

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Sr. No.	Name of Noticee	SEBI Registration No.
1	Ficus Commodities Pvt. Ltd.	INZ000086237

In the matter of Ficus Commodities Pvt. Ltd.

Background

1. The present matter emanates from the show cause notice dated October 12, 2022 (hereinafter referred to as “**SCN**”) served on Ficus Commodities Pvt. Ltd. (hereinafter referred to as “**FCPL / Noticee**”) under regulation 27(1) of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”). The *Noticee* is registered with Securities and Exchange Board of India as a commodity derivatives broker under the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) having registration number INZ000086237. The *Noticee* was registered as a member of the Multi Commodity Exchange of India Limited (hereinafter referred to as “**MCX**”) and the National Commodity and Derivatives Exchange Limited (hereinafter referred to as “**NCDEX**”).
2. Vide the above mentioned SCN, the *Noticee* was called upon to show cause as to why action as recommended by the Designated Authority (hereinafter referred to as “**DA**”) or any other direction as deemed fit should not be issued/imposed on it in terms of regulation 27 of the Intermediaries Regulations. The issued SCN enclosed therewith the report of the DA dated September 16, 2022 made with respect to the *Noticee*.
3. The DA in his report had observed the following against the *Noticee*: -

- 3.1. MCX had terminated the membership of the *Noticee* with effect from June 29, 2018 in terms of rule 43(b) and bye-law 14.2 of the said Exchange for the misconduct and non-cooperation in respect of the production of the documents for inspection. The membership of the *Noticee* with NCDEX has also ceased with effect from May 8, 2018;
- 3.2. The *Noticee* has aided and abetted Ficus Securities Pvt. Ltd. (hereinafter referred to as "**FSPL**"), a connected entity, in diverting funds belonging to the clients of FSPL.
4. Based on the aforesaid finding the DA held that the *Noticee* has violated the following provisions of law during the period April 1, 2015 till January 23, 2018 (hereinafter referred to as the "**Inspection Period**"):
- 4.1. Regulations 27(i) and (ii) of the Stock Brokers Regulations.
- 4.2. Clauses A (1) and (5) of Code of Conduct as provided under Schedule II read with regulation 9 of the Stock Brokers Regulations.
- 4.3. SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.
5. The DA in his report has also made the following recommendation:
- "In view of the above, in terms of Section 12(3) of the Securities and Exchange Board of India Act, 1992 read with regulation 26 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, I hereby recommend the cancellation of the certificate of registration (registration No. INZ000086237) granted by the Securities and Exchange Board of India to Ficus Commodities Private Limited (Permanent Account Number: AABCV4377P)."*
6. As stated above that a SCN based on the Enquiry Report was served on the *Noticee*. However, the *Noticee* failed to submit any response to the SCN inspite of service of the SCN. Thereafter, a reminder email dated December 22, 2022 was sent to Mr. Vinod Bansal, one of the key personnel of the *Noticee*. In response to the said email, Mr. Vinod Bansal vide his email dated December 23, 2022 stated that he has informed the concerned person to do the needful. It is noted from the records that till date no reply has been received from the *Noticee*. However, to proceed further in the matter, a personal hearing was scheduled on February 16, 2023 in the

present matter. The *Noticee* was informed about the said personal hearing vide email dated February 13, 2023. On the day of the scheduled personal hearing, no one appeared on behalf of the *Noticee*.

Consideration of Issues and Findings

7. I note from the records that the *Noticee* has neither filed any reply to the SCN nor has availed the opportunity of personal hearing granted to it. It will be appropriate here to note that the findings in the Inspection Report are primarily based on the findings of forensic audit conducted by S Panse & Co. of FSPL, Exchange inspection report, analysis of bank statements and other records maintained by the *Noticee*. Consequently, the instances of irregularities/observations pointed out in the 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, based on materials available on record. After going through all the material, as aforesaid, available on record, I find that the primary issue that requires determination in the present matter is whether or not, the *Noticee* has by its acts and conduct during the inspection period, has violated the applicable provisions of securities law, as mentioned in preceding paragraphs and as alleged in the SCN from time to time relating to its broking operations.
8. As noted in the beginning of the present Order, neither the *Noticee* nor any Authorised Person on its behalf, has replied to the allegations levelled in the SCNs with respect to the findings of the Inspection Report. Nevertheless, I proceed to examine as to whether the facts unearthed during the course of the inspection and as noted in the Enquiry Report, support the allegations levelled in the SCN against the *Noticee*.
9. Before dealing with the issue at hand, it would be appropriate to refer to the relevant provisions of law alleged to have been violated in the matter, extract whereof is reproduced below:

STOCK BROKERS REGULATIONS

Conditions of registration.

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

(a) the stock broker holds the membership of any stock exchange;

...

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II;

“27. A stock broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker, if he—

(i) ceases to be a member of a stock exchange; or

(ii) has been declared defaulter by a stock exchange and not re-admitted as a member within a period of six months; or....”

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) Regulations, 1992

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.

...

(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.

CIRCULAR ISSUED BY SEBI

- *SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.*

10. Now advertent to the issue at hand, it would be relevant to first highlight the findings of the inspection carried out by SEBI into the affairs of the *Noticee* during the inspection period, which are discussed in subsequent paragraphs.

Aided and abetted FSPL in diverting funds belonging to the clients of FSPL.

11. The *inter se* connection between the *Noticee* and FSPL, as noted from the findings of the inspection, is evident from the following: -

11.1. Upon perusal of website of FSPL i.e. <http://ficuswealth.com>, the name of the *Noticee* is appearing on the said homepage.

11.2. Mr. Surender Singh is the common Director of both the entities.

11.3. Both FSPL and the *Noticee* shared the same office (810, Indra Prakash Building, Connaught Place, New Delhi-110001).

- 11.4. The names of past Directors i.e. Ms. Tripta Kapoor and Ms. Poona Rajbhar of the *Noticee* were appearing in the client master (extracted from the back office) of FSPL and they were also found to be the employees of FSPL.
- 11.5. Ms. Neena Bansal who was a Director in FSPL was a subscriber to the Memorandum of Association of the *Noticee*.
- 11.6. There were huge amounts of funds transfers between FSPL and the *Noticee*. During the period April 1, 2015 to December 16, 2016, FSPL from its HDFC NSE Client account (numbered 000 30340030695) had transferred INR 48.28 crore to the *Noticee's* HDFC account (numbered 00030340037043) and had received INR 48.94 crore during the said period.
12. In the light of the aforesaid discussion, I note that both the *Noticee* and FSPL at some point in time or the other, had common Promoter and Director too, with ex-employees of FSPL being Directors of the *Noticee* and both the entities even shared a common website and a registered office. The record also shows that in the then active bank accounts of the *Noticee*, Mr. Vinod Bansal, Ms. Neena Bansal and Mr. Mayur Bansal (nephew of Mr. Vinod Bansal) were the authorized signatories. Thus, not only the key personnel of both the entities were common but their functioning was also intricately linked with each other (through common website, authorised signatories, fund transfers etc.). Therefore, I find that both the so called different corporate entities were in fact intricately linked to each other and were practically run by the same set of common key persons, hence, were in fact acting in concert with each other during the relevant period.
13. On a scrutiny of bank statement of FSPL, it was noted that during the period of April 2015 till December 31, 2016, from its HDFC NSE Client a/c no. 30340030695, FSPL has transferred INR 48.28 crore to the *Noticee's* HDFC a/c no. 00030340037043 and has also received INR 48.94 crore during the said period from the *Noticee*. It has been noted in a connected matter (SEBI Order dated August 25, 2022 in the matter of Ficus Securities Pvt. Ltd. and Others) that when the said transaction was done FSPL was not in a position to repay / settle the funds due to be paid to its credit balance clients. It was further held in the said SEBI Order dated August 25, 2022 that FSPL had misutilised its clients' funds for purposes other than utilizing

the said funds for the purpose of and in the interest of the clients' trading accounts. Moreover, it was also noted that clients' securities were not available with FSPL, as it had pledged its clients' securities to avail loans from financial institutions and consequently was not settling the accounts of its clients on a monthly / quarterly basis. All the aforesaid factors aptly demonstrate that the financial health of FSPL was unsound. Given the aforesaid circumstances when FSPL was starving for funds, the unusual manner in which the transfer of funds took place regularly, almost every other day for 21 months whereby FSPL went on transferring funds from its account to the account of the *Noticee* which, on a preponderance of probability basis, can be said to be nothing but diversion of those funds which were actually meant to be refunded to FSPL's clients to settle their credit balances. No explanation whatsoever has been furnished by the *Noticee*, with respect to the said funds transactions that have been alleged as diversion of clients' funds. The above findings find strength from the fact that FSPL was having a poor financial health because of which it was found to be using securities and funds belonging to its clients, for meeting its own proprietary obligations. Though the *Noticee* was a client of FSPL, however, it has been observed that it had not done any trading during the period April 2015 till December 31, 2016. Moreover, no justification with supportive evidence has been furnished by the *Noticee* to justify the frequent transfer of funds made between it and FSPL, even though it did not do any trading during the aforesaid period. The above acts of transfer of funds on a frequent basis by a defaulter stock broker i.e., FSPL who defaulted in settling the accounts of its clients, was apparently due to the fact that FSPL was found utilizing clients' money as well as clients' securities to meet its own obligation and to use those funds and securities for other extraneous purposes not permissible under the law. Therefore, given the fact that the *Noticee* and FSPL have common Promoter, common Director and ex-employees of FSPL were Directors of the *Noticee*, apart from sharing the same registered office and website, the aforesaid transfer of funds between the *Noticee* and FSPL, at a time when FSPL needed the funds the most to repay to its clients, cannot be said to be a fortuitous act but was deliberately done under an illicit design, despite the fact that both the entities were aware that FSPL was prohibited under the law to transfer funds belonging to its clients to its connected entity, the *Noticee*. Thus, the *Noticee* has visibly aided and abetted FSPL in diverting

its clients' funds for being misutilised for private gain of FSPL in a fraudulent manner. To put it differently, but for the active collusion of the *Noticee*, FSPL could not have diverted the said funds belonging to its clients by transferring those funds to the account of the *Noticee* even though the *Noticee* did not have an active trading account with FSPL and did not enter into any trading transaction during the relevant period, when it had received such huge amounts of funds from FSPL.

14. I note that various measures taken by SEBI by issuing circular, code of conduct etc., as cited earlier on the issue of Stock Broker – Client transactions, settlement of funds and securities etc., are primarily intended to increase transparency in management of securities of clients and funds by the stock brokers. The funds in the client's accounts cannot be applied for any purpose other than what is permissible under SEBI rules and regulations. The objective of opening and maintaining a separate account for the client's funds is to segregate and identify them separately and to prevent its misuse either for trades of other clients or of the stock broker itself or for any other purposes, so as to ensure that they are beyond the reach of the stock broker and / or its employees. The aforesaid action of the *Noticee* wherein it has actively aided and abetted FSPL in routing / diverting the funds belonging to the clients of FSPL, as per its own convenience without paying any heed to its statutory obligations, cannot be viewed leniently. Thus, I find that the *Noticee*, by aiding FSPL in diverting its clients' funds, has grossly violated clauses A (1) and A (5) of code of conduct of Stock Brokers Regulations read with SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.

Condition of Registration

15. In terms of regulation 9 (a) of the Stock Brokers Regulations, one of the primary conditions of seeking registration is that the stock broker applicant must hold the membership of any one of the stock exchanges. In the present matter, it is noted from the available records that MCX had terminated the membership of the *Noticee* with effect from June 29, 2018 in terms of rule 43(b) and bye-law 14.2 of the said Exchange for the misconduct and non-cooperation on the part of the *Noticee* in respect of production of the documents for inspection. Further, the membership of the *Noticee* with NCDEX was also ceased with effect from May 8, 2018. Thus, currently the *Noticee* is no longer holding the membership of any of the recognized

stock exchange. Hence, the *Noticee* is not fulfilling one of the primary conditions for holding the certificate of registration as a stock broker, as mandated under regulation 9 (a) of the Stock Brokers Regulations. The same has resulted in violation of regulations 27 (i) and (ii) of Stock Broker Regulations.

16. To sum it up, I observe that the information and data gathered at the time of inspection unequivocally bring to light, the flagrant regulatory lapses noticed from the way the *Noticee* has aided and abated FSPL in diverting the latter's clients' funds. Further, the violation committed by the *Noticee* is undoubtedly grave in nature which has been carried out for a considerable period of time unabatedly despite the fact that the *Noticee* very well knew that what it was doing was not at all permissible under the extant SEBI regulations and circulars pertaining to dealing in clients' funds.
17. In view of the aforesaid discussions, it is held that the *Noticee* has carried out its stock broking activities during the inspection period in contravention of various provisions of SEBI Act, regulations and circulars. I note that a stock broker being a vital securities market intermediary, is strictly prohibited from indulging in any act detrimental to the investors' interest or which leads to interference with the fair and smooth functioning of the market. A stock broker is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and shall have to ensure that its interests do not compromise the integrity of the securities market. In the given facts of the situation, the *Noticee* has failed to fulfil its avowed duty as a responsible market intermediary. The gravity of lapses and contraventions of the statutory provisions committed by the *Noticee* as alluded at length in preceding paragraphs, can also be gauged from the fact that the *Noticee* has been expelled from the Exchanges (MCX and NCDEX) since May - June 2018. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and protect the integrity of the securities market. Since the conduct of the *Noticee* is not in the interest of investors in the securities market, appropriate measures need to be taken against the *Noticee*, else it may lead to loss of investors' trust in the securities market.
18. I note that the DA has recommended that certificate of registration of the *Noticee* may be cancelled. Having considered the allegations and material available on

record, I find no reason to disagree with the recommendation given by the DA, rather I am of the firm view that considering the facts and circumstances of the case, the ends of justice demands that in the instant matter the *Noticee* does not deserve to continue as a registered intermediary.

Directions

19. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 12 (3) and 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 27 (5) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby cancel the certificate of registration (registration No. INZ000086237) granted to Ficus Commodities Pvt. Ltd.
20. The Order shall come into force with the immediate effect.
21. A copy of this order shall be forwarded to Ficus Commodities Pvt. Ltd. and all the recognized Stock Exchanges.

Date: March 28, 2023
Place: Mumbai

-Sd-
S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA