

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: SHRI M. S. SAHOO, WHOLE TIME MEMBER**

**AGAINST SHRI ASHISH KAUSHIKBHAI SHAH
IN THE SHARES OF M/s. SOMANI CEMENT COMPANY LTD.**

Date of Hearing: 15.09.2008

Appearances:

For Noticee: Shri Ashish Kaushikbhai Shah
Shri Kaushik S. Shah, Father of the Noticee

For SEBI: Mrs. Barnali Mukherjee, Deputy General Manager
Shri B. Shyam Rao, Manager
Shri Benoy Melshiyar, Legal Officer
Shri Mohamed Rahaz P.M, Legal Officer

ORDER

[UNDER SECTIONS 11 (4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 44 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997].

1. Securities and Exchange Board of India had conducted investigations into the dealings in the shares of M/s. Somani Cement Company Ltd. (hereinafter referred to as "SCCL") for the period July 02, 2004 - April 01, 2005. The investigations, prima facie, revealed that Shri Ashish Kaushikbhai Shah (hereinafter referred to as "the Noticee") allegedly acquired 14,27,600 shares constituting 19.91% of the paid up capital of SCCL on September 05, 2003, without making the public announcement as required under Regulation 10 of the

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “the Takeover Regulations”).

2. In view of the above, a notice dated October 11, 2007 was issued to the Noticee to show cause as to why appropriate action/directions, including a direction to make public offer to acquire 20% of shares of SCCL, under Sections 11B and 11 (4) of the SEBI Act, 1992 read with Regulation 44 of the Takeover Regulations should not be issued / initiated against him. The Noticee replied to the show-cause notice, vide his letter dated November 26, 2007. An opportunity of personal hearing was granted to the Noticee before me at SEBI’s Head Office at Mumbai on September 15, 2008 at 2.30 PM. The Noticee, accompanied by his father, attended the hearing.

3. I have carefully examined the show-cause notice dated October 11, 2007 issued to the Noticee, response dated November 26, 2007 of the Noticee, other materials on record and submissions made during the course of hearing.

4. The charge levelled against the Noticee is that he acquired 14,27,600 shares, constituting 19.91% of the paid up capital (71,68,900 shares) of SCCL without making a public announcement as required under Regulation 10 of the Takeover Regulations. The Noticee has not disputed the impugned acquisition either in his reply dated November 26, 2007 to the show cause notice or during the course of personal hearing. Since the Noticee has admitted the acquisition of shares, the only issue to be decided is whether the said acquisition would trigger Regulation 10 of the Takeover Regulations, in the circumstances stated by the Noticee in his defence.

5. The Noticee has pleaded that he was not aware of the laws applicable in the matter. This is against the well known principle “*Ignorantia juris non excusat* or *Ignorantia legis neminem excusat* i.e. “ignorance of the law is no excuse”. This excuse does not enable the notice to escape from the liability for violating the law.

6. The Noticee has contended that the SCCL shares were transferred to his demat account as security for a loan of Rs. 10 lakh advanced by him to one Shri Sanjiv Shah and hence, he did not have beneficial interest in or ownership over the SCCL shares. It is difficult to accept this contention, as the said demat account of the Noticee does not indicate any record of such pledge or hypothecation. The said demat account indicates that he had acquired 19.91% of the shareholding of SCCL by way of transfer and therefore, he was the beneficial owner of the said shares, as defined in Section 2 (1) (a) of the Depositories Act, 1996.

7. The Noticee has produced a translated copy of a Memorandum of Understanding (MoU) stated to have been entered into by him with Shri Dharmeshbhai Pravinbhai Shah and Shri Sanjivbhai Pravinbhai Shah on May 12, 2004, in support of his claim that the SCCL shares were received by him as security. The said MoU can not be relied upon since it was executed subsequent to the impugned transaction. Further, the MoU does not indicate that the transactions in shares stated therein related to the shares of SCCL. Hence, I am not able to rely on the MOU to refute the facts borne out by demat accounts.

8. In view of the above, it is difficult to believe that transactions in shares of SCCL entered into by the Noticee arose out of the loan transactions. The Noticee has failed to put up a consistent case with regard to the existence of material circumstances pleaded by him in defence and failed to rebut the conclusion that he was the beneficial owner of the shares. I, therefore, find that the Noticee has violated Regulation 10 of Takeover Regulations.

9. However, I find merit in the submission of the noticee that he did not have any intention to acquire substantial number of shares or control over SCCL as evidenced by his subsequent conduct. To ascertain this, I called for his trading details from both the Depositories. CDSL and NSDL, vide their respective letters dated September 22, 2008 and September 25, 2008, have provided statements of

transactions of the Noticee. On examination of these statements, I find that the Noticee did not hold the shares of SCCL for long. I further find that he has executed a few minor transactions in the shares since 2003 till date. The last transaction of the Noticee in the shares of SCCL was on February 04, 2004 and at present, he is not holding any share of SCCL.

10. The attending circumstances, as stated above, does not justify a direction to the appellant to make the public announcement at this stage. At the same time, since his transactions in SCCL were not proper, I am of the view that this is a fit case to invoke an alternative penalty of debarring the Noticee from participating in the securities market.

11. Taking into account all facts and circumstances of the case and in exercise of the powers conferred upon me under Section 19 read with Sections 11 (4) and 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 44 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997, I hereby restrain Shri Ashish Kaushikbhai Shah (PAN No. ASCPS1113J) from buying, selling and dealing in securities in whatsoever manner or accessing the securities market directly or indirectly in any manner for a period of five years.

12. A copy of this order shall be served on all recognised stock exchanges and depositories to ensure that the Noticee does not undertake transactions prohibited in Para 11 above.

13. This order shall come into force with immediate effect.

Place: Mumbai

Date: November 24, 2008.

M.S. SAHOO

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA