BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER REF NO. ORDER/NH/KL/ 2022-23/20974-20977]

UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of

1. Ficus Securities Private Limited
PAN: AAACV0429K

2. Mr. Vinod Kumar Bansal
PAN: AAGPB8255Q

3. Ms. Neena Bansal
PAN: AIDPB7112P

4. Mr. Surender Singh
PAN: EFTPS4215D

In the matter of
Ficus Securities Private Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted an inspection of the stock broking activities of **Ficus Securities Private Limited** (hereinafter referred to as **'Noticee 1'/'FSPL'**) on January 23, 2018 at its registered office located at New Delhi. The period covered in the inspection was from April 01,

2015 to January 23, 2018 (hereinafter referred to as **‘Inspection Period’**). During the inspection period, the Noticee was a registered stock broker with SEBI with the following Registration numbers:

Table-1

Sl. No.	Exchange	Registration Number
1.	BSE	INF011298636 INB011298636
2.	NSE	INE231298630 INF231298630 INB231298630
3.	MSEI	INB261298633 INF261298633

2. The purpose of the inspection was to verify whether FSPL has complied with various regulatory norms/requirement in respect of its following activities as a SEBI registered stock broker:

    i. *submission of information to SEBI*
    ii. *usage of clients’ funds*
    iii. *usage of clients’ securities,*
    iv. *transfer of funds with associated company*
    v. *redressal of investor complaints*
    vi. *settlement of claims, etc.*
    vii. *submission of DP account details to the stock exchanges*

3. Based on the findings of the inspection, various non-compliances by the Noticees were observed in respect of its stock broking activities during the inspection period. In view of the above, SEBI initiated adjudication proceedings against FSPL and its directors viz. Mr. Vinod Kumar Bansal (hereinafter referred to as '**Noticee 2**'/ '**Mr. Vinod**'), Ms. Neena Bansal (hereinafter referred to as '**Noticee 3**'/ '**Ms. Neena**') and Mr. Surender Singh (hereinafter referred to as '**Noticee 4**'/ '**Mr. Surender**'). The Noticee nos. 1 to 4 are hereinafter collectively referred to as '**the Noticees**'.

APPOINTMENT OF ADJUDICATING OFFICER

4. Dr. Anitha Anoop was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') vide communique dated June 10, 2020 under Section 19 read with Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) and rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) and also read with Section 23-I of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') read and rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **'SCRA Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 23D of SCRA, Sections 15A (a), 15C, 15HA and 15HB of the SEBI Act, the aforementioned alleged violations of the provisions of law by the Noticees. Pursuant to the transfer of Dr. Anitha Anoop to another department, Shri Suresh B Menon was appointed as the AO in the matter vide communique dated November 03, 2020. Thereafter, on superannuation of Shri Suresh B Menon, the undersigned was appointed as the AO in the instant matter vide communique dated June 07, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice ref no. SEBI/EAD/AA/KL/11045/2020 dated June 22, 2020 (hereinafter referred to as **'SCN'**) was issued by the erstwhile AO to the Noticees in terms of Rule 4 of the Adjudication Rules and Rule 4 of the SCRA Adjudication Rules to show cause as to why an inquiry should not be held against the Noticees and why penalty should not be imposed on them under the provisions of Section 23D of SCRA, Sections 15A (a), 15C, 15HA and 15HB of the SEBI Act, for the violations alleged to have been committed by the Noticees. The allegations leveled against the Noticees in the SCN, the submissions of the Noticees and my observations/findings are discussed in detail in the following paragraphs of the order.

6. In response to the SCN, the Noticees vide emails dated September 04, 2020, October 03, 2020, and October 25, 2020, requested for additional time to make submissions to the SCN. Thereafter, the Noticees made submissions in reply to the SCN vide letter dated December 16, 2020. In terms of Adjudication rules and in the interest of natural justice, the Noticees were provided with an opportunity of hearing in the matter. The hearing was conducted on December 21, 2020 before the erstwhile AO Shri Suresh B Menon, through online webex platform. The Noticee no. 2 viz. Mr Vinod Kumar Bansal (director of Noticee no.1) appeared on behalf of the Noticees and reiterated the submissions made by the Noticees in their reply dated December 16, 2020. Pursuant to the appointment of the undersigned as the AO in the instant matter, the Noticees were again granted an opportunity of hearing in terms of Adjudication rules and in the interest of natural justice. The hearing was scheduled on September 21, 2022 and the Noticees preferred to attend the hearing through online webex platform. The Noticee no. 2 viz. Mr Vinod Kumar Bansal (director of Noticee no.1) appeared as

Authorised Representative ('**AR**') behalf of the Noticees and reiterated the submissions made by the Noticees in their replies dated December 16, 2020 and December 28, 2020. Subsequently, the Noticees made additional submissions along with supporting documents vide email dated October 04, 2022.

7. It is noted that in the instant matter, with regards to the inspection conducted by SEBI, proceedings were also initiated under Section 11, 11 (4) and 11B of the SEBI Act, against the Noticees including four other entities. In this regard, the Whole Time Member, SEBI (hereinafter referred to as '**WTM SEBI**') conducted the 11B proceedings and vide order ref. no. WTM/SM/NRO/NRO/18550/2022-23 dated August 25, 2022, WTM-SEBI established violations committed by the Noticees mentioned therein and, *inter-alia*, issued the following directions against them:

In respect of:

S. No.	***Name of Noticee***	***PAN***
1	*Ficus Securities Pvt. Ltd.*	*AAACV0429K*
2	*Ficus Commodities Pvt. Ltd.*	*AABCV4377P*
3	*Vinod Kumar Bansal*	*AAGPB8255Q*
4	*Surender Singh*	*EFTPS4215D*
5	*Neena Bansal*	*AIDPB7112P*
6	*Poonam Rajbhar*	*AGQPR0343D*
7	*Tripta Kapoor*	*ASVPK5946Q*
8	*Shabnam John*	*AGUPJ1830F*

31. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, pass the following directions:

31. 1. Noticees No. 1 to 3 are hereby restrained from accessing the securities market in any manner and are also prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for the period a period of 7 years.

31. 2. Noticees No. 5 to 8 have already undergone restraint and debarment from securities market for than 4 years. Hence, in the given facts and circumstances of the matter the same is appropriate and no further directions needs to be passed against them. Therefore, the directions issued under paragraph 31 of the Interim Order so far as it relates to Noticees No. 5 to 8, shall stand vacated. Further, Noticees No. 5 to 8 are cautioned and directed to be careful before associating themselves as a Director in any intermediary of the securities market.

31. 3. Noticee No. 3 is hereby restrained from holding post of Director, any managerial position or associating himself in any capacity with any listed public company and any public company which intends to raise money from the public, or any securities market intermediary registered with SEBI for a period of 7 years.

31. 4. Noticees No. 1 and 3 shall, jointly and severally, be liable to repay / refund the investors / clients' money with an interest of 15 % per annum from the date when the repayment became due till the date of actual repayment, under the supervision of NSE. Similarly, Noticees No. 2 and 3 shall, jointly and severally, be liable to repay / refund the investors / clients' money with an interest of 15 % per annum from the date when the repayment became due till the date of actual repayment, under the supervision of NCDEX.

31. 5. Noticees No. 1 and 3 shall, jointly and severally, be liable to return the securities due to the clients / investors of Ficus or their monetary value as on the date of actual payment of money in lieu of shares, under the supervision of NSE. Similarly, Noticees No. 2 and 3 shall, jointly and severally, be liable to return the securities due to the clients / investors of Ficus Commodities or their monetary *value as on the date of actual payment of money in lieu of securities, under the supervision of NCDEX.*

31. 6. Noticees No. 1 to 3 shall not dispose of or alienate any of their assets, whether movable or immovable (including funds in their bank accounts), or create any interest or charge in any such assets, till such time the refunds / repayments as directed at 31.4 and 31.5 above are completed.

31. 7. The Banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by Noticees No. 1 to 3, except for the purpose of payment of money to the clients/investors under the written confirmation of the concerned stock exchange(s).

31. 8. Since Ficus was majorly active on NSE, NSE Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated demat account where all the securities lying in the demat accounts of Ficus shall be transferred.

31. 9. The NSE Defaulters Committee shall open and operate a dedicated interest bearing bank account with a Nationalized Bank where all the funds lying in various bank accounts held in the name of Ficus and Mr. Vinod Bansal shall be transferred.

31. 10. Similarly, NCDEX's Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated demat account where all the securities lying in the demat accounts of Ficus Commodities shall be transferred.

31. 11. The NCDEX's Defaulters Committee shall open and operate a dedicated interest bearing bank account with a Nationalized Bank where all the funds lying in various bank accounts held in the name of Ficus Commodities and Mr. Vinod Bansal shall be transferred.

31. 12. The modalities of selling the assets, depositing the proceeds thereof in the Escrow Account(s) opened in accordance with the directions contained in paragraph 31.8 to 31.11 above and disbursing the amounts to the clients / investors after verifying the claims shall be worked out by NSE and NCDEX by their mutual co-ordination. NSE and NCDEX shall have a lien on the remaining amount, if any, lying in the Escrow Account(s), after satisfying the claims of the investors/clients. The lien shall be up to the extent of total money disbursed by the

Exchanges out of their IPF accounts to the clients/investors of Ficus and Ficus Commodities.

31. 13. NSE and NCDEX shall deal with the claims of their clients / investors in accordance with their respective bye-laws and procedures, after adjusting the disbursements made through the Defaulters' Committee mechanism.

31. 14. NSE for Noticees No. 1 and 3 and NCDEX for Noticees No. 2 and 3 shall proceed with the recovery of funds and securities from the assets of respective Noticees to cover any shortfall in funds and securities in the Escrow Accounts(s) and Demat Account, opened pursuant to the directions above.

<u>ALLEGED VIOLATIONS AS MENTIONED IN THE SCN</u>

8. The violations alleged to have been committed by the Noticees as mentioned in the SCN are summarised in the following table:

<u>Table-2</u>

<table>
<tr><th>Sl. no.</th><th>Noticee</th><th>Nature of violations</th><th>Regulatory Provisions alleged to be committed by the Noticees</th></tr>
<tr><td>1</td><td>Ficus Securities Pvt. Ltd.</td><td>A. Non submission of Information.</td><td>Regulation 26 (ii) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations').</td></tr>
<tr><td rowspan="3">
2
3
4</td><td rowspan="3">(Directors)
Vinod Kumar Bansal
Surender Singh
Neena Bansal</td><td rowspan="3">B. Misuse of clients' funds
C. Misuse of Clients' securities
D. Transfer of funds</td><td>Section 23D of SCRA r/w Circular no. SMD/SED/CIR/93/23321 dated 18 Nov, 1993</td></tr>
<tr><td>Regulation 3 (a),(b), (c) and(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').</td></tr>
<tr><td>Clause 15 of Rights and Obligations document for Stock Broker, Sub- Brokers and Clients as prescribed in Annexure 04 of the SEBI Circular no. CIR/MIRSD/16/2011 dated August 22, 2011.</td></tr>
</table>

			Clause A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of the Broker Regulations.
		E. Non redressal of Investor complaints.	Regulation 9(e) of the Broker Regulations.
		F. Failure to carry out running account settlement of clients’	SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009.
			Clause 33 of Rights and Obligations document for Stock Broker, Sub- Brokers and Clients as prescribed in Annexure 04 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011.
		G. Non-disclosure of DP account details to the Exchange	Clause 2 (2.2) of the SEBI Circular SEBI/HO /MIRSD/ MIRSD2/CIR /P/2016/95 dated September 26, 2016.

ISSUES, CONSIDERATION OF SUBMISSIONS, OBSERVATIONS

9. It will be appropriate here to note that the findings in the inspection report of SEBI are based on analysis of samples and test checking of various books and other records maintained by FSPL, as well as the written/oral information furnished by the Noticees i.e. FSPL and its Directors / officials during the course of inspection. Consequently, the instances of irregularities/observations pointed out in inspection report are illustrative in nature and are not all-inclusive. In the light of the aforesaid factual position, I proceed to adjudicate the matter, and I find that essentially, the following issues arise for determination in the instant matter:

Issue 1: Whether the Noticees have failed to comply with various provisions of the SCRA, SEBI Act, Rules, Regulations and circulars issued by SEBI, in respect of the stock broking activities, during the inspection period?

Issue 2: If answer to the aforesaid question is in affirmative, whether the violations would attract monetary penalty on the Noticees under the provisions of Section 23D of SCRA, Sections 15A (a), 15C, 15HA and 15HB of the SEBI Act?

Issue 3: If answer to the aforesaid question is in affirmative, what should be the quantum of the monetary penalty?

10. The first issue to be addressed is as follows:

Whether the Noticees have failed to comply with various provisions of the SCRA, SEBI Act, Rules, Regulations and circulars issued by SEBI, in respect of the stock broking activities during the inspection period?

I will now proceed to deal with the allegations leveled against the Noticee in the SCN, the submissions made by the Noticee and record my observations/findings in the following paragraphs:

A. non-submission of information to SEBI
B. misuse of clients' funds
C. misuse of clients' securities,
D. transfer of funds with associated company
E. non redressal of investor complaints,
F. non-settlement of claims, etc.
G. non-submission of DP account details to the stock exchanges

A. <u>Non-submission of information to SEBI</u>

Allegations leveled against the Noticees as mentioned in the SCN:

i. SEBI issued a notice under Section 11(2)(i) of SEBI Act, 1992 dated August 30, 2017 to FSPL seeking the certain information.

ii. *It is alleged that the Noticee, prima facie, failed to submit complete information sought from it, due to which a proper inquiry into the facts could not be carried out by SEBI. In view of the above mentioned, prima facie, failure of the Noticee to submit the complete information sought from it, it is alleged that Noticee has violated the provisions of Regulation 26 (ii) of the Stock Broker Regulations.*

Submissions of the Noticee in reply to the SCN:

i. *The allegation with respect to non-submission of information is incorrect and hence, denied. In response to SEBI letter dated August 30 2017 addressed to FSPL seeking the requisite information, the Noticee (FSPL) provided the requisite information to the then Regional Director, SEBI at its Delhi Office vide our Letter dated 15.09.2107 which was duly received by SEBI office on 18.09.2017. Thus, it is incorrect to allege that the information did not come through SEBI. The Noticee (FSPL) further, provided all the requisite information through Questionnaire pertaining to Inspection period April 1, 2015 to till date of Inspection Jan 23, 2018.*

ii. *The information provided through aforesaid reply and Questionnaire were not incomplete but were as per available record and to the best knowledge and belief of the Noticees. In view of facts provided hereinabove, the Noticees have not violated Regulation 26 (ii) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and such, it is our humble request not to impose any penalties with reference aforesaid alleged violations of Regulation.*

Findings:

i. The text of the relevant provisions of law alleged to be committed by the Noticees in this regard (ref: Table-2) is reproduced hereunder for reference:

BROKER REGULATIONS

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for monetary penalty

26. A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely—

(ii) Failure to furnish any information, books or other documents within 15 days of issue of notice by the Board.

ii. It is noted from the materials made available on record that vide a notice under Section 11 (2) (i) of SEBI Act dated August 30, 2017, information was sought from FSPL/Noticee no.1. In response, Noticee no.1 vide letter dated September 15, 2017 replied to the aforesaid notice and furnished the information in soft copies and also through emails dated September 18, 2017. The Noticees, in their submissions to SCN also reiterated the same and mentioned that all the information as per available record and to the best of their knowledge and belief, was submitted to SEBI.

iii. In this regard, I note that there is no material on record to show if there was any inadequacy, in the information submitted by FSPL. Pursuant to submitting information in response to the notice, FSPL was called for a meeting on October 4, 2017 which the representatives of Noticee no.1 failed to attend. However, the material on record did not show whether there was any follow up with FSPL after its representatives failed to attend the meeting. The allegation that has been levelled in the SCN is the failure of FSPL to submit the information sought from it. However, as the records reflect, submission of information has been largely complied by FSPL. Thus, in the given facts and circumstances of the matter, I find that the allegation of failure to furnish information to SEBI, does not hold good against FSPL. Therefore, the violation of Regulation 26 (ii) of Broker Regulations alleged to be committed by the Noticees does not stand established.

B. <u>Misuse of clients' funds</u>

C. <u>Misuse of clients' securities</u>

D. <u>Transfer of funds with associated company</u>

Allegations leveled against the Noticees as mentioned in the SCN:

i. *It is alleged that FSPL was not in a position to pay funds of its credit balance clients, as on the date of inspection and such shortage of funds amounted to Rs. 34.71 crore. Therefore, it is alleged that FSPL misused clients' funds to the extent of Rs. 34.71 crore. and violated relevant regulatory provisions w.r.t Non-segregation and misuse of clients' funds.*

ii. *It is observed that clients' securities to the extent of Rs. 29.50 crores held in the various demat accounts as on January 31, 2018 were prima facie not available with FSPL. Therefore, it is alleged that FSPL misused clients' securities to the extent of Rs. 29.50 crores and violated relevant regulatory provisions.*

iii. *It is alleged that the funds to the extent of Rs. 6.26 crore were transferred to FCPL by FSPL, during the inspection period, which led to the alleged violation of the below mentioned provisions of law. Based on the facts and circumstances mentioned above, it is alleged that the Noticees have violated the following regulatory provisions of the securities laws.*

    a. *Section 23D of the SCRA*
    b. *Circular no. SMD/SED/C1R/93/23321 dated 18 Nov, 1993*
    c. *Clause 15 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 04 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011.*

d. *Clause A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of the Broker Regulations.*
e. *Regulation 3 (a), (b), (c) and(d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').*

Submissions of the Noticees in reply to the SCN:

i. *It is respectfully submitted that there is no misuse of client's funds and securities. Attention your goodself is invited to the fact that Noticee Company wanted to expand its business and in the process had opened its new offices in Mumbai, Jaipur and in Punjab. The noticee company was in need of finances for the said purposes and therefore, approached its various reputed clients for financial help.*

ii. *The clients of the Noticee company responded in positive manner and given financial help to the Noticee-Company. The clients of the Noticee company had agreed to lend financial help to the Noticee Company either financially or by transferring their holding in the pro account of the Noticee-Company. The Noticee-Company had maintained separate records for the same.*

iii. *It is pertinent to mention here that for the verification of said statement of the Noticee-Company, your goodself may peruse the Delivery Instructions Slip (DIS) duly executed by the clients of the Noticee-Company as may be available with CDSL as the Noticee-Company is unable to produce the same itself. The bare perusal of the reason for transfer would reflect the purpose of transfer of the shares which is mentioned to be "loan/margin". It may be brought to the notice of your goodself that since the Noticee-Company has closed operations since long and all its staff/employees have left their services. It is further pertinent to mention here that Mr. Vinod Kumar Bansal who is an old person of 60 years of age and in fact, had been doing the business somehow pulling on the things. It is pertinent to mention here that most of the records of the Noticee-Company is in fact lost and is available in scratch.*

iv. *Thus, there is no question of misuse of the client's securities and funds. The Noticee Company suffered losses and thus, the securities which were transferred* *by its holders to the Noticee-Company as loan/financial assistance were lost and therefore, there is no misuse of client's securities/funds.*

v. *Attention of your good self is further invited to the fact that Noticee-Company had pledged the securities for the purposes of raising finances from the pro-account. It is highlighted the no securities from the De-mat account of any of the clients of the Noticee-Company had been mis-utilized nor there is any allegation of any of the clients of the Noticee-Company that Noticee-Company had illegally taken securities from their De-mat account without their consent.*

vi. *Unfortunately, whiling aiming for expansion, the Company could not meet the expenses, resultantly, suffered huge monitory losses. Due to cyclical effect of aforesaid monetary losses, shortage of funds arises within the Company and therefore, the Company was not in position to pay funds to its credit balance clients.*

vii. *Further, funds raised through pledging of shares were also exhausted towards the losses suffered by the Company and consequently, Company could not repay the amount due towards the NBFC, who due to non-fulfillment of obligation by us towards NBFC squared of pledged securities.*

viii. *This was the reason; the Company could not return the securities to its client which were given to the Noticee-Company by them as a financial help/loan. It is worthwhile to mention here that whatever the securities were lying in the client's respective demat account, were duly returned to them and the Company did not misappropriate their securities in any manner whatsoever. Thus, there is no case of misuse of client's securities.*

ix. *It is worth mentioning here that the demat accounts of the clients were shifted to Globe Capital Market Limited with prior approval of CDSL, a Depository and accordingly, Deed of Assignment dated 06th Feb 2018 was executed between FSPL and Globe Capital Market Limited, a Depository Participant. The Company in the meantime, approached various clients from whom it has availed the financial help and whatever funds were available with it, tried to settle their accounts.*

x. *The Noticees are still making bonafide attempt to settle the claims of the persons who helped the Noticee-Company financially. Although, due to the prevailing* *pandemic situation, noticees are facing difficulties in raising funds to settle clients dues. The Noticees are till hopeful that they could settle all in due course of time.*

xi. *In view of above, it is respectfully brought to your goodself that there is no misuse of client securities and funds by the Noticee-Company and we request your honour not to impose penalties, otherwise, the Company shall be further burdened and consequently, face monetary difficulties in settling the disputes with its clients.*

xii. *FSPL and FCPL are two different entities. For the purpose of cost cutting, both the entities were operating its business from common office. From the perusal of MCA record, it can be revealed that both the companies were earlier having different offices since last many years. It was only in the month of Nov. 2017 when FSPL and FCPL, under the compelling circumstances, shared their registered office as a process of cost cutting due to suffering of business losses. Moreover, the director of both the companies were known to each other. There is no common website of FSPL and FCPL. http://ficuswealth.com.is the official website of FSPL. The website belonged only to FSPL and not to FCPL. FCPL was given to old employees. FSPL and FCPL were clients each others. The fund transfers took place between them in normal course of their transactions. Since FCPL was a client of FSPL for trading and investments, so the inter transfer of funds was of routine in nature and there was no outstanding amount at the end. Although, there was pendency in accounts at the time of SEBI inspection but when NSE took data from the company, both the accounts were reconciled, and there were no dues from FCPL. Mr.Surender Singh was appointed as a Director on 2nd November 2017, but he was never a director throughout the operations of the company.*

xiii. *He was appointed as director when Mrs. Neena Bansal resigned as director from FSPL and other directors resigned from FCPL. Mrs.Neena Bansal might be a promoter of FCPL 15-20 years back, but she was neither a share holder nor was director since then. Since, Mrs. Neena Bansal was a promoter of FCPL, it does not establish the association of both the Companies.*

xiv. *It is submitted that no malafide violation of any of the rule of the SEBI or NSE is committed by the FSPL or its Directors.*

Findings:

i. The text of the relevant provisions of law viz. Section 23D of SCRA, SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, Clause 15 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 4 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011, Clauses A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of SEBI Stock Brokers Regulations read with regulations 3(a), (b), (c) and (d) of the PFUTP Regulations, alleged to be committed by the Noticees in this regard is reproduced here under:

SCRA

PENALTIES AND PROCEDURE

Penalty for failure to segregate securities or moneys of client or clients.

23D. *If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be [liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

SEBI Circular dated November 18, 1993

1. It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

A] Member Broker to keep Accounts:

Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member –

i. Moneys received from or on account of each of his clients and,

ii. the moneys received and the moneys paid on Member's own account.

B] Obligation to pay money into "clients' accounts".

Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at Bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii).

C] What moneys to be paid into "clients account".

No money shall be paid into clients account other than –

i. money held or received on account of clients;

ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;

iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;

iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

SEBI Circular dated August 22, 2011

"TRANSACTIONS AND SETTLEMENTS

15. The stock broker shall ensure that the money/securities deposited by the client shall be kept in a separate account, distinct from his/its own account or account of *any other client and shall not be used by the stock broker for himself/itself or for any other client or for any purpose other than the purposes mentioned in Rules, Regulations, circulars, notices, guidelines of SEBI and/or Rules, Regulations, Bye-laws, circulars and notices of Exchange.*

Stock Brokers Regulations

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

(1) Integrity: *A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*

…

(4) Malpractices: *A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.*

(5) Compliance with statutory requirements: *A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or

deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

ii. During the course of inspection, various records of the Noticee were examined such as, annual accounts, list of the clients, ledger accounts, demat statements, trial balance, bank accounts, etc. to examine the position of FSPL w.r.t funds and securities of its clients. As per trial balance dated January 23, 2018, the position of total creditors of FSPL is observed as under:

Account Head name	**Amount (Rs.)**
Credit clients'	363,192,591.64

iii. In order to verify the total funds available with the broker as on the date of inspection, SEBI sought the bank statements for the period between April 01, 2015 and January 31, 2018 from HDFC Bank for the below mentioned bank accounts of FSPL. It is observed that the total availability of funds in the broker's bank accounts as on January 31, 2018 were as follows:

Name of the Bank	**Bank account no.**	**Amount (Rs.)**
HDFC NSE Client A/c	00030340030695	124.73
HDFC NSE Business	00030340025552	439.63

HDFC NSE CD Client A/c	0030340036361	148.42
HDFC NSE Clearing A/c	00990610008376	0.00
HDFC Mutual Fund Sett A/C	90090610010177	46.42
HDFC NSE Client A/C	05982340006283	298.55
	Total	**1057.75**

iv. Further, NSE informed SEBI that the total funds of FSPL available with the Clearing Member and Exchange as on January 22, 2018 were as follows:

Account Head Name	**Amount (Rs.)**
NSCCL Security Deposit	1,500,000.00
NSE F&O	2,500,000.00
NSE Security Cash	11,000,000.00
Total (i)	**1,50,00,000.00**
Funds available with CM	95,226.64
IFSD available with CM	200,000.00
FDR available with CM	800,000.00
Total (ii)	**10,95,226.64**
Total (i+ii)	**1,60,95,226.64**

v. In this regard, it was observed in the inspection report that there was a total shortage of funds with FSPL, details of which are given as under:

<u>Table-3</u>

	Account Head Name	**Amount (Rs.)**
i.	Funds with clearing member	10,95,226.64
ii.	Bank balance as per bank statement	1,057.75
iii.	Deposit with NSE (Encumbered against IGRP proceedings)	1,50,00,000.00
A	Total funds available with FSPL (i+ii+iii)	1,60,96,284.39
B	Position of Credit clients'	36,31,92,591.64
	Shortage of funds with FSPL (B-A)	**34,70,96,307.25**

vi. Based on the findings of the inspection and from the table above, I observe that due to shortage of funds of Rs. 34.71 crore, as on the date of inspection, FSPL was not in a position to pay the funds of the clients who were demanding the same from it. It further indicated that the funds which were supposed to be available with FSPL to pay out to the clients, have been diverted and utilised by FSPL for purposes other than for paying to its credit clients.

vii. Having gone through the record and submission made on this behalf, I note that the regulatory provisions categorically prescribe the purposes for which the funds and securities of clients can be utilized by a stock broker and the alleged acts of appropriating the clients' securities under the garb of taking financial help from clients with their consent don't fall in any of the instances / purposes so mentioned under the relevant provisions. Additionally, it is also observed that Mr. Vinod Bansal claims to have obtained the consent of certain clients to the effect that their securities available with FSPL could be utilized for business expansion of the FSPL. However, the aforementioned submission of Mr. Vinod Bansal is not supported by any documentary evidence. Further, the list of clients submitted by Mr. Vinod Bansal has no evidentiary value as it contains merely a scrip wise demat holding of clients as on January 31, 2018. It does not on its own, demonstrate that the clients on the said list have agreed to help FSPL financially. No correspondence either by way of email or physical letter or bank statements showing transfer of funds from clients' bank accounts to FSPL's own bank account etc. has been submitted by Mr. Vinod Bansal. As per the provisions of Section 23D of SCRA and SEBI Circular dated November 18, 1993, FSPL had a mandatory obligation to settle its clients' funds first. If FSPL had settled its clients' funds, then the scenario of shortage of funds in the records of FSPL could have been avoided. Thus, the reasoning of Mr. Vinod Bansal that the clients' funds were used for business expansion with their consent, cannot be accepted in respect of the allegation levelled against FSPL for non-availability and mis-utilisation of clients' funds.

viii. In this regard, it is pertinent to mention the following judgement of the Hon'ble Securities Appellate Tribunal (Hon'ble 'SAT'):

"..In Samco Securtiies Ltd. vs SEBI (Appeal No. 493 of 2021 decided on March 30, 2022) the Hon'ble SAT held as under:

:-We find that mis-utilization of the clients' credit funds is a grave issue and not in the interest of the securities market. A stockbroker has to treat each of its client as separate and independent entity and ensure that each clients' accounts are settled separately and individually. In this regard, the appellant was statutorily obliged to abide by the directions issued under the SEBI circulars dated November 18, 1993 and September 26, 2016."

ix. In view of the above, I hold that the allegation that FSPL misused its clients' funds to the extent of Rs. 34.71 crores during the inspection period stands established.

x. Further, as regard mis-utilisation of client securities, I note that as per provisions of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, it shall be compulsory for all the member brokers to make payment to their clients or deliver to the clients the securities purchased for them within two working days of pay-out, unless the client has requested otherwise.

xi. During the course of inspection, it was observed from the scrip wise breakup of all the securities of FSPL and as per register of securities (hereinafter referred to as "**ROS**") that there were shortfalls of clients' securities. The available records also show the position of client securities available with FSPL as on January 31, 2018 as under:

Table-4

Account Head Name	Amount (Rs.)
Value of client securities as per ROS	29,59,37,882.44
(Less) Value of client securities available with FSPL in beneficiary accounts, clearing member and pledge with NBFC	-9,74,491.44
Shortfall of client securities	**29,49,63,391.00**

xii. From the above table it is observed that client securities to the extent of Rs. 29.49 crores supposed to have been held in various demat accounts as on January 31, 2018, were actually not available in those demat accounts. The same demonstrates that after the securities were purchased, pay-out was not made to the clients within two days, as mandated by SEBI Circular dated November 18, 1993. If the securities were not available with the stock broker in the demat accounts or were not delivered to the clients with the absence of any explanations by FSPL as to where the shares were supposedly kept on behalf of the clients, it can be inferred that the securities were misappropriated / misused by the stock broker for the purposes other than the mandated purposes. This can lead a prudent person to presume that these shares have been misused by FSPL for its own purposes. It is noted that the securities lying with the stock broker are held by the stock broker in a fiduciary capacity. The stock broker has to credit the securities to the demat account of its clients when the securities are fully paid for. Even for some reasons if the securities of the clients are lying with the stock broker, the stock broker is prohibited under law from using those securities for its own purposes.

xiii. Mr. Vinod Bansal has submitted that on perusal of the Delivery Instruction Slip (DIS) executed by FSPL clients, the purpose of shares transfers by the clients will reflect as for extending loan / margin support by the clients to FSPL and therefore, there was no mis-utilisation of securities. I note that the Noticees have failed to submit supporting documents such as copies of DIS in this regard. Even if the submissions of Mr. Vinod Bansal is accepted for the sake of argument, it is noted that the purpose mentioned on DIS does not unequivocally bring out that shares were in fact allowed by the clients to be transferred to FSPL. The particulars mentioned on the DIS, if mentioned as as 'loan / margin' could also mean that the shares were transferred for the purpose of margin requirement of the clients themselves (and not for proprietary account of FSPL) to enable the clients to trade in the market. Thus, in the absence of any documents on record to show the correspondence between the clients and the stock broker to explain the specific reason for transfer of shares from the clients demat accounts, the submission/reasoning stated by the Noticees cannot be accepted.

xiv. In view of the above, I hold that the allegation that FSPL has misused clients' securities to the extent of Rs. 29.50 crores during the inspection period stands established.

xv. It is further alleged that during the inspection period, funds (net transfer of Rs. 6.26 crs) were transferred/received by FSPL to one of its associated companies viz. Ficus Commodities Pvt Ltd (hereinafter referred to as '**FCPL**'). It is observed during the course of inspection that both the companies viz. FSPL and FCPL have common address. Further, from the records available and from the records obtained from website of Ministry of Corporate Affairs, the findings of inspection mentioned that one of the directors of FSPL viz. Mr. Surender Singh was also the director of FCPL during the inspection period. It was also brought out that the names of past directors of FCPL viz. Ms. Tripta Kapoor and Ms. Poona Rajbhar appeared in the client master of FSPL which was extracted from its back office. It was further mentioned that Mr. Surender Singh/Noticee no.4 was a director of both FSPL and FCPL from November 2, 2017 till March 01, 2019 and Ms. Neena Bansal/Noticee no.3, was also a common promoter of both FSPL and FCPL during the inspection period. Further, the inspection report stated that the website of FSPL, (http://ficuswealth.com) claimed about the facilities being offered by FCPL. In view of the facts as discussed above it is noted that FSPL and FCPL are related to each other.

xvi. In this context, it is noted that during the period from April 01, 2015 to January 30, 2018, FSPL transferred Rs. 87.28 crores and received Rs. 81.02 crores from FCPL in a series of transactions, amounting to a net transfer of funds to the extent Rs. 6.26 crore from FSPL to FCPL (as per the details given in the table below). However, I note that the Noticees have not provided any valid explanation with respect to the aforementioned transfer of funds. The submission of Mr. Vinod Bansal that FSPL and FCPL are different companies cannot be accepted on face value as both the corporate entities were in fact linked to each other and were practically run by same set of common key persons. Hence, it can be concluded that FSPL and FCPL were acting in concert as far as the aforesaid alleged transactions are concerned.

xvii. Mr. Vinod Bansal has further submitted that the fund transfers between FSPL and FCPL were done in the normal course as both were clients of each other. In this regard, the findings of inspection brought out that FCPL as a client of FSPL has not done any trading in the period from April 2015 till December 2016. Nevertheless, during the aforesaid period, FSPL had transferred Rs 48.28 crores to FCPL and had received Rs. 48.94 crores from FCPL. Thus, in absence of any trading relationship with FCPL, the contention of fund transfers being routine business transaction cannot be accepted.

xviii. In view of the above discussions/observations made above, I hold that by misusing clients' funds, misusing clients' securities and by transferring funds to its associate company without any substantiated reason, it is established that the FSPL has violated the following provisions of securities laws.

  i. *Circular no. SMD/SED/C1R/93/23321 dated 18 Nov, 1993*
  ii. *Clause 15 of the Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 04 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011.*
  iii. *Clause A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of the Broker Regulations.*
  iv. *Regulation 3 (a), (b), (c) and (d) of the SEBI 'PFUTP Regulations'.*

E. <u>Non redressal of investor complaints,</u>

Allegations leveled against the Noticees as mentioned in the SCN:

  i. *It is alleged that FSPL failed to redress 327 investor complaints (as on November, 2018) within one month from the date of receipt of the complaints and therefore allegedly violated the regulatory provisions of the Conditions of registration as specified under Regulation 9(e) of the Broker Regulations.*

Submissions of the Noticee in reply to the SCN:

  i. *As per para 21 of notice under reference, against 327 complaints, claim of amount Rs 95.43 crore is shown, whereas as per our ledger, total credit including clients' securities was approximately Rs 63 crore approx. Further,* *from the perusal of para 8 of the present notice, it may be seen that shortage of funds is shown at 34.7 Crore and also in para 12 of the present notice under reference, shortfall of client securities is shown as 29.4 Crore. So there is a mismatch of Rs. 32 cr. Approximately. Further, there are various clients, who had raised exaggerated claims in NSE.*

ii. *Further, NSE has established an Investor Protection Fund with the objective of compensating investors in the event of defaulters' assets not being sufficient to meet the admitted claims of investors, promoting investor education, awareness and research. The Investor Protection Fund Trust, based on the recommendations of the Member and Core Settlement Guarantee Fund Committee (formerly Defaulters' Committee), compensates the investors to the extent of funds found insufficient in Defaulters' account to meet the admitted value of claim, subject to a maximum limit of Rs. 25 lakhs per investor per defaulter/expelled member in respect of claims arising on expulsion/declaration of default of members and subject to an overall limit per defaulter / expelled member. It is submitted that NSE has already declared the Noticee-Company as defaulter.*

iii. *In view of above, claim amount as referred in para 21 as 95.43 needs reconciliation. In absence of reconciliation, no penalties be imposed on alleged violation of regulatory provisions of the Conditions of registration as specified under Regulation 9(e) of the Broker Regulations.*

Findings:

i. Before proceeding, I would like to refer to the applicable provisions of securities laws alleged to be committed by the Noticees in this regard, which read as under:

SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -

(e) he shall take adequate steps for redressal of grievances, of the investors within one month of the date of receipt of the complaint and inform the Board as and when required by the Board;

ii. From the findings of the inspection, I note that during the inspection period, there was an increase of investor complaints against FSPL month wise. Further, the inspection report mentioned that as on November 13, 2018, as per SCORES website, the total number of complaints received against FSPL were 81, out of which 38 were still pending. The details in this regard are given below:

Table-5

Month	**Complaints**	**Claim Value (in Rs. crores)**
October 2017	2	1.25
November 2017	55	17.63
December 2017	71	17.50
January 2018	81	9.65
Total	**209**	**46.03**

iii. The status of the claims against the FSPL as submitted by NSE in its reply dated August 07, 2018 are as follows:

Deposit available with Exchange	**No. of Complaints**	**Claim Value (Rs.)**	**Amount disbursed so far**
NIL	327	95,43,61,510	NIL

iv. I note from the table above that as on August 07, 2018, that the Noticee has failed to redress 327 investor complaints within one month from the date of receipt of the complaints. Further, NSE in its aforesaid email also mentioned that the Noticee was already declared expelled cum defaulter by NSE (vide circular no. NSE 16/2018 dated March 05, 2018).

v. In response to the SCN, Mr. Vinod Bansal has raised the issue of exaggerated claims by the clients of FSPL in their respective complaints, while not submitting specifically on the allegation of pending investors complaints. In this regard, I note that by making the above submission, Mr. Vinod Bansal has admitted that there were investor complaints which were yet to be resolved by FSPL as on the date mentioned in the inspection report, even if he disagrees with the claim amount. It will be appropriate here to note that the issue before me is whether or not all the investor complaints pending against FSPL have been redressed by it in a timely manner or not. As the factual status is already discussed and stated in the previous paragraph, I note that FSPL failed to redress all the 327 investor complaints as on the date mentioned in the inspection report. The same is further adduced as the Noticees also did not claim to have resolved all the investor complaints which were found out during the course of the inspection.

vi. In respect to the submissions made by Mr. Vinod Bansal regarding exaggerated claims, the same cannot be adjudicated in the instant proceedings.

vii. In view of the discussions above, I hold that by failing to redress all the investor complaints in a timely manner during the inspection period, FSPL has violated the provisions of Regulation 9 (e) of SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992.

F. <u>Non-settlement of claims, etc.</u>

Allegations leveled against the Noticees as mentioned in the SCN:

i. During the inspection, based on the basis of the analysis of the trial balance of the broker it was observed that the broker was not settling the accounts of its clients on monthly/quarterly basis. Therefore, it is alleged that FSPL failed to carry out running settlement of its clients in violation of the following regulatory provisions.

a. SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009.

b. Clause 33 of Rights and Obligations document for Stock Broker, Sub- Brokers and Clients as prescribed in Annexure 04 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011.

Submissions of the Noticee in reply to the SCN:

i. Further, NSE has established an Investor Protection Fund with the objective of compensating investors in the event of defaulters' assets not being sufficient to meet the admitted claims of investors, promoting investor education, awareness and research. The Investor Protection Fund Trust, based on the recommendations of the Member and Core Settlement

Guarantee Fund Committee (formerly Defaulters' Committee), compensates the investors to the extent of funds found insufficient in Defaulters' account to meet the admitted value of claim, subject to a maximum limit of Rs. 25 lakhs per investor per defaulter/expelled member in respect of claims arising on expulsion/declaration of default of members and subject to an overall limit per defaulter / expelled member. It is submitted that NSE has already declared the Noticee-Company as defaulter.

ii. we have also settled various claim of the clients directly, the evidence thereof is already provided herein.

Findings:

i. Before proceeding, I would like to refer to the relevant provisions of SEBI circulars alleged to be violated by the Noticees in this regard, which read as under:

SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009

Running Account Authorization

…

12. Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

…

(e) The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract

from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 4 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011

***33**. The stock broker shall make pay out of funds or delivery of securities, as the case may be, to the Client within one working day of receipt of the payout from the relevant Exchange where the trade is executed unless otherwise specified by the client and subject to such terms and conditions as may be prescribed by the relevant Exchange from time to time where the trade is executed.*

ii. As per findings of the inspection, it is noted that during the inspection period FSPL had not done actual settlement of funds and securities (on monthly / quarterly basis) in case of 87 instances out of total 100 instances verified, pertaining to 50 clients. The time period considered in this regard was from July 2016 to December 2016 (two quarters). An illustrative list highlighting a few of the aforementioned instances is reproduced hereunder:

Table - 6

S.No.	**Client Code**	**Client Name**	**Period of settlement**	**Financial balance as on date of settlement (in Rs.)**	**Securities valuation as on date of settlement (in Rs.)**	**Total amount not settled (in Rs.)**
1	C0277	Gaurav Credits Private Limited	Jul16- Sep16	25,80,181.20	68,52,561.00	94,32,742.20
2	MUM070	Geeta Prakash Shah	Jul16- Sep16	-	42,08,428.75	42,08,428.75
3	VR050	Jatinder Bhasin	Jul16- Sep16	68,00,238.67	21,67,510.90	89,67,749.57
4	C0080	Amg	Jul16- Sep16	92,748.99	-	92,748.99

		Mercantile Pvt Ltd				
5	C0031	Ontime Consultants India Private Limited	Jul16- Sep16	18,22,119.68	-	18,22,119.68

iii. Further, the findings of the inspection also brought out that on verification of trial balance and register of securities as on December 31, 2016, FSPL had not settled the clients' accounts having credit balances of funds and securities, which were inactive for more than three (3) months in 106 instances. The aforesaid accounts which were not settled had clients' funds amounting to Rs. 52.79 lakhs. An illustrative list highlighting a few of the aforementioned instances is reproduced hereunder:

Table – 7

Sl. No.	Client code	Account Head Name	Credit Closing Bal as on 31-12-16 (in Rs.)	Security valuation as on 31-12-16 (in Rs.)	Total (in Rs.)	Last Trade Date
1	C0576	Mukesh Kumar Garg	11,32,969.98	5,53,776.2	16,86,746.18	16/09/2016
2	C0027	Satvik Bansal	2,70,504.36	0	2,70,504.36	05/08/2016
3	C0011	Ravi Khullar	1,67,239.18	2,20,576.2	3,87,815.38	16/05/2016
4	C0585	Vijay Kumar Goel	99,340.51	0	99,340.51	14/03/2016
5	MUM043	Himanshu Rajnikant Sanghvi	92,876.83	0	92,876.83	24/06/2016

iv. In this context, I note that as per SEBI circular dated December 3, 2009, the actual settlement of funds and securities has to be done by the stock broker, at least once in a calendar quarter or in a month, depending on the preference of the client. However, it is observed from the findings of inspection and from the above tables that during the period between July 2016 to December 2016, there were substantial number of clients having significant outstanding credit balances in their trading accounts that remained unsettled. The Noticees in their submissions have failed to make detailed submissions in respect of settling running accounts pertaining to 50 clients and in 106 instances. Further, the document submitted by Mr. Vinod Bansal i.e. Excel sheet along with copies of bank account transactions, also mentions transactions and settlement of only 12 clients, whereas the findings of inspection were pertaining to 50 clients' accounts. In view thereof and in lack of submissions and documentary evidence, I note that the statement made by the Noticees in claiming to have settled the running accounts of its clients is vague and not substantiated.

v. Clients, whether active or inactive, are entitled to receive the settlement statement periodically as per their preference. This is prescribed by SEBI in the interest of investors so that their funds are not kept unsettled by the stock broker for indefinite periods on any pretext. However, as observed from the findings of the inspection, it is pertinent to mention that the clients of FSPL were kept in dark with respect to the state of affairs in their running accounts maintained with FSPL as they were not receiving the statement of account form FSPL in a timely manner. Such noncompliance by FSPL gave rise to the possibility of the aforesaid inactive clients' accounts being misutilised for unauthorized trading, by employees or any other persons, etc. of the stock broker. I note that the aforementioned circular was issued with a view to instill greater transparency and discipline in the dealings between the clients and the stock brokers and to protect the interests of investors in the securities market. However, in the instant case, I note that FSPL instead of taking steps to ensure compliance with the mandatory provisions of SEBI circular dated December 3, 2009, had continually defaulted in its obligations to comply with the circular.

vi. In view of the above, I hold that by failing to settle the running accounts during the inspection period, FSPL has violated the provisions of SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009 and clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 4 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011.

G. <u>Non-submission of DP account details to the stock exchanges</u>

Allegations leveled against the Noticees as mentioned in the SCN:

i. *It is alleged that the Noticee, not having disclosed two DP account details to the exchanges, violated the regulatory provisions of Clause 2 (2.2) of the SEBI Circular SEBI/HO /MIRSD/ MIRSD2/CIR /P/2016/95 dated September 26, 2016.*

Submissions of the Noticee in reply to the SCN:

i. The allegation with respect to non-disclosure of two Demat Accounts maintained with two different Depository Participants (DP) is also incorrect and denied. FSPL had disclosed each and every demat account to Exchange. There was no reason of non disclosure. If FSPL were maintaining many demat accounts with one DP, then there is no reason arises for non-disclosure of one such demat account bearing same PAN Card number and *other details. There might be some miscommunication/misunderstanding by the Exchange while carrying out inspection.*

Findings:

i. The relevant provisions of SEBI circular applicable in this regard are mentioned below:

SEBI circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

***Reporting of Bank and Demat accounts maintained by Stock Broker*:**

2.2. The stock brokers shall inform the Stock Exchanges of existing and new demat account(s) in the following format:

Name of DP	*Account Number/ Client ID*	*DP ID*	*Name of Account Holder*	*PA N*	*Sub-type/ tag of Demat Account (Proprietary/ Client/ Pool/ Collateral)*	*Date of Opening*

2.3.3. Details of all existing bank and demat accounts shall be communicated to Stock Exchanges by the stock brokers in the format specified above within one month from the date of this circular.

ii. As stipulated under the provisions of SEBI Circular SEBI/HO /MIRSD/MIRSD2/CIR /P/2016/95, a stock broker is obligated to inform the Stock exchanges about the details of its existing and new demat accounts in the prescribed format. On verification of beneficiary accounts of FSPL, it was observed by the inspection team that the stock broker was maintaining

Depository Participant (DP) accounts which have not been declared to the Stock Exchange. Details of such demat accounts are given under: -

Table - 8

DP NAME	Account No.	Type of Account
IL&FS Securities Services Limited	IN300095-11465666	Client beneficiary
Globe Capital Market Limited	12020600-00448228	Client beneficiary

iii. Noticee no.2/Mr. Vinod Bansal while not denying the existence of the aforesaid two demat accounts has categorically stated that FSPL had disclosed the said two demat accounts to the Exchange. The said submission of the Mr. Vinod Bansal is not supported by any documentary evidence which would show as to how and when the information pertaining to the said two demat accounts was informed/furnished by FSPL to the stock exchange. I hold that FSPL has violated Clause 2 of the SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which puts an obligation on the stock broker to inform the Stock Exchanges of all existing and new demat account(s) maintained by a stock broker in a timely manner.

DIRECTORS' LIABLITY

11. Before summarising the violations established by FSPL as discussed in the previous paragraphs, I proceed to deal with the implications of violations of a company on its directors i.e. Noticee nos. 2 to 4 in the instant matter. Based on the records available, it is noted that the following persons were the directors of FSPL at relevant points of time:

Table-9

Sl. No.	Noticee Name	Tenure of the Director
1 .	**Present Director**	
a.	Mr. Vinod Kumar Bansal	14/04/2003-till date
2 .	**Past Directors**	
a.	Neena Bansal	16/04/1992 to 02/11/2017
b.	Mr. Surender Singh	02/11/2017 to 01/03/2019

12. The aforesaid factual position has also not been disputed by the Noticees in their submissions. It is noted that directors play a key role in controlling the affairs of a company. The directors are expected to devote adequate time to ensure that the company is not only managed well but also that sufficient systems are put in place to comply with various laws. The Directors of a company are responsible to supervise the management of the affairs of the company. Therefore, a Director cannot escape from his / her liability arising out of any wrongdoing by the company. In view of the above, I hold that the directors of the company viz. Noticee nos. 2 to 4 are also responsible for the violations of Noticee no.1 viz. FSPL during the inspection period.

13. In the light of the foregoing observations, the violations committed by the Noticees during the inspection period which were established in the previous paragraphs are summarized in the following table:

Table-10

Sl. no.	Noticee	Nature of violations	Violations (regulatory provisions) alleged to be committed by the Noticees	Violations established (Yes/No)	Relevant penal provisions if established
1	Ficus Securities Pvt. Ltd./ *(Directors)*	A. Non submission of Information.	Regulation 26 (ii) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as '**Broker Regulations'**).	**No**	Not applicable
2 3 4	Vinod Kumar Bansal Surender Singh Neena Bansal	B. Misuse of clients' funds C. Misuse of Clients' securities D. Transfer of funds	Section 23D of SCRA r/w Circular no. SMD/SED/CIR/93/23321 dated 18 Nov, 1993,	**Yes**	**Section 23D of SCRA, Sections 15HA and 15HB of the SEBI Act**
			Regulation 3 (a),(b), (c) and(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**).	**Yes**	
			Clause 15 of Rights and Obligations document for Stock Broker, Sub- Brokers and Clients as prescribed in Annexure 04 of the SEBI Circular no. CIR/MIRSD/16/2011 dated August 22, 2011.	**Yes**	
			Clause A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of the Broker Regulations.	**Yes**	
		E. Non redressal of Investor complaints.	Regulation 9(e) of the Broker Regulations.	**Yes**	**Section 15C of the SEBI Act**
		F. Failure to carry out running account settlement of clients'	SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009.	**Yes**	**Section 15HB of the SEBI Act**
			Clause 33 of Rights and Obligations document for Stock Broker, Sub- Brokers and Clients as prescribed in Annexure 04 of the SEBI Circular no. CIR/MIRSD/	**Yes**	

			16/2011 dated August 22, 2011.		
		G. Non-disclosure of DP account details to the Exchange	Clause 2 (2.2) of the SEBI Circular SEBI/HO /MIRSD/ MIRSD2/CIR /P/2016/95 dated September 26, 2016.	**Yes**	**Section 15HB of the SEBI Act**

Issue 2: If answer to the aforesaid question is in affirmative, whether the violations would attract monetary penalty on the Noticees under the provisions of Section 23D of SCRA, Sections 15C, 15HA and 15HB of the SEBI Act?

14. From the discussion in the Issue No. I, it is noted that the violations were established as mentioned in the table above and accordingly, the Noticees are liable for imposition of penalty in terms of of Section 23D of SCRA, Sections 15C, 15HA and 15HB of the SEBI Act. The applicable provisions are reproduced below for reference:

15. The text of the aforementioned provisions of law are given below:

SCRA

PENALTIES AND PROCEDURE

Penalty for failure to segregate securities or moneys of client or clients.

23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be [liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

SEBI Act

PENALTIES AND ADJUDICATION

Penalty for failure to redress investors' grievances*.*

15C. If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be which shall not be less than one lakh rupees but liable to a penalty which may extend to one crore rupees.

Issue III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act and Section 23J of SCRA?

16. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA, which reads as under;

SEBI Act

15J -Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b)the amount of loss caused to an investor or group of investors as a result of the default;
(c)the repetitive nature of the default."

SCRA

"23J. Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

17. In view of the facts and circumstances of the case and the charges being established, the quantum of penalty would depend on the factors referred to under Section 15J of the SEBI Act and Section 23J of the SCRA stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. I note that the inspection did not reveal any specific disproportionate gains or advantage made by the Noticees. The evidence/observations on record against the Noticee, suggest the misuse of the accounts of its clients- both the funds and securities of clients, unauthorized pledging of shares, non-segregation of clients' funds and securities, non-settlement of funds and securities of clients etc, which, in my assessment, are very serious findings and such violations deserve to be adequately penalized. In my view, the failure on the part of the Noticee, as discussed in the pre-paragraphs, would compromise the regulatory framework and would defeat the purpose of measures provided in the various aforementioned SEBI Circulars / Regulations / Act on protection of clients' funds and securities by the stock broker I cannot ignore the fact that the Noticee was under a statutory obligation to abide by the provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars / directions issued thereunder, which it failed to do

during the inspection period. In this regard, it is pertinent to mention the following judgements of Hon'ble Securities and Appellate Tribunal (Hon'ble **'SAT'**):

*"..**In Arihant Capital Markets Ltd. vs SEBI (Appeal No. 521 of 2019 decided on October 21, 2021) the Hon'ble SAT held as under**:-*

> *The learned AO further noted that the circular specifically provided what money is to be paid into client accounts and what money is to be withdrawn from the client accounts. It was further specified that withdrawal of money from client accounts only towards the payment to be made on behalf of clients or towards payment of debts due, etc. as detailed was required to be made. Therefore, the appellant was found in the violation of the said circular for which penalty of Rs. 5 lac was imposed.*
>
> *10. Upon hearing both sides and upon perusing the relevant circulars, in our view, the order cannot be faulted with. The earlier circular had clearly stated that the funds of the client cannot be applied for any other purposes. The appellant's case was that the funds were applied by it for the dues for their associates, group company, etc. Now, during the arguments only, the issue of nonexistence of formula in the previous circular is brought up. In fact, the said formulization is nothing but the crystallization of the earlier circular."*

"..In Bezel Stock Brokers Pvt. Ltd. vs National Stock Exchange of India (Appeal No. 294 of 2018 decided on January 30, 2019) the Hon'ble SAT held as under :

> *The appellant had failed to act in a diligent manner and had failed to protect the interest of his clients. It was found that the appellant had failed to ensure availability of clients' assets and misappropriated clients' funds to meet the proprietary obligation and, therefore, the appellant failed to perform its fiduciary duty**. Using clients' funds is a misuse of clients' funds and securities and thus, the appellant was liable for imposition of penalty (emphasis supplied)**.*
>
> *We are further of the opinion, that considering the admission of the appellant that they had misused the client funds and securities the imposition of penalty of ` 15 lakhs over and above the amount indicated in Annexure 1 was justified in the given circumstances."*

18. It is also pertinent to mention that during the course of the instant adjudication proceedings, the respective stock exchanges informed SEBI that the current status of the Noticee no. 1 is *expelled and defaulter* with respect to the membership at all the Stock exchanges mentioned at Table-1 viz. NSE, BSE and MSE. Further, I also take note that WTM SEBI vide order dated August 25, 2022 the Noticees have been restrained from accessing the securities market in any manner whatsoever, and also been ceased and desisted from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever, as per the directions mentioned therein. The directions issued by WTM SEBI have already been reproduced in previous paragraphs. The Noticee no. 2 viz. Mr. Vinod Bansal also submitted along with supporting documents that his son is suffering from serious health issues and that the WTM SEBI order directions imposing restraint have created an impediment on the day to day financial earnings. The Noticees further pleaded that as they have been out of regular business activities, the financials of FSPL have been stifled and hence prayed for a merciful imposition of the penalty amount. I am inclined to consider the submissions regarding health issues faced by son of Mr. Vinod Kumar Bansal as a mitigating factor while imposing penalty.

ORDER

19. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 15J of the SEBI Act and Section 23J of the SCRA and in exercise of the powers conferred upon me under Section 23D of SCRA, Sections 15C, 15HA and

15HB of the SEBI Act, I hereby impose monetary penalty on the Noticees as given in table below:

Table-11

<table>
<tr><th>Sl. No.</th><th>Noticees</th><th>Nature of violations</th><th>Penal Provisions</th><th>Penalty (to be paid Jointly and Severally)</th></tr>
<tr><td>1.</td><td rowspan="4">Noticee no.1/FSPL

Noticee no.2/Mr. Vinod

Noticee no.3/Ms. Neena Bansal

Noticee no.4/Mr. Surender Singh</td><td>i. Non-segregation and Misuse of clients’ funds
ii. Non-segregation and Misuse of clients’ securities
iii. Transfer of funds with associated company</td><td>Section 23D of SCRA,

Sections 15HA of the SEBI Act

Section 15HB of the SEBI Act</td><td>Rs. 1,00,000/-

Rs. 5,00,000/-

Rs. 1,00,000/-</td></tr>
<tr><td>2</td><td>iv. Non redressal of Investor complaints</td><td>Section 15C of the SEBI Act</td><td>Rs. 1,00,000/-</td></tr>
<tr><td>3</td><td>v. Failure to carry out running account settlement of clients’</td><td>Section 15 HB of the SEBI Act</td><td>Rs. 1,00,000/-</td></tr>
<tr><td>4</td><td>vi. Non-disclosure of DP account details to stock exchange</td><td>Section 15HB of the SEBI Act</td><td>Rs. 1,00,000/-</td></tr>
<tr><td></td><td colspan="3">Total</td><td>Rs. 10,00,000/-
(Rs. Ten lakhs Only)</td></tr>
</table>

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

20. The Noticees shall remit / pay the said total amount of penalty jointly and severally within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT >Orders >Orders of AO >PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

21. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

22. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

23. In terms of the provisions of Rule 6 of the AO Rules, a copy of this order is being sent to the Noticees viz Ficus Securities Ltd, Mr. Vinod Kumar Bansal, Ms. Neena Bansal and Mr. Surender Singh and also to the Securities and Exchange Board of India.

PLACE: Mumbai	**N HARIHARAN**
DATE : October 31, 2022.	**ADJUDICATING OFFICER**