

ORDER OF THE ADJUDICATING OFFICER UNDER SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 15H(ii) OF SEBI ACT, 1992 AGAINST

- 1 DSQ HOLDINGS Ltd. (formerly Square D Holdings Ltd.)**
- 2 PILLIAR PATTIYAR TEXTILES Ltd.**
- 3 HIMADIRI ELECTRONIC (P) Ltd.**
- 4 ESCORTS FINVEST (P) Ltd.**
- 5 GATEWAY FINANCIAL SERVICES (P) Ltd.**

FOR THE CONTRAVENTION OF REGULATION 10(2) OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1994 IN THE MATTER OF ACQUISITION OF SHARES OF M/S. DSQ BIOTECH Ltd.

The undersigned was appointed as the Adjudicating Officer in place of Ms. Poonam Bamba, the previous Adjudicating & Enquiry Officer to inquire into and adjudge the alleged contravention of Regulation 10(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 by the aforesaid entities (hereinafter referred to as the acquirers) for acquisition of shares of DSQ Biotech Ltd. (hereinafter referred to as "DSQ") from June, 1995 onwards, without making public announcement in terms of the said Regulations.

THE ALLEGATIONS:

Show cause notice was issued to the acquirers, seeking their reply on the alleged contravention of Regulation 10(2) of SEBI (SAST) Regulations, 1994 for the acquisition of shares of DSQ Biotech Ltd from June, 1995 onwards as detailed hereunder without making public announcement in accordance with the Regulations to acquire further shares of DSQ Biotech Ltd. The notice alleges that the acquirers

were acting in concert with each other and their aggregate holding was 51% of DSQ's equity as on 23rd November 1994 when the open offer in terms of the Regulations was closed on 23.11.94. As the aggregate shareholding of the acquirers and PACs, was much higher than 10% of DSQ's equity, it is alleged that they could not have acquired further shares as detailed below without making a public announcement in terms of Regulation 10(2) of the said regulations.

Acquirer	No. of DSQ Biotech Ltd. shares acquired	Period of acquisition
DSQ Holdings Ltd. (DSQH)	51,850	14.07.95 to 31.03.96
Pilliar Pattiyar Textiles Ltd. (PPT)	576,800	Oct. 95 to Feb. 96
Himadiri Electronic (P) Ltd. (HEL)	5,800	23.06.95 to 03.08.95
Escorts Finvest (P) Ltd. (EFL)	17,200	Jul 95 to Aug 95
Gateway Financial Services (P) Ltd. (GFL)	2,500	14.06.95 to 22.06.95
	654,150.	

It is alleged that Himadiri Electronic (P) Ltd., Escorts Finvest (P) Ltd. Gateway Financial Services (P) Ltd., were introduced to the broker by Mr. Dinesh Dalmia, promoter DSQ group. And the payment obligations of these three entities were adjusted against the credit balance of DSQH by the broker as per the statement of the broker. DSQH and PPT funded the transaction of these three acquirers and hence, these three acquirers are alleged to be just front entities of the DSQ group.

The notice also alleges that DSQ group indulged in artificial trades in the scrip of DSQ, thereby inflating its price. The shares of DSQ Biotech were pledged with banks, financial institutions and other intermediaries to obtain loan, which again was used for further artificial trades of DSQ scrip in the market.

REPLY AND PERSONAL HEARING:

DSQ Holdings Ltd. (DSQH) & Pilliar Pattiyar Textiles Ltd. (PPT):

DSQH and PPT replied to the notice vide their identical letters dated 28th May 2002. It was stated that erstwhile promoters sold their entire stake in PPT to the DSQ group in July / August 1994.

The DSQ group decided to increase its stake in DSQ Biotech. On 30th April 1994, DSQH, Square D Exports (now Square D Textiles & Exports Ltd.) and Lexus Exports Ltd. executed an agreement and acquired 4,498,995 shares of DSQ Biotech, constituting 50.94% of its equity. Subsequently, on 5th May 1994, DSQH made public announcement to acquire 20% of DSQ's equity. In terms of the Open offer document dated 12th August 1994, the mandatory open offer opened on 1st October 1994 and closed on 23rd November 1994. Copies of Offer document and Form of acceptance were enclosed in support of the aforesaid contention.

In the personal hearing held on 24th March 2003 and 9th April 2003, Mr. Janakiraman, CA, appeared on behalf of DSQH and PPT respectively. He confirmed having inspected the original relied upon documents. He also admitted that Himadiri Electronic (P) Ltd., Escorts Finvest (P) Ltd. and Gateway Financial Services (p) Ltd. were acting in concert with DSQH and PPT in acquiring shares of DSQ after 23rd November 1994. The acquirers did not make the public announcement as they felt that the open offer made by them under clause 40A and 40B of the Listing Agreement itself is enough for compliance. He also conceded that the aforesaid acquisition is in violation of Regulation 10(2) of (SAST) Regulations, 1994. However, it was submitted that there was no loss caused to the investors, no disproportionate gain to the acquirer and the violation was not repetitive in nature, hence pleaded for a lenient view.

Himadiri Electronic (P) Ltd. (HEL):

Tickwell Commercial Ltd., vide letter dated 10th November 2001 responded to the notice. It was stated that HEL has merged with Tickwell Commercial Ltd. (TCL) in terms of Kolkata High Court Order. TCL stated that the transactions referred in the notice were very old and small in nature and because of the change in management neither the records nor old employees were available to give a proper reply. Under the circumstances, TCL pleaded for dropping the proceedings.

HEL, now merged with TCL, was given opportunity for personal hearing on 27th November 2001, 17th June 2002, 21st April 2003, 11th July 2003 (at Kolkata) and on 20th October 2003 at Mumbai. HEL / TCL did not attend the personal hearings. However, it may be noted that Shri Janki Raman, CA, who appeared for DSQH & PPT has confirmed that HEL is a PAC in the matter of acquisition of shares of DSQ Biotech after 23.11.94

Escorts Finvest (P) Ltd. (EFL):

EFL has responded to the notice vide letter dated 10th November 2001. EFL sought 3 weeks additional time to file reply as the relevant data was not readily available because of problem in its computer. EFL did not file any reply. However, it was given opportunity for personal hearing on 27th November 2001, 17th June 2002 and on 30th January 2004, which it did not avail. In response to the notice of hearing scheduled for 30th January 2004, EFL, vide its letter dated 30th January 2004 sought some more time as its Director and Lawyer were out of town. Thus, it can be seen that despite affording fair and reasonable opportunity, they failed to avail the same.

Gateway Financial Services (p) Ltd. (GFS):

GFS responded to the notice vide its letter dated 12th November 2001, seeking time till December 2001 to furnish its reply. GFS was given opportunity of personal hearing on 27th November 2001, 17th June 2002, 21st April 2003, 9th July 2003 and 27th August 2003 at Mumbai and on 11th July 2003 at Kolkata. GFS did not file its

reply to the notice nor did it attend the proceedings, except on the dates mentioned below.

Mr. Arvind Aggarwal, Director of GFS, appeared on 21st April 2003. He sought short adjournment and agreed to file reply to the notice latest by 2nd May 2003. Mr. Promod Kumar Agarwal, employee of GFS and son of O.P. Agarwal, Director of GFS, appeared before me on 11th July 2003. He submitted that GFS could not reply to the notice as their records were lost / misplaced after the Income Tax raid on their broking outfit conducted in November 2001. As requested, a copy of the notice, along with the annexures, was given to him and he agreed to submit the reply by 21st July 2003 but did not respond.

APPRECIATION OF EVIDENCE AND FINDINGS

DSQ Holdings Ltd was promoted in 1992 by Shri Dinesh Dalmia. In late 1993, the company entered into discussions for the acquisition of majority shares of DSQ Biotech (DSQB), which was promoted by KND Engineering & Technologies Ltd as a joint venture with the Tamil Nadu Industrial Development Corporation Ltd. (TIDCO). TIDCO held 20% and KND Engineering held 30.94% of DSQB. KND Engineering negotiated with TIDCO to acquire its 20% stake and agreed to sell the entire block of 50.94% to DSQ Holding. An additional 25% of the shares of DSQB were proposed to be acquired by DSQH of which 20% was intended to be through the mandatory open offer in terms of the listing agreement.

On 30th April, 1994, DSQH, Square D Exports (now Square D Textiles and Exports Ltd) and Lexus Exports Ltd (now Jardine Overseas Ltd) executed an agreement to acquire and acquired 44,98,995 equity shares constituting 50.94% of the paid up equity share capital of DSQB at a price of Rs.15.94 per share from KND Engineering Ltd.

On 5th May, 1994, the Board of DSQH decided to make an open offer to acquire an additional 20% of the equity share capital of DSQB. This was made public on 5th May 1994 pursuant to an advertisement that appeared in the Indian Express, Chennai edition. Upon acquisition of 50.94% of the share capital of DSQB and making an open offer to acquire a further 20% of the shares, the letter of offer for the open offer was dispatched to the shareholders on 12th August, 1994. The open offer opened on 1st October 1994 and closed on 23rd November 1994. The offer price was determined at Rs.15.94 per share.

It was admitted that DSQH continued to acquire shares of DSQB in the secondary market from 1994 onwards.

On 30th September 1994 the shareholders of DSQB at the 7th AGM approved the Rights issue and the Board of DSQB in their 43rd Board meeting held after the aforesaid AGM finalized the terms and conditions for the Rights issue at a premium of Rs.35 per share at a ratio of 1 share for every 2 shares held in DSQB. The rights issue opened for subscription on 7th July, 1995 and closed on 8th August, 1995. During the period, DSQ Holdings and PPTL acquired 6,28,650 shares constituting 4.74% of the paid up capital of DSQB through open market acquisition.

Regulation 10(2) of SEBI (Substantial Acquisition of Shares and Takeovers Regulations, 1994 which was notified on 7.11.1994 reads as under :

Acquisition of 10% or more of the shares of any company through open market purchases

10(2) An acquirer who on the date of commencement of this Regulations holds shares which carry more than 10% of the voting rights in the capital of the company, shall not acquire any further shares in the company from the open market, unless such acquirer makes a public announcement of intention to acquire shares in the open market in accordance with the Regulations.

It is true that DSQH made public announcement on 5th May 1994 to acquire 20% of DSQ's equity followed by open offer which opened on 1st October 1994 and closed on 23rd November 1994 vide the open offer document dated 12th August 1994. However, it must be stated here that the aforesaid public announcement and the ensuing open offer were made to comply with clause 40A and 40B of the Listing agreement.

The contention of the learned authorized representative on behalf of DSQH and PPT that once an open offer is made in terms of the Listing Agreement, there is no bar for the acquirer to acquire further shares of the Target Company without making another public announcement for subsequent acquisition is not tenable. The aforesaid public announcement admittedly is in compliance with the Clause 40A & B of the Listing Agreement of the Stock Exchange. The SEBI (Substantial Acquisition of Shares and Takeovers Regulations, 1994 came into force on 7th November 1994.

As seen above, in terms of Regulation 10(2) of the said Regulations, the acquirer who holds 10% or more of the shareholding of the target company cannot acquire further shares in the open market unless he makes a public announcement in accordance with the Regulations. It is not in dispute that the acquirers who held more than 10%, in fact 51% stake in the target company as on the date of coming into force of the Regulations i.e. 7th November, 2004 have acquired further shares of the target company from 14.6.95 to 31.3.96 in the secondary market as detailed below :

Acquirer	No. of DSQ Biotech Ltd. shares acquired	Period of acquisition
DSQ Holdings Ltd. (DSQH)	51,850	14.07.95 to 31.03.96
Pilliar Pattiyar Textiles Ltd. (PPT)	576,800	Oct. 95 to Feb. 96
Himadiri Electronic (P) Ltd. (HEL)	5,800	23.06.95 to 03.08.95
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	654,150	

However, the above acquisition was not preceded by a public announcement in terms of Regulation 10(2) of the said Regulations. The Learned Authorised Representative of DSQH and PPT had fairly conceded in the Adjudication proceedings on 9th April 2003 and also on 24th March 2003 that Regulation 10(2) of SEBI (Substantial Acquisition of Shares and Takeovers Regulations, 1994 was violated by the acquirers but nevertheless submitted that they were under a bonafide belief that the earlier public announcement under the Listing Agreement was sufficient compliance. It was also submitted that there was no loss caused to the investors, no corresponding gain to the acquirers and there is no repetitive default so as to levy a penalty.

In case of SEBI v/s Cabot International Capital Corporation in Appeal no 7 of 2001 in SEBI Appeal No 24 of 2000 , the Hon'ble High Court of Bombay, the following was observed.....

"The penalty imposable under the SEBI Act and the Regulations under Section 15I and 15J, is deterrent in nature to see that the parties or person concerned complies with the Regulations strictly. This imposition of the penalty under SEBI Act and Regulations is civil in nature and cannot be equated with penal in character as referred and submitted by the respondents and /or observed by the Appellate Authority. It is also clear that the word "penalty" has different colour and shades and facets and that has to be interpreted and imposed on the basis of particular act and policies or scheme. It is also clear that there can be two distinct liabilities under the same act i.e. civil and/or criminal. The authorities or Regulatory Authority have ample power to initiate both proceedings, if case is made out, within the framework of the SEBI Act or the Regulations.

The SEBI Act and the Regulations, are intended to regulate the security market and the related aspects, the imposition of penalty, in the given facts and circumstances of the case, cannot be tested on the ground of "no mens rea, no penalty". For breaches of provisions of SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential."

Despite having over 10% of the shareholding of the target company as discussed above, the acquirers acquired further shares of the target company without making a Public Announcement which is a condition precedent to acquiring further shares in terms of Regulation 10(2) of SEBI(SAST) Regulations, 1994 as cited above. Therefore, violation of Regulation 10(2) of the said Regulations is established. In fact, the Learned Authorised Representative had conceded the aforesaid violation but pleaded to take a lenient view as according to him there was no loss caused to the investors and in the absence of repetitive nature of default etc.

Had the acquirer made a public announcement to acquire further shares from the other shareholders, they would have got an opportunity to tender their shares pursuant to such public announcement and exited from the company at a beneficial price to be determined under the Regulations. Therefore, the interest of the investors is prejudicially affected. Further, such announcement if made, would have also impacted the price movements of the share in the stock exchange and the investors would have had an opportunity to exit from the company. This secondary market exit opportunity to the shareholders of the target company would have been in addition to the open offer which the acquirer was required to make under the Regulations. It is, therefore, not correct to contend that there is no loss caused to the investors. As the acquisition of shares by the acquirers continued in different spells over a period of time between June 1995 and March 1996, it is also a case of repeated defaults.

Section 15H of SEBI Act, 1992 (as it existed prior to the amendment) reads as under:-

15H - Penalty for non disclosures of Acquisition of Shares and Takeovers

If any person who is required under this Act or any Rules or Regulations made there under fails to

make a public announcement to acquire shares at a minimum price

he shall be liable to a penalty not exceeding five lakh rupees.

ORDER

It is pertinent to refer to the order of the SAT in Appeal No.151/2004 dated 7.2.2005 in the matter of Man Industries. It has been held by the Hon'ble Tribunal that for irregularities that were committed prior to the amendment of the SEBI Act on 29.10.2002, penalty as existing at the relevant period only is to be imposed and not the new penalties under the amended Act. The SAT held that it is the common ground that at the relevant period the maximum penalty was Rs.5 lacs. The amendment enhancing the penalty to Rs.5 crores came into force with effect from 29th October, 2002. The Hon'ble SAT at page 16 of the order held as under :

“Penalties unless specifically made retrospective must inevitably be only with effect from the date of amendment. Accordingly, we hold that at the relevant time, the maximum penalty was Rs.5.00 lakhs”.

For the aforesaid reasons, the penalty imposed is limited to Rs 5.00 lakhs (Rupees five lakhs only) for failure to make public announcement in accordance with the Regulations in term of Section 15 H (ii) of SEBI Act, 1992.

Having regard to the submissions made, the factors contained in section 15J of SEBI Act,1992, the gravity of the charges established, the facts and circumstances and following the order of the Hon'ble SAT in Man Industries Ltd. cited above, I hereby impose a consolidated penalty of Rs.5.00 lakhs (Rupees Five Lakhs only) on

DSQ Holdings Ltd (formerly Square D Holdings Ltd), Pilliar Pattiyar Textiles Ltd, Himadiri Electronic (P) Ltd, Escorts Finvest (P) Ltd, Gateway Financial Services (P) Ltd., who contravened the provisions of Regulation 10(2) of SEBI (Substantial Acquisition of Shares and Takeovers Regulations, 1994 read with Section 15H(ii) of SEBI Act, 1992 in the matter of acquisition of shares of DSQ Biotech Ltd. They are jointly and severally liable to pay the penalty. It shall be remitted by way of a crossed Demand Draft drawn in favour of "SEBI – PENALTIES REMITABLE TO GOVERNMENT OF INDIA" and forwarded immediately to Shri R S Loona, Executive Director, SEBI, 224, Mittal Court, "B" Wing, Nariman Point, Mumbai – 400 021.

Date : June 30, 2005

S. V. KRISHNA MOHAN

Place : Mumbai

ADJUDICATING OFFICER