

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Section 11(4)(b) and 11B read with Section 4(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 against DSQ Software Limited and Shri Dinesh Dalmia, Director

CO/17/ISD/09/2004

1.0 Background

1.1 DSQ Software Ltd., formerly known as Square D Software Ltd., (hereinafter 'the company') is a company engaged in Software business. The company was originally incorporated on March 6, 1992 under the name and style of M/s. Square D Software Limited with its registered office at Calcutta. The company later on changed its registered office effective from August 16, 1994 from Calcutta to Chennai and its registered office is at G R Complex, 407-408, Mount Road, Nandanam, Chennai 600 035. Effective from 01/04/1997, the company, changed its name from M/s. Square D Software Limited to M/s. DSQ Software Limited. The shares of the company are listed on the stock exchanges of Mumbai, Kolkata, Madras, Delhi, Ahmedabad and the National Stock Exchanges. As per the Prospectus filed with SEBI for its public issue during 1993, the promoters of the company were Shri Dinesh Dalmia and his group concerns viz.,

- a. Ganapati Commerce Ltd.,
- b. Ganapati Combines Ltd.,
- c. Lexus Exports (P) Ltd., and
- d. Square D Exports

It was observed from the details of promoter's share holding submitted by the company vide its letter dated 07/08/2001 to SEBI that share holdings of M/s. Powerflow Holding & Trading Co., Pvt., Ltd., M/s. DSQ Holdings Ltd., and Radha Dalmia (w/o Dinesh Dalmia) as on 31/03/1999, 31/03/2000 and 30/06/2000 were shown under promoters' share holding.

It was also observed from the promoter's share holding details submitted vide its letter dated 09/05/2001 to SEBI that share holdings of Hulda Properties & Trades as on 29/03/2001 were shown under Promoter's share holding. Thus Powerflow Holdings & Trading Co. Pvt. Ltd. , DSQ Holdings Ltd, Radha Dalmia and Hulda Properties and Trades, being entities associated with Dinesh Dalmia are also promoters of the company.

Directors of the company

Board of Directors as per the Company's Eighth Annual Report 1999-2000 (for 18 months period July'99 to 31 Dec 2000)

Sr. No.	Director's Name	Designation	As per Annual Report 2001-2002	Remarks
1	Mahammed Ghulam Ghouse	Chairman	Resigned 28-06-2002	Also in 1998-99 Annual Report
2	Dinesh Dalmia	Vice Chairman & Managing Director	Continuing	Also in 1998-99 Annual Report
3	Brigadier (retd.) V M Sundaram	Director	Resigned 30-06-2002	Also in 1998-99 Annual Report
4	S K Bhatnagar IAS (retd.)	Director	Ceased By Death 04-08-2001	Also in 1998-99 Annual Report
5	B K Pal	Director	Resigned 28-06-2002	Also in 1998-99 Annual Report
6	J Narayanamurthy (IDBI Nominee)	Director	IDBI withdrew on 03-07-2002	Also in 1998-99 Annual Report

7.	K M Venkateswaran	Director	Resigned 28-06-2002	In 1998-99 Annual Report as Director & Co.Secy.
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	Pawan Kumar	President & Chief Executive Officer	Since 18-05-2000
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Board of Directors as per Ninth Annual Report 2001-2002 (18 months period Jan'2001 – June 2002)

Sr. No.	Director's Name	Designation	Since
1	Govind Rajan	Chairman	28-06-2002
2	Dinesh Dalmia	Vice Chairman & Managing Director	
3	Rajesh Gupta	Director	12-06-2002
4	Shiw Kumar Agarwal	Director	20-07-2002

1.2 A sharp fluctuation in the price of the scrip of the company was noted during the period October 1999 to March 2001. The price of the scrip increased from Rs.250/- in October 1999 to Rs.2,631/- in March 2000, but by March 2001, the price had fallen to a level of Rs.150/-. The said movements in price were also accompanied by large volumes (at times touching daily average volume of 10, 00,000 shares) on all The Stock Exchange, Mumbai (BSE), National Stock Exchange (NSE) and Calcutta Stock Exchange (CSE).

1.3 In the light of the above fluctuation in price and volumes, Securities and Exchange Board of India (hereinafter referred to as "SEBI") initiated an investigation into the trades in the scrip of DSQ Software for the above periods vide order dated March 29, 2001. Based on *prima facie* findings of certain irregularities in the alleged acquisition of Fortuna Technologies Inc., USA by the company, by allocating 1.40 crore shares on share swap basis, the following directions were passed by SEBI vide order dated July 20,2001:

1. *DSQ cancel the acquisition of Fortuna Technologies being done on swap basis after following the procedure laid down under the Companies Act.*
2. *DSQ be prohibited from accessing capital market for a period of one year or completion of investigation and action thereupon whichever is later.*
3. *Shri Dinesh Dalmia, Managing Director, of the company be debarred from dealing in securities for a period of one year or completion of investigation and action thereupon whichever is later.*

Subsequently, SEBI vide order dated December 20, 2001 confirmed the aforesaid actions after giving reasonable opportunity of hearing.

1.4 Further Investigations by SEBI revealed irregularities in the allotment of shares by the company, irregularities in the dematerialization of the shares so allotted, irregularities in the sale of the shares so allotted by several brokers and entities associated with the promoters of the company. The following are the findings of investigation:

- (a) It is observed from listing application, dated February 26, 2001, submitted to the Stock Exchanges by the company that 1.70 crore shares were allotted to the following entities:

Date of allotment	No. of shares	Distn. Nos	Name of allottees
20-05-2000	30,00,000	30250001-33250000	New Vision Investment Ltd.
12-01-2001	1,40,00,000	33250001-47250000	Pref. allotment to shareholders of Fortuna technologies Inc. USA viz:

	(60,00,000)		1. Technology Trust., Mauritius
	(40,00,000)		2. Softec Corporation Ltd., Mauritius
	(40,00,000)		3. New Vision Investment Ltd., Mauritius

However, the investigation revealed that the company had allotted 1.30 crore shares to the following entities in the year 2000 itself

Name of Entities	Allotted on	Dematted on	Distinctive Nos.	Remarks
30 Lakh shares to New Vision Investment Ltd, UK	20/05/2000	30/05/2000	30250001 – 33250000	Pref. allotment
30 Lakh shares to Dinesh Dalmia, Trustee, Technology Trust	05/10/2000	17/10/2000	33250001 – 36250000	Pref. allotment
40 Lakh shares to Dr.Suryanil Ghosh, Trustee, Softec Corporation	24/10/2000	31/10/2000	36250001 - 40250000	Pref. allotment
30 Lakh shares to Dinesh Dalmia, Trustee, Technology Trust	14/12/2000	19/12/2000	40250001 – 43250000	ESOP

In 2001, 40 lakh shares were allotted in physical form as given below

Name of Entities	Allotted on	Dematted on	Distinctive Nos.	Remarks
40 Lakh shares to New Vision Investment Pvt. Ltd, New Delhi	12/01/2001	Not dematerialized	43250001 - 47250000	Pref. allotment

(b) The shares allotted to New Vision Investment Ltd, UK, Dinesh Dalmia, Trustee, Technology Trust & Dr. Suryanil Ghosh, Trustee, Softec Corporation were subsequently transferred/ sold by these entities in the market without listing / obtaining listing permission, at the stock exchanges. It was revealed that around 52.12 lakh of shares were transferred from these entities to DSQ Holding Ltd, around 15.25 lakh shares were transferred to Powerflow Holding & Trading P. Ltd., around 3.75 Lakh shares were transferred to Hulda Properties & Trades Ltd., and around 58.70 lakh shares transferred to various brokers' pool accounts and beneficiary accounts during May 2000 to January 2001.

(c) On examination of the demat account of New Vision Investment U K, it was revealed that all the 30,00,000 shares allotted to it in May 2000 were sold by it till December 2000. It is noteworthy that that partly paid up shares were dematerialized as fully paid up and sold in the market as "good delivery", although at the time of the sale of the shares on the BSE / NSE, the shares were not listed.

From the demat statement, it is observed that when 30,00,000 shares were credited to the demat account on 31/5/00, 50% i.e. 15,00,000 shares were credited to the demat account Client ID No- 10012722) on the same day itself. It was seen that this client ID belonged to broker - Mehta and Ajmera. Subsequently also on 1/6/00, another 5,00,000 shares were transferred to the DP account of Mehta and Ajmera. In aggregate 20,00,000 shares of the company were transferred to the beneficial account of Mehta and Ajmera within one day of being credited. It was also observed that these shares were in turn credited into the account of New Vision from Mehta and Ajmera. 5,00,000 shares were credited on 1/6/00, another 1,25,000 shares were credited on 5/7/00 then 1,00,000 shares were credited on 7/7/00 and finally another 1,00,000 shares were credited on 12/7/00. In this connection, Mehta & Ajmera, stated that New Vision Investment Ltd. UK was never their client and the shares credited to their account were accounted for by them for the clients belonging to the DSQ Group at the behest of Shri Dinesh Dalmia. Thus it is alleged that shares were given to meet the delivery obligation of shares of the promoter entities and associated entities.

A total of 11,50,000 shares were transferred to pool account of broker Dresdner Kleinwort Benson Securities Ltd. (DKB). After these shares were transferred to pool account of DKB, they were then sold by DKB on behalf of his clients DSQ Holdings and Hulda Properties & Trades Ltd. It was also seen that on 6/6/00, 1,00,000 shares were transferred to account no.10003998 which belonged to the broker Khandwala Finance Ltd. It was stated by Khandwala that shares were given to him by DSQ Holdings – client ID 10961072 by way of advance delivery. It was also stated that the shares were not sold or any payment made but were transferred to their beneficiary

account. Khandwala further stated that the shares were transferred back to DSQ Holdings Client ID:10257027 on 1/7/00 as per client's instructions. In this regard, it is pertinent to note that shares have first been given credited from demat account of New Vision UK but as per Khandwala, DSQ Holdings has given it. This further brings out that New Vision UK is a front entity of the company/Shri Dinesh Dalmia.

A total number of 3,25,000 shares were received by Mehta & Ajmera from New Vision Investment, UK and transferred to the account of DSQ Holdings Ltd., having Client ID No.10257027. These 3,25,000 shares were then sold by DSQ Holdings Ltd. through DKB and other brokers. Therefore, 30,00,000 partly paid up shares of Rs.10/- each at a premium of Rs.970/- were fraudulently allotted to New Vision Investment Ltd. U.K. The shares were then dematted and either sold in the market through brokers or transferred to demat account of other brokers and DSQ Holdings & Hulda and sold thereafter.

It was observed that a majority of these shares allotted on a preferential allotment basis to New Vision Ltd., were used to meet the pay-in obligation of DSQ Holdings and Hulda Properties & Trades Ltd. The shares which were not listed on the exchanges were sold on the terminals of the exchanges by entities which belong to DSQ group – DSQ Holdings and Hulda Properties & Trades Ltd. and delivered at the time of pay-in obligations as good delivery knowing that the shares were not listed.

Therefore, it was observed In respect of the 30,00,000 shares allotted to New Vision on 20.5.2000 that the shares were allotted to New Vision Ltd., UK on a partly paid up basis; however, in its application to the depository – National Securities Depository Limited (NSDL) for dematerialization, the company had indicated that the shares were fully paid-up and consequently, the partly paid up shares were dematerialized by the depository as fully paid up and given the same ISIN in which the shares issued earlier were credited. Shares were then sold by promoter associated entities. All the shares were thus offloaded by December 2000 itself i.e. within 7 months and the listing application was made afterwards to the Stock Exchanges in January 2001 (i.e. after 8 months) for these shares. Moreover, it was seen from the Board resolution of the company passed on 29.3.2001, that the 30,00,000 partly paid up shares were later forfeited by the company on account of non-payment of call money by New Vision Ltd., UK.

In this regard, on examination of details of the demat transaction statement and account opening form of New Vision Investments Ltd., UK with NSDL, it was seen that one Mr. Hitendra Naik was the authorized signatory to the account. Upon inquiry with the Depository Participant (DP) Integrated Enterprises (India) Limited, regarding local contact person / address, it was noted that that one Mr. Gopalkrishnan at 407, Anna Salai Nandanam, G. R. Complex, Chennai – 600 035 used to interact with the DP Integrated Enterprises Ltd. It was further observed that Mr Gopalkrishnan was Director in DSQ Holdings Ltd. and DSQ Industries Ltd. Further, the address of Mr Gopalkrishnan is the same as that of the registered office of DSQ Software Ltd.

- (d) The company allotted 30,00,000 equity shares to Dinesh Dalmia Technology Trust on preferential allotment basis on 5/10/2000. On perusing the account opening form and the Trust Deed, it was found that the address of the Trust was 407, Anna Salai, G. R. Complex, Nandanam, Chennai – 600 035 which is the registered Office address of the company. The Trust Deed was made on 03/10/2000 appointing Shri Dinesh Dalmia, Shri Pawan Kumar and Dr. Suryanil Ghosh as the trustees of the DSQ Employees Stock Option Trust and calling the Trust as Technology Trust. The authorized signatory to the account was Shri Dinesh Dalmia. On detailed scrutiny of the demat transaction statement of Dinesh Dalmia Technology Trust revealed that these 30,00,000 shares were subsequently credited to the demat account of DSQ Holdings Ltd. (client ID –10257027) from the Dinesh Dalmia Technology Trust A/c in the following manner: 15,00,000 shares on 17/10/00, 10,00,000 shares on 18/10/00 and 5,00,000 shares on 19/10/00. Detailed investigations brought out that majority of these shares were sold by DSQ Holding Ltd., in the market.

It was observed from the demat statement that when the 30,00,000 shares were credited into the demat account Dinesh Dalmia Technology Trust on 17/10/00, on the same day itself i.e. 17/10/00, as much as 15,00,000 shares (50%) were credited to the demat account of DSQ Holding Ltd. Thereafter, within 1-2 days i.e. on 18/10/00 and 19/10/00, the remaining 15,00,000 shares were credited to the demat account of DSQ Holding Ltd., resulting in a nil balance in the account by 19/10/00. DSQ Holdings Ltd, in turn delivered these shares to pool account of brokers like Dresdner, Harish Biyani, Titan Stock Broking, SMIFS and others. In this connection, Harish Biyani stated that he had never heard of Dinesh Dalmia Technology Trust and it was not its client. He further stated that the shares were received by them (broker) from Hulda Properties against their pay in obligations. As regards the 4,00,000 shares (out of 5,00,000 shares) credited on 19/10/00 by Dinesh Dalmia Technology Trust to DSQ Holdings Ltd., and then to Radha Dalmia and to SMIFS. It was stated by SMIFS that Radha Dalmia was never their client and the shares were received by SMIFS from Powerflow (320000 shares) and Hulda (80000 shares). SMIFS submitted a letter in this regard. Perusal of the letter shows that shares are indicated to have been transferred on account of Maya Trade links Ltd. When SMIFS was confronted with this, it was stated by it that the shares might have been given by Hulda and Powerflow on behalf of Maya Trade Links.

It is further observed from the demat statement of Dinesh Dalmia Technology Trust that another 30,00,000 shares of the company were credited to this demat account of Dinesh Dalmia Technology Trust on 19/12/2000. These shares ostensibly issued under ESOP scheme and allotted in electronic form in the same ISIN in which the shares of the company were traded. These shares were not given listing permission by BSE and NSE. Scrutiny of demat transaction statement reveals a similar trend of outflows regarding these 30,00,000 shares. A total of 12,75,000 shares moved out on 20/12/00. Of these 12,75,000 shares, 9,50,000 shares were credited to demat account no.10257027- DSQ Holdings and 3,75,000 to demat account no.10290048. This account belonged to Hulda Properties and Trades Ltd – company associated with the promoters of the company. Additionally on 23/12/2000, another 5,25,000 shares were credited to the demat account no 10290056. Inquiries revealed that this account belonged to Powerflow Holdings- another company associated with the promoters of the company. Finally, out of the remaining 11,50,000 shares, 9,00,000 shares were once again credited to the demat account of DSQ Holdings on 27/12/00 and 2,50,000 shares were credited to the demat account of DSQ Holdings on 04/01/01.

Hulda delivered these shares in the pool account of the brokers Prabhudas Liladhar and Investmart. The client of Prabhudas Lilladher and Investsmart was DSQ Holdings for aforesaid sales. The delivery was effected from demat account of Hulda. As regards credit of 21,00,000 shares to DSQ Holdings, investigation brought out that a major portion of these shares were in turn credited to 4 major demat accounts with following Calcutta based entities.

Date	Client Id	Name	No. of Shares
20/12/00	10046063	D K Singhania	611250
20/12/00	10035286	Doe Jones	76250
22/12/00	10000706	Maya Trade Links	200000
22/12/00	10012722	Himanshu Ajmera	230000
Total			1117500

Apart from the above, Shares were also transferred to pool account of following brokers against the pay-in obligations of either Hulda Properties or DSQ Holdings

Date	Name of the Broker	No. of Shares
20/12/00	Harish Chandra Biyani	12,500
27/12/00		5,00,000
04/01/01		2,00,000
08/01/01	Dresdner Kleinwort Benson	1,00,000
03/01/01	Dinesh Kumar Singhania & Co.	1,50,000

As regards movement of shares in the demat of account of Powerflow, the examination of said demat account revealed that Powerflow then delivered these shares to the pool account of the broker Investsmart on 27/12/00. These shares were sold by DSQ Holdings through the broker Investsmart on NSE. Thus, shares appear to have been first given by Powerflow to broker as some security which were later sold by broker.

Therefore, it was observed that 60,00,000 shares were credited by the company to Dinesh Dalmia Technology Trust with shares purportedly allotted on a preferential allotment basis and ESOP. Out of these 60,00,000 shares DSQ holdings was credited with 51,00,000 shares, Hulda was credited with 3,75,000 shares and the remaining 5,25,000 shares went to Powerflow holdings. A major portion of these shares were either sold in the market directly or indirectly through entities associated with the promoters of the company or were transferred to related entities and certain brokers. It was also observed that these entities – DSQ Holdings, Powerflow and Hulda used to deliver shares for obligations of associated entities. DSQ Holdings delivered shares for delivery obligations of Powerflow / Hulda and vice versa. All these shares which were sold in the market were not listed shares. This increased the supply of the shares in the market as more shares were traded in the market than actually issued and paid-up capital of the company and listed on a stock exchange. The aforesaid Trust Deed was made on 3/10/2000 appointing Shri Dinesh Dalmia, Shri Pawan Kumar and Dr. Suryanil Ghosh as the trustees of the DSQ Employees Stock Option Trust and calling the Trust as Technology Trust. The authorized signatory to the account was Shri Dinesh Dalmia.

- (e) On perusing the demat transaction statement of Dr. Suryanil Ghosh Trustee Softec Corporation, it was observed that on 31/10/2000, 40,00,000 shares of the company were credited to this account. These shares were fraudulently issued and allotted by the company on preferential allotment basis. These shares were allotted to Dr. Suryanil Ghosh Trustee Softec Corporation on 24/10/2000 in electronic form under the existing ISIN of the company. These shares were not given listing permission by BSE/NSE. Further, on perusing the account opening form and the Trust

Deed, it was found that the address of the Trust was 407, Anna Salai, G. R. Complex, Nandanam, Chennai – 600 035 which is the registered Office address of the company. The Trust Deed was made on 24/10/2000 appointing Shri Dinesh Dalmia, Shri Pawan Kumar and Dr. Suryanil Ghosh as the trustees of the DSQ Employees Stock Option Trust and calling the Trust as Softec Corporation. The authorized signatory to the account was Shri Dinesh Dalmia. It was observed from the demat account that out of these 40,00,000 shares, 26,50,000 shares were transferred to the pool account of brokers, 10,00,000 shares were transferred to beneficiary account of Powerflow, 1,12,000 shares were transferred to beneficiary account of DSQ Holdings and 2,20,000 shares were transferred to other beneficiary accounts. There was a balance left of 18,000 shares in the account.

10,00,000 shares which were transferred to the account of Powerflow Holding & Trading Co. on 31/10/2000 were subsequently transferred to the pool account of the broker Dresdner Kleinwort Benson Securities. These shares were then sold through the broker by DSQ Holdings and Hulda Properties & Trades. 26,50,000 shares were transferred to pool account of various brokers such as Harish Biyani, DKB and SMIFS etc. In this connection, Broker - Harish Biyani stated that he had never heard of Softec Corporation and it was not its client. He further stated that the shares were received by them (broker) from Hulda Properties against their pay in obligations. Regarding credit of 2,00,000 shares, it was stated by SMIFS that the shares were received by SMIFS from Hulda. SMIFS submitted a letter in this regard. Perusal of this letter shows that shares were indicated to have been transferred on account of Maya Trade links Ltd. When SMIFS was confronted with this, it was stated that the shares might have been given by Hulda on behalf of Maya Trade Links. No other explanation was given by SMIFS.

Thus, it was observed that shares were transferred against the sales affected by entities belonging to the DSQ group through these brokers. 1,12,000 shares transferred to DSQ Holdings were pledged by it with ILFS. 50,000 shares transferred to Maya Trade Links were sold by it through SMIFS Securities. From the above findings, it appears that one crore shares were fraudulently allotted by the company – 60,00,000 shares to Dinesh Dalmia Technology Trust and 40,00,000 shares to Dr. Suryanil Ghosh Trustee Softec Corporation. These shares were not listed on BSE and NSE. These shares were sold in the market by entities associated with the DSQ group i.e. DSQ Holdings, Powerflow Holding and Hulda Properties. These shares were delivered in the market knowingly that the shares did not have the listing permission. In both the trust Shri Dinesh Dalmia (Managing Director of the company) was the trustee and authorized signatory. These shares were then brought into the market by either delivering them directly to pool account of brokers against the sales by group entities or indirectly by first transferring the shares to account of group entities and then selling them into the market. Some of the shares were also transferred to beneficiary account of certain brokers and other entities. It is therefore apparent that the company and other group entities have actually indulged in transactions of fraudulent nature.

(f) Investigations revealed that out of these 1.3 crore shares fraudulently allotted and dematted (30 lakh in May 2000, 70 lakh in October 2000 and 30 Lakh in December 2000), except for 18,000 shares in the account of Dr. Suryanil Ghosh Trustee Softec Corporation, all other shares were transferred and sold in the market.

(g) Subsequently, 40,00,000 shares were also fraudulently allotted to New Vision Investment Ltd., New Delhi in physical form. Personal visit of SEBI official to the address No.207 Paras Apartments, Madhu Vihar, Pratapganj, New Delhi, which was given in the demat account opening form, revealed no evidence of any company existing at that address. Investigations revealed that there was promoter-broker nexus between Shri Dinesh Dalmia and the broker, Biyani Securities for the 10,00,000 shares. It was brought out that out of 40,00,000 shares, 10,00,000 shares were given to broker – Biyani Sec in physical form for tiding over his payment crisis and were then deposited by Biyani Sec with the Calcutta Stock Exchange. The broker admitted that it spoke to Shri Dinesh Dalmia who said he would try to help him and shares in the name of New Vision Investment Private Ltd. were given to it. The balance 30 lakh shares were not traceable as New Vision Investments Pvt. Ltd was not available at the registered address as stated earlier.

(h) During the investigation it was also found that the company allotted 1.70 crore of shares to various entities in a fraudulent manner. It was also found that the company entered into an agreement on June 28, 2001 with Shri Ashok Thummalachetty and Fortuna Technologies Inc., a US based company for acquiring the shares of Fortuna Technologies Inc. in a non transparent manner. There were lot of irregularities and different versions of the above deal were given by Shri Dinesh Dalmia and Shri Ashok Thummalachetty. There were two sets of agreements with different dates namely November 27, 2000 and June 28, 2000 supposedly entered between the above parties were submitted. The consideration for the above deal also varies in the agreements. In one of the agreement it was stated that the deal was on shares swap basis and in another agreement it was stated that the deal was on 100% cash basis.

(i) Shri Dinesh Dalmia, the Managing Director of the company, while furnishing information to SEBI on oath on July 16, 2001 stated that he could not recall the name and address of the common custodian where the shares have been kept. In this regard, it was observed that:

- a. Shri Dinesh Dalmia as a managing Director himself has written to the Registrar and NSDL about this allotment and applied for Demat credit

- b. Out of 1.70 crore shares, 60 lakh shares allotted Dinesh Dalmia Technology Trust and 40 lakh shares allotted to Dr. Suryanil Ghosh Trustee Softec Corporation. As one of the trustees to these two trusts, Shri Dinesh Dalmia opened the Demat account in these two names by entering into the client agreement with DPs, Signed Demat account opening form with DPs etc.

Therefore, the statement on oath given by Dinesh Dalmia was false and intended to mislead the investigation.

1.5 In view of the above, it was *inter alia* alleged that the following violations were committed by the company and Shri. Dinesh Dalmia

- a. The company did not inform the said allotments of 1.30 crore shares to the stock exchange where its shares have been listed when these shares were actually allotted and dematted during year 2000 to the aforesaid entities. 30 lakh shares allotted to New Vision Investment Ltd., UK on 20-05-2000 are partly paid (10% of allotment money) and 90% of allotment money has not been paid. However these shares were introduced into market as fully paid shares and without listing. There is no evidence to suggest that the company received any consideration for allotment of 60 lakh shares to Technology trust and 40 lakh shares to Softec Corporation. However these shares were also introduced into market as fully paid shares and without listing.
- b. The company vide letter dated December 15, 2000 to NSDL submitted a certified true copy of the extract of the resolution passed at the allotment committee meeting of the company held on December 14, 2000. As per the said resolution the company allotted 30 lakh equity shares to Dinesh Dalmia, trustee, Technology Trust, (which received 1250 applications for 30 lakh shares of Rs.10/- each at a premium of Rs.250) against Employees Stock Option Scheme. However, these shares were transferred to various entities other than the employees and without any lock-in period. The said trust was operated by Shri Dinesh Dalmia, Managing Director of the company.
- c. Shri Dinesh Dalmia, Managing Director of the company is the authorized signatory and one of the trustees in both the above mentioned trusts viz. Technology Trust and Softec Corporation Trust. It was also noted that none of the allottees are traceable in their given addresses. These 1.30 crore shares which were allotted by the company to various associated entities as mentioned above were not listed on the stock exchanges. However, the allottees offloaded the said shares through the trading system of the exchange misrepresenting the same as listed shares on the stock exchange with the assistance of certain persons and entities like DSQ Holdings Ltd., Hulda Properties and Trades Ltd., Mehta & Ajmera, Powerflow Holdings Ltd., Radha Dalmia, Himanshu Ajmera, Maya Trade Links Ltd., Mittal Securities, Khandwala Finance Ltd., Dinesh Singhania and Doe Jones Investments & Consultants P. Ltd.
- d. The company knowingly gave false information to the Stock Exchanges vide its letter dated February 26, 2001 that the company received full money due from the applicants towards allotment of 30 lakh shares allotted to New Vision Investment Ltd. Further the company knowingly gave false information to the Stock Exchanges vide its letter dated February 26, 2001 that the company received the entire application money from the allottees consideration other than cash towards allotment of 1.40 crore shares allotted on January 12, 2001 to New Vision Investment Ltd. (Mauritius), Softec Corporation Ltd.(Mauritius) and Technology Trust (Mauritius).
- e. The company knowingly gave wrong information of allottees and date of allotments to the Stock Exchanges. They gave the same distinctive numbers which were already allotted to different entities and were already sold/introduced in to the market/system before listing. Due to the company's non-disclosure of the allotments of 1.30 crore shares to the various entities during the year 2000 to the Stock Exchanges the company has defrauded innocent investors who bought unlisted shares during the year 2000.
- f. The company through its associate/front entities sold/introduced around 1.30 crore unlisted demat shares of the company in to the market/system. By this act, fraud was perpetuated on the investors who bought the said shares. As the company concealed the material facts pertain to above allotments from its shareholders, fraud was also perpetuated on them.
- g. The company advanced moneys to DSQ Holdings Ltd. amounting to Rs.15 crore, Rs.54 crore to Mehta & Ajmera, Rs.25 crore to Accord Capital Ltd., and Rs.20 crore to Wood Stock Securities Pvt., Ltd. It is observed that among other entities, these entities also dealt in the shares of the company to create artificial volume in the trading of the company's shares. It is also observed that the said entities entered into synchronized trades to create the artificial

volume and also to offload the unlisted demat shares of the company into the market/system through associated / front entities.

2.0 Show Cause Notice and Personal Hearing

In the light of the above findings of investigation, show cause notice dated 7.10.2003 was issued to the company and its directors enumerating the above findings of investigation and also advising them to show cause why action of the following nature should not be taken against them:

- (a) They be directed to deposit a sum of Rs.840 Crore in a separate escrow account till completion of investigation by SEBI
- (b) They be prohibited from accessing the capital market and dealing in securities for a period of 10 years
- (c) They be directed to buy 1.30 crore shares of DSQ Software which have not been listed on any recognized stock exchange from the securities market and that the same be retained in a separate demat account to be opened for the purpose till permission for reduction in capital is obtained from the competent authority.

Personal Hearing and Inspection of documents

The company and Shri Dinesh Dalmia were given an opportunity for personal hearing as under:

Name of the Persons	Dates of Hearing	Date of Inspection granted
1. DSQ Software Ltd,	22/11/2003	16/01/2004
	17/12/2003	11/02/2004
	27/01/2004	17/02/2004
	04/03/2004	
2. Dinesh Dalmia,	22/11/2003	16/01/2004
	17/12/2003	11/02/2004
	27/01/2004	17/02/2004
	04/03/2004	

Other directors of the company were also issued show cause notice and given opportunity for personal hearing. Separate orders are being passed against them.

The company and Dinesh Dalmia made the following submissions in their reply to the show cause notice and in the course of personal hearing

(i) DSQ Software

The company has not submitted any reply to the allegations leveled against it in the show cause notice dated 07/10/2003. The company represented by M/s. Hariani & Co., on 27/11/2003 has sought an adjournment of the hearing to submit their reply. Accordingly another date of hearing was granted on 17/12/2003. However, the

counsel of the company M/s. Hariani & Co., who appeared on 17/12/2003 on behalf of the company, has once again sought the adjournment of the hearing for 3 more weeks to submit their reply to the show cause notice. Accordingly another date of hearing was granted on 14/01/2004 and it was postponed to 27/01/2004. M/s. Hariani & Co., the counsel of the company vide its letter dated 29/12/2003 had sought inspection of documents relied upon by SEBI to frame the charges against it. As requested, the inspection of documents was provided on 16/01/2004. However, the company did not turn up for the inspection. For the hearing of 27/01/2004, the company has been represented by another counsel M/s. Basant Tilokani & Co., who also sought one more date for inspection and adjournment of the hearing for one month. In the hearing, the counsel was informed that they have to provide a list of documents they want to inspect and the counsel assured that they will submit a list of documents they want to inspect within a day or two. As requested, another date of hearing was granted on 04/03/2004 and the company was informed that it will be the final hearing. Inspection of documents that are relied by SEBI to issue the show cause notice dated 07/10/2003 were provided to the counsel of the company on 11/02/2004 and 17/02/2004 and copies of documents that were opted for by the counsel were also furnished to them.

In the final hearing of 04/03/2004 also, the company or its counsel did not submit any reply to the allegations leveled against them in the show cause notice dated 07/10/2003 and instead they sought inspection of SEBI's investigation reports and documents relied upon by SEBI to pass the orders dated 20/07/2001 and 20/12/2001 for which no appeal was filed by the company.

The company did not make any submissions on the merits of the findings in the show cause notice, rather, they made preliminary objections on the powers of SEBI to issue the directions mentioned in the show cause notice and on the violations of principles of natural justice in view of the fact that copy of the investigation report was not furnished to them.

(ii) Dinesh Dalmia

Shri Dinesh Dalmia has not submitted any reply to the allegations leveled against him in the show cause notice dated 07/10/2003. Shri Dinesh Dalmia represented by M/s. Hariani & Co., (hereafter 'the counsel') on 27/11/2003 has sought an adjournment of the hearing to submit their reply. Accordingly another date of hearing was granted on 17/12/2003. However, the counsel who appeared on 17/12/2003 has once again sought the adjournment of the hearing for 3 more weeks to submit their reply to the show cause notice. Accordingly another date of hearing was granted on 14/01/2004 and it was postponed to 27/01/2004. The counsel vide its letter dated 29/12/2003 had sought inspection of documents relied upon by SEBI to frame the charges against Shri Dinesh Dalmia. As requested, the inspection of documents was provided on 16/01/2004. However, Shri Dinesh Dalmia or his counsel did not turn up for the inspection. However, in the hearing of 27/01/2004, the counsel has sought one more date for inspection and adjournment of the hearing for one month. In the hearing, the counsel was informed that they have to provide a list of documents they want to inspect and the counsel assured that they will submit a list of documents they want to inspect within a day or two. As requested, another date of hearing was granted on 04/03/2004 and the company was informed that it will be the final hearing. Inspection of documents that are relied by SEBI to issue the show cause notice dated 07/10/2003 were provided to the counsel of Shri Dinesh Dalmia on 11/02/2004 and 17/02/2004 and copies of documents that were opted for by the counsel were also furnished to them.

Shri Dinesh Dalmia submitted his reply to the said show cause notice vide letters dated 4.3.2004 and 19.3.2004. Submissions were also made on behalf of Shri Dinesh Dalmia in the course of personal hearing on 4.3.2004. The submissions in brief were as under:

a. Chapter III of the FUTP Regulations, 2003 provides for investigation and Regulation 9 of the said regulations provides that the investigating authority shall on completion of investigation after taking into account all relevant facts shall submit a report to the appointing authority. They stated that they are entitled to a copy of the report submitted to the Board by the investigating authority. They further

submitted that they had sought for inspection of certain documents which have been referred to and / or relied upon by SEBI and / or those which are necessary for them to file a proper and complete reply.

- b. They referred to several letters wherein they sought inspection of documents and further submitted that their request for inspection of documents relied upon by SEBI in passing orders dated 20.7.2001 and 20.12.2001 was refused.
- c. They further stated that they are entitled to the documents mentioned in Point b above on the following grounds :
 - i. It appeared that the present investigation commenced in 2001-2002 and therefore the investigations commenced under 1995 regulations.
 - ii. Under both the 1995 and 2003 regulations, the Board has to satisfy itself that there is a violation of regulations after considering the report submitted by the investigating officer / authority. Both the regulations make it clear that the report is a firm basis of the Board's decision to proceed further in the matter. That being the case, they are entitled to a copy of the report submitted by the investigation officer to the Board. Failure to give inspection / furnish copies of the report would amount to a breach of natural justice.
- d. The alleged violations were of the provisions of the FUTP regulations, 1995 and regulation 12 of those regulations prescribes the directions that could be passed by SEBI. When contrasted with regulation 11 of the FUTP Regulations, 2003 (which repealed the 1995 regulations) it was clear that the directions proposed to be issued would not fall within the scope of Regulation 12 of the 1995 regulations.
- e. The powers conferred on SEBI vide Sections 11 and 11B of the SEBI Act are remedial in nature whereas the proposed directions are penal in nature and therefore outside the scope of the said provisions. The proposed directions calling upon them to deposit Rs.840 crore till completion of investigation by SEBI and the police authorities is penal in nature. In view of the fact that the basis of arriving at the above figure is the highest value of the 1.3 crore shares of DSQ in the year 2000. The current value of the shares is approx Rs.13 crore only.
- f. In view of the punishment imposed vide orders of 20.7.2001 and 20.12.2001, the proposed directions without any change of circumstances cannot be considered as remedial in nature. Further, in view of the fact that the orders of 20.7.2001 and 20.12.2001 have become final as no appeal was filed, the proposed direction would constitute double jeopardy and the same would be contrary to the constitution and permitted.
- g. The impugned show cause notice is an attempt to review the order of 20.12.2001 which not only according to SEBI has become final but the punishment / penalty levied therein has been meted out to them. The Board being a creation of a statute does not have any inherent power in the absence of statutory provisions or review of its earlier order. The impugned show cause notice seeks to increase the penalty / punishment already levied and meted out to them.
- h. The show cause notice has been issued pursuant to powers contained in Section 12 of the SEBI Act. The said provisions do not have within their purview directors of a company since a director of a company cannot be described as a person associated with the securities market. Therefore, on a proper reading of Section 12 and applying the principle of ejusdem generis it would emerge that the Board has no power to issue directions to the directors of a company.

3.0 Consideration of issues

3.1 I have considered the facts of the matter, the findings of investigation, the submissions of the company and its directors and other material on record. I find that the following issues arise for consideration:

a) Whether the allotment and dematerialization of the shares issued on a preferential basis by the company on 20.5.2000, 5.10.2000, 24.10.2000 and 14.12.2000 were done in an irregular manner?

It is alleged that the allotments were done without following the procedures prescribed in the Companies Act, 1956 as amended from time to time and without receiving adequate consideration from the allottees.

It is also alleged that the shares were dematerialized and introduced in the secondary market in a fraudulent and irregular manner. I shall deal with each allotment separately hereunder.

(i) New Vision Investment, UK.

I note that the company had allotted 30,00,000 shares of Rs.10/- each at a premium of Rs.970/- per share on a preferential allotment basis to New Vision Investment Ltd. UK on 20.5. 2000. The said shares were allotted on a partly paid up basis. At the time of issue of the shares, application money @ Rs.98/- per share was to be collected which was Re.1 towards share capital and Rs.97/- towards share premium. The balance call money of Rs.882/- per share was to be collected in three calls. I also note that the Board of the company vide resolution passed on 29.3.2001 forfeited the shares on account of non-payment of call money.

However, at the time of application for listing, the company showed the said shares as fully paid up. The said shares were subsequently dematerialized with the same ISIN number as the listed shares of the company and transferred to the demat accounts of stock brokers and to entities associated with/controlled by the promoters of the company such as DSQ Holdings and Hulda Properties & Trades Ltd. Moreover, in its application to NSDL, the company falsely represented that the shares had been fully paid up. Thus, I find that the said shares were dematerialized in an irregular manner and by misrepresenting facts to the depository viz. NSDL.

I also note that listing application for 30,00,000 shares allotted on 20.5.2000 was made on 26.2.2001 i.e. after 9 months and importantly after all these shares were earlier declared as fully paid and sold in the market till December 2000 after demat credit was given.

(ii) Dinesh Dalmia Technology Trust

I note that the company allotted 30,00,000 equity shares to Dinesh Dalmia Technology Trust (hereinafter referred to as "the trust") on preferential allotment basis on 5.10.2000. I further observe that another 30,00,000 shares of the company were credited to the account of Dinesh Dalmia Technology Trust on 19.12.2000. These shares ostensibly issued by the company under ESOP scheme.

With regard to 30,00,000 shares allotted to Dinesh Dalmia Technology Trust on 5.10.2000, I also note that vide letter dated 9.10.2000, the company had informed NSDL that the allotment committee had in its meeting held on 5.10.2000 allotted 30,00,000 shares to Technology Trust . However, vide letter dated 9.10.2000, the company intimated Registrars to the Issue - MCS that the allotment committee of the company in its meeting held on 20.4.2000 have allotted 30,00,000 shares to Technology Trust. The company later confirmed that the allottee was Dinesh Dalmia Technology Trust; however, the discrepancy in dates of allotment as mentioned in both the letters remained.

Out of these 60,00,00 shares, DSQ holdings was credited with 51,00,000 shares, Hulda Properties & Trades Ltd. was credited with 3,75,000 shares and the remaining 5,25,000 shares went to Powerflow Holdings. A major portion of these shares were either sold in the market directly or indirectly through entities associated with the promoters of the company or were transferred to related entities and stock brokers. It was also observed that these entities – DSQ Holdings, Powerflow and Hulda used to deliver shares for obligations of associated entities. DSQ Holdings delivered shares for delivery obligations of Powerflow / Hulda and vice versa. All these shares which were sold in the market were not listed shares. This increased the float of the shares in the market as more shares were traded in the market than actually issued and paid-up capital of the company.

(iii) Dr. Suryanil Ghosh Trustee Softec Corporation

I note that on 31.10.2000, 40,00,000 shares of the company were credited to the demat account of Dr. Suryanil Ghosh Trustee Softec Corporation. These shares were issued and allotted by the company on preferential allotment basis. These shares were allotted in dematerialized format under the existing ISIN of the company.

From the above findings, it is apparent that one crore shares were fraudulently allotted by the company – 60,00,000 shares to Dinesh Dalmia Technology Trust and 40,00,000 shares to Dr. Suryanil Ghosh, Trustee Softec Corporation. These shares were allotted in electronic form and under the same ISIN under which the existing shares were being traded. These shares were issued without following procedure laid down under the Company Law. These shares were issued without receipt of consideration. These shares were sold in the market by entities associated with the DSQ group i.e. DSQ Holdings, Powerflow Holding and Hulda Properties without being listed on any stock exchange. These shares were delivered in the market knowingly that the shares did not have the listing permission. Since the shares were issued under the same ISIN, it was considered as good delivery by investors because distinctive numbers of the shares could not be traced in the dematerialized form. Taking advantage of the provisions that the company can allot further shares under the same ISIN, the company allotted the above shares to the aforesaid trusts. In both the trusts Shri Dinesh Dalmia (Managing Director of the company) was the trustee and authorized signatory. These shares were then brought into the market by either delivering them directly to pool account of brokers against the sales by group entities or indirectly by first transferring the shares to account of group entities and then selling them into the market. Some of the shares were also transferred to beneficiary account of certain brokers and other entities

From the above I find that the company has allotted shares to entities connected with its promoters, dematerialized the shares and thereafter caused the shares so dematerialized to circulate in the market through stock brokers and other entities without obtaining listing permission from BSE or NSE. Further, I note that the company has failed to inform to stock exchanges and provided stock exchanges with false information regarding allotment of shares. I find that they have thus played a fraud upon investors in the securities market. I further find that the said allotment of 1.30 crores was not included in the Annual Report of the unlisted share for the year 2000-01. I further find that in respect of the said allotments, no consideration has been received by the company, rather, the proceeds of sale of the shares valued at around Rs.630 crore have gone to the entities associated with the company and controlled by Dinesh Dalmia. This amount has been calculated on basis of prevalent market price on date of transfer of shares to demat account of other brokers / entities, details of which are as under :-

Entity	Net outflow Qnty	Net value
New Vision UK	30,00,000	2,40,57,92,500
Dinesh Dalmia Technology Trust	60,00,000	2,33,55,05,625
Softec Corporation	39,82,000	1,55,94,67,650

Total	1,29,82,000	6,30,07,65,775
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Thereby, the shareholders of the company and investors were defrauded by the company.

I further note that the listing application filed by the company with stock exchanges mentioned that 1.70 crore shares were allotted to the following entities:

Date of allotment	No. of shares	Distn. Nos	Name of allottees
20-05-2000	30,00,000	30250001-33250000	New Vision Investment Ltd.
12-01-2001	1,40,00,000 (60,00,000) (40,00,000) (40,00,000)	33250001-47250000	Pref. allotment to shareholders of Fortuna technologies Inc. USA viz: 1. Technology Trust., Mauritius 2. Softec Corporation Ltd., Mauritius 3. New Vision Investment Ltd., Mauritius

However, I also note that the company had allotted 1.30 crore shares to the following entities in the year 2000 itself as given below

Name of Entities	Allotted on	Dematted on	Distinctive Nos.	Remarks
30 Lakh shares to New Vision Investment Ltd, UK	20/05/2000	30/05/2000	30250001 – 33250000	Pref. allotment
30 Lakh shares to Dinesh Dalmia, Trustee, Technology Trust	05/10/2000	17/10/2000	33250001 – 36250000	Pref. allotment
40 Lakh shares to Dr.Suryanil Ghosh, Trustee, Softec Corporation	24/10/2000	31/10/2000	36250001 - 40250000	Pref. allotment
30 Lakh shares to Dinesh Dalmia, Trustee, Technology Trust	14/12/2000	19/12/2000	40250001 – 43250000	ESOP

In 2001, 40 lakh shares were allotted in physical form as given below

Name of Entities	Allotted on	Dematted on	Distinctive Nos.	Remarks
40 Lakh shares to New Vision Investment Pvt. Ltd, New Delhi	12/01/2001	Not dematerialized	43250001 - 47250000	Pref. allotment

From the above, I note that the distinctive numbers of the shares allotted by the company on 12.1.2001 are the same as that of the shares allotted during the period May to December 2000. Further, the shares allotted in 2000 had been sold by the allottees in the market much before the allotment on 12.1.2001

In this regard, I note that DSQ Software had entered into an agreement with one Shri. T.C. Ashok on 27.11.2000 to acquire M/s. Fortuna Technologies Inc. of USA (hereinafter referred to as "Fortuna"). The proposed acquisition was to be funded through a share swap i.e. shares of DSQ Software were to be issued on a preferential basis to three Overseas Corporate bodies viz. Technology Trust Ltd, Softec Corporation Ltd and New Vision Investments Ltd. These Overseas Corporate bodies owned by T.C. Ashok were registered in Mauritius and held the entire capital of Fortuna. I also note that DSQ Software and T.C. Ashok had entered into an agreement to the above effect on 27.11.2000 wherein DSQ Software agreed to allot 14 million equity shares to the three OCB's at Rs.685/- per share on a non-repatriable basis. The shares were to be allotted to the OCBs in a dematerialized form. It was also observed that DSQ Software in Extra ordinary General meeting held on 11.12.2000 had resolved to issue and allot 1.50 crore equity shares on preferential basis to various foreign nationals, foreign companies, non-residential Indians, OCB's etc and that the equity shares so issued were to rank pari passu with the existing equity shares of the company. Accordingly, the Board of Directors in their meeting held on 12.1.2001 had allotted 1.40 crore shares at a premium of Rs.675/- per share on a non-repatriable basis in demat form to the following entities.

Technology Trust Ltd., Mauritius	60,00,000 shares
Softee Corporation Ltd., Mauritius	40,00,000 shares
New Vision Investment Ltd., Mauritius	40,00,000 shares

I have already mentioned supra that the allotments made in the year 2000 were without receipt of adequate consideration and these shares had been dematerialized without obtaining listing permission. Read in this context, I find that the allotments made on 12.1.2001 was not genuine and were intended to regularize the allotments made during the period May to December, 2000 in a fraudulent manner.

In this regard I note that vide order dated July 20, 2001 the then Chairman of SEBI passed the following directions: -

1. *DSQ cancel the acquisition of Fortuna Technologies being done on swap basis after following the procedure laid down under the Companies Act.*
2. *DSQ be prohibited from accessing capital market for a period of one year or completion of investigation and action thereupon whichever is later.*
3. *Shri Dinesh Dalmia, Managing Director, of the company be debarred from dealing in securities for a period of one year or completion of investigation and action thereupon whichever is later.*

Subsequently, SEBI vide order dated December 20, 2001 confirmed the said order.

I note that Regulation 3 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995 (hereinafter referred to as the "FUTP Regulations, 1995") provided that no person shall buy, sell or deal in securities in a fraudulent manner. I find that by its actions as outlined above, the company has acted in a fraudulent manner and thus violated the said regulation.

b) Whether Shri Dinesh Dalmia being the promoter and one of the directors of the company are liable for the fraudulent and irregular activities?

I have already noted above that Shri Dinesh Dalmia was the trustee and authorized signatory of Dinesh Dalmia Technology Trust and Dr. Suryanil Ghosh, Trustee Softec Corporation. I also note from the records of the Depository Participants that Dinesh Dalmia had signed the client agreement forms and opened the demat account. I also note that the addresses of Dinesh Dalmia Technology Trust and Dr. Suryanil Ghosh, Trustee Softec Corporation are that of the company. Therefore, I find that Dinesh Dalmia was in fact the controlling mind of the said entities and the actual beneficiary of the allotments done by the company.

I further note that Dinesh Dalmia, as Managing Director of the company had been instrumental in making the allotments some even without the knowledge of the Board of Directors (as stated by the members of the Board to SEBI). Thus, Shri Dinesh Dalmia has allotted shares to entities that were controlled by him.

I further note that the entities to which the allottees transferred the shares viz. Hulda Properties, Powerflow Holdings, DSQ Holdings and DSQ Industries were also controlled by Dinesh Dalmia. In this regard, I note that Shri Dalmia is the Chairman of DSQ Industries and a director on the Board of DSQ Holdings. He is the husband of Radha Dalmia and she has delivered the unlisted shares on behalf of Hulda Properties and Powerflow Holdings to SMIFS. I further note from the statement of stock brokers such as SMIFS, Prabhudas Lilladher, C. Mackertich, DKB, Mehta & Ajmera that it was Shri Dalmia who introduced Hulda Properties, Powerflow Holdings and DSQ Holdings to them. They have further submitted that the orders on behalf of the said entities were placed by employees of the company.

I also note that the registered office of DSQ Industries and Hulda Properties are the same and that the said address is the correspondence address of Powerflow Holdings, I also note that the address of the corporate office of DSQ Industries and is the same as the address of DSQ Software.

I find that the said entities have not co-operated with the investigation or provided SEBI with details sought from them. However, from the above and based on available records, I find that Dinesh Dalmia was actually in control of the said entities and that these entities had acted in concert as part of a single group. Therefore, I find that Dinesh Dalmia is the final beneficiary of the profits made by the said entities through their fraudulent actions as detailed hereinbefore.

In the light of the above, I find that Dinesh Dalmia being the promoter – director of the company and the person in control of the company and its associated entities was responsible for the fraudulent acts of the company. Thereby, I also find that Dinesh Dalmia has violated Regulation 3 of the FUTP Regulations, 1995.

I note that Dinesh Dalmia has not appeared in person before me, rather, he made appearance through representatives and made submissions. I note that the said submissions are not on the merits of the findings of investigation as communicated vide show cause notice dated 7.10.2003. It is only contended that they have not been furnished by the copy of the investigating report and that SEBI has no power to issue directions mentioned in the show cause notice. In this regard, in the course of hearing, the authorized representatives of Shri Dinesh Dalmia had repeatedly sought adjournments seeking inspection of documents. Three adjournments were granted to Shri Dinesh Dalmia and it was observed that they were on a roving enquiry seeking inspection of separate documents during each such inspection. It was felt that this roving enquiry by the representative of the company and Shri Dinesh Dalmia was intended to delay the process of hearing and therefore of proceeding with action, if any, rather than expediting the process. Shri Dinesh Dalmia has been granted reasonable opportunity of making submission in respect of the allegation made against them and it is not their case that they do not have details of allotments made by them or details of shares dematerialized and brought into the market.

The company and Dinesh Dalmia have sought the documents relied on by SEBI while passing the order in respect of the acquisition of Fortuna Technologies. I find that the Order dated 20/07/2001 was passed keeping in view the emergent requirement of preventing further harm to the market and the Order dated 20/12/2001 confirmed the same after a post-decisional hearing. Inspection of documents was not sought by the parties then and both Orders were also not challenged by the parties. These orders were passed for the prima facie findings of certain irregularities in the alleged acquisition of Fortuna Technologies Inc., USA by the company by allotting 1.40 crore shares on share swap basis on 12.1.2001. The present show cause notice was issued for the irregularities in the allotment of 1.30 crore shares in the year 2000, filing wrong information with the Stock Exchanges and SEBI and introduction of the said 1.30 crore shares into the secondary market without listing.

In view of the above, I find that no prejudice is caused to the company and Dinesh Dalmia by not separately furnishing those documents and that there has been no violation of the principles of natural justice.

I note that the company and Dinesh Dalmia have contended that the directions proposed to be issued under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 do not fall within the scope of section 12 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995. In this regard, I find that the directions that can be issued under Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 includes directions that could have been passed under the 1995 regulations. Therefore, I do not find any merit in the said contention.

In respect of the nature of proposed directions against the company under Sections 11 (4) and 11B of the SEBI Act, the same are remedial in nature, intended to protect the interest of investors and prevent undesirable entities/persons from being associated with the securities market and dealing in securities. Therefore, it cannot be said that the said directions are penal in nature. The proposed directions to deposit amounts in an escrow account are not intended to impose any penalty on the company or Dinesh Dalmia, rather they are intended to ensure that the interest of investors who have purchased the unlisted shares sold by the entities associated with the company and Dinesh Dalmia. The proposed directions to purchase 1.30 crore shares from the market are intended to ensure that fraudulently issued shares are not in circulation in the market causing further damage to market integrity and interests of investors.

3.2 I note that neither the company, its managing director Shri Dinesh Dalmia nor other entities who had introduced the unlisted demat shares into the market viz., DSQ Holding, DSQ Industries, Powerflow Holding, Hulda Properties and Radha Dalmia have denied the allegations leveled against them. I also note that these entities have not co-operated for the investigation by not providing the required information. Further the allottees viz., New Vision Investment Ltd, UK, Dr. Suryanil Ghosh Trustee Softec Corporation, Dinesh Dalmia Trustee Technology Trust and New Vision Investment Pvt., Ltd., are also not available at their registered address. In this regard, I note that Dinesh Dalmia, the Managing Director of the company, while furnishing information to SEBI on oath on July 16, 2001 stated that he could not recall the name and address of the common custodian where the shares have been kept. However, it was observed that:

- a. Shri Dinesh Dalmia as a managing Director himself has written to the Registrar and NSDL about this allotment and applied for Demat credit
- b. Out of 1.70 crore shares, 60 lakh shares were allotted Dinesh Dalmia Technology Trust and 40 lakh shares allotted to Dr. Suryanil Ghosh Trustee Softec Corporation. As one of the trustees to these two trusts, Shri Dinesh Dalmia opened the Demat account in these two names by entering into the client agreement with DPs, Signed Demat account opening form with DPs etc.

I find from the above that Shri Dalmia had sought to provide misleading information to SEBI.

3.3 I note that a total of 1.70 crore shares were fraudulently allotted by the company during the period 2000-01. Of these shares, 1.30 crore shares were allotted in dematerialized form and 40 lakh shares were allotted in physical form. I find that the 1.30 crore worth Rs.630 crore shares allotted in the dematerialized form were introduced by entities associated with DSQ Software and its promoters into the market. In this regard, I also find that out of the said 1.30 crore shares except for 18,000 shares in the account of Dr. Suryanil Ghosh Trustee Softec Corporation, all other shares were transferred and sold in the market. I further note that the sale proceeds which were credited to the accounts of entities associated with the company and controlled by Dinesh Dalmia as a result of such transactions was to the extent of approximately Rs. 630 crore. As regards the 40 lakh shares allotted in the physical form, 10 lakh shares were given as security to CSE by Biyani Securities to tide over the payment crisis. The balance 30 lakh shares remain untraceable. However, since the scrip of DSQ Software is under compulsory demat trading and these 30 lakh shares are in physical form, they are not in circulation in the market.

I also note that the Department of Company Affairs, Government of India, vide their letter dated 21.6.2002 have advised the company to take urgent steps to reduce the share capital of the company. This was informed by the company vide letter dated 21.11.2002 wherein the company has also stated that they are in the process of approaching the Hon'ble High Court for reduction in share capital.

3.4 I further note that Shri Dinesh Dalmia has been prohibited from being associated with the securities market and from dealing in securities for a period of 5 years w.e.f.10.4.2003 vide order of even date in the matter of insider trading in the scrip of DSQ Biotech.

3.5 I further note that the various Police agencies including The Calcutta Police and Central Bureau of Investigation are investigating into the fraudulent activities of the company and Dinesh Dalmia including the activities outlined above.

4.0 Order

In the light of the above, I find that DSQ Software Ltd., and Shri. Dinesh Dalmia have acted to the detriment of investors in the securities market and that their actions have adversely affected the credibility and the integrity of the securities market. They have also perpetrated a fraud on investors and the securities market. I further find that Dinesh Dalmia is not a fit and proper person to be allowed to access to and be associated with the securities market and deal in securities. Therefore, it is necessary in the interest of investors and the securities market that directions under Section 11 and 11B of the SEBI Act, 1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 are issued to DSQ Software Ltd., and Shri. Dinesh Dalmia.

Therefore, in exercise of powers conferred on me by virtue of Section 4(3) of the SEBI Act I hereby direct that:

- (i) Shri Dinesh Dalmia is prohibited from buying, selling or otherwise dealing in securities in any manner, directly or indirectly, for a period of 10 years and is also prohibited from holding any office of responsibility in a company/entity or other institution associated with the securities market for a period of 10 years.
- (ii) DSQ Software Limited is prohibited from accessing the securities market and buying, selling or otherwise dealing in securities in any manner, directly or indirectly in securities for a period of 10 years.
- (iii) Shri Dinesh Dalmia and DSQ Software Ltd shall deposit a sum of Rs.630 crore (being the value of 1.30 crore shares calculated by taking into account the average price of the scrip in the relevant settlement) within a period of 45 days in a separate escrow account to be maintained with a nationalized bank, till completion of investigation by various Police agencies including The Calcutta Police and Central Bureau of Investigation.
- (iv) Shri Dinesh Dalmia shall buy 1.30 crore shares of DSQ Software Ltd, circulated into the secondary market within a period of 45 days and retain the same in a separate demat account to be opened for the purpose, till permission for reduction in capital is obtained by the company from the competent authority.
- (v) The amounts deposited in the escrow account and shares retained in the demat account shall not be withdrawn without prior permission in writing from SEBI.

This order shall come into effect immediately

Place: Mumbai

Date:09.09.04

G.N. Bajpai

Chairman

Securities and Exchange Board of India