WTM/PS/48/IVD/ID-03/MAR/2010

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 C. Mackertich Ltd.

(SEBI Registration No. INB 010932114 & INB 230769433)

Date of hearing: November 03, 2009

Appearances

For Noticee: Mr. M.G. Khanna, Director
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 December, 1999 to January, 2001. During investigation period, 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 who had 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 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 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 in DSQ shares 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, 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 to have connived with the DSQ Group to trade and offload unlisted preferential shares into the market.

5. During the course of investigations, it was *inter alia* revealed that the broker viz. C. Mackertich Ltd. (hereinafter referred to as 'noticee'), registered with

SEBI as stock broker, bearing registration no. INB 010932114 and INB 230769433 had dealt in the scrip for its 4 clients at NSE. Further the noticee was found to have synchronized the trades for its group company client.

6. Based on the findings of the investigations, SEBI initiated enquiry proceedings against the noticee in terms of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), by appointing an Enquiry Officer under Regulation 5(1) of Enquiry Regulations vide order dated July 07, 2005. SEBI appointed the Enquiry Officer, to enquire into the alleged violation of the provisions of the PFUTP Regulations and Broker Regulations. The Enquiry Officer submitted his Report dated June 05, 2007, in terms of Regulation 13 (1) of the Enquiry Regulations recommending a penalty of suspension for a period of three months for violating the provisions of Regulation 4(b) of PFUTP Regulations and Clause A (2) and (5) of the Code of Conduct specified under Schedule II of the Broker Regulations.

7. Subsequently, a Show Cause Notice dated June 12, 2007 (hereinafter referred to as 'SCN'), under Regulation 13(2) of the Enquiry Regulations was issued by SEBI to the noticee, asking it to show cause as to why the appropriate penalty including penalty recommended by the Enquiry Officer, should not be imposed. The noticee was advised to reply to the SCN, together with the documents that it may choose to rely upon in support of his reply within twenty one days of the receipt thereof. It was also informed that in case of failure, it would be presumed that it had no explanation to offer and SEBI shall be free to take such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the said SCN.

8. The noticee replied to the SCN vide its letter received dated August 08, 2007 and requested for an opportunity of personal hearing. Accordingly, an opportunity of personal hearing was also granted to the noticee before me on November 03, 2009. On the date fixed, Mr. M.G. Khanna, Director of noticee

and Mr. Pawan Kumar Goel, Chartered Accountant appeared before me and reiterated the submissions made vide their letter dated August 08, 2007, along with other submissions. The submissions of noticee in its reply, in brief, are:

a. Have not provided with the entire material relied upon.

b. Had executed trades on behalf of various clients including Mackertich Consultancy Services Pvt. Ltd. (hereinafter referred to as 'MCSPL') and Pinnacle Trade and Investments Ltd. (hereinafter referred to as 'PTIL') in ordinary course of business. Said trading constituted a mere 0.16% of the total trading during the relevant period which was very insignificant and miniscule. Percentage of its trades to the gross traded quantity in market was too low so as to have any impact on the market. Had not traded on behalf of Pinnacle Holdings Pvt. Ltd. The time gap between the two transactions was huge i.e. 22 days and the scrip of DSQ was not illiquid.

c. MCSPL, PTIL and Vatican Commercials Ltd. are the group companies and were trading in various other scrips at the relevant time. It was not acting in concert of these group companies.

d. Was not aware that its client MCSPL was placing contra orders with the counterparty broker Credit Suisse First Boston (India) Securities Ltd. (hereinafter referred to as 'CSFB'). It had collected adequate margins for MCSPL and PTIL. Had obtained proper KYC and executed requisite agreement with its client.

e. It placed order for sale of 2,00,000 shares of DSQ on behalf of MCSPL. The total quantity matched with the counter party broker purchase quantity was only 1,99,500 shares out of 2,00,000 shares sold and 4,00,000 shares purchased.

f. Had not executed synchronized deals while trading on behalf of its client PTIL on October 25, 2000. Matching of the orders between MCSPL and PTIL were co-incidental and un-intentional.

g. Had not sold 1,00,000 shares of DSQ on February 24, 2000 through CSFB.

h. Was not aware of the relationship of DSQ and DSQ Industries. Further nothing has been brought on record to show that common persons used to operate various trading accounts.

i. The quantity and time is not matching in the alleged 5 transactions.

j. Intention is necessary to be proved.

9. The noticee has argued that it has not been provided with the entire material relied upon. I note from the Enquiry Report that no such request has been made by the noticee before the Enquiry Officer. Further, I have seen that all relied upon documents have been provided to the noticee. However, I note that no document, which has not been provided to the noticee, is being relied upon in the present proceedings.

10. I have carefully considered the Enquiry Report, the SCN issued to the noticee and its reply. I note that the Enquiry Officer has found the noticee guilty of violation of provisions of Regulation 4(b) of PFUTP Regulations and Clause A(2) and A(5) of the Code of Conduct specified under Schedule II of the Broker Regulations. Considering all this, the issue arises for my consideration is:

a. Whether the noticee had aided and abetted its client in creation of artificial liquidity/ false market in the scrip of DSQ?

b. Whether the noticee had failed to exercise due care and diligence?

11. Whether the noticee had aided and abetted its client in creation of artificial liquidity/ false market in the scrip of DSQ?

a. I have seen the trading details of the noticee and note that at the relevant period of time it had traded for four clients at the NSE in the scrip of DSQ as stated below:

Client	Gross buy	Gross sell	Gross trade	Net buy	%age
Hulda Properties & Trades Ltd.	80,000	0	80,000	80000	0.04
Mackertich Consultancy Services Pvt. Ltd. (MCSPL)	2,07,657	2,07,657	4,15,314	0	0.19

Pinnacle Trades & Investment Ltd. (PTIL)	3,50,000	2,75,000	6,25,000	75,000	0.29
SREI International Finance Ltd.	0	46,059	46,059	-46,059	0.02
			11,66,373		

Out of these four, two entities namely MCSPL and PTIL were the group companies of the noticee and were registered as Non Banking Financial Corporation with the Reserve Bank of India. The total quantity traded by the noticee during the period was 11,66,373 shares.

b. I note from the Enquiry Report that five structured trades were executed by the noticee with the counter party CSFB amounting to 3,48,288 shares. These trades have been stated to have accounted for 0.16% of the gross quantity traded in the scrip during the period under scrutiny.

			Buy					Sell					
Date	**Trade time**	**Trade Qty.**	**Order Time**	**Order Volume**	**Order Price**	**TM Name**	**Client**	**Order Time**	**Order Volume**	**Order Price**	**TM Name**	**Client**	**Time Diff.**
03/10/00	14:22:28	99,500	14:22:28	1,00,000	135	CSFB	MCSPL	14:22:28	1,00,000	135.00	Noticee	MCSPL	0:00:00
03/10/00	14:22:52	1,00,000	14:22:52	1,00,000	135.10	CSFB	MCSPL	14:22:51	1,00,000	135.10	Noticee	MCSPL	0:00:01
25/10/00	15:02:02	49,900	15:01:59	50,000	68.65	Noticee	PTIL	15:02:02	50,000	68.65	CSFB	MCSPL	0:00:03
25/10/00	15:02:22	49,544	15:02:22	50,000	68.65	Noticee	PTIL	15:02:21	50,000	68.65	CSFB	MCSPL	0:00:01
25/10/00	15:02:44	49,344	15:02:42	50,000	68.65	Noticee	PTIL	15:02:44	50,000	68.65	CSFB	MCSPL	0:00:02

c. From the above table, I note that on October 03, 2000, two of the trades amounting to 1,99,500 shares have been executed on behalf of the client namely MCSPL (an associate entity of noticee) who was itself present on both buy and sell side of the trade. These two orders matched with a time difference of just 0-1 seconds.

d. As regards the other three trades on October 25, 2000 executed by the noticee on behalf of PTIL (an associate entity of noticee), I note that the same had matched with another order of MCSPL trading through CSFB, amounting to 1,48,788 shares with a time difference of

just 0-3 seconds. I note the argument of the noticee that it had not traded for Pinnacle Holdings Pvt. Ltd. I have seen the data and note that the noticee was trading for its client namely PTIL and in view of the same the assumption in the Enquiry Report is not being considered being wrong.

e. The orders were entered simultaneously within close proximity of each other for same price and quantity which ensured matching of orders of seller with a specific buyer. As the above said trades of the noticee were on behalf of its associate concerns on both buy and sell side. This indicates a high probability that the noticee would have been aware of the objective of its group companies and provided them with a platform to enter their trade.

f. The noticee has further argued it had not sold 1,00,000 shares of DSQ. I have seen depositions of Mr. Pawan Kumar Saraf, Director of noticee before the Investigating Authority on November 16, 2004 (copy was enclosed with the pre-enquiry Show Cause Notice issued to the noticee). From the depositions, I note that the noticee had itself accepted that there was a sale of 5 lakh shares of DSQ by them through CSFB on February 24, 2000 which was routed through its CSE sauda book. I note that the noticee had also accepted that the said trade was not in compliance with the regulatory provisions at that time. In view of this, the argument of the noticee appears to be baseless and solely made to mislead the proceedings. I take a serious note of the same.

g. I note that DSQ Industries was also a client of the noticee during the relevant period of time. However, the noticee has submitted that it was not aware of its relationship with DSQ. This argument of the noticee appears to be very unlikely as the words ‘DSQ’ is common in both the names and it gives rise to a presumption that the two entities would be related unless proved otherwise.

h. It is difficult to accept the stand of the noticee regarding its non awareness of prior understanding as the entities involved were its group entities and further it involved itself in the scrip through another broker. All this clearly points to the culpability of the noticee in generating interest in the scrip of DSQ. The noticee by participating in the trading in this fashion has aided its clients in achieving their objectives which has lead to the execution of fictitious transactions on the screen of exchange. The intention of the parties to execute such transactions could be inferred from the attending circumstances because direct evidence in such cases may not be available. Evidently, the noticee has put these trades with a view to create misleading appearance of trading which in turn had lead to the creation of artificial liquidity in the scrip. This synchronization of trades tampers with price discovery mechanism of stock exchange and also hampers transparency.

12. Whether the noticee had failed to exercise due care and diligence?

a. From the above discussion and considering the nature of the trades, I note that the noticee should have been suspicious of the trading pattern of its clients which were also related to it, for keeping such high position in the scrip of DSQ.

b. Further, the act of noticee of trading with another broker as a client and denying of the fact while replying to the SCN is not the behaviour expected from a registered intermediary.

c. Thus, I find that the noticee has failed to perform its duties which are expected from a prudent stock broker who has a duty not only towards its client but also towards the securities market. A registered intermediary is expected to have high level of compliance of the rules/ regulations and the directives issued by SEBI.

13. I note that the element of *mens rea* as argued by noticee is not important to be proved in the offences of this kind as has been held by the Hon'ble Supreme Court in the matter of *Chairman, SEBI* Vs. *Shriram Mutual Fund and Another* (2006 (5) SCC 361), where the Hon'ble Court has observed:

> *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not." [Emphasis supplied]*

14. Further, I do not find the mitigating factors as pointed by the noticee, relevant in the present proceedings as this is not a penal proceeding.

15. I am of the view, that in light of what has been stated in para 11 above, it can be concluded that the noticee had aided and abetted its client in creation of artificial liquidity/ false market in the scrip of DSQ. I note that the trades carried out by the noticee were a small percentage of the total market volume. However, the noticee cannot be given a benefit of doubt for this. It may be recalled from para 4 above that a group of 12 brokers traded on behalf of the related entities of DSQ group accounting for 68.29% of the market volume. If a large group of persons connive with each other, the market mechanism can be affected substantially even as the percentage of trades carried out by each is a small percentage of the total market volume.

16. These acts of the noticee are in violation of Regulation 4(b) of PFUTP Regulations and Clause A(2) and A(5) of the Code of Conduct specified under Schedule II of the Broker Regulations. However, considering the

violation found to have been committed by the noticee in the present proceedings and the period of investigations, I consider imposition of penalty of suspension of the certificate of registration for a period of three months as recommended by the Enquiry Officer is on the higher side. In the interest of justice and equity, I dispose of the present Enquiry proceedings as ordered herein below.

17. I note that pursuant to the notification of the Intermediaries Regulations, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the Intermediaries Regulations, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of Intermediaries Regulations.

18. Taking into consideration, the facts and circumstances of the case, 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 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of the stock broker, C. Mackertich Ltd., registered with SEBI as stock broker, bearing registration no. INB 010932114 and INB 230769433 for a period of one month.

19. This order shall come into force on expiry of twenty one days from the date of this order.

DATE : MARCH 05, 2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

WTM/PS/52/IVD/ID-03/MAR/2010

SECURITIES AND EXCHANGE BOARD OF INDIA

IN THE MATTER OF DSQ BIOTECH LTD.

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

CORRIGENDUM TO ORDER NO. WTM/PS/48/IVD/ID-03/MAR/2010

1. Vide Order dated March 05, 2010, certificate of registration of C. Mackertich Ltd., SEBI registered stock broker has been suspended for a period of 1 (one) month.

2. In the said order, the SEBI Registration no. of C. Mackertich Ltd. shall be read as INB 010769439 instead of INB 010932114.

3. 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