SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Regulation 44 and 45 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Section 4(3) of the Securities and Exchange Board of India Act, 1992 against Classic Credit Limited and Panther Fincap and Management Services Limited in the matter of acquisition of shares of DSQ Industries Limited

CO/123/ISD/01/2005

1.0 Background

1.1 DSQ Industries (now known as "Jardine Overseas Limited") is a company listed on the Calcutta Stock Exchange (hereinafter referred to as "CSE") and was formerly known as Lexus Overseas Limited.

1.2 During the period January 2, 2000 to March 14, 2000 the scrip of DSQ Industries witnessed a sharp increase in price on the CSE despite being thinly traded with low average daily volumes. This led to a suspicion of price manipulation and creation of artificial market and therefore, the Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the matter.

1.3 In the course of investigation, it was observed that during the period 1.2.2001 to 31.3.2001, Classic Credit Limited (hereinafter referred to as "Classic Credit") and Panther Fincap and Management Services Limited (hereinafter referred to as "Panther Fincap") had received large quantities of shares of DSQ Industries in their demat accounts. Details of the said credits are as under:

(a) Classic Credit Limited

Date	Received from	No. of shares
15/02/01	Arun Polymers	1000000
15/02/01	Aspolight Barter	800000
01/03/01	Greenfield Investments	2500000
07/03/01	DSQ Holdings	2000000
08/03/01	GTB Pledge Closure	850000
21/03/01	Indsec Securities	500000
31/03/01	Triumph Int. Fin.	250000
	T O T A L	**7900000**

(b) Panther Finacap and Management Services Limited

Date	Received from	No. of shares
15/02/01	Cooltex Commodities	900000
01/03/01	Greenfield Investments	2500000
16/03/01	Indsec Securities	300000
21/03/01	Indsec Securities	590000
	T O T A L	**4290000**

1.4 It was also observed that Classic Credit and Panther Fincap were both owned and controlled by Shri Ketan Parekh. It was alleged that the said two entities had acted in concert and that they had through the said transactions acquired shareholding in DSQ Industries. The collective shareholding acquired by the said two entities (hereinafter referred to as "the acquirers") on various dates was as under:

Date	No. of shares	% of shares acquired	Cumulative shareholding as %
15.2.2001	27,00,000	13.47	13.47
01.3.2001	50,00,000	24.95	38.42
7.3.2001	20,00,000	9.98	48.60
8.3.2001	8,50,000	4.24	52.64
16.3.2001	3,00,000	1.50	24.13
21.3.2001	10,90,000	5.44	59.57
31.3.2001	2,.50,000	1.25	60.82

It was further observed that despite having made the said acquisitions, classic credit and panther fincap failed to make a public announcement as required under Regulations 10, 11 12 and 14 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "takeover regulations") nor did they seek exemption from making the said public announcement.

2.0 Show cause notice

2.1 In the light of the findings of investigation, Show cause notice was issued to the classic credit and panther fincap on 19.2.2004 advising them to show cause why action including directions under Regulations 44 and 45 of the Takeover regulations should not be issued against them. The said entities submitted their replies as under:

Classic Credit submitted their reply vide letter dated 09.03.2004 to the said show cause notice as below:

(i) Classic Credit submitted that they are a separate legal entity having their own identity.

(ii) They submitted that the statement that "The acquirers are Ketan Parekh entities" is erroneous, contrary to law and has been made without application of mind. They pointed out that they are a

separate legal entity and that they have in no manner acted in concert with the other party to whom the show cause notice is addressed.

(iii) They submitted that the all the statements in the said show cause notice alleging acquisition of shares / voting rights / control of DSQ Industries Ltd. are denied and refuted by them as being incorrect and unsubstantiated.

(iv) As regards the transaction details of DSQ Industries Ltd., they submit as under:

a) On 15.02.02, the shares received from Arun Polymers and Aspolight Barter were not purchased by them but were in fact loaned to them. A major quantity was further immediately pledged on the same day or the next day to Bank of Punjab and Global Trust Bank. Thus there was no ownership of shares of DSQ Industries Ltd. by them and thus these shares cannot be said to have been owned by them at any point of time.

b) As for the shares which were pledged with Madhavpura Bank on 21.02.01 and which share were reflected in their account from 15.02.01 to 20.02.01, they submitted that it was a small quantity of 2,50,000 shares and not exceeding the acquisition limit of 5% as per SEBI Regulation 11(1).

c) Further as regards share received from Greenfield Investment on 01.03.01, they submit that the same were also in fact a loan provided to them. The same was further pledged with Madhavpura Bank on the same day itself. It is pertinent to note that an order dated 31.10.2002 of Adjudicating Officer referring to the shares received as loan from Greenfield Investment Ltd. is under Appeal with Securities Appellate Tribunal (Appeal No. 4/2003).

d) Further, the transfer of shares in the depository account of Classic Credit Ltd. by Arun Polymers, Aspolight Barter & Greenfield Investment Ltd. did not amount to a transfer of beneficial interest in the shares as they were only loaned and not sold to them. It is averred strongly that the beneficial interest in the said shares continued to vest in the legal owners of the shares viz. Arun Polymers, Aspolight barter & Greenfield Investment ltd. This is supported by the fact that the consideration for the shares has not been provided by Classic Credit Ltd. to Arun Polymers, Aspolight Barter & Greenfield Investment Ltd. Further it is stated that the shares were pledged with Bank of Punjab, Global Trust Bank & Madhavpura Bank on the same or the next day they were transferred out of their demat account clearly indicating that there was no intention of acquiring substantial number of shares.

e) Further it is submitted that transaction on 07.03.2001 with DSQ Holdings viz. 20,00,000 shares was in fact a loan provided to them. Rs.5,00,000 shares of these were immediately pledged with Milan Mahendra. 5,00,000 shares were transferred on the same day to Indsec Securities on behalf of another entity as on 07.03.01. 2,50,000 shares each were transferred on the next day to Panther Investrade and Panther Fincap. Thus it is to be noted that there was no acquisition of beneficial ownership of the shares or control of DS Industries Ltd. Thus SEBI (Substantial Acquisition of Shares and Takeovers) Regulation 1997 were not attracted.

f) In respect of transactions on 08.03.01 with GTB of 8,50,000 shares it is mentioned that this was only a closure of pledge of shares made to Global Trust Bank on 16.02.01 of the same quantity of shares. This means that 8,50,000 shares that were

pledged with GTB on 16.02.01 were returned by the bank pursuant to pledged closure on 08.03.01. It is clarified that when these shares were in fact acquired and pledged, same was counted as part of our holdings and thus the closure of the pledge does not amount to any fresh acquisition. This is not a new transaction but the same transaction and the reverse transaction has been understood and taken as two different transaction by SEBI which is incorrect.

g) On the same day i.e. 08.03.01, the shares received from GTB were further transferred to Triumph International Finance India Ltd. thereby not creating a situation of acquisition of shares or control of DSQ Industries Ltd.

h) In respect of the transaction on 21.03.01, Indsec Securities returned to us 5,00,000 shares taken as loan by them from us on behalf of another entity, on 07.03.01. hence, this is not a new transaction involving acquisition of shareholding of DSQ Industries Ltd. As a matter of fact, this is a reverse transaction and not to be included in the net holding of shares by them. Further, 4,10,000 shares were in fact transferred from our account. The remaining 90,000 shares were also transferred out of account thereby reducing out holding.

i) In respect of transaction on 31.03.01 wherein shares were received from Triumph International Finance Ltd. it is clarified that these shares received in their account were part of the 8,50,000 shares loaned to them earlier on 08.03.01. Again, it was not a new transaction entered into between Triumph and Classic Credit Ltd. and considering it a new transaction and as acquisition of DSQ Industries Ltd. is a mistake of fact on your part. Further, the same were also transferred out of their account on the same day itself.

(v) They further submit that at no time that at no time did they acquire or had an intention to acquire substantial shareholding in DSQ Industries Ltd. They further submit that whatever shares were transferred in their demat account were transferred as loan without transferring the beneficial interest therein. Also the shares thus transferred to their account did not remain in their account for more than a day. Therefore, the public announcement for a major acquisition in accordance with SEBI (Regulation) 14(1) and 14(3) was not required to be made.

(vi) Further, they submit that on 01.03.01 they had received only 25,00,000 shares of DSQ Industries as a loan from Greenfield Investment Ltd. as against 50,00,000 shares mentioned. They reassert that Classic Credit ltd. is a legal entity incorporated under the Companies Act,1956 and have not acted in concert with any other entity as alleged for the purpose of acquisition or otherwise.

(vii) The said shares were taken as a loan and not with the intention of acquiring or controlling or voting rights in DSQ Industries as alleged. They submitted that they have not committed violation of Regulation 2(1)(c)as they have not done any of the acts mentioned therein.

(viii) Regulation 10 states that persons acting in concert should not exceed their shareholding in particular scrip by more than 15% , they further submit that they are a separate legal entity doing business on their own behalf and not in concert with any other entity. At no instance have they exceeded the stipulated threshold of 15% in the scrip of DSQ Industries. Thus the necessity of public announcement in this particular scrip does not arise.

(ix) They have not exceeded the limit of 15% in the scrip of DSQ thus the need for public announcement under Regulation 11(1) does not arise. Further it is stated that Regulation cited in the show cause notice necessitate public announcement was not applicable to them as they were within the regulatory limit as prescribed by SEBI.

M/s Panther Fincap & Management Services Ltd. submitted its reply vide letter dated 09.03.2004 to the said show cause notice as below:

(i) Panther Fincap submitted that it is a separate legal entity having its own identity.

(ii) They further submitted that "The acquirers are Ketan Parekh entities" is erroneous, contrary to law and has been made without application of mind. They pointed out that they are separate legal entity and that they have in no manner acted I concert with the other party to whom the show cause notice is addressed.

(iii) They submitted that the all the statements in the said show cause notice alleging acquisition of shares / voting rights / control of DSQ Industries Ltd. are denied and refuted by them as being incorrect and unsubstantiated.

(iv) As regards the transaction details of DSQ Industries Ltd., they submit as under:

a) On 15.02.02, 9,00,000 shares received from Cooltex Commodities were not purchased by them but were in fact loaned to them. The substantial quantity of the shares were immediately transferred to Madhavpura Bank i.e. 6,00,000

shares. 3,00,000 shares were transferred to Saimangal Investrade to enable them to meet their financial commitments to Global Trust Bank. Further, it is to be noted that there was no ownership of the shares / control / acquisition of DSQ Industries Ltd. thus these shares cannot be said to have been owned by them at any point of time.

b) Further, as regards shares received from Greenfield Investment on 01.03.01, they submitted that the same were also a loan. These shares were transferred on the same day to Triumph International Fin. , Saimangal Investrade and Panther Investrade in various quantities. As on 01.03.2001, 5,00,000 shares were pledged with Milan Mahendra. On the same day 1,10,000 shares were sold to Indsec Securities and remaining were given as a loan to them i.e. 8,90,000 shares. It is pertinent to note that an order dated 31.10.2002 of Adjudicating Officer referring to the shares received as loan from Greenfield Investment is as under Appeal with Securities Appellate Tribunal (Appeal No. 03/2003).

c) In respect of the transactions dated 16.03.2001 and 21.03.2001, the 3,00,000 shares and 5,90,000 shares received on respective dates from Indsec Securities is a reverse transaction, i.e. Indsec Securities returned 8,90,000 shares which were loan to them as on 01.03.2001. These two transactions in no way can be termed as new acquisitions of shares holding in DSQ Industries Ltd.

d) Besides, the total shares 8,90,000 returned by Indsec Securities were further transferred to Triumph Securities, Panther Investrade and Saimangal Investrade as loan. It is submitted that transaction as on 16.03.2001 of 2,00,000 shares was a pledge to Milan Mahendra.

e) Further, the transfer of shares in the depository account of Panther Fincap & Management Services Ltd. by Cooltex Commodities and Greenfield Investments Services Ltd. did not amount to a transfer of beneficial interest in the shares as they were loaned and not sold to them. It is averred strongly that the beneficial interest in the said shares continued to vest in the legal owners of the shares viz. Cooltex Commodities and Greenfield Investments. This is supported by the fact that the consideration for the shares has not been provided by Panther Fincap & Management Services to Cooltex Commodities and Greenfield Investment. Further it is stated that the shares were either pledged with Madhavpura Bank or given as a loan to other companies and detailed above.

f) In view of the above, they further submitted that at no time did they acquire or have an intention to acquire a substantial shareholding in DSQ Industries Ltd. They further submit that whatever shares were transferred in their demat account were transferred as loan without transferring the beneficial interest therein. Also the shares thus transferred in the account did not remain in their account for more than a day. Therefore a public announcement for a major acquisition in accordance with Regulation 14(1) and 14(3) under the Regulation and SEBI Act, 1992 was not required to be made.

(v) They further contended that on 01.03.01 they had received only 25,00,000 shares of DSQ Industries Ltd. as a loan from Greenfield Investments Ltd. as against 50,00,000 shares mentioned in the show cause notice. The shareholding shown is cumulative shareholding which is erroneous. They assert that Panther Fincap

& Management Services Ltd. is a separate legal entity incorporated under the Companies Act, 1956 and they have not acted in concert with any other entity as alleged for the purpose of acquisition or otherwise.

(vi) The said shares were taken as loan and not with the intention of acquiring control or voting rights in DSQ Industries Ltd. as alleged. They submit that they have not violated Regulation 2(1) (c) as they have not committed any of the acts mentioned therein.

(vii) Regulation 10 states that persons acting in concert should not exceed their shareholding in particular scrip by more than 15% , they further submit that they are a separate legal entity doing business on their own behalf and not in concert with any other entity. At no instance have they exceeded the stipulated threshold of 15% in the scrip of DSQ Industries. Thus the necessity of public announcement in this particular scrip does not arise.

(viii) They further submit that the regulations cited in the show cause notice state the necessity of public announcement was not applicable to them as they are within in the regulatory limit as prescribed by SEBI.

(ix) Regulation 12 states that no acquirer should have any control over the company, irrespective of acquisition of shares or voting rights of the company, without making a public announcement. They the submit that the said shares were taken as a loan and not with the intention of acquiring control or voting rights in DSQ Industries Ltd. Thus the necessity of public announcement does not arise.

(x) Thus it is clear that voting rights is vested in members and a person or a company can be considered as a member only if he falls in one of the categories referred to in Section 41 of the Companies Act, 1956. Since the beneficial ownership of shares were not transferred in any transactions mentioned in the show cause notice, Panther Fincap & Management Services Ltd. did not become a member in the register of members of DSQ Industries Ltd. and therefore had not voting rights vested in them. It is further stated that there is no contravention of SEBI (Substantial Acquisition of shares and Takeovers) Regulation 1977.

3.0 Consideration of issues

3.1 I have considered the findings of investigation, the reply and submissions of Classic Credit and Panther Fincap and other material on record and find that the following issues arise for consideration:

(a) Whether Classic Credit and Panther Fincap have acted in concert and have acquired shares of DSQ Industries in contravention of the Takeover Regulations

(b) Whether the said acquisition was in violation of the takeover regulations

(c) Whether, in view of the findings above, any direction needs to be passed against Classic Credit and Panther Fincap

3.2 The said issues are dealt with as under:

(a) Whether Classic Credit and Panther Fincap have acted in concert and have acquired shares of DSQ Industries.

I note that the term "Persons Acting in Concert" has been defined in Regulation 2 (1) (e) of the Takeover Regulations. Sub-clause (2) of clause (e) also provides that a company, its holding company or subsidiary company or such company or company under the same management either individually or together with each other shall be deemed to be persons acting in concert.

I find that both Classic Credit and Panther Fincap have Shri Ketan Parekh as its promoter – director and controlling mind. The said two companies are part of the same group and essentially under the same management. The said companies in their replies have merely stated that they are separate legal entities and have not acted in concert with each other. However, by virtue of the above provision, I find their reply to be unsatisfactory and I have no hesitation in holding that both the companies are persons acting in concert.

I note that the shares of DSQ Industries have been credited in the demat accounts of Classic Credit and Panther Fincap as under:

Date	**Name of entity**	**No of shares credited**	**% of shareholding acquired**	**Cumulative shareholding as %**
15.2.2001	Classic Credit	18,00,000		
	Panther Fincap	9,00,000		
	Total	***27,00,000***	***13.47***	***13.47***
1.3.2001	Classic Credit	25,00,000		
	Panther Fincap	25,00,000		
	Total	***50,00,000***	***24.95***	***38.42***
7.3.2001	Classic	20,00,000	***9.98***	***48.40***

	Credit			
8.3.2001	Classic Credit	8,50,000 (pledge closure)	***4.24***	***52.64***
16.3.2001	Panther Fincap	3,00,000	***1.50***	***54.13***
21.3.2001	Classic Credit	5,00,000		
	Panther Fincap	5,90,000		
	Total	***10,90,000***	***5.44***	***59.57***
31.3.2001	Classic Credit	2,50,000	***1.25***	***60.82***

I find nothing available in the demat statements obtained from the depository participants to show that any form of pledge or hypothecation was created over the shares transferred to the accounts of both Classic credit and Panther Fincap. The said entities have stated in their replies that the shares were in fact "loaned" to them. If it were so and they had borrowed the shares, a sure proof of such borrowing would have been the creation of a pledge or hypothecation since it is not a practice in commercial transactions to lend shares without any form of security.

I note that in the course of personal hearing, the said entities have submitted copies of letters addressed to them by the entities which transferred the shares into their demat accounts, stating inter alia that the shares had been provided as a short term loan. They have also submitted copies of letters from Classic Credit and Panther Fincap acknowledging receipt of the shares.

In this regard, I note that Regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as "Depositories Regulations") provides for the manner in which a pledge or hypothecation is to be created on a security. As per the said Regulation, the beneficial owner is to make an application through the participant who has the account of the beneficial owner.

The participant upon being duly satisfied has to then make a note in its records of the notice of pledge and forward the application to the depository. The depository thereafter after confirmation from the pledgee shall create and record the pledge within 15 days of the receipt of the application and also send intimation to both the pledger and the pledgee.

In the absence of a pledge or hypothecation created on the shares in the manner prescribed in the depositories regulations, I am unable to accept the submission of the said entities that the transfer of shares into their demat account was only as a loan. I find that there was an acquisition of shares of DSQ Industries by Classic Credit and Panther Fincap in the manner mentioned hereinbefore.

(b) Whether the said acquisition was in violation of the takeover regulations

I note that Regulation 10 of the Takeover Regulations provides as under:

Regulation 10 - No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise (fifteen) percent or more of the voting rights in a company, unless such acquirer make a public announcement to acquire shares of such company in accordance with the Regulations.

I also note that Regulation 11 (1) of the Takeover Regulations provides as under:

Regulation 11(1) - No acquirer who together with persons acting in concert with him has acquired, in accordance with the provisions of law, (15% or more but less than 75%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him additional shares or voting rights entitling him to exercise more than (5%) of the voting rights (in any financial year ending on 31st March) unless such acquirer make public announcement to acquire shares in accordance with the Regulations.

From the details of acquisition, I note that on 1.3.2001, Classic Credit and Panther Fincap had together acquired 50,00,000 shares or 24.95% shareholding in DSQ Industries. However they did not make any Public announcement regarding the said acquisition as required under Regulation 10.

Further, having made such acquisition thereby giving them more than 15% shareholding, Classic Credit acquired 9.98% share holding on 7.3.2001 thus entitling the said entities to voting rights of more than 5%. However, they have failed to make a public announcement as required under Regulation 11(1) of the Takeover Regulations.

I further note that on 21.03.2001, Classic Credit and Panther Fincap have together acquired 10,90,000 shares constituting 5.44% of the shareholding, while they held 54.13% shareholding in DSQ Industries. The said shareholding entitled them to voting rights in excess of 5% but they failed to make the public announcement regarding their acquisition as required under Regulation 11(1).

In their replies the said entities have stated that they did not have any voting rights since they did not come within the definition of member as laid down in Section 41 of the Companies Act, 1956. They have also stated that the beneficial ownership in respect of the shares was not transferred in their favour. I find the said submission to be false. I have already found that there is no credible evidence or material produced by the said entities to show conclusively that the shares credited into their account was by way of loan extended to them by the entities that credited the shares.

In view of the above, I find that the Classic Credit and Panther Fincap had acquired shares and voting rights in DSQ Industries but had failed to make public announcement as required by them under Regulation 10 and 11(1) of the Takeover Regulations.

(c) Whether any direction needs to be passed against Classic Credit and Panther Fincap

I note that Regulation 44 of the Takeover Regulations provides that SEBI may issue directions in the interest of the Securities market and for the protection of the investors. These directions may include directing appointment of merchant banker for causing disinvestment of shares acquired in breach of Regulation 10, 11 or 12, directing their target company or depository to cancel the shares acquired in breach of Regulation 10, 11 or 12 or debar the person concerned (acquirer) from accessing the capital market for dealing in securities for such period as may be determined by SEBI.

Classic Credit and Panther Fincap had acquired shares in violation of the Takeover Regulations and have pledged the shares so

acquired with banks and Financial institutions to avail of credit which they utilised for further transactions in the capital market. They have also mis-represented to SEBI that these shares were in the nature of loan and that no beneficial ownership has been transferred. In view of the above, I find that it is necessary in the interest of investors and the securities market to issue directions to Classic Credit and Panther Fincap prohibiting them from accessing the capital market and dealing in securities.

4.0 Order

In view of the above findings I, in exercise of powers conferred upon me under Section 4(3) of the SEBI Act, read with Section 11 and 11B of the said Act and Regulation 44 of the Takeover Regulations, 2003 do hereby direct M/s Classic Credit Ltd. and M/s Panther Fincap & Management Services Ltd. to make public announcement as required under Chapter III of the said Regulations in terms of regulations 10 & 11 to acquire 20% of the capital of DSQ Industries (now known as "Jardine Overseas Ltd.) taking 01.03.2001 as the reference date for calculation of offer price. The public announcement shall be made within 45 days of passing of this order.

Further, in terms of sub regulation (12) of regulation 22, the payment of consideration to the shareholders of the Company has to be paid within 30 days of the closure of the offer. The maximum time period provided in the said Regulations for completing the offer formalities in respect of an open offer, is 120 days from the date of public announcement. The public announcement in the instant case ought to have been made taking 01.03.2001 as a reference date and thus the entire offer process would have been completed latest by 28.06.2001. Since no public announcement for acquisition of shares of the Company has been made by M/s Classic Credit Ltd. and M/s Panther Fincap & Management Services Ltd. when the Regulations were triggered i.e. on 01.03.2001, it would be just and equitable to direct them to pay interest @ 15% per annum on the offer price, from 28.06.2001 till the actual date of payment of consideration by them, to

all the shareholders who tender the shares in the open offer to be made by them in terms of this Order and whose shares are accepted as per the offer.

This order shall come into effect immediately.

Place: Mumbai
Date: January 03, 2005

G N BAJPAI
Chairman
Securities and Exchange Board of India