by KIL to Bishwanath Murlidhar
Jun 9		5,00,000	Received by KIL from the company
Jun 9	597575	3,98,000	Paid by KIL to Bishwanath Murlidhar
	597536		
Jun 18		3,00,000	Received by KIL from the company
Jun 18	597589	2,53,000	Paid by KIL to Bishwanath Murlidhar
Jun 22		4,00,000	Received by KIL from the company
Jun 22	597596	2,36,000	Paid by KIL to Indraprastha Holdings
Jun 23	600972	1,82,000	Paid by KIL to Bishwanath Murlidhar
Jul 1		47,00,000	Received by KIL from the company
Jul 1	341625	20,00,000	Paid by KIL to M J Patel
Jul 1	341622	15,00,000	Paid by KIL to M J Patel
Jul 1	341624	15,00,000	Paid by KIL to Bishwanath
Jul 5		25,00,000	Received by KIL from the company
Jul 5	341629	20,00,000	Paid by KIL to Indraprastha

Jul 5	341627	5,00,000	Paid by KIL to M J Patel
Oct 1		25,00,000	Received by KIL from the company
Oct 1		20,00,000	Paid by KIL to Indraprastha Holdings
Oct 1		5,00,000	Paid by KIL to M J Patel

From the above, it can be concluded that 'SIL' had deployed its own funds to purchase back its shares, and that it had employed KIL, which received the funds and was largely responsible for the steep price movement in the scrip, for the said purpose.

26. I have noted the contention of 'SIL' that it could not be concerned about the end usage of the funds given by it to KIL. However on the basis of my findings given above and more particularly from the timing of the fund transfers from the books of 'SIL' to the account of KIL and from KIL to the accounts of the brokers/sub brokers, it is clear that fully aware of the end usage of the said funds by KIL, 'SIL' advanced the funds to KIL who then largely used the said funds for the purchase of shares from the secondary market. In almost all the occasions I find that the funds were transferred from the account of 'SIL' and credited into the account of KIL prior to their placement of transactions in the scrip. Moreover, KIL, was the predominant trader in the scrip during the investigation period and admittedly also the promoter group company of 'SIL'. By co-relating these facts along with the material available on record, a clear picture emerges that there was a tacit understanding between KIL and 'SIL', to manipulate the scrip price of 'SIL', for which funds were advanced to KIL on a regular basis. In fact from the frequent transactions with different entities such as Shri D. J. Lawyer, M/s Deejay Enterprises and M/s Fortune Apparels Pvt. Ltd., I find that, 'SIL' always used KIL for securing ICDs from different parties. Moreover, with KIL being one of its Indian promoters, 'SIL' could not have been unaware of the end usage of the funds advanced by it especially after taking into consideration, the frequencies of the fund transfers. As such vague and unconvincing defences put forth by 'SIL' that these fund transfers were mere loan transactions/ICDs or that it was unaware of the end use of the funds by KIL lacks conviction and are not tenable.

27 On the basis of the above, I am of the view that since the management of 'SIL' was interested in jacking up the scrip price, it embarked on an exercise which was meant to camouflage the unhealthy trading practices resorted by it to either create artificial volumes and/or to push up the scrip price to discernibly higher levels, albeit, with the assistance of, one of their Indian promoters KIL, among others. In view of the same, I hold 'SIL' responsible for the abnormal price movement in the scrip during the investigation period i.e June 1999 to August 1999.

28 With reference to the issue and allotment of 4,38,600 equity shares in favour of SB, and the submissions made on behalf of 'SIL' that the same had been done pursuant to the resolution passed by it on July 28, 1999, and upon perusing the copy of the said resolution, I find that the company secretary was authorized to obtain from SB, a commitment, within a period of 15 days from the date of intimation, to complete the deal on or before September 30, 1999. I have also noted the contention of 'SIL' that as the firm commitment was obtained from SB in the first week of September, the forfeited shares were allotted to SB on or about September 28, 1999, and subsequently, the cheques issued on that behalf by SB during the first week of September were encashed by 'SIL'. I have perused the bank accounts of 'SIL' as well as that of SB and of KIL and noted that the cheques issued by SB were realised on October 1, 1999, apparently since the banks were closed for public transactions on September 30, 1999 due to half yearly closing.

29 However, what stands out from the above stated facts is the issue that although SB apparently issued cheques worth Rs.3.76 Crores in favour of 'SIL' during the first week of September 1999, the forfeited shares were re-allotted to SB only on September 28, 1999. and the cheques were realised only when SB received the money from KIL, which in turn received the funds from 'SIL'. Moreover, these transactions have taken place on the same day, i.e., October 1, 1999. The same is substantiated from an examination of KIL's bank account maintained with Oman International Bank, Nariman Point Branch (wherein the company also maintained an account), which is reproduced below :

Particulars	Date	Cheque No.	Debit	Credit
Payments received from Snowcem India Ltd.	1-Oct-99	602710	-	3,233,000
Payments received from Snowcem India Ltd.	1-Oct-99	602708	-	7,335,000
Payments received from Snowcem India Ltd.	1-Oct-99	602709	-	7,432,500
Payments received from Snowcem India Ltd.	1-Oct-99	602711	-	7,500,000
Payments received from Snowcem India Ltd.	1-Oct-99	602712	-	7,500,000
Payments received from Snowcem India Ltd.	1-Oct-99	602715	-	4,500,000
Payments made to Sourabh H Bora	1-Oct-99	607403	3,232,500	-
Payments made to Sourabh H Bora	1-Oct-99	607408	4,500,000	-
Payments made to Sourabh H Bora	1-Oct-99	607401	7,335,000	-
Payments made to Sourabh H Bora	1-Oct-99	607402	7,432,500	-
Payments made to Sourabh H Bora	1-Oct-99	607405	7,500,000	-
Payments made to Sourabh H Bora	1-Oct-99	607406	7,500,000	-

I have also examined an extract of SB's bank account maintained with Oman International Bank, Nariman Point Branch which shows the receipt of funds from KIL and payment to 'SIL' on the same day:

Particulars	Date	Cheque No.	Debit	Credit
Recd from Kosha	1-Oct-1999	607403		3,232,500
Recd from Kosha	1-Oct-1999	672408		4,500,000
Recd from Kosha	1-Oct-1999	607401		7,335,000
Recd from Kosha	1-Oct-1999	607402		7,432,500
Recd from Kosha	1-Oct-1999	607405		7,500,000
Recd from Kosha	1-Oct-1999	607406		7,500,000

Paid to Snowcem	1-Oct-1999	128087	262,500	
Paid to Snowcem	1-Oct-1999	128092	2,970,000	
Paid to Snowcem	1-Oct-1999	128091	7,432,500	
Paid to Snowcem	1-Oct-1999	128088	7,500,000	
Paid to Snowcem	1-Oct-1999	128089	7,500,000	
Paid to Snowcem	1-Oct-1999	128090	7,500,000	
Paid to Snowcem	1-Oct-1999	118295	4,500,000	

30 This flow of funds evidences that, in respect of the forfeited shares reissued by 'SIL' to SB, there was no outflow of funds from the account of SB towards the shares allotted. All that 'SIL' did was transfer the funds to the account of KIL, its promoter group company. On the very same day, two other transactions took place i.e one wherein KIL transferred the funds to SB to enable him to make payments towards the allotment of forfeited shares and the second transaction being SB making payments to 'SIL' in respect of the forfeited shares allotted to him. The flow of funds have been clearly explained in the above stated tables and suggest that 'SIL' was very well aware that it had lent the money for the purpose of making payments towards forfeited shares. As mentioned above, although SB had given cheques during the first week of September 1999, these cheques were presented to the bank for realisation only in the last week of September 1999 and the actual realisation of the cheques took place on October 1, 1999. From the facts on record and the circumstances of the case, I tend to agree with the view brought out in the investigation report, that encashment of the cheques was deliberately delayed to ensure that the bank account of SB was adequately capitalized at the relevant time, by way of transfer of funds from 'SIL'. Moreover, from the records, it is noted that SB still owes more than Rs. 6 crores to KIL, which in turn owes more than Rs. 15 crores to 'SIL'. This means that SB had not made the payments to 'SIL' towards the forfeited shares allotted to him and the whole matter was just a book entry whereby 'SIL' has managed to create shares without the actual infusion of funds.

31 I have noted the submission of 'SIL' made to the investigation authority to the effect that, SB had, in addition to the Rs.3.76 Crore, made payments to it to the tune of Rs.2.53 Cr. on behalf of various other shareholders during the financial year 1999-2000. On examining the table, I find that the amount of Rs.2.53 Cr. includes three cheques realised by 'SIL' on October 1, 1999 which had been given to it by SB during the first week of September 1999. This is substantiated from the records submitted by 'SIL' which details the financial transactions between it and SB during the Financial Year 1999-2000:

Date	Name of Bank	Instrument No.	Amount
2.9.1999	Global Trust Bank	175583	7,50,000
2.9.1999	Oman International Bank	118293	7,50,000
6.9.1999	Oman International Bank	118295 *	45,00,000
6.9.1999	Oman International Bank	128088 *	75,00,000
6.9.1999	Oman International Bank	128090 *	75,00,000
6.9.1999	HSBC	352400	2,70,000
21.9.1999	ANZ Grindlays Bank	466003	3,75,000
23.9.1999	HSBC	352389	37,50,000
	Total		2,53,95,000

*: Cheques also reflected in bank statement of account of SB

32. From the above, it is evident that there was no outflow of funds from the account of SB to that of 'SIL' towards the allotment of the forfeited shares and the claim of 'SIL' to that effect is false. SB made payments to 'SIL' towards the reissue of forfeited shares on behalf of certain persons in the following manner:

Date	Name of Bank	Instrument No.	Amount	Name of Person/ Holder
6.9.1999	Oman International Bank	128087	2,62,500	Mayur Finance Ltd.
7.9.1999	- do -	128092	29,70,000	Gautam Kumar Dugar
5.9.1999	- do -	128076	14,85,000	Shyam S Agarwal
12.9.1999	- do -	128082	6,60,000	Alok Dalmia
13.9.1999	- do -	128083	6,37,500	Anita Chandak
11.9.1999	- do -	128081	1,72,500	A Jhunjhunwala
15.9.1999	- do -	128085	10,42,500	Gauri Shankar
8.9.1999	- do -	128079	6,07,500	I Jhunjhunwala
15.9.1999	- do -	128086	4,12,500	Ravi P Burman
14.9.1999	- do -	128084	2,25,000	Sandeep Khanna
6.9.1999	- do -	128077	2,02,500	S Jhunjhunwala
7.9.1999	- do -	128078	17,70,000	S Jhunjhunwala
10.9.1999	- do -	128080	1,20,000	U K Jajodia
5.9.1999	- do -	128091	74,32,500	Balkishan Tosniwal
	Total		1,80,00,000	

The co-ordinated and synchronized manner in which the funds have been transferred from the bank account of 'SIL' to that of SB and then back to 'SIL' lends credence to the argument that there was an outflow of funds from 'SIL' for the forfeited shares.

33. Thus notwithstanding the terms of the alleged Board resolution and the books of 'SIL' which show that shares were allotted to SB, I find that 'SIL' deployed its own funds to purchase the forfeited shares and the Board Resolution was passed to facilitate and add authenticity to the entire transfer proceedings wherein shares have been shown as allotted to SB by means of a 'fictitious book

entry'. As stated earlier, SB is closely associated with 'SIL' and admittedly acted as its finance broker on numerous occasions and is also among the list of top clients who had traded in the scrip during the investigation period.

34. In view of the above I hold that, although 'SIL', KIL and SB are separate and distinct identities under the management of their respective Board of Directors and do not share common directors, the same does not preclude any one entity from acting in concert with another in the manipulation of the shares of 'SIL'.

35. I have noted that 'SIL' has attributed the sudden surge in its volumes to major corporate announcements / events that took place during the calendar year 1999, i.e. January 1, 1999 to December 31, 1999. I have noted the list of such announcements made by 'SIL':

Name of Paper	Date	Subject in Short
Navbharat Times	July 22, 1999	Snowcem planning to double turnover
The Hindu Business Line	August 2, 1999	Snowcem India
Business Standard	August 4, 1999	Snowcem net vaults
The Hindu	August 5, 1999	Snowcem India
Akila	August 5, 1999	Snowcem India net profit up 175%
Money	August 9-15, 1999	Snowcem India's NP up 175%
Dainik Jagaran	August 15, 1999	Snowcem net profit increased
National Herald	August 15, 1999	Snowcem India net profit up 175%
Afternoon	August 16, 1999	Snowcem India NP up 175%
The Economic Times	August 18, 1999	Snowcem gets a colourful matt finish
Finance Today	October 4-10, 1999	Snowcem gets ISO 9002
Money	November 1-7, 1999	Snowcem India
Loksatta	November 4, 1999	Snowcem sales up 98%

36 Notwithstanding the above, there are no two opinions as regards the fact that the scrip of 'SIL', was largely illiquid, not just before the relevant period but also otherwise. Yet the fact remains that the scrip was constantly traded and that too by specific entities and the shares purchased or sold, got easily absorbed by these entities. I have noted the matching of the orders by these entities, by placing the buy and sell orders at the same price almost at the same time, thereby creating volumes. One may accept it as a coincidence in case of a solitary incident or two. However I have noted that the same has occurred regularly. The consistent regularity with which the trades got matched on the BSE and NSE, leads one to conclude, that these transactions were structured and synchronized. The structured and synchronized nature of trades is evidenced by the proximity of timing of putting-in buy and sell orders, exact matching of price and quantity of shares, resulting in matching of trades almost on every occasion between brokers dealing for specific entities, even when there are more than a few thousand brokers spread over more than 300 cities in the country. The matching of trades in the scrip of 'SIL' cannot be said to be a mere coincidence as there have been numerous instances of such transactions and these uncanny matches were not isolated transactions.

37 It is to be noted that SEBI had directed the Stock Exchanges to put in place screen based computerized trading which would enable investors to transact in a fair and transparent manner. This mechanism was also meant to ensure matching of the orders through the impersonal screen, on the basis of "best offer price" wherein the sellers would realize the true price of their securities within the circuit filters prescribed by SEBI. It is to be further noted that in order to reinforce confidence in the bourses, the exchanges under the initiative of SEBI, guaranteed settlement of the trades and also put in place the concept of the Trade Guarantee Fund, to back up this assurance. However, upon an analysis of the trades executed in the scrip of 'SIL', I have noted that the very purpose of impersonal trading has been defeated through inputting of trades which were nothing but structured transactions entered by certain entities due to the nexus between them, and the same was duly facilitated by 'SIL', by providing the funds for the immediate absorption, of its shares, pursuant to a sale or purchase which resulted in the projection of the price of its shares in a way that was not the market determined price, possibly inducing other people to buy. These trades were arranged deals entered into with a prior understanding meant to defeat the principle of ensuring the best price and were solely responsible for creating the artificial market and price rise in the scrip and 'SIL' played a major role in the said manipulation.

38 'SIL' has contended that although the show cause notice pertained to alleged substantial spurt in volumes and the rise in the scrip price for the period from June 1999 to August 1999, the allegations contained therein related to the period that was not the investigation period, and therefore, the show cause notice be withdrawn. I find that SEBI has the mandate to take into consideration various issues related to the investigation, on the basis of the evidence available on record, which have the impact on the securities market. As the events during the investigation period had a bearing on subsequent development, the action of the entities during the said period was taken into consideration to decide the issue in its entirety. In any case, no prejudice was caused to 'SIL' in as much as adequate opportunities have been offered to it at any point of time.

39 In this context it is relevant to note the provisions of Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. which reads as under :

"No person shall—

- effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;
- Indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;
-;

d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;

40 Though 'SIL' has mainly contended that, as there was no intention on its part to manipulate the market, there is no violation of the provisions of the Regulations quoted above, from a cumulative reading of the facts available on record and mentioned above and the circumstantial evidence, read with the provisions of the regulation quoted above, I find that 'SIL', acted in concert with other entities like KIL and SB among others, to create an artificial/ false market during the said period. 'SIL' supported these entities in carrying out substantial transactions in its scrip by providing financial support, thereby aiding and abetting the price manipulation of the scrip. These acts are violative of the provisions of Regulations 4(a), (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and not in accordance with sound market principles.

41 It is to be noted that persons who operate in the market, are required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings. People, who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, are not fit or proper persons to operate in the market.

42 Accordingly, in view of the facts and circumstances of the case and the blatant violations by 'SIL' of the provisions formulated by SEBI for the protection of the investors, I find that a direction restraining it from accessing the securities market and dealings in the securities market for a period of two years would be required. The passing of such an order would be necessary for the regulation of the persons operating in the capital market and the development thereof as well as the protection of the investors.

43 In view of the above and in exercise of the powers conferred upon me under Sections 19, read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the SEBI (Prohibition of fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby restrain the company; M/s Snowcem India Limited, from accessing the securities market and dealing in securities for a period of two years.

44 This order shall come into force with immediate effect.

A.K.BATRA

DATE : DECEMBER 05, 2003

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA