BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PKK/AO/225/2010]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

Against

Shri Nishit B. Mehta
PAN: AGSPM6157C

In the matter of
Somani Cement Company Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') had conducted an investigation into the alleged excess dematerialization of equity shares, false corporate announcements and manipulative and fraudulent trading in the shares of Somani Cement Company Limited (hereinafter referred to as the 'SCCL'), a company listed on the stock exchanges. In course of the said investigation, the Investigating Authority had issued summonses to Shri Nishit B Mehta (hereinafter referred to as the 'Noticee') requiring the Noticee to appear before him and furnish specific documents and information as stated in the said summonses. The Noticee allegedly did not comply with the said summonses.

2. SEBI has therefore, initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'Act') against the Noticee to inquire into and adjudge the alleged violations of the provisions of Section 11C (2) read with Section 11C (5) of the Act.

Appointment of Adjudicating Officer

3. In view of the above, SEBI vide order dated September 07, 2007 appointed Ms. Babita Rayudu as Adjudicating Officer (AO) under section 15-I of the Act read with Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A (a) of the Act, the alleged violation of Section 11C (2) read with Section 11C (5) of the Act by the Noticee. Subsequent to her deputation to IRDA, Mr. Sandeep Deore was appointed as AO in the instant matter vide order dated November 23, 2007. SEBI vide order dated August 17, 2010 appointed the undersigned as the AO consequent to the transfer of Mr. Deore to the Enforcement Department.

Show Cause Notice, Reply and Personal Hearing

4. The AO issued a notice dated April 29, 2008 (hereinafter referred to as the 'SCN') under Rule 4 of the Adjudication Rules to the Noticee to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections 15A (a) of the Act, for his alleged violation of the provisions of Section 11C (2) read with 11C (5) of the Act. The allegation against the Noticee is his failure to appear before the Investigating Authority as also failure to furnish the information sought by him. This has resulted in non-compliance of the summons.

5. The SCN was sent to the Noticee through 'Registered Post with A/d' and the same was duly delivered. However, neither the Noticee nor his representative submitted any reply to the SCN. In the absence of any

written reply submitted by the Noticee, the AO considered the matter on the basis of the material available on record. The AO accordingly decided to conduct an inquiry. The AO granted an opportunity of personal hearing to the Noticee by issuing a letter dated December 10, 2009 advising him to appear before him on December 18, 2009 for the personal hearing. The notice of hearing was served on the Noticee by Affixture on December 17 2009.

6. The Noticee requested for another opportunity of hearing vide his letter dated December 18, 2009. The undersigned has given another opportunity of hearing vide letter dated August 26, 2010 advising the Noticee to appear before him on September 08 2010. The hearing was conducted at the Western Regional office of the SEBI at Ahmedabad. The Noticee appeared before the undersigned for the said personal hearing at the scheduled date and time.

7. During the personal hearing, the Noticee inter alia submitted that during the relevant period, he was located in Baruch on job for about two and half years. The non submission of information was not deliberate but due to compelling circumstances. The Noticee also undertook to give detailed written submission with regard to the charges levelled against him in the SCN latest by September 25, 2010.

8. Accordingly, vide letter dated September 17, 2010 the Noticee inter alia submitted that the notices were received by his mother who is not literate and could not understand what was delivered in the notice. Further, there was no intention on his part not to respond to the various notices.

9. In view of the above, I am proceeding with the matter on the basis of the written and oral submissions made by the Noticee and the documents and materials as available on record.

Consideration of Issues, Evidence and Findings

10. I have carefully perused the charges against the Noticee mentioned in the SCN, submissions made at the time of personal hearing, the written submissions made thereafter and the material available on record. In the instant matter the following issues arise for consideration and determination:

   a. **Whether the Noticee has violated the provisions of Section 11C (2) read with 11C (5) of the Act by non-compliance of summons issued by the Investigating Authority, SEBI?**
   b. **Whether the Noticee is liable for monetary penalty prescribed under Section 15A (a) of the Act for the aforesaid violation?**
   c. **If yes, what should be the quantum of monetary penalty?**

11. Before proceeding to decide the above issue, it is important to have a look at the abovementioned provisions as they existed at the relevant time. The same inter alia read as follows.

Investigation.

11C

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other

employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

12. I observe from the available record that the Investigating Authority had issued summonses dated July 27, 2006; November 07, 2006 and January 09, 2007 to the Noticee requiring him to appear before the Investigating Authority and furnish information and documents as mentioned in the Annexure to the summons. I find that the summons dated July 27, 2006 was duly received by the Noticee. However, he did not submit the information sought for nor appeared before the Investigating Authority. The summons dated November 07, 2006 was also received by the Noticee. The Noticee vide letter dated November 16, 2006 submitted that due to some unavoidable circumstances, he could not collect the documents and he requested one month time for production of the documents. However, he did not submit the information as stated by him.

13. I also find that the investigating Authority again issued a summons dated January 09, 2007 which was sent by courier. The Noticee however did not submit the information and also did not appear before the Investigating Authority. There are no records to show that the Noticee sent any correspondence in this regard.

14. From the foregoing, it is established beyond doubt that the Noticee had failed to comply with the summonses issued to him by the Investigating Authority and therefore, has violated Section 11C (2) read with 11C (5) of the Act.

15. Any non compliance of the summons of the Investigating authority hampers the process of investigation. The Hon'ble SAT has also

recognized the importance of compliance of summons and in the matter of ***DKG Buildcon Pvt. Ltd. v. SEBI*** **(Appeal No. 106 of 2006, Date of decision: 7.1.2009)**, it has held that

"…It is of utmost importance that every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations. If persons are allowed to flout the summons issued to them during the course of the investigations, the Board as the watchdog of the securities market will not be able to perform its duties in protecting the interests of the investors and safeguarding the integrity of the securities market."

16. It is therefore clear that timely submission to the Investigating Authority of information and documents required by him by person to whom the summons is issued is very important for effectively conducting investigation and non co-operation by an entity can be detrimental to the interest of investors and securities market on account of any delay in the investigation. Thus, any non-compliance of the summons needs to be viewed seriously.

17. As the Noticee has failed to compliy with the said summonses, I conclude that the allegation of violation of Section 11C (2) read with 11C (5) of the Act by the Noticee stands established which makes the Noticee liable for monetary penalty under Section 15A (a) of the Act.

18. The provisions of section 15A (a) of the Act as prevailing at the relevant time are reproduced hereunder :

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

19. While imposing monetary penalty it is obligatory to consider the factors stipulated in section 15J of Act which reads as under:

    15J - Factors to be taken into account by the adjudicating officer

    While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

    (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

    (b) the amount of loss caused to an investor or group of investors as a result of the default;

    (c) the repetitive nature of the default.

20. I observe that from the material available on record any quantifiable gain or unfair advantage accrued to the Noticee as a result of his default can not be computed. The extent of loss suffered by the investors as a result of the default of the Noticee can not be derived from the material available on record. It is noted that the Noticee had not complied with any of the three summonses issued to him. Therefore, the default is repetitive in nature.

Order

21. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of ₹ 2,00,000/- (Rupees Two Lakh Only) under Section 15A (a) of the Act on the Noticee viz. Shri Nishit B. Mehta. In my

view, the penalty is commensurate with the default committed by the Noticee.

22. The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, Investigation Department (ID8), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

23. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: December 01, 2010 **P K KURIACHEN**

Place: Mumbai **ADJUDICATING OFFICER**