

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY REGULATIONS), 2002 AGAINST BALLABH DAS DAGA, MEMBER, CALCUTTA STOCK EXCHANGE ASSOCIATION LTD.

WTM/GA/136/ISD/2/07

1.0 BACKGROUND

1.1 The shares of DSQ Industries Ltd. (hereinafter referred to as DSQ), are inter alia listed on the Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE). DSQ Industries Ltd, is stated to be a group concern of Shri Dinesh Dalmia, main promoter of DSQ Software Ltd. It was noticed that the shares of DSQ were not frequently traded during the period November 01, 2000 to March 31, 2001 and no major volumes were observed in the said shares till December 2000.

1.2 In the above facts and circumstances, Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an Investigation to look into the alleged manipulation in the shares of DSQ and to look into the possible violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to

Securities Market) Regulations, 1995 (hereinafter referred to as the FUTP Regulations) and Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations,1992 (hereinafter referred to as the Broker Regulations).

1.3 The investigation conducted by SEBI revealed that Ballabh Das Daga (hereinafter referred to as the Broker), member, CSE and registered with SEBI (registration number INB030492218) had entered into cross trades in the shares of DSQ on November 13 and on November 15, 2000.

1.4 It was found that, on November 13, 2000, the Broker had entered into a cross deal of 20,000 shares of DSQ between his clients viz. Vibhore Management (buyer) and Hifunda.com (seller). On November 15, 2000, the Broker had again entered into a cross deal of 20,000 shares of DSQ between his clients Kanika Management (buyer) and Hifunda.com (seller). The Broker had also executed transactions in the shares of DSQ in his proprietary account. The details of which are mentioned below:

Trade Date	Time	Order No	Qty	Price	Buy or Sell	Client code
13/11/2000	14:54:02	31024626	10000	255	S	V102
13/11/2000	14:54:02	31024630	10000	255	B	H038
13/11/2000	14:54:02	31024641	10000	255	B	H038
13/11/2000	14:54:02	31024637	10000	255	S	V102
15/11/2000	13:31:51	31033203	2500	260	B	H038
15/11/2000	13:31:51	31033203	2500	260	B	H038

Trade Date	Time	Order No	Qty	Price	Buy or Sell	Client code
15/11/2000	13:31:51	31033203	2500	260	B	H038
15/11/2000	13:31:51	31033198	2500	260	S	K135
15/11/2000	13:31:51	31033198	2500	260	S	K135
15/11/2000	13:31:51	31033198	2500	260	S	K135
15/11/2000	13:31:51	31033203	2500	260	B	H038
15/11/2000	13:31:51	31033198	2500	260	S	K135
15/11/2000	13:32:06	31033206	2500	260	B	SELF
15/11/2000	13:32:06	31033206	2500	260	B	SELF
15/11/2000	13:32:06	31033197	2500	260	S	K135
15/11/2000	13:32:06	31033197	2500	260	S	K135
15/11/2000	13:32:06	31033206	2500	260	B	SELF
15/11/2000	13:32:06	31033197	2500	260	S	K135
15/11/2000	13:32:06	31033197	2500	260	S	K135
15/11/2000	13:32:06	31033206	2500	260	B	SELF

- 1.5 The price volume movement in the shares of DSQ at CSE on November 13, 2000 and November 15, 2000 are given below:

Date	Total volume at CSE	Open Price (Rs.)	High price(Rs.)	Low Price(Rs.)	Close Price(Rs.)
13/11/2000	20200	257.1	257.1	255	255
15/11/2000	20300	259.9	266.5	260	266.5

- 1.6 It was alleged that the majority of the volume in the shares of DSQ at CSE on November 13, 2000 and November 15, 2000, was as a result of the aforesaid cross deals executed by the Broker on behalf of his clients. It was also alleged that the Broker had created artificial volumes in the

shares of DSQ, which was otherwise illiquid and thereby resulted in creation of artificial price in the said scrip. It has been alleged that, the cross deals entered by the Broker was in violation of regulation 4(a) to (d) and 5(a), (b) of the FUTP Regulations.

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 On completion of the investigation, SEBI appointed an Enquiry Officer, vide order dated July 24, 2003 under regulation 5(1) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the Enquiry Regulations) to enquire into the alleged violations (as mentioned above) committed by the Broker while executing trades on behalf of his clients in the shares of DSQ. The Broker filed its reply and also made its submissions during the course of the hearing before the Enquiry Officer. The Enquiry Officer conducted the enquiry in terms of the provisions of the Enquiry Regulations and, vide his report dated October 29, 2004 recommended for the imposition of the penalty of suspension of the certificate of registration of the Broker for a period of four months. The Enquiry Officer had inter alia observed in his report that though the Broker had violated regulation 4(a) and (b) of the FUTP Regulations, the evidence did not substantiate the violation of regulations 4(c) and (d) and 5(a) and (b) of the FUTP Regulations.

3.0 SHOW CAUSE NOTICE, REPLY AND HEARING

- 3.1 Based upon the recommendation of the Enquiry Officer, a notice dated November 22, 2004 was issued to the Broker under regulation 13(2) of the

Enquiry Regulations asking him to show cause as to why the penalty as considered appropriate should not be imposed upon him. A copy of the Enquiry Report was also forwarded to the Broker with the said show cause notice. SEBI, in the said show cause notice had also advised the Broker to inform whether he was desirous of attending a personal hearing before SEBI.

- 3.2 The Broker, vide letter dated November 29, 2004 stated, "I am received your letter cum Show Cause Notice on 25th November 2004. In response to your notice I like to say that I was not aware regarding that rules of that type of transactions. Hence I request you to change the penalty to "Warning" instate of the suspension for four months.

Further I assure you that such type of transaction will not be executed in future."

4.0 CONSIDERATION OF ISSUES AND FINDINGS:

- 4.1 As the Broker has not sought for the personal hearing as indicated by SEBI in the aforesaid show cause, I proceed further on the basis of the investigation report, the Enquiry Report, the show cause notice sent to the Broker, his reply and other materials available on records.
- 4.2 It is an undisputed fact that the Broker had entered into cross deal for 40,000 shares in the shares of DSQ on November 13 and 15, 2000. The total transactions in the shares of DSQ at CSE were 20,200 shares and 20,300 shares on November 13, 2000 and November 15, 2000, respectively. I note that the total DSQ shares traded at CSE on the

aforesaid dates were 40,500 shares which amounted to 98.76% of the total shares traded. Admittedly, the shares of DSQ were illiquid (during the above period when the Broker executed transactions). The Broker had also admitted before the Enquiry Officer that he was aware that the shares of DSQ were illiquid at the time of his transactions and that the trades in the shares of DSQ were executed only to earn brokerage. The Broker further stated before the Enquiry Officer that the clients for which he had executed the cross deals had no other dealings with him.

- 4.3 The fact that trades were executed on a large volume in the shares of DSQ at CSE, which was illiquid at the time of such trades should have alerted the Broker that something was amiss. This has to be viewed in the context that the Broker was dealing with the two clients for the first time, that too in an illiquid scrip and further that the Broker did not have any other dealings with the said clients. Obviously the tell – tale circumstances surrounding the said transactions make it suspect. In spite of the same, the fact that the Broker executed cross deals for his clients substantially (98.76% of the total trades of DSQ shares at CSE) lends support to the finding that the Broker was a necessary party to the transactions giving rise to artificiality in the market. Instead of exercising caution, the Broker had executed large number of trades only for the purpose of earning a brokerage and thereby instrumental in creating artificial volumes in the scrip of DSQ at CSE. I also note that the Broker had executed proprietary trading in the shares of DSQ on November 15, 2000. In this context, I would also like reproduce the following relevant observation of the Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to SAT) in the matter of Nirmal Bang Securities (P) Ltd. vs. SEBI:

“BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip, quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of regulation 4 of the FUTP Regulations. The

facts on record categorically establish that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit.”

- 4.4 The clients of the Broker had indulged in fictitious trades in buying and selling the shares of the same company i.e. DSQ and the said trades were executed primarily with a view to artificially increase the trading volumes in the shares of DSQ. Artificial increase in the volumes of the shares of a company has the adverse effect on the innocent investors of the market who get induced to buy the shares because they seldom have knowledge about these transactions and its nature. In the above facts and circumstances, it is fairly established that the trades of the Broker in the shares of DSQ were done for the purpose of creating false and misleading appearance of trading in the shares of DSQ and for the purpose of manipulating the price of the shares of DSQ and that the same should be within the knowledge of the Broker, when the anonymity of screen - based trading has been breached by his pervasive presence on both sides.
- 4.5 Cross deals in the attendant circumstances of the case in relation to an illiquid scrip have provided artificial liquidity by virtue of accounting for 98.76% of the volume of the transactions in the shares of DSQ on November 13, 2000 and November 15, 2000 with the concomitant effect of influencing the price artificially to the detriment of the genuine investors. The cross deals were executed from the same terminal and almost at the same time. The said concerted level of activity, that too continuously over a period of two days, is only compatible with the purposes of manipulating the securities market on the part of the Broker.

4.6 In terms of regulation 4 of the FUTP Regulations, No person shall -

- “(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;
- (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;
- (c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;
- (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress , or cause fluctuations in the market price of securities.
- (e) pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole object of inflating, depressing, or causing fluctuations in the market price of securities”.

4.7 I find that trading volumes in the shares of DSQ at CSE were quite high during the period from January to March, 2000 and the price of the said scrip went up from Rs. 97/- to Rs. 428/- during the said period. Subsequently, no trading was witnessed in the said shares at CSE until November 2000. During November 2000, the maximum volumes in the scrip of DSQ at CSE were observed on November 13 and 15, 2000 when

the Broker had executed trades for 40,000 shares out of the total traded volume of 40,500 shares.

- 4.8 On an examination of the trades executed by the Broker in the shares of DSQ at CSE, as explained above in detail, it can be seen that the trades executed by the Broker were not genuine. I note that the majority of the transactions (98.76%) in the said shares at CSE on November 13 and 15, 2000 were executed by the Broker, at a time when the said shares were illiquid. Therefore, the trades executed by the Broker in the shares of DSQ at CSE can be said to be with an intention of artificially raising the prices of securities and thereby inducing the sale or purchase of securities by unsuspecting investors.
- 4.9 I further note that the trades executed by the Broker in the shares of DSQ at CSE on November 13 and November 15, 2000 created a false appearance of trading and was intended to operate only as a device to inflate, depress, or cause fluctuations. Once the factum of manipulation is proved, then as observed by SAT in the matter of Ketan Parekh Vs SEBI, the investors are affected by the said price difference. The relevant observation made by SAT in this regard is reproduced as below :

“When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy / sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the

decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged.”

- 4.10 The proximity in putting the orders at the same price and for the same quantity, resulted in the matching of the aforesaid transactions, with all the ingredients i.e. quantity, price and the time, required to conclude the trades. Above all it has to be seen that all the transactions were executed at the single terminal of the Broker. The method and manner in which the said cross deals were executed will clearly establish that the same were meant for the purpose of manipulating the price and volumes in the shares of DSQ, against the fundamentals of the functioning of the securities market.
- 4.11 Therefore, by entering into cross deals and creating artificial volumes, it is fairly established that the Broker has violated regulation 4(a) and (b) of the FUTP Regulations.
- 4.12 The Broker contended that he was not aware of the rules regarding the types of transactions which were executed by him. Being an intermediary

registered with SEBI, the Broker is expected to know and comply with the Rules, Regulations, Guidelines etc. governing the securities markets framed/ issued by SEBI/ Central Government from time to time. The Broker failed to do such exercise which was expected from a prudent stock broker who had a duty not only towards its client but also towards the securities market

4.13 I also hold the view that ignorance of law is no excuse and cannot be taken as defense by anybody. Every individual is deemed to know the law of the land. Ignorance of law is not an excuse for not taking any appropriate steps required under the Rules, Regulations etc. Therefore the argument that the Broker did not know the rules can not be accepted in law. In this context, I would like to mention that such uninformed stock brokers by their reckless conduct would put the market in jeopardy. It is noted that the Broker has not refuted the findings of the Enquiry Officer, instead pleaded for leniency to reduce the penalty to 'warning', stating that that he was not aware of the rules regarding the type of transactions he had entered into. The said request can not be accepted in view of the reasons stated above. The Broker, vide letter dated November 29, 2004 has also assured that such transactions would not be executed in future.

4.14 In view of the above and in the in the absence of any mitigating circumstances, I do not find any merit in the request made by the Broker to reduce the penalty of suspension of certificate of registration for four months to that of a warning. In view of the facts and circumstances and also the fact no justifiable explanation has been received from the Broker with respect to his transactions made in the shares of DSQ, I am unable to accept his request in respect of the reduction in penalty. The above

facts establishes that the Broker has violated regulation 4(a) and (b) of the FUTP Regulations.

5.0 ORDER

- 5.1 In view of the forgoing, I, in exercise of the powers conferred vide regulation 13(4) of (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a major penalty of suspension of the certificate of registration of Ballabh Das Daga, {Registration no. INB030492218}, Member, Calcutta Stock Exchange Association Ltd. for a period of four months.

This order shall come into force on the expiry of 21 days from the date of this order.

G ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: 08-02-2007