

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF DSQ BIOTECH LTD.

In respect of Mackertich Consultancy Services Pvt. Ltd.

Date of hearing: November 03, 2009

Appearances

For Noticee: Mr. M.G. Khanna, Senior Executive
Mr. Pawan Kumar Goel, Chartered Accountant

For SEBI: Mr. Rajeev Rastogi, Presenting Officer
Mr. G. Ramar, Deputy General Manager
Mr. Atul Agarwal, Assistant General Manager
Mr. Pradeep Kumar, Legal Officer

ORDER

**Under Regulation 28(2) read with Regulations 38 (2) of Securities and
Exchange Board of India (Intermediaries) Regulations, 2008**

1. The Securities and Exchange Board of India (hereinafter referred as 'SEBI') had conducted investigation into the buying, selling and dealings in the shares of DSQ Biotech Ltd. (hereinafter referred as 'DSQ'). The investigation was conducted for the period of December, 1999 to January, 2001. During investigations the scrip of DSQ was listed at Bombay Stock Exchange (hereinafter referred to as 'BSE'), National Stock Exchange (hereinafter referred to as 'NSE'), Ahmedabad Stock Exchange (hereinafter referred to as 'ASE'), Delhi Stock Exchange (hereinafter referred to as 'DSE') and Magadh Stock Exchange (hereinafter referred to as 'MSE'). The investigations were conducted *inter-alia* to ascertain possible violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations') and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992

(hereinafter referred to as 'Broker Regulations') by the persons dealt in the scrip during the relevant period..

2. During the period of investigations, the price of the scrip at BSE had fallen from Rs.223.30 as on July 17, 2000 to Rs.58.55 as on October 19, 2000. Thereafter, the price of the scrip started rising from Rs.60.80 as on October 21, 2000 and reached to the price of Rs.183.50 as on November 17, 2000. During this period, volumes in the scrip also showed much volatility i.e. a high of 21,44,548 shares as on December 13, 2000 and a low of 48,442 shares October 04, 2000. At NSE also price variation was noticed as the price of the scrip had touched a high of Rs.246 as on December 13, 2000 and a low of Rs.58.50 as on October 19, 2000. The volumes traded touched a high of 66,69,885 shares on January 04, 2001 and a low of 1,35,030 shares as on September 27, 2000. During the same period, no trading was reported on ASE and DSE, however a volume of 500 shares was reported at MSE.
3. The investigations have revealed that DSQ increased the share capital by making a preferential issue of 80,30,000 equity shares priced at Rs.275/- (with face value of Rs.10 and a premium of Rs.265) during March, 2000 to its related four entities as under:

Table-A

Sr. No.	Name	No. of Shares	%age of Expanded Paid Up Capital
1.	Deutsche Bank Custodial Ltd. (FII ¹)	22,00,000	9.77%
2.	Society Generale, Paris (France) (FII)	11,00,000	4.88%
3.	A.J. Finance Ltd. (OCB ²)	30,00,000	13.33%
4.	Greenfield Investment Ltd. (OCB)	17,30,000	7.69%

These particular shares were partly paid up upto the extent of 10%, paid at the time of the allotment. It was revealed by the investigations that the rest of 90% did not come into the company and was managed to be shown to have been credited to the company by fictitious bank entries through three Indian companies viz. Continental Filaments, Athena Software and Uniforge Steel

¹ Foreign Institutional Investors

² Overseas Corporate Bodies

(all belonging to DSQ Group). Further, two of these companies namely Continental Filaments and Uniforge Steel were bought by the DSQ Group in March, 2000 itself.

These shares were dematerialized on the instruction of DSQ, into the accounts of Greenfield Investment Ltd. and A.J. Finance Ltd. which were then subsequently transferred to the demat account of DSQ Holdings Ltd. and were offloaded in the market through various brokers at NSE and BSE. It was also found that these shares were used to satisfy the settlement obligations of various other DSQ group entities in the market by availing of financing through the market as these entities were provided the amount to the extent of the sale proceeds by their brokers on the date of the trade itself i.e. in advance of the pay out of the exchange.

During the relevant period, DSQ Holdings Ltd. appeared as one of the major selling counterparties for the trades made by the associated entities. For these trades orders were put simultaneously or within close proximity of each other for same price and quantity. These orders were found to be in the nature of synchronized trades and were put with a view to match with prior understanding.

4. At NSE during the period September, 2000 to January, 2001, possible structured deals and cross deals were found to have been executed between the brokers, which accounted for about 7.24% of the gross traded quantity in the scrip. At BSE during the period December, 1999 to April, 2000, synchronized trades were found to have entered by 12 brokers on behalf of related entities to the DSQ group, which accounted to 68.29% of the market volume. Further, the percentage of these trades to the particular day's trading was to the extent of 21% - 100%. Further, the brokers were found connived with the DSQ Group to trade and offload unlisted preferential shares into the market.

5. On completion of investigations, SEBI *inter alia* issued Show Cause Notice dated October 28, 2005 (hereinafter referred to as 'SCN') to Mackertich Consultancy Services Pvt. Ltd. (hereinafter referred to as 'noticee'), under Section 11(4)(b) and 11B of Securities and Exchange Board of India (hereinafter referred to as 'SEBI Act') read with Regulation 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The SCN alleged that the noticee while trading in the scrip through four different brokers at NSE entered synchronized trades within its group entities and created artificial volumes in the scrip of DSQ. The SCN, therefore, alleged that the acts of the noticee were in violation of the Regulation 4 (b), (c) and (d) of PFUTP Regulations. Accordingly, it called upon the noticee to show cause as to why suitable directions under Section 11 B of SEBI Act read with Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, including restraining it from accessing the capital market should not be issued against it.
6. Noticee vide its letter dated December 06, 2005 replied to the SCN and requested for a personal hearing. In the mean time the noticee applied for settlement of the proceedings through consent order in terms of SEBI Circular dated April 20, 2007. SEBI, however, did not agree to settle the proceedings by consent as the terms offered by the noticee were not adequate and finally rejected the application. Accordingly, an opportunity of personal hearing was granted to the noticee before me on November 03, 2009. On the date fixed, Mr. P.K. Goel, Chartered Accountant and Mr. M.G. Khanna, Executive appeared before me on behalf of noticee and made submissions.
7. I have carefully considered the SCN, reply of the noticee and other material available on record. The main contentions raised by the noticee in brief are:

- a. It was not connected with Panther Fincap & Management Services Ltd., Luminant Investment Ltd., Triumph international Finance Ltd., N.H. Securities Ltd. and Classic Share & Stock Broking Services Ltd.
- b. Had not acted in concert with Pinnacle Trade and Investments Ltd. (hereinafter referred to as 'Pinnacle') and were not its associate company. Pinnacle had no share holding in the noticee and these were the professionally managed companies.
- c. Had not entered into any transaction with Khandwala Integrated Financial Services Pvt. Ltd. (hereinafter referred to as 'Khandwala') during the year of investigations. Had no counter transaction with Khandwala.
- d. It purchased 2,00,000 shares in the scrip of DSQ from Credit Suisse First Boston (I) Securities Pvt. Ltd. (hereinafter referred to as 'CSFB') on October 03, 2000 and had sold them through CSFB on October 25, 2000. Both these trades were genuine.
- e. The sale made by it on October 25, 2000 through CSFB were made out of its own stock of 4,00,000 shares purchased on October 03, 2000. Had no relation with the trades entered into by Pinnacle with C. Mackertich Ltd.
- f. Its trades cannot be alleged to have created artificial volume in the scrip.
- g. Structured deals are not in violation unless conducted with an intention to manipulate the price of the scrip.
- h. Had not caused any artificial change in the price of the scrip.
- i. The trade of 2 Lakh shares with C. Mackertich Ltd. was a square up transactions whereby purchase of these shares were made in September 28, 2000 and was squared up on October 03, 2000 i.e. within the settlement period September 27, 2000 to October 03, 2000.
- j. Trades with CSFB were delivery based.
- k. SEBI has considered only part of the transaction in its investigation.
- l. Had no trades with the entities related to DSQ group.

8. I note that noticee, at the relevant period of time was a Non Banking Financial Corporations (hereinafter referred to as 'NBFC') registered with the RBI. MCSPL stated that they have invested in the scrip based on personal research, research based reports and market trends. It was stated that the company belonged to the C. Mackertich group. I note that the noticee during the investigations has stated that Pinnacle, Satellite Intercontinental Pvt. Ltd. and Vatical Commercials Ltd. were its associates/ group companies. However, while replying to the SCN, the noticee has denied of this. Such plain denial is not acceptable as the statement before the Investigation Authority was on oath and has its legal sanctity; in view of this I reject the argument of the noticee that Pinnacle was not its associate company. I have carefully considered the SCN, reply received from the noticee and material available on record. I note that SCN has described the transactions entered by the noticee clearly, along with supporting evidence of movement of shares.
9. After having examined the above details, the issue arises for my consideration is: Whether the noticee had indulged in circular trading and was responsible for creating artificial volumes while trading in the scrip of DSQ?
10. Whether the noticee had indulged in circular trading and was responsible for creating artificial volumes while trading in the scrip of DSQ?

- a. The noticee during the relevant period of time had traded in the scrip of DSQ, the detail thereof are as under:-

Name of the broker	Exchange	Buy	Sell	Gross	Net
Credit Suisse First Boston India Securities Ltd.	BSE	0	200000	200000	-200000
Khandwala Integrated Finances Ltd.	NSE	600000	600000	1200000	0
Credit Suisse First Boston India Securities Ltd.		400000	675000	1075000	-275000
SMIFS Securities Ltd.		275000	275000	550000	0
C. Mackertich Ltd.		207657	207657	415314	0

- b. From above, I note that the noticee was trading through various brokers during the relevant period of time. It has been revealed that the noticee had running accounts with the brokers and there was no specific requests

for margins from any of the brokers. The noticee has also not informed any of the brokers about its dealing with multiple brokers.

- c. I have seen the instances of transactions stated to be synchronized as brought in the SCN.

Trade date	Trade time	Trade number	Trade price	Trade Qty.	Buy				Sell				Time Diff.
					Order Time	Order Price	Broker	Client	Order Time	Order Price	Broker	Client	
03/10/2000	14:11:17	341221	136.25	50,000	14:11:16	136.25	CSFB	Noticee	14:11:17	136.25	Khandwala	Noticee	0:00:01
03/10/2000	14:11:35	341498	136.25	50,000	14:11:35	136.25	CSFB	Noticee	14:11:25	136.25	Khandwala	Noticee	0:00:10
03/10/2000	14:11:49	341661	136.25	50,000	14:11:49	136.25	CSFB	Noticee	14:11:43	136.25	Khandwala	Noticee	0:00:06
03/10/2000	14:11:56	341756	136.25	50,000	14:11:56	136.25	CSFB	Noticee	14:11:54	136.25	Khandwala	Noticee	0:00:02
03/10/2000	14:22:28	353461	135.00	99,500	14:22:28	135.00	CSFB	Noticee	14:22:28	135.00	C.Mackertich	Noticee	0:00:00
03/10/2000	14:22:52	353936	135.10	1,00,000	14:22:52	135.10	CSFB	Noticee	14:22:51	135.10	C.Mackertich	Noticee	0:00:01
25/10/2000	14:03:08	525178	66.25	50,000	14:03:07	66.25	Khandwala	Noticee	14:03:08	66.25	CSFB	Noticee	0:00:01
25/10/2000	14:03:21	525448	66.25	50,000	14:03:19	66.25	Khandwala	Noticee	14:03:21	66.25	CSFB	Noticee	0:00:02
25/10/2000	14:03:28	525627	66.25	50,000	14:03:28	66.25	Khandwala	Noticee	14:03:28	66.25	CSFB	Noticee	0:00:00
25/10/2000	14:03:38	525787	66.25	50,000	14:03:38	66.25	Khandwala	Noticee	14:03:38	66.25	CSFB	Noticee	0:00:00
25/10/2000	15:02:02	619333	68.65	49,900	15:01:59	68.65	C.Mackertich	Pinnacle	15:02:02	68.65	CSFB	Noticee	0:00:03
25/10/2000	15:02:22	620137	68.65	49,544	15:02:22	68.65	C.Mackertich	Pinnacle	15:02:21	68.65	CSFB	Noticee	0:00:01
25/10/2000	15:02:44	620756	68.65	49,344	15:02:42	68.65	C.Mackertich	Pinnacle	15:02:44	68.65	CSFB	Noticee	0:00:02

- d. From the table above, it is noted that the noticee was appearing on both sides of the trades on October 03, 2000 and October 25, 2000, where the noticee was trading through CSFB on one side and Khandwala on the other. I note the argument of the noticee that the noticee during the relevant period of time had not traded through the Khandwala. In this regard, SEBI has called for confirmation from Khandwala. Khandwala in turn asked for confirmation from Pinnacle Finstock Pvt. Ltd., who confirmed that the trades were carried out by it for its client i.e. noticee. I further note that the noticee vide its letter dated June 28, 2007 has also confirmed that the said trades were carried out by it. In view of this the argument of the noticee finds no merits for consideration.

- e. Further, it is seen that the noticee has been found matching its orders by putting consecutive buy and sell orders through separate brokers. I note

that the order time had been matched to the seconds. The sell order for the trade was entered at 14:22:28 on October 03, 2000 for 1,00,000 shares while the buy order was placed through CSFB at 14:22:28 for the same amount of shares and the trade was executed at 14:22:28 for 99,500 shares. Again at 14:22:52 on the same day another order for sale of 1,00,000 shares was entered and the same was executed within one second. It is important to note here that the ultimate client here was the noticee itself who was present on both the sides of the order.

- f. I have also seen another instance of trading on October 25, 2000, and observe that on the buying side Pinnacle (a related entity of noticee) was present and there were series of matching trades for a total quantity of 1,48,788 shares, with a time difference of just 1-3 seconds.
- g. It has been observed from the table above that there was almost exact matching in the quantity, rate and also proximity in the time of inputting buy and sell orders. It is clear that these orders were synchronized and were put with a view to match with other trades put with prior understanding.
- h. During the course of investigations, when the rationale for giving simultaneous buy and sell order at same time through different broker was asked from the noticee, it had submitted that the orders were placed in the normal course of business. I note that such placing of orders cannot be termed as normal as on one hand a person is taking sell position and at the same time the same person is taking buy position. Most probably the noticee had given orders for these two positions to be executed at the same point of time so that its orders should match with each other. No genuine investor would indulge in this kind of trading in normal course and from the pattern it can be inferred that the same was done with ulterior motive of creating artificial liquidity in the market as these were not intended to transfer the beneficial interest in the securities. The orders

were placed simultaneously within the close proximity of each other for the same price and quantity.

- i. It cannot be termed as mere coincidence that every time, the client managed to sell to/ buy from the same counterparty client and/ or related/ associated client. Thus, it is inferred that these transactions were not genuine sale-purchase transaction and had the effect of creating artificial volume in the shares of DSQ.

- 11. From the above discussion, it is clear that the noticee was putting buy and sell orders at almost the same rate and quantity. I note that such pattern of trading of the noticee has not brought any change in the beneficial ownership of the traded scrip and had only resulted in creation of artificial volume. I note that such artificial trades generate interest of genuine investors who trade in the scrip seeing the activity in the scrip. I note that this is serious market irregularity which tends to disturb the market equilibrium. Mackertich Consultancy Services Pvt. Ltd. is therefore, guilty of violating the provisions of regulations Regulation 4 (b), (c) and (d) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.
- 12. Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Section 11 of SEBI Act, 1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, do hereby restrain the noticee viz. Mackertich Consultancy Services Pvt. Ltd., from buying, selling or dealing in securities market whatsoever or accessing the securities market, directly or indirectly, for a period of one year from the date of this order.

- 13.** This order shall be served on all recognized stock exchanges and depositories to ensure that the noticee is not allowed to undertake transactions as prohibited in Para 12 above.
- 14.** This direction shall come into force with immediate effect.

DATE : MARCH 03, 2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

SECURITIES AND EXCHANGE BOARD OF INDIA

IN THE MATTER OF DSQ BIOTECH LTD.

IN RESPECT OF M/S. MACKERTICH CONSULTANCY SERVICES PVT. LTD.

Order under Regulation 28(2) read with Regulations 38 (2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

CORRIGENDUM TO ORDER NO. WTM/PS/45/IVD/ID-03/MAR/2010

- 1.** Vide order dated March 03, 2010, Mackertich Consultancy Services Pvt. Ltd. has been restrained from buying, selling or dealing in securities market whatsoever or accessing the securities market, directly or indirectly, for a period of one year.
- 2.** In partial modification of the said order, it is ordered that the effective date of this order will be March 05, 2010.
- 3.** Further, the stock exchanges are hereby directed to permit the respective members to square off its existing open positions, if any, at the earliest in the F&O segment.
- 4.** This corrigendum shall come into force with immediate effect.

Date: March 11, 2010
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA