

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

IN THE MATTER OF M/S MEGA CORPORATION LIMITED

**In respect of M/s. DPS Shares and Securities Private Limited
(SEBI Registration No. INB010986539)**

ORDER

**Under Regulation 28(2) read with Regulation 38(2) Of SEBI (Intermediaries)
Regulations, 2008.**

1. M/s. DPS Shares & Securities Private Limited (hereinafter referred to as 'DPS') is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a member broker of the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE').
2. M/s. Mega Corporation Limited (hereinafter referred to as 'MCL') is a public company listed at the BSE. The volume in the scrip of MCL shot up dramatically from January 2005 onwards. During the period from January 2005 to September 16, 2005, the price of the scrip moved up sharply from Rs.5.25 to Rs.41.10 representing manifold rise accompanied by an equally sudden spurt in average monthly volume thousand times over the previous period to around 1,56,22,538 shares. The marked increase in price and trading volume during the months from January 2005 to March 2005 was not accompanied by any positive corporate developments. Therefore, investigation was initiated by SEBI.
3. During the investigation, it was observed that the total income of MCL had increased from Rs.4.32 crores in 2003-04 to Rs.14.06 crores in 2004-05. It was observed that MCL's profit after tax had improved to Rs.9.24 crore in 2004-05 as

compared to a loss of Rs.16.7 lac in 2003-04. This quantum jump in the profits of MCL was claimed to be on account of sale by MCL of shares of three companies i.e. Lakshmi Overseas Ltd., Karuna Cables Ltd. and IFSL Ltd. As per the findings of the investigation, it was claimed by MCL that it recorded an income of Rs.10.8 crores in 2004-05 from its investments, as the proceeds of the abovementioned sale of shares. MCL further claimed that the said sale of shares was executed by it on the BSE through DPS in the BSE Online Trading System (BOLT), for which the contract notes and other documents were issued by DPS to MCL. The said contract notes and other documents claimed to be issued by DPS were submitted by MCL to SEBI during the course of investigation.

4. During the course of the said investigation, it was discovered that the said sale transactions claimed to be executed by MCL on the BSE Online Trading System were not genuine. On the basis of information called and received from BSE it was alleged that the said contract notes alleged to have been issued by DPS to MCL for the said sale transactions were manipulated and that none of the transactions mentioned in the said contract notes were genuine. It appeared to SEBI that MCL reported huge profits in its annual report for the year 2004-05 by manipulating its books of account to induce the investors into buying the shares of MCL and DPS aided and abetted MCL in achieving that by issuing dummy contract notes.
5. Based on the findings of the investigations, SEBI initiated enquiry proceedings against the noticee in terms of SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations (hereinafter referred to as 'Enquiry Regulations'), by appointing an Enquiry Officer under Regulation 5(1) of Enquiry Regulations vide order dated August 13, 2007 read with subsequent order dated November 23, 2007. SEBI appointed the Enquiry Officer, to enquire into the alleged violations of PFUTP Regulations and Broker Regulations. As the Enquiry Regulations were repealed with effect from the notification of SEBI (Intermediaries)

Regulations, 2008 (hereinafter referred to as 'Intermediaries Regulations'), the Enquiry Officer/ Designated Authority (hereinafter referred to as the 'Enquiry Officer') submitted his Report dated July 16, 2009, in terms of Regulation 27 of Intermediaries Regulations, recommending thereby a penalty of suspension for a period of 3 months to the noticee for issuance of falsified contract notes violating the provisions of Regulations 3 (b), (c) & (d); 4 (1) and 4 (2) (p) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') and the provisions of Clauses A (1), (2), (3), (4) and (5) of the Code of Conduct for Stock Brokers, specified in Schedule II read with Regulation 7 of SEBI (Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'Stock Brokers Regulations').

6. Subsequently, a show cause notice dated July 28, 2009 (hereinafter referred to as 'SCN'), under Regulation 28(1) of Intermediaries 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 its 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.
7. DPS never responded to the SCN dated July 28, 2009. An opportunity of personal hearing was granted to the noticee before me on February 26, 2010. DPS vide letter dated February 27, 2010 informed that due to budget session on February 26, 2010, it could not attend the said hearing and requested for some other date for personal hearing. As requested, one more opportunity of personal hearing was granted to DPS on March 19, 2010. On March 19, 2010, Shri Rajkumar Masalia appeared on

behalf of DPS and requested for adjournment of hearing to any future date due to non-availability of its lawyer. Accordingly, a third opportunity of hearing was granted to DPS on May 7, 2010. Again vide letter dated May 7, 2010, DPS sought adjournment of hearing for the same reason of non-availability of its lawyer. I am of the view that despite giving ample opportunity of personal hearing to DPS it failed to appear before me and sought adjournment on the same grounds that the lawyer was not available; hence, no further adjournments are necessary and the matter may be proceeded ex-parte.

8. I have carefully considered the investigation reports, Enquiry reports, Show Cause Notices issued by SEBI and replies thereof. The issue that arises for my consideration is whether DPS had aided and abetted MCL in luring investors into buying the shares of MCL by issuing dummy contract notes.
9. Considering the material on record and the submissions of DPS vide letter dated April 23, 2008 to pre-enquiry show cause notice dated January 24, 2008, it is beyond doubt that the said contract notes in question which were submitted by MCL to SEBI were forged and fabricated. DPS itself has accepted the said fact. However, DPS has contended that the said contract notes were not issued by them but were fraudulently obtained by MCL in collusion with Shri Pratik Shah and Shri Sujal Shah, the erstwhile directors of DPS. DPS has further contended that the same was done without its knowledge.
10. I note that DPS is a body corporate. A body corporate thinks and acts through the persons responsible for running it who act as its agents. By natural corollary, the body corporate is responsible for the acts of its agents. Therefore, even assuming that the said contract notes were made available to MCL by Shri Pratik Shah and Shri Sujal Shah who happened to be the directors of DPS at the relevant time, DPS cannot evade responsibility for and consequences of their act. Considering the

material available on record, there is no doubt that MCL had used the said false contract notes to manipulate its books of accounts to show unreal profits in order to induce the investors into buying the shares of MCL.

11. The said issue has also been dealt by the Hon'ble SAT in Appeal No. 176 of 2009 in the case of *M/s. DPS Shares and Securities Pvt. Ltd. vs. BSE*, wherein the Tribunal observed that, *"The fact that the two directors who were running the day to day affairs of the company had forged the contract notes in regard to trades which were never executed on the exchange is not in dispute...These two directors being responsible senior officers of the company had ostensible authority to act on behalf of the company and while carrying out their functions had forged the contract notes. In these circumstances, one cannot but hold that they were the directing mind of the corporate entity for which the latter must be held responsible"*.
12. In view of the abovementioned observations, findings and explanations, I agree with the conclusion of the enquiry officer that the allegation of violation of Regulations 3 (b), (c) & (d); 4 (1) and 4 (2) (p) of the PFUTP Regulations against the broker DPS is established.
13. I am also of the view that the abovementioned provisions of the said Code of Conduct are quite clear in their import and prescribe certain duties for the broker and stipulate certain norms to which the behavior of the broker must conform while transacting business. The said provisions also expressly prohibit the broker from indulging in certain acts which may be detrimental to the interests of the securities market in general and that of investors in particular.
14. In the above paragraphs, I have already held DPS guilty for issuance of falsified contract notes. DPS has repeatedly contended that though its two erstwhile directors were directly involved in issuance of the said fabricated contract notes, DPS as a company was not involved and the acts were done without its

knowledge. In my opinion, the said contention cannot be accepted as the directors in any company are its topmost functionaries whose acts bind the company. The same also shows lack of due skill, care and diligence on part of DPS in carrying out its business.

15. In view of the foregoing, I agree with the findings of Enquiry Officer that the broker DPS has violated the provisions of Clauses A (1), (2), (3), (4) and (5) of the Code of Conduct for Stock Brokers, specified in Schedule II read with Regulation 7 of the Stock Brokers Regulations.
16. I am of the view that such acts of serious irregularities threaten the market integrity and orderly development of the market and call for regulatory intervention to protect the interest of investors and it would be in the interest of justice if a penalty of suspension of the certificate of registration is imposed on DPS for aforesaid violations.
17. 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, DPS Shares and Securities Private Limited, SEBI Registration No. INB010986539 for a period of 3 months.
18. This order shall come into effect on expiry of 21 days from the date of this order.

DATE: SEPTEMBER 21, 2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA