

**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 Dresdner Kleinwort Benson Securities Ltd.
[presently known as Dresdner Kleinwort Wasserstein Securities (India) Ltd.]**

**(SEBI Registration No. INB 010706833
& INB 230706837)**

Date of hearing: November 03, 2009

Appearances

For Noticee: Mr. Rohan Rajadhyaksha, Advocate
Mr. Jaitra Jani, Advocate

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 who had dealt in the scrip during the relevant period.

2. During the period of investigation, 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 shown sudden increase i.e. from a high of 21,44,548 shares as on December 13, 2000 to 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

¹ Foreign Institutional Investors

² Overseas Corporate Bodies

companies viz. Continental Filaments, Athena Software and Uniforge Steel (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, 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 conniving 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. Dresdner Kleinwort Benson Securities Ltd. (hereinafter referred to as 'noticee'), registered with SEBI as stock broker, bearing registration no. INB 010706833 and INB 230706837 had dealt in the scrip for its clients at both BSE and NSE.

6. Based on the findings of the investigations, SEBI initiated enquiry proceedings as 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 January 29, 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 Clause A (2) and (5) of the Code of Conduct specified under Schedule II of the Broker Regulations and SEBI Circular dated April 11, 1997 bearing no. SMD/Policy/Circular/5-97.

7. Subsequently, a Show Cause Notice dated February 02, 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 fifteen 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 SCN returned undelivered. Vide another letter dated April 30, 2007, SEBI forwarded the SCN to the Official Liquidator, Mr. Hemant Sethi, C/o AZB Partners. The noticee replied to the SCN vide its letter received dated June 20, 2007 and requested for an opportunity of personal hearing. Accordingly, an opportunity of personal hearing was granted to the noticee on September 14, 2007, before the then Whole Time Member. Pursuant to this, noticee also filed its written submissions vide letter dated September 24, 2007.

9. Due to change in authority, another opportunity of personal hearing was given to the noticee before me on November 03, 2009. On the date fixed, Mr. Rohan Rajadhyaksha, Advocate and Mr. Jaitra Jani, Advocate appeared before me and reiterated the submissions made vide their earlier letters, along with other submissions. During the course of hearing the noticee submitted that the trades were in the nature of Delivery Versus Payment (hereinafter referred to as 'DVP') and this was a practice prevalent at the relevant point of time, upon this the representative of noticee was asked to produce the following documents:
 - a. Written agreement or proof of arrangement with its clients for the purpose of undertaking DVP trades.
 - b. In how many other scrips DVP trades were entered by noticee?
 - c. Document showing that apart from the clients mentioned in the SCN, noticee had executed DVP trades for any other clients?
 - d. Document showing the period of relationship with the clients for which DVP trades were entered?

For replying to these queries, noticee requested for one months time which was granted to it. Noticee filed its written submissions vide its letter dated December 12, 2009. The submissions of noticee in its reply, in brief, are:

- a. A major penalty of suspension of noticee's certificate of registration for a period of 18 months have already been imposed upon by an order

dated April 29, 2004 and it can not be penalized for alleged violations during the same period.

- b. Request for represented by Indian Legal Counsel at hearing rejected.
- c. Transactions in question were executed by the Noticee only upon delivery of shares in its account by its clients. 'DVP' system was adopted by it to trade on behalf of its clients without any intention of funding such clients.
- d. Stock Exchange mechanism was not at risk as in the event of its client's default, it could deliver the shares deposited by the clients.
- e. KYC circular only requires an intermediary to satisfy itself about the identity of the client.
- f. Executed only sell trades and was not aware of the intention with which its clients were trading in the scrip of DSQ.
- g. Subject trades were undertaken between December, 1999 and January, 2001. After this, it has discontinued its business in India and all its employees have left the employment. Noticee is currently under liquidation.

10. The noticee has argued that its request for representation by Indian Legal Counsel at hearing was rejected by the Enquiry Officer. I note that for the present hearing, the noticee has been represented through the Advocates, in view of this the concern of the noticee has been resolved and no such issue remains for consideration. Further, the noticee vide its letter dated December 12, 2009 submitted the written submissions for replying to the queries raised during the hearing. I note that the noticee has instead of replying to the queries has only made excuses, which were also made during the hearing. I note that the noticee has failed to provide the relevant information as asked for during the course of hearing. In view of this, I have no other option but to proceed on the material available on record.
11. 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 Clause A (2) and (5) of the Code of Conduct

specified under Schedule II of the Broker Regulations and SEBI Circular dated April 11, 1997 bearing no. SMD/Policy/Circular/5-97. Considering all this, the questions arise for my consideration is: Whether the noticee had funded its client and while doing so had failed to exercise due care and diligence while dealing with its clients?

12. Whether the noticee had funded its client and while doing so had failed to exercise due care and diligence while dealing with its clients?

a. I have seen the trading details of the noticee and note that it had entered only sell orders in the scrip of DSQ. The trading details of the noticee have been brought out as under:

Exchange	Clients	Gross buy	Gross sell	Gross trade	Net buy
BSE (July, 2000 to November, 2000)	DSQ Holdings Ltd.	0	2,20,000	2,20,000	-2,20,000
	Hulda Properties & Trades Ltd.	0	8,00,000	8,00,000	-8,00,000
NSE (September, 2000 to January, 2001)	DSQ Holdings Ltd.	0	1,50,000	1,50,000	-1,50,000
	Panther Fincap & Management Services Ltd.	0	6,50,000	6,50,000	-6,50,000
	Hulda Properties & Trades Ltd.	0	36,63,925	36,63,925	-36,63,925
	Classic Credit & Finance Management Ltd.	0	27,75,000	27,75,000	-27,75,000

b. I note that Mr. Dinesh Dalmia, director of DSQ Holdings and DSQ Industries, had requested the noticee to sell his companies shares in February, 1999. Further, Mr. Annamalai another director of DSQ Software Ltd. had introduced Hulda Trade and Properties Ltd. as a client to the noticee. I note from the findings of the Enquiry Officer that the clients of the noticee were related as and it was well aware about the interest of DSQ related entities in the subject scrip.

c. It is an admitted fact that the noticee had made advance payment to its clients to the extent of their sale proceeds while the settlement obligation at the exchange was discharged later on by the noticee instead of seller. The payment for such trades were made to its clients either on the date of transaction or on the immediate next date of

transaction without waiting for pay-out of funds from the exchange. A table of such date of sales and the date when the payout was released to the client and the date of scheduled payout has been brought out below for ready reference:

Client name	Transaction date	Traded Qty.	Market Rate	Amount	Date of Payment	Exchange settlement
at BSE (during July, 2000 - November, 2000)						
Hulda Properties	24/7/2000	4,00,000	185.00	73,25,22,000	24/7/2000	5/8/2000
Hulda Properties	9/10/2000	4,00,000	106.5	4,21,92,000	10/10/2000	20/10/2000
DSQ Holdings Ltd.	24/10/2000	2,00,000	67.7	1,34,28,000	24/10/2000	2/11/2000
Panther Fincap	20/11/2000	4,00,000	190.25	7,53,48,000	20/11/2000	2/12/2000
Panther Fincap	4/12/2000	2,00,000	188.60	3,73,46,000	4/12/2000	16/12/2000
DSQ Holdings Ltd.	19/12/2000	4,01,075	190.57	7,57,83,121	19/12/2000	1/1/2001
Classic Credit Ltd.	26/12/2000	75,000	140.50	1,04,39,250	26/12/2000	5/1/2001
Hulda Properties	26/12/2000	4,00,000	139.67	5,54,16,000	26/12/2000	5/1/2001
Hulda Properties	1/1/2001	4,00,000	170.04	6,74,08,000	1/1/2001	12/1/2001
Hulda Properties	8/1/2001	5,00,000	182.93	9,07,05,000	8/1/2001	18/1/2001
at NSE (during September, 2000 - January, 2001)						
Hulda Properties	11/10/2000	1,00,000	91.78	90,81,000	11/10/2000	25/10/2000
Hulda Properties	12/10/2000	1,50,000	84.75	1,26,03,000	12/10/2000	25/10/2000
DSQ Holdings Ltd.	13/10/2000	1,50,000	75.10	1,11,73,500	13/10/2000	25/10/2000
Classic Credit Ltd	24/11/2000	5,25,000	185.77	9,66,10,500	24/11/2000	06/12/2000
Hulda Properties	01/12/2000	1,00,000	182.50	1,80,78,000	1/12/2000	13/12/2000
Panther Fincap	07/12/2000	5,00,000	186.25	9,21,95,000	7/12/2000	20/12/2000
Hulda Properties	8/12/2000	2,70,000	188.16	5,03,71,200	8/12/2000	20/12/2000
Hulda Properties	11/12/2000	5,00,000	206.62	10,25,75,000	12/12/2000	20/12/2000
Hulda Properties	12/12/2000	5,00,000	241.22	10,64,50,000	13/12/2000	20/12/2000
Classic Credit Ltd	13/12/2000	5,00,000	238.25	11,78,70,000	13/12/2000	27/12/2000
Panther Fincap	13/12/2000	1,50,000	238.25	3,53,61,000	13/12/2000	27/12/2000
Hulda Properties	15/12/2000	3,87,625	198.45	7,64,08,640	18/12/2000	27/12/2000
Hulda Properties	18/12/2000	2,00,000	190.25	3,77,96,000	18/12/2000	27/12/2000
Hulda Properties	18/12/2000	1,300	199.00	2,57,088	19/12/2000	27/12/2000
Hulda Properties	22/12/2001	6,00,000	179.77	10,69,92,000	22/12/2000	03/01/2001
Hulda Properties	2/1/2001	1,30,000	167.60	2,16,61,900	3/1/2001	09/01/2001
Classic Credit Ltd.	3/1/2001	10,00,000	160.81	15,90,30,000	3/1/2001	17/01/2001
Hulda Properties	3/1/2001	50,000	166.7	82,56,500	4/1/2001	17/01/2001
Classic Credit	4/1/2001	7,50,000	180.8	13,41,82,500	4/1/2001	17/01/2001
Hulda Properties	4/1/2001	1,75,000	180.8	3,13,56,000	4/1/2001	17/01/2001
Hulda Properties	4/1/2001	2,00,000	177.12	3,51,06,000	4/1/2001	17/01/2001
Hulda Properties	9/1/2001	10,000	166.51	1,65,42,000	9/1/2001	17/01/2001
Hulda Properties	9/1/2001	1,75,000	160.37	27,89,500	10/1/2001	17/01/2001
Hulda Properties	9/1/2001	25,000	160.37	39,85,000	10/1/2001	17/01/2001

- d. A look at the above table substantiates the fact that the noticee was providing immediate financing to its client under the pretext of regular sale transaction and for securing the payments, while trading through

the stock exchange mechanism. I note the argument of the noticee that these were the DVP trades and were accepted in market. I do not find any merit in this argument of the noticee as the pattern followed herein appears to be a special arrangement between the noticee and its clients. In this arrangement the noticee provided sale proceeds of the shares received from the client in advance and in result the client has made use of this advance in completing its buying obligations of the same shares through the counter party broker. It appears from the facts of the case that the clients of the noticee had used up the money so received from the noticee at the counterparty buying broker for their pay-in obligation. Considering this, I am in complete agreement with the findings of the Enquiry Officer that on one hand the trades of noticee becomes a legitimate transaction on the stock exchange and liable for clearing and settlement by the exchange, on the other hand the clients of the noticee gets finance upto the extent of the sales proceeds on the day of delivery of shares itself.

- e. This pattern clearly suggests that the noticee had acted as financier to its clients while trading in the scrip of DSQ for the period of few days for which it gave the money to the selling client without incurring any risk because it had shares worth that amount by way of security. I note that the noticee has not submitted any information about extending the said facility of DVP trades to any other client during the relevant period of time. This shows that the noticee had made this special arrangement only to DSQ group clients.
- f. Further, I note that the brokerage charged by the noticee had depended to a limited extent on the difference between the number of days from the noticee's payment of the sale proceeds to the clients and the actual receipt of funds by the noticee pursuant to the pay-out in the stock exchange. In view of this, the plea that the noticee had not derived any benefit from the sale transactions executed on behalf of

the clients, does not hold good, particularly in view of the fact that the broker was ensuring repayment of funds advanced by it to the clients.

- g.** I also note that BSE vide its circular no. 5638/96 dated October 01, 1996, advised the brokers that funding/ financing transactions are not being considered genuine transactions between the brokers and mentioned that such transactions would also fall within the ambit of fictitious transactions. It was further advised that serious view shall be taken against those members who were found to be involved in such transactions. Further, BSE vide its subsequent notice no. 80626/2001 dated March 17, 2001, once again advised its members, not to enter into such transactions and has warned the members concerned of strict disciplinary action in case of any such violation, besides, annulment of such transactions and non availability of Trade Guarantee Fund cover etc. I note that the noticee having provided finance to its clients under the garb of trading has also violated the above said directives of BSE.
- h.** Furthermore, I also agree with the view as pointed out by the Enquiry Officer that the DVP deals involves a custodian as an agent who ensures the DVP nature of trades, while no custodian was involved in the whole process in the present case. In view of this, the contention of the noticee is unacceptable.
- i.** Before concluding, I also place reliance upon the case law cited by the Enquiry Officer i.e. the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter of Ketan Parekh Vs SEBI (Appeal no. 2 of 2004), wherein Hon'ble SAT had observed that the role of the broker in arranging finance to its client was no less than those of the clients.
- j.** Further, the noticee had not sought to know the investment objective of its clients. I note that the Enquiry Officer in its report has found that

the noticee has downplayed the importance and requirements of KYC by not satisfying itself about the genuineness and the financial soundness of the client and its investment objectives. The noticee has argued that the SEBI Circular only requires an intermediary to satisfy itself about the identity of the client. I have seen the specific clause in the 'Member Client Agreement' which reads as under:

“Whereas the MEMBER has satisfied and shall continuously satisfy himself about the genuineness and financial soundness of the CLIENT and investment objectives relevant to the services to be provided”

A reading of this clause clearly refers that the requirement is continuous and necessary. I note that the noticee had not sought to know the objective of its client's in spite of the fact that it was aware of the relationship between the clients and the scrip in which they were trading. In view of this the omission of the noticee has resulted in violation of SEBI Circular dated April 11, 1997 bearing no. SMD/Policy/Circular/5-97.

- k.** I note that the noticee had misused the screen based trading by allowing such activities on the stock exchange. In view of the findings stated above, I note that the noticee has failed to exercise due skill, care and diligence which are expected from a prudent stock broker who had a duty not only towards its client but also towards the securities market.
- 13.** I note that the charge of execution of funding of clients by the noticee stands established. Further, it is also clear that the noticee has failed to perform its duties as specified in the code of conduct for stock brokers in the Broker Regulations.
- 14.** I note the argument of the noticee that a major penalty of suspension of certificate for a period of eighteen months vide SEBI order dated April 29,

2004, and it can not be penalized for the alleged violations during the same period. I have seen this order and note that the said order covers the trades of two clients of the noticee i.e. Panther Fincap and Management Services Ltd. and Classic Credit and Finance Management Ltd. in the scrip of DSQ during the relevant period of time. Considering this, the said trades of the noticee for its clients namely Panther Fincap and Management Services Ltd. and Classic Credit and Finance Management Ltd. are not being considered for the present proceedings.

- 15.** Having gone through the facts and circumstance of the case, I hold that the noticee has violated the Clause A (2) and (5) of the Code of Conduct specified under Schedule II of the Broker Regulations and SEBI Circular dated April 11, 1997 bearing no. SMD/Policy/Circular/5-97. I agree with the findings of the Enquiry Officer. I find that the acts committed by the noticee have to be viewed seriously as the execution of the said trades pose serious threat to the price discovery mechanism of the stock exchange and the safety of securities market mechanism. Having regard to the nature and gravity of the charges established, the facts and circumstances of the case, I am of the considered view that ends of justice will be met by suspending the certificate of registration for a period of one month. I also note that already, an order directing cancellation of certificate of registration of the noticee has been passed by SEBI, vide order dated April 26, 2007 for its dealings in the scrip of DSQ Software Ltd. I note that the noticee has preferred an appeal as against this order of SEBI before the Hon'ble Securities Appellate Tribunal. However, no stay has been granted to it. Considering this and the fact that the noticee is under liquidation no useful purpose will be served by suspending the certificate of registration of noticee. Therefore, I hereby dispose of the Enquiry proceedings initiated against the noticee accordingly.
- 16.** 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.

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 dispose of the present Enquiry proceedings as against Dresdner Kleinwort Benson Securities Ltd. registered with SEBI as stock broker, bearing registration no. INB 010932114 and INB 230769433.

DATE : 26/02/2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA