

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 the directors of DSQ Software Limited

CO/16/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.

	Pawan Kumar	President & Chief Executive Officer	Since 18-05-2000
--	-------------	-------------------------------------	------------------

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 (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, the investigation revealed that the company had allotted following entities in the year 2000 itself as given below

1.30 crore shares to the

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 Singhanian	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 Singhanian & 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 tidying 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 directors of company

- 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.

The directors and Shri Pawan Kumar were given an opportunity for personal hearing on 22/11/2003 and as per their request another hearing was given on 27/01/2004. They were also given 15 more days time to submit their written submission if any. The directors mentioned in para 1.1 made submissions in their reply to the show cause notice and in the course of personal hearing. The submissions of Dinesh Dalmia have been considered separately in the order passed against him along with the company. The submissions of the other directors are as under:

(i) Mohammed Ghulam Ghouse

He submitted that he was not a full time director of the Company and was never in over-all charge of the business operation of the Company. As a member of the Board, his role was to participate in the formulation of policies. Hence, decision making in respect of the day to day management of the Company was not within the purview of his duties / responsibilities.

Shares had been allotted to various companies on different dates and members of the Board were aware only of the allotment of 30 lakh shares to New Vision Investment Ltd., UK on 20.5.2000. These shares were allotted at a premium of Rs.970/- per share and since the allottee paid only 10% of the total price, the Board after due notice to the allottee cancelled the allotment and forfeited the amounts paid. Hence, the question of dematerialization of these partly paid shares does not arise. A reference has been made to a number of other Board meetings. He was not aware of those meetings and to his knowledge none of his Co-Directors attended those meetings.

On 29.3.2001, the Board considered the acquisition of Fortuna Technologies Inc., USA, on a share swap basis and made a conditional allotment subject to fulfillment of the conditions stipulated by the Board. However, there were no discussions thereafter regarding compliance of these conditions stipulated. No draft agreement was also put up to the Board. Therefore, he was not aware of the allegations made by him in respect of the allotment to Fortuna Technologies Inc., USA and was never a party to any of them.

Apart from the allotment of 30 lakh shares made to New Vision Investment Ltd. UK on 20.5.2000 which was subsequently cancelled for non-payment of Call Money, he was not aware of any other transaction. The manner in which the shares have been traded and their movements which have been outlined by SEBI in the notice are also not within his knowledge.

He reiterated that he was never in charge of the day to day affairs of the Company.

In respect of allegations regarding advancing of monies for purchase of the Company's own shares, he submitted that the Company had placed funds with certain merchant brokers /financial intermediaries for investment in Govt. Securities / Gilts. These funds were also recovered by the Company with interest in a short span of time.

(ii) B K Pal

He submitted that he was not a full time director of the company and was never in over-all charge of the business operation of the Company. As a member of the Board, his role was to participate in the formulation of policies. Hence, decision making in respect of the day to day management of the Company was not within the purview of his duties / responsibilities.

On 29.3.2001, the Board considered the acquisition of Fortuna Technologies Inc., USA, on a share swap basis and made a conditional allotment subject to fulfillment of the conditions stipulated by the Board. However, there were no discussions thereafter regarding compliance of these conditions stipulated. No draft agreement was also put up to the Board. Therefore, he was not aware of the allegations made by him in respect of the allotment to Fortuna Technologies Inc., USA and was never a party to any of them.

Apart from the allotment of 30 lakh shares made to New Vision Investment Ltd. UK on 20.5.2000 which was subsequently cancelled for non-payment of Call Money, he was not aware of any other transaction. The manner in which the shares have been traded and their movements which have been outlined by SEBI in the notice are also not within his knowledge.

(iii) K M Venkateswaran

He submitted that he was not a full time director of the Company and was never in over-all charge of the business operation of the Company. As a member of the Board, his role was to participate in the formulation of policies. Hence, decision making in respect of the day to day management of the Company was not within the purview of his duties / responsibilities.

Shares had been allotted to various companies on different dates and members of the Board were aware only of the allotment of 30 lakh shares to New Vision Investment Ltd., UK on 20.5.2000. These shares were allotted at a premium of Rs.970/- per share and since the allottee paid only 10% of the total price, the Board after due notice to the allottee cancelled the allotment and forfeited the amounts paid. Hence, the question of dematerialization of these partly paid shares does not arise. A reference has been made to a number of other Board meetings. He was not aware of those meetings and to his knowledge none of his Co-Directors attended those meetings.

On 29.3.2001, the Board considered the acquisition of Fortuna Technologies Inc., USA, on a share swap basis and made a conditional allotment subject to fulfillment of the conditions stipulated by the Board. However, there were no discussions thereafter regarding compliance of these conditions stipulated. No draft agreement was also put up to the Board. Therefore, he was not aware of the allegations made by him in respect of the allotment to Fortuna Technologies Inc., USA and was never a party to any of them.

Apart from the allotment of 30 lakh shares made to New Vision Investment Ltd. UK on 20.5.2000 which was subsequently cancelled for non-payment of Call Money, he was not aware of any other transaction. The manner in which the shares have been traded and their movements which have been outlined by SEBI in the notice are also not within his knowledge.

He reiterated that he was never in charge of the day to day affairs of the company.

In respect of allegations regarding advancing of monies for purchase of the Company's own shares, he submitted that the Company had placed funds with certain merchant brokers /financial intermediaries for investment in Govt. Securities / Gilts. These funds were also recovered by the Company with interest in a short span of time.

(iv) Brig.V M Sundaram

He submitted that he was not a full time director of the Company and was never in over-all charge of the business operation of the Company. As a member of the Board, his role was to participate in the formulation of policies. Hence, decision making in respect of the day to day management of the Company was not within the purview of his duties / responsibilities.

Shares had been allotted to various companies on different dates and members of the Board were aware only of the allotment of 30 lakh shares to New Vision Investment Ltd., UK on 20.5.2000. These shares were allotted at a premium of Rs.970/- per share and since the allottee paid only 10% of the total price, the Board after due notice to the allottee cancelled the allotment and forfeited the amounts paid. Hence, the question of dematerialization of these partly paid shares does not arise. A reference has been made to a number of other Board meetings. He was not aware of those meetings and to his knowledge none of his Co-Directors attended those meetings.

On 29.3.2001, the Board considered the acquisition of Fortuna Technologies Inc., USA, on a share swap basis and made a conditional allotment subject to fulfillment of the conditions stipulated by the Board. However, there were no discussions thereafter regarding compliance of these conditions stipulated. No draft agreement was also put up to the Board. Therefore, he was not aware of the allegations made by him in respect of the allotment to Fortuna Technologies Inc., USA and was never a party to any of them.

Apart from the allotment of 30 lakh shares made to New Vision Investment Ltd. UK on 20.5.2000 which was subsequently cancelled for non-payment of Call Money, he was not aware of any other transaction. The manner in which the shares have been traded and their movements which have been outlined by SEBI in the notice are also not within his knowledge.

He reiterated that he was never in charge of the day to day affairs of the Company.

In respect of allegations regarding advancing of monies for purchase of the Company's own shares, he submitted that the Company had placed funds with certain merchant brokers /financial intermediaries for investment in Govt. Securities / Gilts. These funds were also recovered by the Company with interest in a short span of time.

(v) J Narayanamurthy

He submitted that he was a whole time employee of IDBI, a statutory corporation established under the Industrial Development Bank of India Act, 1964(IDBI Act), for the purpose of providing credit and other facilities for the development of industry.

During his tenure as nominee director, he reported various goings on in the company to IDBI arising out of matters discussed at the Board meetings. Being of IDBI nominee, he has limited role and in charge of day-to-day affairs. Also was he was not a member of the allotment committee.

IDBI sanctioned various financial assistance to the company on the terms and conditions contained in various Loan Agreements entered into between themselves and the Company. Pursuant to the conditions stipulated in the Loan agreements read with section 30A of the IDBI Act empowering IDBI to appoint its nominee on the Board of the Company, IDBI vide its letter dated August 4, 1999 appointed me as its nominee on the Board of the Company with effect from August 20, 1999. He submitted that he ceased to be a nominee Director with effect from July 3, 2002.

Being a nominee director, his role on the Board of the Company was very limited and at any point of time was he in charge of or responsible for the day-to-day conduct of the business of the Company. In other words, his directorship was not similar to those directors of the Company who were having effective control of the management and affairs of the Company.

In terms of sub-section (2) of Section 30A of IDBI Act, a Director appointed by IDBI on the Board of an assisted concern does not incur any obligation or liability by reason only of his / her being a Director or for any thing done or omitted to be done in good faith in discharge of his /her duties as Director or anything related thereto.

Various courts have from time to time opined that the directors who represent special interest in a company should be distinguished from those who are in effective control and management of the company. In this regard, he drew attention to the judgment pronounced by the Hon'ble Supreme Court in State of Haryana vs Brij Lal Mittal & others (JT1998/Vol.III 584).

In the circumstances stated above, he submitted that he could not be held liable for the alleged failure of the Company in complying with the provisions of Regulations 3 & 4 (a), (b), (c) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 and Guidelines 9 and 11 of SEBI (Employees Stock Option Scheme and Employees Stock Purchase Scheme) Guidelines, 1999. He further submitted that he was not liable to be proceeded under Regulation 11 of the aforesaid Regulations read with Section 11 and 11B of SEBI Act, 1992.

He also submitted that the Company has constituted an Allotment Committee and that he was not a member of the Allotment Committee. No allegation is made specifically against him in the show cause notice and he has not committed any act of fraud as defined in SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995. He also submitted that he has been implicated merely as one of the Directors of the Company without noticing the fact that he was a nominee director appointed by IDBI.

(vi) Pawan Kumar

- (a) In the absence of relevant documents such as Trust Deed of DSQ Employees Stock Option Trust, minutes of the meetings of the said trust and other relevant documents such as statements of various persons recorded during the course of investigation, he is handicapped in rebutting the allegations made against him.
- (b) In terms of his letter of appointment, he was in charge of the running of the company and achieving projections with regard to its activities in the area of software development and solutions. However, the control over the secretarial and financial functions of the company was retained by Shri Dinesh Dalmia, Vice Chairman and Managing Director to the extent that during his tenure as President and CEO of the company, he did not sign even one cheque on behalf of the company.

- (c) He resigned from the post of Director and Vice President vide letter dated 23.4.2001 and the said resignation was placed before the Board of Directors on and he was relieved from the services of the company on 2.5.2001. He also filed copies of Form 32 submitted by the company to the ROC to show that he was appointed as a Additional Director on 24.3.2000 and resigned as a director on 16.5.2000.
- (d) He was nominated as a trustee of DSQ Employees Stock Option Trust along with Dr. Suryanil Ghosh and Dinesh Dalmia, who was the Managing Trustee. He was never a trustee of Dinesh Dalmia Technology Trust or any other trust that may have been formed by Dinesh Dalmia.
- (e) He was neither aware nor was he consulted regarding any of the transactions relating to the shares of the company. His responsibility was in the area of software development and solutions and not in any of the financial matters of the company. Moreover, he has neither the knowledge nor the expertise in such financial matters.
- (f) He did not have knowledge of the letter dated 26.2.2001 addressed by Dinesh Dalmia to the Secretary, BSE regarding the issue of 1.4 crore equity shares on a preferential basis. He was not a part of the proceedings of the allotment committee of the company held on 12.1.2001. He was also not a director of the company at the material time and was not aware or kept informed or given a copy of the minutes of the meeting of the allotment committee held on 12.1.2001.
- (g) He was not aware of the allotment of 30 lakh shares on preferential basis to New Vision Investment Ltd in the meeting of the allotment committee held on 20.5.2001.
- (h) He was not aware of the letter dated 26.2.2001 from Dinesh Dalmia to the Manager, Listing Department, NSE.
- (i) The mere fact that he was President and CEO of the company does not ipso facto mean that he was in charge of the business of the company and that he was concerned or associated with the alleged transactions. On the contrary evidence on record shows that Dinesh Dalmia, K.G. Gopalakrishnan and Shri Annamalai were the persons concerned and responsible for the alleged transactions.

3.0 Consideration of issues

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 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 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 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 Qty	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

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

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
--	------------	------------	----------------------	---	------

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 rather 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 the directors of the company are liable for the fraudulent and irregular activities of the company and of its promoter, Shri Dinesh Dalmia?

A Separate order has been passed against Dinesh Dalmia the promoter director for his role in the fraud committed by the company and their associated entities. The other directors of the company viz. Mohammed Ghulam Ghouse, B.K.

Pal, K.M. Venkateshwaran, Brig(Retd) V.M. Sundaram, and J. Narayana Murthy (IDBI Nominee) and Pawan Kumar (President & CEO) have stated that they were not aware of the allotments and that Shri Dinesh Dalmia has kept them in the dark about activities relating to the allotment of these shares. Shri Pawan Kumar has also submitted that although he was designated as President and CEO of the company, he was not involved in any of the financial transactions of the company.

It is not disputed by any of the said persons that the allotments were made by the company. It is also not disputed by them that the shares were dematerialized or that the company had advanced funds to various brokers for purchase of its own shares. The quantum and value of the shares allotted are sufficiently large to have attracted the attention of any responsible Board of Directors and to ensure that these allotments were done in the proper course. The above persons being directors of the company failed to exercise due diligence and perform the role of directors of the company to ensure that the interest of shareholders in the company are protected and that the company complies with the provisions of law applicable in the matter. Thereby, these directors have also failed to prevent the large scale fraudulent activity undertaken by Dinesh Dalmia and other promoters and ultimately by the company by circulating bad delivery shares in the secondary market.

In this regard, I also note that Shri Narayana Murthy has submitted that he was merely a nominee of IDBI and that by virtue of Section 30A(2) of the IDBI Act, he does not incur any obligation or liability by reason only of being director or for anything done or omitted to be done in good faith in discharge of his duties as a director. He has also brought to my notice the judgements of various courts in this regard. I agree with the submissions made by him and find that no liability can be fastened on him since he was only a nominee director. Further, I also note that he stated that he had reported the developments observed by him to IDBI.

In respect of Shri Pawan Kumar, I find that although he was designated as President and CEO of the company, he was not a member of the Board of directors during the material period. I also find that though his name was mentioned as one of the trustees of Dinesh Dalmia Technology Trust and Softec Corporation, he has stated that he was not aware of these trusts. Shri Pawan Kumar has also stated that he was not involved in the "secretarial and financial" functions of the company and that these were handled by Dinesh Dalmia. In view of the fact that there is no documentary or other evidence directly implicating Pawan Kumar, I give him the benefit of doubt.

In respect of the other directors of the company (except Dinesh Dalmia against whom a separate order has been passed), I find that all these directors admitted that they are aware about the allotment of 30 lakh shares to New Vision Ltd., UK made on 20/05/2000 and it is also observed from the Directors sitting fee statement submitted by their counsel that Mohammed Ghulam Ghouse, B.K. Pal and Brig(Retd) V.M. Sundaram had attended all the Board meetings of the company including the allotment committee meeting held on 20/05/2000. The investigation revealed that New Vision Ltd., UK to whom 30 lakh partly-paid shares was allotted on 20/05/2000 is not available at the registered address and these partly-paid shares were dematerialized as fully paid and liquidated by the entities associated with the company and its Managing Director Shri Dinesh Dalmia.

I find that Mohammed Ghulam Ghouse, B.K. Pal, K.M. Venkateshwaran, Brig (Retd) V.M. Sundaram have failed to exercise the diligence expected of them as directors of the company. I further find that Mohammed Ghulam Ghouse, B.K. Pal, K.M. Venkateshwaran, Brig(Retd) V.M. Sundaram have by their said failure abetted the company and Shri Dinesh Dalmia in the fraudulent activities mentioned herein before.

4.0 Order

In the light of the above, I find that DSQ Software Ltd has acted to the detriment of investors in the securities market and that its actions have adversely affected the credibility and the integrity of the securities market. The directors of DSQ Software as specified above have failed to exercise due diligence and prevent the unlawful and fraudulent activities of the company and its promoters. Therefore, it is necessary in the interest of investors and the securities market that directions are issued under Section 11 and 11B of the SEBI Act, 1992 to these directors. Separate orders are being passed against

DSQ Software Ltd., Shri Dinesh Dalmia and other promoters of DSQ Software, against the stock brokers and other entities involved in the fraudulent transactions.

Therefore, in exercise of powers conferred on me by virtue of Section 4(3) of the SEBI Act I hereby direct that Mohammed Ghulam Ghouse, B.K. Pal, K.M. Venkateshwaran, Brig(Retd) and V.M. Sundaram directors of DSQ Software during the material period are prohibited from buying, selling or dealing in securities, in any manner, directly or indirectly for a period of 5 years and also prohibited from holding any office of responsibility in a company/entity or other institution associated with the securities market for a period of 5 years.

This order shall come into effect immediately.

Place: Mumbai

Date: 09.09.04

G.N. Bajpai

Chairman

Securities and Exchange Board of India