

BEFORE THE 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 M/S. D.B & CO. MEMBER, CALCUTTA STOCK EXCHANGE ASSOCIATION LIMITED IN RESPECT OF ITS DEALINGS IN THE SHARES OF PATRIOT TRADING COMPANY LIMITED.**

Date of Hearing: February 19, 2007

Appearances:

Noticee : Shri Debabrata Biswas, Proprietor of the Broker

Securities and Exchange Board of India : Shri Jayanta Jash, Dy. General Manager

1.0 BACKGROUND:

1.1 The shares of Patriot Trading Company Ltd. (hereinafter referred to as the company) are listed on the Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE). It was noticed that the price of the shares of the company increased from Rs. 2.30/- per share on August 01, 2001 to Rs. 62.16/- on February 15, 2002 and subsequently showed a downward trend and reached Rs.27.05/- on February 28, 2002.

1.2 In view of the unusual price movements noticed in the shares of the company, Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation in respect of buying, selling and dealing in the shares of the company and to enquire into whether the said company, other intermediaries/persons associated with the said buying, selling and dealing in the shares of the company contravened the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the FUTP Regulations), Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations), Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, (hereinafter referred to as the 'Takeover Regulations') and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the insider Trading Regulations).

1.3 The investigation conducted by SEBI found that certain members of CSE namely, Ballabh Das Daga, Bubna Stock Broking Services Ltd., D.B & Co, Lexus Shares & Stock Brokers Pvt. Ltd. and Prakash Baid Securities Pvt. Ltd. traded substantially in the shares of the company and contributed 87% of the total turnover in the said shares at CSE during the period August 2001 to February 2002. The aforesaid members of CSE are also registered as stock broker with SEBI. The aforementioned D.B & Co is hereinafter referred to as the Broker.

1.4 It was found that the Broker had executed trades for 5,84,000 (both buy and sale) shares of the company on behalf of its various clients out of the total turnover of 78,68,302 shares at CSE. Investigation revealed that out of the aforesaid trades of the Broker, 5,44,000 shares were transacted by way of cross deal which constituted 93% of the Broker's trading volume in the shares of the company. It was also found that both the buy and sell orders were executed by the Broker in its single terminal at the same time with the same price and quantity with most of the trades being client to client transactions.

1.5 The details of the transactions of the Broker in the shares of company are given below:

Date	Order Time	Trade Time	Order No	Trade No	Member Code	Qty	Price	Buy / Sell	Counter Party Code
5-Dec-01	12:52:37	12:52:38	330914190	1348	D0090	10000	27.50	B	D0090
5-Dec-01	12:52:37	12:52:38	271137059	1348	D0090	10000	27.50	S	D0090
5-Dec-01	12:52:48	12:52:48	330914192	1349	D0090	10000	27.50	B	D0090
5-Dec-01	12:52:48	12:52:48	271137060	1349	D0090	10000	27.50	S	D0090
5-Dec-01	12:52:57	12:52:58	330914193	1350	D0090	10000	27.50	B	D0090
5-Dec-01	12:52:57	12:52:58	271137061	1350	D0090	10000	27.50	S	D0090
5-Dec-01	12:53:03	12:53:07	330914194	1351	D0090	10000	27.50	B	D0090
5-Dec-01	12:53:07	12:53:07	271137062	1351	D0090	10000	27.50	S	D0090
5-Dec-01	12:53:08	12:53:18	330914195	1352	D0090	10000	27.50	B	D0090
5-Dec-01	12:53:17	12:53:18	271137064	1352	D0090	10000	27.50	S	D0090
5-Dec-01	12:53:15	12:53:22	330914196	1353	D0090	10000	27.50	B	D0090
5-Dec-01	12:53:22	12:53:22	271137065	1353	D0090	10000	27.50	S	D0090
12-Dec-01	13:59:24	13:59:27	301026649	1373	D0090	10000	30.80	B	D0090
12-Dec-01	13:59:27	13:59:27	420766149	1373	D0090	10000	30.80	S	D0090
13-Dec-01	14:55:06	14:55:23	271140737	1374	D0090	3000	33.20	B	D0090
13-Dec-01	14:55:23	14:55:23	271140738	1374	D0090	3000	33.20	S	D0090
13-Dec-01	14:55:42	14:55:53	271140739	1375	D0090	6000	33.20	B	D0090
13-Dec-01	14:55:53	14:55:53	271140741	1375	D0090	6000	33.20	S	D0090
14-Dec-01	14:40:51	14:40:51	360764191	1384	D0090	10000	35.50	B	D0090
14-Dec-01	14:40:51	14:40:51	330917466	1384	D0090	10000	35.50	S	D0090
14-Dec-01	14:41:08	14:41:08	360764192	1385	D0090	10000	35.50	B	D0090
14-Dec-01	14:41:08	14:41:08	330917467	1385	D0090	10000	35.50	S	D0090
19-Dec-01	13:59:50	13:59:51	330917876	1399	D0090	10000	38.00	B	D0090
19-Dec-01	13:59:50	13:59:51	271141871	1399	D0090	10000	38.00	S	D0090

Date	Order Time	Trade Time	Order No	Trade No	Member Code	Qty	Price	Buy / Sell	Counter Party Code
27-Dec-01	15:10:23	15:10:33	330919130	1441	D0090	3000	42.25	B	D0090
27-Dec-01	15:10:33	15:10:33	330919131	1441	D0090	3000	42.25	S	D0090
27-Dec-01	15:10:52	15:11:01	330919132	1442	D0090	2000	42.25	B	D0090
27-Dec-01	15:11:01	15:11:01	330919134	1442	D0090	2000	42.25	S	D0090
31-Dec-01	14:23:05	14:23:27	181308920	29	D0090	10000	41.00	B	D0090
31-Dec-01	14:23:27	14:23:27	181308923	29	D0090	10000	41.00	S	D0090
31-Dec-01	14:23:10	14:23:31	181308921	30	D0090	10000	41.00	B	D0090
31-Dec-01	14:23:31	14:23:31	181308924	30	D0090	10000	41.00	S	D0090
31-Dec-01	14:23:13	14:23:35	181308922	31	D0090	2000	41.00	B	D0090
31-Dec-01	14:23:35	14:23:35	181308925	31	D0090	2000	41.00	S	D0090
4-Jan-02	14:18:26	14:18:27	210989921	63	D0090	10000	48.00	B	D0090
4-Jan-02	14:18:26	14:18:27	31818459	63	D0090	10000	48.00	S	D0090
4-Jan-02	14:19:20	14:19:20	210989922	64	D0090	10000	48.00	B	D0090
4-Jan-02	14:19:20	14:19:20	31818462	64	D0090	10000	48.00	S	D0090
4-Jan-02	14:19:48	14:19:48	210989924	65	D0090	3000	48.00	B	D0090
4-Jan-02	14:19:48	14:19:48	31818463	65	D0090	3000	48.00	S	D0090
4-Jan-02	14:20:21	14:20:28	210989928	66	D0090	3000	52.00	B	D0090
4-Jan-02	14:20:27	14:20:28	31818467	66	D0090	3000	52.00	S	D0090
8-Feb-02	14:50:05	14:50:05	211005723	217	D0090	6000	52.00	B	D0090
8-Feb-02	14:50:04	14:50:05	31850395	217	D0090	6000	52.00	S	D0090
13-Feb-02	15:07:55	15:07:55	181346482	222	D0090	5000	62.00	B	D0090
13-Feb-02	15:07:55	15:07:55	31853900	222	D0090	5000	62.00	S	D0090
13-Feb-02	15:08:07	15:08:07	181346483	223	D0090	5000	62.00	B	D0090
13-Feb-02	15:08:07	15:08:07	31853901	223	D0090	5000	62.00	S	D0090
13-Feb-02	15:08:17	15:08:18	181346484	224	D0090	5000	62.00	B	D0090
13-Feb-02	15:08:17	15:08:18	31853903	224	D0090	5000	62.00	S	D0090
13-Feb-02	15:14:28	15:14:29	31853924	225	D0090	5000	62.20	B	D0090
13-Feb-02	15:14:28	15:14:29	181346509	225	D0090	5000	62.20	S	D0090
13-Feb-02	15:14:40	15:14:40	31853925	226	D0090	5000	62.20	B	D0090
13-Feb-02	15:14:40	15:14:40	181346510	226	D0090	5000	62.20	S	D0090
13-Feb-02	15:14:51	15:14:51	31853928	227	D0090	5000	62.20	B	D0090
13-Feb-02	15:14:51	15:14:51	181346511	227	D0090	5000	62.20	S	D0090
26-Feb-02	13:17:18	13:17:18	31866909	290	D0090	2500	42.00	B	D0090
26-Feb-02	13:17:18	13:17:18	121218643	290	D0090	2500	42.00	S	D0090
26-Feb-02	13:17:18	13:17:18	31866909	291	D0090	2500	42.00	B	D0090
26-Feb-02	13:17:18	13:17:18	121218643	291	D0090	2500	42.00	S	D0090
26-Feb-02	13:17:18	13:17:18	31866909	292	D0090	2500	42.00	B	D0090
26-Feb-02	13:17:18	13:17:18	121218643	292	D0090	2500	42.00	S	D0090
26-Feb-02	13:17:18	13:17:18	31866909	293	D0090	2500	42.00	B	D0090
26-Feb-02	13:17:18	13:17:18	121218643	293	D0090	2500	42.00	S	D0090
26-Feb-02	13:17:41	13:17:41	31866913	294	D0090	2500	42.00	B	D0090
26-Feb-02	13:17:40	13:17:41	121218648	294	D0090	2500	42.00	S	D0090
26-Feb-02	13:17:41	13:17:41	31866913	295	D0090	2500	42.00	B	D0090
26-Feb-02	13:17:40	13:17:41	121218648	295	D0090	2500	42.00	S	D0090
26-Feb-02	13:17:41	13:17:41	31866913	296	D0090	2500	42.00	B	D0090
26-Feb-02	13:17:40	13:17:41	121218648	296	D0090	2500	42.00	S	D0090
26-Feb-02	13:17:41	13:17:41	31866913	297	D0090	2500	42.00	B	D0090
26-Feb-02	13:17:40	13:17:41	121218648	297	D0090	2500	42.00	S	D0090
26-Feb-02	13:18:04	13:18:05	121218651	298	D0090	2500	42.00	B	D0090
26-Feb-02	13:18:04	13:18:05	31866916	298	D0090	2500	42.00	S	D0090
26-Feb-02	13:18:04	13:18:05	121218651	299	D0090	2500	42.00	B	D0090
26-Feb-02	13:18:04	13:18:05	31866916	299	D0090	2500	42.00	S	D0090
26-Feb-02	13:18:04	13:18:05	121218651	300	D0090	2500	42.00	B	D0090
26-Feb-02	13:18:04	13:18:05	31866916	300	D0090	2500	42.00	S	D0090
26-Feb-02	13:18:04	13:18:05	121218651	301	D0090	2500	42.00	B	D0090
26-Feb-02	13:18:04	13:18:05	31866916	301	D0090	2500	42.00	S	D0090
26-Feb-02	13:18:24	13:18:35	121218656	302	D0090	2500	42.00	B	D0090
26-Feb-02	13:18:35	13:18:35	31866919	302	D0090	2500	42.00	S	D0090
26-Feb-02	13:18:24	13:18:35	121218656	303	D0090	2500	42.00	B	D0090
26-Feb-02	13:18:35	13:18:35	31866919	303	D0090	2500	42.00	S	D0090
26-Feb-02	13:18:24	13:18:35	121218656	304	D0090	2500	42.00	B	D0090
26-Feb-02	13:18:35	13:18:35	31866919	304	D0090	2500	42.00	S	D0090
26-Feb-02	13:18:24	13:18:35	121218656	305	D0090	2500	42.00	B	D0090

Date	Order Time	Trade Time	Order No	Trade No	Member Code	Qty	Price	Buy / Sell	Counter Party Code
26-Feb-02	13:18:35	13:18:35	31866919	305	D0090	2500	42.00	S	D0090
26-Feb-02	14:04:48	14:04:48	31867159	306	D0090	2500	42.20	B	D0090
26-Feb-02	14:04:48	14:04:48	121218912	306	D0090	2500	42.20	S	D0090
26-Feb-02	14:04:48	14:04:48	31867159	307	D0090	2500	42.20	B	D0090
26-Feb-02	14:04:48	14:04:48	121218912	307	D0090	2500	42.20	S	D0090
26-Feb-02	14:06:42	14:06:42	31867169	308	D0090	2500	42.20	B	D0090
26-Feb-02	14:06:41	14:06:42	121218926	308	D0090	2500	42.20	S	D0090
26-Feb-02	14:06:42	14:06:42	31867169	309	D0090	2500	42.20	B	D0090
26-Feb-02	14:06:41	14:06:42	121218926	309	D0090	2500	42.20	S	D0090
26-Feb-02	14:06:42	14:06:42	31867169	310	D0090	2500	42.20	B	D0090
26-Feb-02	14:06:41	14:06:42	121218926	310	D0090	2500	42.20	S	D0090
26-Feb-02	14:06:42	14:06:42	31867169	311	D0090	2500	42.20	B	D0090
26-Feb-02	14:06:41	14:06:42	121218926	311	D0090	2500	42.20	S	D0090
26-Feb-02	14:21:04	14:21:05	121218999	312	D0090	2500	42.00	B	D0090
26-Feb-02	14:21:04	14:21:05	31867295	312	D0090	2500	42.00	S	D0090
26-Feb-02	14:21:04	14:21:05	121218999	313	D0090	2500	42.00	B	D0090
26-Feb-02	14:21:04	14:21:05	31867295	313	D0090	2500	42.00	S	D0090
26-Feb-02	14:21:29	14:21:30	121219003	314	D0090	2000	42.00	B	D0090
26-Feb-02	14:21:29	14:21:30	31867298	314	D0090	2000	42.00	S	D0090
26-Feb-02	14:21:29	14:21:30	121219003	315	D0090	2000	42.00	B	D0090
26-Feb-02	14:21:29	14:21:30	31867298	315	D0090	2000	42.00	S	D0090
26-Feb-02	14:21:29	14:21:30	121219003	316	D0090	2000	42.00	B	D0090
26-Feb-02	14:21:29	14:21:30	31867298	316	D0090	2000	42.00	S	D0090
26-Feb-02	14:21:29	14:21:30	121219003	317	D0090	2000	42.00	B	D0090
26-Feb-02	14:21:29	14:21:30	31867298	317	D0090	2000	42.00	S	D0090
26-Feb-02	14:21:29	14:21:30	121219003	318	D0090	2000	42.00	B	D0090
26-Feb-02	14:21:29	14:21:30	31867298	318	D0090	2000	42.00	S	D0090
26-Feb-02	14:24:28	14:24:28	31867312	319	D0090	2000	42.00	B	D0090
26-Feb-02	14:24:28	14:24:28	121219021	319	D0090	2000	42.00	S	D0090
26-Feb-02	14:25:59	14:26:00	121219032	320	D0090	2000	42.20	B	D0090
26-Feb-02	14:26:00	14:26:00	31867320	320	D0090	2000	42.20	S	D0090

- 1.6 In view of the above, it was prima facie alleged that the Broker had violated regulation 7 of the Broker Regulations, clause A (1), A (2) and A (4) of the Code of Conduct specified in the Broker Regulations and regulation 4 (a) and 4 (b) of the FUTP Regulations.

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 On completion of investigations, SEBI appointed an Enquiry officer vide order dated July 08, 2004 under regulation 5(1) of SEBI (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 committed by the Broker as mentioned above while dealing in the shares of the company.

- 2.2 Accordingly, a notice dated August 26, 2004 was issued to the Broker asking it to show cause as to why recommendations under section 13 (1) of the Enquiry Regulations should not be imposed against it. SEBI had also forwarded the copy of the proceedings in respect of the appointment of the Enquiry Officer and the findings of the investigation to the Broker with the said show cause notice. The Broker was given 21 days time to give its reply to the said show cause notice. The Broker vide letter dated September 11, 2004 inter alia requested to grant time till November 15, 2004 for submitting its reply.

- 2.3 The Broker vide letter dated October 11, 2004 submitted its reply to the aforesaid show cause notice. Though the Enquiry Officer had granted an opportunity of hearing to the Broker it had failed to avail the same. The Broker vide letter dated December 20, 2004 informed the Enquiry Officer about its inconvenience to appear before him on the date of hearing and further requested the Enquiry Officer to consider the reply dated October 11, 2004 as its final reply. The Enquiry Officer in his report dated October 21, 2005 did not recommend any action against the Broker, as, according to him the charges leveled against the Broker were not established.

3.0 CONSIDERATION OF ISSUES AND FINDINGS.

- 3.1 I have considered the investigation report and the Enquiry Report. I note that the Broker had executed substantial trades in the shares of the company (which was illiquid scrip at the time of the transactions) including cross deals (93% of its total transactions in the said shares at CSE during the above period). In the process, the Broker had executed several cross deals almost on a regular basis and at higher levels (price). Both sell and buy orders were placed almost at the same time from the single terminal of the Broker with the same quantity, price etc. In the process, the Broker had allowed its clients to execute trades at a pre determined price and time causing price variations and thereby, impaired the market integrity by entering into trades which were not genuine. In view of the above, I observe that the Broker has prima facie violated the provisions of Regulation 4 (a) and (b) of the FUTP Regulations and clauses A (1), (2) and (4) of the Code of Conduct stipulated in Schedule II to the Broker Regulations and therefore, I am unable to accept the findings and recommendation made by the Enquiry Officer.

- 3.2 Accordingly a notice dated April 26, 2006 was issued to the Broker asking it to show cause as to why a major penalty of suspension of the certificate of registration for a period of six months should not be imposed against it.

- 3.3 The Broker vide letter dated May 8, 2006 inter alia stated that both the buyers and sellers were different parties (unrelated) and all the trades had been backed by delivery and payment and duly executed as per the prevailing Rules and Regulations of the Exchange / SEBI. The Broker denied the allegation that it had created artificial volume and that it had involved in the artificial price of the shares of the said company. The Broker further claimed that no specific facts were mentioned in the show cause notice dated April 26, 2006. The Broker clarified that if a transaction was executed by a registered client on the trading terminal of the exchange and if the payment was settled through the official exchange mechanism and if the beneficial ownership of the shares were transferred from the buying client to the selling client, the question of genuineness of the trades did not arise. The Broker further contended that the show cause notice dated April 26, 2006 is contradictory to the Enquiry Report.
- 3.4 The Broker was also granted an opportunity of hearing on February 19, 2007. Shri Debabrata Biswas, Proprietor of the Broker appeared before me and admitted the violations committed by the Broker, as SEBI was not convinced by its reply in relation to similar violations noticed in the case of Prime Capital Markets Ltd. Further, the Broker requested SEBI to consider that the penalty, if any, against it, might run concurrently with its on going suspension imposed by SEBI, vide order dated January 17, 2007 in respect of its dealings in the matter of Prime Capital Markets Ltd. He further stated that the Broker would be careful in future while executing trades on behalf of its clients.
- 3.5 I have perused the investigation report, the enquiry report, the show cause notice dated April 26, 2006, the reply of the Broker dated May 8, 2006, the oral submissions made on behalf of the Broker at the time of the hearing and other materials available on record. At the outset, I would like to deal with the contention of the Broker that the show cause notice dated April 26, 2006 issued by SEBI is contradictory to the Enquiry Report. In this regard, I would like to mention that there is no contradiction between the Enquiry Report and the show cause notice dated April 26, 2006. In terms of the provisions of the Enquiry Regulations, the report of the Enquiry Officer is only recommendatory in nature and he may only recommend for the imposition of either minor or major penalties as mentioned thereof.
- 3.6 In terms of regulation 13(4) of the Enquiry Regulations, the competent authority {Chairman or Member (as the case may be)}, upon the receipt of enquiry report is empowered to pass such order as he may deem fit after considering the reply filed by the intermediary concerned. The expression "pass such order as he may deem fit" is not only restricted to the passing of orders which are final in character. If the competent authority has the jurisdiction to pass any order in reference to a specific case called for by it as it thinks fit, obviously it can come to a different conclusion from the one to which the Enquiry Officer had arrived, on the same set of facts. Regulation 13(4) of the Enquiry Regulations confers a wide jurisdiction enabling the Competent Authority to take an entirely different view on the same set of facts. In a given case, the competent authority is empowered to take into account the material factors which were available on record but were not considered by the Enquiry Officer, for the purposes of doing justice. I am of the considered view that the trades executed by the Broker in the shares of the company on behalf of its clients are in prima facie violation of the provisions of the FUTP Regulations and the Code of Conduct specified in the Broker Regulations and hence called for a major penalty as provided in the Enquiry Regulations. Accordingly, the show cause notice dated April 26, 2006 was issued to the Broker and thereby, an opportunity was provided to the Broker to make its submissions in respect of the show cause notice and the proposed increase in penalty.
- 3.7 The Broker was also granted an opportunity of hearing by me on February 19, 2007. The said opportunities were provided by SEBI to the Broker towards the compliance of the principles of natural justice, so that the Broker could make its submission/explanation, if any, against the proposal to enhance the penalty. Therefore, as evident from regulation 13(4) of the Enquiry Regulations, the recommendations of the Enquiry Officer are not binding on the Competent Authority i.e. Chairman or the Member, SEBI, as the case may be and he can pass such order as it thinks fit. In view of the above, I am unable to accept the contention of the Broker that the Enquiry Report and the show cause notice are contradictory to each other and accordingly the same is rejected.
- 3.8 The Broker has not disputed the trades done by it on behalf of its clients in the shares of the company at CSE during December 2001 to February 2002. In the said process, the Broker had executed trades for 5,84, 000 shares of the said company out of the total turnover of 78,68,302 shares at CSE. I note that the majority of the aforesaid trades of the Broker were by way of cross deals executed at its single terminal. The details of the cross deals executed by the Broker are explained in detail in the table given in para 1.5 above. On a perusal of the said trades, it can be seen that the Broker had executed cross deals on a regular basis from December 5, 2001 to February 26, 2002. The price of the shares of the company on December 5, 2001 was Rs.27.50 and the Broker executed trades generally at a higher price till February 13, 2002, when the price of the shares of the company reached its maximum at Rs.62.20/- Thereafter, on February 26, 2002 the Broker had executed a number of cross deals at the same price i.e Rs.42/-.
- 3.9 I note that the cross deals accounted for majority of the trades of the Broker at CSE in the shares of the company between December 2001 to February 2002 as show in the table at para 1.5. The continuity and the consistency with which the said cross deals were executed by the Broker on behalf of its clients in the shares of the company cannot be a matter of coincidence, considering its nature (the price, quantity and time) and its recurrence in a row. It can be seen that most of the buy and the sell orders were placed by the Broker at almost the same time, with just a difference of few seconds. The said proximity in the placing of 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.
- 3.10 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 the company, against the fundamentals of the functioning of the securities market. The transactions executed by the Broker undoubtedly increased the volume and price of the shares of the company artificially to induce the genuine investors to invest in the said shares. I note that at the time when the Broker was actively executing cross deals in the shares of the company, the price had increased from Rs.27.5/- to Rs.62.20/- (except the trades on February 26, 2002 which were uniformly executed at the rate of Rs.42/-), a rise of more than 100%.
- 3.11 It can be seen from the table shown in para 1.5 above, that the cross deals executed by the Broker comprised of 93% of its total volume in the shares of the company, which was illiquid at the time of the said trades. In the given circumstances, considering the nature of the trades (uniformity in time, quantity and price etc.), it can not be said that the said transactions were genuine. The series of trades in the form of cross deals, considering its numbers, quantity etc. will only lead to the finding that all the deals were done with the purpose of manipulating the price / volume in the shares of the company and thereby the securities market to the detriment of the genuine investors. The said concerted level of activity, that too continuously over a period of three months, is only compatible with the purposes of manipulating the securities market on the part of the Broker. Such transactions undoubtedly create an artificial market to mislead the genuine investors and the said transactions create false volumes. It is too much of a coincidence over too long a period in too many transactions when the same stock broker had entered into buy and sell orders for the same quantity of shares almost simultaneously.

- 3.12 The Broker should have stopped executing such transactions which would affect the interest of the genuine investors in the securities market. 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. On the other hand he continued to execute such trades. The cross deals were executed from the same terminal and almost at the same time. The trades executed by the Broker were not genuine in the sense that the said trades were executed between client to client at the same terminal.
- 3.13 In the above facts and circumstances, it is fairly established that the trades of the Broker in the shares of the company were done for the purpose of creating false and misleading appearance of trading and for the purpose of manipulating the price of the shares of the said company 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. 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 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 and thereby was instrumental in creating artificial volumes in the shares of the company.
- 3.14 In this context, the provisions of Regulation 4 of the said Regulations is reproduced hereinbelow for the sake of reference.
- "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".
- 3.15 The peculiar nature of the trades executed by the Broker and the modus operandi in those transactions persuades me to the conclusion that these transactions were the outcome of a predetermined and planned action. In the present case, admittedly the Broker itself was executing transactions on both sides (buy and sell). The Broker allowed its clients to trade in the shares of the company substantially. Cross deals involving interplay of market forces, pre supposes the active participation of the Broker. In the present case, the Broker was directly involved and was trading on both sides of the transactions and the same itself will prove the direct participation of the Broker in the entire transactions that took place in the shares of the company for the purpose of giving a misleading appearance of trading in the market and thereby artificially increasing the volume and price of the said shares. I note that the increase in the share price of the company at CSE during the above period occurred as a result of the aforesaid cross deals executed by the Broker and in the process, the Broker had also created artificial volumes in the shares of the company.
- 3.16 In the facts and circumstances, the trades executed by the Broker in the shares of the company at CSE as explained above in detail, would only lead to the conclusion that same were not genuine which created misleading appearance of trading on the securities market and was intended only for the purpose artificially raising the prices of shares of the company thereby inducing the sale or purchase of the said shares by any person. The Broker's direct participation (on both buy and sell sides) would prove him guilty in respect of the market manipulation. Even in cases where no direct evidence is available, the tell - tale circumstances hold the mirror on to the intentions of parties, albeit shrouded in secrecy. And the legal proof in such circumstances is nothing but a prudent man's estimate of the probabilities of the case. As a matter of fact the Hon'ble Supreme Court in the matter Collector of Customs, Madras and Others Vs D. Bhoormall made the following observation "El Dorado of absolute proof being unattainable, the law accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent mans estimate as to the probabilities of the case".
- 3.17 I further note that the trades executed by the Broker in the shares of the company as aforesaid created a false appearance of trading and was intended to operate only as a device to inflate, depress, or cause fluctuations in the said shares. 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."*
- 3.18 A cumulative analysis of the facts of the case, clearly indicate that the Broker did not act in a bonafide manner. On the contrary, the above facts highlight its complete involvement in the creation of misleading market in the shares of the company and the creation of artificial volume and price in the said shares.

- 3.19 The natural corollary to this issue is whether the Broker had maintained high standards of integrity, promptitude, fairness and exercised due skill, care and diligence in the conduct of its business. The Broker also shall not create false market or indulge in any act detrimental to the investors' interest or which leads to the interference with the fair and smooth functioning of the securities market. The trades (including the cross deals) executed by the Broker as explained in detail above will prove that the said trades in the shares of the company created a misleading appearance in the market and further created artificial volume and price in the said shares by hampering the price movement mechanism prevailing in the securities market. It further shows that the Broker had not exercised due skill, care and diligence and not maintained high standards of integrity, promptitude, fairness in the conduct of its business.
- 3.20 Therefore, it is fairly established that the Broker had violated the provisions of Regulations 4(a) and (b) of the FUTP Regulations and clauses A(1) (2) and (4) of the Code of Conduct specified in Schedule II of the Broker Regulations.
- 3.21 Though the Broker in its reply dated May 8, 2006 submitted that it had not committed any violations as mentioned in the show cause notice dated April 26, 2006, Shri Debabrata Biswas (the proprietor of the Broker) during the time of the hearing before me, admitted the aforesaid violations, since he was not able to convince SEBI for similar market misdemeanors in the case of Prime Capital Markets Ltd. During the time of hearing, Shri Debabrata Biswas, further requested SEBI to consider that the imposition of penalty, if any, against it might run concurrently with its on going suspension imposed by SEBI vide order dated January 17, 2007 in respect of its dealings in the matter of Prime Capital Markets Ltd.
- 3.22 In the facts and circumstances, the violations committed by the Broker call for a higher penalty than that recommended by the Enquiry Officer as ordered herein under.

4.0 ORDER

- 4.1 In view of the foregoing, 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 D.B & Co {Registration no. INB 030067311}, Member, Calcutta Stock Exchange Association Ltd. for a period of six months.
- 4.2 As D.B & Co is already undergoing suspension in terms of Securities and Exchange Board of India order dated January 17, 2007, this order shall come into force with immediate effect and run concurrently.

G ANANTHARAMAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date : 26th February, 2007