BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 111 of 2010

Date of decision: 3.5.2011

1) Subramanian R. Venkat
6 Nugget, 18th Road,
Khar (West), Mumbai – 400 052.

2) Anuradha Venkatasubramanian
6 Nugget, 18th Road,
Khar (West), Mumbai – 400 052. ……Appellants

Versus

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

2) Board of Trustees of HSBC Mutual Fund
Having address at 314, D. N. Road,
Fort, Mumbai – 400 001.

3) HSBC Mutual Fund
Having address at 314, D. N. Road,
Fort, Mumbai – 400 001.

4) HSBC Asset Management (India) Private Limited
Having address at 314, D. N. Road,
Fort, Mumbai – 400 001.

5) Chief Executive Officer of HSBC Asset
Management (India) Private Limited
Having address at 314, D. N. Road,
Fort, Mumbai – 400 001. …… Respondents

Mr. Zal Andhyarujina, Advocate with Mr. Joby Mathew and Mr. Deepak Dhane, Advocates for Appellants.

Mr. Kumar Desai, Advocate with Ms. Daya Gupta, Advocate for Respondent no. 1.

Mr. Iqbal Chagla, Senior Advocate with Mr. Riyaz Chagla, Mr. M. P. Bharucha and Mr. Charles De Souza, Advocates for Respondents no. 2 to 5.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S. S. N. Moorthy, Member

Per : Justice N. K. Sodhi, Presiding Officer

Whether the changes made by Respondents 2 to 5 in the Mutual Fund scheme had changed the fundamental attributes thereof or modified the same

affecting the interest of unitholders so as to attract the provisions of Regulation 18(15A) of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 (hereinafter referred to as the Regulations) is the short question that arises for our consideration in this appeal. Facts giving rise to the appeal are these.

2. The appellants before us are husband and wife and they claim that they regularly invest in shares and mutual fund schemes through market intermediaries duly registered with the Securities and Exchange Board of India (the Board) and/or recognized by the stock exchanges. Respondent no. 2 is the Board of Trustees of HSBC Mutual Fund. Respondent no. 3 is the HSBC Mutual Fund set up in the year 2002 with HSBC Securities and Capital Markets (India) Private Limited as the sponsors of the mutual fund. Respondent no. 4 is a private limited company promoted by HSBC Limited and appointed by respondent no. 3 to manage the mutual funds and operate the schemes of such funds in accordance with the provisions of the Regulations. Respondent no. 5 is the Chief Executive Officer of the fourth respondent.

3. Respondents 2 to 4 had launched an open ended Gilt scheme by the name of HSBC Gilt Fund during the year 2003 (hereinafter referred to as the scheme) which sought to generate reasonable returns through investments in government securities. The scheme had two plans – Short Term Plan and Long Term Plan. The short term plan was known as HSBC GILT FUND – SHORT TERM PLAN (HGF-ST). In the offer document it was mentioned that the short term plan was suitable for investors seeking to obtain returns from a plan investing in gilts (including treasury bills) across the yield curve with the **average maturity of the portfolio normally not exceeding 7 years and modified duration of the portfolio normally not exceeding 5 years**. The long term plan was intended to suit investors with surpluses for medium to long periods and the plan was to invest in gilts (including treasury bills) across the yield curve with the **average maturity of the portfolio normally not exceeding 20 years and modified duration of the portfolio normally not exceeding 12 years**. The appellants chose the short term

plan as against the long term plan as, according to them, they wanted to invest their personal savings in the short term plan of the scheme and considering the fund's objective, the fund's previous years' investment pattern and having regard to the reputation and brand of HSBC, they agreed to entrust a large portion of their life's savings to this fund and made the following investments through DSP Merrill Lynch Limited (for short the distributor).

Sr. No.	Date	Amount
1	October 20, 2008	Rs. 2,00,69,000/- (Rupees Two Crore Sixty Nine Thousand only).
2	November 7, 2008	Rs.29,98,000/- (Rupees Twenty nine lacs ninety eight thousand only)
3	November 11, 2008	Rs. 10,00,000/- (Rupees Ten lacs only)
4	November 17, 2008	Rs.11,60,000/- (Rupees Eleven lacs sixty thousand only).
	Total	Rs. 2,52,27,000/- (Two Crores Fifty Two lacs Twenty Seven Thousand only).

It is the case of the appellants that when they received the monthly statement for their account around the third week of February 2009, they noticed a sharp erosion in the value of their account compared to the previous month and also observed that Net Asset Value (NAV) of the fund had sharply fallen (nearly 10 per cent in three days) from January 6, 2009. The appellants made enquiries in this regard from the distributor who reportedly informed the former that respondents 2 to 5 had made changes in the scheme on January 5, 2009. The long term plan was wound up. The short term plan which was meant for investment in government securities for a period of 5 to 7 years was changed to a term investment not exceeding 15 years. The respondents had also changed the name of the scheme by dropping the words "SHORT TERM" from its name. They also changed the benchmark index of the scheme from 'I sec Si-Bex' to 'I sec composite index'. According to the appellants, the fall in the NAV was as a consequence of the changes made in the scheme and their grievance is that the respondents had changed the fundamental attributes of the scheme without informing the unitholders or the distributor of the

changes and without giving a reasonable opportunity to the unitholders to exit the scheme as required under the Regulations. The appellants also allege that they were completely unaware of the changes until March 2009. It is their case that mutual funds are required to follow the guidelines and procedures laid down by the Board under the Regulations and respondents 2 to 5 were under an obligation to inform each unitholder including the appellants of any changes in the policy, whether fundamental or otherwise, which would affect the interest of the investors. According to the appellants, the laid down procedure was not followed by respondents 2 to 5 and the short term plan for investment for 5-7 years was converted into a long term plan for investment for a period not exceeding 15 years. The appellants claim that since the NAV was steeply falling and with a view to avoid further continued losses in their investments, they exited the scheme and lodged a complaint with the distributor and the respondents. A complaint dated April 4, 2009 was also filed with the Board with a request to intervene in the matter and direct the asset management company to make good the losses suffered by the appellants.

4. The matter was investigated by the Board. While investigating the complaint the Board formulated the following issues for its consideration:-

> "a. Whether the impugned changes made in the scheme amounted to changes in the fundamental attributes of the scheme in contravention of Regulation 18(15A) of the Mutual Funds Regulations and SEBI Circular dated May 23, 2008?
>
> b. Whether the Board of Trustees and the Fund have contravened Regulations 18(9) & 18(22) and Clauses 2, 6 and 9 of the Code of Conduct prescribed under the Fifth Schedule of the Mutual Funds Regulations?
>
> c. Whether the AMC had contravened Regulations 18(9), 18(22), 25(1) & 25(16) and Clauses 2, 6 & 9 of the Code of Conduct prescribed under the Fifth Schedule of the Mutual Funds Regulations?
>
> d. Whether the Chief Executive Officer of the AMC had failed to ensure that the Fund/AMC complied with all the provisions of the Regulations, Guidelines and Circulars issued in this regard from time to time, in violation of Regulation 25(6A) of the Mutual Funds Regulations?"

On the first issue, the whole time member observed that **"After the Long Term Plan was wound up, only the Short Term Plan was continued. Subsequently, the said plan underwent certain changes, the major change being the change of the modified duration from "normally not exceeding 5 years" to "not exceeding 15 years".** He further observed that even though the fund/asset management company had cited liquidity crisis and the corresponding volatility of the assets under management as the reasons for increasing the duration, "**the same according to me is a very important factor which could have influenced the decision of the investors/unitholders on whether to remain invested in the scheme or to exit. Regulation 18(15A) of the Mutual Funds Regulations provides for the communication about the proposed changes to the unitholders and giving them an exit option**". Having said this, he goes on to hold that the changes did not fall within the clarifications issued by the Board as per its circular of February 4, 1998 and, therefore, they did not alter the 'fundamental attributes' of the scheme so as to attract Regulation 18(15A). He also observed that the changes in the scheme did fall within "any other change which would modify the scheme and affects the interest of unitholders" and thereby attract Regulation 18(15A) of the Regulations but he did not record any adverse finding against Respondents 2 to 5 on the plea that there was no such allegation in the show cause notice issued to them. The whole time member also referred to the change in the benchmark index and concluded that such a change did not affect the 'fundamental attributes' of the scheme. As regards issues (b), (c) and (d) referred to in paragraph 4 of the impugned order, the whole time member found that the Board of trustees of the fund and the fund had contravened the provisions of Regulation 18(9) and 18(22) of the Regulations and clauses 2, 6 and 9 of the code of conduct prescribed in the fifth schedule to the Regulations. He also found that the asset management company (Respondent no.4) had contravened Regulations 25(1) and 25(16) and clauses 2, 6 and 9 of the code of conduct. Since the fifth respondent had failed to ensure that the mutual fund complied with all the relevant provisions of law, he had, according to him, contravened Regulation 25(6A) of the Regulations. Accordingly, by his order dated April 23, 2010 the whole time member warned

Respondents 2 to 5 to strictly comply with the law governing their conduct and business of mutual fund in the securities market. It is against this order that the present appeal has been filed.

5. We have heard Mr. Zal Andhyarujina, Advocate on behalf of the appellants, Mr. Kumar Desai, Advocate on behalf of the Board and Mr. Iqbal Chagla, Senior Advocate on behalf of Respondents 2 to 5. The learned senior counsel appearing for the respondents has, at the outset, raised a preliminary objection regarding the maintainability of the appeal. He contends that the appellants are not persons aggrieved within the meaning of section 15T of the Securities and Exchange Board of India Act, 1992 (hereinafter called the Act) as nothing has been said against them in the impugned order and, therefore, they could not maintain the appeal. The other leg of the argument is that since the appellants had exited the scheme on their own volition in March, 2009 and ceased to be members thereof, they are not entitled to any relief whatsoever. Shri Kumar Desai learned counsel appearing for the Board has adopted the objections raised by the learned senior counsel. Having given our thoughtful consideration to the preliminary objections raised on behalf of the respondents, we are unable to accept the same. The grievance of the appellants is that after they invested in the short term plan of the scheme, respondents 2 to 5 carried out material changes in the scheme by winding up the long term plan and converted the short term plan for investment for 5 to 7 years into a long term plan for investment for 15 years. This, according to them, affected the fundamental attributes of the scheme and, in any case, modified the scheme affecting the interest of unitholders and, therefore, the respondents ought to have complied with the provisions of Regulation 18(15A) of the Regulations whereunder every unitholder on the date of the change including the appellants should have been given a right to exit the scheme at the then prevailing NAV. Further grievance of the appellants is that even though the Board on their complaint has found that material changes were brought about in the scheme which affected the rights of the unitholders, it has erred in not issuing directions to respondents 2 to 5 to comply with the provisions of Regulation 18(15A) and give a right to exit to every unitholder who on the date

of the change was a member of the scheme. The provisions of Regulation 18(15A) of the Regulations shall be dealt with in detail while dealing with the merits of the contentions raised before us and suffice it to mention that under the said provision, if a change in the fundamental attribute of a scheme is carried out or the scheme is modified affecting the interest of the unitholders, then every unitholder on the date of the change ought to be given a right to exit the scheme. If the appellants are right in making the grievance that they have made before us then there is no gainsaying the fact that they are persons aggrieved and would have a right to exit from the scheme when the changes were made which right has been denied to them. Admittedly, the provisions of Regulation 18(15A) were not complied with by respondents 2 to 5 when the changes were made and no unitholder was given an exit route. In this background, we are satisfied that the appellants are persons aggrieved by the impugned order as they are the ones who have lost the right to exit and their legal rights have been infringed. We are of the considered opinion that if the changes carried out in the scheme affect its fundamental attributes or modify the scheme affecting the interest of unitholders, then every unitholder of the scheme as on the date of the change could feel aggrieved. If we were to conclude that the changes do not affect the fundamental attributes of the scheme or they do not affect the interest of the unitholders, the appeal in that event would be dismissed. But it cannot be said that it is not maintainable. Moreover, it was the complaint of the appellants that was being enquired into and we think that they have a right to tell us that the order passed thereon by the Board was not in accordance with law. In this view of the matter, we cannot agree with the learned senior counsel for respondents 2 to 5 that the appellants are not persons aggrieved or that they cannot maintain the present appeal. Section 15T of the Act enables a “person aggrieved” to file an appeal against an order of the Board. Although the words “person aggrieved” have not been defined in the Act, they have a specific connotation and are well understood by courts and tribunals. In this context we are tempted to refer to the observations of Lord Denning in Attorney General of the Gambia vs. Pierre Sarr N’Jie 1961 AC 617 wherein he observed as under:-

> "The words person aggrieved are of wide import and shall not be subjected to a restrictive interpretation. They do not include, of course, a mere busy body who is interfering in things which do not concern him; **but they do include, a person who has a genuine grievance because an order has been made which prejudicially affects his interest**." (emphasis supplied)

In Jasbhai Motibhai Desai vs. Roshan Kumar & Ors. AIR 1976 SC 578, the learned Judges of the Supreme Court were examining the question of locus standi of the appellants therein and laid down tests to distinguish between persons aggrieved and strangers and busy body of meddlesome interlopers. Persons in the last category were said to be those who interfere in things which do not concern them and act in the name of Pro Bono Publico though they have no interest of the public or even of their own to protect. The learned Judges observed that distinction between persons aggrieved and strangers was real and they laid down the following broad tests in this regard :-

> "Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognized by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designated to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

Having regard to the aforesaid observations, we are of the firm view that the appellants satisfy all the tests laid down by the Supreme Court and that they are persons aggrieved entitling them to maintain the present appeal.

6. It was then argued by the learned senior counsel that since the appellants had exited the scheme in March, 2009 on their own volition, they have ceased to be unitholders and any relief granted to them would be in the form of compensation which is beyond the jurisdiction of this Tribunal and falls within the scope of a

Civil Court which alone can deal with such matters. Here again, we are unable to agree with the learned senior counsel. If the grievance of the appellants is justified, then a direction must issue to respondents 2 to 5 to comply with Regulation 18(15A) of the Regulations as on the date of the change. In that event we will have to hold that the Board erred in not issuing such a direction and that such a direction would only mean compliance with the provisions of the Regulations. If such a direction results in the appellants being compensated, so it be. It is true that the appellants have exited the scheme and that was because the NAV was steeply falling and it appears that they did not have the capacity to take further risks and bear further losses. Their conduct in exiting the scheme cannot, in the circumstances of the case, be said to be unreasonable so as to disentitle them to come up in appeal. It was pointed out by the learned counsel for the respondents that large number of unitholders continued with the scheme and did not exit. That may be so as they may be having a larger risk taking capacity. This fact also does not make the appellants ineligible for claiming the relief which they may otherwise be entitled to. In the result, we overrule the preliminary objection raised on behalf of the respondents.

7. This brings us to the merits of the grievances made by the appellants. Mr. Zal Andhyarujina, learned counsel for the appellants, strenuously contended that when the scheme was floated in the year 2003, it had two plans – short term plan and the long term plan and that the appellants consciously chose the short term plan whereunder the investments in the scheme could be made for a period not exceeding 7 years though the said period could be brought down to 5 years. It is argued that after the appellants had invested their life's savings in the scheme, respondents 2 to 5 brought about substantial changes therein changing its fundamental attributes and, therefore, it was incumbent upon them to have sent a written communication about the proposed change to each unitholder including the appellants and also to have given them an option to exit at the prevailing net asset value without burdening them with any exit load. In other words, what is argued is that because of the material changes made in the scheme, respondents 2 to 5 ought

to have complied with the provisions of Regulation 18(15A) of the Regulations and not having done so they flouted the law. It is also the grievance of the appellants that they made a complaint to the Board which enquired into the same and having found that material changes had been made in the scheme which affected the interest of the unitholders, it (the Board) failed to issue appropriate directions to respondents 2 to 5 to comply with the Regulations. The learned senior counsel appearing on behalf of respondents 2 to 5 has, on the other hand, contended that the scheme was launched with the investment objective of generating reasonable returns through investment in government securities of various maturities and that the difference between the long term plan and the short term plan was not the maturity of the government securities invested in but the investment horizon of the investors in the scheme. He referred to the circular of February 4, 1998 issued by the Board and strenuously argued that the fundamental attributes of the scheme would have undergone a change only if it had ceased to be an open ended scheme or if the investments therein were to be made in securities other than government securities. The argument is that since neither of these attributes were changed in the present case, the fundamental attributes of the scheme were not altered so as to attract the provisions of Regulation 18(15A) of the Regulations. The learned senior counsel also argued that it was the investment pattern in a scheme which is its fundamental attribute and that a modified duration or average maturity of an investment made therein does not constitute a fundamental attribute. According to the respondents, the fundamental attributes of the scheme would get altered if investments therein were to be made in equity or money market instruments instead of government securities as originally stipulated. The respondents also referred to the combined offer document wherein it is stipulated that the duration of the investment could undergo a change in case the market conditions warrant and according to the fund manager's view. In short, the respondents pleaded that the changes brought about in the scheme did not affect the fundamental attributes thereof and, therefore, compliance with the requirements of Regulation 18(15A) was not necessary.

8. Before we deal with the respective contentions of the parties it is necessary to refer to the changes that were brought about in the scheme after the appellants had made investments therein. As already observed, the scheme as originally formulated in the year 2003 was by the name of HSBC Gilt Fund and it had two plans, short term plan and long term plan. It is common case of the parties that the long term plan was wound up in January 2009 and the short term plan under which investments were to be made for a period from 5 to 7 years has been changed to a term investment for a period not exceeding 15 years. The name of the scheme was also changed and the words "SHORT TERM" appearing in the title of the scheme were also dropped. Apart from changing the duration of the investments to be made, the benchmark index of the scheme was also changed from 'I sec Si-Bex' to 'I sec composite index'. It is pertinent to mention here that a benchmark index of a scheme is a methodology adopted to measure the success and performance of a scheme. It is, thus, clear that the name of the scheme was changed, the duration of the investments to be made therein had undergone a substantial change and the benchmark index to measure its performance was also altered.

9. We may now refer to the provisions of the Regulations. These were framed by the Board with a view to regulate the mutual funds and the schemes operated by them which have to be in accordance with the provisions of the Regulations. A mutual fund is a fund established in the form of a trust to raise monies through sale of units to the public or a section of the public in one or more schemes for investing in different kinds of securities. Public is invited to invest in a scheme through an offer document. Every mutual fund is required to be registered with the Board and operate scheme(s) in accordance with the provisions of the Regulations. Regulation 18 deals with the rights and obligations of the trustees and sub-regulation (15A) with which we are concerned is reproduced hereunder for facility of reference:-

"18. (1) …….

(2) …….
……..
……..

> (15A) The trustees shall ensure that no change in the fundamental attributes of any scheme or the trust or fees and expenses payable or any other change which would modify the scheme and affects the interest of unitholders, shall be carried out unless,-
>
> (i) a written communication about the proposed change is sent to each unitholder and an advertisement is given in one English daily newspaper having nationwide circulation as well as in a newspaper published in the language of region where the Head Office of the mutual fund is situated; and
>
> (ii) the unitholders are given an option to exit at the prevailing Net Asset Value without any exit load."

A reading of the aforesaid provision leaves no room for doubt that the trustees cannot bring about a change in the fundamental attributes of any scheme or any other change therein which would modify the scheme and affect the interest of unitholders unless a written communication about the proposed change is sent to each unitholder and an advertisement is given in the newspaper as prescribed in the Regulation and the unitholders are given an option to exit the scheme at the prevailing NAV without any exit load.

10. Having regard to the changes made in the scheme by which the duration of the investments therein was altered from 5 to 7 years to a period not exceeding 15 years, we are of the considered opinion that this change is one which affects the fundamental attributes of the scheme and also modifies the same affecting the interest of the unitholders. The words "fundamental attributes" have not been defined in the regulations and, therefore, they have to be understood according to their ordinary dictionary meaning. Fundamental is something which is basic or serves as a foundation or goes to the root of the matter. In the context of an investment scheme, one of the important factors that an investor looks at is the duration for which the investments are going to be made in that scheme. In this sense, the duration of the investment constitutes one of the fundamental attributes thereof. In the instant case when the scheme was launched it had two plans – short term plan and long term plan the duration of both was different and the investors took an informed decision in investing in one or the other plan. As already observed, the appellants chose the short term plan as, in their perception the said

plan would give better returns. It is the case of respondents 2 to 5 that the long term plan which had a long average maturity period had to be wound up as they could not muster even a minimum of 20 investors so as to continue with the said plan. It was on the winding up of the long term plan that the duration of investments in the short term plan was altered from 5 to 7 years to a period not exceeding 15 years. It is, thus, clear that there were no takers for the long term plan and what respondents 2 to 5 did was after winding up the long term plan, they increased the duration of the short term plan to a long term without informing the investors. This was most unfair. Since the duration of the investments was substantially increased, we have no doubt in our mind that one of the fundamental attributes of the scheme was altered. Even the whole time member has recorded a finding in the impugned order that the change in the duration virtually modified the short term plan into a long term plan and this is what he has observed :-

> "The sudden change in investing substantial funds of the scheme in long term gilt instruments from short term instruments had in turn changed the average maturity and the modified duration of the scheme portfolio, drastically varying them, so as to modify the scheme virtually into a Long Term Plan."

Besides, the scheme got modified which affected the interest of the unitholders. The name of the scheme was also changed and the words "short term" were dropped. This is another indicator of the substantial change made in the scheme. The fact that the bench mark index of the scheme was changed from "I sec Si-Bex" to "I sec composite index" also supports our view that there was a fundamental change in the attributes of the scheme which necessitated respondents 2 to 5 to change the methodology to measure the success of the modified scheme. The whole time member himself has recorded a finding that the changes affect the interest of the unitholders of the scheme. It is pertinent to refer to this finding in his own words :-

> "The change in the duration of the scheme is a change which certainly affects the interest of the unitholders of the scheme. Any fund house making any changes so as to modify the scheme which affects the interests of the unitholders would be liable for the contravention of Regulation 18(15A) of the Mutual Funds Regulations, if they had effected such changes without complying with the procedure mentioned therein."

Having recorded the aforesaid findings, the whole time member holds that the aforesaid changes in the scheme did not alter its fundamental attributes merely because they did not fall within the clarifications issued by the Board as per its circular of February 4, 1998. We cannot agree with him. The circular was issued giving clarifications in regard to some of the fundamental attributes of a scheme. What is elaborated therein is only illustrative and in the very nature of things it cannot be exhaustive. Apart from the attributes referred to in the circular, there could be other fundamental attributes of a scheme like the duration of a scheme as in the present case. We agree with the learned senior counsel for the respondents that if the nature of the investments were to change, the fundamental attributes of a scheme would get altered. He was right in contending that if investments were to be made in equity or money market instruments instead of Government securities as originally stipulated, the fundamental attributes of a scheme would undergo a change. But those could not be the only fundamental attributes of a scheme. As already observed, there could be other attributes as well depending upon the nature of the scheme.

11. We are really amazed that the whole time member after recording a finding that respondents 2 to 5 had changed the scheme which affected the interest of the unitholders without complying with Regulation 18(15A) of the Regulations failed to issue directions to these respondents for complying with the provision. The finding recorded in this regard has already been reproduced above and we agree with the whole time member that respondents 2 to 5 had brought about changes in the scheme which affected the interest of the unitholders. This being so they were obliged to comply with the provisions of Regulation 18(15A) which they have not and the grievance of the appellants is justified that the Board failed to issue appropriate directions in this regard. The reason given by the whole time member for not issuing the necessary directions is that there was no such allegation in the show cause notice dated August 7, 2009 that was issued to the respondents. This reason, to say the least, is most untenable. The details of the changes made in the scheme have been elaborated in the show cause notice and there is a clear

allegation in para 16 thereof that the respondents had violated, among others, Regulation 18(15A) of the Regulations. It is this Regulation which required the respondents to give an exit route to all those who were the unitholders on the date of the change including the appellants. We are satisfied that the whole time member grossly erred in not issuing the appropriate directions in this regard.

12. Before concluding, we may notice yet another argument raised on behalf of the respondents. It was urged that the combined offer document issued by respondents 2 to 5 itself contained a stipulation that a change could be made if warranted by the market conditions and according to the fund manager's view. The argument is that since the changes were made as per the stipulation in the offer document, the appellants could possibly have no grievance. We cannot accept this contention either. The power of the fund manager to bring about changes in any scheme as stipulated in the combined offer document cannot be disputed but if such changes alter the fundamental attributes of a scheme or modify the same affecting the interest of the unitholders as in the present case, the fund and its mangers would have to comply with the provisions of Regulation 18(15A) of the Regulations. It is the non compliance with this provision which is the root cause of the grievance made by the appellants.

13. Respondents 2 to 5 have also been found guilty of violating the code of conduct prescribed in the fifth schedule to the Regulations for which they have been appropriately warned. Since they have not come up in appeal, it is not necessary for us to go into the merits of those findings.

For the reasons recorded above, we allow the appeal, set aside the findings of the whole time member on issue (a) as formulated in para 4 of the impugned order and hold that the changes brought about in the scheme altered the fundamental attributes thereof and also modified the same affecting the interest of the unitholders. In view of these findings, we would have normally issued a direction to respondents 2 to 5 to comply with Regulation 18(15A) of the Regulations and give an exit route to all those who were unitholders on the date of

the change. We are refraining from issuing such a direction as we were informed by the respondents during the course of the hearing that NAV of the scheme has now substantially increased and that no unitholder shall like to exit at the then prevailing NAV which was much lower. Moreover, no other unitholder/investor has come up in appeal before us. This, however, does not mean that the appellants who have been agitating the matter can be deprived of their right to exit the scheme as on the date of the change at the then prevailing NAV. A direction is, therefore, issued to respondents 2 to 5 to comply with Regulation 18(15A) of the Regulations qua the appellants and provide them with an exit route. The appellants are also directed to furnish adequate proof of the price at which they exited the scheme. We are issuing this direction in exercise of our powers under Rule 21 of the Securities Appellate Tribunal (Procedure) Rules, 2000 in order to secure the ends of justice. Parties are left to bear their own costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S. S. N. Moorthy
Member

3.5.2011
Prepared & Compared by
rhn/ptm