BEFORE THE ANTI-CORRUPTION TRIBUNAL **Case No. 1/2013**

BANGLADESH CRICKET BOARD

IN THE MATTER OF CHARGES BROUGHT UNDER THE ANTI-CORRUPTION CODE

BETWEEN:

BANGLADESH CRICKET BOARD

COMPLAINANT

AND

(1) MOHAMMAD ASHRAFUL
(2) SHIHAB HOSSAIN ("JISHAN") CHOWDHURY
(3) SALIM CHOWDHURY
(4) GAURAV RAWAT
(5) MOHAMMAD RAFIQUE
(6) MOSHARAFF HOSSAIN
(7) MAHBUBUL ALAM
(8) DARREN STEVENS
(9) KAUSHAL LOKURACHCHI
(10) LOU VINCENT

DEFENDANTS

Appearances:

Mr. Jonathan Taylor, Mr. Iain Higgins, Ms. Sally Clark and Mr. Mudassir Hossain for the Complainant, Bangladesh Cricket Board and Anti-Corruption and Security Unit of the International Cricket Council.

Mr. Qumrul Haque Siddique and Mr. Nawroz M R Chowdhury for the Defendant Nos. 2 and 3.

Mr. Arif ul Huq Bhuiyan and Mr. Khaled Sarkar for Defendant No. 4.

No appearance on behalf of the Defendant No. 5.

Mr. Mohammad Noor us Sadik and Mr. Syfuzzaman Tuhin for the Defendant Nos. 6 and 7.

Mr. Yasin Patel, Mr. Khaled Hamid Chowdhury and Mr. Siddik Aboobakar (SA LAW Chambers) for Defendant No. 8.

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A. ABBREVIATIONS:

ACSU	Anti-Corruption & Security Unit of the International Cricket Council
BB	Barisal Burners
BCB	Bangladesh Cricket Board
BPL	Bangladesh Premier League
BPL 2013	The 2013 edition of the BPL staged at various locations in Bangladesh from the 17 January to the 19 February 2013.
CK	Chittagong Kings
CL	Chris Liddle
Cobb	Josh Cobb
Code	BCB Anti-Corruption Code for Participants effective from 15 January 2013
Contesting Defendants	Defendants who have denied the charges in the Notice of Charges
CW	Chris Watts
DAO	Designated Anti-Corruption Official
DG	Dhaka Gladiators
Disputed Number	The phone number ending 7582 alleged to be that of JC but which is disputed.
DR	Duronto Rajshahi
DS	Mr. Darren Stevens
DY	Mr. Dharamveer Yadav
ET	Eddie Tolchard
FLT20	Friends Life T20
GR	Gaurav Rawat
ICC	The International Cricket Council
ICC Code	ICC's Anti-Corruption Code
IP	Ian Lesley Pont
IPL	Indian Premier League
JC	Mr. Shihab "Jishan" Chowdhury

KL	Mr. Kaushal Lokurachchi
KR	Khulna Royal Bengals
LV	Lou Vincent
MA	Mr. Mohammad Ashraful
MM	Mashrafe Mortaza
MR	Mohammad Rafique
Mr. Pont	Mr. Ian Pont
OS	Owais Shah
Phone Schedule	A schedule containing extracts of information relating to phone calls made from JC's admitted number.
POS	Mr. Peter O' Shea
Robin	Mahbubul Alam, Defendant No.7
Rubel	Mosharraf Hossain, Defendant No. 6
SC	Mr. Salim Chowdhury
SR	Sylhet Royals
T-20	Bangladesh Premier League T20
VG	Mr. Varun Gandhi
YPS	Mr. Yogendra Pal Singh

B. INTRODUCTION:

Bangladesh Premier League:

1. The Bangladesh Cricket Board (**"BCB"**) is recognized by and established under the National Sports Council Act 1974 (as amended) to regulate and promote cricket in Bangladesh. With the objective of organizing a world class domestic T-20 cricket league under the brand name of Bangladesh Premier League T20 (**"BPL"**), BCB appointed an event management company, Game On Sports Management, and held auctions for the purpose of selling franchises[1] The intention of the BCB was to hold 12 editions of the BPL each year starting from 2012. The 2012 edition of the BPL was held successfully although there were rumors and suspicions of alleged corruption during that event.

2. After investigations of the rumours and suspicions by the BCB vigilance team a Pakistani bookmaker was found involved in suspicious activities in Chittagong. The bank account number of Jamshed Nasser, the Pakistan team opening batsman was found on his cellphone. Mashrafe Murtoza was allegedly approached by Shariful

[1] Preamble to Franchise Agreement 22 December 2012

Haque, a former Bangladeshi national player. After investigations by the BCB, charges were brought and Shariful Haque was banned for life[2].

3. Franchises were bid for and purchased by different companies and owned by various franchisees under separate agreements. Each franchisee operated its teams under its chosen brand name and style. The teams that participated in the BPL were Dhaka Gladiators (**"DG"**), Chittagong Kings (**"CK"**), Khulna Royal Bengals (**"KR"**), Barisal Burners (**"BB"**), Duronto Rajshahi (**"DR"**) and Sylhet Royals (**"SR"**).

4. The DG team was owned by the franchisee Shihab Corporate House Limited, a private family company, under a Franchise Agreement dated 22 December 2012[3]. Mr. Salim Chowdhury (**"SC"**) and his sons Mr. Shihab Chowdhury (also known as Jishan) (**"JC"**) and Tishan Chowdhury were shareholders and participated in its management as Chairman, Managing Director and Director. The BPL 2012 edition was won by the DG.

BPL 2013:

5. The 2013 edition of the BPL was to be staged at various locations in Bangladesh from the 17 January to the 19 February 2013. By the 31 January 2013, DG had won 5 out of the 6 matches and was in a commanding position at the top of the league table.

Anti Corruption Code:

6. Corruption in sport is big business. It is related to the legal and illegal betting that takes place on the results of matches or tournaments or what is predicted to happen during a match or tournament. Everyone wants to be able to predict the future whether it be in respect of life generally or in respect of a particular sport. If one can predict the future, money can be made on the predictions. By somehow "fixing" the result in a sporting event and turning a prediction into a certainty, unscrupulous people make a lot of money. It proves the point made in the proverb relating to the game of bridge: "one peek is worth a thousand finesses". Once one knows with the illegal "peek" which opponent holds which card, certainty is achieved and the game can be easily won.

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[2] EB(T17/POS1)
[3] EB (T17/AP-3)

7. The Tribunal finds it relevant to quote the following statement from the case brought by the England and Wales Cricket Board against cricketers Mervyn Westfield and Danish Kaneria:[4]

"Self evidently, corruption, specifically spot fixing, in cricket or any other sport for that matter, is a cancer that eats at the health and very existence of the game. For the general public, supporting the game and their team within it, there is no merit or motivation to expend time, money or effort to watch a match whose integrity may be in doubt. The consequences of the public's disengagement from cricket would be catastrophic. Furthermore, the game of cricket simply cannot afford to have its reputation tarnished in the eyes of commercial partners. These partners could not and would not link their brand to a sport whose integrity had been so undermined. For players who have devoted their entire careers to the pursuit of hard fought and properly competitive sport, to have those genuine achievements called into question by the corruption actions of a tiny minority, may tend to devalue their worth. Accordingly, we have no doubt that this is a cancer which must be rooted out of the game of cricket."

8. To deal with the "Cancer" of corruption all cricket governing bodies globally and wholeheartedly took decisions to take the strongest possible action against corruption in the sport. The International Cricket Council ("**ICC**") as the world's governing body for cricket adopted its Anti-Corruption Code ("**ICC Code**") and all full members of the ICC, including the BCB, have adopted a detailed Anti-Corruption Code for Participants implementing at the domestic level the provisions of the ICC Code.

9. BCB initially adopted the BCB Anti-Corruption Code for Participants effective from 1 October 2012[5]. It was replaced by a later version which became effective from 15 January 2013.

10. The present case is brought and tried under the BCB Anti-Corruption Code for Participants effective from 15 January 2013 ("**Code**")[6]. It sets out the purpose behind the Code in Article 1 as follows:

> *"1.1 The Bangladesh Cricket Board has adopted this Anti-Corruption Code in recognition of the following fundamental sporting imperatives:*

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[4] BCB OB 2.1
[5] AB (T2)
[6] AB (T1)

1.1.1 All cricket matches are to be contested on a level playing-field, with the outcome to be determined solely by the respective merits of the competing teams and to remain uncertain until the cricket match is completed. This is the essential characteristic that gives sport its unique appeal.

1.1.2 Public confidence in the authenticity and integrity of sporting contest is therefore vital. If that confidence is undermined, then the very essence of cricket will be shaken to the core. It is the determination to protect that essence of cricket that has led the Bangladesh Cricket Board to adopt the Anti-Corruption Code.

1.1.3 Advancing technology and increasing popularity have led to a substantial increase in the amount, and the sophistication, of betting on cricket matches. The development of new betting products, including spread-betting and betting exchanges, as well as Internet and phone accounts that allow people to place a bet at any time and from any place, even after a cricket match has started, have all increased the potential for the development of corrupt betting practices. That, in turn, increases the risk that attempts will be made to involve participants in such practices. Even where that risk is more theoretical than practical, its consequence is to create a perception that the integrity of the sport is under threat.

1.1.4 Furthermore, it is of the nature of this type of misconduct that it is carried out under cover and in secret, thereby creating significant challenges for the Bangladesh Cricket Board in the enforcement of rules of conduct. As a consequence, the Bangladesh Cricket Board needs to be empowered to seek information from and share information with competent authorities and other relevant third parties, and to require Participants to cooperate fully with all investigations and requests for information.

1.1.5 The Bangladesh Cricket Board is committed to taking every step in its power to prevent corrupt betting practices undermining the integrity of the sport of cricket, including any efforts to influence improperly the outcome or any other aspect of any Match or Event.

1.2 This Anti-Corruption Code is to be interpreted and applied by reference to the fundamental sporting imperatives described in Article 1.1. This includes

but is not limited to a case where an issue arises that is not expressly addressed in this Anti-Corruption Code. Such interpretation and application shall take precedence over any strict legal or technical interpretations of this Anti-Corruption Code that may otherwise be proposed."

11. The Tribunal notes the *"fundamental sporting imperatives"* in the Code and also accepts the principle as stated by another Tribunal[7] that there is an *"overriding imperative of fairness which is necessarily to be implied into the Code"*(underlining added). The Tribunal emphasizes that the focus of the sport as a whole, any particular game, the Code, any investigation into allegations of corruption under the Code and any proceedings before any Anti-Corruption Tribunal must respect and adhere fully to the twin pillars of the sporting imperatives and the overriding imperative of fairness.

12. The Tribunal recognises that as long as greed exists in humanity, there will be persons who will resort to corruption to take advantage of this human frailty. However, the Tribunal feels that only by strictly and persistently following and maintaining these twin pillars by all those involved in the sport, the scourge of corruption can be tackled. The Tribunal feels that the emphasis must be on the "prevention" of corruption so that the greed that exists is not satisfied and the temptation that is normally placed in front of the players can be resisted by making corruption a "high risk" venture for all involved. The commitment of the BCB under the Code is to *"...prevent corrupt betting practices undermining the integrity of the sport of cricket.."*[8].

The Code:

13. The Code has 11 Articles and each article has several sub-articles. There is one Appendix containing certain definitions. *"Participants"* include *"Any Player"* and *"Player Support Personnel"* as defined. Article 1 sets out the Introduction, Scope and Application stating that all Participants are automatically bound by the Code and, amongst others, to submit to the *"exclusive jurisdiction of any Anti-Corruption Tribunal under"* the Code *"to hear and determine charges brought ... on behalf of the BCB ..."* (Art. 1.3.4). Those bound by the Code agreed *"not to bring proceedings in any court or other forum that are inconsistent with the foregoing submissions to the jurisdiction of this Anti-Corruption Tribunal..."*(Art. 1.3.6). It recognises that *"The conduct prohibited under [the] Code may also be criminal offence and/or a breach of*

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[7] ICC Tribunal – ICC V Butt, Asif & Amir

[8] Code Art. 1.1.5

other applicable laws and regulations" and states that "*Participants must comply with all applicable laws and regulations at all times*" (Art. 1.7).

14. Article 2 of the Code sets out the Offences under it. There are four offences under the headings of Corruption (Art. 2.1), Betting (Art. 2.2), Misuse of Insider Information (Art. 2.3) and General (Art. 2.4). Each of these has three or four sub-articles with specific types of offences. Attempts and conspiracies (Art 2.5.1) and aiding (Art. 2.5.2) are made offences under the Code. Certain matters are excluded as being irrelevant to the determination of whether any offence has been committed including whether the performance or efforts of the Participant or the results the outcome of a Match or Event were or could be affected by the alleged acts or omissions (Art. 2.6.4 and Art.2.6.5)

15. Art. 3 deals with Standard of proof and Evidence which is dealt with separately below. Art. 4 sets out provisions relating to Investigations and Notice of Charge placing the obligation to investigate a breach of the Code and to charge a Participant on the Designated Anti-Corruption Official (Art. 4.1). The Code recognises that the investigations of breaches of the Code may be conducted in conjunction with ... "*other relevant authorities (including criminal justice, administrative, professional and/or judicial authorities.)*" (Art. 4.2). The Designated Anti-Corruption Official may issue a Demand on a Participant asking for disclosure of specific records "*and / or a written statement made by the Participant setting out in detail all the facts and circumstances of which the participant is aware ...*" (Art. 4.3). He can issue a "*Notice of Charge*" setting out various matters (Art. 4.5) and can order a Provisional Suspension in certain circumstances in respect of which there are specified procedures to be followed. Art. 4.7 deals with the process for Responding to a Notice of Charge.

16. Art. 5 deals with the Disciplinary Procedure including references to the Disciplinary Panel, appointment of its Chairman and members (Art. 5.1.1A and B), the powers and responsibilities of the Chairman (Art. 5.1.1B and 5.1.2), the procedure for forming Tribunals to hear cases (Art. 5.1.2), the Convenor and his powers (Art. 5.1.3) and the preliminary and full hearings before the Tribunals (Art. 5.1.3 and 5.1.4). Art. 5.2 sets out the requirements in respect of the decisions of the Tribunals.

17. Art. 6 sets out the sanctions that may be imposed where a Participant has admitted an offences or it is found by a Tribunal that an offence or offences under the Code has been committed. Art. 6A deals with National Level Appeals and Art. 7 with

Appeals to CAS. Art. 8 deals with Public Disclosure and Confidentiality, Art. 9 with Recognition of Decisions and Art. 10 with Limitation Periods.

18. Art. 10 sets down the limitation period of 8 years after the date of occurrence of the offence after which no action can be commenced. Art. 10.2 gives discretion to the BCB to give priority to other investigations or proceedings. Art. 11 deals with Amendment and Interpretation. Art. 11.5 states that the Code is governed by and should be construed in accordance with Bangladesh laws. It also states *"Strictly without prejudice to the arbitration provisions of Articles 5 and 7... disputes relating to this ...Code shall be subject to the exclusive jurisdiction of the Bangladesh Courts"*.

Appointment of ICC ACSU - Services Agreement:

19. On 14 January 2013, the BCB appointed the ICC's Anti-Corruption & Security Unit (**"ACSU"**) by entering into a Services Agreement to implement and monitor compliance with the Code at the BPL 2013[9]. That tournament was the extent of the remit of ACSU under the Services Agreement. It did not cover any other Match or Event as defined in the Code. Amongst others, the obligations of ACSU in relation to the BPL 2013 were to:

"assist BCB in overseeing, managing, implementing and enforcing all aspects of the anti-corruption provisions of the [Code]..." with a proviso that *"ACSU ...shall have no decision-making power...to charge and / or provisionally suspend a player, player support personnel or team official... and no responsibility for the prosecution of any matter..."* Clause 1.1(b).

"Liaise with local police and law enforcement authorities in all host cities to coordinate measures designed to prevent corruption in cricket". Clause 1.1(d)

20. ACSU also undertook in the following terms:

"The ICC shall, as soon as reasonably practicable, notify BCB in writing of any significant matter or occurrence in relation to provision of the Services." Clause 1.3(g)

"The ICC shall ensure that an ACSU representative is available to meet with BCB to review the provision of the Services on a weekly basis before the Event and on a daily basis during the Event or such other period as may be agreed by the Parties from time to time." Clause 1.3(i)

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[9] DB (TA/pp.107)

21. The plain purpose of the Services Agreement was to appoint ACSU to provide its expertise and personnel in the context of the agreed services since BCB did not have its own infrastructure in place to ensure compliance with the Code during the BPL 2013. It is equally plain that in order to carry out the purpose the Services Agreement and to ensure compliance with the Code, there was a need for co-operation between the officials of the BCB and the ICC. Such co-operation would require putting in place systems for anticipating the possible breaches of the Code and dealing with the urgent situations on a timely basis that could arise during the BPL.

22. The Tribunal notes with regret that the BCB and ACSU did not have effective co-operation between them and no systems were in place to deal with emergent situations in a timely manner. The evidence placed before the Tribunal suggests that BCB appears to have left ACSU to "get on with the job" without realising that the obligations for enforcement of the Code fell upon the BCB itself and that ACSU was acting only as its agent for the limited purposes in the Services Agreement. ACSU did not have any decision making power or to prosecute. BCB appears to have been oblivious of the matters over which it retained control, in particular, that it was entitled to be informed of *"any significant matter or occurrence"* taking place during the BPL 2013. The Tribunal is bewildered by the carefree approach taken by BCB towards ACSU's role during the BPL 2013 and BCB's lack of initiative to find out what ACSU was doing on its behalf.

23. It is also regrettable that ACSU, on the other hand, did "get on with the job" but, in its own way. There were no systems in place to deal with specific situations as they arose, no discussions with the BCB, no liaison with the local law enforcement authorities or consideration of the domestic laws of Bangladesh and no consideration given for the Bangladeshi citizens in the event that a fixed match is played before them and the fee paying public is deceived under the eyes of the regulators who are entrusted to prevent such deception. When the time came for the investigation phase, the admitted position is that there were no guidelines or protocols in place for dealing with or interviewing suspects or witnesses. No weekly or daily meetings as required under the Services Agreement were held at all between BCB and ACSU at any point in time.

24. What is even more significant is that the evidence clearly shows that the ACSU representatives assigned on the ground were totally unaware of the Services Agreement and its terms. The Tribunal was informed by Mr. Peter O' Shea (**"POS"**) that he and his colleague, Mr. Dharamveer Yadav (**"DY"**) (who did not give evidence

before the Tribunal) were not briefed about the terms and conditions of the Services Agreement. Consequentiy, they were unaware of the need for the daily briefings or the weekly meetings and the obligation to report significant matters or incidents to BCB. The evidence was that they were under an obligation only to report to the Head of ACSU in Dubai, Mr. Yogendra Pal Singh ("**YPS**"), (who also did not give evidence before the Tribunal) and what YPS did with the information was a matter for him. It appears to the Tribunal that YPS did not also communicate to BCB the information related to him from his operatives on the ground. The Tribunal would be speculating on the reason for this failure but states that this appears to be a plain breach of ACSU's obligations under the Services Agreement.

25. This is unfortunate since the clear evidence before this Tribunal is that there were at least two fixed matches that were played during the BPL 2013 each taking place under the eyes of ACSU and with its knowledge. Further, the evidence is clear that the fixed match between DG and CK played in Chittagong on the 2 February 2013 was played with the consent of ACSU. It is obvious that the ACSU did not consider the dire consequences (as highlighted in the quotation from ECB v Kaneria[10]) that inevitably follow when a fixed match is played out. It was accepted by several witnesses of BCB and ACSU that the information about a proposed fixed match that was available to ACSU and that a decision was taken by ACSU to allow the fixed match to take place were indeed significant matters and should have been reported to BCB and that the law enforcement officers should have been involved. The Tribunal cannot see any logic in ACSU proceeding with its decision to allow the fixed match to take place whilst keeping BCB in the dark. The Tribunal will deal with these troubling and highly material aspects of this case further in this Determination.

26. Although the Services Agreement required a written report, the Acting CEO of BCB in his evidence has acknowledged that no written report was provided by ACSU as was required. The Services Agreement was followed by a letter agreement dated 20 February 2013[11] by which BCB authorises ACSU to investigate the breaches of the Code in relation the BPL 2013 on the basis of an "oral" report. No details of this oral report and as to which official in the BCB considered it apart from the Acting CEO are before the Tribunal. It appears that the BCB management was content to leave these matters to ACSU without considering the details of the report or of any consequences that flow from it. Again, this looks like a clear breach of the Services Agreement by ACSU which BCB simply accepted without demur.

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[10] AB/BCB OB 2.1
[11] DB/TA/pp1

27. The Services Agreement and the letter of the 20 February 2013 expressly refers to the BPL 2013 to as the "Event". It is clear that the authority of ACSU under the letter dated 20 February 2013 to investigate and charge Participants under the Code was restricted at all material times to the BPL 2013. To make it absolutely clear, the Tribunal finds that until this point in time in February 2013, ACSU did not have any authority from BCB to investigate or prosecute any breaches of the Code relating to the Friends Life T20 ("**FLT20**") since the Services Agreement and the letter agreement of February 2013 contain no reference to it at all. It follows that any action taken by ACSU in relation to the FLT20 after this letter agreement must be without authority.

28. The letter agreement of the 20 February 2013 contains an express agreement between BCB and ICC that "*... following the conclusion of the investigation and in the circumstances where the investigation decides that there is a case, or cases to answer ...to enter into good faith discussions to determine whether such matters should be the subject of proceedings under the ...Code...*" (clause (5)).

29. The evidence before the Tribunal is that before he left Bangladesh, the Defendant No. 9 Mr. Kaushal Lokurachchi ("**KL**") was spoken to by DY about KL's failure to report an alleged approach made by GR. It is plain ACSU did not have any authority at that stage to pursue KL. If DY felt this was a significant matter to raise with KL, he was obliged to inform BCB about this matter. However, since he was not aware of the Services Agreement, it is not surprising that BCB never heard about these matters from DY.

30. Following the investigations by ACSU, by another letter agreement dated 12 August 2013[12] BCB entered into a further agreement to constitute ICC acting through ACSU and/or its legal functions as the Designated Anti-Corruption Official ("**DAO**"). It authorises the ICC to "*take such steps as may be necessary in the further investigation and prosecution of breaches of the Code...*". This letter agreement again expressly refers only to the BPL 2013 and to no other Match or Event. It follows that until this point in time, there is no reference to any event other than the BPL 2013 in the Services Agreements or the agreements by letter. There is no reference in this letter agreement to the FLT20. Each of the Services Agreement and the two letter agreements were signed by the Acting CEO of the BCB.

[12] DB/pp49-51

31. Some Charging Recommendations also dated the 12 August 2013[13] were made by ICC to BCB. It expressly refers to 4 matches within the BPL 2013 as being the relevant matches. Those matches are the Sylhet, Chittagong, Khulna and Barisal matches played on the 25 January, 2 February, 11 February and 12 February 2013 respectively. However, surprisingly this document for the first time refers to the FLT20 tournament to be *"held in the summer of 2013 in England"*. There is no evidence before the Tribunal as to where ACSU got the authority to investigate allegations of offences in respect of the FLT20. The Charging Recommendations have been accepted on behalf of the BCB by its Acting CEO. The Tribunal cannot understand on what basis the Charging Recommendations were signed by BCB in respect of the FLT20.

32. Since there is no disclosure of any material relating to this decision to approve the Charging Recommendations, the Tribunal finds that that this was not a considered decision taken by the BCB. Significantly, save for the signature of the CEO on the document, there is no evidence as to whether those in the management of the BCB were aware that the Charging Recommendations contained allegations of breaches of the FLT20 or whether anyone raised any query as to whether the FLT20 came within the jurisdiction of the BCB or the Code. No questions appear to have been asked by anyone as whether the authority of ACSU under the Services Agreement and the letter agreements extended to investigating the FLT20. The ACSU simply appears to have taken up the issues relating to the FLT20 without any reference to the Services Agreement or the letter agreements. It appears to be an afterthought, the issues having surfaced long after the BPL 2013 had concluded and long before even the preparations for the FLT20 had begun.

33. Further, no good faith or meaningful discussions as required by the letter agreement of the 5 February 2013 appear to have taken place before the letter agreement of the 12 August 2013 and the Charging Recommendations were placed before BCB by ACSU and were accepted by BCB.

C. BACKGROUND FACTS:

Betting and Gamblers:

34. Today, most forms of gambling are legal in many jurisdictions. However, it is still illegal in many countries, as in the Indian Sub-continent. Gambling on sport,

[13] DB/pp49-51

the entire result is manipulated. Therefore arrangements are made where the result of the match is known in advance. Spot fixing takes place when specific incidents within the game are prearranged. For example, how many wides a bowler will bowl in a particular over or session; how many runs will be achieved in a particular bracket of overs; how or when a batsman will be out; and, the method, or the score or the over may be relevant in this context.

39. The fixer obviously has to work with the players or team officials in order to fix the match or an aspect of it. The player may initially be approached with an innocent offer of a great sponsorship deal. The initial approach may include free meals and gifts in order to lead the target into a trap. Once the confidence of the target is gained, the fixer will ask for inside information or that the target does something during a match. Once involved, it is difficult escape the clutches of the fixer. This is where the Code comes into play and those approached, must immediately report such approach to the authorities. This is an essential part of Code and the awareness programs run by regulators on the Code. Unchallenged evidence was led before the Tribunal that some of the Participants in the BPL, mainly, the players received training from ACSU during the BPL 2013[17]. Such a rule requiring immediate report of an approach is intended to allow the regulator to take action to prevent the proposed fix.

<u>Report of corrupt approach:</u>

40. In the context of this case, the prosecution case and the evidence before the Tribunal led by it is that either on the 30 or 31 January 2013 in a hotel room at the Peninsula hotel, JC said to Ian Lesley Pont (**"IP"**), the head coach of DG, *"Are you up for earning some extra money?"*, to which IP automatically said *"Yes"* assuming that JC was talking about small non-contractual bonuses that were handed out to the team members by the DG management.

41. This exchange in passing was followed up by JC on the evening of Friday, 1 February 2013 after DG had played their 6th match of the season against DR and which was won by DG by 13 runs. This meant that DG had now won 5 out of the first 6 games and topped the league table. That evening, JC asked IP if he remembered *"the thing that we talked about the other day"*. This was followed by JC saying *"Do you know what I am talking about or do I need to spell it out?"*. JC then said that the plan was to fix the match that was to be played the next day with CK so that DG would lose the match. IP was informed by JC that the right captain was to be chosen to carry out

[17] EB/T16/POS-Ex 2

the plan and that Mashrafe Mortaza ("**MM**") should be rested and MA would captain in his place. There then followed a discussion between JC and IP as to who else might be interested in getting involved and the name of Owais Shah ("**OS**") was raised.

42. Later that evening, JC returned to IP's room and discussed the plan to fix the CK game in much more detail. Reading from a piece of paper that was a quarter size of an A4 page, details were given by JC of what was to happen in different overs, who was doing what, what to do if DG batted first and what to do if DG bowled first. IP was informed that MA (Robin) would play and that the leg spinner KL will play instead of Chris Liddle ("**CL**"). IP was offered US$6,000 for being part of the fix.

43. The Tribunal accepts that this approach came as a complete surprise to IP and that he contacted his wife that evening, told her about what had happened, that he did not want to be part of it, and that he wanted to fly home immediately. He told her that he would report the matter. However, the Tribunal notes that IP did not report the matter immediately as he was required to do under the Code although he knew the names, telephone numbers and hotel rooms of the relevant ACSU officials and who were staying in the same hotel as IP. The Tribunal feels that this was a lapse on his part and several valuable hours and the opportunity to take positive action to prevent the playing of the fixed match were lost.

44. The next morning, at the breakfast table, IP met POS, who came and sat next to him at the table. POS enquired whether IP wanted to talk about something. IP then informed POS what he could remember from the night before and his conversations with JC. He informed POS that he had come to the decision to take the next flight home. POS explained to IP that it would be extremely helpful for ACSU if IP would stay in Bangladesh and secretly record any future conversations with JC to provide some direct evidence that could be used to prove his involvement in fixing matches. IP repeated his desire to leave the country immediately and not have anything to do with the franchise.

45. However, the Tribunal accepts that IP was persuaded by POS to do whatever he could to help the ACSU put together a strong case against those who were corrupting the sport. POS informed IP that he and ACSU would support him throughout. The Tribunal feels that IP felt under pressure to co-operate with ACSU and as a result he changed his initial plan not to have anything to do with the DG and leave Bangladesh immediately. IP was never advised that his acting on the instructions of ACSU in implementing the fix could put him at risk of being prosecuted under the Code or under Bangladeshi laws.

ICC decision to allow corrupt matches be played:

46. In the mean time, arrangements were put in place to record a conversation with JC in which details of the fixed match were to be discussed. Arrangements were made to record the event on a pen sized video camera and a separate audio recording device which DYset up in IP's room. IP also set up his own Apple Mac laptop computer to record the event. IP then called JC and asked him to come to his room and the full details of the fix was discussed and recorded. The recording was then provided to DY who by then had the evidence he wanted.

47. The whole plan was then reported by DY to YPS. YPS instructed DY that the corrupt match be played according to the plan that JC had related to IP. The Tribunal accepts the evidence of IP that the match between DG and CK was fixed both as to the result and also in respect of certain aspects of it.

48. The Tribunal has already noted that there are no witness statements from DY and YPS and they have not been called as prosecution witnesses although they have direct knowledge of the fixed CK and DG match and the decision to play the fixed match.

49. It is obvious that the focus of ACSU was on gathering evidence and not on prevention of the fixed match. BCB were not informed of any of this although this was a significant matter or occurrence in the context of the Services Agreement and ACSU was contractually obliged to bring it the attention of BCB. ACSU had no decision making power under the Services Agreement but did take the decision to allow the fixed match to go ahead. No discussions took place with IP or anyone else as to whether the match could be played without those who were named by JC to be involved in the fix. The local law enforcement authorities were not consulted and no consideration was given to whether this would amount to a breach of the local laws. Although there are no specific laws in Bangladesh dealing with corruption in sport, there are penal laws prohibiting activities such as cheating[18] and conspiracy to cheat.

50. The Chairman of ACSU, Sir Ronald Flanagan, expressed his regret about this failure to inform BCB of this significant matter and made a personal unreserved apology on behalf of ACSU for not involving BCB at that stage. He assured the Tribunal that this will not happen in the future.

[18] S. 420 of the Penal Code

Tribunal's concerns:

51. The Tribunal has been concerned about this decision of ACSU as soon as it learnt about it at the Preliminary Hearing held on 24 November 2013. It appeared to the Tribunal that a breach of the Code was allowed to take place by allowing the fixed match to take place. Amongst other matters, the Tribunal directed in its Order No. 1 as follows:

> *"....*
>
> *During the opening of the case for the Complainant, the Tribunal became aware for the first time of facts that it feels requires a proper and satisfactory explanation. Apparently, Mr. Ian Pont, the coach for the Dhaka Gladiators, reported the fix to ACSU soon after he was approached but before the allegedly fixed match, which forms the subject-matter of these proceedings, was played. The Tribunal was informed that Mr. Pont was instructed by ACSU to proceed with the plan as allegedly fixed. Accordingly, the whole scheme alleged against the Defendants was allowed to take place under the eyes of ACSU and a fixed game was played according to the alleged conspiracy.*
>
> *The Tribunal desires that this aspect of the matter should be placed fully before the Tribunal in the Briefs to be considered at the hearing on preliminary issues and liability and submissions made on the justification for this decision.*
>
> *The Tribunal further enquired whether it has any powers to make any recommendations if, after full consideration of the case, it concludes that other persons should have been also implicated. Mr. Taylor fairly stated that whether the Tribunal has powers or not, its recommendations will be considered fully by the BCB and the DAO and any action required will be taken.*
>
> *...."*

52. The concern of the Tribunal remained throughout the hearing and questions were addressed to each one of the relevant witnesses as to how a sports regulator who was under an obligation to prevent corruption in the sport would allow a corrupt match to take place.

53. It became clear from the evidence and the Tribunal finds that the decision to allow the fixed match to take place was solely taken by ACSU and the approach to fix the match or the decision to allow the fixed match to take place was not communicated to BCB. Further, the Tribunal finds that no consideration was given to whether the

facts which were then known to ACSU amounted to a breach of the domestic Bangladesh laws and whether the law enforcement authorities should have been informed. In this context, the Tribunal notes from Mr. Ravi Sawani's evidence that in dealing with match fixing in India, he had liaised throughout with the Indian Police[19].

54. The Tribunal expresses the view that the correct approach would be to involve the national board in every case immediately and inform the local law enforcement authorities. Acting on its own, exposes the personnel of ACSU responsible for the decision and those who act on ACSU's instructions to a risk of facing an allegation of being involved in the conspiracy of the fixers. The Tribunal is of the view that there must have been other alternatives available to allowing the fixed match to take place. One solution would be to cancel the match and re-fix it for another day. This happens quite often when rain delays or stops play. Another alternative that is available is to speak to the team or teams and play the match without those who were named. None of these options appear to have been considered.

Fixed matches played:

55. The evidence before the Tribunal is clear and the Tribunal finds that a fixed match between DG and CK was in fact played out with the result that CK won the game on the basis of corruption and not in accordance with the skills of the players. The Barisal match was also fixed and this was also played out according to the plan.

56. Some emails were placed before the Tribunal from other sports' regulators that in a similar situation, each regulator would decide on a 'case by case' basis as to what should be done. However, it appears that more often than not, sports regulators do not stop matches or events even where they have information about corruption in the match or event. The Tribunal does not agree that allowing corruption to take place can be consistent with the role of any regulator entrusted with the role to prevent corruption in the sport it regulates.

57. Such passiveness on the part of the regulators would be welcomed by the fixers and would encourage them and their accomplices to continue with their efforts to spread the cancer of corruption. If the fixers who were involved in corrupting the DG versus CK match (the people like Varun Gandhi and Sunil Bhatia) knew that the match was allowed to be played according to their plan by the ICC, they would laugh all the way to their banks with their ill-gotten spoils. All the evil consequences of

[19] EB/T19/Ravi Sawani/Para 4/pp2

corruption mentioned in ECB v Kaneria[20] quoted above will then inevitably follow causing irreparable harm to the sport.

58. What was even more surprising than allowing fixed matches to be played in front of the innocent spectators in Bangladesh and abroad is that the BCB/ACSU tried to justify its decision solely on the basis that such a decision would get more direct evidence which could be used for a successful prosecution of players. The result in this case shows that this did not happen. The evidence that was adduced before the Tribunal became unreliable, partly as a result of ACSU's decision to allow fixed matches to be played and partly as a result of the flawed investigation process. It is also significant that none of those involved in the betting markets, in particular, VG, who is alleged to have instigated the corruption has been investigated by ACSU or charged under the Code or prosecuted under the domestic Bangladeshi laws.

Investigation:

59. As stated above, on the 20 February 2013, following an oral report by the head of ACSU to the BCB, significant concerns and suspected breaches of the Code were highlighted. By a letter of the same date[21], the BCB appointed ICC/ACSU to be exclusively responsible for conducting the required investigation into the suspected breaches of the Code and appointed ACSU as the DAO.

60. There then followed an investigation by ACSU in relation to the corrupt match played on the 2 February 2013 and the allegations of corruption during the BPL 2013. The investigation focused on the BPL 2013 as a whole and specifically on the Sylhet, Chittagong, Khulna and Barisal matches held on the 25 January and 2, 11 and 12 February 2013 respectively.

61. It also appears that the investigation also extended over allegations of corruption in failing to report in respect of the FLT20 which was to be played in England in July – August 2013. Given the express limitation of the investigation to the BPL 2013, the Tribunal finds that the ACSU did not have any authority under the Services Agreement and the letter agreements to extend the investigation in relation to the BPL 2013 investigations into the FLT20. A considerable amount of time and resources were devoted by ACSU to this endeavour which, according to the Tribunal, was not justified by the Services Agreement or the letter agreements.

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[20] AB 2.1
[21] DB Pg. 47

62. It appears to the Tribunal that one of the first players to be confronted with the allegations of corruption was MA. On the 23 May 2013 he was interviewed and he made a confession to representatives of the ICC.

63. Following the investigation, on 12 August 2013, YPS as the head of ACSU recommended that certain charges be brought against the Defendant Nos. 1-9[22]. The letter dated 12 August 2013[23], as the letter dated 20 February 2013 was drafted and placed before BCB for signature and was signed by its CEO. It authorised ACSU to take such steps under the Code as it may consider necessary in the further investigation and prosecution in relation to the breaches of the Code during the BPL 2013. As stated above, there was no reference in this letter to the FLT20. It appears that even at this time, the BCB was not informed by ACSU about what and how investigations were being carried out. The BCB also took no initiative to find out from ACSU about these matters and left the investigation and all matters relating to the charging of defendants to ACSU.

64. The findings of the Tribunal that ACSU did not have any authority from BCB to investigate any allegations in respect of the FLT20 must have consequences on the resulting investigation, the charges in the Notice of Charges and the proceedings before the Tribunal. The Tribunal is set up under the Code to hear and decide the allegations which the DAO brings in the Notice of Charges with proper authority from BCB. Since the Tribunal finds that BCB did not authorise the DAO to investigate into the FLT20 matches, the inclusion of the charges relating to the FLT20 by the DAO is an unauthorised act. The Tribunal holds that this absence of authority in the DAO to include charges affects the jurisdiction of this Tribunal to hear any of the charges relating to FLT20 and that it does not have jurisdiction to make determinations in respect of these charges.

65. In any event, the Tribunal has considered these charges on the merits and has made determinations on them as well.

D. CHARGES:

Schedule:

66. ACSU, acting as the DAO, issued notice of charges dated 13 August 2013 in respect of each of the Defendant Nos. 1-9[24]. The charges brought can be summarized as

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[22] DB Pg. 49
[23] DB/pp52-53
[24] DAO Pg. 54, 70, 86, 100, 116, 126, 142, 156, 175

follows:

Defendant	Sylhet match (25.01.13)	Chittagong match (02.02.13)	Khulna match (11.02.13)	Barisal match (12.02.13)	FriendsLife T20 (July/August 2013)
Jishan Chowdhury		2.1.1 (mastermind behind fixing effort)		2.1.1 (co-instigator of fixing effort)	2.1.4 (soliciting others to participate in fixing)
Salim Chowdhury		2.1.1 (co-instigator of fixing effort)	2.1.1 (instigator of fixing effort)	2.1.1 (co-instigator of fixing effort)	2.1.4/2.5.2 (covering up JC offence)
Gaurav Rawat	-	2.1.1 (party to Chowdhurys' fixing effort) 2.1.4 (asking Loku and Ashraful to conduct further, separate fix)	2.1.1 (party to Salim Chowdhury's fixing effort)	2.1.1 (party to Chowdhurys' fixing effort) 2.1.4 (asking Ash to carry out further, separate fix)	
Mahbubul Alam (Robin)		2.1.1 (party to Chowdhury's fixing effort)		2.1.1 (party to Chowdhury's fixing effort)	
Mosharaff Hossain (Rubel)		2.1.1 (party to Chowdhury's fixing effort)		2.1.4 (party to Chowdhury's fixing effort)	
Mohammad Rafique		2.1.4 (encouraging Ash to participate in Chowdhury's fixing effort)		2.1.4 (encouraging Ash to fix with Chowdhurys) 2.1.1 (party to separate fixing arrangement with Ash)	
Darren Stevens		2.4.2 (failure to report approach to participate in fixing)			2.4.2 (failure to report approach to participate in fixing)

Ingredients of Offences:

67. Several defendants are charged with breaching Article 2.1.1 of the Code which deals with *'fixing or contriving in any way or otherwise influencing improperly or being a party to any effort to fix or contrive in any way or otherwise influence improperly, the result, progress, conduct or any other aspect of any Match or Event'*.

68. These charges require proof beyond reasonable doubt that the defendant charged:

68.1 was, or agreed to be, a party to an *'effort'* to fix (or contrive or otherwise improperly fluence)

68.2 the result (i.e., match-fixing) or *'any other aspect'* (i.e., spot-fixing)

68.3 of a 2013 BPL match or a 2013 FLT20 match; and

68.4 intended to carry out his part in the fix as he had agreed to do.

69. It is common ground between the parties that in an allegation under Art. 2.1.1 of the Code, it must be proved beyond reasonable doubt that there must be the requisite intention on the part of a defendant to carry out the fix as agreed[25].

70. Several defendants are charged with breaching Article 2.1.4 of the Code which deals with *'soliciting, inducing, enticing, instructing, persuading, encouraging or facilitating (a) any Participant to commit an offence under any of the foregoing provisions of this Article 2.1 and/or(b) any other person to do any act that would be an offence if that person were a Participant'*.

71. These charges also require proof beyond reasonable doubt that the defendant charged:

71.1 solicited, induced, enticed, instructed, persuaded, encouraged or facilitated;

71.2 another Participant;

71.3 to help fix the outcome or any other aspect of a match, in breach of Article 2.1.1.

72. The Defendant No. 8, Mr. Darren Stevens (**"DS"**) is charged with two charges of breaching the Code Article 2.4.2 which deals with *'failing or refusing to disclose to the Bangladesh Cricket Board (without undue delay) full details of any approaches or*

[25] ICC v Butt, Asif and Amir (Note 16 Opening Brief)

invitations received by the Player ... to engage in conduct that would amount to a breach of this Anti-Corruption Code'.

73. To sustain these two charges, the BCB/ACSU must prove beyond reasonable doubt that:

73.1 DS received an approach or invitation to engage in conduct that would amount to a breach of the Code and

73.2 did not report to the BCB.

Burden and standard of Proof:

74. Article 3 of the Code places the burden on the BCB/ACSU to prove the charges they have brought to the comfortable satisfaction of the Anti-Corruption Tribunal, *'bearing in mind the seriousness of the allegation that is being made, that the alleged offence has been committed. This standard of proof in all cases shall be determined on a sliding scale from, at a minimum, a mere balance of probability (for the least serious offence) up to proof beyond a reasonable doubt (for the most serious offences)'.*

75. The Tribunal has ruled in its Procedural Order No. 1 and on at least two further occasions, when invited by BCB/ ACSU, to reconsider its previous ruling that the BCB/ACSU must prove all the charges brought (including the least serious charge under Art 2.4.2 of the Code of failure to report) beyond reasonable doubt.

76. It was submitted by BCB/ACSU that the learned Anti-Corruption Tribunal that heard the case brought under the ICC Anti-Corruption Code against the Pakistani players (Butt, Asif and Amir) construed the Code's requirement of proof beyond reasonable doubt to mean that the evidence submitted needs to have the same degree of cogency *'as is required in a criminal case before an accused is found guilty. That degree is well-settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible, but not in the least probable" the case is proved*

beyond reasonable doubt, but nothing short of that will suffice'.[26] The Tribunal adopts these statements as being correct and relevant in this context.

77. The Procedural Rules adopted by the Tribunal provide that *'a party seeking to rely on a particular fact or facts (for example, in rebuttal of a charge, or in support of a defence to a charge) shall have the burden of proving such fact(s) on the balance of probabilities'*. [27] As an example it was submitted by BCB/ACSU that if a party asserts that evidence has been obtained in circumstances that are so unfair or improper that it must be excluded from the record, that party bears the burden of proving the facts that support that claim on the balance of probabilities. The Tribunal accepts this principle as being applicable in this case.

Absence of guidelines / protocols for investigations:

78. Much argument was made in the oral and written submissions about the process to be followed during the course of investigations of breaches of the Code. On the one hand, it was argued that these proceedings are quasi-criminal in nature and that the processes of investigation and interview of suspects and witnesses must be fair, adequately preserving their respective rights. On the other hand it was argued that these proceedings are in the nature of disciplinary proceedings to which admittedly the judicial rules of evidence are inapplicable, and as long as the evidence has been obtained fairly, the evidence should be admitted.

79. The question of what weight is to be attached to the admitted evidence is obviously a matter for the Tribunal. It has also been pointed out that the Code imposes an obligation upon those bound by it to cooperate with any investigation thereunder.

80. The Tribunal finds on the basis of the admitted evidence that there were no guidelines or protocols in place for investigation to be conducted. The investigators acting on behalf of ACSU were devising their own methods of investigation which varied from time to time. On some occasions, notes were kept or recordings made. In other situations, it appears that notes were not taken nor any recordings of interviews made. More often than not there is no statement as to who recorded the witness statement from a witness or a defendant or who was present during the interview. Most of the witness statements are not witnessed by anyone.

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[26] ICC v Butt, Asif and Amir, Anti-Corruption Tribunal decision dated 5 February 2011 [AB tab 8], para 27, quoting Denning J in Miller v Minister of Pensions, 1947 2 All ER 372 [AB tab 16] at 373H; endorsed on appeal, Asif v ICC, CAS 2011/A/2362, award dated 17 April 2013 [AB tab 17], p.16.

[27] [AB tab 3, para 4.2.2].

81. In any event, the evidence shows that MA and KL were interviewed on two separate occasions before the witness statements that have been produced before the Tribunal were prepared and signed by them. However, no notes of the previous interviews were placed before the Tribunal.

82. The Tribunal finds that this process is consistent with the process that has been followed in the case of DS. The Tribunal was provided with his initial statement and the recording and transcript of his second interview, in addition to the witness statement which was produced as his evidence before the Tribunal. The Tribunal feels that the absence of a written system in any guidelines or protocols for investigation of breaches of the Code and interviewing the suspects and the witnesses is a serious lacuna. It adversely affects the fundamental sporting imperatives and the overriding imperative of fairness. As a result, the Tribunal approached the evidence given by the investigators and others on behalf of the prosecution with substantial caution.

Evidence must be reliable:

83. The Procedural Rules of the Tribunal provides that it *'is not a court of law'*.[28] Further, the Procedural Rules state that the Tribunal *'shall not be bound by judicial rules governing the admissibility of evidence. Instead, facts relating to an offence under the Anti-Corruption Code may be established by any reliable means, including admissions. Objections such as hearsay, etc. shall go to the weight to be given to such evidence, not to its admissibility'*.[29]

84. These Rules follow Article 3.2 of the Code, which states that the Tribunal *'shall not be bound by judicial rules governing the admissibility of evidence. Instead, facts relating to an offence under this Anti-Corruption Code may be established by any reliable means, including admissions'*. The CAS stated in the Asif appeal, this *'releases the Tribunal from the confines of judicial rules governing the admissibility of evidence'*.[30] In line with Art 1.2 of the Code, *'technical'* objections should be rejected meaning that the Tribunal *'must consider weight rather than admissibility'*.[31]

85. The Tribunal in the Butt case also said that considerations of the weight to be given to evidence are *'subject always to the overriding imperative of fairness which is necessarily to be implied into the Code. We recognise that the principles that have lain behind the exclusion of certain forms of evidence from being heard in English*

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[28] [AB tab 3, para 1.1].
[29] Ibid. para 4.4.1
[30] Asif v ICC, CAS 2011/A/2362, award dated 17 April 2013 [AB tab 17], p.17.
[31] ICC v Butt, Asif and Amir, Anti-Corruption Tribunal decision dated 5 February 2011 [AB tab 8], para 29.

courts will have resonance even where questions of weight are being considered. It is obvious, for example, that hearsay evidence of what someone said outside of the Tribunal hearing is of less weight than evidence given by witnesses in court".[32](Underlining added)

86. The Tribunal considered the scope and effect of this *'overriding imperative of fairness'* It accepts that this relates mainly to the issue of reliability and that the Tribunal's reference to the *'overriding imperative of fairness'* also included the doctrine that in certain, albeit rare circumstances evidence may be excluded as an abuse of process or not given its full weight because of the circumstances in which it was obtained. In that situation, the admission of that evidence or in the Tribunal's view, giving it full weight *'would have such an adverse effect on the fairness of the proceedings that the court ought not to..."* admit it or give it full weight.

87. It was also submitted that the only other potential argument would be that the BCB/ACSU gathered further evidence at interview in such a manifestly improper and unfair way that admitting that evidence would destroy public confidence in the integrity of the entire proceedings and the Code to such a degree that it would be better to let the defendants go free than allow the proceedings to go ahead.

88. True it is that no allegation of lying has been or could be made against the ACSU in these proceedings as in the case of R v Mason cited by Mr. Patel. However, complaints have been made about the way the ACSU gathered evidence in interview and the Tribunal makes its own analysis of the methods of investigation and recording interviews. The way in which the witness statements of certain of the witnesses produced before the Tribunal have been prepared, in the Tribunal's view makes the testimony contained in them unreliable.

89. Obviously *'[d]irect evidence is moreweighty than hearsay evidence. [If] A says he saw something, it is better evidence than B saying that A told him he (A) saw something'.*[33] However, the Tribunal recognises that hearsay evidence is also admissible in these proceedings, albeit that it may be given less weight than direct evidence. The Tribunal's own Procedural Rules states: *'Objections such as hearsay, etc. shall go to the weight to be given to such evidence, not to its admissibility'.*[34]

90. The CAS has emphasised that *'when assessing the evidence [in a corruption case], the Panel has well in mind that corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their*

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[32] ICC v Butt, Asif and Amir, Anti-Corruption Tribunal decision dated 5 February 2011 [AB tab 8], para 29.
[33] Beloff, 'Finding out the facts: the role of the Sports Disciplinary Tribunal,' (2002) 2 I.S.L.R. 35-37 [AB tab 49].
[34] [AB tab 3], at para 4.4.1

wrongdoing'.[35] As a result, direct evidence of corruption is not a prerequisite; instead, charges can be upheld based entirely on the inferences drawn from indirect (or *'circumstantial'*) evidence.[36]

91. Based on the above provisions and cases cited, the Tribunal accepts that the key issue is simply whether the evidence offered is reliable in order to be admitted or for full weight to be given in order to prove a case beyond reasonable doubt. The Tribunal also accepts the principle that weight of the evidence and not admissibility is the key.

Evidence of co-conspirators:

92. The situation faced by this Tribunal in considering the evidence before it is that the evidence against the contesting defendants comes mainly from defendants who have either admitted, namely, MA and KL, or denied offences, namely, DS, with which they have been charged in relation to their part in respect of match fixing. Evidence has also been given by someone who actively participated and facilitated the playing of at least one fixed match, namely, IP. In either case, the witnesses can properly be described as co-conspirators on the basis of their evidence alone.

93. It follows that questions about reliability, admissibility and weight have arisen about the evidence given by two types of witnesses in the context of this case: first, the evidence given by a defendant against another. In particular focus is the evidence of a defendant who has admitted the offence and his evidence is relied upon by the prosecution to prove the guilt of a co-accused who is disputing the allegation. The other category of evidence is that given by prosecution witnesses who were complicit in the decision to allow a fixed match to take place and did take part in such fixing.

94. The evidence of MA, KL and DS fall in the first category while that of IP and POS falls in the second category. Except to the extent that the evidence goes against its maker or where the Tribunal has expressly made a finding accepting part of the evidence given by any of these witnesses is corroborated by other clear and independent evidence, the Tribunal treats their evidence reflected in the witness statements with the utmost suspicion. The suspicion arises because of the manner in which the

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[35] Oriekhov v UEFA, CAS 2010/A/2172, award dated 18 January 2011[AB tab 21], para 54; Savic v PTIOs, CAS 2011/A/2621, award dated 5 September 2012 [AB tab 22], para 8.7.

[36] See, e.g., ICC v Butt, Asif & Amir, Anti-Corruption Tribunal determination dated 5 February 2011 [AB tab 8], para 30, citing Attorney General of Jersey v O'Brien, 2006 WL 690572 (PC App No 50 of 2005 (Lord Hoffman) [AB tab 23] Kaneria v ECB, Appeal Panel decision dated May 2013 [AB tab 6], para 9.

statements of these witnesses have been produced or their role in allowing fixed matches to be played.

95. It has been rightly submitted that if the Tribunal believes that a defendant is exaggerating his evidence against another defendant in order to minimise his own culpability, or in an effort to secure mercy for himself from the Tribunal, then those facts can and should take that into account in determining the weight to be given to that evidence. But if not, i.e., if the Tribunal considers that that evidence is honest and accurate, then there is no basis at all to give it less weight just because it is given by an alleged co-conspirator.

96. The Tribunal finds that each of MA, KL and DS were interviewed on three separate occasions. The Tribunal has the statements produced by DS on each of the three occasions. The first and second statements were produced by the prosecution on the basis of requests for disclosure by Counsel acting on behalf of DS. The Tribunal also has a recording and transcript of the last interview that DS had at the offices of Bird & Bird. However, in sharp contrast to the case of DS, no statements or records from the first or second interviews of MA or KL have been produced. In the case of each of these Defendants, the Tribunal has the witness statement that was prepared by the prosecution and presented to them for signature. No evidence or explanations have been given by any of the prosecution witnesses as to whether any statements were recorded at the earlier interviews and what if anything was said or admitted at those interviews.

97. The Tribunal finds parallels between the interviews of DS on the one hand and MA and KL on the other. It has already noted that there were no guidelines or protocols in place for dealing with suspects or witnesses at interviews. The first interview in each case of MA and KL was a short interview lasting minutes. There then followed a longer interview. In the case of MA, this interview lasted several hours over a period of four days. There was a similar long interview with KL. In the end, very well prepared statements were produced by the prosecution solicitors with all the i's dotted and the t's crossed. These were then placed before each of MA and KL and were signed by each of them. These statements have been placed before the Tribunal as the evidence of the witnesses and were adopted by each of them as their evidence.

98. In the case of DS, the Tribunal notes how the statements have developed over the period during which he has been under investigation. The Tribunal also has the benefit of hearing the recording of part of the final interview and seeing the transcript of that interview. The Tribunal finds that a lot of questions were leading in

nature and that many questions were rolled up with statements or suggestions from the interviewers which were simply being adopted by DS. On many occasions, questions which included more than one question and to which more than one answer was possible, were simply accepted by a "yes". The Tribunal has no doubt that the interviews of MA and KL followed the same pattern. The relevant evidence given by MA, KL and DS will be considered by the Tribunal in the context of the case advanced by the BCB/ACSU against each defendant.

99. In respect of IP and POS, the same considerations of reliability, admissibility and weight apply. IP was instructed by ACSU to assist and although he did not wish to, he was persuaded to assist ACSU. The Tribunal feels that he felt obliged and that he did not have any choice but to assist ACSU. His co-operation was not voluntary and by agreeing to assist the ACSU, it is clear that he failed to act as the head coach and discharge his obligations in that capacity to his team. He was also unable to fulfil the pastoral role that a head coach normally plays towards his team members in helping and guiding them. His position as head coach of DG was totally compromised as soon as he started to act on the instructions of ACSU.

100. Indeed, the Tribunal finds from the transcript that after the meeting with JC which was recorded, that IP felt extremely bad about the conflict he faced in continuing to work as head coach and at the same time acting on the instructions of ACSU. He also asked POS whether he should 'have a quiet word with" DS but was instructed not to do so. The Tribunal finds that POS was so inextricably linked with instructing IP to carry on with the fixing plans regarding the Chittagong match that it would be wrong to give his evidence any weight. There was no evidence as to whether anyone in ACSU considered whether acting in the way that IP and POS did in allowing the fixed Chittagong match to be played would expose them to be charged under the Code or prosecuted under the Bangladesh laws.

101. There is another troubling aspect of the involvement of IP and POS. The evidence from IP was that he was offered US$6,000 to arrange the fixing of the Chittagong match. After his co-operation with ACSU and after the fixed match was played, IP was given US$6,000 in cash. Although this payment is denied by SC and JC as being made for IP's part in the fix, IP states that he received this amount. IP reported the receipt of this US$6,000 to POS who related it to YPS in Dubai. He was instructed by ACSU to keep this amount. IP then retained the amount of US$6,000.

102. The BCB/ ACSU in their Closing Brief invites *"the Tribunal to find that as far as the Chowdhurys were concerned this US$6,000 constituted payment to Pont for his apparent acquiescence ... in the fixing of the Chittagong match."* The Tribunal finds

that the consent of ACSU allowing IP to retain this money admittedly as the proceeds for his part in the Chittagong fix is disturbing. The evidence shows that IP, albeit on the instructions of ACSU have been involved in fixing the Chittagong match right from the outset and continued until the end when he receives his payment for his part which she is allowed to retain. He was unable to explain to the Tribunal the basis for keeping this money save that it was approved by ACSU. His involvement from in the fix and the receipt and retention of the US$6,000 makes the evidence of IP and POS even more unreliable.

103. The Tribunal has considered the question of whether the evidence of MA, KL and IP should be admitted. Having considered the principles set out above, the Tribunal holds that it should and does admit the evidence of these prosecution witnesses. However, the Tribunal has no doubt that to give such evidence full weight when it is relied upon to establish the guilt of another accused would be contrary to the sporting imperatives and the principle of fairness which runs as a golden thread through the Code. To do so would destroy public confidence in the integrity of this Tribunal's proceedings. Their evidence in the statements provided by them go beyond their own confessions and the Tribunal finds that in so far as they refer to other defendants, such evidence was introduced by or on the suggestion of ACSU and was not voluntary. The Tribunal therefore admits the evidence but for the reasons given, it is unable to give such evidence any weight. Accordingly, the evidence does not prove the case against the other defendants beyond reasonable doubt.

104. In any event, there is a clear discrepancy between the evidence given by IP and the other prosecution witnesses when they were asked about why a fixed match was allowed to be played on the 2 February 2013. Explanations were given by the BCB/ACSU prosecution team as to why this happened and the witnesses for the prosecution sought to explain and downplay the situation by stating that they did not know that a fixed match was going to be played. It was asserted that they only had a suspicion on the basis of the report by IP. The Tribunal cannot accept this evidence given by the prosecution witnesses and has already accepted the evidence of IP on this point that the DG v CK and the DG v BB matches were fixed. It follows that the evidence from the other prosecution witnesses who were involved in the investigation of the allegations was being adjusted to justify the playing of a fixed match. This casts doubt in the minds of the Tribunal members about the quality of their evidence in respect of the investigation process and what happened during such process.

105. As stated above, a substantial part of the evidence before the Tribunal came from co-defendants, some of whom have pleaded guilty and one who is contesting the charges. The Tribunal has admitted most of the evidence produced before it by the parties. However, it finds the evidence of MA, KL and IP is not reliable and cannot establish any charge beyond reasonable doubt against any of the contesting Defendants unless such evidence is supported by other clear and cogent independent evidence.

E. LEGAL FRAMEWORK

106. The Code states that it *'is governed by and shall be construed in accordance with the Law of Bangladesh'*.[37] Although derived from the ICC Code and being similar to the codes adopted by other national governing bodies, it is a body of rules which are to be followed as part of the rules of the game. It operates consensually as an internal set of rules by reason of the various contractual arrangements in place between the BCB, Players and Participants (as defined in the Code).

107. The Tribunal accepts that the Code should be construed and applied as an independent and autonomous text while adhering to the twin pillars of sporting imperatives and fairness and not by pure reference to the national laws of Bangladesh. In so doing the Tribunal recognises that it can be assisted by the decisions taken by other tribunals considering the ICC Code or other national codes. However, none of the parties have referred the Tribunal to any decisions of any court or tribunal where the issue and consequences of the regulator allowing a fixed match to take place has been considered. The Tribunal is accordingly faced with the unenviable task of deciding these issues for the first time.

108. Issues of construction of the Code do arise in the context of the allegations in relation to the FLT20 tournament in England and whether this Tribunal has jurisdiction to deal with those allegations.

<u>National laws:</u>

109. There are a number of provisions in the Bangladesh Penal Code 1860 dealing with dishonest conduct generally and corruption in respect of public officials, although there are no specific offences dealing with corruption in sport. It has been submitted, and the Tribunal accepts, that arranging a fixed match and having it played in the presence of a stadium full of unsuspecting fee paying spectators and

[37] (Code Art 11.5)

who were deceived may amount to breach of certain provisions of the Penal Code. This is a factor which was totally ignored by ACSU in the context of its investigations and its decision to allow one or more fixed match to take place.

110. It has been asserted that an allegation could be raised that ACSU was complicit in breaching the criminal laws of Bangladesh. The Tribunal of course takes note of the allegation, makes no finding at all in respect thereof but recommends that in future there must be close liaison between the ACSU investigators and the relevant law enforcement authorities in Bangladesh.

F. ROLE OF TRIBUNAL:

Nature of proceedings:

111. The Code set outs the offences under it[38] and the process[39] for trying allegations of offences under it and the sanctions to be imposed if any of the allegations are proved[40] It is expressly stated that *"...proceedings before the Anti-Corruption Tribunal shall be conducted on a confidential basis."*[41] The Tribunal reminds itself that the twin pillars of the sporting imperatives and fairness applies to each and every aspect of these proceedings.

112. The Code states: *"Strictly without prejudice to the arbitration provisions of Articles 5 and 7 of this Anti-Corruption Code, disputes relating to this Anti-Corruption Code shall be subject to the exclusive jurisdiction of the Bangladesh Courts."*[42] Submissions were addressed to the Tribunal in the context of the Preliminary Objections (dealt with below) on this Article as to the nature of these proceedings.

113. Art. 5 of the Code is expressly referred to as "arbitration provisions". In this context, it would be useful to note that under Art. 1.3.4 the Participants are agreeing to the exclusive jurisdiction of the Tribunal under the Code and by Art. 1.3.6 the agreement not to bring any proceedings in any court or forum inconsistent with the submissions to the Tribunals under the Code. These provisions read together shows the jurisdiction given to the Tribunal is consensual and akin to arbitrations and the reference to "arbitration provisions" has to be understood accordingly.

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[38] Art. 2 –Offences
[39] Art. 5 – The Disciplinary Procedure
[40] Art. 6 – Sanctions
[41] Art. 5.1.6
[42] Art. 11.5

114. As a result, by agreement of the parties, the Tribunal has competence to rule on its own jurisdiction. The Tribunal has accordingly proceeded to consider and rule on its own jurisdiction.

115. The Tribunal considers that the reference to the jurisdiction of the Bangladesh courts relate to any matters which are outside the provisions of Art. 5 of the Code.

Determination against contesting defendants:

116. In respect of the charges brought, admissions have been submitted by Defendant No. 1 MA, Defendant No. 9 KL, and Defendant No. 10, Lou Vincent ("**LV**"). The Tribunal, by its Procedural Order No. 1 has adjourned the cases of MA and KL to sanctions and costs hearing and by its Procedural Order No. 2, the case of LV was adjourned to the same hearing. The sanctions and costs hearing was fixed initially on the 26 February 2014 and then by consent of the parties was adjourned to a date to be fixed after the delivery of the full reasons for its Determination: Conclusions and Orders made on the 26 February 2014.

117. Considering its obligations under Art. 5.1.2 to hear each case brought by the Notice of Charges against each contesting defendant, by its Procedural Order No. 1, the Tribunal directed as follows:

"The Tribunal decided to follow its Procedural Rules and directs that there should be two stages only: the first dealing with all preliminary objections and all issues on liability; and, the second part dealing with sanctions and costs."

118. Accordingly, the Tribunal proceeded to hear and determine the charges against the remaining defendants who have denied the charges in the Notice of Charges ("**Contesting Defendants**") and the heard the Preliminary Objections and the evidence. There was no issue between the parties on whether to hear the case against the Contesting Defendants together. The Tribunal, applying its powers under Art. 5.1.11 of the Code, also considered this to be the most appropriate way of dealing with the allegations since they arise out of the same incidents or set of facts or as there is a clear link between separate incidents.

Trial in absentia:

119. Both the Code[43] and the Procedural Rules[44] allow a case to be heard and determined where a defendant does not appear or is not represented before it so long as proper

[43] Art. 5.1.10
[44] AB/Tab3

"Any ... selector ... or any person who is (a) employed by, represents or is otherwise affiliated to a ...team .. that is affiliated to ...or otherwise falls within the jurisdiction of the Bangladesh Cricket Board and that participates in Domestic Matches ..."

124. Admittedly SC and JC are the Chairman and Managing Director respectively of the franchise owning company of DG and also directors and shareholders of that company. The evidence before the Tribunal also shows that from time to time they were involved in selecting the members of the team who would play in a match and were acting as selectors. Therefore, the Tribunal finds that they fall squarely within the definition of Player Support Personnel.

Authority of BCB to enter into Services Agreement:

125. It was next argued that the BCB did not have the authority or ability to enter into a contract with ICC as it was the global body regulating cricket. The role of ICC was to help develop cricket and cannot work as part of BCB or as its agents.

126. The ICC is a company registered under the laws of the Emirate of Dubai and is a legal person. It contracted with BCB to provide certain services. The BCB has been set up under Bangladeshi law to promote cricket in Bangladesh. BCB and ICC are legally separate entities and can enter into contract outside their roles as the global regulator and a national cricketing body. On the face of the documents and the evidence led, it appears to the Tribunal that the Services Agreement and the letter agreements were signed by officials of those bodies. No evidence was produced which shows that persons entering these agreements lacked authority to enter them.

Authority of ACSU:

127. It was submitted that the Code requires BCB as the national cricketing body to report a number of matters to the ICC. Therefore, the ACSU being an integral part of ICC could not act as the DAO or the agent of BCB thereby acting in the capacity both as regulator and also on behalf of the national body.

128. The Tribunal has considered the terms of the Services Agreements and the letter agreements and the roles of BCB under the Code and also of the ICC. There does not appear to be any conflict in carrying out the two roles that the ICC has as a regulator and as the provider of the Services under the Service Agreement and the letter agreements. The roles are well defined and can be performed without compromising in any way the ICC's role as the global regulator of cricket.

Jurisdiction:

129. It was submitted that the Tribunal does not have jurisdiction to deal with the charges against SC and JC in respect of the FLT20 and that only the allegations of offences against the defendants raised before the Tribunal in respect of the BPL 2013 fall within its exclusive jurisdiction.

130. The Tribunal is a forum for resolving disputes under the Code with limited jurisdiction. Therefore, it has to make findings of fact on the limits of its jurisdiction. In response to the challenge to jurisdiction in respect of the FLT20, the provisional view of the Tribunal after hearing the Preliminary Objections was that it will hear the evidence before coming to a final decision on what led to these charges and the circumstances in which the charges have arisen. On this basis, at the conclusion of the Preliminary Objections the Tribunal directed that it will hear the evidence on all matters including on the FLT20 allegations while rejecting the Preliminary Objections. However, the intention of the Tribunal was that it would leave open the challenge to jurisdiction in respect of the FLT20 charges until the conclusion of the hearing on liability.

"40 day rule":

131. Art. 5.1.4.1 states that *"Save in exceptional circumstances or where the parties otherwise agree, the full hearing should take place no longer than forty (40) days after receipt by the Participant of the Notice of Charge"*. The Notices of Charge are all dated 13 August 2013 and have been served on all defendants soon after. The Tribunal was not even constituted within the 40 days and the trial has not been completed as stated in that Article. It was therefore asserted that the trial cannot now proceed.

132. The first point noted by the Tribunal is that as a matter of language, the word used is *"should"* and not *"shall"* This suggests that it was more of an expectation than a mandatory requirement. Secondly, the Article does not set out consequence in the case of a breach of it. This also points towards a construction that the time limit is not mandatory and that it is merely directory. Further, the parties are aware that this is the first case brought under the Code and that nine defendants were initially charged with offences. It is well known that there were considerable practical difficulties encountered by the BCB in setting up the Disciplinary Panel which led to a delay in convening a Tribunal. The Tribunal finds these facts to amount to exceptional circumstances in which case the time limit could be exceeded.

Gaurav Rawat:

133. The only point made on behalf of the Defendant No. 4, Gaurav Rawat ("GR") as a Preliminary Objection was that he was not a Player Support Personnel as he did not come within the definition in the Code.

134. It is admitted that GR was the CEO of the DG team. The Tribunal finds that he was involved in general team management and the Tribunal holds that he does fall within the definition of Player Support Personnel as quoted above.

Robin / Rubel:

135. It was submitted on behalf of the Defendants 6, Mosharraf Hossain ("**Rubel**") and 7, Mahbubul Alam ("**Robin**") that the position of DAO and the ICC must be held by two different persons. This challenge is similar to that relied upon by the Chowdhurys. It was asserted that the ICC cannot hold both positions since the DAO will be submitting documents and information under the Code to the ICC.

136. The Tribunal has found that the roles of the ICC and the DAO are different and do not overlap. In acting in the capacity of DAO, the ACSU Unit of ICC was acting as the agent of BCB and when sending the material required under the Code to the ICC would be acting on behalf of the BCB.

H. RULING ON PRELIMINARY OBJECTIONS

137. The Tribunal heard the Preliminary Objections and made the following ruling:

"The Tribunal has considered the Prosecution Opening Briefs, the Answer Briefs of the defendants raising preliminary objections and has considered the submissions of counsel of the parties at length. For reasons that will be given by the Tribunal at the end of the hearing on liabilities, the Tribunal rejects objections that have been raised including those relating to the Friends Life T20

.... "

138. Although the Tribunal rejected the objections and directed that it would proceed to hear the matter on the merits, it intended that the ruling on jurisdiction should be provisional only in respect of the FLT20. At the conclusion of the hearing, having heard the evidence the Tribunal concluded that in respect of the FLT20 charges that it had no jurisdiction to deal with them and also that they were not proved on the basis of the evidence.

139. The BCB/ACSU raised objection at the conclusion that they understood the Tribunal's ruling on jurisdiction as final and therefore had not made any submissions on jurisdiction in the Closing Briefs. The Tribunal gave all parties a further opportunity to make written submissions on jurisdiction and the BCB/ACSU and Counsel for DS made further submissions.

140. After due consideration of these further submissions and considering the evidence, the Tribunal holds that it does not have jurisdiction in respect of the FLT20 charges.

I. CASE AGAINST EACH CONTESTING DEFENDANT:

Need to consider separately:

141. Although the trial relating to all the Contesting Defendants is taking place together, the Tribunal reminds itself that it must consider each charge against each defendant separately. The Tribunal has already held that MA, KL, DS and IP are to be regarded as co-conspirators and that their evidence is unreliable for the reasons already given. No weight could be attached to the evidence of any of them in so far as it is relied upon by the BCB / ACSU to support a charge against any defendant other than the maker of the statement.

142. One of the reasons for holding that the evidence is unreliable and not attaching any weight to it is on the basis that the methodology used by the BCB / ACSU to obtain their statements was not fair and appear to have been embellished with information fed to the witnesses by the persons interviewing them.

143. The evidence of MA, KL and DS can only be considered so far as such evidence relates to them or is supported by other independent evidence in respect of the other defendants.

Documentary evidence:

144. The Tribunal received documentary evidence from the prosecution in the two bundles marked as "Documents Bundle" and "Evidence Bundle". The Evidence Bundle contained the witness statements of the witnesses relied upon at the hearing. Some of the witness statements also exhibited documents.

145. The Tribunal also received documents from the Defendants exhibited to their respective witness statements.

Witness statements:

146. The prosecution submitted statements from the witnesses they intended to rely upon. The Contesting Defendants have also provided witness statements denying the charges. The witnesses who appeared before the Tribunal have been cross-examined.

147. The following witnesses gave evidence before the Tribunal:

(1) Mr. Mohammad Ashraful: Gave evidence on 23.01.2014 until 26.01.2014.

(2) Mr. Ahmed Mustaque: Gave evidence on 26.01.2014.

(3) Mr. Kaushal Lokuarachchi: Gave evidence on 26.01.2014.

(4) Mr. Eddie Tolchard: Gave evidence on 26.01.2014.

(5) Mr. Chris Watts: Gave evidence on 27.01.2014.

(6) Mr. Alan Peacock: Gave evidence on 27.01.2014.

(7) Mr. Peter O'Shea: Gave evidence on 20.01.2014.

(8) Mr. Mashrafe Bin Mortaza: Gave evidence on 29.01.2014

(9) Mr. Ian Pont: Gave evidence on 30.01.2014

(10) Sir Ronald Flanagan: Gave evidence on 30.01.2014.

(11) Mr. Shihab (Jishan) Chowdhury: Gave evidence on 01 and 02.02.2014

(12) Mr. Salim Chowdhury: Gave evidence on 02.02.2014

(13) Mr. Gaurav Rawat: Gave evidence through Skype on 03.02.2014

(14) Mr. Mosharaff Hossain (Rubel): Gave evidence on 03.02.2014.

(15) Mr. Mahbubul Alam (Robin): Gave evidence on 04.02.2014

(16) Mr. Darren Stevens: Gave evidence on 04.02.2014 and 05.02.2014.

(17) Mr. Nizamuddin Chowdhury: Gave evidence on 05.02.2014, and

(18) Mr. Afzalur Rahman Sinha: Gave evidence on 05.02.2014.

148. The evidence of these witnesses was recorded and agreed transcripts have been prepared for the benefit of the Tribunal and the parties.

Phone Schedule:

149. The prosecution placed before the Tribunal a schedule ("**Phone Schedule**") containing extracts of information relating to phone calls made from JC's admitted number and the number ending 7582 alleged to be that of JC but which is disputed ("**Disputed Number**"). After an initial challenge on behalf of JC, the Phone Schedule was accepted as being an accurate extract of the information received from the telephone companies about calls and text messages sent during the relevant period. The Phone Schedule was prepared on the basis of the information exhibited to the witness statement of Mr. Vertigen. The Tribunal will refer to the Phone Schedule further in this Determination below.

150. There is also evidence of the location from which calls were being made using the Disputed Number.

Exclusion of statements of witnesses not presented for cross examination:

151. A number of witness statements were served by the prosecution but the witnesses were not called before the Tribunal. These were the statements from CK, OS and CL. The Tribunal ruled that these statements should not be relied upon since the witnesses were not tendered for cross-examination.

J. SHIHAB CHOWDHURY:

Chittagong match:

152. The Tribunal has considered the charge against JC that he breached Code Art 2.1.1 in that he was party to an effort to fix the outcome of the Chittagong Match.[47] The prosecution case against JC is that he approached IP and a number of Players and Player Support Personnel to fix the result of the Chittagong match and certain aspects of its. IP would be paid US$6,000 and MA Tk. 10 lacs for being part of the fix.

153. The BCB/ACSU relied upon the evidence of IP, MA, KL, CK, DS and POS in support of that charge. Additionally, BCB/ACSU relies upon the tape recording and the transcript of JC's meeting with IP in his hotel room on the morning of the Chittagong

[47] See charge letter [DB tab B1, p.54].

Match and the Phone Schedule. JC denied the evidence and stated that he did not approach anyone to fix and was not a party to any effort to fix the Chittagong match.

154. The evidence of MA, KL, DS and IP in so far it seeks to implicate JC is found to be unreliable for reasons already given and no weight is to be attached to that evidence. The Tribunal has already observed that the method of obtaining the witness statements from MA, KL and DS was not fair and therefore unreliable. It has also made similar observations in respect of the evidence given by IP and POS. Since the Tribunal finds this evidence unreliable, although given by different persons, the evidence cannot corroborate each other. For this reason the Tribunal does not attach any weight to the evidence given by MA, KL, DS and IP in so far as such evidence seeks to implicate JC in respect of the Chittagong match.

155. It follows that the Tribunal is left with the evidence from IP about the meeting with JC on the morning of the Chittagong match which was recorded. The Tribunal accepts the evidence of IP only because it is corroborated by the recording of JC in IP's room that JC came to see him that same morning (2 February 2013) and recounted the specific details of the fix.

156. The only evidence that is reliable is the recording made by IP and the transcript of that recording. These can clearly be regarded as independent evidence and the Tribunal accepts the evidence of IP that the other party in the room was JC. The Tribunal has heard parts of the recording and has seen the transcript. Therefore, there is clear, independent and cogent evidence against JC that corroborates the evidence of IP that JC was involved in the effort to fix the result of the Chittagong match.

157. The Tribunal cannot be satisfied so as to be sure on the evidence placed before it that the telephone with the Disputed Number ending 7582 did belong to JC. Amongst others, the Tribunal notes that no evidence has been provided as to who the phone is registered to. The selected records obtained from the phone company of the phone calls and text messages does not by themselves establish that the Disputed Number was being used by JC. In any event, even if it is accepted for the sake of argument that JC was using that number, the Tribunal will be speculating as to what was discussed between JC and those he called with his known number and the number sought to be ascribed to him. There were several innocent explanations advanced before the Tribunal as to why JC would call certain people. It has been established by the evidence that JC would send messages relating to team selection to various people connected with DG. From time to time, he would contact other smokers on the team to smoke cigarettes.

158. The Tribunal finds that the Phone Schedule raises more questions than it answers. There are calls to and from several persons involved with DG from two numbers, one admitted and the other denied. The Tribunal feels that in the ultimate analysis, inferences cannot be drawn from the Phone Schedule to establish the case the BCB/ACSU seek to make out against JC.

159. The evidence of MA's brother, Mustaq Ahmed, does not help in establishing the case against JC. Mustaq could not remember whether the check he cashed was from a personal account or a joint account nor could he give an explanation as to why the check was issued to MA. The Tribunal prefers the evidence given by SC and JC that they did not have any joint bank account.

160. On consideration of the evidence in its totality, the Tribunal finds that this charge is proved beyond reasonable doubt.

Barisal match:

161. In support of the charge against JC for being party to an effort to fix the Barisal Match, in breach of Code Article 2.1.1, the BCB/ACSU rely mainly on evidence of MA that JC was present in the hotel room at the Hotel Regency in Dhaka when SC told MA that he will captain the Barisal match and that he had to lose the match and later that he could try to win the match. The Tribunal notes that the prosecution seems to suggest that JC and SC being present in the same hotel suite incriminate each other. Without further evidence of involvement, the Tribunal is unable to accept that mere presence can incriminate either JC or SC. In any event, the Tribunal finds that the evidence of MA is unreliable and cannot prove the charge beyond reasonable doubt.

162. The prosecution also seek to rely upon the evidence against SC The Tribunal cannot be satisfied so as to be sure that JC and SC were working together in the way suggested by the BCB / ACSU. Having seen, heard and observed JC and SC as witnesses, the Tribunal feels that it is highly unlikely that a son who does not smoke in front of his father out of respect for him will be involved in joint criminal venture with his father. The Tribunal finds that the evidence that JC was present when SC spoke to MA, Robin and Rubel does not establish that JC was complicit in the alleged plan of SC.

163. Accordingly, this charge is not proved beyond reasonable doubt.

FLT20:

164. This charge is being considered on the merits although the Tribunal has concluded that it has no jurisdiction to deal with the allegations relating to the FLT20.

165. In support of the charge that JC breached Code Article 2.1.4 in that he solicited Josh Cobb ("Cobb"), DS, IP and Eddie Tolchard ("ET") to be party to the fixing of matches in the 2013 FLT20 competition in England, the BCB/ACSU rely on the evidence of ET IP, Chris Watts ("CW") and DS.

166. The BCB/ACSU case is that JC, using the Disputed Number, sent two messages to ET on the 28 April 2013. He also exchanged messages with IP on the Blackberry Messenger on the 30 April 2013 and also on the same day with ET via What'sApp. There is also evidence from CW who exhibits a report from Cobb. It is suggested that by these messages, JC was trying to fix matches in the FLT20 in exchange for substantial sums, USD 50-75 K per match being suggested. There is also some evidence of DS about this from his statements which is relied upon.

167. The evidence of IP and DS in this respect is found to be unreliable for the reasons already given and need no further consideration.

168. The texts to ET are clearly from the Disputed Number and which the Tribunal has held it cannot be satisfied so as to be sure that it belonged to JC or was used by him.

169. Further, the message appears to be equivocal and can be read both as a corrupt approach or a genuine attempt to set up some business enterprise with players. The message does not identify or seek to approach any specific player who will play in the FLT20. This is significant as the Tribunal holds that in order to prove a case under Art. 2.1.4, there has to be an identified Participant who is being approached or is sought to be approached. No Participant in the FLT20 has been identified in the message or in any other way as being approached to commit an offence under Art. 2.1.

170. The evidence from CW about Cobb's phone is that the message was from the Disputed Number. The Tribunal has held that it cannot be sure that the phone was JC's phone and has found that the message seems equivocal.

171. The charge is not proved beyond reasonable doubt.

K. SALIM CHOWDHURY:

172. Against SC the BCB/ACSU allege that he committed an offence under Code Art 2.1.1 in that he was party to (indeed the co-instigator with his son of) an effort to fix the outcome of the Chittagong Match.[48] In support of that charge, the BCB/ACSU rely on all of the evidence cited above against JC and the evidence of MA and IP.

173. The evidence from MA is that VG called him on the 1 February 2013 and told him that SC would be calling him to participate in fixing the Chittagong match, that SC was present also on the 1 February when JC proposed and discussed the fix with him and that he was given a cheque for Tk. 10 lacs on the 3 February. The evidence from IP is that after the Chittagong match he was summoned to the Chowdhury's hotel suite and given an envelope with US$6,000 in it.

174. The evidence of MA and IP is found unreliable for the reasons already given above and need no further consideration. The evidence against JC cannot be used wholesale against SC since the Tribunal cannot accept that the mere presence of JC and SC in the same hotel suite, without further evidence of actual involvement establish that they were complicit in this type of criminal activity.

175. Accordingly, the charge is not proved beyond reasonable doubt.

<u>Khulna match:</u>

176. In support of the charge that SC was a party to an effort to fix an aspect of the Khulna Match, in breach of Code Article 2.1.1, the BCB/ACSU rely on the evidence of MM, MA, IP and JC.

177. MM said the DG owners told him the night before the Khulna match that he was being rested for a few matches starting with Khulna and the following game as DG were comfortably placed with the number of games already won. MM also said he was ok with this since more important matches were coming up later.

178. MA and IP's evidence is found to be unreliable for reasons already given and needs no further consideration. MA's evidence that he was asked to play his natural game is not an unusual request from a team owner. The evidence that he was asked to score over 39 runs in overs 4, 5 and 6 is not given any weight by the Tribunal for reasons already given by the Tribunal. The evidence from IP about the text about the team selection and batting order is nothing out of the ordinary in the context.

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[48] See Salim Chowdhury charge letter, [DB tab B1, p.54].

179. MM's evidence that he was asked to be rested does not establish the charge as the reason given for resting him appears to be a genuine reason and he has accepted this as being a genuine reason for not playing in the Khulna match.

180. The evidence against JC cannot be used for the same reason and as the Tribunal feel that it is highly unlikely that father and son were involved in the same criminal venture.

181. In the event the fix did not come off as planned.

182. Accordingly, the charge is not proved beyond reasonable doubt.

Barisal Match:

183. In support of the charge that SC breached Code Art 2.1.1 by being a party to an effort to fix the Barisal Match the BCB/ACSU relies upon the evidence of MA who referred to a meeting with SC in his hotel suite. Apart from the holding of the Tribunal that the evidence of MA is unreliable for reasons already given, the Tribunal accepts the evidence of SC that he never stays in a hotel in Khulna and did not stay in a hotel suite on this occasion as he was staying at his club.

184. The evidence of IP about his discussions with GR the next day is also found to be unreliable for the reasons already given. In any event, this evidence does not implicate SC in any way whatsoever.

185. Therefore, the charge is not proved reasonable doubt.

186. In support of the charge that SC breached Code Art 2.5.2 the BCB/ACSU rely on SC's denial of the allegation and is attempting to build a case on speculation.

187. The evidence is that SC was interviewed while he stopped over in Dubai on a trip from London to Dhaka. He was interviewed at the offices of the ICC and a witness statement was prepared for him and was presented to him just before left for the airport from his hotel. He does not make any admissions in this witness statement and the prosecution asserts that he lied in this statement to cover up for himself and his son. The Tribunal cannot find any reason for coming to this conclusion.

188. In particular, the Tribunal notes that there is no evidence that SC had knowledge that his son JC had sent incriminating messages to IP, ET, DS and Cobb. The prosecution Closing Brief puts this as a presumption[49]. The requirement of knowledge on the part

[49] Para. 8.33

of SC about JC's acts or omissions relied upon in the charge has not been established by evidence and the Tribunal is unable to draw an inference to this effect on the basis of the evidence before it.

189. The charge is not proved beyond reasonable doubt.

L. GAURAV RAWAT:

Chittagong Match:

190. In specific support of the charge that GR breached Code Article 2.1.1 to fix the Chittagong Match, the BCB/ACSU assert that GR was involved in corrupt activities prior to the 2013 BPL and had clear links with VG and rely on the evidence MA and KL. The prosecution also relies upon the Phone Schedule.

191. The evidence from MA and KL of the approaches by GR are found unreliable so far they seek to assert a case against a co-defendant for reasons already given. In any event, the Tribunal finds that KL did not agree to any of the suggestions made by GR.

192. As stated above, the Phone Schedule raises more questions than it answers and does not help in establishing the case the BCB/ACSU seek to make out against GR.

193. The charge is not proved beyond reasonable doubt.

194. In specific support of the separate charge that GR breached Code Art 2.1.4 by encouraging MA and KL also to carry out further spot fixes in the overs 16, 17, 18 and 19 and to concede 13 runs per over respectively in the Chittagong Match, the BCB/ACSU rely on the evidence of MA and KL.

195. The evidence of MA and KL are found to be unreliable for the reasons already given. There is also no separate independent evidence in this context.

196. The charge is not proved beyond reasonable doubt.

Khulna Match:

197. In respect of the charge that GR breached Code Art 2.1.1 by being party to the effort to fix an aspect of the Khulna Match the BCB/ACSU rely upon the evidence from MA. The evidence of MA that he spoke to GR in his room and GR confirmed that MA should go ahead and try to do what SC had asked, namely, to score more than 39 runs in overs 4-6 is found to be unreliable in this context. GR did say in his cross-

examination that MA would be saying this as an admitted corrupt player to save himself. The Tribunal finds that there is some truth in this suggestion.

198. This charge is not proved beyond reasonable doubt.

Barisal Match:

199. In specific support of the charge that Rawat was a party to the Chowdhurys' effort to carry out a spot-fix during the Barisal Match (by ensuring DG conceded at least 35 runs in overs 6-8), in breach of Code Article 2.1.1, the BCB/ACSU rely on the evidence of MA and IP.

200. The evidence of MA is that he spoke with GR who enquired what the plan was for that day and also what plan SC had informed him. MA states that he related the plan to GR. MA also spoke with GR after he got out and suggested that MA should try to win the game. The evidence from IP is in relation to the day after the Barisal match when he met GR who said something about a 'double-cross' by MA. He deduced from that conversation that there must have been some arrangement between GR and MA.

201. The evidence of MA and IP is found to be unreliable in this context. There is also no independent evidence in this regard.

202. The charge is not proved beyond reasonable doubt.

203. In support of its charge that Gaurav Rawat also breached Code Art 2.1.4 by encouraging Ashraful to carry out a separate spot-fix of the Barisal Match, the BCB/ACSU rely on the evidence of MA. The evidence of MA is that GR came to see him again and asked him whether he would give Robin a second over to bowl. He was offered Tk. 5 lacs for this.

204. The evidence of MA is found to be unreliable in this context. There is also no independent evidence in this regard.

205. The charge is not proved beyond reasonable doubt.

M. MAHBUBUL ALAM ("Robin"):

Chittagong Match:

206. In support of the charge that Robin breached Code Art 2.1.1 by agreeing to be a party to the effort to fix the Chittagong Match, the BCB/ACSU rely in particular on

the evidence of IP, MA and JC. Additionally, they rely upon the performance on the ground and the Phone Schedule.

207. The evidence of MA and IP each refer to Robin and Rubel had agreed to be part of the fixing of the Chittagong match. For the reasons already given, the Tribunal finds the evidence of MA and IP to be unreliable and cannot support this charge. JC's evidence on its own also being unreliable does not prove the charge.

208. The Phone Schedule showing that JC called Robin three times that day does not establish the case that Robin was part of the fix.

209. The Tribunal has watched the performance of Robin on video. He was allegedly asked to bowl between overs 6 to 9 and 16 to 19 and the plan was to concede over 35 runs in the first slot and 60 runs in the second. It was suggested that the fact that Robin bowled two wides and a big no ball were proof that he was working according to the spot fixing plan. The Tribunal's view is that it is not the first time that a bowler has bowled two consecutive wides in a T20 match, nor is it likely to be the last. This may be for a variety of reasons. The Tribunal notes that this was his first match of the competition, he was short of match practice, he was taken in as a replacement for the captain of his side and the country's premier and icon fast bowler. It is quite natural for him to be nervous which was added by his playing in front of a vociferous home crowd of the opposing team. The umpire had also earlier warned him of getting too close to the return crease. The Tribunal also notes that Robin is an inexperienced player on the circuit and not always holding a regular place in the side. Therefore, the mistakes could be attributed to trying extra hard on the field and cannot be construed as deliberate acts.

210. Further, Robin batted at No. 10 in this match scoring the third highest runs for his team with a strike rate of 216. In fact, in the only other match that he batted, he also averaged a strike rate of 200. He also took a fairly brilliant catch in the outfield to dismiss Brendan Taylor, the most in form batsman of CK. He also took the wicket of Naeem Islam, CK highest scorer, with a short ball that surprised the batsman into playing a soft shot.

211. The Tribunal notes that Robin has not been offered any consideration for taking part in the spot fixing exercise. Considering these matters and accepting his evidence, the Tribunal concludes that the case against Robin is not made out.

212. The charge is not proved beyond reasonable doubt.

Barisal Match:

213. The BCB/ACSU invite the Tribunal to uphold the Article 2.1.1 charges that Robin and Rubel were party to an effort to fix the Barisal Match based on the evidence of MA.

214. MA stated that the night before the match, SC advised him that he would be captain that he was to try to win the match but was to give the ball to Robin and Rubel for overs 6 to 8 so that they could concede 35 runs in that over. MA also stated that while he was in SC's room SC called Robin to the suite and told him to concede more than 22 runs. After MA's intervention that was too much, Robin had agreed to try to give away 18 runs. Robin denied this meeting or exchange.

215. The evidence of MA is found to be unreliable for the reasons already given. The Tribunal accepts the evidence of Robin that this did not take place.

216. The charge is not proved beyond reasonable doubt.

N. MOSHARRAF HOSSAIN ("Rubel"):

217. In support of the charge that Rubel breached Code Art 2.1.1 by agreeing to be a party to the effort to fix the Chittagong Match, the BCB/ACSU rely on the evidence of IP and MA.

218. The evidence of IP and MA relied upon is that JC specifically said on 1 and 2 February that Rubel had agreed to be part of the fixing of the Chittagong match by helping to lose the match and by deliberately conceding runs in overs 5 to 8 and 16 to 19.

219. Regarding his performance on the ground, it appears from the video footage that Rubel bowled 3 of the possible 4 overs. In the 3 overs he bowled, he went for only 17 runs and also picked up two important wickets of in form frontline batsmen of the other side at a very critical stage in the innings. Of the 18 deliveries bowled by him, 10 were dot balls. His economy rate also was creditable. While batting at number 9, Rubel scored 16 runs thereby being the second highest scorer. The Tribunal have no reason to doubt his performance on the field and finds that his performance was inconsistent with being part of a spot fixing exercise.

220. The evidence of MA and IP is found to be unreliable for the reasons already given. The Tribunal also accepts his evidence that he was not involved in the alleged spot fixing.

221. The charge is not proved beyond reasonable doubt.

222. The BCB/ACSU invite the Tribunal to uphold the Article 2.1.1 charges that Robin and Rubel were party to an effort to fix the Barisal Match based on the evidence of MA.

223. MA stated that the night before the match, SC advised him that he would be captain that he was to try to win the match but was to give the ball to Robin and Rubel for overs 6 to 8 so that they could concede 35 runs in that over. MA also stated that while he and Robin were in SC's room SC called Rubel to the suite and told him to concede 15-20 runs in one over. After MA's intervention that he might be able to give a wide or a short ball, Rubel said he needed to be paid 8 to 10 lac taka. Rubel denied this meeting or exchange.

224. The evidence of MA is found to be unreliable for the reasons already given. The Tribunal accepts the evidence of Robin that this did not take place.

225. The charge is not proved beyond reasonable doubt.

O. MOHAMMAD RAFIQUE:

226. In specific support of the charge that Mohammad Rafique breached Code Art 2.1.4 by encouraging Ashraful to do as the Chowdhurys asked and help fix the Chittagong Match, the BCB/ACSU rely on MA.

227. MA states that after Jishan approached him on the day of the Chittagong Match, he went to have lunch with Rafique in his room. MA told Rafique about JC's offer to be captain and to lose the game deliberately. MA says that Rafique asked him to do what the owners wanted.

228. The evidence of MA is found to be unreliable for the reasons already given. The Tribunal does not find anything untoward in Rafique not wishing to participate in the proceedings and does not feel that there is any ground for drawing any adverse inferences against him for his absence.

229. The charge is not proved beyond reasonable doubt.

230. In support of its charge that Mohammad Rafique breached Art 2.1.4 of the Code by encouraging MA to carry out the Chowdhurys' plan to fix the Barisal Match, the BCB/ACSU rely on the evidence of MA.

231. MA states that he went to lunch with Rafique on the day of the game and related to him the plan given by SC to which Rafique said that MA should go along with the plan. The Tribunal does not find anything untoward in Rafique not wishing to

participate in the proceedings and does not feel that there is any ground for drawing any adverse inferences against him for his absence.

232. The evidence of MA is found to be unreliable for the reasons already given.

233. The charge is not proved beyond reasonable doubt.

234. In support of the charge that Rafique breached Code Article 2.1.1 by asking Ashraful to carry out a further, separate fix of the Barisal Match, to settle their *'debt'* to Sunil Bhatia, the BCB/ACSU rely in particular on MA.

235. The evidence from MA is that Sunil Bhatia has been calling Rafique and wanted him to do something to pay back money that had been given in 2010. He asked MA that if DG bowled first to bowl an over and deliberately concede 10 runs. MA agreed as a favour to him.

236. The evidence of MA is found to be unreliable for the reasons already given.

237. The charge is not proved beyond reasonable doubt.

P. DARREN STEVENS:

Chittagong Match:

238. The BCB/ACSU has charged Darren Stevens not with being part of the fixing conspiracy but with having breached Code Art 2.4. in that he failed to report the fact that JC tried to recruit him to help fix the Chittagong Match. The BCB/ACSU rely on the evidence of CW, POS, IP and DS himself in support of that charge

239. The evidence of CW and POS is unchallenged and establishes that DS has received the awareness training.

240. The thrust of the evidence against DS in this respect is the fact that he was approached by JC and invited to be the captain of the Chittagong match in name only while MA should be the captain on the pitch. The Tribunal has difficulty in accepting that anyone hearing such an offer would automatically and necessarily conclude that DS was being asked to be part of a fix. DS stated in his evidence that although he found this offer to be odd that he did not understand that this was an approach to be part of a fix. The Tribunal accepts the evidence given by DS to this extent.

241. The evidence of IP is found to be unreliable to sustain the charge against DS for the reasons already given.

242. The Tribunal finds that evidence from DS does not amount to an admission and cannot establish the charge of failing to report.

243. The charge has not been proved beyond reasonable doubt.

FLT20:

244. This charge is being considered on the merits although the Tribunal has concluded that it has no jurisdiction to deal with the allegations relating to FLT20.

245. In respect of the Art. 2.4.2 charge for failing to report JC's approach to him in April or May 2013 to help fix FLT20 matches the BCB ACSU rely upon DS' own evidence. The allegation is that DS received a text message from JC which he did not disclose to ACSU.

246. The serious flaws in the system of interviewing witnesses or suspects without any written protocols or guidelines are highlighted in this case. The Tribunal has seen the records of the first and second interviews of DS. It has considered the sequence of events and finds certain disturbing factors in the process. Ultimately, the Tribunal finds that the process adopted in this case has not been fair.

247. It became clear from the evidence that when ACSU interviews a witness or a suspect, he is not told in what capacity he is being questioned. He is simply told that he has an obligation under the Code to provide information. However, he is not warned that he may face charges under the Code on the basis of what he tells the interviewers. Notes of the interviews are kept but not shared with the person interviewed. It appears to the Tribunal that the questions during the interviews could be complex and the process tiring for the person interviewed. The result is that the interview becomes oppressive leading to the person interviewed just wanting to end it by saying what the interrogators want.

248. What is significant in this case is that DS's phone was surrendered for examination and no traces of the message could be found on it.

249. The Tribunal accepts the evidence of DS that he saw part of the message from JC and then deleted it without reading it.

250. The Charge is not proved beyond reasonable doubt.

Q. DISPOSITION:

251. The Tribunal announced its conclusions on the 26 February 2014 and the verdicts in respect of the Contesting Defendants as follows:

CONCLUSIONS:

1. These conclusions of the Tribunal are unanimous and relate to the defendants who have contested the charges before the Tribunal, namely, Defendants Nos. 2, 3, 4, 5, 6, 7 and 8 ("Contesting Defendants"). Full reasons for these conclusions will be provided in due course.

2. The Tribunal has been troubled and deeply concerned since the Preliminary Hearing held on the 24 November 2013 about one aspect of this case. At that hearing, the Tribunal learnt for the first time that the match on the 2 February 2014 between Dhaka Gladiators ("DG") and Chittagong Kings ("CK") was allowed to be played after it was reported to the Anti-Corruption & Security Unit of the International Cricket Council ("ACSU) by the DG Head Coach, Mr. Ian Pont ("Mr. Pont"), that he was approached by Shihab "Jishan" Chowdhury ("JC") with a plan to lose the match and that certain aspects of the match were to be fixed.

3. As a result and given the sporting imperatives set out in the BCB Anti-Corruption Code ("Code") and the overriding objective of fairness in the sport, the investigation process and at any hearing dealing with allegations of breaches of the Code, the Tribunal raised this issue in its Procedural Order No. 1 and sought assistance from the representatives of the parties as to what impact, if any, it had upon the proceedings. The Tribunal decided that it will deal with this matter in its final determination after considering the evidence and the full submissions of the parties.

4. The Tribunal finds that details of the match fixing and the spot fixing were discussed on the night of 1 February 2013 and disclosure was made by Mr. Pont in the morning of the 2 February 2013 to Mr. Peter O'Shea of ACSU. Following the report and on the instructions of ACSU, JC was called into Mr. Pont's hotel room during the morning to discuss the plan and the conversation with JC was recorded by him on his laptop. The transcript of that conversation was proved before the Tribunal. It is clear from the transcript and the testimony of witnesses that well before the fixed match was played, details of how DG would lose the match, who would or might be

involved and at what points and how the spot fixing would take place were known to ACSU.

5. The information relating to this approach and the plan to play the fixed match was relayed to the Head of ACSU in Dubai by the ACSU officials in Bangladesh. The BCB had earlier entered into a Services Agreement with ACSU under which ACSU were to assist BCB in overseeing, managing, implementing and enforcing all aspects of the Code. Despite this, BCB were not informed about the disclosure by Mr. Pont nor were the law enforcement authorities in Bangladesh. The Tribunal finds that this was a significant matter which should have been brought to the attention of the BCB and the law enforcement agencies in Bangladesh since corruption of this nature also breaches the domestic penal laws.

6. The Chairman of ACSU, Sir Ronald Flanagan, expressed his regret about this failure and made a personal unreserved apology on behalf of ACSU for not involving BCB at that stage. He assured the Tribunal that this will not happen in the future.

7. The decision was taken by the Head of ACSU in Dubai to allow the fixed match to go ahead. Acting solely on the instructions on ACSU, Mr. Pont went along with JC's plan and the fixed match was played on the 2 February 2013 in Chittagong. The Tribunal accepts his evidence that it was known well before the match that it was fixed.

8. Although the focus of the Services Agreement and the Code is on prevention of match fixing and spot fixing, the Tribunal holds that this deliberate choice made by ACSU is unfortunate and wrong. The Tribunal finds that allowing match fixing or spot fixing to take place during the match of DG against CK, ACSU has allowed the Code to be breached and from which breach corrupt people must have benefitted. The emphasis of ACSU on gathering evidence and prosecution of offenders rather than on prevention of corruption cannot be accepted by the Tribunal as the correct approach to fight corruption in the sport.

9. Explanations were given by the BCB-ACSU prosecution team as to why this happened and the witnesses for the prosecution sought to explain the position by stating that they did not know that a fixed match was going to be played. It was asserted that they only had a suspicion on the basis of the report by Mr. Pont. The Tribunal cannot accept this evidence.

10. There was also evidence before the Tribunal in the form of emails from other sports' regulators that in a similar situation, they would decide on a 'case by case' basis as to what should be done. However, it appears that more often than not, sports regulators do not stop matches or events even where they have information about corruption in the match or event.

11. The Tribunal is not impressed with any of the explanations provided as a justification for permitting a fixed corrupt match to be played. The Tribunal is of the view and holds that this approach of the regulator cannot be supported. The Tribunal feels that ICC as the sports regulator must take a more pro-active approach towards prevention of corruption and that fixed matches should never be allowed to be played.

12. The Tribunal feels that approach of ACSU to allow a corrupt match to be played should be deprecated. However, since no allegation of entrapment has been raised by any of the Contesting Defendants, the Tribunal feels that this action of ACSU should not result in the proceedings being dismissed on that ground or stayed as an abuse of process.

13. The Tribunal also noted deficiencies in the methods of investigation used by ACSU. There were admittedly no protocols or guidelines in place for interviewing witnesses or suspects, contemporaneous notes of interviews were not always made or disclosed at the hearing and no systems were in place to deal with urgent situations that arise on the ground or to liaise with local law enforcement authorities. The Tribunal finds that the process of investigation was flawed and incomplete to the extent that allegations of unfairness could be sustained.

14. A substantial part of the evidence before the Tribunal came from co-defendants, some of whom have pleaded guilty and one who is contesting the charges. The Tribunal has admitted most of the evidence produced before it by the parties. However, it finds the evidence of Mr. Ashraful, Mr. Lokuarachchi and Mr. Pont is not reliable and cannot establish any charge beyond reasonable doubt against any of the Contesting Defendants unless such evidence is supported by other clear and cogent independent evidence.

15. Having considered the evidence against each of the Contesting Defendants separately, the Tribunal's determination in respect of each of them is as follows:

16. As against Shihab Jishan Chowdury:

(1) Art. 2.1.1 charge for being a party to an effort to fix the Chittagong match: Guilty

(2) Art. 2.1.1 charge for being a party to an effort to fix the Barisal match: Not Guilty

(3) Art. 2.1.4 charge for soliciting Cobb, Stevens, Pont and Tolchard to help fix Friends Life T20 matches: No jurisdiction and Not Guilty

17. Against Salim Chowdury:

(1) Art. 2.1.1 charge for being a party to an effort to fix the Chittagong match: Not Guilty

(2) Art. 2.1.1 charge for being a party to an effort to fix aspects of the Khulna match: Not Guilty

(3) Art. 2.1.1 charge for being a party to an effort to fix the Barisal match: Not Guilty

(4) Art. 2.1.4 / 2.5.2 charge for covering up his son's solicitation of Cobb, Stevens, Pont and Tolchard to help fix Friends Life T20 matches: No jurisdiction and Not Guilty

18. Against Gaurav Rawat:

(1) Art. 2.1.1 charge for being a party to an effort to fix the Chittagong match: Not Guilty

(2) Art. 2.1.4 charge for being a party to an effort to fix aspects of the Chittagong match: Not Guilty

(3) Art. 2.1.1 charge for being a party to an effort to fix an aspect of the Khulna match: Not Guilty

(4) Art. 2.1.1 charge for being a party to an effort to fix the Barisal match: Not Guilty

(5) Art. 2.1.4 charge for being a party to an effort to fix an aspect of the Barisal match: Not Guilty

19. Against Mohammad Rafique:

(1) Art. 2.1.4 charge in relation to the Chittagong match: Not Guilty

(2) Art. 2.1.4 charge in relation to the Barisal match: Not Guilty

(3) Art. 2.1.1 charge in relation to the Barisal match: Not Guilty

20. Against Mosharraf Hossain Rubel:

(1) Art. 2.1.1 charge for being a party to an effort to fix the Chittagong match: Not Guilty

(2) Art. 2.1.1 charge for being a party to an effort to fix the Barisal match: Not Guilty

21. Against Mahbubul Alam Robin:

(1) Art. 2.1.1 charge for being a party to an effort to fix the Chittagong match: Not Guilty

(2) Art. 2.1.1 charge for being a party to an effort to fix the Barisal match: Not Guilty

22. Against Darren Stevens:

(1) Art. 2.4.2 charge for failing to report JC's approach to him on 2 February 2013 to help fix the Chittagong match: Not Guilty

(2) Art. 2.4.2 charge for failing to report JC's approach to him in April or May 2013 to help fix 2013 FriendsLife T20 matches: No jurisdiction and Not Guilty

ORDERS:

23. Shihab Jishan Chowdhury having been found guilty of the Art. 2.1.1 charge against him for being a party to an effort to fix the Chittagong match shall attend before the Tribunal on 27 February 2014 at 10:30 am for the hearing on sanctions and costs either in person or with his legal representative. In the event that he fails to attend or is not represented, the Tribunal shall proceed with the hearing in his absence.

24. Each of the Defendant Nos. 2, 3, 4, 5, 6, 7 and 8 are discharged in respect of the charges on which they have been found to be not guilty.

25. The Provisional Suspension imposed upon each of Mosharraf Hossain Rubel and Mahbubul Alam Robin is lifted with immediate effect.

26. Any payments due to any of the Contesting Defendants in respect of the 2013 Edition BPL remaining unpaid on the grounds of the charges before the Tribunal shall be paid within 2 weeks of the date of issue of the full reasons for the Determination.

27. Each of the Contesting Defendants who have been discharged from the charges brought against them shall be entitled to apply to the Tribunal for their reasonable costs of legal representation and expenses to be paid by the BCB setting out brief details of the costs incurred. Copies of the application shall be served upon the prosecution by email on or before 08:00 on Thursday, 27 February 2014.

28. The Tribunal shall consider the applications for costs at the sanctions and costs hearing on the 27 February 2014.

252. The sanctions and costs hearing of the 27 February 2014 was adjourned generally with the consent of the parties to a date to be fixed after the Tribunal gave its reasons for its decision handed down on the 26 February 2014.

253. After the Tribunal published to the parties its Determination: Conclusions and Orders dated 26 February 2014, Counsel for the BCB/ACSU raised a question about the Tribunal's earlier ruling on the Preliminary Objections. This related to the Tribunal's ruling whereby it dismissed the Preliminary Objections. It was contended that the BCB/ACSU regarded the issue of jurisdiction had been finally resolved by the Tribunal's ruling on jurisdiction in dealing with the Preliminary Objections. The Tribunal having held in its Determination: Conclusions and Orders dated 26 February 2014 that in respect of the FLT20 that it has no jurisdiction, the prosecution submitted that it did not make any submissions on the point in the course of its closing submissions as it thought the issue was no longer extant.

254. Subsequently, the Tribunal gave a further opportunity to the parties to make submissions on the issue of jurisdiction.

255. The BCB/ACSU submitted detailed written submissions on the issue and a short formal submission was made on behalf of DS. The Tribunal has considered the

submissions and the evidence in the case. Having considered the matter fully, the Tribunal holds that it is entitled to rule on its own jurisdiction at any stage of the proceedings and states that the ruling in respect of jurisdiction when dealing with the Preliminary Objections was provisional only. Having considered the matter fully in the light of the evidence it heard, it holds that it has no jurisdiction in respect of the FLT20 matches.

256. Accordingly, the Tribunal directs that the parties who have pleaded guilty or have been found guilty appear before the Tribunal on the 18 June 2014 at 10:30 to the hearing on sanctions and costs at a venue to be advised.

Dated at Dhaka, Bangladesh on 8 June 2014.

Justice Khademul Islam Chowdhury
Convenor

Mr. Shakil Kasem
Member

Mr. Ajmalul Hossain QC
Member