

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No.19 of 2012

Date of Decision: 7.9.2012

Khandwala Securities Ltd.
Vikas Building, Ground Floor,
Green Street, Fort, Mumbai – 400 023.

..... 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. Vinay Chauhan, Mr. Anant Upadhyay and Mr. Ranjit Bhonsale, 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 : S.S.N. Moorthy

The appellant is a corporate stock broker on the Bombay Stock Exchange Limited (BSE) and the National Stock Exchange of India Limited (NSE). It is registered with a certificate of registration with the Securities and Exchange Board of India (for short the Board). The present appeal arises from an order passed by the whole time member of the Board on January 13, 2012. In terms of the said order, the whole time member, acting under section 19 of Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as SEBI Act and Intermediaries Regulations respectively) suspended the certificate of registration of the appellant for a period of one month. The whole time member found the appellant guilty of violating the provisions of regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and clauses A(1), (3), (4), (5) and B(6) of the Code of Conduct prescribed as specified in

Schedule II under regulation 7 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (for short the FUTP Regulations and the Brokers Regulations respectively).

2. The brief facts leading to the impugned order are the following. The Board conducted investigation in the dealings in the shares of Kopran Limited (Kopran) for the period February 22, 2000 to February 29, 2000. During the period of investigation, the price of the scrip rose from ₹ 159 to ₹ 256.70 at NSE and from ₹ 152.50 to ₹ 260 at BSE. Investigations revealed that the Khandwala Group consisting of the appellant (KSL), Khandwala Finance Limited (KFL) and Jayantilal Khandwala & Sons Private Limited (JKS) was the major trader in the scrip of Kopran during the investigation period. The investigation further revealed that the price rise in the scrip was contributed to a large extent by cross deals executed by the above mentioned entities. The Board appointed an enquiry officer to enquire into the alleged violation of the provisions of FUTP Regulations and code of conduct prescribed for stock brokers. A show cause notice was issued to the appellant on June 16, 2006 setting out the details regarding price rise of the scrip and the role of the appellant in the said manipulation. It was alleged that the Khandwala group executed deals numbering 26 on the NSE and 19 on the BSE contributing to major volume in the markets which influenced the price rise of the scrip without any fundamental technical factors. It was also alleged that the appellant failed to inform its clients about the execution of cross deals and this resulted in personal advantage to the broker at the expense of the interest of the clients and this was against the provisions of FUTP Regulations. It was alleged that the appellant purchased shares at a lower price before giving a 'buy recommendation' to the clients and later sold the said shares to retail clients at a higher price through cross deals. On June 24, 2006, the appellant replied to the show cause notice requesting the Board to provide the appellant with certain documents on which reliance has been placed. The Board responded thereafter providing the appellant with necessary details which were relied upon in the proceedings. On November 23, 2006, the appellant submitted a detailed reply to the show cause notice denying all the allegations. On October 15, 2009, the appellant was issued a post enquiry show cause notice enclosing a copy of the enquiry report submitted by the designated officer. The appellant filed a detailed reply to the same on

December 7, 2009. The appellant denied all the allegations therein. This was followed by a personal hearing as well. Another written submission was filed by the appellant on July 29, 2010. After considering the submissions made by the appellant, the whole time member concluded that the appellant was guilty of violating the above mentioned provisions of FUTP Regulations and Brokers Regulations and passed the impugned order suspending the certificate of registration of the appellant for a period of one month. The above order of the whole time member is under challenge before us.

3. Shri P.N. Modi, learned counsel for the appellant and Shri Shiraz Rustomjee, learned senior counsel for the respondent Board took us through the records of the case.

4. The first objection raised by the appellant in this case is that the appellant is distinct from KFL which got merged with the appellant subsequent to the commission of the alleged wrong doing. It is submitted that KFL, the broker at the relevant time, was trading independently based on its commercial wisdom and the merger of the two entities in 2002 cannot be a basis for attributing the action of KSL to the appellant. The two entities got amalgamated as per a proper scheme of amalgamation approved by the Hon'ble High Court of Bombay and the terms and conditions specifically absolved the appellant of any acts or other proceedings of KFL other than those 'pending' at the time of amalgamation. It is contended that the liability arising out of the wrong doing committed prior to 2002 cannot be transferred to the successor company since the said liability is personal to the offender. The appellant's learned counsel laid emphasis on clause 14 (iii) and (iv) of the explanatory statement under section 393 of the Companies Act, 1956 and clause 5 of the scheme of amalgamation of KFL and KSL. The thrust of the argument is that only those legal proceedings which are pending at the time of amalgamation would bind the appellant and it cannot be foisted with the liability of the pre-amalgamation period. In support of his contention, the appellant's learned counsel drew our attention to the judgment of the Bombay High Court in the case of Securities and Exchange Board of India vs. S.K.D.C. Consultants Ltd. (2004) 53 SCL 407 Bombay.

5. The senior counsel appearing for the respondent Board drew our attention to the scheme of amalgamation between the two entities and submitted that the terms of amalgamation cannot erase the liability of the erstwhile entity after the violation of law has taken place. According to him, all pending dues and obligations arising out of legal

proceedings survive and the appellant cannot take shelter under the terms of the amalgamation. He also drew our attention to the undertaking given by the company during the proceedings and submitted that the appellant cannot be permitted to shift its stand as per convenience.

6. We have considered the rival contentions. The whole time member, after due consideration of the terms of amalgamation, concluded that the proceedings against KFL would continue against the appellant after merger. He has placed reliance on clauses 14(iv) and 5(i) of the explanatory statement under section 393 of the Companies Act, 1956 and scheme of amalgamation of the two entities mentioned hereinabove. Admittedly, the proceedings relate to the wrong doing of KFL during February 2000. The amalgamation of KFL with the appellant took place in 2002. The scheme of amalgamation has been duly approved by the High Court of Bombay. It is interesting to note that the above said clauses in the amalgamation documents are relied upon by both the appellant's learned counsel and the whole time member. For ease of reference, the said clauses are extracted below:-

“(4) The salient features of the Scheme are as follows:

- (i) The Appointed Date for the Scheme will be 1st April 2000 or such other date as may be fixed by the Bombay High Court.
- (ii) With effect from opening of the Business as on Appointed Date, the entire business and undertakings of KFL including all its properties and movable assets of any nature whatsoever including licenses, lease, tenancy rights, franchisee rights, membership of any Stock Exchange and all other rights, title, interest or powers of every kind, nature and descriptions whatsoever shall under the provisions of Sections 391 and 394 of the Act and pursuant to the Orders of the Bombay High Court sanctioning this Scheme and without any further act or deed, but subject to the charges affecting the same as on the Effective Date be transferred and/or deemed to be transferred to and vested in KSL so as to become the property of KSL.
- (iii) With effect from commencement of the business as on the Appointed Date, all debts, liabilities, duties and obligations of KFL shall pursuant to the Orders of the Bombay High Court under Section 391 and 394 and other applicable provisions of the Act and without any further act or deed be also transferred or be deemed to be transferred to and vest in and be assumed by KSL so as to become as from the Appointed Date the debts, liabilities, duties and obligations of KSL on the same terms and conditions as were applicable to KFL.
- (iv) If any suit, appeal or other legal proceedings of whatsoever nature by or against KFL is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the amalgamation and by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against KSL against KFL as if this Scheme had not been made.”

.....

.....

“Legal Proceedings

5.1 If any suit, appeal or other legal proceedings of whatsoever nature by or against KFL is pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the amalgamation and by anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against KSL in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against KFL as if this Scheme had not been made.

5.2 On and from the Effective Date, KSL shall and may, if required, initiate any legal proceedings in relation to the business of KFL.”

7. The appellant’s learned counsel lays special emphasis on the words “Pending” referred to in the above clauses and it is argued that only proceedings pending as on the date of amalgamation can survive to be proceeded against in respect of the amalgamated company. The whole time member would interpret it, on the other hand, to mean that any legal proceedings of whatsoever nature against KFL can be carried on and prosecuted in the case of the appellant since it is in relation to debts, liabilities, duties or obligations owed by KFL. The learned senior counsel appearing for the Board also highlighted the above clauses contained in the scheme of amalgamation. On a careful consideration of the terms of amalgamation we also find that the duties and obligations of KFL cannot be obliterated by virtue of the clauses in the amalgamation document. Apart from the above, there is another compelling factor which would render the contentions of the appellant incorrect. It is noteworthy that the appellant has submitted an undertaking to the Board on March 8, 2002 specifically on this issue. The undertaking reads as under:

“We undertake that all notices and correspondences from the Securities and Exchange Board of India on the matter of pending investigation and enquiry against Khandwala Finances Limited or any of its Directors or any other matter, shall be addressed to Khandwala Securities Limited and its Directors as the case may be and further that such correspondences and notices shall be received and acted upon by Khandwala Securities Limited and also further that all actions that may be taken against Khandwala Finances Limited shall be taken against Khandwala Securities Limited who shall not at any point of time raise any jurisdictional issue.”

8. The above undertaking is part of the enquiry report filed by the designated officer. The undertaking is not denied or disputed by the appellant. It is in the normal course of events that an undertaking of this kind has been furnished by the appellant. When confronted with the undertaking the appellant’s learned counsel attempted to interpret it

in such a way as to relate only to the matters of “pending investigations”. However, a close reading of the undertaking would reveal that it has two limbs, one relating to pending investigation and the other relating to prospective actions. The language of the undertaking is also such that both the possibilities are suitably covered. To repeat, it may be noted that the second limb runs as under:- “.....also further that all actions that may be taken against Khandwala Finance Limited shall be taken against Khandwala Securities Ltd who shall not at any point of time raise any jurisdictional issue”. The above undertaking is categorical and specific. The appellant cannot be heard to shift its stand now in the face of the clear stand taken in the aforesaid undertaking. So the conduct of the appellant establishes in clear terms that as early as 2002 the appellant had agreed to respond to all prospective action in respect of KFL without any jurisdictional dispute. The decision of the High Court of Bombay in the case of S.K.D.C. Securities Limited may not be of any assistance to the appellant in this case in the light of the undertaking referred to hereinabove. So we conclude that the first objection raised by the appellant is not tenable.

9. While considering the manipulation in the scrip it was alleged that KFL had given a “Strong Buy” recommendation to the scrip of Kopran on 23.2.2000. The report was prepared by the Equity Research Division of KFL on its behalf and on behalf of JKS and FALCON Brokerage P. Ltd. The research papers projected the price of the scrip at around ₹ 650. The appellant strongly denied the allegations that it purchased the shares of Kopran in the backdrop of the recommendations in the research papers. It is very vehemently argued that the appellant purchased the impugned shares in the ordinary course of business based on its commercial wisdom and it had no knowledge of research report published by KFL’s Equity Research Division. According to the appellant’s learned counsel the said report was for private circulation only and the appellant was not provided with any clue regarding the contents of the research papers and so there is no basis to conclude that the purchases effected by the appellant were prompted and motivated by the research report.

10. The learned senior counsel appearing for the respondent Board defended the order of the whole time member with a pointed reference to the research report under consideration. According to him, the appellant was privy to the report and the purchase

of shares by the appellant had a strong backing of the projections contained in the research report.

11. We have considered the issue. We have also gone through the above said research report, a copy of which has been provided during the hearing of the case. The research report is dated February 23, 2000. Admittedly this date is very crucial in as much as substantial purchase of shares of Kopran was effected by the appellant on February 22, 2000 and February 23, 2000. The research report is prepared by KFL research. It is captioned “for private circulation only”. This pre-supposes circulation among select target group. However, the facts of the case show that the report was made available on the web site of ‘moneycontrol.com’. This fact is not disputed by the appellant. In the first page of the report the address of a contact person is given for reference purpose. It is interesting to note that the address is that of Dr. V.V.L.N. Shastri, Vice President, Khandwala Securities Ltd. The research report has been prepared by the entire Khandwala group for taking necessary decision concerning backup services to be provided to investors. The concluding portion of the report points to active involvement of the entire group and also the decision to provide investment banking and other services to be provided by KFL and its associate companies. The appellant has strenuously argued in its reply to the show cause notice that there is nothing on record to show that the purchase of shares was prompted by the research report nor is there any evidence to show that the clients received the research report so as to enable them to make a buy option. The appellant’s main thrust is on the so called ‘private circulation’ of the research report. However, as mentioned above, the research report was available on the website and it was open to all even though it was stated to be for ‘private circulation’ only. The facts contained in the research report mentioned above also would show that the appellant had clear knowledge of the research report and the purchase of shares cannot be regarded as an innocent market operation independent of the research report.

12. With regard to the allegation of price manipulation in the scrip and obtaining undue advantage by the appellant it is contended by the appellant’s learned counsel that the allegation is totally misplaced in the facts of the case since the appellant was trading in the scrip as a broker on the trading platform of the exchange where the counter party is not known. There was no intention to purchase at a lower price and sell at a higher price

induced by the research report. It is admitted that cross deals are permitted in law and in the present case the appellant never traded in excess of the last traded price. The appellant had traded in the same scrip prior to and after the investigation period and the scrip has registered fluctuations right through. The investigation period cannot be singled out as one of abnormal features engineered by the appellant's manipulative intent. In fact, Kopran had made certain important corporate announcements on February 22, 2000 regarding issue of right shares, public issue etc which influenced the stock to a large extent. According to the appellant's learned counsel this fact has been conveniently ignored by the Board. It is also submitted that many of the clients who bought the shares were corporate/institutional investors and no evidence has been brought on record to show that they were influenced by the research report. The appellant relies heavily on the policy followed by it regarding communication with the clients in respect of the sale of shares and cross deals. According to the appellant, the policy was to inform the clients over phone in case of cross deals or other factors which require statutory communication. However, the appellant's learned counsel would admit that it could not furnish any evidence regarding the communication with the clients because of the lapse of time and that should not lead to any adverse inference. In fact, he strongly questions the conclusion drawn by the designated officer in the enquiry report that benefit of doubt cannot be provided to the appellant in the absence of relevant evidence, which, according to the appellant, could not be provided because of lapse of time. With regard to the cross deals, it is argued that the buy and sell orders in the alleged cross deals were executed through two different terminals involving two different dealers and so the counter party was never known. While admitting the purchase of shares on the crucial dates, namely February 22, 2000 and February 23, 2000, it is argued that the appellant purchased shares at around ₹ 189, beyond which it had no role or responsibility and so manipulation cannot be attributed to the appellant. The appellant's trades were delivery based and not in the nature of square off trades. There was no allegation of non delivery from any client or non transfer of beneficial ownership. With regard to the communication with the clients about the cross deals the respondent Board could produce only one confirmation from one Nidhi Kanoi though there were several clients with whom the appellant traded. Strong objection is taken against this evidence since appellant was not provided with the

letter in advance, nor was it permitted to cross examine the said Nidhi Kanoi. According to the appellant, the non communication of the cross deals with the clients of the appellant does not stand proved and so the appellant cannot be held guilty on the basis of the flimsy evidence in the case of Nidhi Kanoi. Since the transactions took place within the last traded price and there is no evidence of any damage to any client, the allegation of manipulation of price has no substance. As regards the price of the scrip, the contention of the appellant is that it is decided by the clients and the appellant was acting only as a broker at the behest of the clients. In short, it had no role in creating artificial increase in the price of the scrip. It is contended that the transactions were in the normal course of business dictated by commercial wisdom and there was no intention to influence the price or volume and derive undue advantage.

13. Learned senior counsel appearing for the respondent Board submitted that the appellant has made large purchases on February 22, 2000 and February 23, 2000 induced by the research report prepared by the group and acting alongwith other members of the group it derived undue advantage by purchasing the shares at a lower rate and selling them at a higher rate immediately afterwards. Last traded price is not a relevant issue in this case since the appellant purchased the shares at a lower rate guided by the research report and sold them high contrary to the 'buy recommendation' in the research report. In the process, the clients had no knowledge about the identity and credentials of the company and substantial transactions took place on the crucial dates. The research report has been prepared by KSL, KFL and JSL as a group and their dealings have to be regarded as that of a common entity which is evident from their conduct. So, even though there are no pro-trades in the strict sense of the term, the cross deals are of the group and there is no evidence to show that the clients were previously informed about the cross deals as laid down in the regulations. The learned senior counsel for the Board would make a pointed reference to the disciplinary action taken by NSE with regard to the alleged transactions. The reply furnished by the appellant before the disciplinary committee of NSE wherein the appellant admitted to the knowledge of the clients about the research report and the peculiar nature of transactions entered into by the appellant with its associates in the form of purchase on account for certain valued clients and subsequent sale through cross deals goes against the normal trading pattern of a broker.

He relied strongly on the conduct of the parties and the communication from Nidhi Kanoi to establish that there was no communication with the clients about the counter party in the cross deals. It is submitted that the conduct of the appellant has been contrary to the normal functions of a broker and the end result has been of undue advantage to the appellant on account of the circumstances detailed in the impugned order.

14. We have considered the rival submissions. We have already held in paragraph 11 hereinabove that the appellant had clear knowledge of the contents of the research report and so we have no hesitation to hold that the purchases on February 22, 2000 and February 23, 2000 were aided by the information available in the research report. The trades in the present case are cross deals. We agree that cross deals are legally permissible. We also agree that in the facts of the case the trades were within the last traded price and beneficial ownership was transferred. However, the fact remains that the appellant had purchased the shares knowing fully well the prospects of the price of the shares. It goes without saying that in cross deals, a broker knows both the parties involved in the trade. The shares were purchased on the eve of the circulation of the research report as mentioned above. Contrary to the “buy recommendation” given by the appellant and its group, the appellant began selling the shares from February 23, 2000 to February 29, 2000 by way of cross deals. The appellant knew the counter parties since the sales were effected through cross deals. As a broker, the appellant should have kept the interest of the client uppermost in its dealings, but in the present case the appellant acted contrary to the above ethics and derived undue profit. The appellant indulged in 45 cross deals as stated in the enquiry report. During February 22 to 24, 2000 the appellant contributed substantially to the increase in the volume of the scrip through cross deals. It is the case of the whole time member that the Khandwala group purchased 7,37,700 shares of Kopran on the crucial dates, February 22 and 23, 2000. This is not disputed. Immediately after the purchase of the shares and after the circulation of the “buy recommendations” the appellant and its group entities started selling the shares through KFL and JKS by way of cross deals. The purchases were made in the range of ₹ 152.56 to ₹ 207.76. The sales were effected in the range of ₹ 200 to ₹246.93. After February 29, 2000 the scrip registered fall in its price. By that time the appellant had off loaded a substantial quantity of shares and derived the benefit of the artificial market.

15. The contention of the appellant is that the above transactions were market determined and there is no complaint of non transfer of beneficial ownership. While appreciating the above submission we would hold that in a situation of this kind the intention of the party has to be determined from the abnormal conduct witnessed during the period under consideration. In cases of market manipulation, admittedly, no direct evidence would be available. Mostly circumstantial evidence and conduct of parties determine the intention behind trades which are suspicious and abnormal. It is the bounden duty of a broker to protect the interest of its client and abide by the procedures which are laid down in the regulations. When cross deals take place necessary communication has to be given in advance to the clients with regard to the identity of the counter parties. In the present case the argument of the appellant is that no evidence for the communication with the clients could be produced because of the lapse of time and the communication was mostly over phone. The Board issued letters to three parties namely Nidhi Jain (presently Nidhi Kanoi), Bajaj Auto Ltd. and Amit Patel on July 20, 2004 with respect to the purchase of shares of Kopran by the above parties and whether they were aware of the sale of shares of Kopran by their associate companies and whether the appellant had taken permission from them or disclosed to them that they were selling the shares in their capacity as principal. As per records no reply was received from Amit Patel. Replies were received from Bajaj Auto Ltd and Nidhi Kanoi. Bajaj Auto Ltd. stated that the investment was made as a part of its regular investment activity as decided by the authorized officers of the company. There was no specific answer to the queries raised by the Board with regard to knowledge of counter parties etc. Nidhi Kanoi in her reply dated August 4, 2002 stated that she was not aware whether any associate companies of Kopran sold shares to the appellant. It was also stated that the appellant did not seek her permission nor did it disclose that the shares were sold to her in their capacity as a principal. Even though the appellant traded with several clients the Board decided to have sample verification from three parties. As observed above, one of the parties did not reply and the reply received from another does not answer the specific queries. The Board relied on the reply of only one of the clients, namely, Nidhi Kanoi but it is interesting to note that the statement of Nidhi Kanoi was not communicated to the appellant even though her statement was received by the Board as early as August

2004. So, in the facts of the case no clinching evidence has been brought on record to establish that the version of the appellant regarding communication with the clients is false or untrue. The whole issue clinches on lapse of time in as much as verification was being done in 2004 with respect to transactions of 2000 and processing of the same was conducted after further length of time and it is quite possible that solid and reliable evidence is not available after a long passage of time. Even though the conduct of the appellant in the circumstances mentioned above cannot be accepted as normal and as per laid down procedures the Board also has failed to bring on record sufficient evidence to rebut the submissions of the appellant with regard to communication of cross deals with client and the abnormal trade practices.

16. The observations of the disciplinary committee of NSE have also got a persuasive effect in the facts of the case. We are aware of the fact that the proceedings of the disciplinary committee of NSE stand on a different footing. However, the appellant has furnished details regarding the transactions under consideration in this appeal and the order of the disciplinary committee has been accepted. The submission of the appellant that the said order of NSE was accepted for commercial reasons and the enquiry proceedings were initiated subsequent to the order of NSE may not be very relevant since the subject matter is the same wrong doing. The following observations of the committee throw sufficient light on the conduct of the appellant which reinforce the stand of the whole time member in the impugned order.

“The trading member further submitted that for some valued clients, it has to buy shares on own account from the market, accumulate a particular quantity and then sell to the client at an average buy price; that it had used the same feature while dealing in the possible cross deals as pointed out in the show cause and that it not only executes transactions in the capacity of a dealer where it buys on own behalf from clients and then sells on own behalf to clients, but also executes transactions in the capacity of a broker wherein it only acts as an intermediary for the buying and the selling client.

In its meeting dated December 10, 2004, the Bench then asked the trading member to submit a summary of trades in all securities during the period under scrutiny, showing separately, the day-wise trades executed on own account and on behalf of clients.

The Bench after perusing the details submitted by the trading member, noted that the trading member could not give satisfactory reasoning for executing apparent cross deals where it first bought on proprietary account from persons apparently associated with the company in an illiquid segment at prices lower than the prices prevailing at the liquid segment, then releasing a research report recommending a buy of the scrip, then selling on proprietary account to retail clients at prices higher than the prices at which the scrips were bought.”

17. The circumstances of the case and the conduct of the appellant as discussed above show that it traded in the scrip of Kopran aided by the findings in the research report prepared by the group, induced the clients with a buy recommendation, purchased the shares with full knowledge of the contents of the research report, manipulated the price and sold the shares immediately thereafter reaping substantial advantage for itself. The whole time member has come to the above conclusion after a proper appreciation of the circumstances of the case and conduct of the parties. As observed above, such manipulative transactions are to be tested on the conduct of parties and abnormality of practices which defy normal logic and laid down procedures.

18. The appellant's learned counsel took strong exception to the long delay in the completion of the proceedings in this case. According to him, the impugned order passed in the year 2012 relates to investigation of 2003. The transactions took place in 2000. Investigations started in November 2003. Show cause notice was issued in January 2006. Reply was filed in November 2006 after supply of documents and correspondence. Personal hearing took place in 2009. The appellant approached the Board with a consent application twice during 2007 to 2010. Ultimately, the order happened to be passed in May 2012. It is contended that the initial notice was issued after a span of 6 years from the period of investigation and the hearing took place after a period of 9 years there from. According to the appellant, sheer lapse of time has handicapped the appellant from tracing many documents relevant to the issue under consideration. It is submitted that suspension of the certificate of registration of a broker after such a long lapse of time would have no salutary effect with respect to maintaining the integrity of the market.

19. For the reasons mentioned hereinabove in paragraph 17 we uphold the finding that the appellant has violated FUTP Regulations and code of conduct for stock brokers as held by the whole time member. However, we find that the punishment meted out to the appellant, namely, suspension of certificate of registration for a period of one month is highly disproportionate. One mitigating factor is that, as discussed hereinabove, the Board has not been able to bring on record sufficient evidence to disprove the submissions of the appellant with regard to communication with clients about the cross deals. Another mitigating factor is the delay in conclusion of proceedings which has been discussed above. Even after giving due allowance for the period consumed in

consent proceedings, the proceedings dragged on for several years between 2003 and 2012. This Tribunal has held in several cases including Subhkam Securities Private Limited. vs. Securities and Exchange Board of India decided on July 25, 2012 Appeal no.73 of 2012, Aditi Dalal vs. Securities and Exchange Board of India decided on November 28, 2011 Appeal no.143 of 2011 that proceedings under the Securities and Exchange Board of India Act require finalization within a reasonable period of time. Delay defeats justice and the very purpose for which proceedings are initiated. In the present case, the suspension of certificate of registration after a period of 12 years from the commission of the violation cannot be regarded as reasonable or justified.

In view of the mitigating factors in the present case, while upholding the violation as found by the whole time member, we hold that a warning to the appellant to be careful in future would be reasonable and would meet the ends of justice.

The appeal is disposed of as above. No costs.

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

Sd/-
S.S.N. Moorthy
Member

7.9.2012

Prepared and compared by
RHN