

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST SHRI BISHWANATH MURLIDHAR 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. SIL is engaged in the manufacture of exterior paints and allied products. 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')
2. 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. 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 during 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

3. 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. The movement of the scrip (in terms of the price) was more or less in tandem with NSE.
4. 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 the Securities and Exchange Board of India (hereinafter referred to as 'SEBI').
 5. From an analysis of the trading details of the various members as well as their clients who had traded in the scrip of SIL, it was observed that some entities associated/close to the Snowcem Group had been actively involved in trading of its shares during the relevant period 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.
 6. On the basis of the findings of the investigations of NSE and the data collected by SEBI in the meantime, from SIL, brokers of BSE etc, 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 and brokers and the personnel of SIL to appear before the investigating authority. Upon a perusal and analysis of the records submitted by these entities, it was observed that Kosha Investments Ltd (for brevity's sake hereinafter referred to as 'KIL') who is one of the promoter group companies of SIL being the Indian Promoter, was the predominant trader in the scrip during the period of investigations and that a common set of clients were trading in the scrip through BSE and NSE members at the same point of time. These clients, who had formed a cartel and traded through the members of both BSE and NSE during the investigation period, had executed several transactions for KIL. It was further noted that some of these entities, who were also brokers of BSE/NSE, had 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). Their trading in the scrip accounted for approximately 40% of the combined trading volume of NSE and BSE and this by and large contributed to the price rise in the scrip. Based on these reports, it was surmised that there was a possibility that these trades were fictitious and meant to create artificial volumes and increase the price of the scrip of SIL. Amongst these clients, Bishwanath Murlidhar, (hereinafter referred to as 'BM') who was the proprietor of M/s Bishwanath Murlidhar, member BSE, was amongst the top five ultimate clients, and also coincidentally one of the BSE brokers through whom KIL had traded substantially in the scrip during the period under investigation.
 7. From the trading details collected, it was observed that BM had registered himself as a client with the NSE broker, M/s Nariman Finvest Pvt. Ltd. and had placed orders in large quantities, which was almost equal to the average daily traded volume of that scrip at that point time and that subsequently these shares were getting absorbed into the market in spite of the fact that the scrip was not so liquid.
 8. In view of the findings of the investigation, a notice dated July 15, 2002 was issued by SEBI to BM asking him to show cause as to why directions prohibiting him, from dealings in the securities market for a suitable period should not be issued to him under section 11B of the Act read with Regulation 11 and 12 of the SEBI (Prohibition of fraudulent and unfair trade practices relating to the securities market) Regulations, 1995 (for brevity's sake hereinafter referred to as the 'Regulations'). BM was directed to reply to the said notice within 21 days of the receipt thereof and it was also indicated to him that if he failed to reply within the said time, it would be presumed that he had nothing to say in the matter and that SEBI would be free to take such action as deemed fit.
 9. Thereupon BM vide his letter dated September 5, 2002 inter alia submitted that the transactions in the scrip of SIL were undertaken by him based on its fundamentals, since the performance of SIL was found to be very good for the quarter ended March 19, 1999 and June 19, 1999. It was stated that there was a wide product acceptability and market expectation of favorable announcements by SIL due to high profits announced by it. Further there was a volatility in the market / spurt in the volumes of the scrip as a whole during the period when the sensex touched a new height of above 6000. Therefore, the transactions entered into by him or on his behalf were not responsible for the artificial raising of

the price of the scrip. As regards the charge of entering into purchase and sale of the scrip of SIL without any intention to effect the transfer of ownership, it was stated that the total volume of trading undertaken by him at NSE through M/s Nariman Finvest was only 2,87,400 shares which was 5.59% of the total volume during the period of investigation. It was further submitted that the spurt in volumes continued even after August 1999 and hence the same had no relation to the trading undertaken by him as a client in the scrip during the period. In response to the charge of creating a

false and artificial market for the price of the scrip along with KIL, BM submitted that KIL, as a client had traded in the BSE through him where he had acted as a broker and accounted for 92% of the volumes on the terminal of BM. It was stated that KIL had taken delivery of 58.56% of the shares and that as the trading was delivery based, there was no violation of the FUTP Regulations. BM expressed ignorance of the fact that KIL was one of the Indian promoters of SIL. While denying the allegation of indulging in circular trading, BM submitted that in each settlement, either the quantity purchased was squared off, or if any balance was left, delivery was taken or given as the case may be.

10. On the basis of the above submissions, BM requested that the proceedings initiated against him be dropped in the absence of any factual basis for the same and further requested that a personal hearing be granted to him. Accordingly BM was advised to appear before me for a personal hearing held on September 2, 2003. On the said date, Shri S.N. Agarwal and Shri Sandeep B. Jhunjhunwala appeared on behalf of BM and while reiterating the submissions made earlier on his behalf, further pointed out that as 60% of the trades undertaken by BM were delivery based, there was no market manipulation and as such there was no violation of Regulation 4(d) of the FUTP Regulations. Further it was stated that when they had stopped trading in the said scrip in the market on August 03, 1999, the ruling price of the scrip was Rs.101/- Three weeks later, on August 24, 1999 the price had risen to Rs.180/- As such they had not acted in concert with any other party nor was the interest of any of the investors adversely affected and hence there was no violation of Section 11 of SEBI Act which provides for directions to be issued to persons who have acted in a way that is not in the interest of the investors. Upon the conclusion of the hearing, on the request of BM, an additional period of 7 days was granted to him to file written submissions. Hence, BM sent his submissions vide letter dated September 8, 2003. On examination of the said letter, it was noted that a page was missing. The missing page being called for from BM. The said page was received thereafter at the SEBI office on September 11, 2003. Upon perusal of the contents of the said letter, it was noted that BM had with reference to the issue of spurt in volume and price, inter alia stated that the volume of the scrip was in the region of 1,0,1000 – 1,28,600 shares between 24th June, 1999 and 1st July, 1999, when BM purchased 700 shares of SIL. Thereafter, the volume increased to 1,15,500 shares on 3rd August 1999 when BM exited the market by selling 3000 shares. Similarly, the spurt in price was from Rs.50/- per share to Rs.101/- per share. On the said basis it was stated that there was practically no spurt in the volumes whereas the price had increased from Rs.50/- to Rs.100/- per share on account of the following factors :

- o Better financial performance of SIL as evidenced from the data submitted in the reply of BM dated September 5, 2002.
- o Wide acceptability of the product
- o Market expectations of favorable announcement.
- o Volatility in the market, during the period when the sensex touched a new height of above 6000.

BM stated that his volumes as a client amounted to 2,87,400 shares which was 5.59% of the total volume at the NSE during June 1999 to August 1999 and after he quit the markets on August 3, 1999, the volumes touched the level of 315,600 shares on August 6, 1999 on the NSE and the price reached a level of Rs.181/- per share on August 24, 1999. Thereby neither the spurt in volumes nor price was due to his participation in the trading of the above scrip at the NSE. .

11. With reference to the allegation of acting in a concert with a select cartel of broker, and thereby artificially rating the price, BM clarified that whereas there had been virtually no increase in the volume from the level prevailing in the last week of June 1999 to 3rd August 1999, the increase in price of the scrip was not an outcome of formation of any concert or cartel by them as a client at the NSE, otherwise the volume of the scrip would not have risen to a level of 315,600 shares on August 6, 1999 and price to a level of Rs.181/- on August 24th 1999. BM stated that if there had been cartel as alleged, the price and volumes would have stopped increasing on August 3, 1999 when they quit the market. As regards the allegation of his involvement in circular trading, as a client at NSE which pushed up the volumes to artificial levels, it was clarified that whereas the volumes of the scrip at NSE had remained virtually stagnant at a level of about 1,20,000 shares from the last week of June 1999 to 3rd August 1999, the increase in price took place after his entering the market on August 3, 1999 from a level of Rs.101/- per share to Rs.181/- per share on August 24, 1999. Referring to the illustration cited by SEBI in the show cause notice dated 31st July, 2002, BM stated that the said example indicated that BM as a client at NSE had sold 50,000 shares in Settlement No.28 which was factually incorrect since BM had sold 45,000 shares on July 20, 99 as brought out in their earlier reply dated September 5, 2002. Furthermore, the said illustration did not specify the date on which KIL had purchased 50,000 shares from Kasat who was the buying broker of NSE, the same could not be termed as circular trading. BM further pointed out that the show cause notice dated July 31, 2002 had specified the counter broker of NSE as Triveni Management Consultancy Services Ltd and their client as KIL whereas the buying broker of KIL was given as Kasat. Thus it was not clear as to whether the buying broker of KIL was Kasat or Triveni Management Consultancy Services Ltd. Similarly, in Sett. No.29 of NSE, BM was shown to have sold 50,000 shares through Nariman Fininvest purchased by KIL through Kasat whereas subsequently in the show cause notice it was stated that BM had sold 48,700 shares on 27th July, 99 and the counter party member was M/s.Indraprasth Holding Ltd for KIL as a client. On the said basis BM stated that there was no circular trading.

12. With reference to the allegation of trading of KIL as its client at BSE, BM clarified that during the period of investigation, in 13 settlements in the BSE the total volume of the scrip was 3,406,700 shares of SIL in which BM as BM of BSE had a volume of 2,85,200 shares i.e. 8.3% of the total volume of BSE out of which the volume of KIL was 2,63,200 shares. It was further clarified that at the time of registering KIL as the client, BM as a member of BSE was not aware about the fact that KIL was promoter of SIL

13. Regarding the allegation that the purchase and sale of securities had been effected to create a false and artificial market due to the fact that the entire purchase and sale of the security was with an intention not to effect transfer of beneficial ownership, it was submitted that out of the total volume of 2,63,200 shares purchased / sold by KIL as client of BM, member BSE, KIL took delivery of 154,000 shares which was to the extent of 58.50% of the total volume traded by KIL at the terminal of BM at BSE, hence the allegation that the price rise was artificial by trading was factually incorrect.

14. Regarding the allegation of adversely affecting the interest of investors, BM submitted that by participating in the trading of the above scrip as client of Nariman Fininvest at NSE, the investor interest was not adversely affected because even if an investor had purchased the share at the highest price of Rs.101/- per share on 3rd August, 99 (when BM as a client of Nariman Fininvest exited), the investor had gained Rs.80/- per share within a span of 3 weeks when the price of the scrip was Rs.181/- per share on 24th August, 99.

15. 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 by BM and his representatives during the investigation proceedings, the findings of the investigation as communicated in the show cause notice dated July 15, 2002 and the reply dated September 5, 2002 as well as the submission made before me.

16. On a cumulative analysis of the case, I find that a nexus appears to exist between BM and the other ultimate clients as well as KIL who is incidentally one of the Indian promoters; all of whom had carried out several transactions in the scrip of SIL. The following details bring out that linkage.

17. Admittedly BM had in his individual capacity traded in the scrip of SIL during the period under investigation. These orders placed in large quantities, were found to be almost equal to the average daily traded volume of that scrip at that point of time. Admittedly BM was introduced to M/s Nariman Fininvest Pvt. Ltd. in June 1998, and paid Rs.3.50 Lacs as initial margin to M/s Nariman Fininvest Pvt. Ltd. Although BM registered himself as a client with M/s Nariman Fininvest Pvt. Ltd. in June 1998, he started trading with M/s Nariman Fininvest Pvt. Ltd. only during the period under investigation and that only too in the scrip of SIL, despite the fact that BM had his own card of BSE. The dealings of BM in the said scrip with M/s Nariman Fininvest Pvt. Ltd. on NSE are given as under:

Name of BM	Sett. #	Purchases	Sales	Gross	Net
Nariman Fininvest Pvt. Ltd.	25	700	-	700	700
	26	5,500	5,500	11,000	-
	27	37,100	38,600	75,700	- 1,500
	28	50,000	45,000	95,000	5,000
	29	50,000	50,000	1,00,000	-
	30	-	5,000	5,000	- 5,000
Total		1,43,300	1,44,100	2,87,400	- 800

18. In this regard, it is also observed that BM has not done even a single transaction in his own account on the BSE, but traded only on the NSE. During the recording of statement held on December 21, 2001, it was admitted by BM that since he was not getting the required quantity on BSE, he was forced to deal on the NSE in the scrip of SIL through another member, allegedly on account of the availability of quantity of the scrip of SIL on the NSE as opposed to BSE and the fact that the rates of NSE were lower than that of BSE. However I have noted that the price and volume of both the BSE and NSE were more or less similar. In fact, the price and volume of both the exchanges; BSE and NSE were shown to BM from which BM had to concede that the volume and the price are more or less similar at both the exchanges. Hence the said argument of BM seems inadequate.

19. I have also noted that the orders placed in large quantities by BM which was almost equal to the average daily traded volume of that scrip at that point time, were getting absorbed into the market in spite of the fact that the scrip was not so liquid. Under normal circumstances, this should have been a matter of concern to BM and yet in this case it was not. I have also noted that a significant portion of the gross volume of BM in this scrip was square-off in nature on the ground that it was a normal market practice among the market participants (traders) to square off their position within the settlement. However, upon a study of the available records, I find that the sell orders of BM as a client, were getting ostensibly matched with the buy orders of KIL on NSE on the following occasions:

St. No.	Buying Broker	Client	Qty	Selling Broker	Client
28	Kasat	KIL	50,000	Nariman Fininvest	Bishwanath
29	Kasat	KIL	50,000	Nariman Fininvest	Bishwanath

29	Nariman Finvest	Bishwanath	50,000	Triveni Management	KIL
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20. From the above transactions, it can be inferred that KIL had a tacit understanding with BM and possibly with others as well who were acting in concert with KIL. The said reasoning can be sustained from the fact that the buy/sell transactions placed by KIL were getting matched with the sell/buy transactions placed by BM as brought out above. In addition to this, I have noted that KIL has entered into several transactions in which it was the ultimate client on both the sides i.e. on one side BM was buying the shares on behalf of KIL and on the other side, the counter party brokers were selling the shares on behalf of KIL. In most of these transactions, it was observed that the buy rate and sell rate placed by KIL was the same. In view of these circumstances, the reasoning for BM to trade in the scrip on NSE becomes apparent. No other meaning can be assigned to these type of transactions except that they were intended to either raise the scrip price drastically and/or to maintain the price. This kind of unhealthy trading practices employed by KIL are bound to distort the market equilibrium.

21. I have also noted the fact that BM did not have any adequate explanation to offer as regards these transactions, noted in the trade log of NSE which are clearly structured in nature.

(i) On July 20, 1999, within a short span of two minutes, BM had sold 25,000 and 20,000 shares at 2.27.26 p.m. to 2.29.19 p.m. wherein the counter party member was M/s Triveni Management Consultancy Services Ltd. and their client was KIL.

(ii). On July 27, 1999, BM had sold 48,700 shares at 12.53.35 p.m. wherein its counter party member was M/s Indraprastha Holding Ltd. and the client was once again KIL.

22. I believe that it has to be a sheer co-incidence wherein such a big quantity of shares got absorbed through some other broker almost immediately and the counter-party for all such trades was KIL, who was also trading in the scrip of SIL through BM on the BSE. These transactions as mentioned above, were nothing but structured transactions entered by the above mentioned two entities.

23. Thus a nexus between BM and the other clients as well as KIL is clearly established. I find that a majority of the transactions in the scrip of SIL were executed by these individuals who are linked to SIL. I have also noted that the total transactions executed by BM in his individual capacity as well as that as a broker were almost equal to the average daily traded volume of that scrip at that point of time with an intention to create artificial volumes and to increase the price of the scrip. The fact that the nexus was established for the purpose of market manipulation in the scrip of SIL, gains further strength from the fact that these persons acting in concert, executed manipulative trades in the scrip of SIL such that a big quantity of shares purchased by these entities got absorbed through some other broker almost immediately even though the scrip of SIL was not liquid and the counter-party for all such trades was KIL. The same resulted in the projection of the price of the shares of SIL in a way that was not the market determined price. The same is substantiated from the facts detailed above which clearly indicate that BM has traded in the scrip mainly because he was aware of the fact that KIL, which was its client for the trades on BSE, was trading heavily in the scrip and is a promoter group company of SIL although Shri Ramkishore B. Jhunjhunwala, son of BM, during the recording of statements held on October 30, 2001 submitted that BM was not aware that KIL was a promoter of SIL. This statement was made despite the fact that KIL was trading through BM since December 1998 and that its director Shri Dangarwala who was known to BM, used to place the orders for KIL.

24. From the facts and circumstances mentioned above, I find BM guilty of aiding and abetting KIL and SIL in the price manipulation of the scrip. 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-

- a. 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;
- b. Indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;
- c.;
- 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;

25. Though BM has time and again contended that, as there was no intention on his part to manipulate the market and that there is no violation of the provisions of the Regulations, from the facts abovementioned read with the provisions of the regulation quoted above, it can be inferred that the conduct of BM was not in accordance with sound market principles. BM acting in concert with other entities, carried out substantial transactions in the scrip of SIL which violated 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.

26. 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.

27. Accordingly, in view of the facts and circumstances of the case and the blatant violations by BM of the provisions formulated by SEBI for the protection of the investors, I find that a direction restraining him from dealings in the securities market for a period of Two years would be adequate. 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.

28. In view of the above, in exercise of the powers conferred up on me under Sections 19, 11 and 11B of the SEBI Act, 1992, read with Regulation 11 of the SEBI (Prohibition of fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby prohibit Bishwanath Murlidhar from buying, selling or dealing in securities in his individual capacity for a period of Two years with immediate effect.

DATE: APRIL 27th, 2004

PLACE: MUMBAI

A.K.BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA