

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: G.ANANTHARAMAN, WHOLE TIME MEMBER.

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. MITTAL SECURITIES PRIVATE LIMITED, MEMBER, NATIONAL STOCK EXCHANGE OF INDIA LIMITED, IN RESPECT OF ITS DEALINGS IN THE SHARES OF DSQ SOFTWARE LTD.

WTM/GA/14/ISD/5/07

Date of Hearing: September 29, 2006

Appearances:

For Noticee: Shri Vinay Chauhan, Advocate.

For Securities and Exchange Board of India: Shri. B Rajendran, Dy. General Manager,
Shri A. Mithwani, Asst. General Manager and
Shri Vijayakrishnan. G, Asst. Legal Advisor.

1.0 BACKGROUND

1.1 The shares of DSQ Software Ltd. (hereinafter referred to as the company), formerly known as Square D Software Ltd., are inter alia listed at the National Stock Exchange of India Ltd. (hereinafter referred to as NSE) and the Bombay Stock Exchange Ltd. (hereinafter referred to as BSE). The company was originally incorporated on March 6, 1992 as

M/s. Square D Software Limited with its registered office at Kolkata. Thereafter, the registered office of the company was shifted from Kolkata to Chennai with effect from August 16, 1994. The name of the company was subsequently changed from M/s. Square D Software Limited to M/s. DSQ Software Limited with effect from April 01, 1997.

- 1.2 There was an unusual movement in the share price of the company and the same increased from Rs.255/- to Rs.2631/- during October 1, 1999 and March 31, 2000. Subsequently, the share price plummeted to Rs. 149/- on March 31, 2001 from Rs. 1499/- on April 1, 2000. The said price movements were also accompanied by large volumes (at times, the daily average volume reached 10, 00,000 shares) at BSE and NSE.
- 1.3 In the facts and circumstances, based upon prima facie findings, Securities and Exchange Board of India (hereinafter referred to as SEBI) vide an interim order dated July 20, 2001 inter alia prohibited the company and its promoter viz. Shri Dinesh Dalmia from accessing capital market for a period of one year or completion of investigation and action thereupon whichever is later. The said interim order was confirmed by SEBI, vide order dated December 20, 2001 after giving reasonable opportunity of hearing.
- 1.4 The investigation conducted by SEBI inter alia found that Shri Dinesh Dalmia had fraudulently allotted 1.7 crore shares of the company to its group / associate entities. Out of the above, around 1.3 crore shares of the company were off loaded in the securities market by the group / associate entities of Shri Dinesh Dalmia viz. Hulda Properties and Trades Ltd., Powerflow Holdings Ltd., DSQ Holdings Ltd. and DSQ Industries Ltd. etc. before the listing of the said shares. The market value of the said 1.3 crore shares of the company was found to be around

Rs.630 crores, calculated by taking into account the average price of the shares of the company at the relevant time. Thus, the promoters/directors of the company generated funds by trading in the shares of the company through their associates. The above mentioned associates of Shri Dinesh Dalmia sold large quantities of the shares of the company through a set of stock brokers at NSE and BSE and the said shares were bought back by the said associates at the same time through different set of stock brokers inter alia by way of synchronized trades. It is further seen that the stock brokers through which the aforesaid sales were done, made payment to the sellers (associates of the company) even before they received the pay out from the clearing corporation, and that to cover the same, the rate of brokerage was adjusted to the time of payment.

1.5 In view of the above findings of investigation, SEBI vide order dated September 9, 2004 inter alia prohibited the company and Shri Dinesh Dalmia from buying, selling or otherwise dealing in securities in any manner, directly or indirectly, for a period of 10 years. Shri Dinesh Dalmia was further prohibited from holding any office of responsibility in a company/entity or other institution associated with the securities market for a period of 10 years. In the said order, SEBI had also passed the following directions:

- (i) “Shri Dinesh Dalmia and DSQ Software Ltd shall deposit a sum of Rs.630 crore (being the value of Rs.1.30 crore shares calculated by taking into account the average price of the scrip in the relevant settlement) within a period of 45 days in a separate escrow account to be maintained with a nationalized bank, till completion of investigation by various Police agencies

including The Calcutta Police and Central Bureau of Investigation.

- (ii) Shri Dinesh Dalmia shall buy 1.30 crore shares of DSQ Software Ltd, circulated into the secondary market within a period of 45 days and retain the same in a separate demat account to be opened for the purpose, till permission for reduction in capital is obtained by the company from the competent authority.
- (iii) The amounts deposited in the escrow account and shares retained in the demat account shall not be withdrawn without prior permission in writing from SEBI”.

1.6 The aforesaid order dated September 9, 2004 was challenged by the company and Shri Dinesh Dalmia before the Hon'ble Securities Appellate Tribunal (SAT). Vide order dated December 8, 2005, SAT upheld the aforesaid SEBI order inter alia with the following modification:

“The period of debarment shall be from the date when the interim order was passed by SEBI on 27.1.2001 and will run for a period of 10 years from that date and the order to that extent also is modified”.

1.7 SAT, in the said order, has inter alia observed “I find that by its actions as outlined above, the company has acted in a fraudulent manner”. “.....unlisted shares were sold to the unsuspecting investors way back in 2000-01 at a price of several hundred rupees for each share.

- 1.8 The investigation conducted by SEBI inter alia found that the associates of Shri Dinesh Dalmia viz. Hulda Properties and Trades Ltd., Powerflow Holdings Ltd., DSQ Holdings Ltd. traded heavily in the shares of the company among themselves and thereby created volumes by executing synchronized trades, circular trades etc. The details of the trades of the above entities through some of the major brokers in the shares of the company during the period April 1 ,2000 - March 31, 2001 { at NSE, BSE and Calcutta Stock Exchange Association Ltd. (CSE) } are mentioned below :

A. Hulda Properties and Trades Ltd.

Exchange	Period (April 1 ,2000 - March 31, 2001)		
	Purchases (shares)	Sales (shares)	Net (shares)
BSE	8337664	8293196	44468
NSE	10532021	12510678	-1838857
CSE	12074917	11063876	1011041
Total	30944602	31867750	-783348

B. Powerflow Holdings Ltd.

Exchange	Period (April 1 ,2000 - March 31, 2001)		
	Purchases (shares)	Sales (shares)	Net (shares)
BSE	3722500	3547500	175000
NSE	3855500	4055500	-200000
CSE	612000	862000	-250000
Total	8190000	8465000	-275000

C. DSQ Holdings Ltd.

Exchange	Period (April 1 ,2000 - March 31, 2001)		
	Purchases (shares)	Sales (shares)	Net (shares)
BSE	3579037	5139037	-1560000
NSE	719500	5860500	-5141000
CSE	237900	100000	137900
Total	4536437	11099537	-6563100

Thus, all the above three entities bought 4.36 crore shares and sold 5.15 crore shares of the company during the above period.

1.9 It is seen from the above, that the trades of the above entities contributed substantial volumes in the shares of the company at NSE, BSE and CSE inter alia during April 2000 and March 2001. The said trades (including the synchronized trades) were executed through the stock brokers viz. Dresdner Kleinwort Benson Securities Ltd (DKB), Prabhudas Liladhar Pvt. Ltd., Woodstock Securities Ltd. Woodstock Broking Ltd. Omega Equities Ltd., Mittal Securities Pvt. Ltd. etc. It was found that while one of the associate entities was selling, other entities were buying shares. By entering into such synchronized deals, effectively there was no change in beneficial ownership and there was creation of artificial market. Thus, it was found that inter alia the aforesaid associated entities viz. Hulda Properties and Trades Ltd., Powerflow Holdings Ltd., DSQ Holdings Ltd. had indulged in synchronized transactions which defeated the transparency of the trading mechanism of stock exchanges.

1.10 In the facts and circumstances, SEBI vide order dated October 4, 2004 inter alia prohibited DSQ Holdings Ltd, Hulda Properties & Trades Ltd., Powerflow Holdings Pvt. Ltd, DSQ Industries Ltd from accessing the

securities market and dealing in securities for a period of 10 years. In the said order it was observed:

“ I also find that DSQ Holdings Ltd, Hulda Properties & Trades Ltd., Powerflow Holdings Pvt. Ltd and DSQ Industries Ltd have indulged in synchronized transactions that seek to defeat the transparency of the trading mechanism of stock exchanges.....”.

“ I find that the DSQ Holdings Ltd, Hulda Properties & Trades Ltd., Powerflow Holdings Pvt. Ltd, DSQ Industries Ltd and Mrs. Radha Dalmia have acted to the detriment of investors and the safety and credibility of the securities market. They have indulged in activities that are fraudulent and unfair and manipulative.”

“the associated entities had entered into synchronized and circular deals wherein the buy order and sell orders were inputted in the trading system at the same time for same rate and same quantity. While one of the associated entities was selling, other entities were buying shares. By entering into such synchronized deals, they have facilitated trades where effectively there was no change in beneficial ownership and there was creation of artificial market”.

- 1.11 DSQ Holdings Ltd, Hulda Properties & Trades Ltd., Powerflow Holdings Pvt. Ltd, DSQ Industries have not preferred any appeal against the aforesaid order. SEBI had also cancelled the certificate of registration of DKB in respect of its irregular trades in the shares of the company, vide order dated April 26, 2007.

1.12 Further, the investigation conducted by SEBI inter alia found that M/s. Mittal Securities Pvt. Ltd. (hereinafter referred to as the 'Broker'), member, NSE and registered with SEBI as a stock broker (registration number INB 230653135) had executed trades for substantial number of shares of the company for its client Hulda Properties and Trades Ltd., between settlement nos. 2000025 and 2001012 at NSE during June 2000 to March 2001. It was found that the Broker had also executed synchronized trades in the shares of the company for Hulda Properties and Trades Ltd. between June 2000 – November 2000, wherein the ordered quantity, price and time were completely matched. The said Hulda Properties and Trades Ltd., is hereinafter referred to as Hulda for the sake of brevity. The total trades of Hulda at NSE in the shares of the company vis-à-vis the trades executed by the Broker for Hulda are mentioned below :

Trades of Hulda at NSE in the shares of the company during June 2000 to March 2001		Trades of the Broker for Hulda at NSE in the shares of the company during June 2000 to March 2001		Percentage of Broker's trades to Hulda's total trades at NSE in the shares of the company during June 2000 to March 2001	
Buy	Sell	Buy	Sell	Buy	Sell
98,00,471	1,10,65,738	15,83,850	14,83,080	16.16%	13.40%

1.13 The synchronized trade details of the Broker (for Hulda) in the shares of the company with the counterparty stockbroker, Dresdner Kleinwort Wassertein Securities (India) Private Limited (hereinafter referred to as DKB), member, NSE are as follows:

Trade Date	Buy order number	Buy Time	Buy Price	Buy Qty	Trade Time	Buying Client	Sell Order No.	Sell Time	Sell Price	Sell Qty	Selling Client
16-Jun-00	200006160675328	1:45:00 PM	968.75	25000	13:45:00	Hulda	200006160675292	1:44:59 PM	968.75	25000	Hulda
16-Jun-00	200006160676797	1:45:46 PM	968.85	25000	13:45:49	Hulda	200006160676930	1:45:49 PM	968.80	25000	Hulda
19-Jun-00	200006190081345	10:08:39 AM	1027.50	25000	10:08:39	Hulda	200006190081383	10:08:39 AM	1027.25	25000	Hulda

19-Jun-00	200006190084064	10:09:09 AM	1028.50	25000	10:09:09	Hulda	200006190084029	10:09:09 AM	1028.50	25000	Hulda
18-Oct-00	200010180329597	11:15:56 AM	343.60	20000	11:15:56	Hulda	200010180329592	11:15:56 AM	343.60	20000	DSQ Holdings Ltd.
18-Oct-00	200010180337070	11:18:46 AM	344.15	10000	11:18:51	Hulda	200010180337215	11:18:51 AM	344.15	10000	DSQ Holdings Ltd.
18-Oct-00	200010180385187	11:40:35 AM	342.60	10000	11:40:36	Hulda	200010180385209	11:40:36 AM	342.60	10000	DSQ Holdings Ltd.
18-Oct-00	200010180385881	11:40:58 AM	342.50	20000	11:40:58	Hulda	200010180385870	11:40:57 AM	342.50	20000	DSQ Holdings Ltd.
18-Oct-00	200010180386593	11:41:21 AM	343.10	20000	11:41:22	Hulda	200010180386615	11:41:22 AM	343.10	20000	DSQ Holdings Ltd.
06-Nov-00	200011060112250	10:12:27 AM	395.75	55000	10:12:28	Hulda	200011060112378	10:12:28 AM	395.75	55000	DSQ Holdings Ltd.

Thus, the Broker had executed 2 synchronized trades each on June 16, 2000 (@Rs. 968.75/- and Rs. 968.85/-) and June 19, 2000 (@Rs.1027.50/- and Rs.1028.50/-) in the shares of the company on behalf of Hulda. The said trades were executed between the same client. i.e the buy and the sell client was Hulda. The said trades were high value transactions, executed without the client registration form and the member client agreement. The Broker had also executed 5 synchronized trades on October 18, 2000 and 1 synchronized trade on November 06, 2000 in the said shares for Hulda. In all such trades, the counter party client was found to be DSQ Holdings Ltd. The said trades were executed in the price range of Rs. 342/- to Rs. 395/-. Hulda was placing buy orders through the Broker while the sell orders were executed either by Hulda itself or by DSQ Holdings Ltd. through another stock broker viz. DKB.

- 1.14 It has been alleged that Shri Dinesh Dalmia had introduced Hulda to the Broker and that the orders on behalf of Hulda were placed by Shri Soumyan, Shri Govind and Shri Annamalai (employees of DSQ group).
- 1.15 In the above facts and circumstances, it has been alleged that the Broker has prima facie violated the provisions of regulations 4 (a), (b), (c) and (d) of 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

the provisions of the Code of Conduct as specified in Schedule II read with regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations).

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 On completion of the investigation, SEBI appointed an Enquiry Officer, vide order dated August 4, 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. Accordingly, a notice dated June 15, 2004 was issued to the Broker. The Broker submitted its reply to the said show cause notice and the Enquiry Officer vide report dated October 30, 2004, recommended for the imposition of a major penalty of suspension of the certificate of registration of the Broker for a period of four months.

3.0 SHOW CAUSE NOTICE, REPLY AND HEARING:

- 3.1 Pursuant to the recommendation of the Enquiry Officer, a notice dated November 9, 2004 was issued to the Broker under regulation 13(2) of the 2002 Regulations, asking it to show cause as to why the penalty as recommended by the Enquiry Officer as may be deemed appropriate should not be imposed upon it. A copy of the Enquiry Report was also forwarded to the Broker with the said show cause notice.
- 3.2 The Broker vide letter dated November 30, 2004 filed its reply and inter alia stated that its clients' list included premier Domestic Financial Institutions, Domestic Mutual Funds, Insurance Companies, Foreign

Financial Institutions, retail clients etc. The Broker stated that, it maintained high standards of integrity, promptitude and fairness in the conduct of its business and that it had executed the transactions in good faith in the normal course of business and in consonance with the Rules and Regulations of SEBI/Stock Exchange. The Broker added that it was not aware of the counter party client when it executed the transactions on behalf of its client. The Broker stated that it had taken the proper Know Your Client (KYC) form from its client.

3.3 The Broker claimed that it had not made any proprietary trading in the shares of the company and that it had not gained any undue advantage by executing transactions in the said shares. The Broker stated that it had not acted in concert with its client (Hulda) and that it had executed the member client agreement, collected the requisite margin from its client and that there had been no complaint from the stock exchange or SEBI. The Broker contended that it had not entered into any transaction with the intention of artificially raising or depressing the prices and that its transactions were pursuant to the instructions received from its client. The Broker added that its trades had not induced any person to purchase or sell the securities. The Broker claimed that there was change in beneficial ownership of the shares and that it had not violated the provisions of regulation 4 of the FUTP Regulations as alleged. It further added that the Broker had not acted in concert with Hulda.

3.4 The Broker further clarified that it had executed transaction only on four days for 2,35,000 shares of the company as against the total trades of 1,23,27,265 shares during the 4 days (June 16,2000, June 19,2000, October 18, 2000 and November 06, 2000) and that the percentage of its trades as a percentage of total trades during the relevant period comprised 1.90% only. It was further added that its trades constituted

around 3% and below of the total volume of the trades on the said dates and that it was insignificant to create any impact on the market. The Broker urged that the execution of the transactions on behalf of a client without an intention to manipulate and in the absence of any knowledge about the counter party broker / counter party client could not be deemed to be a manipulative transaction. The Broker clarified that the Enquiry Report was silent about the fact as to whether it had the knowledge that DKB was the counter party broker/ client and also whether it had the knowledge of the manipulation by the company and its associates. The Broker contended that it had not entered into any transactions with the intention of artificially raising or depressing the prices and that it had not induced any person to purchase or sale the securities. It further added that the Broker had not indulged in any act so as to create a false or misleading appearance of trading in the securities market. The Broker also stated that it had not indulged in any transaction, which were not genuine transaction and that its transactions were delivery based with change in beneficial ownership.

- 3.5 The Broker further stated that it was not aware that the promoters / directors of the company generated funds by trading in the shares of the company through their associates and that it was not aware about the said associates of the company. The Broker stated that it was not aware as to whether Hulda was an associate of the company and whether it was indulging in synchronized trading as alleged. The Broker claimed that, as it had carried out only purchase transactions on behalf of Hulda, there was no question of making any payment to seller associate of the company even before the receipt of pay out as alleged. It had also denied any kind of financing to the client carrying out transaction through it. The Broker clarified that it had no reason to enquire as to why Hulda was trading only in the shares of the company.

- 3.6 The Broker urged that it was wrong to allege that it had not assessed the financial capacity of its client and further submitted that the client had sufficient earnings in the previous financial year. The Broker asserted that there was no occasion for it to suspect the bonafides of Hulda. Referring to the statement of the representative of DKB recorded by SEBI (on July 5, 2002), the Broker stated that it appeared that there might be prior understanding between DKB and DSQ group (of which Hulda was a part) in terms of financing and selling the shares to identified counterparty brokers. It is further maintained that, when the Broker was executing transactions on October 18, 2000 and November 6, 2000 on behalf of Hulda, it was not aware that its associate (DSQ Holding) was simultaneously placing the sell orders for the same quantity of shares at the same time and same price.
- 3.7 The Broker further stated “It is again emphasized that out of the four parties involved in the transaction i.e. Buying client (Hulda Properties Ltd.) Buying broker (Mittal Securities Ltd.), Selling Broker (DKB) & Selling client (Hulda Properties Ltd. / DSQ Holdings Ltd.) three are related (i.e. Hulda Properties Ltd. DKH, DSQ Holding) and have a common understanding. In view of the said nexus among the said three parties about which we had no knowledge, it is clear that for the exact matching of price, quantity and time of the orders the said three entities are responsible.”
- 3.8 The Broker clarified that the facts of Nirmal Bang Securities Pvt. Ltd. vs. SEBI (referred to in the enquiry report), decided by the Hon’ble Securities Appellate Tribunal, Mumbai (SAT) and the present case were entirely different. In respect of the nature of evidence required to sustain the charge of manipulation, the Broker referred to the order dated

October 27, 2001 passed by SAT in the matter of Sterlite Industries Ltd. vs. SEBI. The Broker also placed reliance on the judgments of Hon'ble Supreme Court inter alia in the case of Hindustan Steel Vs. State of Orissa (AIR 1970 SC 253), Ex- Naik Sardar Singh Vs. UOI (1991) 3 SCC 212 on the question of imposition of penalty. Additionally the order of SAT in the matter of M J Patel Vs. SEBI was also cited in support.

- 3.9 SEBI granted various opportunities of hearing to the Broker and the matter was finally heard on September 29, 2006. Shri Vinay Chauhan, Advocate appeared on behalf of the Broker and reiterated the submissions made by the Broker in its reply dated November 30, 2004. Shri Suresh Mittal, Director of the Broker was also present during the time of the hearing. The Broker vide letter dated October 9, 2006 filed its written submissions and inter alia stated that the Enquiry Officer while making certain findings had traversed beyond the charges leveled in the show cause notice.
- 3.10 In this context, the Broker had placed reliance on the judgment of the Hon'ble Supreme Court in the matter of Narendra Mohan Arya vs. United India Insurance Company Ltd. and others (2006) 4 SCC 713 and order of SAT dated June 27, 2006 in the matter of NVS Brokerage Pvt. Ltd. vs. SEBI. In respect of the financial capability of its client, the Broker claimed that its client had excellent track record in terms of meeting its payment and delivery obligation. The Broker had also submitted the copy of the balance sheet of Hulda for the year ending March 1999 and claimed that its client had an investment of Rs.28.25 lakhs in the shares of DSQ Holding since 1995 – 96. The Broker also specified the percentage of volume / turnover of its transactions vis - a - vis the volumes / turnovers in the market and of the alleged synchronized transactions on June 16, 2000, June 19, 2000, October 18, 2000 and November 6, 2000. On the

basis of the same, the Broker sought to explain that it had executed transactions for 2,35,000 shares of the company (for Hulda) on the aforesaid days against the total trading of 2,75,67,015 shares of the company on NSE.

3.11 The Broker also claimed that the percentage of alleged volume / turnover of Hulda as a percentage of volume / turnover during the investigation period was too insignificant to have any kind of impact on the market. In respect of the synchronized transactions the Broker had placed reliance on the judgments of SAT in the matters of Ketan Parekh vs. SEBI and Kasat Securities Ltd. Vs SEBI.

3.12 Thus, the submissions made by the Broker, in brief, are :

- ? The Enquiry Officer has gone beyond the show cause notice.
- ? The trades executed by the Broker on behalf of Hulda were negligible as compared to the total volume of the company at NSE.
- ? The Broker was not aware of the counterparty broker / client at the time of execution of trades.
- ? The Broker had not involved in any manipulation and that it had not violated the provisions of the FUTP Regulations and the Broker Regulations.
- ? The other people involved in the trades viz. Hulda, DSQ Holdings Ltd. and DKB only are responsible for the alleged manipulation.

4.0 CONSIDERATION OF ISSUES AND FINDINGS

4.1 I have perused the Enquiry Report, the show cause notice dated November 9, 2004, the reply of the Broker dated November 30, 2004, the oral as well as written submissions made on behalf of the Broker and

other materials available on record. In the facts and circumstances of the present case, the following issues emerge for consideration:-

- a) whether the Enquiry Officer had traversed beyond the show cause notice as contended by the Broker and
- b) whether the Broker had violated the provisions of the FUTP Regulations and the Broker Regulations as alleged in the show cause notice.

4.2 The Broker contended that the Enquiry Officer had gone beyond the show cause notice dated June 15, 2004 in the context of the following observations made in the Enquiry Report.

- ? “On perusal of the client registration form, it is seen that the client Hulda Properties Ltd. does not have the financial capabilities to enter into transactions in such large volumes.”
- ? “The client’s financial performance being very poor as indicated above, it should have aroused the suspicion of the broker when each trade by the client involved huge outlays of funds.”
- ? “From the financial statements enclosed with the KYC forms, it may also be seen that the client had large investment of Rs.28.25 lakhs in the shares of DSQS since the year 1995 – 96 (prior period details are not available) which appears to be a long term investment. When the client had such a huge investment in DSQS coupled with trading only in the said scrip in the aforesaid manner which involves huge outlay of funds that is disproportionate to its financial wherewithal’s as seen earlier, it should have aroused the suspicion of the broker.”

4.3 In the said show cause notice, it has been specifically mentioned “Your role as aforesaid is unbecoming of a broker and these trades are prohibited under Regulation 4(a) (b) (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995 and also in violation of provisions of the Code of

Conduct as specified in Schedule II read with Regulations 7 of SEBI (SB&SB) Regulations 1992.”

4.4 I note that, pursuant to the show cause notice, the Enquiry Officer granted opportunities to the Broker to make its submissions in respect of the charges leveled against it. The Broker had submitted before the Enquiry Officer that it had exercised due skill and care in the conduct of its business by obtaining the proper Know Your Client (KYC) forms containing client address and that it had obtained proper margins.

4.5 I observe that, though the specific clauses of the Code of Conduct were not explicitly expressed in the show cause notice, it was mentioned therein that the Broker had inter alia violated the provisions of the Code of Conduct as specified in Schedule II of the Broker Regulations. The extracts of the show cause notice sent to the Broker is quoted at para 4.3 above. In this context, the relevant clauses of the Code of Conduct as specified in Schedule II of the Broker Regulations (in relation to a stock broker) is reproduced below for the sake of ready reference:

“(1) *Integrity*: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) *Exercise of due skill and care* : A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) *Manipulation*: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) *Malpractices* : A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) *Compliance with statutory requirements:* A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him.”

4.6 The Enquiry Officer in his report has inter alia observed “It, therefore, cannot be said that the broker had exercised due care and caution and acted without negligence while transacting in the scrip of DSQS”. Considering the provisions of the clauses of the Code of Conduct as mentioned in the preceding para, it can be seen that the aforesaid findings of the Enquiry Officer fell within the scope of charges framed, while the observations by the Enquiry Officer (as quoted at para 4.2 above) captured the necessary material circumstances for coming to such conclusion. It is a matter of record that the observation (as quoted at para 4.2 above) was based on the documents (KYC form) available on records (which were executed by the Broker in the conduct of its business). Verification of the financial capacity of clients before executing the trades on their behalf, is one of the cardinal checks under the KYC norms/guidelines and it behoves a SEBI Registered Intermediary as the broker to follow the same scrupulously. Such assessment of financial capacity of the client is necessary in order to avoid the risk. When a stock broker fails to perform the said primary requirements and further, if he happens to be transacting on behalf of such clients without knowing their antecedents and financial capacity, he is putting the entire system in jeopardy. Such verification necessarily arises out of the exercise of due skill, care and diligence. It is in such a context only, that the Enquiry Officer had made the observations as in para 4.2 and such observations having nexus with application of KYC norms cannot be regarded as one falling beyond the scope of show cause notice which, to all intent and purposes, deals with the Code of Conduct.

4.7 The Broker has also placed reliance on the judgment of the Hon'ble Supreme Court in the matter of Narinder Mohan Arya Vs. United India Assurance Co. Ltd. (2006) 4 SCC 713 and contended that the Enquiry Officer was not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of charges was wholly illegal. As already discussed above, I note that the Enquiry Officer had not traveled beyond the show cause notice and thus his observations were based on the documents executed by the Broker and available on record. While making the observations, the Enquiry Officer had not considered any documents which were not executed by the Broker or which were not in possession of the Broker. The observations made by the Enquiry Officer were clearly on the basis of the documents on record. In this context, I would like to reproduce certain extracts of the observation made by the Hon'ble Supreme Court in the case cited supra:

“14. Ordinarily, we would not have referenced to the findings of the enquiry officer. He was entitled to draw his own inference and so long as the inference drawn by him is supported by some materials on record, it is well settled that a court of judicial review would not interfere therewith.”

4.8 In any event, in so far as the show cause notice refers to violation of Code of Conduct, the observations of the Enquiry Officer in respect of the financial capacity, the verification of which is a necessary ingredient of Code of Conduct, are totally consistent with the tenor of the show cause notice and do not traverse beyond as contended.

- 4.9 In the facts and circumstances, the contention of the Broker that the Enquiry Officer had traversed beyond the show cause notice is untenable and accordingly rejected.
- 4.10 In respect of the second issue, I observe that Hulda had executed trades for 98,00,471 shares (buy) and 1,10,65,738 shares (sell) of the company at NSE during June 2000 to March 2001. I also note that the Broker had executed 15,83,850 (buy) and 14,83,080 (sell) shares of the company on behalf of said Hulda during the said period. The trades of the Broker on behalf of Hulda thus accounted for 16.16% and 13.40% respectively of the total buy and sell volume of Hulda at NSE during the above period. Certain trades were executed at the price range of Rs.968/- to Rs.1028/-. The Broker had executed synchronized trades on behalf of Hulda and that it was observed that, while the Broker was placing buy orders for Hulda, either Hulda or DSQ Holding was placing sell orders through another stock broker viz. DKB. Out of the said synchronized transactions 94,148 shares got matched when Hulda was placing order on both sides 1,28,728 shares got matched when DSQ Holding was placing orders on the other side.
- 4.11 The Broker stated that its trades were not synchronized in nature and that it was not aware as to whether Hulda or the associates of the company was placing sell orders from the other side. On a perusal of the table at 1.10, it can be seen that the Broker had executed two trades each on June 16, 2000 (@ Rs.968/-) and June 19, 2000 (@ Rs.1027/- and Rs.1028/-), 5 trades on October 18, 2000 and a single trade on November 6, 2000 for its client Hulda in the shares of the company. I note that the Broker had placed orders for 1 lakh shares of the company on June 16, 2000 and June 19, 2000 at the price range of Rs.968/- to Rs.1028/-. It is pertinent to note that the said trades (on June 16, 2000

and June 19, 2000) were executed between the same client (Hulda). i.e the buy and the sell orders were executed by the same client.

4.12 The trades executed by the Broker on behalf of Hulda were synchronized in nature as the price, time and quantity of the shares (the 3 main ingredients) were matched to each other so as to culminate in the execution of trades. Out of the 10 trades, two trades (June 19, 2000 and October 18, 2000) were matched completely in all respects i.e. time, quantity and price. In most of the other trades, the maximum time difference was 5 seconds wherein the price and quantity were completely matched.

4.13 Thus, the Broker had executed number of synchronized trades in the shares of the company on behalf of its client repeatedly, as mentioned in the table at para 1.13. When the Broker was executing orders for its client during the above period, the counterparty orders were placed almost at the same time, with the maximum difference of five seconds. In the process, large number of shares of the company were traded between the associates of the company. The consistency with which the said trades were executed by the Broker on behalf of its client in the shares of the company cannot be a matter of coincidence, considering its nature (the price, quantity and time) and the high liquidity of the scrip in an anonymous screen based trading system. The said proximity in the placing of orders at the same price and for the same quantity almost at the same time resulted in the matching of the aforesaid transactions, with all the ingredients i.e. quantity, price and the time, required to conclude the trades.

4.14 I note that during the relevant period, the shares of the company were highly liquid and that the liquidity in trading implies amount of activity in

such shares wherein a considerably large number of buyers and sellers execute trades. In such a situation where the participants are numerous, it is almost improbable to get a stock broker's trades executed always with the same counter party stock broker, unless, the said stock broker is in collusion with the counter-party stock broker and the client. Further, a higher volatility means that a security's value can potentially be spread out over a larger range of values. This means that the price of the security can change dramatically over a short time period in either direction. In such a scenario where the price fluctuates in each second, it is almost impossible for the client to give a price range which would only match with a particular counter-party stock broker at a particular quantity. In all the transactions, both the buying and selling client was associated with the company and, in such scenario, the trades of the Broker for its client would clearly establish that the Broker was a party to the ongoing market manipulation. The Broker had misused the screen based trading by executing such fictitious trades on the stock exchange.

- 4.15 In the above facts and circumstances, the transactions executed on behalf of the client which were matched with the counter party client belonging to the company cannot be a coincidence and the same would not have been possible without a pre determined mind to execute the same with the price, quantity of shares matching in respect of the buy and sell orders. Such synchronized deals involving interplay of market forces, pre supposes the active participation of the Broker. This has to be seen in the overall context of the execution of such trades (when the price was very high compared to the other trades) without executing the member client agreement and the client registration form for the first four trades executed on June 16, 2000 and June 19, 2000. The trades on the said dates were high value transactions valued around Rs.10 crore as the same were executed when the share price was Rs.1027/- and 1028/-

respectively. The same would prove the direct participation of the Broker in the entire transactions that took place in the shares of the company (as stated above) for the purpose of giving a misleading appearance of trading in the shares of the company and thereby artificially increasing the volume of the said shares. It is true that the brokers act on the advice of their client and that in a normal trade executed through the exchange mechanism, the broker may not be aware of the counter party. However, considering the facts and circumstances of the present case, wherein the trades in a highly liquid scrip were executed between common set of brokers and clients regularly as mentioned in this order, I have no doubt to hold that the Broker was aware of the counterparty. It is the brokers who executes the trade by punching the buy / sell order at a specific time. I note that every trade establishes the price of the scrip and accordingly it matters and the trades executed by the Broker for the purpose of creating artificial volume and price interfered with the fair price discovery system.

- 4.16 As observed by the Hon'ble Securities Appellate Tribunal (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.”

4.17 Further, SAT in the matter of Ketan Parekh Vs SEBI had inter alia observed :

“The word ‘synchronise’ according to the Oxford dictionary means “cause to occur at the same time; be simultaneous”. A synchronized trade is one where the buyer and seller enter the quantity and price of the shares they wish to transact at substantially the same time. This could be done through the same broker (termed a cross deal) or through two different brokers. Every buy and sell order has to match before the deal can go through. This matching may take place

through the stock exchange mechanism or off market. When it matches through the stock exchange, it may or may not be a synchronised deal depending on the time when the buy and sell orders are placed. As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium..... Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.The nature of the transaction executed the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

- 4.18 I note that the trades of the Broker undoubtedly created 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

synchronized trades with other stock brokers for the same quantity of shares almost simultaneously. The Broker failed to exercise due skill, care and diligence which was expected from a prudent stock broker who had a duty not only towards its client but also towards the securities market, by executing trades without the client registration form and the member client agreement. I note that the Broker was a necessary party to the transactions giving rise to artificiality in the market. The Broker, by executing large number of synchronized trades was instrumental in creating artificial volumes and price in the shares of the company.

- 4.19 From the copy of the client registration form and the member client agreement executed between the Broker and its client (Hulda), it can be seen that the said forms were dated July 10, 2000 and July 19, 2000. These dates are relevant as the Broker had executed four trades of 25,000 shares each on June 16, 2000 and June 19, 2000 when the average share price of Rs.1000/- approximately. The value of the said trades is approximately Rs. Ten Crore. Thus the Broker had executed trades for such a big value without executing the member client agreement and the client registration form in advance. As already observed, it is one of the precautionary measures to be exercised by a stock broker to verify the financial capacity of his clients before executing the trades on their behalf, which is one of the checks under the KYC norms/guidelines. Such assessment of financial capacity of the client is necessary in order to avoid the risk. If he happens to be transacting on behalf of such clients without knowing their antecedents and financial capacity, he is putting the entire system in jeopardy. Such exercise is a part and parcel of the exercise of due skill, care and diligence. Above all the four trades were synchronized trades wherein the buying and the selling client was Hulda and the traded price ranged between Rs.968/- and Rs.1028/-. Some of the trades (June 16, 2000 and June 19, 2000)

were executed prior to the execution of the client registration form and the member client agreement, when the price was ranging between Rs.968/- and Rs.1028/-. The trades executed on June 16, 2000 and June 19, 2000 were fictitious as the buyer and seller were the same.

4.20 I note that the trades executed by the Broker on behalf of its client in the shares of the company created misleading appearance of trading in the said shares and resulted in the reflection of prices of securities of the company based on transactions which were not genuine and which affected the unsuspecting investors. Thereby, the trades of the Broker for Hulda artificially raised the prices of the shares of the company. As the client of the Broker and the counter party clients are associates, it can be said that they did not intend to effect the transfer of the beneficial ownership but only intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities.

4.21 The contention of the Broker that it was not aware as to whether Hulda belonged to the Promoter group of the company and that it had the knowledge about the connection between the company and its client has to be viewed from the conduct of the parties, the nature of the trades executed etc. The trade orders were placed almost at the same time with the same price and quantity. As already observed, such orders were not possible without a pre determined mind to execute the same with the price, quantity of shares matching in respect of the buy and sell orders. The Broker had executed 10 synchronised trades on four days in the shares of the company for its client. The Broker contended that it had executed 1932 trades in total on the aforesaid days (June 16, 2000, June 19,2000, October 18, 2000 and November 06, 2000) and that alleged matching of 10 trades were sheer co incidence. I am unable to accept the said contention as it has been already observed that without a

pre determined plan, the 10 trades as mentioned above can not be matched in all respects.

4.22 The contention of the Broker that its transactions on behalf of the client was miniscule as compared to the total volume of shares of the company at NSE, can not be viewed in isolation. The trades of the Broker has to be seen in the overall situation existed at the relevant time. In this context, I would like to observe that the said persons can alone can not manipulate its shares. It required various persons/entities/stock brokers etc. to execute the game plan. The role of the each individual player would be different from each other. Accordingly, the nature/concentration of the involvement of the individual player would vary. However, low it might be the individual involvement can not be ignored. Otherwise, it would lead to a situation wherein only the company and its associates would alone be responsible for the entire manipulation. I am unable to accept the said proposition. Further, I note that the 10 synchronized trades in the shares of the company which are highly liquid can not be matched (in all respects) without a pre determined mind.

4.23 Further, the Broker stated that it had executed 1,932 trades on 4 days in which the alleged synchronized trades taken place. The Broker in its written submissions mentioned the percentage of volume of its transaction vis a vis the volumes of the synchronized trades on June 16, 2000, June 19, 2000, October 18, 2000 and November 6, 2000. The said details are given below :

Trade date	Trades of the Broker in all the scrips	Synchronized trades of Hulda	Synchronized Trades of Hulda as a %age of Brokers total traded quantity
16/6/00	2,47,166	50,000	20.23
19/6/00	83,636	50,000	59.78
18/10/00	2,09,894	80,000	38.11
6/11/00	1,98,132	55,000	27.76

Total	7,38,828	2,35,000	31.81
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- 4.24 Further the Broker had also mentioned the details of trades done by it on June 16, 2000, June 19, 2000, October 18, 2000 and November 6, 2000, as mentioned below :

Trade Date	No of Trades	No. of synchronized trades	synchronized trades as a % of total trades
16/6/00	546	2	0.37
19/6/00	279	2	0.72
18/10/00	717	5	0.70
6/11/00	390	1	0.26
Total	1932	10	0.52

- 4.25 Thus, the trades of the Broker in the shares of the company on behalf of Hulda on the said dates accounted for 20.23%, 59.78%, 38.11% and 27.76% of its total trades on the said four dates respectively. i.e an average of 31 % of its total trades. The Broker stated that the total trades executed by it on the said 4 days were 1,932 (for 7,38,828 shares). Out of the said 1,932 trades, the synchronized trades for Hulda were 10, for 2,35,000 shares which would imply that the balance 1,922 trades were executed for 5,03,828 shares. This shows that the Broker had executed substantial synchronized trades in the shares of the company for Hulda, vis-a vis other trades. In such situation, I am of the view that the Broker had facilitated its client to manipulate the shares of the company by creating artificial volume and misleading appearance.
- 4.26 Once it is found that certain trades were executed with a pre determined plan for the purpose of creating a false appearance in the market, it is immaterial to look into the number of such trades, volume of the shares traded. In manipulation, the participation of a specific stock broker may be miniscule while comparing with the total number of trades, volume of

the shares traded in the exchange etc. Given the fact that there was manipulation in the scrip as borne out by the orders of SEBI and SAT, such manipulation could not have been possible by the company and its associates alone without the brokers acting in concert. Further, it stands to reason that the brokers who had direct dealings with them (in the present case, DKB and Mittal Securities Pvt. Ltd. by executing synchronized trades) can't escape their responsibility on the plea that it was not aware of its client's manipulative intentions in the market. There may not be any direct evidence in the context of market operations as to whether there was a constructive knowledge on the part of the Broker in respect of the manipulation, while dealing with its clients. It is a matter of inference from the attendant circumstances. The present case has all the ingredients and features as noticed in the case of connected entities namely buying client (Hulda), selling broker (DKB) and selling client Hulda/DSQ holdings) and these 3 entities had been penalized in separate proceedings for manipulating in the shares of the company. In such a position which has come to stay, the role of the buying broker (Mittal Securities Pvt. Ltd.) can not be any different and has to be consistent with the overall scheme of market manipulation in the shares of the company as transpired, to which it was a necessary party, though on a lesser scale. In this connection, the observation of SAT in the matter of Triumph International Finance Ltd. Vs SEBI is very relevant. "It must not be forgotten that every trade establishes the price of the scrip and when two brokers punch in the buy and sell orders simultaneously at a pre determined price which they fix and match the trades on the screen of the system they are obviously interfering with the fair price discovery process of the exchange and this would amount to manipulation and bench marking the price. Such trades are prohibited by the unfair trade practices regulations framed by the Board". As a matter of fact in the reply dated November 30, 2004 the Broker has referred to a nexus

among the buying client (Hulda), selling client (Hulda/DSQ Holdings) and selling broker (DKB) about which the Broker had no knowledge. Also the reply seeks to acknowledge that without such a nexus the exact matching of price, quantity and time would not have been possible, while apportioning the responsibility on the three of them to the honorable exclusion of the buying broker feigning innocence. Definitely, the Broker's feint is self serving and can not be countenanced. Further out of the four parties to the transactions, three have already been penalized. The question that arises for consideration is – could it be said that the Broker was innocent. It is the Broker who plays a pivotal role in synchronizing the trades with the counter broker and match the same through the exchange mechanism by punching the buy and sell orders simultaneously. It is true that the brokers act on the advice of their clients but it is they who actually implement the game plan.

- 4.27 In a quasi judicial proceeding like this turning on preponderance of probability, the standard of proof is prudent man's estimate as to the probabilities of the case. In this view also, any plea to delink the Broker from the collective nexus would be a travesty of facts.
- 4.28 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.
- 4.29 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”.

4.30 I note that the buying and selling clients were the associates of the company and there was complete matching of buy and sell orders (in respect of quantity and order price). The difference between the orders being very less the trades were executed primarily with a view to artificially increase the trading volumes in the shares of the Company. Artificial increase in the volumes of scrip has the adverse effect on the innocent investors of the market who get induced to buy the shares. SAT in the matter of Ketan Parekh vs. SEBI had observed:

“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."

- 4.31 The proof of manipulation almost always depends on inferences drawn from a mass of factual details. Findings must be gathered from patterns of trading data and the nature of the transactions etc. Several circumstances of a determinative character coupled with the inference arising from the conduct of the parties in a major market manipulation could reasonably lead to conclusion that the Broker was responsible in the manipulation. The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. As pointed out by Best in "Law of Evidence", the presumption of innocence is no doubt *presumptio juris*; but everyday practice shows that it may be successfully encountered by the presumption of guilt arising from circumstances, though it may be a presumption of fact. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case. SAT has observed in the matter of Ketan Parekh Vs. SEBI :

“..... Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.”

4.32 Presumption plays a critical role in coming to a finding as to the involvement or otherwise of a market participant in any manipulation. For instance, while trading, a lip service can be paid to a screen based trading system while agreement is reached beforehand between brokers to effect the transaction. Anonymity can be a cloak to cover anastomosis of interest. Therefore, the hackneyed plea based on intentions in the market place can not pass muster in all circumstances, more so when such intentions are in the special / peculiar knowledge of the parties to the transactions. Also any suggestion attributing innocence to the parties involved in such transactions would give rise to an untenable situation where certain other third persons/entities alone would be responsible for the manipulation and none else. The execution of trades for its client without obtaining the necessary documents cannot be expected from a prudent stock broker.

4.33 In the facts and circumstances I observe that the Broker had violated Regulation 4 (a) to (d) of the FUTP Regulations.

4.34 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. In terms of the provisions of the Code of Conduct prescribed under the provisions of the Broker Regulations, a stock broker shall not inter alia 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 Broker shall also maintain high standards of integrity, promptitude and fairness and shall act with due skill, care and diligence in the conduct of his business. It is also a requirement that the Broker shall not inter alia indulge in manipulative transactions with a view to distort the market equilibrium. The trades of the Broker as explained in detail above would prove that the same created a misleading appearance of trading, artificial volume and price in the shares of the company by vitiating the price discovery mechanism in the securities market. The Broker also executed certain trades before entering into the client registration form and the member client agreement. The details of the same were already discussed above. It amply demonstrates that the Broker, instead of maintaining the Code of Conduct as expected of a SEBI Registered intermediary, virtually became a party to the manipulation in the shares of the company to the detriment of genuine investors.

- 4.35 A Stock broker is expected to protect the interest of the investors in the securities market in which he operates and it ill behoves him to become a party to any market manipulation. Being an intermediary operating in the securities market, the Broker is required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings as specified in the Code of Conduct of the Broker Regulations (mentioned above). An intermediary who fails to perform such duties has to be punished in terms of the provisions of the Enquiry regulations. In view of the above, it is established that the Broker had violated the above clauses of the Code of Conduct prescribed under the Broker Regulations.

4.36 In the facts and circumstances, it is fairly established that the Broker had violated the Clause A(1) to (4) of the Code of Conduct specified in the Broker Regulations.

4.37 I also note the observation of the Hon'ble Supreme Court in the matter of The Chairman, SEBI Vs Shriram Mutual Fund and anr. "The Tribunal has erroneously relied on the judgment in the case of Hindustan Steel Ltd. Vs. State of Orissa, AIR 1970 SC 253 which pertained to criminal/quasi-criminal proceeding. That Section 25 of the Orissa Sales Tax Act which was in question in the said case imposed a punishment of imprisonment up to six months and fine for the offences under the Act. The said case has no application in the present case which relates to imposition of civil liabilities under the SEBI Act and Regulations and is not a criminal/quasi-criminal proceeding.

In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow".

4.38 In view of the above, as the Broker has violated regulation 4(a) to (d) of the FUTP Regulations and Clause A(1) to (4) of the Code of Conduct specified in the Broker Regulations, I decide to impose a major penalty of suspension of the certificate of registration of the Broker, as ordered herein under.

5.0 ORDER

5.1 In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 13(4) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a major penalty of suspension of certificate of registration of M/s. Mittal Securities Pvt. Ltd., Member, National Stock Exchange of India Ltd. (Registration no. INB 230653135) for a period of four months.

5.2 This order shall come into force immediately 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: May 30, 2007