

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/s INDUSIND BANK LIMITED, DEPOSITORY PARTICIPANT OF NATIONAL SECURITIES DEPOSITORY LIMITED, SEBI REGISTRATION NO. IN300159

WTM/GA/79/ISD/07/06

1.0 BACK GROUND

- 1.1 M/s Indusind Bank Limited (hereinafter referred to as the 'IBL') is a Depository Participant (DP) of National Securities Depository Limited (hereinafter referred to as 'NSDL') and is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a Depository Participant under Section 12 of SEBI Act, 1992 with Registration Number IN300159.
- 1.2 DSQ Software Limited (DSQS), is a company listed in Madras Stock Exchange, National Stock Exchange, Bombay Stock Exchange, Delhi Stock Exchange, Ahmedabad Stock Exchange and Calcutta Stock Exchange. Investigation was conducted by SEBI into the alleged manipulation in the scrip of DSQS. Investigations by SEBI, inter alia, revealed irregularities in the allotment of shares by the company, irregularities in the dematerialization of the shares so allotted and irregularities in the sale of the shares so allotted by several brokers and entities associated with the promoters of the company.
- 1.3 The investigations inter alia revealed irregularities in opening the demat account in the name of 'Dr. Suryanil Ghosh, Trustee Softech Corporation' by IBL as a Depository Participant. Out of the 13 million unlisted shares

DSQS floated in the secondary market, 4 million shares came through the beneficiary account opened with IBL.

- 1.4 In view of the findings of the investigations, an enquiry was initiated against IBL for suspected violations of SEBI Act, 1992, Depositories Act, 1996, SEBI (Depositories and Participants) Regulations, 1996 and Bye laws and business rules of NSDL.

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 An Enquiry Officer was appointed vide SEBI order dated November 28, 2003 under Regulation 5(1) of SEBI (Procedure for Holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations') to enquire into the alleged opening of the Beneficiary Account in the name of Softec Corporation-Trustee Suryanil Ghosh for the credit of shares of DSQS.
- 2.2 The Enquiry Officer issued a notice dated 28.11.2000 to IBL under Regulation 6(1) of the Enquiry Regulations and further granted an opportunity of personal hearing to it. IBL submitted its reply and appeared for personal hearing. The Enquiry Officer conducted the enquiry in terms of the Enquiry Regulations and IBL was given a fair and reasonable opportunity to make its submissions. After considering the reply and the submissions made, the Enquiry Officer submitted his report dated January 19, 2005.
- 2.3 The Enquiry Officer made his findings as under;
- a) IBL had failed to take into account Clause 13 of the Trust deed which states that the Compensation Committee shall nominate one of the Trustees to be the Chairman of the Trustees. The Compensation

Committee shall also nominate an alternate Chairman from its trustees who shall act in the absence of the Chairman and shall exercise all powers of Chairman. Further, the Enquiry Officer observed that IBL had accepted the signature of Shri Dinesh Dalmia, one of the Trustees of the aforesaid Trust despite the fact that his name was not authorized by Chairman or alternate Chairman of the Trust as mentioned in clause 13 of the Trust deed. Therefore, there was no document available authorizing Shri Dinesh Dalmia to open the Demat Account in the name of the Trust.

b) IBL relied on a trust deed made on October 24, 2000 however the deed was signed on October 3, 2000. IBL failed to find this discrepancy, therefore there is lapse in exercising due diligence before opening the demat account.

c) With regards documentary proof of identity and proof of address for opening the said demat account, IBL failed to produce any documentary evidence.

d) The name of the Trust was written as Dr Suryanil Ghosh in DP-Client Agreement and the same is admitted by IBL as a procedural lapse.

e) As regards the identity of the person who witnessed the agreement between DP and client for opening the account is concerned, the identity of the person was not disclosed. Therefore, there was technical lapse on the part of IBL as a DP in not obtaining the details of the person who witnessed the DP –client agreement for opening the Demat Account.

2.4 In view of the findings, the Enquiry Officer recommended a minor penalty of 'suspension of Certificate of Registration' of IBL for a period fifteen days under regulation 13(1) (a) (iv) of the Enquiry Regulations.

3.0 SHOW CAUSE NOTICE AND REPLY OF IBL

3.1 After considering the Enquiry Report, a Show Cause Notice dated January 25, 2005 under regulation 13(2) of the Enquiry Regulations was issued to IBL enclosing therewith a copy of the Enquiry Report.

3.2 Vide letter dated February 15, 2005, IBL submitted as follows;

3.2.1 The Enquiry Officer had overlooked the provisions contained in clause 18 and clause 19 of the Trust Deed, which are reproduced hereunder:

"Decision by Majority

18. *The decision of the majority of the Trustees at the meeting shall be the decision of the Trustees and shall be final and binding accordingly. The Trustees shall be at liberty to pass a resolution without any meeting of the Trustees provided that such resolution shall be evidenced in writing and passed by majority after being circulated.*

Trustees Power to appoint a Secretary

19. *The Trustees shall have the power to appoint any Trustee to act as secretary of the Scheme and the said secretary may be vested with such powers and management of the Trust as the Trustees may from time to time in their absolute discretion determine. With the consent of the employer, the trustees shall have the power to retain any person or person to do any legal, accountancy or other work which they may consider necessary or expedient in connection with the management of the Trust or of the assets thereof. It is however provided that such person shall not be paid any remuneration for such service."*

3.2.2 The Enquiry Officer has overlooked the submissions made before him since IBL had produced a copy of Resolution passed by Trustees of Trust. IBL had also presumed that the Trustees have complied with the requirements of the Trust Deed and allowing any trustee to open the account will be indoor management of the Trust, which the IBL is not required to look into. Once the Resolution of the Board of Trustees is produced, IBL can rely upon the said resolution and can open the account in accordance with the resolution passed by the Trust. It had opened the account in the name of the Trust as per the resolution passed by the Trust and the account is opened on the name of 'Dr.Suryanil Ghosh, Trustee, Softech Corporation.' Clause 18 of the Trust Deed empowers the trustees to take the decisions by majority and the decision taken by the trustees in majority will be binding on the Trust.

3.2.3 Clause 13 provides for the appointment of the additional trustees as decided by the Compensation Committee. The compensation committee is empowered to nominate Chairman or Alternate Chairman who are empowered to exercise the powers to manage the Trust. However, the said clause does not vest the powers only with the Chairman or Alternate Chairman nominated by the compensation committee. As per clause 18, the Trustees can take the decisions by majority and it will be binding on the Trust. Moreover, as per clause 19, one of the trustees can be appointed as secretary who has powers of management of the Trust, as the trustees may determine from time to time. As such, merely because Mr. Dinesh Dalmia, per se, is not either Chairman or Alternate Chairman, he cannot be said to have no powers to open the account as observed by the Enquiry Officer. Reading together all these clauses, it can be construed that Mr. Dinesh Dalmia, one of the trustees, was duly authorized to open the account and the Bank has

opened the account by complying with relevant NSDL Regulation in this behalf.

3.2.4 The date of the execution of the Trust Deed on page 1 as 21.10.2000 and on the last page as 3.10.2000, could not have been noticed at the cursory glance of the said Trust Deed. It is practically impossible to read line by line the document produced by the account holder at the time of opening of the demat account. IBL has accepted the Trust Deed by prima facie relying on the fact that it is executed by the author of the Trust i.e. DSQ Software Ltd. and date of execution is mentioned in the document. This discrepancy is subsequently noticed only on careful examination of the said Trust Deed, which otherwise could not have been noticed in the absence of any irregularity in the stock market. The observations of the enquiry officer are not based on the facts and circumstances prevalent at the time of opening of the demat account.

3.2.5 Except the discrepancy of date noticed in the Trust Deed, the Enquiry Officer had not pointed out any single instance of violation of any specific rules or regulations of SEBI Act and / or NSDL Byelaws & Regulations. Hence, merely because there is discrepancy in the date of Trust Deed, to which the IBL is not party, it cannot be said that there was lapse on the part of the IBL at the time of opening the demat account and non-exercise of due diligence while opening the account as observed by the Enquiry Officer.

3.2.6 At the time of opening of the account in the name of the Trust which was opened under ESOP Scheme, the said scheme was newly launched and there were no specific guidelines for the manner in which the account was to be opened and the procedures to be complied with for

the Trust created by the employer for the benefit of the employees. When the employer is creating a Trust, in all probability, the office address of the Trust and address of the employer will be one and the same. In that case, if the address proof of the employer is on record of the IBL, then the question of address proof of the Trust will not arise. IBL pointed out that in the present case also, the address of the Trust and the address of the employer viz. DSQ Software Ltd was one and the same. DSQ Software Ltd was maintaining a banking relationship with the IBL at Chennai and the IBL had verified the address proof of DSQ Software Ltd. Insisting for the address proof from the Trust again was not required as address of the Trust and DSQ Software Ltd was the same. Hence, the observations of the enquiry officer that the bank had not insisted for the address proof of the Trust is not correct.

3.2.7 The DP-Client Agreement has been witnessed by one of the staff member of the IBL. The staff member who has witnessed the agreement knew the executant personally. Hence, IBL had complied with the requirements of NSDL Regulations. Since, the staff member of the IBL himself had witnessed the document, the details of the person who has witnessed the documents was not necessary at all. Therefore, the observations of the enquiry officer that the IBL as Depository Participant failed to obtain the details of the person who had witnessed the DP Client Agreement for opening of the demat account is not correct. IBL has not committed knowingly or unknowingly any violation of SEBI Act, Depository Act and/or NSDL Bye laws and Regulations. If any lacunae are noticed, they are minor and procedural or technical in nature for which the IBL may be pardoned and the enquiry proceedings may be dropped.

4.0 HEARING:

- 4.1 IBL was granted an opportunity of personal hearing on February 22, 2006. IBL appeared for the oral hearing before me through its Executive Vice Presidents Mr.J. Moses Harding and Mr. S. N. Pai, Senior Vice President Mr. Chetan Shah, Chief Managers Mr. R. Karithikeyan and Mr. A. S. Chatpude. IBL made the oral submissions whereby its reiterated its submissions made in the letter dated February 14, 2005.

5.0 Consideration of Issues

- 5.1 Before dealing with the issue, it would be appropriate to have a closer scrutiny of documents produced by the DP in the course of enquiry/ investigation. The DP account was opened on the basis of such Documents namely Trust Deed, Application for Account opening and Agreement with Client. Taking up the Trust Deed first, it is seen that the Deed relates to 'Softec Corporation' created by Shri Dinesh Dalmia for the ESOP Scheme. The document available on record is a photocopy of the Trust Deed. It appears that the Trust Deed was made on the 24th day of October 2000 and witnessed on 3rd October 2000. As per the deed the trustees are:-

1. Shri Dinesh Dalmia
2. Shri Pawan Kumar residing at Chennai
3. Dr. Suryanil Ghosh residing at Calcutta

- 5.2 The above mentioned persons were to act as Trustees of DSQ Employees Stock Option Trust. Clause 13 of the Trust Deed spells out a mechanism for the appointment of Trustees to be made by the employer. Accordingly the power of appointing the Trustees shall be vested in the Compensation

Committee who shall make such appointments in writing. Further Compensation Committee shall nominate one of the Trustees to be a Chairman of the Trustees. Apart from this, the Compensation Committee shall also nominate the Trustee to be an alternate Chairman who shall act in the absence of Chairman and shall exercise all the powers of the Chairman. Clause 20 of the Trust Deed refers to the modalities of the operations of the Scheme. Accordingly, all correspondence in relation to the operation of the Scheme may be conducted by the Chairman and/ or in his absence by the alternative Chairman and in the absence of both by the Trustee authorized in that behalf by the Trustees... The Trustees shall decide which of the Trustees shall operate the bank account on their behalf. The copy of the Trust Deed which is available on record does not contain the signatures of the Trustees and it is not clear whether the Trustees have consented to be so. There is no proof of such verification on record. The Trust Deed is not a registered Trust Deed. It does not appear to have been made on Stamp Paper. There are no signatures by witnesses, excepting some undecipherable initials. Further there is no accompanying resolution of the Trustees authorizing Shri Dinesh Dalmia to open and operate bank account and demat account for the Trust as required by clause 13 and 20.

- 5.3 The date of the execution of the Trust Deed on page 1 is given as October 24, 2000 and the date on the last page of the deed on which the agreement has reportedly been witnessed is given as October 03, 2000. The discrepancy in the dates raises several questions which remain unanswered. A cursory look of the Trust Deed with all the attendant material gaps as detailed supra should normally have alerted even the most unwary of the persons in the DP's office as to the genuineness or otherwise of the Trust Deed. The photocopy of the extract of the minutes of the meeting of the Trustees authorizing Shri Dinesh Dalmia to issue

instructions in the demat account was dated October 18, 2000. Now, if the Trust Deed is executed on October 24, 2000, then the resolution submitted is a nullity as the same is dated October 18, 2000. It also appears that no attempt has been made to verify the photocopy with the original of the documents and get the deficiencies supplied, to the satisfaction of the DP, as required by SEBI circular dated 4th August, 2000 addressed to all DPs. As a matter of fact the said circular envisages that an authorized official of the DP under his signature shall verify the original documents and there is no proof of such compliance. Even assuming that there were no extant guidelines or regulations with regard to opening of demat accounts in relation to Trust, SEBI circular dated 4th August, 2000 should have served as the broad guidelines, as it only stressed what is expected of a prudent person in relation to opening of any new account. The minimum that was required to be verified in the given circumstances was about the genuineness or otherwise of the document.

- 5.4 The next significant document which is equally important for consideration is the agreement for the DP and the client as per the extant byelaws of NSDL, under byelaw no.6.4.1. It states that no participant shall conduct business as participant with its clients unless it has entered into agreement with its clients. Accordingly the agreement between the DP and the client becomes another important document. In the instant case, there is no date of agreement. Also the question whether Shri Dinesh Dalmia was competent and authorized to enter into agreement with the DP remains, in as much as there is no resolution to that effect by the Trustees of the Trust authorizing Shri Dinesh Dalmia to enter into such an agreement and further in as much as Clause 13 read with Clause 20 of the Trust Deed does not automatically empower Shri Dinesh Dalmia to enter into such an agreement with the DP.

- 5.4 IBL has contended that the Enquiry Officer had overlooked the provisions contained in clause 18 and clause 19 of the Trust Deed. A glance at the Clause 18 and 19 explains that the decision of the majority of trustees will be final and binding. Both the clauses talk about the majority of the trustees as decision making authority and not a trustee as decision maker. The photocopy of the extract of the minutes of the meeting of the Trustees authorizing Shri Dinesh Dalmia to issue instructions in the demat account did not indicate that the decisions were taken by the trustees. This coupled with the resolution dated October 18, 2000 which is prior to the execution of the trust dated on October 24, 2000 renders the entire document a medley of disjointed and disparate elements, staring in the face. To suggest that the same is not susceptible of detection in a cursory scrutiny is too naïve a plea a merit countenance, in as much as it seeks to trivialize the responsibility of verification with the original to a cursory exercise. What more, such piquant features are patent on the face of the trust deed which any trained eye can identify on simple verification. Accordingly the explanation of the DP is far from convincing.
- 5.5 Further, the DP-Client agreement has been entered with Dr Suryanil Ghosh, an individual (not referred as 'Trustee'), and signed by Shri Dinesh Dalmia without indicating the capacity in which he signed while the trust has been differently described as 'Softec Corporation' in one place and 'DSQ Employees Stock Option Trust' in another place in the trust deed, whereas the copy of extract of the minutes of the meeting of the trust referred the trust as 'Dr Suryanil Ghosh Trustee Softec Corporation'. When such glaring discrepancies were brought to the notice of the DP, they accepted before the Enquiry Officer that in the DP client agreement the name of the trust was not written in full and written in short as 'Dr Suryanil Ghosh' which was a procedural lapse. In such a scenario when all manner of details relating to trust is mired in inconsistencies and

contradictions, the ubiquitousness of Shri Dinesh Dalmia as a sole signatory in all the documents referred, to the total exclusion of others despite being named in the documents under reference should have raised the suspicion of the DP as to whether the whole arrangement is a one man show. Instead of answering a serious issue upfront, the attempt on the part of DP to take refuge in specious explanation that such lapses were technical and procedural in nature smacks of a cover up.

- 5.6 The above observations based upon some of the documents relevant to opening of a demat account by the DP make it evident that the DP did not exercise basic care and prudence which is expected of a DP. Even assuming that there were no extant guidelines or prescribed procedures with regard to opening of demat account of a Trust, it cannot be gainsaid that there were guidelines on the subject at the relevant point of time. As already stated, SEBI circular dated 4th August, 2000 stresses that it is extremely important that all documents are verified with the originals and photographs and signatures duly authenticated before accounts are opened. Further it is added that the same are critical steps for the safety, integrity and efficient functioning of the depository system and that any failure in that regard could invite appropriate regulatory action. Verification with original would include all the scrutiny of the original as complete document evidencing the existence of a valid Trust, going beyond a physical matching. The said circular clearly imposes a duty of verification on the DP, in the same manner as what is expected of a normal prudent person acting in such circumstances.
- 5.7 The plea of the DP that any lacunae noticed are minor and procedural or technical in nature cannot cut much ice, since the basic precaution to be observed in opening new DP account cannot be dispensed with on such specious plea. The basic guidelines are applicable in all circumstances

irrespective of the standing of the person concerned and any relaxation in the observance of basic elementary precaution is fraught with dire mischief as happened in this case subsequent to the opening of the DP account, when the account turned out to be the fountainhead of unmitigated market mischief. Similarly there has been abject failure in the verification of the physical documents. Such verifications which are not idle formality are prescribed to satisfy that the documents do evidence the existence of these arrangements or accounts which they represent and are meant to be a check against any form of misrepresentation to cheat.

- 5.8 In short such verifications have not been carried out by the DP, while accepting the crucial documents without minimum scrutiny as mandated. Further, the acceptance of Shri Dinesh Dalmia as an authorized person of the Trust without the necessary resolution to that effect and without insisting on the requirements of Clauses 13 and 20 of the Trust Deed is again proof of the fact that minimum verification was given a short shrift on the strength of the other bank accounts held by DSQS and Shri Dinesh Dalmia. The guidelines relating to verification cannot be ignored, since such an act can be the thin end of the wedge, paving the way for several egregious developments as happened in the instant case. As a matter of fact the orders passed by SEBI in September/ October 2004 against DSQ Software Ltd, their promoters, directors, associated entities etc. clearly brings out that Shri Pawan Kumar one of the Trustees based at Chennai was not aware of the Trustees at all though his name was mentioned as one of the Trustees of Dinesh Dalmia Technology Trust and Softec Corporation. Similarly, Dr. Suryanil Ghosh who was also mentioned as one of the Trustees of the Trust was not available at the given address as the address itself was found to be incorrect. In that view of the matter though such findings might have transpired in the orders passed by SEBI in September/ October 2004, the fact remains that the Trust was to all

intents and purposes a front of Dinesh Dalmia for his questionable designs to get unfair advantage to himself and to his associates by exploiting the markets and cheating the investors.

- 5.9 The findings in those orders of SEBI indicate that 1,00,00,000 shares were fraudulently allotted by DSQ software, 60,00,000 shares of DD 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 the same existing shares were being traded. These shares were issued without following the procedure under Company Law. These shares were sold in the market by entities associated, with DSQ group like DSQ Holdings, Powerflow Holding and Hulda Properties without being listed on any stock exchanges. These shares were delivered in the market knowingly that the shares did not have 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 could allot further shares under the same ISIN the company allotted the above shares to the aforesaid trusts in the demat accounts. 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. Though the DP might claim that they cannot be expected to know in advance whether the account would be misused, or not, the point that is being stressed at this juncture and for the purpose of this order is that, had the DP followed the basic precaution in relation to the opening of new DP accounts as is brought out by SEBI circular dated 4th August, 2000 duly reinforced by NSDL in their circular dated 9th August, 2000 communicated to all DPs, the major market misconduct as mentioned above could have been averted.

Though nobody can be judged by hindsight, it would be equally important to reckon with that a posteriori development which has a causal relationship with real time failure does have a bearing on it, besides setting it on the canvas of subsequent developments.

- 5.10 By virtue of the same, IBL is guilty of violating SEBI Circular No.SMDRP/Policy/Cir-36/2000 dated August 4, 2000 and NSDL Circulars Nos.NSDL/P1/2000/505 dated April 18, 2000, NSDL/P1/2000/1394 dated August 9, 2000 and NSDL/P1/119 dated July 22, 1997 and thereby in turn violating NSDL Business Rules 7.1.1 and 7.1.2 and Regulation 20 (2) (b) of SEBI (Depositories and Participant) Regulations, 1996.

6.0 ORDER

- 6.1 After careful consideration of the submissions made by the DP and the facts available on record, in exercise of powers conferred under upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of the Enquiry Regulations, I hereby direct the certificate of registration of M/s IndusInd Bank Limited, Depository Participant of NSDL having SEBI Registration No. IN300159 be suspended for a period of 15 days except for acting on the instructions of existing beneficial owners, so that the interests of existing Beneficiary Owners remain unaffected.
- 6.2 This order shall come into effect three weeks from the date of the passing of the order.

Place: Mumbai
Date:10-08-2006

G. Anantharaman
Whole Time Member
Securities and Exchange Board of India