

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

ORDER

UNDER SECTIONS 11, 11 (4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 (1) OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AND REGULATION 44 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVER) REGULATIONS, 1997 AGAINST SOMANI CEMENT COMPANY LTD., MR. BIMLESH KUMAR MISHRA AND MR. A. K. SINGH IN THE MATTER OF SOMANI CEMENT COMPANY LTD.

1. Securities and Exchange Board of India (SEBI) had conducted investigations into the dealings in the shares of Somani Cement Company Ltd. (SCCL) for the period July 02, 2004 - April 01, 2005. The investigations, *inter alia*, revealed that the SCCL, and its Chairman Mr. Bimlesh Kumar Mishra had allegedly made several misleading announcements, created unusual movements in volumes and prices, dematerialised shares in excess of issued shares of SCCL and failed to appoint a common agency for handling share transfer work of SCCL and therefore, violated Regulation 3 and Regulation 4 (1), 4 (2) (a), (d), (e) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (PFUTP Regulations) and Regulation 53A of the SEBI (Depositories and Participants) Regulations, 1996 (DP Regulations). The investigations further revealed that Mr. Bimlesh Kumar Mishra had allegedly acquired more than 15% shares of SCCL without complying with the requirements specified under Regulation 10 and 11 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Takeover Regulations). Mr. Bimlesh Kumar Mishra, along with Mr. A. K. Singh, acquired control over SCCL, without making open offer to acquire shares, in violation of Regulation 12 of the Takeover Regulations.

2. In view of the above, SEBI issued a common notice dated October 11, 2007 to the SCCL, Mr. Bimlesh Kumar Mishra and Mr. A. K. Singh (Noticees) to show cause as to why appropriate action / directions, including directions to restrain from accessing capital market and dealing in securities in any manner, buy back the excess 37,58,450 dematted shares and make a public offer to acquire 20% of shares of SCCL, under sections 11, 11B and 11 (4) of the SEBI Act, 1992 read with Regulation 44 of the Takeover Regulations should not be initiated/ issued

against them. I note that show cause notices (SCNs) were duly served on the Noticees. They were also reminded to respond to the same. However, no reply was received.

3. Vide notice dated August 28, 2008, an opportunity of personal hearing was granted to the Noticees on September 15, 2008. All the notices returned undelivered with an endorsement that the Noticees were not available at the given address. Vide notice dated September 19, 2008, another opportunity of hearing was granted on October 01, 2008. These notices were sent through Vadodara Stock Exchange (VSE) for serving on the Noticees by affixture. VSE, vide its letter dated September 29, 2008, responded that the notices could not be served, since the premises were occupied by others. Thereafter, a final opportunity of hearing was granted on October 08, 2008 and the notices for hearing in this regard were published on the website of SEBI.

4. The Noticees neither filed their reply to the show cause notice nor availed the opportunity for personal hearing. Hence I set the Noticees *ex-parte* and proceed to examine the allegations leveled against them based on the material available on record.

5. It has been alleged in the SCNs that SCCL and Mr. Bimlesh Kumar Mishra made following misleading corporate announcements during 2004 -2005:

I. Vide letter dated October 25, 2004, SCCL informed BSE:

(a) It was going to set up a new cement plant at Bhavnagar for which it had sought technical assistance from The Associated Cement Companies Ltd. (ACC). ACC had conducted project viability study, selected the project site, etc.

(b) It started talks with Cimmco Birla for the supply of machinery and equipment for the cement plant.

(c) Punjab National Bank (PNB) and Morgan Stanley acquired 4.35% and 0.5% stake in the said project.

II. Vide letter dated March 1, 2005, SCCL informed to BSE:

(a) It bagged an export order for Rs. 32 crore from an Iraq based firm.

(b) It plans to set up a new cement plant at Mahuva.

(c) It was considering modernisation of the said plant for which it was in dialogue with the Sate Government.

III. Quoting Mr. Bimlesh Kumar Mishra, a news report in the Business Standard on March 16, 2005 stated:

- (a) Acquisition of Apex Cement would help SCCL to enhance its capacity.
- (b) ACC was conducting project viability study for the Bhavnagar project.
- (c) SCCL bagged an export order for Rs. 32 crore from an Iraq based firm.

6. I find that:

- (a) In response to the clarification sought by BSE, ACC clarified, vide its letter dated March 17, 2005, that it had no plans to offer any technical support or services to SCCL. It also wrote to the Editor of Business Standard on March 17, 2005 that the report published in the Business Standard on March 16, 2005 by SCCL regarding technical collaboration with ACC was factually incorrect and misleading. Vide letter dated March 29, 2005, it forwarded a copy of the letter dated November 22, 2004 of SCCL to VSE stating that ACC was earlier engaged by SCCL for technical assistance in 1995 and it was misinterpreted by employees of SCCL that the engagement still continued. Thus, it appears that SCCL did not have any collaboration with ACC.
- (b) PNB, vide letter dated July 08, 2005, addressed to SEBI informed that it was holding 4,42,200 shares of SCCL as pledge from some employees of the SCCL in February 1996 for the security towards loan and apart from this, they did not have any stake in the project. The shareholding pattern of SCCL indicates that Morgan Stanley was holding 21,300 (0.3%) shares in June 2002, which reduced to 19,200 (0.27%) shares at the end of September, 2004. It continued to hold the same number of shares even at the end of December 2004. Thus, it appears that PNB and Morgan Stanley did not have the kind of stake in SCCL, as claimed by SCCL.
- (c) As per the annual results of SCCL for the year ended March 2004, its turnover was Rs.12.89 crore and it incurred a loss of Rs. 8 crore. The unaudited results for the quarter ended on September 2004 also showed loss. With this kind of performance, a Company is unlikely to bag an export order of the order of Rs. 32 crore. Besides, SCCL failed to provide any kind of evidence of the export order to the investigation.

7. I note that investigations attempted to verify the veracity of the corporate announcements from SCCL. However, in spite of receipt of letters, there was no response from SCCL. Mr. Bimlesh Kumar Mishra sent several letters in response to the summons issued by the investigating authority, but did not offer any explanation regarding the corporate announcements or their implementation. In view of the absence of any explanation from SCCL, and on the basis of details gathered by investigation from as BSE, ACC, PNB, MCS Ltd. (Registrar and Transfer

Agent of SCCL), and given the track record of performance of SCCL, I find that the substantive claims made by SCCL, as stated in Para 5 above, were false and misleading.

8. I find that after the corporate announcements on October 25, 2004, there was spurt in price and volume of the shares of SCCL. The price went up from Rs.1.83 on October 12, 2004 to Rs. 8.50 on January 11, 2005 and average daily volume increased from 35,577 shares during July 16 - October 12, 2004 to 2,75,024 shares during October 14, 2004 – January 11, 2005. It, therefore, appears the misleading announcements contributed to unusual prices and volumes.

9. I find that Mr. Bimlesh Kumar Mishra transferred 41,31,000 shares during September 2004 - March 2005 in off market to certain connected persons who sold the shares in the market. This is confirmed from the statement of Umashankar Agarwal, one of the entities to whom the shares were transferred in the off market, that he received shares from Mr. Mishra and got Re. 0.25 per share to sell the shares in the market. Mr. Mishra also sold 3,30,000 shares in the market during February - March 2005. These transactions created artificial volumes and influenced the price of the shares and unduly benefited Mr. Mishra. It is, thus, clear that SCCL and Mr. Mishra made misleading advertisements and created artificial volumes through transactions by connected persons and thereby manipulated the prices in the market and benefited from the transactions.

10. I find from the annual report of the SCCL for the year ended March 31, 2004 that its paid up capital was Rs. 7,16,89,000 comprising of 71,68,900 shares of Rs. 10 each. As per the report submitted by BSE, no further issues were made by the SCCL. However, it is observed from the reconciliation statement submitted by MCS Ltd. and as confirmed by NSDL and CDSL vide their letters dated March 07, 2005 and January 03, 2006 that NSDL and CDSL were holding 71,78,739 and 37,48,611 shares respectively on March 5, 2005. Another 7,15,000 shares were pending for dematerialisation with NSDL on the same date. Thus, there were at least 1,16,42,350 (71,78,739 + 37,48,611 + 7,15,000) shares in circulation, leaving aside the shares yet to be submitted for dematerialisation. This means that there were at least 44,73,450 (1,16,42,350 - 71,68,900) shares in excess of the issued capital and 37,58,450 shares (44,73,450-7,15,000) over and above the issued capital had already been dematerialised.

11. It find that NSDL, vide letters dated March 07, 2005 and March 15, 2005, informed SCCL about excess dematerialisation. SCCL, in its reply dated March 12, 2005 to NSDL, expressed surprise over the difference between issued and dematerialized capital and requested

NSDL to continue dematerialisation as it was only a clerical mistake. Vide letter dated April 04, 2005, SCCL sought further time for providing the clarification. However, it did not make any further correspondence in this regard. Nor did it take any action to rectify the same. On the other hand, Mr. Bimlesh Kumar Mishra, vide letter dated April 27, 2007, admitted to SEBI that the shares in excess were intentionally sold by him in order to meet the liability of SCCL towards unsecured creditors.

12. I find that MCS Ltd., vide letter dated December 27, 2005, provided an agreement entered with NSDL, CDSL, SCCL and MCS Ltd. to show that it had connectivity with NSDL and CDSL for dematerialisation and rematerialisation of shares of SCCL. They, however, stated that the entire process of physical documents for dematerialisation, rematerialisation, transfer of shares etc. was handled in house by SCCL. This is contrary to regulatory requirement that all matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point i.e. either in house by the issuer or by a Share Transfer Agent registered with SEBI. This made excess dematerialisation possible, which facilitated artificial volumes and market manipulation.

13. In view of the above, it is established that the SCCL and Mr. Bimlesh Kumar Mishra made misleading corporate announcements, failed to appoint a common agency for handling share transfer work, dematerialised shares in excess of paid up capital, offloaded the shares in the market through connected persons, and thereby created artificial market and manipulated the price of the shares of SCCL, and thus, violated Regulation 3 and Regulation 4 (1), 4 (2) (a), (d), (e) and (r) of PFUTP Regulations and Regulation 53A of DP Regulations.

14. I find from the statement of Mr. Krishna Somani that Mr. Bimlesh Kumar Mishra and Mr. A. K. Singh took over the SCCL in the year 1997 from the Somani family. The report of investigation dated April 11, 2005 submitted by BSE to SEBI and the disclosure made by SCCL to BSE establish that Mr. Bimlesh Kumar Mishra and Mr. A. K. Singh were having control over SCCL as on March 31, 1997. Further, Mr. Bimlesh Kumar Mishra crossed 15% of the paid up capital of SCCL on February 23, 2005 without making public offer as envisaged under Regulations 10 and 11 (1) of the Takeover Regulations. I find from the demat statement of Mr. Bimlesh Kumar Mishra that he did not have any shares of SCCL on February 16, 2005

However, he was holding 15,08,400 shares (21.04% of the paid up capital) of the SCCL on February 23, 2005. He transferred 15,00,000 shares to various entities on February 24, 2005 reducing his holding 0.12% of the paid capital of the SCCL. However, they did not make any public announcement and thereby violated Regulations 10 and 12 of the Takeover Regulations.

15. I note that the hearing notices could not be delivered to Noticees. I do not think any purpose will be served by directing them to buy back excess demat shares or to make a public offer. It is, therefore, desirable for SEBI to look for alternative efficacious remedy, including disgorgement, given the gravity of violations of the FUTP Regulations, Takeover Regulations and DP Regulations. Without prejudice to SEBI's right to take the alternative efficacious remedy. I am of the view that this is a fit case to restrain the Noticees from participating in the securities market in any manner.

16. Taking into account the relevant 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 Somani Cement Company Ltd. and Mr. Bimlesh Kumar Mishra (PAN No. AGCPM0469R) from buying, selling or dealing in securities in whatsoever manner or accessing the securities market, directly or indirectly, in any manner for a period of ten years. I also restrain Mr. A. K. Singh 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 three years.

17. A copy of this order shall be served on all recognised stock exchanges and depositories to ensure that the Noticees do not undertake transactions prohibited in Para 16 above.

18. This order shall come into effect immediately.

Place: Mumbai
Date: December 17, 2008

M. S. SAHOO
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA