WTM/KMA/CFD/418/07/2010

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K.M. ABRAHAM, WHOLE TIME MEMBER

ORDER

DIRECTIONS UNDER SECTIONS 11, 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATIONS 44 AND 45 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 IN THE MATTER OF ACQUISITION OF EQUITY SHARES WITH VOTING RIGHTS OF BHEEMA CEMENTS LIMITED

1. This proceedings disposes of the show cause notice (hereinafter referred to as the notice) dated March 28, 2011 issued by the Securities and Exchange Board of India (hereinafter referred to as SEBI) to Mr. S.R.B. Ramesh Chandra, Mr. S. Chandra Mohan, Mr. S Chandra Mohan (HUF), Ms. S. Laxmi Mohan, Mr. S. Karthik Sarat Chandra, Ms. Deepthi Sunethri, S.R.B. Ramesh Chandra (HUF), Ms. Vimala Kumari, Mr. S. Chatur Swaroop Chandra, Ms. S. Dharini, Mr. S. Kishore Chandra, S. Kishore Chandra (HUF) and Ms. S. Sasi Rekha (hereinafter collectively referred to as the acquirers). SEBI, vide the said notice required the acquirers to show cause as to why one or more or all actions under Regulations 44 and 45 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations) read with Sections 11, 11(4), 11B, 11D, 15I and 24 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as SEBI Act) including but not limited to the directions to divest the shares of Bheema Cements Limited, formerly known as Ckoramaandal Cements Limited (hereinafter referred to as the target company) acquired in violation of Regulation 11(2) of the Takeover Regulations and to

credit the profits made, to the Investor Protection and Education Fund established under Regulation 3 of the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations 2009, should not be initiated against them for the violations of Regulations 11(2) and 14(2) of the Takeover Regulations.

2. Brief facts of the matter as mentioned in the notice are as follows. The target company, on July 6, 2007, made a preferential allotment of 41,96,790 warrants convertible into equity shares to the acquirers. Pursuant to the conversion of the said warrants by the acquirers on December 15, 2008, their holding had increased from 69.11% to 74.01% of the total share capital of the target company. As no public announcement was made by the acquirers in respect of the aforesaid acquisition, it was alleged that the acquirers had contravened Regulations 11(2) and 14(2) of the Takeover Regulations and hence the notice. The acquirers vide letter dated May 3, 2011 replied to the notice and same is considered below in this Order. Subsequently, an opportunity of hearing was also afforded to the acquirers on May 18, 2011 wherein Mr. K.A.N. Subba Rao, Mr. U.B.S.S.Prasad and Mr. Janak C. Pandya (company secretary) appeared before me and made submissions on the lines of the aforesaid reply, as authorized by the acquirers.

3. I have considered the oral as well as the written submissions made on behalf of the acquirers including their reply dated May 3, 2011. Before proceeding further, I would like to mention the following undisputed facts:

i. The acquirers belong to the promoter group of the target company.

ii. The target company, made a preferential allotment of 41,96,790 warrants convertible into equity shares to the acquirers, on July 6, 2007.

iii. Pursuant to the conversion of the said warrants by the acquirers on December 15, 2008, their holding had increased from 69.11% to 74.01% of the total share capital of the target company.

iv. No public announcement was made by the acquirers in respect of the aforesaid acquisition.

The issue to be considered is whether the acquirers had contravened Regulations 11(2) and 14(2) of the Takeover Regulations as mentioned in the notice. The said Regulations are reproduced below for reference:

Consolidation of holdings

11(1)…….

[(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through [or with] persons acting in concert with him any additional shares [entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures seventy-five per cent (75%), the words and figures ninety per cent (90%) were substituted.

[Provided further that such acquirer may, [notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11,] without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:- (i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company; (ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).]

Timing of the public announcement of offer

14. *(1)* ……

> (2) In the case of an acquirer acquiring securities, including Global Depository Receipts or American Depository Receipts which, when taken together with the voting rights, if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in regulation 10 or regulation 11, the public announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be 3[:]

4. The submissions of the acquirers is that they were under the impression that they were eligible for exemption under Regulation 3(i)(l) read with Regulation 4 of the Takeover Regulations, in respect of the impugned acquisition. I note that there was an increase in the shareholding of the acquirers (part of the promoter group) of the target company in the year 2005. In respect of the said increase in promoter shareholding due to proposed acquisition of 30,00,000 Equity Shares of ₹10 each issued on preferential basis, pursuant to an application made under Regulation 4 of the Takeover Regulations, SEBI, vide an Order dated September 23, 2005 granted exemption from complying with Regulation 11 (1) of the Takeover Regulations. From the records, I note that SEBI had written a letter to the Company on June 26, 2007. The said letter was in reply to a letter of the Company dated February 21, 2007 and clearly stated "However, it may be noted that the exemption granted vide SEBI Order No. WTMO/11/CFD/09/2005 dated 23rd September 2005 and the said extension is only for the preferential allotment of 30,00,000 shares and not for allotment of 41,96,790 warrants as sought for in your application. Such advice should not be construed as grant of exemption from compliance of Takeover Regulations in respect of allotment of warrants and conversion thereof into equity shares at a future date". However, despite such a clear advice, the target company, on July 6, 2007, made the preferential allotment of 41,96,790 warrants convertible into equity shares to the acquirers. The said warrants were converted into equity shares by the acquirers on December 15, 2008 and thereby increasing their

holding from 69.11% to 74.01% of the total expanded share capital of the target company. This act on the part of the acquirers is highly objectionable for various reasons. Firstly, no prior application under Regulation 4(2) of the Takeover Regulations was filed by the acquirers in respect of the said acquisition seeking exemption from complying with the provisions of the Takeover Regulations. Further, a public announcement was also not made by the acquirers in respect of the said increase. Ignorance of law cannot be taken as an excuse. Facts of the case indicate that the acquirers are aware of the statutory requirements. They had made an application under Regulation 4(2) in respect of a proposed acquisition of 30,00,000 Equity Shares of ₹10 each, as stated above in this Order. Accordingly, the exemption was granted by SEBI, vide Order dated September 23, 2005. The time for complying with the said order was subsequently extended by SEBI, vide letter dated June 26, 2007. The submission of the acquirers is that while obtaining the shareholders approval in their Extra Ordinary General Meeting held on December 13, 2005, the target company had also included the allotment of 41,96,790 warrants to be converted into same number of equity shares and that the target company had also obtained in-principle approval from the Bombay Stock Exchange Limited (BSE) on January 12, 2007 for listing of the equity shares to be issued upon the said convertible warrants. According to the acquirers, the target company had also applied to the stock exchanges for the final listing approval as well as trading permission for the allotment of equity shares. The said submission cannot be accepted for the reasons stated above. The Order dated September 23, 2005 was only in respect of the acquisition of 30,00,000 Equity Shares of ₹10 each, as stated above. Further, the acquirers were specifically informed by SEBI, vide letter dated February 21, 2007 that the exemption granted by SEBI was not for the allotment of 41,96,790 warrants. Despite the above advice, the acquirers went ahead and acquired 41,96,790 warrants which were subsequently converted into the equity shares of the target company, as stated above. The said acquisition also caused in the increase in voting rights which consequently

triggered Regulation 11(2) of the Takeover Regulations. Further, the submission that the overall increase in the percentage of promoters and the promoter group was only 4.9% which are less than 5% of creeping acquisitions as allowed under Regulation 11(2) of the Takeover Regulations is also not acceptable. The said increase, as per the second proviso to Regulation 11(2), is allowed only under the following circumstances:

(i) if the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).]

The said proviso makes it clear that the said 5% benefit would not be available in respect of preferential allotment. Thus, the acquirers are mandated to make a public announcement in respect of the impugned acquisition as provided under Regulations 11(2) and 14. Further, I do not consider it necessary to consider the submission of the acquirers that SEBI, in past, in the matters of Jaiswal Neco Limited and Seahorse Hospitals Limited granted post facto exemption from complying with the provisions of the Takeover Regulations. Though, SEBI granted such exemptions, the facts of the present case are totally different from the said cases. As per Regulation 4, an exemption can be granted only in respect of a proposed acquisition. Further, this is a case, where the acquirers were informed by SEBI in advance that the SEBI Order dated September 23, 2005 would not exempt the preferential allotment of 41,96,790 warrants convertible into equity shares to the acquirers. It was further to the said advice, the acquirers acquired warrants and subsequently converted into equity shares.

As a Regulator, SEBI cannot encourage such deliberate violation. As the acquirers have deliberately contravened Regulation 11(2) of the Takeover Regulations, I do not consider it fit to consider the submissions made by them in their application dated September 20, 2010 which was filed for seeking exemption from the applicability of Regulation 10 and 11 of the Takeover Regulations, in respect of the aforesaid conversion of warrants. The said application was made subsequent to the acquisition of shares. The said application was returned by SEBI vide letter October 27, 2010 as it was not maintainable. The fact that the acquirers have deliberately violated the provisions of law is borne out from their reply, wherein it was stated "We also reiterated that even though we have not fully complied with the provisions of the Takeover Regulation and should have been applied in advance before converting the warrants into equity shares but are eligible for the post facto-exemptions under the Regulation 3(i) read with regulation (4) of the Takeover code". The above would establish that the acquirers have contravened Regulations 11(2) and 14(2) of the Takeover Regulations.

5. After finding the acquirers guilty of contravening the aforesaid provisions of the Takeover Regulations, the next step would be to decide the nature of directions that warrants to be issued to them. The notice issued to the acquirers has contemplated the issuance of one or more or all actions under Regulations 44 and 45 of the Takeover Regulations read with Section 11, 11(4), 11B, 11D, 15I and 24 of the SEBI Act including but not limited to the direction to divest the shares of the target company acquired in violation of Regulation 11(2) and to credit the profits made to the Investor Protection and Education Fund established under Regulation 3 of the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009. The acquirers were specifically informed by SEBI, vide letter dated February 21, 2007 that the exemption granted by SEBI was not for the allotment of 41,96,790 warrants and despite the said advice, the acquirers acquired 41,96,790 warrants which were

subsequently converted into the equity shares of the target company. The said acquisition had increased their voting rights from 69.11% to 74.01% (an increase of 4.9%). The said increase does get covered under the circumstances mentioned under the second proviso to Regulation 11(2). This Order has discussed as to how the acquirers had deliberately contravened the aforesaid provisions. Therefore, the acquirers have to be appropriately penalized for their practices. I find it reasonable to direct the acquirers to divest 41,96,790 shares (4.9% of the equity capital of the target company) which have been acquired in contravention of Regulation 11(2) of the Takeover Regulations and to initiate adjudication proceedings, in terms of Regulations 44(a) and 45 of the Takeover Regulations, for their default. Accordingly, the notice issued to the acquirers is disposed of with the following directions.

6. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11 and 11B of Securities and Exchange Board of India Act, 1992 read with Section 19 thereof, and Regulations 44 and 45 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, hereby issue the following directions:

a. The acquirers, Mr. S.R.B. Ramesh Chandra, Mr. S. Chandra Mohan, Mr. S Chandra Mohan (HUF), Ms. S. Laxmi Mohan, Mr. S. Karthik Sarat Chandra, Ms. Deepthi Sunethri, S.R.B. Ramesh Chandra (HUF), Ms. Vimala Kumari, Mr. S. Chatur Swaroop Chandra, Ms. S. Dharini, Mr. S. Kishore Chandra, S. Kishore Chandra (HUF) and Ms. S. Sasi Rekha shall disinvest 41,96,790 shares, which constitutes 4.9% of the equity capital of the Bheema Cements Limited, as provided under Regulation 44(a) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, within a period of two months from the date of this Order and transfer the profits, if any, arising out of such disinvestment, to the Investor Protection and

Education Fund established under Regulation 3 of the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

b. The aforesaid persons/entities shall, for the purpose of carrying out such disinvestment, appoint a merchant banker, who shall file a report to the Securities and Exchange Board of India detailing the compliance of the above direction within two weeks from the date of such compliance.

c. Adjudication proceedings under the provisions of the Securities and Exchange Board of India Act, 1992 read with Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 shall be initiated against the aforesaid acquirers in respect of their contravention of Regulation 11(2) of the said Regulations in acquiring 41,96,790 shares without making public announcement as mandated under the aforesaid provision. A separate Order would be issued appointing the Adjudicating Officer. The entities/persons may make their submissions before the Adjudicating Officer, who shall consider the same on merits without being prejudiced by the observations made in this Order and pass an appropriate Order in accordance with law within a period of three months from the date of his appointment.

7. This Order shall come into force with immediate effect.

DR.K.M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE: MUMBAI
DATE: JULY 19, 2011