# BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

**Appeal No. 5 of 2012**

**Date of decision: 19.06.2012**

Networth Stock Broking Ltd.
Office No. 1001/1002, 10th Floor,
Atlanta Centre, Opp. Udyog
Bhawan, Sonawala Road,
Goregaon East, Mumbai – 400 063. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. P. N. Modi, Advocate with Mr. Neville Lashkari, Mr. Joby Mathew, Mr. Deepak Dhane, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mobin Shaikh, Advocate for the Respondent

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)
S. S. N. Moorthy, Member

Per : P. K. Malhotra

This appeal has been filed against the order dated December 27, 2011 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) under regulation 28(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 holding the appellant guilty of violating regulation 4 (a), (b), (c) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (for short FUTP regulations) and clause A (2), (3), (4) and (5) of the Code of Conduct prescribed for the stockbrokers in Schedule II under regulation 7 of the Securities and Exchange Board of India (Stock broker and Sub-broker) Regulations, 1992 (for short Stockbrokers

Regulations) and suspending the certificate of registration of the appellant for a period of one month.

2. The appellant is a public limited company which is registered as a stockbroker with the Board. It had executed trades on behalf of its clients, among others, in the scrip of G. G. Automotive Gears Ltd. (for short the company). The Board carried out investigations in the dealings of the scrip of the company for the period from August 1, 2002 to October 16, 2002 and it found that a group of four member brokers, including the appellant, and their clients traded in the scrip of the company in a circular manner intra day for forty days during the investigation period. The appellant had executed trades on behalf of its client Ms. Indumati Goda. Proceedings were intitiated against the brokers and their clients separately around the same time. Show cause notice dated June 5, 2006 was issued to the four brokers including the appellant alleging that the four member brokers and their clients had traded in a circular pattern intra day for forty days during the period of investigation. The brokers and their clients involved in the circular trading alongwith the contribution of each was referred to in the show cause notice in the form of a table which is reproduced hereunder for facility of reference:-

| **S. No.** | **Broker Name and Code** | **Client Name** | **No. of Shares Bought** | **No. of Shares sold** |
|---|---|---|---|---|
| 1 | DPS Shares and Securities Pvt. Ltd. (Clg. No. 151) | 1. Anju Gandhi (A017)<br>2. Atul Gandhi (A018)<br>3. Harshad (H012)<br>4. Soham Securities (S251)<br>5. S<br>6. S012 | 3500<br>28000<br>8125<br>40000<br>2500<br>18230 | 5000<br>30850<br>8125<br>48999<br>2500<br>18250 |
| 2 | Unique Stockbro Pvt. Ltd. (Clg. No. 170) | 1. Hitesh Shah (8654)<br>2. Trusha Goda (9393) | 66775<br>29890 | 67825<br>37750 |
| 3 | Networth Broking Limited (Clg. No. 197) | I U Goda (3217) | 111250 | 98420 |
| 4 | Action Financial Services (India) Limited (Clg. No. 444) | P B Chandrashekhar (406748) | 120479 | 111030 |

The show cause notice further mentioned that investigations had revealed that one Shri Shirish C. Shah had fruadulently traded on behalf of Ms. Indumati Goda and her daughter in law Ms. Trusha Goda. On the basis of these allegations in the show cause notice, the appellant was alleged to have violated provisions of regulation 4 of the FUTP regulations and also the Code of Conduct prescribed for the stockbrokers under the stockbroker's regulations.

3. The appellant filed its reply denying the allegation that it was involved in any way in the circular trades in the scrip of the company. However, the appellant admitted that it had executed trades on behalf of Ms. Indumati Goda. On consideration of the material collected during the investigations and the enquiry, the enquiry officer submitted his report dated January 22, 2009 holding the appellant guilty of charges levelled against it. A copy of the enquiry report was then furnished to the appellant alongwith a notice dated March 16, 2009 calling upon it to show cause as to why the same should not be accepted. The appellant again filed its reply on April 22, 2009 denying the allegation that it was a party to the circular trading. However, the whole time member, after considering the material on record, noted that the appellant had traded in the scrip of the company for its client Ms. Indumati Goda and it aided and abetted the creation of misleading appearance of trading by its clients in the securities market. By his order dated April 19, 2011, the whole time member of the Board held the appellant guilty of violating the provisions of regulation 4 (a), (b), (c) and (d) of the FUTP regulations and also Clause A (1) to (5) of the code of conduct prescribed for the stockbrokers under the stockbrokers regulations and suspended the certificate of registration of the appellant for a period of one month. The appellant challenged the said order before this Tribunal. After hearing learned counsel for the parties at length, the Tribunal, by its order dated June 21, 2011, remanded the matter to the Board for proceeding afresh in the matter. While remanding the matter to the Board, the Tribunal observed as under:-

> "We have heard ……..... the appellant has been found guilty of aiding and abetting its client, namely Ms. I. U. Goda for the creation of misleading appearance of trading in the securities market by executing circular trades. Separate proceedings had been initiated against the clients as well including Ms. I. U. Goda and it is common ground between the parties that she has been let off the charge of executing circular trades. It must be remembered that every broker executes either a self trade or a trade on behalf of his client(s). Admittedly, in the case before us the appellant is said to have executed trades on behalf of Ms. I. U. Goda and the finding recorded by the whole time member is that while executing trades on her behalf, the appellant had aided and abetted her in creating misleading appearance of trading in the scrip of the company. When Ms. Goda has been exonerated, we wonder how the finding against the appellant that it aided and abetted her in executing false/circular trades can be upheld. It is clear from the record that Ms. I. U. Goda has been exonerated of the charges on the ground that the aforesaid Shirish Shah had fraudulently executed trades on her behalf by opening bank accounts in her name. In this view of the matter, we cannot uphold the finding recorded by the whole time member.
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> In the result, the appeal is allowed and the impugned order set aside. The case is remanded to the respondent Board for taking fresh proceedings in accordance with law. Since the transactions that have been called in question were executed way back in 2002 and the matter is quite old, we direct that the proceedings be concluded expeditiously but not later than six months from the date of receipt of this order. We make it clear that all contentions raised on both sides are kept open and the Board shall decide the issues afresh without being influenced by any observation made by us in this order. No costs."

4. In compliance with the order passed by this Tribunal, the Board issued a fresh show cause notice dated September 27, 2011 on the basis of the enquiry report dated January 22, 2009 modifying the charge to some extent. The relevant part of the notice which enumerates the charge is reproduced hereunder for ease of reference:-

> "a. There was an unusual spurt in the prices and volumes in the scrip of GGAGL on Bombay Stock Exchange (BSE). During the period of August 01, 2002 to October 16, 2002, the price of the scrip increased from Rs. 23 as on August 01, 2002 to Rs. 115.30 as on October 16, 2002 coupled with steep variation in volumes i.e. from 16,847 shares as on August 01, 2002 to 1,05,776 shares as on September 17, 2002 and from

77,041 shares as on September 18, 2002 to 19,962 shares as on October 16, 2002.

b. A group consisting of four brokers including you, Unique Stockbro Pvt. Limited (Unique), DPS Shares and Securities Pvt. Limited (DPS) and Action Financial Services (I) Limited (Action) were found trading intra-day for 40 days in circular manner which contributed to an unusual spurt in the traded volumes of the scrip of GGAGL during the relevant period. The shares were being rotated in a circular manner among the group of said brokers.

c. The total volume generated by way of such circular trades by the said group of four brokers, was 4,28,749 shares i.e., about 19% of the total quantity of the shares traded during the period of investigation. The total number of shares bought and sold among the said four brokers is same i.e. 4,28,749 shares. Out of this you had purchased 1,11,250 shares and sold 98,420 shares in the scrip of GGAGL while trading on behalf of your registered client Ms. I. U. Goda on whose behalf Shirish C. Shah had placed orders/ fruadulently traded. The orders in respect of most of the trades entered by you were entered with a startling proximity in the timing, price and quantity with that of said brokers, thus resulting into matching of the orders.

d. The Enquiry Officer has found that the trades were synchronized and circular in nature and executed in such a manner that led to creation of artificial volumes in the scrip and was designed to create a false market leading to significant price movement in the scrip.

e. The Enquiry Officer after considering the facts of the case including your submissions has recommended a penalty of suspension of certificate of registration for a period of one month.

3. It was found by the Enquiry Officer that one Mr. Shirish Shah had fraudulently traded on behalf of your client Ms. Indumati Goda. It was submitted by you that Mr. Shirish C. Shah was neither your client nor your remisier. It was observed from you letter dated December 22, 2004 wherein you had admitted that your client Ms. Indumati Goda had never come to your office and her registration form for opening the account and required documents were submitted by Shirish C. Shah. It was also submitted by you that Shirish Shah only used to place the orders. A copy of said letter is enclosed as Annexure ‘A’. You as a stock broker is expected to have taken necessary steps to prevent the commission of irregularities/violations by Shirish Shah who had fraudulently dealt on behalf of Ms. I. U. Goda in the scrip of GGAGL in the manner stated above. Shirish Shah could not have traded

> in the name of Ms. I. U. Goda without taking you in confidence and without your knowledge and co-operation."

On the basis of the above, it was alleged that the appellant had violated provisions of regulation 4 (a), (b), (c) and (d) of the FUTP regulations and Clause A (1) to (5) of the code of conduct prescribed under the stockbrokers regulations.

5. The appellant submitted its reply dated November 21, 2011 again denying the charges. It also took preliminary objection stating that the direction of the Tribunal is to initiate fresh proceedings in accordance with law. However, instead of proceeding afresh, the Board has relied on the same enquiry report and issued a fresh show cause notice. It was also stated by the appellant that in the enquiry report there is only one reference to Shirish Shah which states that Shirish Shah, remisier of Unique (another broker) had fradulently traded on behalf of Ms. Indumati Goda and her daughter in law Ms. Trusha Goda. In paragraph 3 of the fresh show cause notice, reproduced above, the allegation of fraud has been pleaded but no material/particulars or details of the fraud have been provided as to how and in what manner Shirish Shah had committed fraud on Indumati Goda and on her daughter in law and how the appellant is connected to the fraud committed by Shirish Shah. The appellant again reiterated its request for furnishing copies of the order / trade logs and also sought permission to cross-examine Indumati Goda. The whole time member of the Board, after considering the material on record, rejected the preliminary objection and request of the appellant for cross-examining Indumati Goda and held him guilty of violating the provisions of 4 (a), (b), (c) and (d) of the FUTP regulations and also Clause A (2) to (5) of the code of conduct under the stockbrokers regulations and, by the order dated December 27, 2011, suspended certificate of registration of the appellant for a period of one month. Hence the present appeal.

6. We have heard the learned counsel for the parties at length. They have taken us through the records of the case, placed before us certain judgments/orders stated to be relevant to the points on issue and taken us through the relevant provisions of the Act and the regulations. The appellant has been found to be guilty of violating the provisions of regulation 4 of the FUTP regulations on the ground that all the four brokers including the appellant had followed the common pattern of circular trading which also indicates synchronization in placing of orders thereby creating artificial volume in the scrip of the company which resulted in increasing the price of the scrip. It is nobody's case that the trades executed were not circular in nature. Since the trades executed were circular in nature and were executed on 38 consecutive trading days among the four brokers, the whole time member has jumped to the conclusion that there was connivance of the noticee with its counter party brokers and hence the trades are manipulated. No doubt, circular/synchronized trades were executed and the Board initiated action against the brokers and the clients including the appellant. What we have to see is when the appellant is being charged with fraud what is the evidence direct or circumstantial, against him on record to show that either he was party to the fraud or he knew that other brokers/clients are playing fraud or some mischief leading to commission of fraud thereby violating the provisions of the FUTP regulations. The only finding recorded by the whole time member is that in view of the repeated trades day after day one might conclude that the appellant had knowledge of the fraud. This Tribunal has been consistently holding that violation of FUTP regulations involves commission of fraud which is indeed a serious market offence and a high degree of probablity is required to establish such a charge. There has to be enough material on record to show that the broker had knowledge of the game plan at the time of executing the trade or the trading pattern of the client gives rise to some suspicion about the mischief. Merely because the appellant acted as a broker of one of the parties, it does not follow that he was a party to the game plan of the client in executing matching trades. The foundation of enquiry under

enquiry regulations is a valid notice and also that the charge levelled therein has to be clear, precise and unambiguious so that the dilinquent knows what exactly he is charged with. The whole time member appears to have jumped to the conclusion that merely because circular trades were executed on 38 days by the appellant, his intention was manipulative. This finding is based on no material on record and it appears that the whole time member has not appreciated the concept of circular/synchronised trades. Admittedly, the trades in question were executed by the clients and the appellant was acting only as a broker. It has not entered into any proprietory trades. If there is some evidence or material available on record that the appellant knew that the trades were fictitious then there would be no hesitation in upholding the finding of the Board. However, there is no such link available either on the record or any finding to this effect has been recorded by the whole time member. There is no material on record to show that the appellant, as a broker knew, that the trades were circular/synchronised. There are no findings that either the broker and their clients were connected persons or they were acting in concert. Trading was through the exchange mechanism and was online where the code number of the broker alone is known and it is not possible for anyone to know from the screen as to who the clients are. Merely because the appellant acted as a broker it cannot be concluded that he must have known about the transactions. There has to be more material on record to prove that fact. While drawing the inference that the appellant must have known about the nature of the transaction, the Board could have made enquiries from the clients which it has failed to do. Mr. Shiraz Rustomjee, learned senior counsel for the respondent Board, very streneously urged before us that a trade cannot match on the screen of the exchange without active connivance of the broker. The trades matched on 38 trading days and such matching cannot be a matter of coincidence. In support of his argument learned senior counsel for the Board relied on the order of this Tribunal in the case of Ajmera Associate Pvt. Ltd. vs. SEBI (Appeal no. 13 of 2007 decided on 5.2.2008) which has also been relied upon by the whole time member in the impugned order. Counsel has also placed reliance on the order of

this Tribunal in the case of Triumph International Finance Ltd. vs. SEBI (Appeal no. 35 of 2002 decided on 4.5.2007). He particularly emphasised the following observations of the Tribunal:-

> "Out of the four parties to the transactions the three have already been penalized. The appellant as a broker is the one against whom action has now been taken by the impugned order. The question that arises for consideration is – could it be said that the appellant was innocent and whether such large number of trades could have matched on the screen without the knowledge and active involvement of the appellant as a broker. The answer has to be in the negative. It is the broker who plays a pivotal role in synchronizing the trades with the counter broker and match the same through the exchange mechanism by punching the buy and sell orders simultaneously. It is true that the brokers act on the advice of their clients but it is they who actually implement the game plan. In the trades now in question the buyer, the seller and CSFB as the seller's broker have already been found guilty. It is inconceivable that such large number of trades could have matched on the screen without the appellant as the buyer's broker being a party to the game plan. Since the buy and sell orders were punched into the system simultaneouly in such large numbers and they all matched, we cannot believe that it was a coincidence and the only inference that can be drawn is that there was a prior meeting of the minds before the trades were executed and this disturbs the true price discovery mechanism of the exchange."

7. The submission made by learned senior counsel for the Board may not be wholly correct. There can be a variety of reasons for the trades matching on the screen of the exchange. Merely because a trade has matched both in regard to price and quantity and that the buy and sell orders were placed at the same time it cannot lead to the conclusion that the broker had knowledge of fictitious trades being executed between the buyer and the seller. It has been observed by this Tribunal in a number of cases that on a screen based trading system, it is not possible for a broker to know who the counter party is at the time when the trades are executed. The case of Triumph International Finance Ltd., relied upon by the Board, is distinguishable as it was categorically admitted in that case that in all the trades the buyers and the sellers were Ketan Parekh entities who were found guilty of executing manipulative trades and had been proceeded against by the Board. The appellant was also found to be a close associate of Ketan Parekh and

his investment/broking companies. The Board has not brought any material on record in the case in hand proving any nexus between the appellant and the other broker entities or the clients. Even in the case of Ajmera (supra) this Tribunal has observed that merely because the two clients have executed matched trades, it does not follow that their brokers were necessarily a party to the game plan. Following the decision in the case of Kasat Securities Pvt. Ltd. vs. SEBI (Appeal no. 27 of 2006 decided on 20.6.2006), this Tribunal has held in a number of cases including in the case of Bipin R. Vora vs. SEBI (Appeal no. 62 of 2006 decided on 13.9.2007), M. J. Patel Shares and Stockbrokers Ltd. vs. SEBI (Appeal no. 157 of 2004 decided on 17.7.2006) that merely because the appellant acted as a broker of one of the parties, it does not follow that he was a party to the game plan of the client in executing the matched trades. In the case of Ramaben Samani Finance Pvt. Ltd. vs. SEBI (Appeal no. 91 of 2006 decided on 22.10.2007), the Tribunal has specifically observed that there has to be enough material on record to show that the broker knew about the game plan at the time of executing the trade. Therefore, if a broker has to be attributed knowledge of circular/synchronized trades, the Board must have with it some material on record from which such knowledge can be inferred. Merely because the appellant has acted as a broker it cannot lead us to the conclusion that he had knowledge of the wrong doing. It is true that the trades have been found to be circular/synchronized, but there is nothing on record to show that the appellant had knowledge of the manipulative intent or mischief of the client. While dealing with an idential situation, this Tribunal has made following observations in the case of Kasat Securities Pvt. Ltd. vs. SEBI (Appeal no. 27 of 2006 decided on 29.6.2006):-

> "Trading was through the exchange mechanism and was online where the code number of the broker alone is known and the learned counsel for the parties are agreed that it is not possible for anyone to ascertain from the screen as to who the clients were. This is really a unique feature of the stock exchange where, unlike other moveable properties, securities are bought and sold between the unknowns through the exchange mechanism without the buyer or the sellet even getting to meet. Therefore it is not possible for the broker to know who the parties were. Merely because the appellant acted as a broker cannot lead us to the conclusion that it

> must have been about the nature of the transaction. There has to be some other material on the record to prove this fact. The Board could have examined someone from KIL to find out whether the appellant knew about the nature of the transactions but it did not do so. As a broker, the appellant would welcome any person who comes to buy or sell shares. The Board in the impugned order while drawing an inference that the appellant must have known about the nature of the transactions has observed that the appellant failed to eqnuire from its clents as to why they were wanting to sell the securities. We do not think that any broker would ask such a question from its clients when he is getting business nor is such a question relevant unless of course, he suspects some wrong doing for which there has to be some material on the record."

8. It has been specifically pleaded by the appellant that during the investigation period, i.e. in the year 2002, there was no software available for carrying out long or real time surveillance and it was not possible to carry out surveillance of thousands of transactions of all clients on a daily basis. It has also been pleaded by the appellant that the impugned trades in the scrip of the company were done on behalf of its clients and the intra day trading was the normal/usual pattern of the trading adopted by the said client. The appellant had not entered into any proprietory trades in the scrip. It is a matter of record that there were positive media reports regarding the said company and the financial performance of the company had shown good results. Therefore, the appellant had no reason to suspect any irregularity in the increase in the price of the scrip. The client had been regularly trading in the same fashion in as many as 26 different scrips and, since inception, the client's trading pattern was primarily by way of day trading whereby she bought and sold equal quantities in respective scrips in the course of the day. All payments were made from her bank account and even for her delivery based trades, deliveries were made from her demat account. These are all relevant submissions made by the appellant which have been totally ignored by the whole time member while passing the impugned order. Under the circumstances, we are of the considered view that the Board has failed to establish the charge of fraud as alleged.

9. There is another reason as to why the charge cannot sustain. In the first round of litigation, while passing the order of June 21, 2011, this Tribunal had specifically observed that the charge of aiding and abetting the client cannot be upheld against the appellatn because the client has been exonerated of the charge on the ground that one Shirish Shah had frudulently executed the trades on behalf of Indumati Goda. We find almost identical finding has been given by the whole time member in the impugned order also when he observed that Shirish Shah has executed the manipulative trades with the active connivance of the appellant or "if one generously thinks aided by the negligence of the noticee". Shri P. N. Modi, learned counsel for the appellant has placed on record a copy of the order passed by the whole time member of the Board against Shirish Shah in which, Shirish Shah has been found guilty of executing circular trades. But no evidence has been brought on record to show that the appellant knew the manipulative intent of Shirish Shah or both were acting in concert. The fact that the appellant was never in contact with Ms. Indumati Goda makes no difference for the reasons that at the relevant time there was no law, rules, regulations or orders that required that a broker must collect the registration form only by requiring client to personally come to the broker's office and submit the same. It is the appellant's case that the client's registration form alongwith prescribed KYC documents including proof of identity and number of particulars were collected. It is no case of the Board that KYC norms were not followed by the appellant at the relevant time. In this view of the matter, we are unable to agree with the findings of the whole time member that the appellant had connived with Shirish Shah or was negligent in executing the trades. These findings of the whole time member are not supported by any material on record.

10. Learned counsel for the appellant had also challenged the order on the ground of violation of principles of natural justice as copies of the order/trade logs were not provided to it and, inspite of request made, the appellant was not

afforded an opportunity to cross-examine Ms. Indumati Goda. In its reply dated November 21, 2011 to the show cause notice the appellant had specifically stated that it has not been "furnished with the documents or material which would show or imply that Ms. Indumati Goda or her daughter in law, Ms. Trusha Goda have disputed or denied the said trades." It was further stated that the charges are fundamentally based on allegation that Mr. Shirish Shah had fraudulently traded on behalf of Ms. Indumati Goda. The appellant contended that no particulars or details of the alleged fraud have been disclosed and the appellant had not been given an opportunity to cross-examine Ms. Indumati Goda. The whole time member of the Board, while passing the impugned order, has rejected these contentions of the appellant observing that trade logs have been supplied to the appellant and that no document which has not been provided to the noticee is being relied upon in the proceeding. However, we notice that what has been provided to the appellant with the show cause notice is not copy of the trade logs. The annexure to the show cause notice provides only trading pattern of the four brokers and not the trade logs. Admittedly, the order logs were not provided although the appellant requested for the same. This, in our view, has caused prejudice to the appellant in making a proper representation. The whole time member of the Board has also observed that the request of the noticee to cross-examine Ms. Induamati Goda is not maintainable because, "SEBI has not solely relied on the submission of Ms. Indumati Goda and the facts of the case have been independently verified". On this count also, we are of the considered view that the whole time member has failed to comply with the principles of natural justice. Learned senior counsel for the Board stated before us that no prejudice is caused to the appellant by not providing order/trade logs as the details of the trading pattern were provided to the appellant alongwith the show cause notice. In support of this argument leaned senior counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Haryana Financial Corporation and Anr. Vs. Kailash Chandra Ahuja [(2008) 9 SCC 31].** We hav**e** perused the said judgemnt. This judgment basically lays down the proposition that if there

is no prejudice caused to a delinquent employee due to non-supply of inquiry report then the order of punishment cannot be set aside merely on the ground that no copy of enquiry officer's report was supplied. This case also refers to the various earlier decisions given by the Supreme Court on the same issue and the position was summarized by the Court as under:-

> "From the aforesaid decisions, it is clear that though supply of report of Inquiry Officer is part and parcel of natural justice and must be furnished to the delinquent- employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show 'prejudice'. Unless he is able to show that non-supply of report of the Inquiry Officer has resulted in prejudice or miscarriage of justice, an order of punishemnt cannot be held to be vitiated. And whether prejudice had been caused to the delinquent- employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."

In this judgment itself, the Court has restated the principles of natural justice and indicated that they are flexible and in the recent time, they had undergone a sea change. If there is no prejudice to the employee, an action cannot be set aside merely on the ground that no hearing was afforded before taking decision by the authority. The non observance of the natural justice is itself prejudice to any man and proof of prejudice independent of proof of denial of natural justice is unnecessary. While passing the impugned order the whole time member has observed that "**SEBI has not solely relied upon the submission of Ms. Indumati Goda"** (*emphasis supplied).* This observation itself indicates that there were certain submissions made by Ms. Indumati Goda which have been taken into consideration but the appellant has not been provided either with the copies of those submissions or afforded an opportunity to cross-examine Ms. Indumati Goda. This is in violation of principles of natural justice. This Tribunal has been consistently holding that the best way to prove circular/synchronised trades is to have a look at the order/trade logs. In the absence of copies of order/trade logs, the appellant has been denied a chance of proper defence. We have no hesitation in holding that the appeal must succeed even on the ground that while holding

enquiry against the appellant, the Board has not followed the principles of natural justice by not providing it with copies of the order/trade logs and denying it copy of submissions made by Ms. Indumati Goda and an opportunity to cross-examine her.

For the reasons stated above we are of the considered view that the whole time member of the Board has failed to bring home the charge against the appellant of violating regulation 4 of the FUTP regualtions and the code of conduct under the stockbrokers regulations. We, therefore, set aside the impugned order and allow the appeal with no order as to costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S. S. N. Moorthy
Member

19.06.2012
Prepared & Compared by
ptm