

## BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulations 11 and 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 against Mr. Dinesh Dalmia and M/s. DSQ Software Ltd.

In the matter of M/s. DSQ Software Ltd.

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1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation into the trading of the shares of M/s DSQ Software Ltd. (hereinafter referred to as "DSQ/Company") for the calendar year 1998 when a sharp rise in the price of the scrip was observed.
2. It was noted during investigation that DSQ Software Ltd. (formerly known as Square D. Software Ltd.) was incorporated as a public limited company on March 6, 1992. With effect from April 1, 1997, the company changed its name to DSQ Software Ltd. The main promoters of the Company were Mr. Dinesh Dalmia and his group entities viz; Ganapati Commerce Ltd., Ganapati Combines Ltd., Lexus Exports (P) Ltd. (name changed to DSQ Holdings Ltd.) and Square D. Exports. These companies/firms were wholly owned by Mr. Dinesh Dalmia, his friends and family members. Shares of DSQ were listed on National Stock Exchange Ltd. ("NSE"), Bombay Stock Exchange Ltd. ("BSE"), Ahmedabad Stock Exchange Ltd., Calcutta Stock Exchange Ltd., Madras Stock Exchange Ltd. and Delhi Stock Exchange Ltd.
3. During the investigation, an overall increase in the share prices of Software and Information Technology ("IT") scrips was observed. The comparison of share prices of major Software/IT companies with that of DSQ during the investigation period is given in the following Table:

**Table 1**

Company	Market Price in ₹		Percentage Rise
	Jan-98	Dec-98	
DSQ	41.25	351.50	752%

Infosys	270.20	739.60	174%
Wipro	99.10	367.80	271%
Satyam	16.60	72.80	339%
NIT	450	1082.50	141%
Silverline	29.25	108.60	271%

4. As indicated in the above Table, the percentage rise in the price of the shares of DSQ was considerably higher as compared to that of other companies in the same industry. Percentage increase in other scrips varied between 140% to 340%, whereas, percentage increase in the price of the shares of DSQ was around 750%. BSE- Sensex during 1998 rose from around 3200 in January to around 4000 in April and fell to around 2800 in October and again rose to around 3050 in December.
5. The investigation revealed that the higher increase in price of the shares of DSQ was due to the following reasons:
- I. As per the minutes of 5th AGM of DSQ filed with the Stock Exchanges, DSQ had obtained shareholder's approval for a strategic sale on September 26, 1997.
- II. DSQ had a considerably low floating stock because of the following reasons:
- a) There were stay orders on transfer of substantially large number of shares i.e. 56,89,800 shares representing 28% shares of DSQ in 3 cases summarized below:
- i. Commonwealth Development Corporation (CDC) was holding 38 lakh shares (18.77%) in DSQ and was a co-promoter of DSQ. CDC was holding a single jumbo certificate and had sent the certificate to the Company to split it into marketable lots on April 28, 1998. Mr. Dinesh Dalmia filed two petitions in the Chennai High Court. Vide petition no. 327 of 1998, he prayed before the Court to restrain CDC from selling or in any manner dealing with the 38 lakh shares in the Company and vide petition no. 328 of 1998, he prayed before the Court to direct the Company and the Registrar and Share Transfer Agent not to split the jumbo certificate into marketable lots. Interim orders were passed by the Court in the petitions. The Company turned down CDC's request of splitting the jumbo certificate citing the Court Order restraining it from doing so. Subsequently, the Company, vide a letter dated May 3, 1999 informed BSE that the parties (Mr. Dinesh Dalmia and CDC) reached a settlement following which the Court vacated the stay order on splitting of

shares on October 24, 1998. The share certificate was subsequently spilt on November 2, 1998.

- ii. DSQ Industries Limited, a group company of Mr. Dinesh Dalmia, had obtained a packing credit loan from UTI Bank, Calcutta by pledging 7,10,200 shares of DSQ. Since DSQ Industries was unable to repay the loan amount, UTI Bank sold shares in the market during the period March 26, 1998 to April 6, 1998. DSQ Industries Limited approached Calcutta High Court and obtained an interim injunction order on May 14, 1998 restraining DSQ from transferring the shares involved in the dispute in favour of UTI. However, UTI Bank had already sold the shares through Anand Rathi Securities. Anand Rathi Securities approached the court to get the stay order vacated as otherwise the shares sold by the broker would result in bad delivery. UTI Bank had sent a notice on July 18, 1997 to Glix Merchants Pvt. Ltd. (one of the group entities who had pledged the shares with UTI Bank for obtaining the loan for DSQ Industries) regarding default on loan by DSQ Industries and its intention to sell off the shares. Subsequently, DSQ Industries Ltd. withdrew the case and the injunction order was vacated by the Calcutta High Court on July 24, 1998. DSQ on receiving the Court order transferred all the shares involved in the case to the respective transferees.
- iii. Powerflow Holding & Trading Company, Calcutta (related to the promoters and promoter group) had borrowed ₹ 2 cr. from Hakeem Auto Ltd. vide their agreement dated November 11, 1997. The security given was 11,68,800 shares of DSQ, out of which 7,25,800 shares were duly transferred in Hakeem Auto's name and 4,43,000 shares were with blank transfer forms. The tenure of the loan was 12 months with the option that the lender could sell these shares if the borrower failed to pay the money. Because of non payment of money on time, Hakeem Auto had sold 2,20,000 shares through Lalkar Securities and 95,000 shares through Taswala. Meanwhile Powerflow Holding approached the Bombay High Court and obtained an order restraining the Company from transferring these shares, till the suit is disposed off. BSE vide its letter dated July 25, 1998, informed SEBI that the brokers of BSE have gone to the Court and obtained an order restraining the shares from being auctioned till August 10, 1998. Later, vide a letter dated December 8, 1998; BSE informed SEBI that Powerflow Holding & Trading Company have withdrawn the suit against the Company on September 16, 1998. In the said letter, BSE also stated that as per the Court order, the validity of all the transfer deeds lodged with the Company or its share transfer agents on or before July 2, 1998 (being book closure date) is extended to December 31,

1998 and such shares shall be transferred by the Company to the respective transferee(s) together with all accruals to which they would have been entitled as if the shares had been transferred to their names on July 2, 1998. The parties reached an out of court settlement and subsequently the order was vacated on September 25, 1998. As per the letter dated May 3, 1999 sent by DSQ to BSE, the Company on receiving the orders transferred all the shares that were subject to the injunction.

- b) It was noted that the stake of Mrs. Radha Dalmia (wife of Mr. Dinesh Dalmia) in DSQ had increased from 6,90,200 shares (3.42% of the equity share capital) on September 26, 1997 to 22,75,200 shares (11.24% of the equity share capital) on July 22, 1998 as described in the following Tables:

**Table 2: Shareholding pattern**

<b>Entity</b>	<b>Percentage Holding as on September 26, 1997</b>	<b>Percentage Holding as on July 22, 1998</b>	<b>Percentage Holding as on October 1, 1998</b>	<b>Percentage Holding as on December 31, 1998</b>
Promoter Companies	26.30	24.83	23.37	19.83
Directors and their Relatives	3.42	11.24	11.24	11.24
Pillaiyar Pattiyar	1.21	1.19	1.18	1.17
CDC	18.77	18.77	18.77	18.77
Electronic Corporation	1.00	1.00	1.00	1.00
Powerflow Holding	4.56	0.46	0.36	2.14
Hakeem Auto	-	2.88	2.88	0.15
<b>Total</b>	<b>55.25</b>	<b>60.36</b>	<b>58.80</b>	<b>54.23</b>

**Table 3: Change in promoter/relatives holdings during the period under investigation**

Entity	Holding as on September 26, 1997	Holding as on July 22, 1998
Lexus exports	14.76	13.30
Ganapathy exports	0.40	0.40
DSQ Holdings	11.14	11.14
Pillaiyar Pattiyar	1.21	1.19
Directors & Relatives (Mrs. Radha Dalmia)	3.42	11.24
<b>Total</b>	30.92	37.27

III. Following positive statements regarding the business and results of the Company were made at DSQ's behest during the investigation period:

- a) Business Line dated April 23, 1998 reported that "the company has bagged a contract from Japanese firm, Unisia Jecs Corp to develop software for latter's automobile embedded systems. It is being reported further that initially the project will be for developing software for anti-lock braking systems and depending on company's performance, will spread to other areas, such as vehicle behaviour management systems."
- b) Business Line dated May 18, 1998 reported that "Mr. Dinesh Dalmia, Managing Director of the company in his interview with the press persons said that enterprise resource planning (ERP) would form major chunk of the company's revenue next year and the company is expecting around \$20 million revenue from ERP implementation, for which it has made arrangements with SAP and Baan. The company expects cumulative growth in turnover of 125 percent for the next two years and expects around 30 percent of the next year's revenues from the ERP segment. The company has set up SAP centre in Calcutta and Baan centre in Chennai. The company is jointly bidding for projects with consultants such as KPMG for ERP implementations. The company is involved in such implementation at client sites such as Bridgestone, Castrol, Novartis and SKF Bearing. It is being reported that the company is planning to enter e-commerce and Web-enabled applications from which it

expects a 10 percent share in next year's revenues and mainframe and mid-range segment is expected to contribute around 33 percent of the next year's revenues."

6. It was found during investigation that the entities involved in the above mentioned litigations were related to Mr. Dinesh Dalmia and other promoters/promoter group of DSQ. It was further noted that these cases were either withdrawn by the petitioners or were settled by the parties out of Court. BSE had also noted the same in its investigation. It was, therefore, alleged that these cases were filed by Mr. Dinesh Dalmia and other entities related to him and the promoters of DSQ as a ploy to squeeze the floating stock of DSQ.
7. It was further found that due to the positive statements made by the Company about its performance/future business, the sentiment in the scrip had improved and due to the reduced floating stock of the scrip, the price of the scrip increased during the investigation period. It was also found that the claims made by the Company about the deal with Japanese firm, Unisia Jecs Corp and those about the future opportunities for DSQ did not materialize. It was alleged that these statements were not genuine.
8. Investigating Authority had issued summons to DSQ, Mr. Dinesh Dalmia and Mrs. Radha Dalmia with a view to ascertain the following:
  - a) The basis for making the statements as mentioned above and also whether these price sensitive statements were disclosed to the stock exchanges;
  - b) How Mrs. Radha Dalmia acquired the shares during the said period;
  - c) Whether any other promoter group entities including Hulda Properties & Trades Ltd. had acquired the shares of the company during this period or made any attempts to artificially propel the prices of the scrip;
  - d) Intention for blocking the sale / transfer of shares as brought out above (3 cases) and subsequent settling of the cases out of Court.
9. Mr. Dinesh Dalmia was advised to appear before the Investigating Authority along with the information relating to his trading in the shares of DSQ, the loan agreements between DSQ Industries Ltd. and UTI Bank, the agreement between DSQ and CDC relating to the restrictions on CDC to sell its stake in DSQ and the agreement between DSQ and Powerflow Holding & Trading Company. Both, Mr. Dinesh Dalmia and Mrs. Radha Dalmia were summoned to appear before the investigating authority on several dates, but the summons could not be delivered as Mr. Dinesh Dalmia and Mrs. Radha Dalmia refused to accept the summons sent by post. When subsequent attempts were made to serve the summons upon Mr. Dinesh Dalmia and Mrs. Radha

Dalmia on their address, the SEBI officials were prevented entry into the premises and the service of summons was hindered.

10. Further, DSQ was issued summons twice asking it to provide information regarding acquisition of shares by Mrs. Radha Dalmia, details regarding press statements made by it, details regarding the disclosures made to Stock Exchanges about these statements etc. In response to the same, SEBI received a letter dated December 29, 2004 from Vaidyanathan Associates stating that the principal officer of the Company, viz. the Managing Director was on a business tour and was not available in India to appear before SEBI. Further, regarding the information sought by SEBI, it was stated that the information was already in possession of SEBI.
11. In view of the non-cooperation of Mr. Dinesh Dalmia, Mrs. Radha Dalmia and DSQ and based on the material available on record, it was alleged that the intention behind obtaining stay orders in all the three cases, as discussed above, was only to create an artificial scarcity of floating stock, as the parties involved were related to Mr. Dinesh Dalmia, promoters and the promoter group and all the three cases were subsequently settled out of Court. It was also alleged that the price sensitive statements were made by the Company to create a positive sentiment for the shares of the company in the secondary market to influence the price of the shares of the company. It was further alleged that the said statements were misleading in nature and had induced public to purchase the shares of DSQ which in turn increased the market price of the shares.
12. In view of the above, SEBI issued a combined Show Cause Notice ('SCN') dated December 11, 2006, to DSQ and Mr. Dinesh Dalmia (hereinafter collectively referred to as "the Noticees") calling upon them to show cause as to why appropriate directions under sections 11(4) and 11B of the SEBI Act including restraining them from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities, for an appropriate period of time, should not be issued. The allegations and violations charged in SCN against the Noticees are summarized in the following Table:

**Table 4 : List of charges against the Noticees**

<b>Sr. No.</b>	<b>Name of the entity</b>	<b>Allegation</b>	<b>Violation</b>
1	Mr. Dinesh Dalmia	Making price sensitive statements which were misleading and which	Regulation 5(1) of SEBI (Prohibition of Fraudulent and Unfair
2	M/s. DSQ	had the effect of inducing	

	Software Ltd.	purchase of securities by public and in turn increasing the market price of the shares of the Company	Trade Practices relating to Securities Market Regulations, 1995
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13. Vide letters dated December 26, 2006 and February 3, 2007, DSQ responded to the SCN stating that the promoter director of DSQ i.e. Mr. Dinesh Dalmia was in judicial custody and the records of the Company had been seized by various authorities for which they do not have any immediate recourse. Reminder notices, dated September 14, 2007 and July 18, 2008 were also issued to the Noticees advising them to reply to the SCN. DSQ, vide letter dated July 25, 2008, requested for a copy of the SCN, which was provided to it vide letter dated August 1, 2008. However, no reply was received from the Noticees. Subsequent reminders served upon the Noticees were also not responded by them. Considering the above facts and circumstances of this case, it was decided to proceed in the matter in absence of reply of the Noticees to the SCN and the Noticees were afforded an opportunity of personal hearing in the matter which they failed to avail despite service of the notice in that regard.
14. I note that even after service of SCN twice and several reminders, the Noticees have neither responded to the SCN, nor have they availed the opportunity of personal hearing before me despite service of notice. In the facts and circumstances of the case, I find that the Noticees were adopting dilatory and delaying tactics in responding to the SCN. They also failed to avail the opportunities provided to them in these proceedings and have deliberately evaded the opportunities of personal hearing. I, therefore, find that the principles of natural justice have been complied with in these proceedings. I am of the view that sufficient opportunities to file reply/submissions and appear for personal hearing have been provided to the Noticees and this matter should now be disposed of on the basis of the material available on record.
15. I find that in the present case, there has been brazen defiance and willful disobedience of summons of the Investigating Authority by the Noticees. Further, despite service of the SCN and notice of personal hearing upon them, the Noticees have deliberately avoided to reply to the SCN and have willfully failed to attend the personal hearing in the matter. Since the Noticees have not filed any reply in their defence and in absence of any material to differ with the charges and allegations made in the SCN, it can also be safely presumed that they admit all the charges and allegations made in the SCN. In this regard, I rely upon the findings of the Hon'ble SAT in the matter of *Classic Credit Limited Vs. SEBI* (Appeal No. 68 of 2003 order dated December 8, 2006, published on January 8, 2007) regarding the significance of filing the reply to the SCN, in which

it stated that “*The appellant did not file any reply to the second show cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*”. I, therefore, do not find any reason to differ from the charges and allegations made in the SCN and I hold that all the charges against the Noticees are established on this ground alone.

16. It is trite to say that in legal parlance, interlocutory injunctions are generally granted by Courts on the basis of *prima facie* case without going into the merits of the case. In the present case, the cases were filed by Mr. Dinesh Dalmia and other promoter related entities and injunctions were granted in their favor by the Courts on the basis of *prima facie* case. However, the design of the Noticees could be inferred from their subsequent conduct such as non-disclosure of the details and outcome of any of the cases (which involved a substantial number of shares and were likely to have an impact on the price of the scrip) to the stock exchanges and settlement of cases out of Court. From such conduct of the Noticees it can be safely inferred that Mr. Dinesh Dalmia and other related entities had planned the squeezing of the floating stock of the Company as found during the investigation.
17. I note that misleading statements were made at the behest of the Company to fuel the artificial price rise in the shares of the Company in the secondary market. The same is evident from the fact that the information published in Business Line on April 23, 1998 and May 18, 1998 was never disclosed to the concerned stock exchanges. Also, no information was furnished to the stock exchanges when the proposed transactions pertaining to the contract with the Japanese Firm and enterprise resource planning (as reported in Business Line) did not materialize. The said information was price sensitive and ought to have been disclosed to the concerned stock exchanges under clause 36 of the Listing Agreement. I further observe that these announcements were made at a time when the floating stock of DSQ had reduced owing to the orders of Courts in the cases filed by Mr. Dinesh Dalmia and his group entities and the increase of stake of Mrs. Radha Dalmia (wife of Mr. Dinesh Dalmia) in DSQ by 8%. Non-disclosure of such information to the stock exchange repeatedly coupled with other facts viz. non-cooperation with investigation/inquiry in the matter, deliberate squeezing of floating stock in the Company etc. as found during investigation shows that DSQ and its management had no intention to implement the said announcements and that they were not genuine.
18. Mr. Dinesh Dalmia, being the promoter and Managing Director of DSQ, was responsible for DSQ making the misleading statements which created an artificial demand for the shares of DSQ in the circumstances (created by Mr. Dinesh Dalmia

himself and other entities related to him) such as reducing the free float of shares by purchasing shares through his wife and filing cases directly and indirectly through his affiliated entities which resulted in the stay of transferability of a substantial number of shares i.e. 28% of the equity capital.

19. In this regard, I note that the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") in matter of *V. Natarajan vs. SEBI (Order dated June 29, 2011 in Appeal No.104 of 2011)* has held that fraudulent or unfair trade practices in securities as prohibited by PFUTP Regulations include publishing any information which is not true or any advertisement that is misleading or contains information in a distorted manner. The following observations made by the Hon'ble SAT in that case are worth mentioning:

*"These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities."*

20. In view of the above, I conclude that DSQ made misleading statements which had the effect of inducing purchase of securities by public which in turn increased the market price of the shares of the Company. Mr. Dinesh Dalmia, being the Managing Director and promoter of the Company, was responsible for the Company in making the misleading statements as explained above. In view of these facts and circumstances, I note that DSQ and Mr. Dinesh Dalmia have violated the provisions of regulation 5(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 which reads as under:

***Prohibition of misleading statements to induce sale or purchase of securities***

*5. (1) No person shall make any statement, or disseminate any information which*

*(a) is misleading in a material particular; and*

*(b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information-*

*(i) he does not care whether the statement or information is true or false; or*

*(ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular*

*Nothing in this sub-regulation shall apply to any general comments made in good faith in regard to -*

*(a) the economic policy of the Government,*

*(b) the economic situation in the country,*

*(c) trends in the securities markets, or*

*(d) any other matter of a similar nature,*

*whether such comments be made in public or in private.*

21. I, therefore, in order to protect the interest of investors and the integrity of the securities market, in exercise of the powers conferred upon me by virtue of section 19 read with sections 11 and 11B of the SEBI Act and the provisions of regulations 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereby restrain M/s. DSQ Software Limited (PAN:AAACS5071J) and Mr. Dinesh Dalmia from accessing the securities market and also prohibit them from buying, selling, and otherwise dealing in securities market, directly or indirectly, in any manner whatsoever, for a period of seven (7) years from the date of this order.
22. A copy of this Order shall be served upon the Noticees, National Stock Exchange Ltd., Bombay Stock Exchange Ltd., Ahmedabad Stock Exchange Ltd., Calcutta Stock Exchange Ltd., Madras Stock Exchange Ltd. and Delhi Stock Exchange Ltd.
23. This Order shall come into force with immediate effect.

**DATE: October 3<sup>rd</sup> 2013**

**PLACE: Mumbai**

**RAJEEV KUMAR AGARWAL**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**