

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 ACCORD CAPITAL MARKETS LTD., STOCK BROKER (REGISTRATION NO. INB 230776837), MEMBER, NATIONAL STOCK EXCHANGE OF INDIA LTD. IN RESPECT OF ITS DEALINGS IN THE SHARES OF DSQ SOFTWARE LTD.

WTM/GA/21/ISD/8/07

Date of Hearing: May 9, 2007

Appearances:

For noticees: Shri Pesi Modi, Counsel

Shri Joby Mathew, Advocate

Shri Nilesh Doshi, Director, Accord Capital Markets Ltd.

For Securities and Exchange Board of India: Shri. B Rajendran, Dy. General Manager,
Shri A. Mithwani, Asst. General Manager
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 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 October 1999 - March 31, 2001 {at NSE, BSE and Calcutta Stock Exchange Association Ltd. (CSE) } are mentioned below :

A. Hulda Properties and Trades Ltd.

Exchange	Period (October 1999 - March 2001)		
	Purchases (shares)	Sales (shares)	Net (shares)
BSE	14536000	14777376	-241376
NSE	18639043	20154719	-1375876
CSE	13234017	11063876	2170141
Total	46409060	45995971	552889

B) Powerflow Holdings Ltd.

Exchange	Period (October 1999 - March 2001)		
	Purchases (shares)	Sales (shares)	Net (shares)
BSE	3722500	3547500	175000
NSE	3855500	4085500	-230000
CSE	612000	862000	-250000
Total	8190000	8495000	-305000

C) DSQ Holdings Ltd.

Exchange	Period (October 1999 - March 2001)		
	Purchases (shares)	Sales (shares)	Net (shares)
BSE	3629037	5449037	-1820000
NSE	872360	7134560	-6262200
CSE	1602900	161000	1441900
Total	6104297	12744597	-6640300

D) DSQ Industries Ltd.

Exchange	Period (October 1999 - March 2001)		
	Purchases (shares)	Sales (shares)	Net (shares)
NSE	155200	500000	-344800

Thus, all the above four entities bought 6.09 crore shares and sold 6.77 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, during October 1999 and March 2001. The said trades (including the synchronized trades) were executed through the members of NSE and BSE viz. Dresdner Kleinwort Benson Securities Ltd (DKB), Prabhudas Lilladher Pvt. Ltd., Woodstock Securities Pvt. Ltd. Woodstock Broking Pvt. Ltd. Omega Equities Pvt. Ltd., Mittal

Securities Pvt. Ltd., Millennium Equities Pvt. Ltd. Accord Capital Markets Ltd. etc.

1.10 It was found from the pattern of the trades that one of the associate entities of Shri Dinesh Dalmia was buying and selling the shares of the company through synchronized trades with other associate entities while other associate entities did an encore in their turn. By entering into such synchronized deals, effectively there was no change in beneficial ownership and there was creation of artificial market. Thus, it was inter alia found that the aforesaid associate entities of Shri. Dinesh Dalmia viz. Hulda Properties and Trades Ltd., Powerflow Holdings Ltd., DSQ Holdings Ltd. indulged in synchronized transactions which prima facie defeated the transparency of the trading mechanism of stock exchanges.

1.11 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”.

- 1.12 Further, the investigation conducted by SEBI inter alia found that Accord Capital Markets Ltd., (hereinafter referred to as the Broker), Member NSE had dealt substantially in the shares of the company during October 1999 to January 2001. The Broker is also a member of Calcutta Stock Exchange Association Ltd. and BSE. The client of the Broker was Mehta & Ajmera, a partnership firm of Shri Himanshu Ajmera and Shri Girish S Mehta. Shri Himanshu Ajmera and Shri Girish S Mehta are the major shareholders and directors of the Broker. The Broker had also executed proprietary trading in the shares of the company. Majority of the aforesaid trades executed by the Broker were in the nature of synchronized trades with other members of NSE and the details of such trades are given below :

A. Synchronised trades with Prabhudas Liladher Pvt. Ltd.

Trade date	Trade time	Trade Qty.	Buy TM name	Buy Order No.	Buy order time	Buy order qty.	Buy order price	Buy Client	Sell TM Name	Sell Order No.	Sell order time	Sell order qty.	Sell order price	Sell Client	Diff. In Seconds
26-Oct-99	11:42:44	30000	AC	199910260279124	11:42:40	30000	318.50	M & A	PL	199910260279246	11:42:44	30000	318.50	Power flow	0:00:04
24-Nov-99	10:10:35	68500	AC	199911240048412	10:10:35	70000	425.00	M & A	PL	199911240048252	10:10:32	70000	425.00	DSQH	0:00:03
24-Nov-99	10:11:11	200	AC	199911240050684	10:11:11	70000	424.00	M & A	PL	199911240048252	10:10:32	70000	425.00	DSQH	0:00:39
24-Nov-99	10:11:11	69300	AC	199911240050684	10:11:11	70000	424.00	M & A	PL	199911240050611	10:11:10	70000	424.00	DSQH	0:00:01
24-Nov-99	10:11:52	13500	AC	199911240053045	10:11:51	30000	426.00	M & A	PL	199911240052956	10:11:50	30000	426.00	DSQH	0:00:01
24-Nov-99	10:12:13	15200	AC	199911240054303	10:12:13	16000	426.00	M & A	PL	199911240052956	10:11:50	30000	426.00	DSQH	0:00:23
8-Aug-00	10:03:58	2500	AC	200008080045116	10:03:58	25000	529.50	M & A	PL	200008080045009	10:03:57	25000	529.50	DSQH	0:00:01
8-Aug-00	10:03:58	18699	AC	200008080045116	10:03:58	25000	529.50	M & A	PL	200008080045009	10:03:57	25000	529.50	DSQH	0:00:01
8-Aug-00	10:04:49	24474	AC	200008080048933	10:04:49	25000	528.25	M & A	PL	200008080048904	10:04:49	25000	528.25	DSQH	0:00:00
8-Aug-00	10:05:25	21392	AC	200008080051421	10:05:24	25000	529.50	M & A	PL	200008080051534	10:05:25	25000	529.50	DSQH	0:00:01
8-Aug-00	10:06:10	14147	AC	200008080054803	10:06:09	25000	531.50	M & A	PL	200008080054846	10:06:10	25000	531.50	DSQH	0:00:01
8-Aug-00	10:07:21	21518	AC	200008080059638	10:07:19	25000	531.25	M & A	PL	200008080059809	10:07:21	25000	531.25	DSQH	0:00:02
8-Aug-00	10:08:15	24345	AC	200008080063495	10:08:14	25000	528.50	M & A	PL	200008080063571	10:08:15	25000	528.50	DSQH	0:00:01
8-Aug-00	10:08:46	25000	AC	200008080065795	10:08:46	25000	527.50	M & A	PL	200008080065811	10:08:46	25000	527.50	DSQH	0:00:00
8-Aug-00	10:09:21	17244	AC	200008080068177	10:09:19	20000	526.50	M & A	PL	200008080068285	10:09:21	20000	526.50	DSQH	0:00:02

B. Synchronised trades with Dresdner Kleinwort Benson Securities Ltd

Trade Date	Buy order number	Buy Time	Buy Price	Buy Qty	Trade Time	Buy Client	Sell Member	Sell Order number	Sell Order Time	Sell Order Price	Sell Qty	Sell Client
02-Feb-00	200002020419623	12:19:38 PM	1432.00	25000	12:19:38	M & A	DKB	200002020419557	12:19:36 PM	1432.00	25000	DSQ Industries
02-Feb-00	200002020421927	12:20:59 PM	1429.00	25000	12:20:59	M & A	DKB	200002020421909	12:20:58 PM	1429.00	25000	DSQ Industries
21-Feb-00	200002210126692	10:29:05 AM	1945.00	20000	10:29:05	M & A	DKB	200002210126584	10:29:03 AM	1945.00	20000	Hulda
21-Feb-00	200002210127958	10:29:24 AM	1947.00	20000	10:29:26	M & A	DKB	200002210128055	10:29:26 AM	1947.00	20000	Hulda
21-Feb-00	200002210130212	10:30:01 AM	1953.00	20000	10:30:01	M & A	DKB	200002210130221	10:30:01 AM	1953.00	20000	Hulda
21-Feb-00	200002210195220	10:48:32 AM	1945.00	30000	10:48:34	M & A	DKB	200002210195354	10:48:34 AM	1945.00	30000	Hulda
28-Feb-00	200002280097911	10:25:23 AM	1802.00	30000	10:25:23	M & A	DKB	200002280097694	10:25:20 AM	1802.00	30000	DSQ H
28-Feb-00	200002280139221	10:37:57 AM	1785.00	25000	10:37:57	M & A	DKB	200002280139145	10:37:56 AM	1785.00	25000	DSQ H
28-Feb-00	200002280139221	10:38:16	1785.00	25000	10:38:16	M & A	DKB	200002280139145	10:38:15	1785.00	25000	DSQ H

	0140166	AM						140135	AM			
28-Feb-00	20000228 0141487	10:38:42 AM	1783.00	20000	10:38:44	M & A	DKB	200002280 141568	10:38:44 AM	1783.00	20000	DSQ H
07-Mar-00	20000307 0101272	10:22:45 AM	2258.00	25000	10:22:46	M & A	DKB	200003070 101306	10:22:46 AM	2258.00	25000	DSQ H
07-Mar-00	20000307 0102950	10:23:09 AM	2262.00	25000	10:23:14	M & A	DKB	200003070 103336	10:23:14 AM	2262.00	25000	DSQ H
07-Mar-00	20000307 0105824	10:23:50 AM	2267.00	25000	10:23:51	M & A	DKB	200003070 105928	10:23:51 AM	2267.00	25000	DSQ H
07-Mar-00	20000307 0108270	10:24:23 AM	2268.00	25000	10:24:23	M & A	DKB	200003070 108259	10:24:23 AM	2268.00	25000	DSQ H
13-Mar-00	20000313 0417745	1:20:38 PM	2367.40	15000	13:20:38	M & A	DKB	200003130 355191	12:40:50 PM	2367.40	25000	Hulda
13-Mar-00	20000313 0426855	1:25:06 PM	2367.40	5000	13:25:06	M & A	DKB	200003130 355191	12:40:50 PM	2367.40	25000	Hulda
13-Mar-00	20000313 0431096	1:28:03 PM	2367.40	2000	13:28:03	M & A	DKB	200003130 355191	12:40:50 PM	2367.40	25000	Hulda
13-Mar-00	20000313 0431499	1:28:19 PM	2367.40	8000	13:28:19	M & A	DKB	200003130 355191	12:40:50 PM	2367.40	25000	Hulda
13-Mar-00	20000313 0432835	1:29:11 PM	2367.40	2000	13:29:11	M & A	DKB	200003130 355191	12:40:50 PM	2367.40	25000	Hulda
13-Mar-00	20000313 0458746	1:46:40 PM	2367.40	2000	13:46:40	M & A	DKB	200003130 355191	12:40:50 PM	2367.40	25000	Hulda
13-Mar-00	20000313 0458746	1:46:40 PM	2367.40	2000	13:46:40	M & A	DKB	200003130 355688	12:41:11 PM	2367.40	25000	Hulda
18-Apr-00	20000418 0024244	9:59:40 AM	1457.00	20000	9:59:40	M & A	DKB	200004180 024035	9:59:37 AM	1457.00	20000	DSQ H
18-Apr-00	20000418 0026839	10:00:11 AM	1453.00	20000	10:00:11	M & A	DKB	200004180 026829	10:00:11 AM	1453.00	20000	DSQ H
18-Apr-00	20000418 0031471	10:01:09 AM	1457.00	25000	10:01:09	M & A	DKB	200004180 031234	10:01:06 AM	1457.00	25000	DSQ H
16-May-00	20000516 0057195	10:07:42 AM	613.50	25000	10:07:42	M & A	DKB	200005160 057220	10:07:42 AM	613.50	25000	DSQ H
16-May-00	20000516 0063413	10:09:10 AM	604.50	25000	10:09:10	M & A	DKB	200005160 063444	10:09:10 AM	604.50	25000	DSQ H
16-May-00	20000516 0065149	10:09:36 AM	603.50	25000	10:09:36	M & A	DKB	200005160 065126	10:09:36 AM	603.50	25000	DSQ H
16-May-00	20000516 0065149	10:09:36 AM	603.50	25000	10:10:04	M & A	DKB	200005160 066880	10:10:04 AM	603.50	20000	DSQ H
16-May-00	20000516 0066787	10:10:03 AM	603.50	20000	10:10:04	M & A	DKB	200005160 066880	10:10:04 AM	603.50	20000	DSQ H
29-May-00	20000529 0104768	10:21:04 AM	562.00	25000	10:21:05	M & A	DKB	200005290 104795	10:21:05 AM	562.00	25000	DSQ H
01-Jun-00	20000601 0034685	10:01:55 AM	723.50	25000	10:01:55	M & A	DKB	200006010 034448	10:01:52 AM	723.50	25000	DSQ H
05-Jun-00	20000605 0144973	10:33:49 AM	973.00	25000	10:33:49	M & A	DKB	200006050 144960	10:33:49 AM	973.00	25000	DSQ H
05-Jun-00	20000605 0148310	10:34:37 AM	977.00	25000	10:34:37	M & A	DKB	200006050 148274	10:34:37 AM	977.00	25000	DSQ H
05-Jun-00	20000605 0150604	10:35:11 AM	977.00	25000	10:35:13	M & A	DKB	200006050 150743	10:35:13 AM	977.00	25000	DSQ H
05-Jun-00	20000605 0153008	10:35:46 AM	977.00	25000	10:35:46	M & A	DKB	200006050 153000	10:35:46 AM	977.00	25000	DSQ H
05-Jun-00	20000605 0162730	10:38:26 AM	966.00	25000	10:38:26	M & A	DKB	200006050 162704	10:38:25 AM	966.00	25000	DSQ H
05-Jun-00	20000605 0164823	10:39:01 AM	964.00	25000	10:39:01	M & A	DKB	200006050 164798	10:39:00 AM	964.00	25000	DSQ H
05-Jun-00	20000605 0166310	10:39:25 AM	964.50	25000	10:39:25	M & A	DKB	200006050 166259	10:39:25 AM	964.50	25000	DSQ H
05-Jun-00	20000605 0172439	10:41:11 AM	964.00	25000	10:41:11	M & A	DKB	200006050 172362	10:41:10 AM	964.00	25000	DSQ H
05-Jun-00	20000605 0174123	10:41:40 AM	963.00	25000	10:41:40	M & A	DKB	200006050 174067	10:41:39 AM	963.00	25000	DSQ H
05-Jun-00	20000605 0176217	10:42:17 AM	961.00	10000	10:42:17	M & A	DKB	200006050 176223	10:42:17 AM	961.00	10000	DSQ H
07-Jun-00	20000607 0158439	10:29:07 AM	1020.00	25000	10:29:07	M & A	DKB	200006070 158365	10:29:06 AM	1020.00	25000	DSQ H
07-Jun-00	20000607 0160274	10:29:38 AM	1020.00	25000	10:29:38	M & A	DKB	200006070 160256	10:29:38 AM	1020.00	25000	DSQ H

07-Jun-00	20000607 0162985	10:30:23 AM	1018.00	25000	10:30:23	M & A	DKB	200006070 162894	10:30:22 AM	1018.00	25000	DSQ H
07-Jun-00	20000607 0165050	10:31:00 AM	1018.50	25000	10:31:00	M & A	DKB	200006070 164928	10:30:57 AM	1018.50	25000	DSQ H
08-Jun-00	20000608 0076903	10:08:57 AM	1004.50	25000	10:08:57	M & A	DKB	200006080 076873	10:08:57 AM	1004.50	25000	Hulda
08-Jun-00	20000608 0079500	10:09:28 AM	1002.75	25000	10:09:28	M & A	DKB	200006080 079449	10:09:27 AM	1002.75	25000	Hulda
08-Jun-00	20000608 0084631	10:10:29 AM	997.00	25000	10:10:29	M & A	DKB	200006080 084521	10:10:27 AM	997.00	25000	Hulda
08-Jun-00	20000608 0086043	10:10:47 AM	997.50	25000	10:10:47	M & A	DKB	200006080 085948	10:10:46 AM	997.50	25000	Hulda
28-Jun-00	20000628 0155101	10:30:17 AM	983.00	5000	10:30:48	M & A	DKB	200006280 156847	10:30:48 AM	982.75	25000	Hulda
28-Jun-00	20000628 0169325	10:34:28 AM	977.10	5000	10:34:56	M & A	DKB	200006280 165960	10:33:24 AM	981.00	25000	Hulda
06-Jul-00	20000706 0136535	10:20:48 AM	1002.00	25000	10:20:49	M & A	DKB	200007060 136589	10:20:49 AM	1002.00	25000	DSQ H
06-Jul-00	20000706 0137933	10:21:07 AM	1003.50	25000	10:21:08	M & A	DKB	200007060 137989	10:21:08 AM	1003.50	25000	DSQ H
06-Jul-00	20000706 0139248	10:21:26 AM	1004.50	25000	10:21:27	M & A	DKB	200007060 139329	10:21:27 AM	1004.50	25000	DSQ H
10-Jul-00	20000710 0077430	10:10:37 AM	1029.00	25000	10:10:38	M & A	DKB	200007100 077533	10:10:38 AM	1029.00	25000	DSQ H
10-Jul-00	20000710 0078944	10:10:56 AM	1028.50	25000	10:10:57	M & A	DKB	200007100 079038	10:10:57 AM	1028.50	25000	DSQ H
10-Jul-00	20000710 0080311	10:11:15 AM	1028.75	25000	10:11:15	M & A	DKB	200007100 080266	10:11:15 AM	1028.75	25000	DSQ H
10-Jul-00	20000710 0081683	10:11:35 AM	1027.00	25000	10:11:35	M & A	DKB	200007100 081694	10:11:35 AM	1027.00	25000	DSQ H
10-Jul-00	20000710 0082794	10:11:50 AM	1027.00	25000	10:11:51	M & A	DKB	200007100 082843	10:11:51 AM	1027.00	25000	DSQ H
10-Jul-00	20000710 0084081	10:12:08 AM	1027.50	25000	10:12:10	M & A	DKB	200007100 084173	10:12:10 AM	1027.50	25000	Hulda
10-Jul-00	20000710 0085502	10:12:28 AM	1028.50	25000	10:12:28	M & A	DKB	200007100 085554	10:12:28 AM	1028.50	25000	Hulda
26-Jul-00	20000726 0193246	10:30:37 AM	670.50	30000	10:30:37	Self	DKB	200007260 193251	10:30:37 AM	670.50	30000	Hulda
26-Jul-00	20000726 0195187	10:31:05 AM	670.50	15000	10:31:05	Self	DKB	200007260 195162	10:31:05 AM	670.50	15000	Hulda
18-Oct-00	20001018 0335234	11:17:59 AM	344.25	565	18-Oct-00	Self	DKB	200010180 331069	11:16:29 AM	344.25	20000	DSQ H
18-Oct-00	20001018 0335529	11:18:05 AM	344.25	500	18-Oct-00	Self	DKB	200010180 331069	11:16:29 AM	344.25	20000	DSQ H
18-Oct-00	20001018 0354123	11:25:42 AM	344.00	1000	18-Oct-00	Self	DKB	200010180 355814	11:26:25 AM	344.00	75000	DSQ H
18-Oct-00	20001018 0381153	11:38:29 AM	342.55	353	18-Oct-00	Self	DKB	200010180 385870	11:40:57 AM	342.50	20000	DSQ H
19-Oct-00	20001019 0212550	10:41:31 AM	301.50	500	19-Oct-00	Self	DKB	200010190 212616	10:41:32 AM	301.50	25000	DSQ H
19-Oct-00	20001019 0894636	2:10:56 PM	338.00	500	19-Oct-00	Self	DKB	200010190 894601	2:10:55 PM	337.75	50000	DSQ H
01-Nov-00	20001101 0188192	10:26:13 AM	390.00	10000	01-Nov-00	M & A	DKB	200011010 188706	10:26:20 AM	389.50	50000	DSQ H
01-Nov-00	20001101 0188194	10:26:13 AM	390.00	2000	01-Nov-00	Self	DKB	200011010 188706	10:26:20 AM	389.50	50000	DSQ H
01-Nov-00	20001101 0194363	10:27:32 AM	391.50	1000	01-Nov-00	Self	DKB	200011010 194239	10:27:30 AM	391.00	50000	DSQ H
08-Jan-01	20010108 0446205	11:15:08 AM	388.55	500	08-Jan-01	Self	DKB	200101080 446501	11:15:11 AM	388.50	50000	Hulda

DSQH – DSQ Holdings Ltd.

PL – Prabhudas Lilladher Pvt. Ltd.

DKB- Dresdner Kleinwort Benson Securities Ltd

M & A- Mehta & Ajmera

AC – Broker

1.13 In the above facts and circumstances, it has been alleged that the Broker has prima facie violated the provisions of Regulation 4 (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), Clauses A(1) to (4) of Schedule II of the Code of Conduct as specified in the Securities and Exchange Board of India (Stock Brokers and Sub – Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations) and SEBI circular dated September 14, 1999.

2.0 APPOINTMENT OF ENQUIRY OFFICER

2.1 On completion of investigations, SEBI appointed an Enquiry officer vide orders dated November 8, 2002 and July 24, 2003 under regulation 5(1) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the Enquiry Regulations) to enquire into the alleged violations committed by the Broker. The Broker made its submissions before the Enquiry Officer. The Enquiry Officer, vide report dated August 22, 2006 recommended to impose a major penalty of suspension of the certificate of registration of the Broker for a period of 24 months.

3.0 SHOW CAUSE NOTICES, REPLIES AND HEARING

3.1 Pursuant to the Enquiry Report, a notice dated September 13, 2006 was issued to the Broker asking it to show cause as to why the penalty as considered appropriate should not be imposed against it. The Broker vide letter dated October 20, 2006 requested SEBI to

grant further time to file the reply to the said show cause notice. Thereafter, vide letter dated October 30, 2006, the Broker had inter alia requested for the complete trade and order log for the scrip of the company during the period in question. In reply, SEBI vide letter dated November 13, 2006 informed the Broker that the data relied upon by SEBI for the issuance of its show cause notice dated September 13, 2006 was already provided to it and further advised the Broker to file its reply to the show cause notice. Subsequently, vide letter dated January 8, 2007 the Broker filed its reply to the show cause notice.

- 3.2 In the reply, it has been inter alia stated that SEBI had not furnished the Broker with the documents and records relied upon and that it had requested for the inspection of the relevant trade and order logs etc. The Broker submitted that refusal to disclose the original documents which formed basis of the charge were in breach of the principles of natural justice. The Broker contended that there was no arrangement/ understanding/ meeting of minds whatsoever either with the counterparty clients or the counterparty stock brokers. Without prejudice to the above contention, the Broker stated that, negotiated deals are permitted to be executed in the manner as prescribed in SEBI circular dated September 14, 1999. The Broker claimed that some of the trades were not synchronized in its strict sense as there were difference in the order time, price and quantity. It also stated that it had not funded in the transaction. It also claimed that merely because the selling clients availed funding from the selling brokers, it would not necessarily mean that the Broker was a party to any conspiracy to facilitate such funding. It added that only normal brokerage was charged by it from the clients in respect of the trades

executed by it. The Broker has also placed its reliance on the judgment of the SAT in the matters of Kasat Securities Pvt. Ltd. Vs. SEBI and Millennium Equities (India) Pvt. Ltd. Vs SEBI in respect of synchronized trades.

3.3 The Broker added that the FUTP Regulations was repealed by Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the 2003 Regulations) with effect from July 17, 2003 and that thereafter, no enquiry could be initiated against the Broker for the violation of FUTP Regulations or for the violations of 2003 Regulations. The Broker stated that the appointment of the second Enquiry Officer on July 24, 2003 was ultra vires the Enquiry Regulations.

3.4 The Broker stated that the number of trades resulting from its order inputs were 363 trades and not 88 as mentioned in the Enquiry Report. The Broker contended that the trades which were referred in the Enquiry Report were only stray trades out of the total trades executed by the Broker in the shares of the said company. The Broker stated that it had placed only 84 buy orders (17,51,918 shares) as against the 88 buy orders (18,73,918 shares) alleged against it. The Broker stated that some of the trades could not be termed as synchronized trades as there was no matching of time, quantity and price. The Broker contended that its trades constituted a small percentage of the total trading in the market on any given date.

- 3.5 The Broker added that the 84 orders in the shares of the company were placed on 23 trading days and which were spread over a period of 441 days. It also stated that the shares of the company were listed in almost all the stock exchanges in India and it was one of the most heavily traded scrips in India. The Broker added that it was not aware of the counterparty clients/ brokers and further contended that there were no circular trades. The Broker submitted that the Enquiry Officer had picked up only 84 trades out of its total trades of 11,409 trades executed in the shares of the company for the same client and for its own behalf during the days in which the impugned trades were made. The Broker also contended that the Enquiry Officer had failed to follow the principles laid down by SAT in the case of Nirmal Bang Securities Pvt. Ltd. in reference to the facts and circumstances of the present case. The Broker stated that it had executed the trade as per the instructions of its client from time to time and that the beneficial ownership of shares was also changed. The Broker also contended that its trades constituted a very small percentage of the total market turnover. It also stated that there was no failure of due diligence on its part and that all its trades were executed in the normal course of its business on the screens of the exchange. It claimed that the trades executed by it were small considering the liquidity of the shares of the company and therefore, it could not have affected the price discovery mechanism.
- 3.6 The Broker contended that the Enquiry Officer had failed to follow the order of SEBI dated September 10, 2004 in the matter of ICICI Brokerage Services Ltd. It has been contended that the facts of SEBI Vs. Cabot International Capital Corporation and the present case had

no correlation to each other. The Broker further stated in its reply that the reference made to certain case laws in the Enquiry Report were irrelevant. The Broker also claimed that it had not failed to act with due skill, care and diligence and its case is that it had not violated the provisions of FUTP Regulations, the Broker Regulations or the SEBI circular dated September 14, 1999. While concluding its contentions the Broker claimed that the recommended penalty was excessive and that there was no justification for the said penalty.

- 3.7 An opportunity of hearing was granted to the Broker on May 9, 2007. Shri Pesi Modi, Counsel made submissions on behalf of the Broker before me. Shri Joby Mathew, Advocate and Shri Nilesh Doshi, Director of the Broker were also present during the time of the hearing. The Learned Advocate reiterated the submissions made by the Broker vide letter dated January 8, 2007.

4.0 CONSIDERATION OF ISSUES AND FINDINGS

- 4.1 I have considered the Enquiry Report, the show cause notice dated September 13, 2006, the reply of the Broker dated January 8, 2007, the oral submissions made on behalf of the Broker and other relevant materials available on record.
- 4.2 The Broker has taken a preliminary objection that no enquiry could be initiated against it either under the FUTP Regulations or under the 2003 Regulations. The contention of the Broker is based upon the assumption that though the FUTP Regulations was repealed by the 2003 Regulations w.e.f. July 17, 2003, no corresponding changes

were made in clause (i) of regulation 4 of the Enquiry Regulations under which the present proceedings were initiated and that as a result, no enquiry could be initiated for the violations of the FUTP Regulations. I do not find any force in the said argument as the present enquiry proceedings against the Broker was initiated on November 8, 2002 under the Enquiry Regulations for the alleged violations of the provisions of the FUTP Regulations. In terms of Regulation 4 (i) of the Enquiry Regulations, an enquiry can be initiated for the contravention of the provisions of FUTP Regulations. Therefore, the initiation of the Enquiry proceedings against the Broker is well within the ambit of the provisions of the Enquiry Regulations and the same can be continued irrespective of the fact that the FUTP Regulations were repealed by the 2003 Regulations.

- 4.3 Further, in terms of the provisions of Regulation 13 of the 2003 Regulations, SEBI is empowered to continue the proceedings initiated for the violation of Regulation 3,4,5 and 6 of the FUTP Regulations, notwithstanding the repeal thereof. The appointment of the second Enquiry Officer, vide order dated July 24, 2003 is only a continuation of the proceedings already initiated against the Broker under the provisions of the Enquiry Regulations read with the provisions of the FUTP Regulations. Therefore, I do not accept the contention of the Broker that the appointment of the second Enquiry Officer is ultra vires of the Enquiry Regulations. Further, I note that no prejudice has been caused to the Broker as the second Enquiry Officer had granted sufficient opportunities to the Broker to make its submissions in respect of the charges leveled against it.

- 4.4 I note that the Broker has not disputed the trades executed by it in the shares of the company. The proprietary trades and the trades for Mehta & Ajmera (client of the Broker), in the shares of the company are also not disputed. Further, I note that the partners of the client of the Broker are Shri Girish Mehta and Shri Himanshu Ajmera. The said Shri Girish Mehta and Shri Himanshu Ajmera are the promoters/directors of the Broker and are also the major share holders (43.76% each) of the Broker as on October 31, 2001 and they continued to hold majority shares in the Broker. Their shareholding in the Broker as on March 31, 2006 was 48.62% (each).
- 4.5 I further note that the certificate of registration of Shri Girish S Mehta (registration no. INB030451228 with trade name M/s Mehta & Ajmera) and Shri Himanshu Ajmera (registration no. INB030451326 and INB 031149611 with trade name M/s Mehta & Ajmera), Members, Calcutta Stock Exchange association Ltd. were suspended for a period of 1 year by SEBI vide order dated March 4, 2004 in respect of their dealings in the shares of the company. Further, the aforesaid certificate of registrations (INB030451228 and INB030451326) were further suspended by SEBI for a period of six months by SEBI vide order dated February 12, 2007 in respect of its dealings in the shares of DSQ Industries Ltd. (associate of Shri Dinesh Dalmia). In the said matters, the stock brokers were found to have entered into synchronized trades in the shares of the respective scrips. The above facts would categorically prove that there was a clear and established nexus between the Broker, its directors, the client etc. and that there was similarity in the execution of trades.

4.6 I note that during the course of investigation, Shri Nilesh Doshi, Director of the Broker had given statement to SEBI. He was also a former director of one Time Vinimay Pvt. Ltd., which was incorporated in the year 1999 as an investment vehicle of Mehta & Ajmera, the client of the Broker. The control of the said Time Vinimay Pvt. Ltd. was subsequently taken over by Shri Dinesh Dalmia and his group. This further shows that there existed a business relationship between the Broker and Shri Dinesh Dalmia. The relevant extracts of the statements Shri Nilesh Doshi are quoted below :

“Q1. Please introduce yourself.

Ans. I am Shri Nilesh Doshi, former director of Time Vinimay Private Ltd.

Q2. Please explain what were the functions handled by you in Time Vinimay Private Ltd.

Ans. I had been the director of Time since September 1999 till March 2000 after which the control of the company was handed over to Dinesh Dalmia and his group.

Q3. Who were the other directors of Time during your tenure?

Ans. The other directors were 1) Mr Hitesh Vasa 2) Mr Kamlesh Pancholi

Q4. What was the business of Time and for what purpose was it founded?

Ans. Time Vinimay was basically formed as a investment vehicle of Mehta and Ajmera – a partnership concern (engaged in share broking). Time was incorporated as a private limited company in the beginning of 1999.”

4.7 Further, in his capacity as the director of the Broker Shri Nilesh Doshi had stated

“Q3. Who are the directors in Accord Capital Markets Ltd. and their residential address.

Ans. In total there are 5 directors, including myself. The other directors are 1) Shri Girish S. Mehta, residing at 19, Mahendra Road, Kolkatta 25, 2) Shri Himanshu Ajmera- residing at 44/2 Sarat Bose Road, kolkatta – 700 020, 3) Shri Manoj Patel, residing at Ballygunge Circular Road, Kolkatta 19 and 4) Shri Kamlesh Pancholi residing at 5 Ashton Road, Kolkatta – 20.

Q4a. Does Accord Capital or directors of Accord have any connection / relation with DSQ Software Ltd. or the directors / promoters of DSQ Software Ltd.

Ans. As Accord, we do not have clients that are connected with directors/ promoters of DSQ Software. However, 2 of our directors, Shri Girish Mehta and Shri Himanshu Ajmera were having business relations with Shri Dinesh Dalmia, Managing Director of DSQ Software.

Q5. It is seen from the transaction details furnished by you that your client Mehta & Ajmera have transacted in large quantities in the

shares of DSQ Software Ltd. How are they connected with Accord. Who was placing orders on their behalf. When was the payment made to the client?

Ans. Mehta & Ajmera is a partnership company having Mr. Girish Mehta and Mr. Himanshu Ajmera as partners. Both of them are promoters of Accord. Both Mr. Girish Mehta and Mr. Himanshu Ajmera used to place orders with us for trading. Orders used to be placed either on telephone or in person by either of these 2 persons. Payment was on a running account basis.”

Q. 39 Accord Capital has received Rs. 25 cr from DSQ Software on 14/1/2000. In this connection, please state details of following transactions:

- a. Manner in which the above amount was utilized with details thereof
- b. Details of securities purchased, if any with the aforesaid amount. Details to include name of security, date of purchase, rate, quantity, whether off market or stock exchanges. If the purchase was pursuant to any agreement/understanding, please provide details thereof and copy of such agreement /understanding.

Ans. (a) 14.5 cr. (on 17/1/2000) have gone towards pay in obligation in NSE and 11 cr(on 18/1/00) were paid to Mehta& Ajmera – clients against the credit in their account .

Q. 41. Is Accord Capital or the directors of Accord are connected with these entities.

Ans. As on date there is no connection between Accord and these entities. Earlier, 2 of the directors of Accord- myself and Mr Kamlesh

Pancholi were on Board of Time Vinimay. Mr Manoj Patel was director on Board of Annapurna Tie up. Now, none of the directors of Accord are on the Board of either Annapurna or Time. They were companies formed with a view to invest in capital markets. Now, these companies have been sold off and we have no connection with them/current Board.”

4.8 Though it was contended by the Broker that there was no prior understanding while executing the trades, the above statements of Shri Nilesh Doshi would clearly establish the close business relationship which existed between the Broker, its client (Mehta & Ajmera), its directors, the DSQ group etc at the time of execution of the trades.

4.9 On a perusal, inter alia, of the above statements, the following points emerge;

- i) The Broker had executed substantial number of synchronized trades (as alleged) in the shares of the company for its client, Mehta & Ajmera and themselves.
- ii) Mehta & Ajmera is the partnership firm in which the partners are Shri Girish Mehta & Shri Himanshu Ajmera who are also the promoters /directors of the Broker.
- iii) Shri Girish Mehta & Shri Himanshu Ajmera are the substantial shareholders of the Broker. Collectively they were holding more than 85% as on October 31, 2001 and continue to hold the same.
- iv) The certificate of registration of Shri Girish Mehta & Shri Himanshu Ajmera as a stock broker (trade name Mehta &

Ajmera) were suspended by SEBI in respect of their dealings in the shares of DSQ Industries Ltd. and the company.

- v) Mehta & Ajmera (trade name) as a member of CSE had executed 9.84% and 8.74% of the gross purchases and sales of the total trades of Hulda and DSQ Holdings Ltd. in the shares of the company.
- vi) Shri Girish Mehta & Shri Himanshu Ajmera were having business relationship with Shri Dinesh Dalmia.
- vii) Time Vinimay Private Ltd. is an investment vehicle incorporate by Mehta & Ajmera in the year 1999. Shri Nilesh Doshi and Shri Kamlesh Pancholi, the directors of the Broker were also the directors of Time Vinimay Private Ltd.
- viii) Time Vinimay Private Ltd was subsequently transferred to Shri Dinesh Dalmia and his group.

4.10 According to me, the foregoing facts with their tell – tale evidentiary value are sufficient enough to prove that the Broker had executed trades in the shares of the company with a prior understanding (consensus ad idem) arising out of the existing close business relationship between the Broker, its client and Shri Dinesh Dalmia. In this background, the contention of the Broker that there was no prior understanding while executing the trades in the shares of the company peters out to be an empty denial without any substance.

4.11 In the above facts and circumstances, the trades of the Broker in the shares of the company have to be examined in the background of an existing business relationship. I note that the Broker had executed

substantial synchronized trades in the shares of the company regularly since October 1999 to January 2001. As explained above, the majority of the synchronized trades of the Broker were executed on behalf of its client Mehta & Ajmera, an associate entity. The Broker had also executed proprietary trades in the said shares. While the Broker was executing buy orders for its above client (Mehta& Ajmera) including proprietary trades in the shares of the company, the sell orders were placed by Hulda Properties and Trades Ltd., Powerflow Holdings Ltd., DSQ Holdings Ltd. through the stock brokers viz. DKB and Prabhudas Lilladher Pvt. Ltd. In most of the above trades, the time difference between the buy and sell orders was very less and the price and quantity of the trades matched almost in all the trades. The Broker contended that some of the trades were not synchronized in its strict sense as there were difference in the time, order quantity and price. However, I note that the Broker had executed so many other trades which were exactly matched with reference to the time, quantity and price.

- 4.12 I note that most of the synchronized trades executed by the Broker were perfectly matched with the counter party orders even with respect of the price to the extent of two decimal points. The proximity in placing the orders at the same price and for the same quantity almost at the same time (in majority of the cases) resulted in the matching of the aforesaid transactions, with all the ingredients i.e. quantity, price and the time, required to conclude the trades. The time difference (between the buy and sell orders) of majority of the synchronized trades was very less with the price and quantity matching. The said synchronization cannot take place in the absence

of any specific understanding / arrangement between the clients at the first instance, especially when the shares of the company were highly liquid at the time of the trades.

4.13 I note that during the relevant period, the shares of the company were highly liquid and that the liquidity in trading suggests the scale 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 has had certain arrangements/ understanding with the counter-party stock broker and the client. If there was no specific understanding / meeting of minds as contended by the Broker the orders of the Broker would have got matched with the orders placed by some other stock brokers.

4.14 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. The selling client and the buying client was either having business relationship or was associated with the company thereby demonstrating that the Broker was a necessary party to the ongoing market manipulation. The only inference from the above facts is that the Broker had misused the screen based trading by executing such synchronised trades on the stock exchange.

- 4.15 SEBI had already found that the associates of Shri Dinesh Dalmia including DSQ Holdings Ltd., Hulda Properties and Trades Ltd. were prohibited by SEBI as mentioned above in this order. It is also borne out that similar modus operandi was adopted by Mehta and Ajmera (client of the Broker) while dealing in the shares of the company as well as in DSQ Industries Ltd. which had resulted in the suspension of the certificate of registration of Mehta and Ajmera (Trade name) as mentioned above in this order.
- 4.16 The consistency with which the 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. In this context it has to be mentioned that Broker had also made proprietary trades in the shares of the company on various occasions, the other side being Hulda Properties and Trades Ltd. and DSQ Holdings Ltd., the associates of Shri Dinesh Dalmia, who was having business relationship with the promoters/ directors of the Broker. Therefore, it is unbelievable that such coincidence of trades would take place without the actual meeting of minds, especially when the client was none other than the partnership firm of the directors of the Broker, with a business association with Shri Dinesh Dalmia.
- 4.17 In the above circumstances, it is highly unbelievable that the synchronized trades executed by the Broker on behalf of its client (including the proprietary trades) in the shares of the company were in the normal course of business without any malafide intentions and

without any prior knowledge. No matter what was the putative objective, in the facts and circumstances, the transactions (executed between connected people) per se, were synchronized in nature and the same could be possible only with prior meeting of minds. The trades of the Broker created artificial volume in the shares of the company and the conduct of the Broker needs to be judged in the attendant material circumstances of the case wherein the buy order and sell orders were inputted in the trading system almost at the same time, rate and quantity, to the detriment of genuine investors and the safety and credibility of the securities market.

4.18 The above instances would 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 shares of the company and thereby artificially increasing the volume of the said shares. It may be true that the Broker act on the advice of its client and that in a normal trade executed through the exchange mechanism, a stock 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, consistently as mentioned in this order, I have no doubt to hold that the Broker was a necessary party to the trades which were executed with a prior understanding. It is the stock brokers who executes the trade by punching the buy / sell order at a specific time.

4.19 In the above facts and circumstances and considering the nature of the synchronized trades executed between the clients of the Broker

and the counterparty clients, could it be said that the Broker was innocent and whether such synchronized trades could have been possible without its knowledge and involvement? In this context, I note the following observation of SAT in the matter of Triumph International Finance Ltd. Vs. SEBI: "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. In the trades now in question the buyer, the seller and CSFB as the seller's broker have already been found guilty. It is inconceivable that such large number of trades could have matched on the screen without the appellant as the buyer's broker being a party to the game plan. Since the buy and sell orders were punched into the system simultaneously in such large numbers and they all matched, we cannot believe that it was a coincidence and the only inference that can be drawn is that there was a prior meeting of the minds before the trades were executed and this disturbs the true price discovery mechanism of the exchange. The appellant is only feigning innocence which plea in the circumstances cannot be accepted."

- 4.20 In the above facts and circumstances, the transactions, executed on behalf of the client (Mehta and Ajmera) including the proprietary trades, 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 said stock brokers. The nature of the relationship that existed between the Broker, its promoter, its client (Mehta & Ajmera), Time Vinimay Private Ltd. (investment company incorporated by Mehta and Ajmera) and Shri Dinesh Dalmia as explained above in graphic details would only lead to the conclusion that the trades were executed with prior meeting of minds and any inference of exclusion of meeting of minds in the facts and circumstances would be inconsistent with the attendant circumstances of the case highlighting a vinculum amongst the participants. Further, I note that Time Vinimay Private Ltd. had received 50 crores from the company on March 22, 2000 and Rs. 4 crores on March 28, 2000 and it has been admitted by Shri Nilesh Doshi that part of the said funds were utilized to pay Mehta & Ajmera towards their dues and the other part was advanced to the said Mehta & Ajmera towards future trading in securities at the instance of Shri Dinesh Dalmia. Further Shri Nilesh Doshi had also admitted that the Broker had received Rs. 25 crores from the company on January 14, 2000. The series of trades in the form of synchronized trades would only lead to the finding that the said trades executed by the Broker were done with the purpose of manipulating the volume in the shares of the company to the detriment of the gullible investors. The said concerted level of activity and that too repeatedly for a number of trades is only compatible with the purposes of manipulating the securities market on the part of the Broker and the funding by the company has its own materiality and connotation in the sequence of events as depicted above.

4.21 The argument of the Broker that its trades in the shares of the company for the said client was minuscule as compared to its total trades, cannot pass muster in the facts and circumstances. The contention of the Broker that its transaction on behalf of the clients was minuscule as compared to the total volume of shares of the company, can not be viewed in isolation. The trades of the Broker have to be seen in the overall situation as existed at the relevant time. 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 inconsequential it might be, the individual involvement can not be ignored. Otherwise, it would lead to a piquant situation wherein Shri Dinesh Dalmia and his associates would alone be responsible for the entire manipulation. I am unable to accept the said proposition. In the present case, the established closeness of the parties to the transactions paved the way in facilitating the execution of the entire game plan. Further, I note that inter alia the various synchronized trades executed by the Broker in the shares of the company which was highly liquid can not be matched (in all respects) without a pre determined mind.

4.22 Further, 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 minuscule while comparing with the total number of trades, volume of the shares traded in the exchange etc. The

question is whether the trades were executed with the involvement of various parties with a prior knowledge for the purpose of manipulation? If yes, the parties involved therein are liable to be punished in accordance with law. In the present case, it is established that the trades were executed with the prior knowledge for the purpose of manipulation. Given the fact that there was manipulation in the scrip as borne out by the orders of SEBI, such manipulation could not have been possible by Shri Dinesh Dalmia and his associates alone without the stock brokers acting in concert. Further, it stands to reason that the Broker who had direct dealings with them can't escape its responsibility on the plea that it was not aware of its client's manipulative intentions in the market.

- 4.23 I note that, even in cases where direct evidence is not available 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, the same has to be inferred from the attendant circumstances. In such a position which has come to stay, the role of the Broker 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, without which the trades would not be completed. 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”.

- 4.24 The proof of manipulation in the circumstances 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. Hon’ble Securities Appellate Tribunal (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.”

- 4.25 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.
- 4.26 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.
- 4.27 In the present case, I note that the Broker knowingly executed the synchronized trades on behalf of its client (Mehta & Ajmera). 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. Definitely it is a clear case of having congruence of interest and such an act could not be anything but compatible with a scheme of manipulation, to which the Broker is a privy. It is true that the stock brokers act on the advice

of their clients but it is they who actually implement the game plan. In the circumstances, it becomes increasingly evident that the subsequent synchronized deals involving the Broker, its client (Mehta & Ajmera) and Shri Dinesh Dalmia who were interconnected/ having business relationship as brought out supra were yet another step in manipulating the volume and price of the shares of the company. Further, it is an admitted fact the Broker had utilized 14.5 crores out of Rs. 25 crores received from the company towards the pay in obligation of its client. The above would further strengthen the nexus existed between the Broker, its client, the company and the associates of Shri Dinesh Dalmia.

4.28 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 its clients artificially raised the prices of the shares of the company.

4.29 Therefore, the typical synchronized transaction executed by the Broker in the shares of the company as explained, would prove that the Broker was very much in the thick of it and their plea of ignorance is nothing but a feint. The synchronized trades executed by the Broker, considering the facts and circumstances of the case cannot be dismissed as of no consequence, on the specious plea that they were on a very small scale, spread over a period of time. On the contrary, such synchronized transactions have to be appreciated on materials/

data/statements brought on record establishing the nexus between the Broker, the company, the associates of Shri Dinesh Dalmia and the other counter party stock brokers.

4.30 It is also important to note the following observation of SAT in respect of synchronised trades:

i) 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.”

ii) In the matter of Ketan Parekh Vs SEBI:

“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."

- 4.31 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.”

- 4.32 In view of the above, I do not consider it relevant to examine the other cases cited by the Broker. Further, SEBI has filed an appeal before the Hon'ble Supreme Court of India against the order passed by SAT in the matter of Millennium Equities Pvt. Ltd. In addition to the above, I

observe that each case has to be examined and considered on its own facts and circumstances. 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.

4.33 The provisions of regulation 4 of the FUTP Regulations is quoted below for sake of ready 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”.

4.34 Undoubtedly, the trades executed by the Broker in the shares of the company created misleading appearance of trading in the securities market by executing non genuine trade transactions without intending

to transfer the beneficial ownership. In the facts and circumstances, it is fairly established that the Broker has violated the provisions of regulation 4 (b), (c) and (d) of the FUTP Regulations.

4.35 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 Clauses A(1) to (4) 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 stock 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 a stock broker shall not inter alia indulge in manipulative transactions with a view to distort the market equilibrium.

4.36 In the present case, the trades of the Broker (as explained in detail above) created a misleading appearance of trading in the shares of the company, artificial volume and price in the shares of the company by vitiating the price discovery mechanism in the securities market. 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.

- 4.37 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, a stock 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. 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. In my view, on the basis of the material available on record it is difficult to conclude that the Broker had exercised the norms mentioned in the Code of Conduct as alleged.
- 4.38 In the facts and circumstances, it is established that the Broker had violated Clauses A(1) to (4) of the Code of Conduct as specified in Schedule II of the Broker Regulations.
- 4.39 SEBI circular dated September 14, 1999 stipulates that all negotiated deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchange just like any other normal trade. In the present case, as already observed, most of the trades executed by the Broker in the shares of the company were fictitious. Further, the said trades were found to be not genuine trades and executed only for the purpose of creating misleading appearance of trading, artificial volume / price in the shares of the company. This is not the one which was envisaged under the aforesaid SEBI circular.

4.40 The Broker had executed several trades which facilitated inter alia its clients to transact substantially in the shares of the company. As discussed above, the synchronized trades of the Broker for its client executed without intending to effect the transfer of beneficial ownership but to operate only as a device to cause fluctuations in the price of the shares. The fictitious trades which resulted in the creation of artificial price and misleading appearance of trading cannot be treated as the one which are envisaged under the above circular. Therefore, it is established that the Broker had violated the SEBI Circular dated September 14, 1999.

4.41 In the facts and circumstances, it is fairly established that the Broker had violated regulation 4(b),(c) and (d) of the FUTP Regulations, Clauses A(1) to (4) of the Code of Conduct as specified in Schedule II of the Broker Regulations and the SEBI Circular dated September 14, 1999. These violations are not trivial to be condoned, considering the nature of the trades executed by the Broker and its involvement in the said trades. The aforesaid violations committed by the Broker calls for a penalty and considering the facts and circumstances of the case, I, find that this is a fit case for imposing major penalty 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 Accord Capital Markets Ltd. (Registration no. INB 230776837), Member, National Stock Exchange of India Ltd. for a period of twelve 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: 27/08/2007