WTM/ASB/MIRSD/MIRSD_DPIEA/27868/2023-24

WTM/ASB/MIRSD/MIRSD_DPIEA/27869/2023-24

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under 11(1), 11 (4) and 11B (1), 11 B (2), 11 D of the Securities and Exchange Board of India Act, 1992 and Section 12 A (1) and 12 A (2) of the Securities Contracts (Regulation) Act, 1956 read with Section 23 D and Section 23H of Securities Contracts (Regulation) Act, 1956 read with Regulation 35 of the SEBI (Intermediaries) Regulations, 2008

In the matter of Fairwealth Securities Limited and Fairwealth Commodity Broking Pvt. Ltd.

In respect of –

Noticee No.	Name of the Noticee	PAN
1.	Fairwealth Securities Ltd.	AAACF8795N
2.	Dhirender Gaba	AFUPG9615E
3.	Naveen Gaba	AAEPG8929N
4.	Shripad Sadanand Desai	AMGPD5283J
5.	Sandeep Jindal	AETPJ4553L
6.	Shitla Prasad Shukla	AAJPS3925M
7.	Aagas Software Solutions Pvt. Ltd.	AAICA5378C
8.	Katashraj Securities Pvt. Ltd.	AACCK7144E
9.	Reets Plastics Pvt. Ltd.	AACCR2424A
10.	Shyam Sunder Jolly	ADBJ6001G
11.	Chahek Housing Pvt. Ltd.	AAHCC0112H
12.	Vikram Kumar	AROPK2904N
13.	Fairwealth Financial Services Ltd.	AAACS4473Q
14.	Fairwealth Commodity Broking Pvt. Ltd.	AABCF0079J

(The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

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1. Background –

1.1. The present proceeding before me emanates from an interim report of NSE received by SEBI on October 10, 2019 ("**NSE Report**") and the forensic audit initiated by BSE into the working of Fairwealth Securities Limited ("**FSL**"), which culminated in a Forensic Audit Report dated December 22, 2020 ("**FAR**"). Additionally, the present proceeding also concerns findings/observations in respect of the inspection carried out by SEBI of Fairwealth Commodity Broking Private Limited ("**FCBL**") during the period, April 01, 2017 to December 20, 2018 ("**SEBI Inspection Report**").

1.2. I note that FSL is registered with SEBI in the following categories:

a. a stock broker in equity, equity derivative and currency derivative segments of NSE (Registration no. INZ000186238);
b. a stock broker in equity, equity derivative and currency derivative segments of BSE (Registration no. INZ000186238);
c. a stock broker in equity, equity derivative and currency derivative segments of MSEI (Registration no. INZ000186238); and
d. a depository participant of CDSL (Registration no. IN-DP-CDSL-393-2007).

1.3. Similarly, I note that FCBL is registered with SEBI as a commodity derivatives broker with the registration number, INZ0000337 and is a member of Multi Commodity Exchange of India Ltd. ("**MCX**") and National Commodity and Derivatives Exchange Limited ("**NCDEX**").

1.4. It is noted from the record that action was initiated by SEBI against FSL pursuant to the receipt of the NSE Report. A chronology of the actions initiated by SEBI against FSL, and the associated events surrounding SEBI's actions are captured hereunder:

Table - 1

S. No.	Event	Date
1.	NSE forwarded an interim report of its preliminary observations to SEBI.	October 10, 2019
2.	*Ad interim ex parte order* was passed by SEBI against FSL and thirteen other entities upon the finding that the entities were in *prima facie* violation of the SEBI (Brokers and Sub Brokers) Regulations, 1992 ("**Stock Brokers Regulations**"), SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**"), and circulars made thereunder ("**Interim Order**").	October 11, 2019
3.	Letter issued by BSE appointing a forensic auditor, Sarath & Associates to look into the working of FSL, pursuant to the directions contained in the Interim Order.	November 25, 2019
4.	National Stock Exchange of India Ltd. passed an order expelling FSL from the membership of the exchange.	January 14, 2020
5.	A Confirmatory Order was passed by SEBI confirming the directions issued vide the Interim Order dated October 11, 2019. The directions in the Interim Order, however, were revoked in respect of Roop Lal Aggarwal and Kamala Prasad Shukla. So, by way of the Confirmatory Order, the directions in the Interim Order were confirmed in respect of twelve entities and revoked in respect of the above-named two entities ("**Confirmatory Order**")	January 24, 2020

6.	Final forensic audit report with respect to the working of FSL submitted by BSE to SEBI ("**FAR**"). The scope of the audit was the examination of all books of accounts of the member, including financial ledgers, Banks book/ statements, DP Statements/ Register of Securities, Financial Statements/ Trail Balance, etc. gathered from the firm/ available records with exchange, for F.Y. 2016-17, 2017-18, 2018-19 till December 22, 2020 ("**Forensic Audit Period**").	December 22, 2020

1.5. I see from the table that an Interim Order was passed in the matter in respect of fourteen entities, and a confirmatory/revocation Order was passed confirming the directions in the Interim Order in respect of twelve entities (including FSL) and revoking the same in respect of two entities. Thus, the directions contained in the Interim Order continue to remain in operation with respect to the said twelve entities. The said twelve entities have been made Noticees in the present SCN.

1.6. In this regard, it would be relevant to provide a brief summary of the Interim Order passed in the matter. The essential parts of the Interim Order are captured hereunder:

Prima-facie Findings

a. The Interim Order recorded that on comparison of the back office Register of Securities as on October 03, 2019 with the holding statements of beneficiary accounts of FSL, it was observed that there was a shortfall of securities worth Rs. 103.84 core which was not available with FSL. Also, it was noted that securities had primarily been sold by FSL through five client codes without those clients possessing those securities. It was also observed that the five client codes belonged to five entities that were related

to FSL. Additionally, the Interim Order observed that on verification of trial balance of FSL, as on October 03, 2019, NSE observed that as against client credit balances amounting to Rs. 56.37 crore, available balance in bank/clearing member/exchange/clearing corporation were to the extent of Rs. 4.27 crore. Therefore, a shortfall of Rs. 52.10 crore was seen. Further, it was noted, based on the net-worth certificate of FSL (as on March 31, 2019) and Trial Balance dated October 03, 2019 as computed by NSE, that the net-worth of FSL (as on October 03, 2019) was in the negative by Rs. 5.93 crore.

b. The Interim Order *prima facie* found that FSL had mis-utilised the funds and securities of clients with the assistance/connivance of other related entities.

Directions

c. Considering the facts as brought out, the following directions were passed in the Interim Order:

"8. Under the above circumstances, I, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11B and 11D read with Section 19 of the SEBI Act, 1992 and Regulation 35 of SEBI (Intermediaries) Regulations, 2008, by way of this ex parte ad interim order, hereby issue the following directions:

(i) All Noticees are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the s ecurities market in any manner whatsoever, till further directions;

(ii) The aforesaid Noticees shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;

(iii) The aforesaid Noticees are directed not to dispose of or alienate any assets, whether movable or immovable, or to create or invoke or release any interest or charge in any of such assets except with the prior permission of NSE and BSE;

(iv) The aforesaid Noticees are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately to NSE and BSE but not later than 5 working days from the
date of receipt of this order;
(v) Till further directions in this regard, the assets of the Noticees shall be utilized only for the purpose of payment of money and /or delivery of securities, as the case may be, to the clients/investors under the supervision of the concerned exchanges/depositories;
(vi) The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid Noticees except for the purpose mentioned in sub-para (v) above, after confirmation from NSE/BSE;
(vii) The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by the Noticees except for the purpose of payment of money to the clients/investors under the written confirmation of NSE /BSE;
(viii) The stock exchanges shall appoint forensic auditor to track misuse of client's funds/securities and to identify the net assets/liabilities of Noticee no. 1 and submit the report to SEBI within 90 days;
(ix) The stock exchanges shall deal with the complaints/claims of the clients against the member and may return the amount of client fund and securities to the clients and may also use assets of the Noticee no. 1 to meet clients'/exchanges'/clearing members'/clearing corporations', obligations; and
(x) The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of aforesaid entities/persons.
9. The findings recorded in the order are based on the prima facie examination of facts and prima facie violation of securities law.

10. The present order has been passed under disciplinary proceedings against the Trading Member for the violations of the Securities Laws, as mentioned in the order above. The observations in this order does not ipso facto entitle any client of the Trading Member to claim their funds, stocks and securities, which claims are to be taken by such clients with the concerned stock exchanges/depositories in accordance with their respective bye-laws.

11. The Noticees against whom this Order is being passed may file their objections, if any, within twenty – one (21) days from the date of receipt of this Order. The Noticees are directed to submit their replies along with the supporting documents including details of payments made to clients. In the event the Noticees intend to avail an opportunity of personal hearing, they may appear before the Securities and Exchange Board of India at its Head Office at SEBI Bhavan- II, Plot No.C4 -A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400051 on November 15 , 2019 at 02:30 PM. In the event of the Noticees failing to file replies within 21 days of receipt of this order or failing to appear before SEBI on the aforesaid date and time, the preliminary findings at paras 6

of this Order and directions at para 8 (i) to (x) above shall be deemed to be confirmed against the Noticees automatically, without any further orders.

12. This order shall come into force with immediate effect. A copy of this order shall be forwarded to all the Noticees, Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with. "

1.7. Further, it has already been stated that an inspection was conducted by SEBI of FCBL during December 20-26, 2018 for the period, April 01, 2017 to December 20, 2018. The findings of the said inspection in the form of the SEBI Inspection Report was shared with FCBL. It is noted that FCBL is a subsidiary

of FSL, and Dhirender Gaba and Naveen Gaba were the Directors of FCBL at the time of inspection.

1.8. In view of the above, a common show-cause notice dated July 16, 2021 bearing number SEBI/HO/MIRSD/DPIEA/OW/RA/2021/15739 has been issued under Sections 11(1), 11(4), 11B (1), 11B (2) and 11 D of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with Section 15 HA of the SEBI Act and Section 12 A (1) and 12A (2) of the Securities Contracts (Regulation) Act, 1956 ("**SCRA, 1956**") read with Section 23 D and Section 23H of SCRA, 1956 read with Regulation 35 of the Intermediaries Regulations in respect of the working of the FSL and FCBL ("**SCN**").

1.9. It is in this background that the present proceeding, which is to consider the allegations made in the SCN, is before me.

2. The Show-cause Notice –

2.1. As brought out in the preceding paragraphs, the SCN has been issued to FSL, FCBL and other entities. In this regard, the SCN can be bifurcated into two parts: a) allegations with respect to the working of FSL and b) allegations with respect to affairs of FCBL. The allegations with respect to FSL are summarised hereunder: -

a. Unauthorised off-market transactions in clients' accounts.
b. Unauthorised trading in clients' accounts and misappropriation of clients' securities.
c. Unavailability of securities.
d. Unauthorised pledging of clients' securities.
e. Non-settlement of clients' accounts.
f. Mis-utilisation of funds for own purposes/debit balance clients.
g. Misrepresentation in books of account and submission of incorrect net-worth certificate to stock exchange.
h. Failure to furnish documents to stock exchange and non-cooperation with the auditor.

i. Related party transactions.

j. Miscellaneous contraventions –

   i. discrepancies in email IDs and mobile numbers in the data of clients;

   ii. FSL purchased securities in un-registered client code;

   iii. non-segregation of funds/securities of clients; and

   iv. code of conduct violations.

2.2. The allegations with respect to FCBL are summarised hereunder: -

a. Failure to segregate client funds from own funds.

b. Misuse of clients' funds.

c. Non-settlement of clients' funds.

d. Enhanced supervision data.

e. Client registration process (KYC and KRA process).

f. Correct mobile number and email ID not uploaded in UCC database.

2.3. Based on the above-mentioned facts, the following violations have been alleged against the Noticees in the SCN:

Table – 2

Noticee	Violations Alleged
FSL	▪ SEBI Circular SMD/ SED/CIR/93/23321 dated November 18, 1993, SEBI Circular SEBI /HO/MIRSD/MIRSD2/ CIR/P /2016/95 dated September 26, 2016. ▪ SEBI Circular CIR/HO/ MIRSD /MIRSD2/CIR/P/2017/108 dated September 26, 2017, SEBI Circular CIR/HO/MIRSD/MIRSD2 /CIR/P/2017/124 dated November 30, 2017 and SEBI Circular CIR/H0/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11,2018 ▪ SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular No SEBI/MRD/Policy/AT/Cir-19/2004 dated April 21, 2004, SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 and SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 ▪ Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. ▪ SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. ▪ SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. ▪ SEBI Circular No. SMD/SED/CIR/93/23321 dated 18 Nov, 1993 read with SEBI/MRD/SE/Cir- 33/2003/27/08 dated Aug 27, 2003. ▪ Rule 15 of Securities Contracts (Regulation) Rules, 1957 ("**SCRR,1957**") and Regulation 17 of the SEBI (Stock-Brokers) Regulations, 1992. Further, FSL has also violated Clause 6.1.10) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016 as it submitted incorrect/ wrong data to the exchange.

	▪ Regulation 21 of Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 ("**Stock Brokers Regulations**") and Clause A(5) of Schedule II read with Regulation 9 (f) of Stock Brokers Regulations. ▪ Section 12(1) of SEBI Act, 1992 read with Rule 8 (1) (f) and 8 (3) (f) of SCRR, 1957 ▪ Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 ▪ SEBI Circular No. SMDRP/Policy/C\R-39/2001 dated July 18, 2001 and Clause A (2) & A (3) of Schedule II read with Regulation 9 (f) of Stock Brokers Regulations. ▪ Clause 2.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. ▪ Clause A (1) and A (5) of the Code of Conduct prescribed for the Stock brokers under the Stock Brokers Regulations. ▪ Clauses A(1),A(2) & A(5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations. ▪ Section 12A of SEBI Act, 1992 r/w Regulation 3(d), 4(1),4(2)(f), 4(2)(p) and 4(2)(m) of PFUTP Regulations.
Dhirender Gaba, Naveen Gaba, Shripad Sadanand Desai, Sandeep Jindal and Shitla Prasad Shukla (*in their capacity as Directors of FSL*)	Same as that for FSL

Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd., Reets Plastics Pvt. Ltd., Shyam Sunder Jolly, Chahek Housing Pvt. Ltd. and Vikram Kumar (*entities related to FSL*)	▪ Section 12A of the SEBI Act read with Regulation 3(d) and 4(1) of the PFUTP Regulations.
FCBL	▪ SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir-11/2008 dated April 11, 2008. ▪ SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. ▪ SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009. ▪ Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016 ▪ SEBI Master circular SEBI/HO/ MIRSD/ DOP1/ CIR/P/2018/87 dated June 01, 2018 and SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011. ▪ Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

	▪ Clauses A(1), A(2) & A(5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations. ▪ Section 12A of SEBI Act, 1992 r/w Regulation 4(1) & 4(2)(f) of PFUTP Regulations.
Dhirender Gaba and Naveen Gaba *(in their capacity as Directors of FCBL)*	Same as FCBL

2.4. In view of the above allegations made, the Noticees have been called upon to show cause as to why directions under Sections 11 (1), 11 (4), 11B (1), 11B (2) and 11D of the SEBI Act read with Section 15 HA of the SEBI Act and Section 12A (1) and 12A (2) of the SCRA, 1956 read with Sections 23D and 23H of the SCRA, 1956 and Regulation 35 of the Intermediaries Regulations should not be passed against them.

3. Service of SCN, Personal Hearing, Replies and Written Submissions from the Noticees –

3.3. The SCN has been served on all the Noticees. With respect to five Noticees, the SCN could not be served through SPAD and the same was done through affixture. The details regarding the same are provided hereunder:

Table - 3

Noticee No.	Noticee	Affixture details	Whether unserved SCN uploaded on SEBI website ?
5	Sandeep Jindal	Affixed on 21-02-2022	Yes
7	Aagas Software Solutions Pvt Ltd	Affixed on 23-12-2021	Yes
8	Katashraj Securities Pvt Ltd	Affixed on 21-02-2022	Yes
9	Reets Plastics Pvt Ltd	Affixed on 23-12-2021	Yes
11	Chahek Housing Pvt Ltd	Affixed on 23-12-2021	Yes

3.4. The Noticees were also provided opportunities of personal hearing on July 28, 2022, October 18, 2022, January 20, 2023 and January 23, 2023. The details of the personal hearings in the matter are tabulated below:

Table – 4

Date of Hearing	Noticees for whom Hearing Scheduled	Noticees Attended	Represented by
October 18, 2022	Noticees 1,2,3,4,5,6,7,8,9,10, 11,12,13 and 14 (all the Noticees)	Shripad Sadanand Desai (Noticee 4)	Ms. Ayushi Anandpara, Advocate
July 28, 2022	Noticees 1,2,3,4,5,6,7,8,9,10, 11,12,13 and 14 (all the Noticees)	Shitla Prasad Shukla (Noticee No. 6)	Ms. Pratibha Tiwari, Authorised Representtaive
		Shyam Sunder Jolly (Noticee No. 10)	Ms. Rishika Harish and Ms. Darshana Gaggar, Advocates
		Vikram Kumar (Noticee No. 12)	Self
January 20, 2023	Noticees 1,5,6,7,8,9,10 and 11	No appearance	-
January 23, 2023	Noticees 2,3,13 and 14	No appearance	-

3.5. It is noted that there were five Noticees, namely, Sandeep Jindal, Aagas Software Solutions Pvt Ltd, Katashraj Securities Pvt Ltd, Reets Plastics Pvt Ltd, Chahek Housing Pvt Ltd who have neither filed any reply in response to

the SCN nor appeared for hearing. The details of the service of Hearing Notices in respect of the said five Noticees are provided hereunder:

Table – 5

In respect of hearing scheduled on October 18, 2022

Noticee No.	**Noticee**	**SPAD/Affixure**	**Newspaper Publication**
5	Sandeep Jindal	Affixed on 29-09-2022	Hindustan Times (Delhi edition) – English and Gurgaon Mail – Hindi on 12.10.2022
7	Aagas Software Solutions Pvt Ltd	Affixed on 28-09-2022	
8	Katashraj Securities Pvt Ltd	Affixed on 29-09-2022	
9	Reets Plastics Pvt Ltd	Affixed on 28-09-2022	
11	Chahek Housing Pvt Ltd	Affixed on 28-09-2022	

Table – 6

In respect of hearing scheduled on July 28, 2022

Noticee No.	Noticee	SPAD/Affixure	Whether Hearing Notice uploaded on SEBI website ?
5	Sandeep Jindal	Affixed on 02-07-2022	Yes
7	Aagas Software Solutions Pvt Ltd	Affixed on 01-07-2022	Yes
8	Katashraj Securities Pvt Ltd	Affixed on 02-07-2022	Yes
9	Reets Plastics Pvt Ltd	Affixed on 01-07-2022	Yes
11	Chahek Housing Pvt Ltd	Affixed on 01-07-2022	Yes

Table – 7

In respect of hearing scheduled on January 20, 2023

Noticee No.	Noticee	SPAD/Affixure	Whether Hearing Notice uploaded on SEBI website ?
5	Sandeep Jindal	Affixed on 31-12-2022	Yes
7	Aagas Software Solutions Pvt Ltd	Affixed on 28-12-2022	Yes

8	Katashraj Securities Pvt Ltd	Affixed on 31-12-2022	Yes
9	Reets Plastics Pvt Ltd	Affixed on 28-12-2022	Yes
11	Chahek Housing Pvt Ltd	Affixed on 28-12-2022	Yes

3.6. As already stated replies/responses were received from some Noticees pursuant to the issuance of the SCN. The submissions made by the Noticees in their replies are summarised in the following paragraphs.

FSL (Noticee 1) Dhirendra Gaba (Noticee 2), Naveen Gaba (Noticee 3), Fairwealth Financial Services Ltd (Noticee 13) and Fairwealth Commodity Broking Pvt Ltd (Noticee 14)

3.7. Dhirendra Gaba (Noticee 2) has by way of various emails communicated with SEBI representing the above-named Noticees pursuant to the receipt of the SCN. However, even after multiple opportunities spread across almost a year, neither any reply on merits was received from any of the said Noticees nor did any of the said Noticees appear for the personal hearings granted to them.

Shripad Sadanand Desai (Noticee 4)

3.8. The said Noticee through his replies has *inter alia* submitted the following: –

a. He had a Bachelor of Technology degree and served as a System Administrator (Executive) in the IT Department of FSL. His job required him to provide back-end support to the clients in respect of the software employed by FSL and he earned a salary of Rs. 26,100 per month.

b. He was appointed as an Additional Director in Reets Plastics Pvt. Ltd., Aagas Software Solutions Pvt. Ltd and Chahek Housing Pvt. Ltd. with effect from July 08, 2019; July 12, 2019 and July 11, 2019 respectively. He was later appointed to the board of FSL as a Director on September 23, 2019, only 09 days prior to the visit of NSE officials to collect data.

c. Though appointed a Director, he had no signing authority in respect of any matter related to the business of FSL or the other mentioned companies.

d. The major part of the forensic audit of FSL was in respect of FYs 2016-17, 2017-18 and 2018-19. He did not hold the position of Director for a major part of the forensic audit period as he became a Director only on September 23, 2019.

e. SEBI was required to provide all the relevant document/material/information which had been referred and relied upon while issuing the SCN.

f. The SCN issued by SEBI was vague and unspecific. The authority was required to state in the SCN the specific act of the Noticee and how the act of the Noticee had resulted in the violations of law stated in the SCN. In the present case, the SCN was silent on how he had violated the provisions of law and what role he had played.

g. He should be provided the examination –in – chief of Dhirender Gaba and Naveen Gaba.

h. He was appointed only 11 days prior to the end of the audit period i.e., October 03, 2019. So, he had limited involvement in the affairs of FSL and had no access to the books of FSL. Thus, with respect to the

allegations regarding the mismatch in the securities available, mis-utilisation of securities and unauthorised pledging of clients' securities, it was impossible on his part to have acted in any unauthorised manner.

i. With respect to furnishing documents of beneficiaries to whom funds and securities were siphoned off, it was not possible on his part to submit any documents as the audit period was 2016-17 to 2019-20 as he was not associated with FSL during the said period.

j. Neither any illegal or undue profits had accrued to him pursuant to the alleged transactions.

k. Penalty should not be imposed on him.

3.9. The Noticee in his replies has relied on the following case laws: –

a. *Securities and Exchange Board of India V. Price Waterhouse (Civil Appeal No. 6003- 6004/12)* to contend that all statements recorded during the course of investigation should be provided to the respondents.

b. Hon'ble SAT's Order in *Bharat Jayantilal Patel V. Securities and Exchange Board of India (Appeal No. 126 of 2010)* to contend that right of cross-examination should be provided.

c. *Gorkha Security Services V. Government (NCT of Delhi), (2014) 9 SCC105,* Hon'ble SAT's Order in *Swaranganga Trading Private Ltd. V. Adjudicating Officer, SEBI (Appeal No. 74 of 2009),* Hon'ble SAT's Order in *M.G. Capital Service Ltd. V. Securities and Exchange Board of India Appeal No. 62/2012 dated July 31,2012, Food Corporation of India V. State of Punjab and others, (2001) 1 SCC 291* to contend that SCN should not be vague and unspecific.

d. Hon'ble SAT's Order in *Sameer C Arora v. SEBI, (Order dated October 15,2004 in Appeal No. 83/2000), Union of India v. Chaturbhai M Patel, (1976) I SCC 747* to contend that the allegations in the SCN should not be levied merely on surmises and conjectures.

e. Hon'ble SAT's Order in *Vision Technologies India Ltd. V. Securities and Exchange Board of India (Appeal No. 270 of 2004) dated 20th February, 2006,* Hon'ble SAT's Order in *Sterlite Industries (India) Ltd. v. Securities and Exchange Board of India in Appeal No. 270 of 2004 dated February 20, 2006* and *Kirti Pal and Ors. V. State of West Bengal and Ors. 2015(11) SCC 178* to contend that the standard of evidence for proving allegation of the nature made in the SCN was high.

f. Hon'ble SAT's Order in *Sayanti Sen v. SEBI dated 09th August, 2019*, *Agritech Hatcheries & Food Ltd. V. Valuable Steels India Pvt. Ltd., (1999) 96 Com Cases 534 (Mad)*, *G. Vijaylakshmi & Ors. v. SEBI (2000) 12100 Comp Cases 726 (AP)* and *SEBI V. Gaurav Varshney, (2016) 14 SCC 430* to contend that only the person who was in-charge of and was responsible to the company for the conduct of the business of the company at the time of the commission of the offence should be deemed as guilty.

g. *State of Orissa v. Miss Bina Pani Dei (AIR 1967 SC 1269)* to contend that even administrative orders which have civil consequences should be consistent with the rules of natural justice.

h. *Superintended and Remembrancer Legal Affairs to Government of West Bengal Vs. Abani Maity (1979) 4 SCC 85* to contend that 'liable' as appearing in statutes only means the possibility of attracting such obligation and not a mandatory imposition.

i. *SEBI Vs. Cobot International Capital Corporation Limited (Cabot), 2004 51 SCL 307 (BOM)* to contend that if the breach of the regulation was unintentional and based on a *bona fide* belief, strict enforcement of the regulations may not be warranted.

Shitla Prasad Shukla (Noticee 6)

3.10. The said Noticee through his replies has responded to the allegations made in the SCN. Additionally, the Noticee has also reiterated the contents of his reply dated November 13, 2019 submitted at the time of passing of the Confirmatory Order. The said submissions are being considered to the extent they are relevant to the present proceeding. Shitla Prasad Shukla has *inter alia* submitted the following: –

a. He became a Director on the board of FSL pursuant to pressure applied by Dhirender Gaba and Naveen Gaba, and the threat of termination of his employment.

b. The Interim Order had mentioned that he was Director of FSL during the period, September 29, 2017 to July 16, 2019, which was not correct as he was a Director of FSL since October 25, 2017.

c. Dhirender Gaba by way of a letter dated October 27, 2017 had issued a letter clarifying his roles and liabilities as a Director.

d. He was not involved in the day-to-day functioning of FSL, and was only employed as a Legal Manager there. He was in no way associated with dealing in securities by FSL.

e. His bank accounts were never used in the siphoning-off of the funds of the clients of FSL.

f. FSL had transferred certain shareholding in his name, without informing him and taking his consent. It was only later that the same came to his knowledge.

g. He had not received any benefit from FSL except for the salary paid to him.

h. SEBI was required to provide all the relevant document/material/information which had been referred and relied upon while issuing the SCN.

i. The SCN issued by SEBI was vague and unspecific. The authority was required to state in the SCN the specific act of the Noticee and how the act of the Noticee had resulted in the violations of law stated in the SCN. In the present case, the SCN was silent on how he had violated the provisions of law and what role he had played.

3.11. The Noticee in his replies has relied on the following case laws: –

a. *Gorkha Security Services V. Government (NCT of Delhi), (2014) 9 SCC105,* S.L. Kapoor V. Jagmohan & Ors., (1980) 4 SCC 379 and Hon'ble SAT's Order in *J.B. Shares and Stocks Limited V. SEBI (Appeal No. 189/2004) dated March 07, 2006* to contend that the notice should be detailed and provide the information on the basis of which action was contemplated.

b. Hon'ble SAT's Order in *Vision Technologies India Ltd. V. Securities and Exchange Board of India (Appeal No. 270 of 2004) dated 20th February, 2006,* Hon'ble SAT's Order in *Sterlite Industries (India) Ltd. v. Securities and Exchange Board of India in Appeal No. 270 of 2004 dated February 20, 2006* and *Kirti Pal and Ors. V. State of West Bengal and Ors.*

2015(11) SCC 178 to contend that the standard of evidence for proving allegations of the nature made against the said Noticee was high.

Shyam Sunder Jolly (Noticee 10)

3.12. The said Noticee through his replies has *inter alia* submitted the following: –

a. Varsha Gaba was his sister, and she was married to Dhirender Gaba. So, Dhirender Gaba was his brother-in-law by relation.

b. He was a simple graduate and had been associated with the Fairwealth Group since September 2006 as a dealer and was promoted from time to time. In 2018, he was promoted to the post of 'Authorized Person Network Support – VP' and in October 2019 he was earning a salary of Rs. 77,000 per month.

c. During the tenure of his employment, he was asked to open a bank account in Kotak Mahindra Bank by Dhirendra Gaba and in good faith he opened the bank account. The said bank account was handled by Dhirendra Gaba. Apart from the bank account, his trading account maintained with FSL was also handled by Dhirender Gaba, and the trades executed by Dhirendra Gaba through his account were also without his knowledge and consent. He had opened the account for investing in the securities market through IPOs. Subsequent to the opening of the account, the authority to operate the account was shifted to the promoters of Fairwealth Group at the behest of Dhirender Gaba.

d. The lending of the accounts was done by him at the behest of Dhirender Gaba after yielding to societal and employment pressures.

e. No communication for the transactions executed in the trading account and bank account linked thereto were received by him, and accordingly he was in no position to verify the transactions. Furthermore, he was never, even post-facto, informed about the transactions which had been executed through these accounts to realise that there was something amiss. It was only in February 2019 that the Noticee chanced upon the Consolidated Account Statement sent by NSDL in his official Fairwealth email with regard to his DEMAT account, which he found in the spam folder of his email. Only after this email that some suspicion arose in his mind as the Noticee was not receiving any communications pertaining to the accounts handed over to Dhirender Gaba.

f. Subsequently, after receiving the above-mentioned email, he requested Dhirender Gaba numerous times to stop using the Noticee's accounts and to close the accounts. However, upon the repeated oral requests and the assurances from Dhirender Gaba that he will stop using the account no action was taken by him in that direction. Accordingly, vide email dated February 28, 2019 he once again requested Dhirender Gaba to not operate through his accounts and to close them immediately. He once again sent a reminder mail on May 20, 2019. Both the emails and repeated verbal requests were met with non-action.

g. Dhirender Gaba had filed an affidavit dated October 22, 2019 acknowledging that the bank accounts, and the DEMAT and trading accounts were opened and operated by him and the Noticee had no knowledge or say in the operations of those accounts nor did he receive any benefits from the same. With regard to observation pertaining to the ownership of shares in Fairwealth Financial Services Ltd. in which Naveen Gaba and Dhirender Gaba were Directors and shareholders, the Noticee was holding the shares as per the instruction and at the behest of Mr. Dhirender Gaba. Furthermore, the money required to purchase the shares was also provided by Dhirender Gaba.

h. He was only an employee and had limited involvement in the affairs of FSL, and, as such, with respect to the allegations regarding the mismatch in the securities available, mis-utilisation of securities and unauthorised pledging of clients' securities it was impossible on his part to have acted in any unauthorised manner.

i. With respect to furnishing documents of beneficiaries to whom funds and securities were siphoned off, it was not possible on his part to submit any documents as during the audit period (2016-17 to 2019-20) he was only an employee and had limited involvement in the affairs of FSL.

j. He did not avail any benefit from FSL which could be said to be wrongful gains. He earned moderately being an employee of FSL and no extra benefit was availed by him.

k. SEBI was required to provide all the relevant document/material/information which had been referred and relied upon while issuing the SCN.

l. The authority must state in the SCN about the act of the Noticee and how the act of the Noticee had resulted in the violations of law stated in the SCN. In the present case, the SCN was silent on how he had violated the provisions of law and what role he had played.

m. Penalty should not be imposed on him.

3.13. The Noticee in his replies has principally relied on the same case laws as relied upon by Shripad Sadanand Desai and for raising the same contentions. In light of that, the said case laws are not being reiterated here.

Vikram Kumar (Noticee 10)

3.14. The Noticee in his replies has submitted that he was an employee in FSL, and he was made a Director fraudulently by Dhirender Gaba, and his PAN Card, Aadhar Card and Voter ID Card were misutilised for the said purpose. He has also submitted that his father was very unwell and his economic condition was quite weak.

3.15. Additionally, the Noticee in his replies to SEBI has also annexed letters addressed by him to the CBI, Enforcement Directorate, Prime Minster's Office, NCDEX, MCX and the complaint filed with the Bikaji Cama Place Police Post, New Delhi wherein the above allegation of fraud has been stated.

4. Issues –

Part - A

I. Whether FSL (Noticee 1), a registered stock broker with SEBI, was in breach of prevailing provisions of law and carried out –

a) unauthorised off-market transactions in clients' accounts;
b) unauthorised trading in clients' accounts and misappropriation of clients' securities;
c) acts resulting in unavailability of securities;
d) unauthorised pledging of clients' securities;
e) non-settlement of clients' accounts;
f) mis-utilisation of funds for own purposes/debit balance clients;
g) misrepresentation in books of account and submission of incorrect net-worth certificate to stock exchange;
h) failure to furnish documents to stock exchange and non-cooperation with the auditor;
i) related party transactions; and
j) purchased securities in un-registered client code, non-segregation of funds/securities of clients, code of conduct violations and discrepancies in email IDs and mobile numbers in the data of clients?

II. If the answer to Issue No. A-I is in the affirmative then whether FSL has violated Section 12A of SEBI Act, 1992 read with Regulation 3(d), 4(1), 4(2)(f), 4(2)(p) and 4(2)(m) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations, 2003 as well as Clauses A(1), A(2) and A(5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations?

III. If the answer to Issue No. A-I is in the affirmative then whether the Directors of FSL, namely, Dhirender Gaba (Noticee 2), Naveen Gaba (Noticee 3), Shripad Sadanand Desai (Noticee 4), Sandeep Jindal (Noticee 5) and Shitla Prasad Shukla (Noticee 6) can be held liable for the actions/ violations of FSL?

IV. If the answer to Issue No. A-I is in the affirmative then whether Aagas Software Solutions Pvt. Ltd. (Noticee 7), Katashraj Securities Pvt. Ltd. (Noticee 8), Reets Plastics Pvt. Ltd. (Noticee 9), Shyam Sunder Jolly (Noticee 10), Chahek Housing Pvt. Ltd. (Noticee 11) Vikram Kumar (Noticee 12) and Fairwealth Financial Services Ltd. (Noticee No. 13) are related to FSL and can be held to have aided and abetted FSL?

Part - B

I. Whether FCBL (Noticee 14), a registered commodity broker with SEBI, has, in breach of the prevailing provisions of law –

a) failed to segregate client funds from own funds;
b) misused clients' funds;
c) not settled the clients' funds;
d) not complied with the requirement of enhanced supervision data;
e) not complied with the prescribed client registration process (KYC and KRA process); and
f) not uploaded in UCC the correct mobile number and email ID of its clients.

II. If the answer to Issue No. B-I is in the affirmative then whether FCBL has violated Section 12A of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations, 2003 as well as Clauses A(1), A(2) and A(5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations?

III. If the answer to Issue No. B-I is in the affirmative then whether the Directors of FCBL, namely, Dhirender Gaba (Noticee 2) and Naveen Gaba (Noticee 3) can be held liable for the actions/ violations of FSL?

5. Consideration and findings –

5.1. As has been stated before, pursuant to the issuance of the SCN, communications were received by way of emails from Dhirender Gaba representing Noticees 1, 2, 3, 13 and 14. However, the said Noticees have not submitted any reply on merits of the allegations made in the SCN. The said Noticees in their replies have contended that they be allowed to access funds from their frozen bank accounts under a suitable monitoring mechanism to pay the vendors, which would enable them to access the data systems of FSL/FCBL. Only then there could be a meaningful defence, without which the hearing would be an eyewash. Considering the same, the said Noticees were informed that the documents/material on the basis of which the SCN had been issued had already been provided to them, and the said documents were again provided to them by email. Even after providing of documents, Noticees 1, 2, 3, 13 and 14 neither attended any hearing nor filed any reply on merits. Additionally, it is noted that opportunity of hearing was granted to Noticees 1, 2, 3, 13 and 14 on July 28, 2022. The said Noticees sought adjournment on the ground that Dhirender Gaba was unwell. Considering the same, another

hearing was given on October 18, 2022. The said Noticees again sought an adjournment on the ground that data was not available with them. Consequently, hearings were again granted on January 20, 2023 and January 23, 2023. The said Noticees again did not attend the hearing.

5.2. Further, it has been already been stated that no reply to the SCN has been received from Aagas Software Solutions Pvt. Ltd.; Katashraj Securities Pvt. Ltd.; Reets Plastics Pvt. Ltd.; Chahek Housing Pvt. Ltd.; and Sandeep Jindal.

5.3. Considering the above, I find that adequate opportunities have been provided to the said Noticees to present and defend their case.

5.4. In this context, I rely upon the observations of the Hon'ble SAT in *Sanjay Kumar Tayal & Ors. vs. SEBI (Order dated February 11, 2014 in Appeal No. 68 of 2013),* wherein it was observed: *"… Appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices."* Accordingly, I find that the Noticees are not interested in participating in the present proceeding before me. Even though they have remained *ex parte*, I nonetheless find it relevant that I should be guided by the documents available on record as laid down by the Hon'ble SAT in *Shri B. Ramalinga Raju vs. SEBI (Order dated May 12, 2017 in Appeal No. 286 of 2014)*. Accordingly, I shall proceed in respect of the Noticees on the basis of the material on record.

Issue A-I – Whether FSL has engaged in activities volatile of provisions of securities law?

Misappropriation of clients' securities and unauthorised trading in clients' accounts.

5.5. It has been alleged in the SCN that FSL had carried out unauthorised transfer of clients' securities to its accounts, and thereafter sold the said securities through related entities, including entities that have been mentioned in the present SCN, namely, Aagas Software Solutions Pvt. Ltd. (Noticee 7), Katashraj Securities Pvt. Ltd. (Noticee 8), Reets Plastics Pvt. Ltd. (Noticee 9), Shyam Sunder Jolly (Noticee 10), Chahek Housing Pvt. Ltd. (Noticee 11), Fairwealth Financial Services (Noticee 13) and Fairwealth Commodity Broking Pvt. Ltd. (Noticee 14).

5.6. By way of the above allegations, two specific facts have been asserted by SEBI in the SCN: a) FSL had unauthorisedly/illegally come in possession/ownership of the securities and b) the sale of securities were carried out by entities who did not own such securities.

5.7. Before considering the said allegations, it is relevant to establish if the above-mentioned entities were related entities of FSL. It is noted that no communication has been received from Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd., Reets Plastics Pvt. Ltd. and Chahek Housing Pvt. Ltd. in response to the SCN. Similarly, while Dhirender Gaba has represented Fairwealth Financial Services Limited in his communications to SEBI, as already stated no response has been filed in respect of the allegations made in the SCN.

5.8. In this regard reference is made to Section 2 (76) of the Companies Act, 2013, which defines 'related party'. The said definition is reproduced hereunder:

" *(76) "related party", with reference to a company, means—*

(i) a Director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a Director, manager or his relative is a partner;

(iv) a private company in which a Director or manager is a member or Director;

(v) a public company in which a Director or manager is a Director or holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing Director or manager is accustomed to act in accordance with the advice, directions or instructions of a Director or manager;

(vii) any person on whose advice, directions or instructions a Director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed".

5.9. The FAR has noted that Shripad Sadanand Desai, a Director of FSL also held Directorships in Aagas Software Solutions Pvt. Ltd., Reets Plastics Pvt. Ltd. and Chahek Housing Pvt. Ltd. So by virtue of Section 2 (76) (iv) of the Companies Act, 2013, Aagas Software Solutions Pvt. Ltd., Reets Plastics Pvt. Ltd. and Chahek Housing Pvt. Ltd. were related parties of FSL.

5.10. Similarly, it is also on record that Dhirender Gaba and Naveen Gaba, Directors of FSL held Directorships in Katashraj Securities Pvt. Ltd. Dhirender Gaba and Naveen Gaba became Directors of Katashraj Securities Pvt. Ltd on May 19, 2017 and June 19, 2017 respectively. Thus, by virtue of Section 2 (76) (iv) for the predominant portion of the Forensic Audit Period (FYs 2016-17,

2017-18, 2018-19 and 2019-20 till December 22, 2020) Katashraj Securities Pvt. Ltd was a related party of FSL.

5.11. Further as regards Fairwealth Financial Services Ltd., it is noted from the documents available on the MCA website, that both Dhirender Gaba and Naveen Gaba were Directors in Fairwealth Financial Services Ltd. and held substantial shareholding in the said company exceeding 2%, much like FSL. So, by virtue of Section 76(2)(v) of the Companies Act, 2013 Fairwealth Financial Services Ltd. was a related party of FSL. With regard to FCBL, the SEBI Inspection Report has brought out that Dhirender Gaba, Naveen Gaba and FSL were the three predominant shareholders. So by virtue of Section 2 (76) (iv) of the Companies Act, 2013 FCBL was a related party of FSL.

5.12. Similarly, Shyam Sunder Jolly was a Director of FSL. So by virtue of Section 2(76) (i) Shyam Sunder Jolly was a related party of FSL.

5.13. The relationship between FSL and the above-mentioned Noticees having been established, reference is made to the FAR, which records the modus operandi adopted by FSL in misappropriating the securities of it clients. Through off-market transactions, securities of the clients were transferred to any of the 44 DEMAT accounts of FSL, after which the securities were moved to the 'pool account' of FSL, and thereafter sold in the securities market by FSL through related entities.

5.14. It is noted from records that the forensic auditors could not find any trading instructions/contract notes in support of the transfer of securities from the accounts of clients to FSL. So, it is evident that the off-market transactions by way of which FSL came to hold the securities of it clients were done in an unauthroised and illegal manner.

5.15. It has been brought out that once FSL came to hold the securities, it sold it through its related entities. In this regard, FAR records the comparison of the details as appearing in the Register of Securities with that of the Holding

Statements, in respect of the entities through which the securities were sold. It is clarified that a Register of Securities is a register maintained by a stock-broker reflecting the securities sold/bought and the remaining balance in respect of each of its clients. A Holding Statement provides the summary of all the securities held in a particular DEMAT account on a specified date, with bifurcation showing the status of those securities maintained by Depositories (CDSL/NSDL).

5.16. The comparison of the details as appearing in the Register of Securities with that of the Holding Statements is revealing. It has been brought out in the FAR that, in comparison to the Register of Securities, 63 entities including the 5 entities named as Noticees in the present SCN had sold 1640 excess securities valued at Rs. 103,19,81,911 as on October 01, 2019 beyond their holdings as recorded in the Holding Statements. A summary of the sale of securities in excess of their holdings as reflected in the Holding Statements is provided hereunder:

Table – 8

S. No	**Client Code**	**Name**	**No of Excess Securities Sold**	**Value of such securities (Rs.)**
1	DLFF555	Katashraj Securities Pvt. Ltd	182	29,81,74,855.30
2	UPFFR794	Reets Plastics Pvt. Ltd	412	22,81,60,881.35
3	DLFFS289	Shyam Sunder Jolly	281	21,29,15,353.40
4	DLFF1166	Chahek Housing Pvt.Ltd	357	18,96,04,150.90
5	DLFF1094	Aagas Software Solutions Pvt. Ltd.	243	7,42,21,143.15
6	DLFFM001	Fairwealth Commodity Broking Pvt.. Ltd.	5	20,06,000.00
7	DLFF02	Fairwealth Financial Services Ltd.	15	16,15,468.55
8	DLPMS1	Fairwealth Securities Limited	1	5,37,550.00
9	**Other 55 Clients of FSL**		**144**	**2,47,46,508.91**
TOTAL			**1640**	**1,03,19,81,911.56**

5.17. So, the fact that these entities were able to sell excess securities over that reflected in their Holding Statements clearly denotes that they had sold securities that did not belong to them.

5.18. In this regard, reference is made to SEBI Circular No. SMD /SED/CIR/ 93/ 23321 dated November 18, 1993. It is relevant to refer to Clause 2 of the said circular, which reads as:

"*it shall be compulsory for all Member brokers to keep separate accounts for client's securities and to keep such books of accounts, as may be necessary, to distinguish such securities from his/their own securities. Such accounts for client's securities shall, inter-alia provide for the following: -*

a. Securities received for sale or kept pending delivery in the market;
b. Securities fully paid for, pending delivery to clients;
c. Securities received for transfer or sent for transfer by the Member, in the name of client or his nominee(s);
d. Securities that are fully paid for and are held in custody by the Member as security/margin etc. Proper authorization from client for the same shall be obtained by Member;
e. Fully paid for client's securities registered in the name of Member, if any, towards margin requirements etc."

Similarly, reference is also made SEBI Circular No. SEBI/HO/MIRSD/ MIRSD2 /CIR/P /2016 /95 dated September 26, 2016. In this regard, reference is made to Clause 2.4.3 of the Annexure to the Circular, which reads as:

"Transfer of securities between "Name of the Stock Broker - Client Account" and individual client's BO account, "Name of the Stock Broker - Pool Account" and "Name of the Stock Broker - Collateral Account" is permitted. Transfer of securities between "Name of the Stock Broker - Client Account" to "Name of the Stock Broker - Proprietary Account" is permitted only for legitimate purposes such as, implementation of any Government/Regulatory directions

or orders, in case of erroneous transfers pertaining to client's securities, for meeting legitimate dues of the stock broker, etc. For such transfer of securities, stock broker shall maintain a stock transfer register clearly indicating the day-wise details of securities transferred."

5.19. From the above the following are noted : a) a stock broker was under obligation to keep separate accounts for client's securities and to maintain books to distinguish such securities from his own securities and b) transfer of securities from the Client Account to the stock broker's own account was permitted only for legitimate purposes such as, implementation of any Government/Regulatory directions or orders, in case of erroneous transfers pertaining to client's securities, for meeting legitimate dues of the stock broker, etc. In the present matter, it has been demonstrated that FSL did not ensure that securities of clients were appropriately segregated and distinguished from its own securities. On the contrary, FSL not only failed to ensure segregation but also appropriated the securities of the clients as its own. Further, as has been brought out, FSL through off-market transactions transferred securities of the clients to its own accounts, without any of the grounds mentioned in the SEBI Circular of September 26. 2016.

5.20. Thus, I find that FSL by misappropriating clients' securities has violated SEBI Circular No. SMD /SED/CIR/ 93/ 23321 dated November 18, 1993 and SEBI Circular No. SEBI/HO/MIRSD/ MIRSD2 /CIR/P /2016 /95 dated September 26, 2016.

5.21. Additionally, it has also been alleged that not only did FSL misappropriate the securities of the clients as its own but also traded such securities without authorisation of the clients. In this regard, the SCN has alleged that FSL has violated SEBI Circular CIR/HO/ MIRSD /MIRSD2/ CIR/P/2017/108 dated September 26, 2017, SEBI Circular CIR/HO/MIRSD/MIRSD2 /CIR/P/2017/124 dated November 30, 2017 and SEBI Circular CIR/H0/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11, 2018.

5.22. In this regard, reference is made to Clause III of SEBI Circular CIR/HO/ MIRSD /MIRSD2/ CIR/P/2017/108 dated September 26, 2017, which states that –

" *all brokers shall execute trades of clients only after keeping evidence of the client placing such order, it could be, inter alia, in the form of:*

a.Physical record written & signed by client,

b.Telephone recording,

c.Email from authorized email id,

d.Log for internet transactions,

e.Record of SMS messages,

f. Any other legally verifiable record.

When dispute arises, the burden of proof will be on the broker to produce the above records for the disputed trades."

From the above, it is evident that a TM is under obligation to maintain evidence with respect to the placing of orders on behalf of the clients.

5.23. Also, reference is made to SEBI Circular CIR/HO/MIRSD/MIRSD2 /CIR/P/2017/124 dated November 30, 2017 and SEBI Circular CIR/H0/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11, 2018 which provide that brokers should execute trades of clients only after keeping evidence of the client placing such order.

5.24. As stated in the preceding paragraphs, FSL was not able to provide any instructions/contract notes pursuant to which off-market transactions were effected between the clients and FSL. Accordingly, I find that FSL has violated SEBI Circular CIR/HO/ MIRSD /MIRSD2/ CIR/P/2017/108 dated September 26, 2017, SEBI Circular CIR/HO/MIRSD/MIRSD2 /CIR/P/2017/124 dated November 30, 2017 and SEBI Circular CIR/H0/MIRSD/MIRSD2/CIR/P/2018/09 dated January 11, 2018.

Unavailability of securities.

5.25. It has been provided in the SCN that the value of securities available with FSL appearing in the RoS, as on October 01, 2019, was Rs. 105,13,22,497.68. However, the SCN has recorded that the securities appearing in the name of FSL's clients' in the Holding Statements, during the period of audit, were valued at only Rs. 15,10,48,996.43.

5.26. Thus, upon a comparison of the two, it is clear that the RoS demonstrated that there was a shortfall in the securities of clients of FSL by Rs. 90,02,73,501.25.

5.27. In this regard, the value of securities appearing in the name of FSL under various Client IDs in the RoS are provided hereunder:

Table – 9

Value of securities as per RoS of FSL (As on October 01, 2019)	**105,13,22,497.68**
DP ID: 12049100 Client ID: 00000042	5,94,82,376.13
DP ID: 12049100 Client ID: 00332924	4,49,27,512.79
DP ID: 12049100 Client ID: 00576358	2,45,27,933.87
DP ID: 12049100 Client ID: 00321840	1,95,86,333.08
DP ID: 12049100 Client ID: 00000135	7,83,173.55
DP ID: 12049100 Client ID: 00078901	5,91,865.31
DP ID: 11000011 Client ID: 00016400	5,86,014.90
DP ID: 12049100 Client ID: 00000116	5,00,000
DP ID: 12049100 Client ID: 00005304	63,786.80
Total Fairwealth Securities Ltd. holding as per CDSL records	**15,10,48,996.43**
Total value of securities unavailable as on October 01, 2019	**90,02,73,501.25**

5.28. Thus, it is evident that securities worth Rs. 90,02,73,501.25 belonging to clients of FSL were missing.

5.29. In this regard, it has already been brought out that under SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, a stock broker was under obligation to keep separate accounts for client's securities and to maintain books to distinguish such securities from his own securities. Further, reference is made to SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008. The said circular requires that brokers should have adequate systems and procedures in place to ensure that client collateral was not used for any purpose other than meeting the concerned client's margin. Thus, the diminished number of securities appearing in the name of FSL's clients denotes that securities belonging to the clients have been unauthorisedly transferred. This is in clear breach of the obligations prescribed in the above-mentioned circulars.

5.30. Additionally, the SCN has alleged that FSL has violated SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. The SCN has made specific mention that the above circular required "*brokers to maintain a stock transfer register clearly indicating the day-wise details of securities transferred*" The said obligation is contained in clause 2.4.3. of the said Circular. Accordingly, it would be appropriate to reproduce the said provision for reference: " *Transfer of securities between "Name of the Stock Broker - Client Account" to "Name of the Stock Broker - Proprietary Account" is permitted only for legitimate purposes such as, implementation of any Government/Regulatory directions or orders, in case of erroneous transfers pertaining to client's securities, for meeting legitimate dues of the stock broker, etc. For such transfer of securities, stock broker shall maintain a stock transfer register clearly indicating the day-wise details of securities transferred.*" Thus as per the said clause transfer of securities from the client account to the stock broker's proprietary account can be done only for legitimate purposes as specified in the circular. It is inferred that the transfers were not for any of the legitimate purposes.

5.31. Further, it has been alleged in the SCN that FSL had violated SEBI Circular No SEBI/MRD/Policy/AT/Cir-19/2004 dated April 21, 2004. From a perusal of the said circular, it is seen that the circular has been addressed to Stock Exchanges and Depositories, and is with respect to the settlement of transactions in case of holidays. The circular provides the guidelines to facilitate the smooth completion of settlement process and help members of the Stock Exchanges meet their obligations in a timely manner. The advisory contained in the said Circular is with respect to the Stock Exchanges/Depositories to adhere to. Evidently FSL is not a Stock Exchange or a Depository. In view of the same, it cannot be said that FSL has violated the said circular in respect of this specific allegation.

Unauthorised off-market transactions in clients' accounts.

5.32. It has been alleged in the SCN that during the period, 2016-17 to 2019-20 there were off-market transactions effected in respect of the securities of the clients of FSL, without their knowledge and permission. It has also been alleged in the SCN that these securities, upon being transferred from the clients to FSL, were in turn transferred to Fairwealth Financial Services Limited, which is an NBFC and related to FSL.

5.33. In this regard, it is noted from records that there were no client contract notes evidencing the off-market transfer of securities of the clients. This leads to the inference that the off-market transfer of securities of the clients was done without their knowledge and permission.

5.34. Additionally, these securities were in turn transferred by FSL to FFSL. Again records reveals that there was no documentary evidence to show the basis of the off-market transactions between FSL and FFSL. The FAR specifically mentions that there was no formal agreement/power of attorney enabling the transfer of such securities from FSL and FFSL. It is further mentioned in the FAR that during the visit to the FSL back office, the Director of FSL failed to

submit/produce any documentary evidence in support of the off-market transactions between FSL and FFSL.

5.35. In this regard, reference is made to Section 2 (i) of the SCRA, 2016. The said section defines spot delivery contract to include *actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money*. Thus, a spot delivery contract *per force* requires the actual delivery of securities and the payment of a price for such securities either on the same day as the date of the contract or on the next day.

5.36. In the present instance, FSL sold the securities to FFSL without the transfer of any consideration as required under Section 2(i) of SCRA, 1956.

Unauthorised pledging of clients' securities.

5.37. The SCN has alleged that FSL had pledged the securities of clients with various banks and NBFCs and raised funds, without the authorisation of the clients. In this regard, the SCN has alleged that FSL had violated SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

5.38. It is stated that the issue involved here has two aspects: a) the pledging of securities and b) the funds raised pursuant to the pledging of securities.

5.39. The FAR notes that upon the examination of the books of account of FSL collected from its back office on March 03, 2020, it was observed that FSL had pledged the securities to various NBFCs/FIs. However, the details of the securities pledged, which essentially meant that the details of the funds raised as a consequence of such pledging, was not available. Further, the FAR noted that there were no records available in the back office of FSL and it could not provide data in support of the details of the securities pledged.

5.40. Accordingly, data of securities pledged by FSL of its clients on four different dates viz., 31.12.2017, 31.03.2018, 30.06.2018 and 31.01.2019, were sought from BSE and analysed. The details of such analysis, as captured in the FAR, are provided hereunder:

Table – 10

Particulars	**Value in Crore (Rs.)**			
	31.12.2017	**31.03.2018**	**30.06.2018**	**31.01.2019**
Value of Securities Pledged as per the Holding Statement (A)	94.38	71.71	60.52	44.20
No. of Clients	11,301	11,775	9,612	7,286
Securities Pledged as of Debit Clients (B)	56.65	65.86	55.29	44.20
Securities Pledged as of Credit Clients (C)	37.73	5.85	5.22	-
Total Debtors (D)	24.45	36.65	18.43	25.51
Total Derivative Margin Obligations (E)	8.01	-	1.52	2.43
Total Obligation (F)= (D + E)	32.46	36.65	19.94	28.95
Excess Pledge of Debit Clients (G)	24.19	29.20	35.34	15.25
Total Excess Pledge (C + G)	61.92	35.06	40,57	15.25

5.41. From the above, it is noted that – a) on all four dates FSL had pledged the securities of debit balance clients in excess of their obligations and b) FSL had also pledged the securities of credit balance clients.

5.42. Additionally, it is noted from the FAR that data was sought from the Depositories i.e., CDSL and NSDL regarding the pledge of securities by FSL and its sister concern, Fairwealth Financial Securities Limited. The year wise cumulative pledge of securities from 2016-17 to 2019-20 by these two entities amounted to Rs. 442,46,47,312 in FY 2016-17, Rs. 6,82,58,15,113 in FY 2017-18, Rs. 6,83,93,32,942 in FY 2018-19 and Rs. 2,04,32,00,108 in FY 2019-20. Even though this data did not bifurcate whether the securities pledged were that of the clients or FSL's, the sheer value of the securities substantiates the

findings as gathered from the data provided by BSE in respect of client securities.

5.43. In this regard, reference is made to Clause 2.5 of the Annexure to SEBI Circular SEBI/HO/ MIRSD/ MIRSD2/CIR/ P/2016/95 dated September 26, 2016, whereby stock brokers are required to ensure that pledging of securities be done only of those clients who have a debit balance in their ledger and the funds raised against such pledged securities for a client should not exceed the debit balance in their ledger.

5.44. It has already been brought out in the above table that FSL had pledged the securities of credit balance clients and, in case of debit balance clients, the funds raised from the pledging were in excess of their obligations. The total excess pledge of securities by FSL as on 31.12.2017, 31.03.2018, 30.06.2018 and 31.01.2019 was Rs. 61.92 crore, Rs 35.06 crore, Rs 40.57 crore and Rs 15.25 crore respectively. Thus, it is evident that FSL has violated SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

5.45. With respect to the second aspect of the issue i.e., the funds raised pursuant to the pledging of securities, it was gathered from the books of account and the details received from the Depositories, that FSL had pledged securities with various NBFCs/ Banks/ FIs viz. Kotak Mahindra Bank, HDFC Bank, Aditya Birla Finance Ltd, IIFL Wealth Ltd, Globe Fin Cap Ltd, ILFS Financial Services Ltd and Edelweiss Custodian Services Ltd. and availed overdraft/Loan Against Security facility with them.

5.46. The FAR notes that since FSL had not provided information in respect of the pledging of securities, bank statements were sought from the above entities. In this regard, the transactions between Aditya Birla Finance Ltd, IL&FS Financial Services Limited, ECL Finance Limited, Kotak Mahindra Bank Ltd, IIFL Wealth Finance Limited, HDFC Bank Ltd, and Globe Fincap Limited on

one hand and the two major accounts of FSL (A/c. No. 01722650000184 & 9511123079 held with Kotak Mahindra Bank) on the other are tabulated below:

Table – 11

Sl. No.	Movement of funds between accounts	Period	Amount (Rs.)
1.	ECL Finance Ltd to FSL(A/c. No. 0184)	29/09/2017-25/09/2019	60,25,50,000
	FSL(A/c. No. 0184) to ECL Finance Ltd	04/10/2017-25/09/2019	47,63,10,060
2.	Aditya Birla Finance Ltd to FSL(A/c. No. 0184)	-	-
	FSL(A/c. No. 0184) to Aditya Birla Finance Ltd.	11/05/2016-31/07/2018	9,54,73,889
3.	IL & FS Financial Services Limited to FSL(A/c. No. 0184)	17/05/2016-15/12/2016	90,324
	FSL(A/c. No. 0184) to IL&FS Financial Services Limited	11/05/2016-31/07/2018	9,54,73,889
4.	IIFL Wealth Finance Limited to FSL(A/c. No. 0184)	27/03/2017-25/05/2017	4,40,00,000
	FSL(A/c. No. 0184) to IIFL Wealth Finance Limited	06/05/2017-28/06/2018	4,66,86,907
5.	Globe Fincap Ltd. to FSL(A/c. No. 0184)	31/05/2018	9,320
	Globe Fincap Ltd. to FSL(A/c. No.3079)	25/04/2017-18/05/2017	6,50,00,000

5.47. Thus, the movement of funds from these entities, with whom FSL had pledged the securities of its clients clearly shows that the funds raised from the pledging of client securities were appropriated by FSL. Further, the FAR notes that funds raised by Fairwealth Financial Securities Limited upon pledging of

securities with ECL Finance Ltd were transferred to a bank account No.09582540006005 maintained with Kotak Mahindra Bank. This bank account, however, was not in the books of account (Trial Balance) of FSL for all the three years of the account.

5.48. Reference, therefore, is again made to Clause 2.5 of the Annexure to SEBI Circular SEBI/HO/ MIRSD/ MIRSD2/CIR/ P/2016/95 dated September 26, 2016 which provides that funds raised against pledged securities shall be credited only to the bank account named as "Name of the Stock Broker - Client Account". However, as would be evident from the above, instead of the funds being credited to the client's account the same was credited to FSL's account. This is a clear violation of SEBI Circular SEBI/HO/ MIRSD/ MIRSD2/CIR/ P/2016/95 dated September 26, 2016. Additionally, since FSL appropriated the funds of the clients, when it was under obligation to segregate its funds from that of its clients, it has also violated SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

Non-settlement of clients' accounts.

5.49. It has been alleged in the SCN that FSL had failed to settle the funds and securities of clients in a timely manner. In this respect, it has been alleged that FSL has violated SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

5.50. Reference is made to the FAR. It is noted that the auditor was provided data for two quarters of FY 2019-20 by FSL. From the said data, it was noted that funds and securities had not been settled for Q1 and Q2 of FY 2019-20. The details as revealed in the FAR are provided hereunder:

Table – 12

Details	Amount of funds not settled (Rs.)	Value of securities not settled (Rs.)
Related Parties /Directors/Group Cos.		
Q1 FY2019-20	79,46,806	31,70,817
Q2 FY2019-20	79,46,821	25,64,543
TOTAL	**1,58,93,627**	**57,35,360**
Clients		
Q1 FY2019-20	1,83,79,446	8,64,60,571
Q2 FY2019-20	1,82,14,133	11,44,67,908
TOTAL	**3,65,93,579**	**20,09,28,479**

5.51. It is noted from the above that the total amount of clients' funds that was not settled was Rs. 3.65 Crore and the total amount of clients' securities that was not settled was Rs. 20.09 Crore in the first two quarters of FY 2019-20.

5.52. In this regard, reference is made to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 which provides that the settlement of funds/securities shall be done within 24 hours of the payout. Though, Clause 12 of Annexure A of SEBI Circular No. SEBI/MIRSD/SE/Cir- 19/2009 dated December 03, 2009, provides an exception to this rule that a client may specifically authorise the stock broker to maintain a running account subject, *inter alia* to actual settlement of funds and securities by the broker, at least once in a calendar quarter or month, depending on the preference of the client. Thus, even if the client had opted to maintain a running account, the securities and funds needed to be settled at least once in a calendar quarter. It is noted

from the details provided that FSL had not done the same thereby violating SEBI Circular No. SEBI/MIRSD/SE/Cir- 19/2009 dated December 03, 2009.

Mis-utilisation of funds of clients for own purposes/debit balance clients.

5.53. It has been alleged in the SCN that FSL has misutilised clients' funds for own purposes or for debit balance clients. In this regard, it has been alleged that FSL has violated SEBI Circular No. SMD/SED/CIR/93/23321 dated 18 Nov, 1993 read with SEBI/MRD/SE/Cir- 33/2003/27/08 dated Aug 27, 2003.

5.54. It is stated that SEBI had laid down principles in its circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated 26.09.2016, on enhanced supervision of stock brokers and depository participants, at point No. 3.3.1 for ascertaining the shortfall of funds in respect of stock brokers. Adopting the said criteria, the FAR has examined whether there was a shortfall of funds at FSL's end. The details of the said calculation are provided hereunder:

Table – 13

Code	Particulars	Amount (Rs.)
A	Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account of STOCK EXCHANGES	1,70,31,321.52
B	Aggregate value of collateral deposited with clearing corporations and/or clearing member	3,47,95,005.11
C	Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges	57,48,59,027.25*
G	**DIFFERENCE [(A+B)-C]**	**(52,30,32,700.62)**
D	Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges	(25,05,62,916.04)
H	Amount of client funds used for own purpose	(27,24,69,784.58)

**Note: The credit balance of the clients refers to the FSL clients who has the financial credit balances of Rs 57.48 crores as per the FSL books of accounts. The amounts shown under the table of 'non-availability of funds' were valued and arrived at as on 01.10.2019.*

5.55. As may be seen from the above, the total shortfall of funds was Rs. 52,30,32,700.62. The natural inference is that the clients' funds had been utilised for other purposes i.e. used either for settlement obligations of debit balance clients or for FSL's own purposes.

5.56. Additionally, it has been brought out in the FAR that FSL had moveable and immovable properties. FSL had raised loans against these properties, and the loans were serviced out of funds from the FSL's trading business. This clearly amounts to misutilisation of funds by FSL.

5.57. Further, it is noted from the SCN that salary of employees of FSL were paid from a client account bearing No. 0678230000947 maintained with HDFC Bank.

5.58. In this respect, reference is made to SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993. Clause 1 of the said circular *inter alia* requires brokers to keep client funds and own funds in separate accounts. Further, no money should be drawn from client's account other than for payment to or on behalf of client or for payment of a debt due to the stock broker from client or as otherwise provided therein.

5.59. Additionally, reference is also made to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, provides that transfer of funds from "Name of Stock Broker - Client Account" to "Name of Stock Broker - Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such

transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.

5.60. From the facts narrated, it has been brought out that funds have been drawn from client's account other than for payment to or on behalf of client or for payment of a debt due to the stock broker from client, namely, payment of salary to employees. Also, the shortfall in funds as brought out denotes that the transfer of funds from the client account has not been for legitimate purposes. In view of the same, I find that FSL has violated SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Misrepresentation in books of account and submission of incorrect net-worth certificate to stock exchange.

5.61. It has been alleged in the SCN that FSL had failed to maintain proper books of account and as such had misrepresented its net-worth in the certificate submitted to exchanges as on March 31, 2018. In this regard, it has been alleged in the SCN that FSL had violated Rule 15 of SCRR, 1957, Regulation 17 of the Stock Brokers Regulations and Clause 6.1.1(j) of Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016 as it submitted incorrect/ wrong data to the exchange.

5.62. The FAR notes that the net-worth of FSL as on 31.03.2018, as per the Certificate submitted by it, was verified with the books of accounts collected from the back office of FSL during the audit. Upon examination, it was noted that FSL had mis-represented the long outstanding debtors (i.e., more than 90 days), the value of fixed assets, pledged securities, non-allowable securities and 30% of the marketable securities. In this respect, some of the specific observations relating to the books of account are provided hereunder:

a. the fixed assets schedule of the Audited Balance Sheet was incorrect, as the schedule did not contain the properties and cars owned by the FSL;
b. FSL had several loans against the cars that it owned, and the value of such assets was not reduced from the net-worth calculation of FSL; and
c. securities had been pledged by FSL with ECL Finance Ltd, Kotak Mahindra Bank and HDFC Bank, Global Finance Ltd during the period 2016-17 to 2019-20. However, the value of such pledged securities, which should have been reduced for the calculation of net-worth, was not considered.

5.63. In view of the said observations, a recalculation of the net-worth of FSL was undertaken. The details of the said recalculated net-worth in comparison to the CA certificate submitted by FSL to the exchanges, as appearing in the FAR, are provided hereunder:

Table – 14

PARTICULARS	**31.03.2018**	
	As Per CA Certificate (in Rs. Crore)	**As per Books of Accounts (in Rs. Crore)**
Capital +free reserves	16.15	16.15
Fixed Assets	(2.37)	(15.12)
(b) Pledged Securities	-	-
(c) Member's Card	-	-
(d) Non-allowable Securities (Unlisted Securities)	(1.28)	(1.28)
(e) Bad deliveries	-	-
(f) Doubtful Debts and advances*	-	(16.16)
(g) Prepaid Expenses and Losses	(0.27)	-
(h) Intangible Assets	-	(0.70)
(i) 30 % of marketable securities	-	-
	12	**(13)**

** Includes debts/advances overdue for more than three months or given to associates.*

5.64. As may be seen from the above, the net-worth certificate as of March 31, 2018 submitted by FSL showed its net-worth to be Rs. 12 crore, whereas it in fact was negative by Rs 13 crore.

5.65. Further, it is noted from the FAR that the details of the properties owned by FSL, as contained in the books of account were in 'soft' form. However, there was no documentary evidence available for these properties at FSL's Gurgaon office premises. Similarly, more than 11 motor cars were acquired by FSL and some of these cars were acquired through bank finance. The repayments of these car loans were being made out of the funds raised from the trading activity of FSL. The complete details of the ledger accounts of the loan accounts or the bank loan account statements were required to verify the application of loan funds and sources of repayment. However, only FSL's Trial Balances were available at their back office.

5.66. Reference is made to Rule 15 of SCRR,1957. The said provision mandates a stock broker to maintain and preserve the books of account and documents for a period of five years. A similar obligation for maintenance and preservation of books of account and documents is also contained in Regulation 17 of the SEBI (Stock-Brokers) Regulations, 1992. Further Clause 6 of the Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016 requires Stock Exchanges and Depositories to frame various event based monitoring criteria, so as to initiate appropriate action in case of any event based discrepancies. While the Stock Exchanges were required to frame various event based monitoring criteria, the circular has provided an illustrative list of events in clause 6.1.1., which includes sharing of incomplete/wrong data or failure to submit data on time by a stock broker.

5.67. From the facts narrated above, it is seen that FSL has failed to maintain and preserve the books of account as required under law. Accordingly, it has violated Rule 15 of SC(R) Rules 1957 and Regulation 17 of the Stock Brokers Regulations. Similarly, FSL by submitting incorrect data on its net-worth to the exchanges falls foul of Clause 6.1.1. of the Annexure to SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016.

Failure to furnish documents to stock exchange and non-cooperation with the auditor.

5.68. It has been alleged in the SCN that FSL had failed to provide access and assistance during the process of forensic audit. In this regard, it has been alleged in the SCN that FSL has violated Regulation 21 of Stock Brokers Regulations and Clause A (5) of Schedule II read with Regulation 9 (f) of Stock Brokers Regulations.

5.69. It is observed from the FAR that there were huge payments and receipts to/from the group entities of FSL, which was not a part of FSL's trading activity. However, the bank statements of all the accounts of FSL from 2016-17 were not available. Further, the bank statements of group entities were also not available for the period from 2016-17 to 2019-20. Accordingly, the FAR concludes that due to the unavailability of such documents the exact amount paid and received could not be verified. Similarly, it is observed from the FAR that the opening balances as on 01.04.2019 did not match with that of closing balance as on 31.03.2019 in the books of account of FSL.

5.70. In this regard, the FAR concludes that even after repeated mails, telephonic conversations and personal requests to FSL's Director Dhirender Gaba at the Gurgaon office premises of FSL, the auditor did not receive complete details of the bank accounts, deeds of properties, details of the client wise securities pledged and the details of the transactions of the group companies.

5.71. Reference is made to Regulation 21 (2) of the Stock Brokers Regulations. The said provision states that – " *The stock-broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock-broker or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker …*" Further, Clause A (5) of Schedule II read with Regulation 9 (f) of Stock Brokers Regulations provides that a stock-broker was required to abide by all the provisions of the SEBI Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable.

5.72. From the facts narrated above, it is clear that there was an existing obligation for providing access and assistance to books of account and documents, which evidently has not happened in the present matter. This is a clear violation of the obligation contained in Regulation 21 of the Stock Brokers Regulations. This violation entails that FSL has violated Regulation 9 (f) of Stock Brokers Regulations which requires a stock broker to *inter alia* abide by all the provisions of SEBI Regulations.

Related party transactions.

5.73. It has been alleged in the SCN that FSL was engaged in business other than securities thereby violating Section 12 (1) of the SEBI Act and Rule 8 (1) (f) and 8 (3) (f) of the SCRR, 1957.

5.74. In this regard, it is noted from the FAR that during FYs 2016-17 to 2019-20, transfer of funds with respect to the past and present, Directors of FSL. The details of the said transactions as captured in the FAR are as under:

Table – 15

Year	31-03-2017		31-03-2018		31-03-2019		01-10-2020	
Directors	**Debit**	**Credit**	**Debit**	**Credit**	**Debit**	**Credit**	**Debit**	**Credit**
DHIRENDER GABA	1,67,56,717	1,86,99,840	16,99,76,799	16,99,97,091	16,22,78,024	17,43,52,689	9,04,10,883	12,90,43,202
NAVEEN GABA	15,95,227	15,73,981	1,09,80,807	1,10,18,982	61,40,006	1,01,07,424	4,63,92,933	7,81,12,932
SHRIPAD SADANAND DESAI	19,000	19,448	7,196	6,731	1,69,405	1,69,405	52,768	55,330
Past Directors								
AMIT GUPTA	1.93.950	2,02,174	38,488	30,057	5	38	77,712	76,546
ANIL DIXIT	856	856					29,000	29,000
KAMLA PRASAD 5HUKLA	21,170	20,010	11,128	10,000		0	17,516	17,516
RAHUL VADAV	573		288		4,020		8,25,045	45
ROOP LAL AGARWAL	1,51,903	1,51,903					1,50,000	1,50,000
SHITLA PRASAD SHUKLA	2,29,931	2.29,931	36,273	35,278	7,41,841	7,27,672	4,45,636	4,14,744
SHYAM SUNDER JOLLY	17,47,56,020	11,44,22,865	8,98,41,635	15,18,64,892	25,65,674	63,53,600	3,39,26,560	3,77,11,811
VIKRAM KUMAR	56,77,128	56,54,643	1,05,57,298	1,05,63,140	30,64,607	10,30,408	27,23,003	27,19,451
SANDEEP JINDAL								

5.75. These payments especially to the Directors cannot be considered as salary/fees as there were payments as well as receipts. There would not be any reason for the Director to make payments to the company.

5.76. Additionally, the FAR also notes that – a) FSL had made payments of Rs.37,69,48,551 to Fairwealth Financial Services Limited and had received an amount of Rs. 61,26,74,478 from Fairwealth Financial Services Limited; and

b) FSL had made payments of Vanshi Builtech Pvt. Ltd Rs. 1,31,50,000 and had received an amount of Rs. 92,00,000.

5.77. It is noteworthy that Fairwealth Financial Services Limited did not have a UCC allotted to it for carrying out trading through FSL. Same was the case with Vanshi Builtech Pvt. Ltd.

5.78. It is stated that Section 12 (1) of SEBI Act, 1992, provides that no stock broker, sub-broker, shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration issued by SEBI. Further, Rule 8 (1)(f) and 8 (3)(f) of the SCRR,1957 provides that a broker should not engage in any business other than that of securities or commodity derivatives. Thus, there is a clear bar on a stock broker to carry out activities that is not within the framework mandated under the certificate of registration.

5.79. It has been brought out in the preceding paragraphs that huge payments were made to related entities, even when such entities did not have UCC allotted to it for carrying out trading through FSL. That being the case the natural inference is that such transactions were not in respect of trading activities. In view of the same, I find that FSL has violated Section 12 (1) of SEBI Act, 1992 and Rule 8 (1)(f) and 8 (3)(f) of the SCRR,1957.

Miscellaneous contraventions

5.80. Lastly, the SCN has alleged four additional contraventions by FSL: a) discrepancies in email IDs and mobile numbers in respect of data of clients; b) purchase of securities through unregistered client code; c) non-segregation of funds/securities of clients; and d) code of conduct violations.

Discrepancies in email IDs and mobile numbers in respect of data of clients

5.81. It has been alleged in the SCN that there where many instances where clients' mobile numbers and email IDs had not been entered in the data maintained by FSL. In this regard, it has been alleged in the SCN that FSL has not complied with Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

5.82. The FAR notes that UCC data in respect of a total of 67,833 clients were examined, out of which there were 2588 instances where clients' mobile numbers had not been entered and 592 instances where both the mobile numbers and email IDs had not been entered. Further, there were 1572 instances where clients, who even though not covered under the definition of "Family" (as per the above-mentioned circular), had common contact numbers and common email addresses registered against their names. The FAR notes that these were active clients.

5.83. In this regard, reference is made to Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011. The said provisions are as under:

" *B. Uploading of mobile number and E-mail address by stock brokers*

i. Stock exchanges shall provide a platform to stock brokers to upload the details of their clients, preferably, in sync with the UCC updation module.

ii. Stock brokers shall upload the details of clients, such as, name, mobile number, address for correspondence and E-mail address.

iii. Stock brokers shall ensure that the mobile numbers/E-mail addresses of their employees/sub-brokers/remisiers/authorized persons are not uploaded on behalf of clients.

iv. *Stock Brokers shall ensure that separate mobile number/E-mail address is uploaded for each client. However, under exceptional circumstances, the stock broker may, at the specific written request of a client, upload the same mobile number/E-mail address for more*

than one client provided such clients belong to one family. 'Family' for this purpose would mean self, spouse, dependent children and dependent parents."

5.84. It is noted from the above that stock brokers are required to upload the details of their clients, preferably, in sync with the UCC updation module, ensure that the mobile numbers/E-mail addresses of their employees/sub-brokers/remisiers/authorised persons are not uploaded on behalf of clients and ensure that separate mobile numbers/E-mail addresses were uploaded for each client.

5.85. It is evident from the above facts that the FSL had not uploaded the details of its clients appropriately, and also failed to ensure that separate mobile numbers/E-mail addresses were uploaded for each client. Accordingly, I find that FSL has violated Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

Purchase of securities through unregistered client code

5.86. It has been alleged in the SCN that a trade through FSL had been made under an unregistered client code. In this regard, it has been alleged in the SCN that FSL had violated SEBI Circular No. SMDRP/Policy/CIR-39/2001 dated July 18, 2001 and Clause A (2) & A (3) of Schedule II read with Regulation 9 (f) of Stock Brokers Regulations, 1992.

5.87. It is noted from the FAR that buy trades were effected through FSL from a client bearing the code 'NSE'. This client code 'NSE' was not found in the UCC data provided by BSE as well as NSE. The FAR noted that the said client code was discovered from the trade logs pertaining to four years from 2016 to 2019. The year-wise details of the trades effected for this client are as under:

Table – 16

Year	Buy Traded Quantity	Buy Traded Value (in Rs.)	No of Trades
2016	3,24,764	41,26,014	224
2017	1,19,912	37,37,375	196
2018	1,44,057	52,96,328	304
2019	6,12,104	1,72,80,656	844
Total	12,00,837	3,04,40,373	1568

5.88. Curiously over the course of the four years, only buy trades were made by the said client. Also, the FAR notes that the 'Sauda Book' as provided by FSL did not mention the transactions of this client.

5.89. In this regard, reference is made to SEBI Circular No. SMDRP/Policy/CIR-39/2001 dated July 18, 2001 which makes it mandatory for all brokers to use unique client codes for all their clients. Brokers shall verify the documents with respect to the unique code and retain a copy of the document. Additionally, the brokers are required to furnish the particulars of their clients to the stock exchanges/clearing corporations. From the facts narrated above, it is evident that FSL has clearly failed to comply with the stipulation of this circular, as neither BSE nor NSE had this client code in their databases.

5.90. Further, reference is made to Clause A (2) & A (3) of Schedule II read with Regulation 9 (f) of Stock Brokers Regulations. Clause A (2) mandates a stock broker to act with due skill, care and diligence in the conduct of his business. Similarly, Clause A (3) requires a stock broker not to indulge in manipulative, fraudulent or deceptive transactions or making personal gains. From the facts brought out in the preceding paragraphs, it is evident that due care and diligence was missing in the conduct of FSL. Also, since there were no details

of any such client actually existing, the natural inference is that it was in fact FSL who in the garb of this client 'NSE' was indulging in deceptive transactions for making personal gains. Thus, FSL has clearly violated Clause A (2) & A (3) of Schedule II read with Regulation 9 (f) of Stock Brokers Regulations.

Non-segregation of funds/securities of clients

5.91. The SCN has alleged that the pledging of securities and the receipt of funds as a consequence of such pledging were not done as per established procedure. In this regard, it has been alleged that FSL has violated Clause 2.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

5.92. It has already been established that FSL and its sister concern had pledged clients' securities and consequently appropriated the funds raised from such pledging of securities. It is noted that Clause 2.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 requires that securities to be pledged have to be pledged from the BO account tagged as "Name of the Stock Broker - Client Account". Similarly, the said provision also requires that funds raised against pledged securities can be credited only to a bank account named as "Name of the Stock Broker - Client Account". Additionally, stock brokers are mandated to send a statement reflecting the pledge and the funding thereof to the concerned client.

5.93. As has already been elaborated in the preceding paragraphs, FSL had pledged securities through its group company, Fairwealth Financial Services Ltd and the specified account. Also, funds raised from the pledging of clients' securities were credited to other bank accounts and not to a specified account. Furthermore, no record was found to suggest that the client whose shares had been pledged had been informed of such pledge and the funds raised as a consequence of the same. On the contrary, it has been established that FSL indulged in the unauthorised pledging of the securities of the clients.

5.94. Accordingly, I find that FSL has violated Clause 2.5 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Code of conduct violations

5.95. The SCN has alleged that actions of FSL, especially large instances of the cash deposits and the cash withdrawals from its bank account(s), denoted a failure of integrity and fairness in carrying out its business thereby violating clause A (1) and A (5) of the Code of Conduct prescribed for the Stock brokers under the Stock Brokers Regulations.

5.96. It is noted from the SCN, based on the bank statements, that one of FSL's bank accounts, namely, account bearing No. 01722650000184 maintained with Kotak Mahindra Bank, saw a large number of cash deposits and withdrawals. During the period, April 13, 2016 to September 21, 2019 a total amount of Rs. 1,00,78,908 was withdrawn from the said bank account. Similarly, during the period, April 27, 2016 to November 24, 2016 cash deposits amounting to Rs. 43,32,500 was made in the said bank account.

5.97. It is noteworthy that cash deposits amounting to Rs 43 lakh were made in the said bank account in the space of seven months. Also, it is noted from the FAR that the bulk of the cash withdrawals from the said bank account happened between 2017 and 2019. It is not a mere coincidence that cash withdrawals happened during the same period when FSL was misusing the clients' securities by pledging them and selling them through other accounts.

5.98. In this regard, reference is made to clause A (1) and A (5) of the Code of Conduct prescribed for the Stock brokers under the Stock Brokers Regulations. Clause A (1) requires a stock-broker to maintain high standards of integrity, promptitude and fairness in the conduct of his business. Clause A (5) requires a stock broker to ensure compliance with all legal obligations at all

times. From the facts narrated above, the natural inference is that funds raised by the sale/pledging of clients' securities were utilised through cash withdrawals. This showed a clear lack of integrity in the functioning of the broker who had been entrusted with the securities and funds of the clients, and was in clear violation of the extant legal provisions applicable to stock brokers. That being the case, Clause A (5) has also been violated by FSL since it is required to comply with the prevailing legal obligations at all times.

Issue A-II – Whether FSL has violated Section 12A of SEBI Act, 1992 read with Regulation 3(d), 4(1), 4(2)(f), 4(2)(p) and 4(2)(m) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations, 2003 as well as Clauses A(1), A(2) and A(5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations?

5.99. It has already been brought out in the preceding paragraphs that FSL had carried out acts that resulted in – unauthorised off-market transactions in clients' accounts; unauthorised trading in clients' accounts and misappropriation of clients' securities; unavailability of securities of clients; unauthorised pledging of clients' securities; non-settlement of clients' accounts; mis-utilisation of funds for own purposes/debit balance clients; misrepresentation in books of account and submission of incorrect net-worth certificate to stock exchange; failure to furnish documents to stock exchange and non-cooperation with the auditor, related party transactions; discrepancies in email IDs and mobile numbers in the data of clients; purchase of securities in un-registered client code; non-segregation of funds/securities of clients; and code of conduct violations.

5.100. In this regard, it has also been alleged in the SCN that FSL by carrying out the above acts had violated Section 12A of SEBI Act, 1992 read with Regulation 3(d), 4(1), 4(2)(f), 4(2)(p) and 4(2)(m) of the PFUTP Regulations.

5.101. Section 12A of the SEBI Act read as under:

"***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act."

5.102. It is noted from the above that Section 12A (d) deals with insider trading, Section 12A (e) deals with the actions relating to dealing in securities pursuant to material or non-public information or communicating such material or non-public information to any other person for dealing in securities and Section 12A (f) deals with acquisition of a company in contravention of extant provisions. It is noted that the present matter does not deal with the above issues.

Accordingly, the application of Section 12A (d), (e) and (f) needs to be excluded from the present consideration.

5.103. The present consideration, therefore, shall be confined to Section 12A (a), (b) and (c). The above provisions essentially form the troika that prohibits the employment and use of manipulative or deceptive devices in respect to the purchase or sale of securities; using any device, scheme or artifice to defraud while dealing in securities; and engaging in any act, practice or course of business which would operate as fraud or deceit upon any person while dealing in securities.

5.104. It is noted from the preceding paragraphs that FSL had carried out off-market sale of clients' securities, pledged clients' securities and sold clients' securities without their knowledge or concurrence. Also, it submitted Net-worth Certificate to the stock exchanges whose contents were untrue and depicted a better picture of its financial health. It sold securities through a client code: 'NSE' that did not exist in the UCC databases of both NSE and BSE. These facts clearly demonstrate that FSL had employed manipulative devices to defraud and deceive. Accordingly, I find that FSL has violated Section 12A(a), (b) and (c).

5.105. Regulation 3(d) reads as: "*No person shall directly or indirectly— (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.*"

5.106. FSL's actions of carrying out off-market sale of clients' securities, pledging of clients' securities and selling of clients' securities without their knowledge or concurrence amounted to an act or practice that operated as a fraud/deceit on the clients, in connection with the dealing of listed securities and was in

contravention of the provisions of the SEBI Act. Accordingly, I find that FSL has violated Regulation 3 (d) of the PFUTP Regulations.

5.107. Regulation 4(2) provides that – "*Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following…*" Under the said provision twenty instances from 'a' to 't' have been listed, demonstrating acts of dealing in securities that would amount to be fraudulent or an unfair trade practice. For the present consideration, the relevant provisions are 4(2)(f), 4(2)(p) and 4(2)(m) of the PFUTP Regulations.

5.108. Regulation 4(2)(f) reads as: "*knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities*".

5.109. It has been brought out in the preceding paragraphs that FSL had submitted a Net-worth Certificate to the stock exchanges whose contents were untrue and depicted a better picture of its financial health. On the contrary, as has been brought out in the FAR, the actual net-worth of FSL had been eroded for the specified period and was Rs. -13 crore. Thus, FSL by reporting incorrect and untrue net-worth details to the exchanges has violated 4(2)(f) of the PFUTP Regulations.

5.110. Regulation 4(2)(m) reads as: "*a market participant entering into transactions on behalf of client without the knowledge of or instructions from client or misutilizing or diverting the funds or securities of the client held in fiduciary capacity*". It has been brought out in the preceding paragraphs that off-market sale of securities of clients was done and the securities pledged, without the clients' knowledge. Also, the funds raised by way of pledging of securities was utilised by FSL. That being the case, it is evident that FSL had not disclosed to its clients, transactions entered into on their behalf.

Accordingly, I find that FSL has violated Regulation 4(2)(m) of the PFUTP Regulations.

5.111. Regulation 4(2)(p) reads as: "*an intermediary predating or otherwise falsifying records including contract notes, client instructions, balance of securities statement, client account statements*". It has been brought out in the preceding paragraphs that the fixed assets schedule of the Audited Balance Sheet was incorrect *inter alia* because the value of the cars owned by FSL had not been reduced even though there were loans against those cars and the value of pledged assets had not been reduced. This clearly shows that the records had false information, and accordingly, I find that FSL has violated Regulation 4(2)(p) of the PFUTP Regulations.

5.112. Regulation 4 (1) reads as: "…*no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities market*." The preceding paragraphs have clearly brought out the various instances of FSL indulging in a manipulative, fraudulent or unfair trade practice. That being the case, the obligation as existing in the said regulation has clearly been violated by FSL.

5.113. Additionally, reference is made to the Code of Conduct as provided in the Stock Brokers Regulations. Clause A (1) provides that a stock broker should maintain high standards of integrity, promptitude and fairness in the conduct of all his business. Clause A (2) provides that a stock broker should act with due skill, care and diligence in the conduct of his business. Clause A (5) provides that a stockbroker should abide by all the provisions of the SEBI Act and the Rules and Regulations framed by the Government, SEBI and the Stock Exchanges.

5.114. It is seen from the facts brought out above that FSL has been found to be in violation of applicable provisions of law. So, FSL has clearly violated Clause A (5) of the Code of Conduct. Additionally, it has been brought out that running account settlement, even though stipulated to take place at least once in a

month or a quarter as per the preference of the client, had not happened. This resulted in a lot of funds of the client lying with FSL. This clearly exhibited a lack of promptitude on the part of FSL in executing its obligations, which resulted in the funds of the clients not being available to them. So, FSL has violated Clause A (2) of the Code of Conduct. Further, it has been elaborated in the preceding paragraphs that FSL had entered incorrect mobile numbers and email IDs in respect of clients, and in certain cases the same mobile numbers/email IDs had been used in respect of multiple UCCs. These facts exhibit a lack of due skill, care and diligence in the conduct of business. So, FSL has clearly violated Clause A (1) of the Code of Conduct.

5.115. Thus, I find that FSL has violated Section 12A(a)(b) and (c) of SEBI Act, 1992 read with Regulation 3(d), 4(1), 4(2)(f), 4(2)(p) and 4(2)(m) of SEBI PFUTP Regulations as well as Clauses A(1), A(2) and A(5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations.

Issue A-III – Whether the Directors of FSL, namely, Dhirender Gaba (Noticee 2), Naveen Gaba (Noticee 3), Shripad Sadanand Desai (Noticee 4), Sandeep Jindal (Noticee 5) and Shitla Prasad Shukla (Noticee 6) can be held liable for the actions/ violations of FSL?

5.116. The SCN has alleged that the above-named Noticees being Directors of FSL during the Audit Period were liable for the actions/omissions of FSL as elaborated.

5.117. As already brought out, emails have been received on behalf of Naveen Gaba and Dhirendra Gaba post the issuance of the SCN, but the said Noticees have refrained from submitting any reply in response to the allegations made therein. Similarly, even though service of SCN has been made on Sandeep Jindal, no response has also been received from him. Accordingly, the present

consideration in respect of the above-mentioned Noticees shall be made on the basis of the material on record.

5.118. Shripad Sadanand Desai and Shitla Prasad Shukla have filed replies in response to the allegations made in the SCN. The submissions made by them have already been captured in the preceding paragraphs. However, for the convenience of reference, short summaries of the submissions made by them are provided hereunder.

5.119. Shripad Sadanand Desai has submitted that –

a. the SCN was vague and unspecific;
b. he should be provided the 'examination of chief' of Dhirender Gaba and Naveen Gaba;
c. he was a trained engineer and was involved as a System Administrator(Executive) in the IT Department of FSL;
d. he was not involved in the process of misutilisation of securities, pledging of securities or evaluating the net-worth of FSL;
e. he was appointed as a Director of FSL at the instance of Dhirender Gaba, and neither had any authority nor was the signatory to any of the documents in respect of the alleged transactions;
f. no illegal or undue profits accrued to him as a consequence of the execution of the transactions; and
g. he had neither caused any loss to the investors owing to the execution of the transactions nor any justification to the same had been provided by SEBI.

5.120. Shitla Prasad Shukla has submitted that –

a. the SCN issued by SEBI was vague and unspecific;
b. he became a Director pursuant to pressure from Dhirender Gaba and Naveen Gaba, and the threat of termination of his employment;

c. he was a Director of FSL from October 25, 2017 and not during the period, September 29, 2017 to July 16, 2019;
d. he was not involved in the day-to-day functioning of FSL, and was only employed as a Legal Manager there;
e. he was in no way associated with dealing in securities by FSL.
f. Dhirender Gaba by way of a letter dated October 27, 2017 had issued a letter clarifying his roles and liabilities and
g. he had not received any benefit from FSL except for the salary paid to him.

5.121. The said Noticees have in their replies stated that the SCN was unspecific and vague and did not specify the charges for which the SCN had been issued. For the same, reliance has been placed by the Noticees on several case laws which have already been captured in the preceding paragraphs. Additionally, Shripad Sadanand Desai has stated that provided the 'examination of chief' of Dhirender Gaba and Naveen Gaba. Since the said Noticees have raised these preliminary issues with regard to the SCN, the same are being dealt with before considering the substantive allegations made in the SCN against them.

5.122. With regard to Shripad Sadanand Desai, the SCN makes out clear allegations against him, and specifies the provisions of law alleged to have been violated. In that regard, reference is made to paragraph 13 of the SCN whereby it has been clearly mentioned that the said Noticee being a Director has been alleged to have violated the same provisions of law as FSL. Further, the SCN has enunciated the factual details that give rise to the allegation that the present Noticee had violated the above-mentioned provisions of law. Accordingly, reference is made to paragraph 2 of the SCN whereby it has been brought out that Shripad Sadanand Desai was a Director of FSL during the Audit Period. Also, reference is made to paragraph 12 of the SCN whereby reliance has been placed on Section 27 of the SEBI Act, which forms the legal basis for the attribution of liability on the Directors for the actions of FSL.

Further, the FAR as well as other documents relied upon for making such allegations have been provided to the Noticees, including the present Noticee. Lastly, the SCN has specified in clear terms (paragraph 15 of the SCN), the relevant provisions of law under which directions are proposed against the Noticees, including the present Noticee.

5.123. Thus, from the above it is seen that the SCN has brought out the allegations, the actions contemplated, as well as the provisions of law under which such actions are being proposed. Accordingly, I do not find any vagueness or lack of specificity in the SCN as has been contended by the present Noticee.

5.124. Furthermore, the present Noticee has inter alia placed reliance on Gorkha Security to contend that the SCN was vague and unspecific. The reliance on Gorkha Security is inappropriate as the findings of the said case are not applicable to the facts of the present matter. It is also clarified that in Gorkha Security, the interpretations offered by the court were made in respect of questions arising out of a commercial dispute, while the present matter relates to actions contemplated by SEBI for violations of statutory provisions.

5.125. With respect to the claim by Shripad Sadanand Desai that he be provided 'examination-in-chief' of Dhirender Gaba and Naveen Gaba, it is stated that no statements of either Dhirender Gaba or Naveen Gaba have been recorded by SEBI. That being the case, no statements have been relied upon to make the allegations in the SCN. In view of the same, the question of providing an opportunity of cross-examination does not arise. Additionally, all the documents relied upon have already been provided as annexures to the SCN.

5.126. Shitla Prasad Shukla has also claimed that the SCN was vague and not specific. The findings on the said issue in respect of Shripad Sadanand Desai, as elaborated in the preceding paragraphs, would also squarely apply to Shitla Prasad Shukla.

5.127. As stated before, the allegations against the above-named Noticess, who were the Directors of GSL, arise from the allegation of contravention against FSL. In that regard, for facility of reference Section 27 of the SEBI Act is reproduced hereunder:

"*27. (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.*

(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, manager, secretary or other officer of the company, such Director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director", in relation to a firm, means a partner in the firm."

Dhirender Gaba and Naveen Gaba

5.128. It is seen from the FAR that Dhirender Gaba was a Director in FSL since 02.03.2005. By his own admission he was the Managing Director of FSL. Similarly, Naveen Gaba was a Director in FSL since 02.03.2005. It is noted that both of them have been Directors of FSL since its incorporation. It is also evident from records that they were involved in the day-to-day affairs of FSL. All communications with SEBI in relation to the present matter were being done by Dhirender Gaba.

5.129. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the matter of *Official Liquidator v. P.A.Tendolkar, [(1973)1SCC602]*, referred to in the case of *N.Narayanan Vs. Adjudicating Officer, SEBI, [AIR2013SC3191]*, wherein the Hon'ble Supreme Court held that "*It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company.*"

5.130. Further not only has the involvement of Dhirender Gaba and Naveen Gaba in the affairs of FSL been close and long, it is also gathered from the FAR that

both the brothers Dhirender Gaba and Naveen Gaba held substantial shareholding in FSL and were the promoters of the company.

5.131. It is evident from the afore-mentioned provision (Section 27) that for the contravention by a company, the persons who at the time of the contravention were in charge of and were responsible to the company for the conduct of business shall be deemed to be guilty of such contraventions. So, the above-mentioned Directors, namely, Dhirender Gaba and Naveen Gaba squarely fall within the scheme of this provision. Also, there is nothing on record to show that the contraventions were committed without their knowledge or that they had exercised all due diligence to prevent the commission of such actions. That being the case, there is no ground to exclude liability of Dhirender Gaba and Naveen Gaba for the contraventions of FSL.

5.132. From a consideration of the material and the understandings gathered from the replies of the Noticees regarding the business of FSL, it is clear that the present Noticees were instrumental in the design of this device for the disposal of clients' securities and to profit from it, as evident by the fact that this fraudulent exercise was in play since FY 2016-17.

5.133. In view of the above, I conclude that Dhirender Gaba and Naveen Gaba who were in charge of the business of FSL and had been involved in the business right from its inception were intrinsically connected in its affairs. The same has also come through from the letters addressed by Dhirender Gaba to employees/Directors accepting responsibility of the acts of FSL. Additionally, the said Noticees being promoters of FSL would naturally be the beneficiaries of the fraudulent scheme of FSL, which resulted in the misappropriation of the securities and funds of clients. Thus, I find that Dhirender Gaba and Naveen Gaba are liable for the contraventions as established in the preceding paragraphs in respect of FSL.

Shripad Sadanand Desai, Sandeep Jindal and Shitla Prasad Shukla

5.134. It is noted from the FAR that Shripad Sadanand Desai was appointed as an Additional Director of FSL on September 23, 2019. Similarly, from the MCA records it is seen that Sandeep Jindal was appointed as an Additional Director on March 06, 2017 and resigned from the same on August 21, 2017. Subsequently, on June 12, 2018 he was again appointed as an Additional Director of FSL, regularised as a Director on September 29, 2018 and resigned from the position on September 23, 2019. Lastly, Shitla Prasad Shukla was appointed as an Additional Director on October 25, 2017 and regularised as a Director on September 29, 2018 and resigned from the position on September 23, 2019.

5.135. Shripad Sadanand Desai and Shitla Prasad Shukla have filed replies in response to the allegations made in the SCN. However, no response has been received from Sandeep Jindal.

5.136. As gathered from their replies, the principal defence offered by Shripad Sadanand Desai and Shitla Prasad Shukla is that they had no knowledge and were not involved in the affairs of the Company. Shitla Prasad Shukla in his reply has submitted a declaration by Dhirender Gaba dated October 19, 2019 whereby *inter alia* it has been stated that he was responsible for the running of FSL and Shitla Prasad Shukla had no role in the management decisions or attending the AGMs of FSL.

5.137. It is an established principle of law that Directors of a company have a fiduciary relationship with the company and its shareholders. It is on this principle that the duties and responsibilities of a Director have evolved which are crystallised in Section 166 of the Companies Act, 2013. One of the foremost duties of a Director is due diligence and care. The law also fastens a duty on the Directors to acquire adequate knowledge and understanding of the affairs of the company. This duty of Directors to maintain sufficient knowledge

and understanding of the company's business is a continuing one so as to enable them to properly discharge their duties as Directors.

5.138. Further, Directors have a duty cast upon them to attend the board meetings. This principle finds resonance in Section 167 (1) (b) of the Companies Act, 2013 which states that the failure to attend Board Meetings for a continuous period of one year would be a ground for the vacation of office by the concerned Director, regardless of leave of absence being given by the Board for the meetings held during the year.

5.139. The present Noticees have argued that they had no knowledge of the affairs of the Company. They have also stated that they did not attend any meetings, and that they were employees concerned with their specific roles. Additionally, it has been submitted by Shripad Sadanand Desai that he had joined FSL at a time (September 23, 2019) which was at the end part of the Forensic Audit Period, commencing from FY 2016-17.

5.140. It is stated that the consideration of the liability of Directors has to be on the touchstone of the above responsibilities. It is reasonably expected of a Director to be aware of the affairs of the whole company and not confine themselves to a particular department. The Noticees have simply stated that they were unaware without demonstrating any attempts made by them to acquaint themselves with the matters pertaining to FSL. This appears to be quite unusual, especially when the Noticees, namely, Shripad Sadanand Desai and Shitla Prasad Shukla have stated that they were employees. Being employed with the Company and sitting on its Board, the argument of lack of knowledge is not tenable. Further, it is one of the primary duties of a Director to attend Board meetings. So, one cannot wriggle out of liability by not doing what one is required under law to do. Additionally, the argument advanced by Shripad Sadanand Desai that his appointment was at the end of the Forensic Audit Period does not pass muster.

5.141. Having failed to carry out the duties cast upon them, the Noticees have now claimed benefit of such failure of duties by stating that they did not have any knowledge of the affairs of the Company and were ignorant about the misappropriation of clients' securities and funds.

5.142. Further, the present proceeding is in the nature of a civil proceeding, under Section 11B of the SEBI Act, and as such, SEBI cannot be laden with the burden of presenting such proof, which would prove beyond reasonable doubt that the Director of a company was conscious of the specific affairs of the company. I view that the fact of the association of the Noticees with FSL as Directors, during the Forensic Audit Period, read with the surrounding circumstances are sufficient to draw the inference that they were aware of the activities of FSL. Further, it has not been demonstrated by the present Noticees that they had exercised all due diligence to prevent the commission of such actions by FSL.

5.143. Thus, upon a conjoint reading of the facts, the material on record and the submissions made, I find that the Noticees, namely, Shripad Sadanand Desai and Shitla Prasad Shukla cannot escape liability for the contraventions of FSL.

5.144. Notwithstanding the above finding, it is acknowledged that Shripad Sadanand Desai and Shitla Prasad Shukla were employees and as such the extent of the threat of termination from employment could have been a limiting factor in the exercise of their powers as Directors. As regards, Sandeep Jindal it is seen that he was a non-executive Director. The said findings shall therefore be appropriately reflected in the Directions.

Issue A-IV – Whether Aagas Software Solutions Pvt. Ltd. (Noticee 7), Katashraj Securities Pvt. Ltd. (Noticee 8), Reets Plastics Pvt. Ltd. (Noticee 9), Shyam Sunder Jolly (Noticee 10), Chahek Housing Pvt. Ltd. (Noticee 11), Vikram Kumar (Noticee 12) and Fairwealth Financial Services Limited (Noticee 13) are related to FSL and can be held to have aided and abetted FSL?

5.145. It has already been brought out that FSL through its activities violated the provisions of securities laws, as detailed in the preceding paragraphs.

5.146. In this respect, it has been alleged in the SCN that transactions were routed through the bank accounts of the above-mentioned Noticees who were related to FSL. Accordingly, it has been alleged that the said Noticees have violated the provisions of Section 12A of the SEBI Act, 1992 read with Regulation 3(d) and 4(1) of the PFUTP Regulations.

5.147. So, the examination in the present issue would be to determine a) if the above-mentioned Noticees were in fact related to FSL and/or its Directors and b) whether the actions/omissions by the above-mentioned Noticees amounted to a violation of Section 12 A of the SEBI Act, 1992 read with Regulation 3(d) and 4(1) of the PFUTP Regulations.

5.148. As noted in paragraphs 5.7 to 5.13 of this Order, it has already been established that Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd., Reets Plastics Pvt. Ltd., Shyam Sunder Jolly, Chahek Housing Pvt. Ltd. and Fairwealth Financial Services Limited were related parties of FSL. So, the said examination is already complete.

5.149. As regards, Vikram Kumar, it is noted from the Interim Order that he was a Director in Agas Software Solutions Pvt. Ltd., Chahek Housing Pvt. Ltd. and Reets Plastics Pvt. Ltd. Also, he was an employee of FSL, and accordingly would have been someone accustomed to receiving instructions from Noticees

2 and 3, and acting pursuant to them. That being the case, he was nothing more than a proxy of FSL and Noticees 2 and 3. So, he was a related/connected entity.

5.150. I shall now proceed to examine the second part of the issue, i.e., whether the actions/omissions of these related parties amounted to a violation of Section 12 A of the SEBI Act, 1992 read with Regulation 3(d) and 4(1) of the PFUTP Regulations.

5.151. It has already been brought out that Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd., Reets Plastics Pvt. Ltd. and Chahek Housing Pvt. Ltd. have not provided any replies in response to the SCN. Similarly, while Dhirender Gaba has represented Fairwealth Financial Services Limited in his communications to SEBI, as already stated no response has been filed in respect of the allegations made in the SCN. In view of the same, for the present consideration the material available on record along with publicly available information shall be referred to. As regards, Shyam Sunder Jolly and Vikram Kumar, responses have been received from them in respect of the allegations made in the SCN, and the same shall be accordingly considered.

5.152. The detailed submissions of Shyam Sunder Jolly have already been captured in the preceding paragraphs. However, for the convenience of reference, a short summary of the submissions made by him is provided hereunder:

a. the SCN was vague and unspecific;
b. he should be provided the 'examination of chief' of Dhirender Gaba and Naveen Gaba;
c. any activity in his account could not be attributed to him as his account was handled by Dhirender Gaba, and he was not aware of the transactions executed in his account;
d. the sale of shares from his account was done by Dhirender Gaba , and he was neither responsible for the operation of the said account nor was

he a beneficiary of the securities or any money received pursuant to sale of such securities;

e. he was only an employee at FSL, and his employment at FSL was due to him being a relation of Dhirender Gaba;
f. he was appointed as a Director of FSL only for a limited period and he neither had any authority nor was he the signatory to any of the documents in respect of the alleged transactions;
g. no illegal or undue profits accrued to him as a consequence of the execution of the transactions; and
h. he had neither caused any loss to the investors owing to the execution of the transactions nor any justification to the same had been provided by SEBI.

5.153. Vikram Kumar in his submissions has principally stated that there was fraudulent use of his documents.

5.154. Shyam Sunder Jolly has in his replies stated that the SCN was not specific and vague and did not specify the charges for which the SCN had been issued. For the same, reliance has been placed by the said Noticee on several case laws which have already been captured in the preceding paragraphs. I note that Shyam Sunder Jolly has raised a preliminary issue with regard to the SCN, and accordingly the same is being dealt with before considering the alleged violation of legal provisions.

5.155. It is noted that the said issue has already been dealt with in respect of Shripad Sadanand Desai and Shitla Prasad Shukla. Accordingly, the findings therein are being adopted in respect of the present Noticee too.

5.156. However, to show specificity concerning this particular Noticee, reference is made to paragraph 9 (A) of the SCN whereby it has been brought out that certain entities, including the present Noticee, had been able to sell securities which were more than the securities held by them. Additionally, reference is

also made to paragraph 9 (I) of the SCN whereby it has been brought out that transfers involving large sums of money were effected through the bank accounts of related parties. These facts clearly detail the basis of the allegation regarding the roles of these related parties in the actions of FSL. Further, the FAR as well as other documents relied upon for making such allegations have been provided to the Noticees, including the present Noticee. Lastly, the SCN has specified in clear terms (paragraph 15 of the SCN), the relevant provisions of law under which directions are proposed against the Noticees, including the present Noticee. Thus, the SCN cannot be said to vague or not specific.

5.157. As regards the demand of the 'examination-in chief' of Dhirender Gaba and Naveen Gaba is concerned, it is stated that the said issue has already been dealt with in respect of Shripad Sadanand Desai. So, the findings on the issue in respect of Shripad Sadanand Desai, as elaborated in the preceding paragraphs, would also squarely apply to Shyam Sunder Jolly.

5.158. Coming to the substantive consideration, reference is made to Table –8 of this Order. It has been demonstrated in the said table as to how certain purported clients of FSL had sold securities which was in excess of their holdings as stated in the holding statements. Of the clients who had been able to sell excess securities primary were: Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd., Reets Plastics Pvt. Ltd., Shyam Sunder Jolly, Chahek Housing Pvt. Ltd. and Fairwealth Financial Services Limited. So, it has been clearly established that FSL had misappropriated the securities of the genuine clients by selling them through these related party client accounts.

5.159. Additionally, it has also been brought out in the preceding paragraphs that substantive payments and receipts between the FSL account on the one hand and the accounts of past Directors, which included Shyam Sunder Jolly and Vikram Kumar, as well as Fairwealth Finnacial Services Ltd. on the other. It has also been established FSL was engaged in in business other than

securities and also misused clients' funds/securities, which is demonstrated by the transfer of funds.

5.160. Thus, from the facts brought out above, it is evident that illegal actions have been done by FSL through Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd, Reets Plastics Pvt. Ltd., Shyam Sunder Jolly, Chahek Housing Pvt. Ltd., Vikram Kumar and Fairwealth Financial Services Limited.

5.161. Shyam Sunder Jolly has not denied the use of his trading account or bank account by FSL. He has, however, claimed that the bank account (maintained with Kotak Mahindra Bank) was being operated by Dhirender Gaba. Also, the transactions in securities effected through his trading account were not carried out by him. Further that he had not made any illegal gains except for the salary received by him.

5.162. In this regard, it is noted from the reply of Shyam Sunder Jolly that for the FYs 2016-17, 2017-18, 2018-19 and 2019-20 he had earned Rs. 5,69,722; Rs. 6,58,078; Rs. 6,37,597 and Rs. 3,54,951. The said Noticee has also provided Income Tax Returns for Assessment Years 2017-18 (FY 2016-17), 2019-20 (FY 2018-19) and 2020-21 (FY 2019-20). Additionally, he has also provided bank statements of the bank account bearing number: 06781140008037 maintained with HDFC Bank.

5.163. From a perusal of the bank statements, it is noted that monthly credit entries of about Rs. 50,000 were made in the said bank account from FSL. Also, the Income Tax Returns show income to be in the close range of the salary earned by Shyam Sunder Jolly. From the above it does appear that the salary stated to have been earned by Shyam Sunder Jolly was not abnormal or exorbitant. Thus, it does not appear that any additional pecuniary benefit that has accrued to the said Noticee.

5.164. While that may be the case, it is stated that one cannot allow one's bank account and trading/DEMAT account to be used by someone else and not bear the consequences of such use. The veritable lending of the bank account and trading/DEMAT account by Shyam Sunder Jolly to FSL enabled it to use the same for misappropriation of the securities of genuine clients. Therefore, Shyam Sunder Jolly cannot be absolved of the responsibility. He knowingly allowed his account to be used as a mule account.

5.165. In the case of Vikram Kumar, as brought out before, he has submitted that his documents were fraudulently used by FSL and its executives, and that he was just an employee. In this regard, he has also provided a complaint dated October 15, 2019 filed by him with the Bhikaji Cama Police Post, New Delhi whereby the allegation of fraudulent use of his documents has been reiterated.

5.166. The said Noticee has also provided a copy of the salary slip to show his income while employed with FSL and in his replies has stated that he had limited economic means.

5.167. In this regard, it is noted from the SCN that transactions between FSL's bank account and Vikram Kumar's bank account started in FY 2016-17 and continued till October 2022. It must be stated that during the above period payment from FSL's account to Vikram Kumar was Rs. 2,00,22,036 and the receipt from Vikram Kumar's account to FSL's account was Rs. 2,00,05,396.

5.168. As may be noted from the above, the transactions spanned over a period of three and a half financial years. Also, from the MCA records, it is seen that Vikram Kumar was a Director in Agas Software Solutions Pvt. Ltd., Chahek Housing Pvt. Ltd. and Reets Plastics Pvt. Ltd. As also established, he was an employee of FSL. In view of the same, it appears extremely farfetched that the present Noticee did not have an inkling about the use of his bank account to effect transactions for that long a period, when he himself was an employee there.

5.169. So, even giving the benefit that he himself did not receive direct benefit from the misappropriation carried out by FSL, it is quite unconvincing that his documents were fraudulently used and a bank account opened. Accordingly, in the case of Vikram Kumar I find that there was a veritable lending of the bank account by him to FSL, which enabled FSL to use the same for misappropriation of funds. Therefore, Vikram Kumar cannot be absolved of the responsibility.

5.170. It has already been demonstrated that Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd., Reets Plastics Pvt. Ltd., Chahek Housing Pvt. Ltd. and Fairwealth Financial Services Limited had sold securities which were in excess of their holdings as stated in the holding statements at the instance of FSL. It has also been demonstrated that these entities were related parties of FSL. In that context, the natural inference is that these entities had provided their trading/DEMAT account to FSL so as to misappropriate the securities of genuine clients.

5.171. It is stated that Section 12A of the SEBI Act *inter alia* prohibits manipulative and deceptive devices employed in contravention of the provisions of the SEBI Act and the Regulations made thereunder. Regulation 3(d) of the PFUTP Regulations mandates that no person should engage in an activity which would operate as a fraud or deceit on any person in connection with the dealing in securities. Regulation 4 (1) mandates that no person should indulge in a manipulative, fraudulent or an unfair trade practice in the securities market. So, by lending their bank accounts and trading/DEMAT account, Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd., Reets Plastics Pvt. Ltd., Chahek Housing Pvt. Ltd., Fairwealth Financial Services Limited, Vikram Kumar and Shyam Sunder Jolly have clearly provided the fraudulent devices for FSL to effect misappropriation of the securities and funds of genuine clients. Accordingly, I hold that the above-named entities have violated Section 12A of the SEBI Act and Regulations 3(d) and 4 (1) of the SEBI PFUTP Regulations.

Issue B-I – Whether FCBL has engaged in activities volatile of provisions of securities law?

5.172. SEBI conducted an inspection of FCBL during December 20-26, 2018, for the period, April 01, 2017 to December 20, 2018. The findings of the SEBI Inspection Report were forwarded to FCBL vide letter dated September 03, 2019 and comments/explanations were sought from FCBL in respect of the findings therein. In furtherance of the findings in the SEBI Inspection Report, which had brought out many issues pertaining to the functioning of FCBL as a commodity derivatives broker, the present SCN has been issued.

5.173. As already brought out, no response has been received from FCBL with respect to the allegations made in the SCN. In view of the same, the consideration of the said allegations shall be undertaken in line with principles enunciated in the previous parts of this Order.

5.174. It bears mentioning that FCBL is a subsidiary of FSL with Dhirender Gaba and Naveen Gaba being the prominent promoters and Directors of FCBL at the time of inspection. The shareholding pattern of FCBL as on June 30, 2018 is provided hereunder:

Table – 17

S. No.	Name of Shareholder	No. of Equity Shares Held
1.	Dhirender Gaba	2,20,000
2.	Naveen Gaba	2,50,000
3.	FSL	2,50,000
4.	Ramesh Chander Diwan	53,416
5.	Sumit Gaba	71,666
6.	Saroj Kumari	45,500
7.	Deepshikha	16,666
8.	Versha Gaba	14,744
9.	Charanjeet Gaba	8,673
	Total	**9,30,665**

5.175. In this background the each of the allegations made against FCBL in the SCN shall be now be considered individually.

Failure to segregate client funds from own funds.

5.176. It has been alleged in the SCN that during inspection it was noted that certain transactions unrelated to clients had been found in client bank accounts. The details of the such transactions are given below:

Table – 18

Account Name	Date	Voucher	Bank	Cheque	Description / Narration	Dr. Amount	Cr. Amount	Balance	Remarks
HDFC A/C-00030340029137	22-May-2017	REAPR0000144			Vide Cheque No. 009993 / Ft-00030340030126-globe Fincap Ltd	1,90,00,000	0	17,46,029	Received from Globe Fincap Ltd.
HDFC A/C-00030340029137	24-May-2017	PYAPR0000948	BHD FC1	TRF	Transfer To 00030340030126 Globe Fincap Ltd Vide Ref No. 705244995748_mcx	0	95,00,000	1,12,92,917	Paid to Globe Fincap Ltd.
HDFC A/C-00030340029137	24-May-2017	PYAPR0000949	BHD FC1	TRF	Transfer To 00030340030126 Globe Fincap Ltd. Vide Ref No. 705245004351 _mcx	0	95,00,000	17,92,917	Paid to Globe Fincap Ltd.

5.177. Based on the above, it has been alleged in the SCN that FCBL had violated SEBI Circular SMD/SED/C1R/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008.

5.178. In this regard, reference is made to the above-mentioned circulars. The said circulars mandate that funds received from clients are to be kept in a separate bank account and the account is designated for the purpose of receipt of funds from and payment to clients. The broker should not use this money for his own transactions or for transactions of any other client or for any purpose other than margin and pay in relating to transaction entered into by such client paying the margin. So, the broker at all times should ensure that the money of the client is kept in the "Member Clients Account" maintained with the Clearing Bank and the funds therein are used for specified purposes.

5.179. As already brought out, it was observed that transactions that were not in respect of the clients were found in the Member Clients Account. FCBL in its reply to the findings of the SEBI Inspection Report has stated that the instance in question was a singular event, and the same had occurred because of the mistake of an employee in FCBL's accounts department, who had only joined 2-3 days prior to the occurrence of the said transaction. Additionally, it has been mentioned that the same was rectified in two days.

5.180. There is no doubt that there is a clear obligation mandating the use of the funds in the clients account only for specified purposes. It must be appreciated that the reason for such a stipulation to be in place is to ensure that the broker while making trades in its proprietary capacity do not dip into the funds of its clients, in case of funds shortfall. The rectification as claimed by FCBL, even if accepted, does not absolve FCBL since the very act of use of funds from the clients account is a fundamental breach of the need for the segregation of funds. Thus, from the above, I find that FCBL by failing to segregate client funds from its own has violated the instructions in the stated circulars.

Misuse of clients' funds.

5.181. It has been alleged in the SCN that upon a sample examination of trading effected by FCBL on 36 days, it was found that on 3 such trading days there had been misuse of the funds of clients. In view of the same, it has been alleged that FCBL had violated SEBI Circular SMD/SED/C1R/93/23321 dated November 18, 1993 and SEBI circular No. SEBI/H0/M1RSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

5.182. SEBI in its circular dated September 26, 2016 crystallised the principle that the total available funds of clients i.e. cash and cash equivalents with the stock broker and with the clearing corporation/ clearing broker should always be equal to or greater than clients' funds as per the ledger balance. If that were not the case, then it indicated that the funds of clients with credit balance had been misused by the broker for its own purposes or to fund the debit balance clients.

5.183. In this regard, the methodology adopted by SEBI to examine the said issue is provided hereunder: -

total fund balance available in all Client Bank Accounts maintained by the stock broker (**A**);

aggregate value of collateral deposited with clearing corporations and/or clearing broker (in cases where the trades are settled through clearing broker) in the form of Cash and Cash Equivalents (Fixed Deposit Receipts, funded portion of Bank Guarantee (BG), etc.) (**B**);

aggregate value of Credit Balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients) (**C**); and

Aggregate value of Debit Balances of all clients as obtained from trial balance across stock exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients, uncleared cheques issued to clients) (**D**).

5.184. Based on the methodology mentioned above, the principle as enunciated in the preceding paragraphs was employed in respect of trading effected by FCBL on 36 trading days. The results of the same are provided hereunder:

Table – 19

Sl No.	**Date**	**A**	**B**	**A+B**	**C**	**G=(A+B)-C**
1	31/07/2017	81,22,465	19,44,3793	2,75,66,258	5,63,35,453	-2,87,69,195
2	28/03/2018	24,71,014	1,63,71,636	1,88,42,650	4,09,70,609	-2,21,27,959
3	14/12/2018	6,953,456	1,64,97,926	2,34,51,382	41,764,433	-1,83,13,051

5.185. As is noted from the table, on 3 out of the 36 trading days during the period, April 2017 to December 2018, the value of G is negative. This indicate that funds of credit balance clients were utilised for settlement obligations of debit balance clients or own obligations.

5.186. In its response to the findings of the inspection carried out by SEBI, it has been submitted by FCBL that G was negative in the three days, since "*wrong figures had been taken in column 'C' by the inspection team*". Additionally, it has been submitted by FCBL that debit balance clients were negligible and they had been funded through the own funds of FCBL. Further, it was submitted by FCBL that the inspection had not pointed out that the funds had been used for settlement of proprietary obligation or loss.

5.187. In this regard, reference is again made to SEBI Circular SMD/SED/C1R/93/23321 dated November 18, 1993. The said circular clearly mandated that no money be drawn from client's account other than - money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Broker from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Broker, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client. Consequently money given by clients has to be available with broker all the time. So, there is a clear obligation that money given by clients shall at all times remain with the broker, and the fact that on the demonstrated 3 trading days 'G' was negative meant that the money at all times was not with the broker.

5.188. Also, the assertion by FCBL in its response that figures had been taken in column 'C' by the inspection team has not been specific as to how the figures were wrong and to what extent. Further, the information that constitutes the figures of column 'C' are provided by a broker to the concerned stock exchange under the SEBI circular No. SEBI/H0/M1RSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016. So, if one considered for the sake of argument that the figures were wrong then that would mean that FCBL had provided wrong figures to the stock exchange. So, this assertion does not hold any merit.

5.189. FCBL has asserted that the inspection did not specifically state that the funds had been utilized to settle proprietary obligation or loss. Even though there is no specific mention of the same in the SEBI Inspection Report, it would not be of much assistance to FCBL. The primary obligation on a broker is that money given by clients shall at all times remain with the broker, and the fact that on certain trading days, money of the clients at all times was not with the broker meant that there had been a violation of the stated obligation. For what purpose the funds had been utilised i.e., to settle proprietary obligation or loss or to fund debit balance clients, is not particularly material.

5.190. Accordingly, I find that FCBL has violated SEBI Circular SMD/SED/C1R/93/23321 dated November 18, 1993 and SEBI circular no. SEBI/H0/M1RSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Non-settlement of clients' funds.

5.191. The SCN has brought out that FCBL had not effected periodic settlement of funds of clients. Additionally, it has also been brought out that FCBL had not effected periodic settlement of funds of inactive clients. Accordingly, it has been alleged in the SCN that FCBL had violated SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

5.192. It is noted from the SEBI Inspection Report that details of the quarter-wise settlement details for the clients were sought from FCBL. The details as provided by FCBL are as under:

Table – 20

FY	**Quarter**	**Total number of active clients during inspection period**	**Total number of clients during the period**	**No of clients required to be settled**	**No. of clients settled**	**No. of Clients not settled**
2017-18	Apr-Jun 2017	1560	1560	1560	1543	17
2017-18	Jul-Sep 2017	1784	1784	1784	1773	11
2017-18	Oct-Dec 2017	1372	1372	1372	1360	12
2017-18	Jan-Mar 2018	1885	1885	1885	1869	16
2018-19	Apr-Jun 2018	2220	2220	2220	2209	11
2018-19	Jul-Sep 2018	2286	2286	2286	2267	19

5.193. Additionally, the settlement position of credit balance clients with credit balance of more than RS. 10,000 was sought. The details of the same are as under:

Table – 21

Quarter ended	Total no of credit balance clients		Credit balance outstanding for less than 90 days (in Rs. Crore)		Credit balance outstanding for more than 90 days but less than 180 days (in Rs. Crore)		Credit balance outstanding for more than 180 days (in Rs. Crore)	
	No of clients	Credit balance	No of clients	Credit balance	No of Clients	Credit balance	No of Clients	credit balance
30-Jun- 17	1223	3,17,82,863	1223	3,17,82,863	—	—	—	—
30-Sep- 17	1331	2,61,87,493	469	97,39,880	862	1,64,47,613	—	—
31-Dec- 17	1188	2,62,24,677	370	1,36,21,382	163	27,48,467	655	98,54,829
31-Mar- 18	1603	2,41,27,437	504	1,04,48,887	195	33,10,892	904	1,03,67,658
30-Jun- 18	1891	2,06,19,384	1891	2,06,19,384	—	—	—	—
30-Sep- 18	1885	2,12,65,397	288	83,95,915	1597	1,28,69,482	—	—

5.194. In this regard, reference is made to SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009 Clause 12 of Annexure – A of the said circular provides that unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. From the tables provided above, it is evident that settlements had not occurred in the timeframe provided.

5.195. In its response to the findings in the SEBI Inspection Report, it has been submitted by FCBL that there were some clients who traded on a daily basis and had requested for the funds to be retained. Even considering that the clients were maintaining a running account, the same had to be settled periodically.

5.196. Reference is made to Clause 8.1 of Annexure to SEBI Circular No. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 which provides that the Trading Member should ensure that a maximum gap of 90/30 days (as per the choice of client viz. Quarterly/Monthly) is there between two running account settlements.

5.197. In the table provided above, it is noted that in many instances the running account settlement did not happen even after 90 days. So, FCBL's claim that clients had requested for the funds to be retained does not hold any merit.

5.198. Furthermore, the SEBI Inspection Report has also brought out that there were many inactive clients whose funds were lying with FCBL and their accounts had not been settled. The details of inactive accounts are brought out hereunder:

Table – 22

Quarter Ended	**No. of UCCs whose balances have remained same on last dates of successive quarters**	**Inactive accounts not Settled**	
		Maximum Amount (in Rs.)	**Credit Balance not settled (in Rs.)**
Jun-17	182	71031.96	8,65,792.53
Sep-17	164	237565.72	13,21,625.66
Dec-17	193	1,71,015.83	10,33,364.21
Mar-18	383	66,631.73	1316418.04
Jun-18	384	2,47,217.12	15,21,662.14

5.199. It is stated that for the purpose of running account settlement, a client who has not traded during a quarter is treated as inactive client for the said quarter. In that regard, it is evident from the above table that even with respect to clients who had not traded for a full quarter, their accounts had not been settled. This again belies the claim of FCBL that the accounts of the clients were settled regularly.

5.200. Accordingly, I find that FCBL has violated SEBI Circular No. SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

Enhanced supervision data.

5.201. It has been alleged in the SCN that from a sample of 38 days, it was found that on 3 days data provided by FCBL on the Exchange Platform, in respect of enhanced supervision data, was incorrect. Accordingly, it has been alleged that FCBL has violated Clause 6.1.1(j) of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016.

5.202. The said circular was brought out pursuant to the recommendations of the Committee on Enhanced Supervision of Stock Brokers/Depository Participants. The purpose was to ensure uniform nomenclature for naming/tagging of bank and DEMAT accounts maintained by brokers and to put in place a sophisticated system for the monitoring of clients' funds lying with the stock broker by stock exchanges. It is in this background that the said circular is of great salience in the monitoring mechanism put in place by SEBI.

5.203. In this regard, specific reference is made to SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016. Clause 6 of the Annexure to the said circular requires Stock Exchanges and Depositories to frame various event based monitoring criteria, so as to initiate appropriate action in case of any event based discrepancies. While the Stock

Exchanges were required to frame various event based monitoring criteria, the circular has provided an illustrative list of events in clause 6.1.1., which includes sharing of incomplete/wrong data or failure to submit data on time by a stock broker.

5.204. It is noted from the SEBI Inspection Report that the inspection, in respect of this particular issue, was concentrated on the verification of details of bank accounts and DEMAT accounts submitted to Exchange by the broker, monitoring of clients' funds lying with stock broker by the Stock Exchanges to detect any misutilisation of clients' funds, name tagging of client and DEMAT accounts and the timely reporting of data by the broker. The above-mentioned verifications were with respect to the submissions of data made by FCBL during the period, April 13, 2017 to December 14, 2018.

5.205. The SEBI Inspection Report has brought out that on verification of FCBL's submissions for clients' funds lying with it on Exchange portal for the sample 38 dates, it was observed that for 3 dates FCBL had incorrectly submitted the details on the Exchange portal.

5.206. Details of bank accounts and DEMAT accounts reported to Exchange were verified with the details provided by FCBL during inspection. Further, number of clients whose balances were reported by FCBL were verified with the count of actual clients who traded as per records available with the exchange. Consequently, discrepancies were observed in data *inter alia* pertaining to aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges, value of collateral deposited with Exchange, value of collateral deposited with clearing member, value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges, value of Debit Balances of all clients, value of Margin utilized for positions of Credit Balance Clients, value of unutilized collateral lying with the Exchange and value of unutilized collateral lying with the clearing member across Stock Exchanges.

5.207. It has already been brought out that for the fulfillment of the purposes of the said circular, brokers are required to provide correct and timely data to the exchanges. Any failure in doing so is a violation of the provisions of the said circular. Accordingly, I find that FCBL has violated SEBI Circular SEBI/HO/MIRSD/MIRSD2 /CIR/P/2016/95 dated September 26, 2016.

Client registration process.

5.208. The SCN has alleged that FCBL had not carried out client registration in the stipulated manner thereby violating SEBI Master Circular SEBI/HO/ MIRSD/ DOP1/ CIR/P/2018/87 dated June 01, 2018 and SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011.

5.209. In this regard, reference is made to SEBI Master circular SEBI/HO/ MIRSD/ DOP1/ CIR/P/2018/87 dated June 01, 2018. The said circular prescribes, in its annexures, the manner and content of information/documents to be taken on record during the client registration process. Similarly, as per circular dated August 22, 2011, a uniform documentation process was prescribed for all the stock brokers / trading members. The circular containing six annexures *inter alia* details the various documents for the client account opening process, the basic information about the client and instruction/check list to fill up the KYC form, document stating the rights & obligations of the stock broker etc. The SEBI Inspection Report has noted observations given by NCDEX and MCX with respect to the client registration process of FCBL.

5.210. As regards NCDEX, a sample of 50 clients (including 17 clients registered during the Inspection period) was taken up for examination. The details of the sample 50 clients are as under:

Table – 23

Particulars	Active	Inactive
Individual	30	0
HUF	2	8
Corporate/ Partnership	8	2
Total	**40**	**10**

5.211. Upon examination of the said sample, it was observed that FCBL was unable to produce one client registration document for registered client, Shree Narayan Aggarwal (HUF), registered on June 23, 2011, which was an inactive client and had not traded as per Exchange records. Also, documents forming part of mandatory documents viz., uniform risk disclosure, rights and obligations and Do's and Don'ts for the clients had not been updated as specified by the extant provisions of law. Further, SEBI registration number had not been updated in client registration documents.

5.212. Additionally, on the verification of the client registration documents the following were observed:

Table – 24

Particulars	Wrong/ Incomplete	Correct	Total
Financial Proof Obtained / not updated	44*	5	49
Tariff Sheets	16	33	49
Contradictory clause (if any)	6	43	49
In Person verification of Clients	47	2	49
Quarterly Settlement Authorization	49	0	49

CKYC (For Individuals clients only)	29	1	30
KRA	0	49	49
Date of consent for trading on exchange / Trading preferences.	2	47	49
Board Resolution for trading in Exchange in case of Corporate clients	2	5	7

**Details of Financial proof obtained / not updated instances are further bifurcated as below:*

Table – 25

Details not updated periodically	Not obtained at the time of client registration	Total
5	39	44

5.213. As regards MCX, a similar sample of 50 clients was was taken up for examination. The details of the sample 50 clients are as under:

Table – 26

Particulars	No. of Clients
HUF	3
Partnership	4
Company	1
Individual	42
Total	**50**

5.214. Upon examination of the said sample, it was observed that FCBL had used the old format for KYC documents including Rights & Obligations and

Guidance Notes etc., running account authorisations had not been obtained/were not available in KYC documents. Where running account authorisations had been obtained, they were not as per prescribed requirements (Monthly/quarterly settlement preference not obtained), ECN declaration was not as per prescribed format, supporting documents in respect of the financial/income status of the client had not been obtained in KYC documents and client financial information not updated periodically at least once in financial year and supporting documents not obtained.

5.215. It has already been brought out that there was an obligation on FCBL to take on record specific documents and capture data in a particular manner during the process of client registration. The above-mentioned paragraphs clearly demonstrate that the said obligations have not been carried out by FCBL. In view of the same, I find that FCBL has violated SEBI Master circular SEBI/HO/ MIRSD/ DOP1/ CIR/P/2018/87 dated June 01, 2018 and SEBI circular CIR/MIRSD/16/2011 dated August 22, 2011.

Correct mobile number and email ID not uploaded in UCC.

5.216. It has been alleged in the SCN that FCBL had entered incorrect mobile numbers and email IDs in respect of UCCs, and in certain cases the same mobile numbers/email IDs had been used in respect of multiple UCCs. Accordingly, it has been alleged that FCBL had violated SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

5.217. In this regard, specific reference is made to Clause 2(B) of SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011. As brought out in the earlier part of this Order, the stock broker was required to enter the details of clients, and to ensure that separate email IDs and mobile numbers were entered in respect of each of the clients.

5.218. It is seen from the SEBI Inspection Report that, in respect of this particular issue, details in respect of all active clients during the inspection period were examined. Upon examination, it was observed that the number of instances of incorrect email ID as per Member Back office vis-a-vis Exchange UCC was 155. Similarly, the number of instances of incorrect mobile number as per Member Back office vis-a-vis Exchange UCC was 109. In certain cases it was also observed that email ID and Mobile number had not been uploaded onto Exchange UCC. Further, on sample verification, it was observed that same mobile number / email ID had been uploaded for multiple client codes. The number of instances wherein same email ID had been used for multiple clients was found to be 50. Similarly, the number of instances wherein same mobile number was used for multiple clients was found to be 15.

5.219. It has already been brought out that obligation existed under SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011 on FCBL to upload the necessary details of its clients with the UCC updation module and ensure that separate mobile number/E-mail address was uploaded for each client. It is quite evident that FCBL has failed in carrying out the said obligation. Accordingly, I find that FCBL has violated SEBI Circular CIR/MIRSD/15/2011 dated August 02, 2011.

Issue B-II – Whether FCBL has violated Section 12A of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations, 2003 as well as Clauses A(1), A(2) and A(5) of Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations ?

5.220. It has already been brought out in the preceding paragraphs that FCBL had carried out acts that resulted in – failure to segregate client funds from own funds; misuse of clients' funds; non-settlement of clients' funds; providing wrong/incomplete enhanced supervision data; improper client registration process; and incorrect mobile number and email ID.

5.221. In this regard, it has also been alleged in the SCN that FCBL by carrying out the above acts had violated Section 12A of SEBI Act, 1992 read with Regulation 4(1) and 4(2)(f) of the PFUTP Regulations.

5.222. At paragraphs 5.101 to 5.102 of this Order, the issue regarding the applicability of Section 12A to the present proceeding has been discussed. The finding that Section 12A (d), (e) and (f) would not be applicable to FSL, is adopted in respect of FCBL in view of the reasons stated in the said paragraph.

5.223. The consideration in case of FCBL shall also be confined to Section 12A (a), (b) and (c). It is noted from the preceding paragraphs that FCBL on 3 trading days, out of the sample 36 days trading days chosen for inspection, had misused the funds of clients. Also, there were many instances where settlement of funds of clients hadn't happened for even 180 days. This resulted in large sums of money, that belonged to the clients, being in the hands of FCBL. Further, there was failure in segregation of the funds of the clients from those of FCBL. These actions resulted in the funds of the clients coming to the possession of FCBL. So, the facts clearly demonstrate that FCBL had employed manipulative devices to defraud and deceive, and ensure that the funds of the clients came to control and could be misused by it. Accordingly, I find that FSL has violated Section 12A(a), (b) and (c).

5.224. Regulation 4(2) provides that – "*Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following…*" Regulation 4(2)(f) reads as: "*knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities*".

5.225. It has been brought out in the preceding paragraphs that FCBL had submitted inaccurate and untrue information to the exchanges while providing enhanced supervision data. Thus, FCBL by report incorrect and untrue incorrect and untrue details to the exchanges has violated 4(2)(f) of the PFUTP Regulations.

5.226. Regulation 4 (1) reads as: "…*no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets*." The preceding paragraphs have clearly brought out the various instances of FSL indulging in a manipulative, fraudulent or unfair trade practice. That being the case, the obligation as existing in the said regulation has clearly been violated by FSL.

5.227. In view of the aforesaid acts of commission and omission on the part of FCBL, the SCN has also alleged that FCBL had violated Clauses A (1), A (2) and A (5) of the Code of Conduct as provided under Schedule II read with Regulation 9 of the Stock Brokers Regulations and Section 12A of the SEBI Act read with Regulation 4(1) and 4(2)(f) of the PFUTP Regulations.

5.228. In this regard, reference is made to the Code of Conduct as provided in the Stock Brokers Regulations. Clause A (1) provides that a stock broker should maintain high standards of integrity, promptitude and fairness in the conduct of all his business. Clause A (2) provides that a stock broker should act with due skill, care and diligence in the conduct of his business. Clause A (5) provides that a stockbroker should abide by all the provisions of the SEBI Act and the Rules and Regulations framed by the Government, SEBI and the Stock Exchanges.

5.229. It is seen from the facts brought out above that FCBL has been found to be in violation of various stipulations of SEBI and the Exchanges. Thereby acting in breach of regulatory prescriptions. So, FCBL has clearly violated Clause A (5) of the Code of Conduct. Additionally, it has been brought out that running account settlement, even though stipulated to take place at least once in a

month or a quarter as per the preference of the client, had not happened in many cases even after 180 days i.e., six months. This resulted in funds of the client lying with FCBL. This clearly exhibited a lack of promptitude on the part of FCBL in executing its obligations, which resulted in the funds of the clients not being available to them. FCBL has clearly violated Clause A (2) of the Code of Conduct. Further, it has been elaborated in the preceding paragraphs that FCBL had entered incorrect mobile numbers and email IDs in respect of UCCs, and in certain cases the same mobile numbers/email IDs had been used in respect of multiple UCCs. Also, FCBL had not carried out client registration in the stipulated manner and had not provided correct enhanced supervision data. These facts exhibit a lack of due skill, care and diligence in the conduct of business. So, FCBL has clearly violated Clause A (1) of the Code of Conduct.

Issue B-III – Whether the Directors of FCBL, namely, Dhirender Gaba (Noticee 2) and Naveen Gaba (Noticee 3) can be held liable for the actions/ violations of FCBL?

5.230. The SCN has alleged, invoking Section 27 of the SEBI Act, that Dhirender Gaba and Naveen Gaba being Directors of FCBL during the Inspection Period would be liable for the actions/ violations of FCBL.

5.231. The principles guiding the liability of Directors has already been brought out in the preceding paragraphs, and, as such, does not require any reiteration here. Further, as has already been stated that Dhirender Gaba and Naveen Gaba have not provided any reply on the merits of the allegations made in the SCN. In view of the same, I shall consider the available material for determination of their respective liabilities.

5.232. It is restated that the SEBI Inspection Report was with respect to the period, April 01, 2017 to December 20, 2018. It is noted from the MCA website that Dhirender Gaba and Naveen Gaba have been only two Directors in FCBL

since its incorporation i.e., September 07, 2006, and were Directors during the period of inspection.

5.233. Dhirender Gaba and Naveen Gaba being the only two Directors in FCBL, it is given that they were intricately involved in the affairs of FCBL. So, it cannot be said that any of the facts brought out before had taken place without their knowledge. Also, all the paid up share capital was held by these two Noticees. Accordingly, the actions and violations of FCBL were for the benefit of Dhirender Gaba and Naveen Gaba.

5.234. Also, the principles regarding the liability of Dhirender Gaba and Naveen Gaba as enunciated in paragraphs 5.129 to 5.131 vis-à-vis FSL are squarely applicable to FCBL also. Accordingly, the same is being adopted here.

5.235. Thus, I find that Dhirender Gaba and Naveen Gaba being the only two Directors in FCBL since its incorporation were deeply involved in the affairs of FCBL and as such are liable for the violations of FCBL.

5.236. Accordingly, I find that Dhirender Gaba and Naveen Gaba, in their capacity as Directors of FCBL, have violated the following provisions of law as have been violated by FCBL.

6. Conclusion –

6.1. In the preceding paragraphs, it has been elaborated that FSL through off-market transactions, transferred the securities of its clients to 44 DEMAT accounts controlled by FSL. After that the securities were moved to the 'pool account' of FSL, and thereafter sold in the securities market by FSL through related entities viz. Reets Plastics Private Limited, Chahek Housing Pvt Ltd, Aagas Software Solutions Pvt Ltd, Katashraj Securities Pvt Ltd and Shyam Sunder Jolly.

6.2. Also, the securities of clients were pledged by FSL with various NBFCs/Banks (Kotak Mahindra Bank, HDFC Bank, ECL Finance Limited, Aditya Birla Finance Ltd, IIFL Wealth Ltd, Globe Fin Cap Ltd, ILFS Financial Services Ltd and Edelweiss Custodian Services Ltd.) in complete disregard and violation of the extant provisions relating to the pledging of securities. The funds raised from the pledging of securities which was that of the clients was also appropriated and used by FSL.

6.3. In addition to the above, it has also been established that clients' accounts had not been settled sometimes beyond 180 days though it is mandated that, even in case of clients opting for rolling settlement, settlement should happen either once in a month or a quarter. Further, it has also been established that funds of clients with credit balances had been mis-utilised for own purposes or for debit balance clients.

6.4. Thus, it is evident that during the Forensic Audit Period FSL had employed fraudulent devices for misappropriating the securities and funds of its clients, and had continued to do so for a fairly long period of time. Dhirender Gaba and Naveen Gaba who have been the Directors of FSL since inception (2005) were the architects of the fraudulent scheme and had roped in related entities and the other Directors to carry out the scheme. Being the dominant shareholders of FSL, the employment of the fraudulent scheme would have been beneficial to them.

6.5. With regard to FCBL, the Order has also brought out that FCBL failed to segregate client funds from its own funds; misused clients' funds; not settled the clients' funds; not complied with the requirement of enhanced supervision data; not complied with the prescribed client registration process (KYC and KRA process); and not uploaded in UCC the correct mobile number and email ID of the clients. In the case of FCBL, much like FSL, the Directors since inception and the predominant holders of the shares of FCBL were Dhirender Gaba and Naveen Gaba.

6.6. In view of the same, the SCN has contemplated appropriate directions under Sections 11(1), 11 (4), 11B (1) of the SEBI Act, 1992 against the Noticees for the aforesaid violations, and I find that appropriate directions need to be passed against the Noticees for the same.

6.7. Also, the SCN has contemplated directions under 11B (2) of the SEBI Act and Section 12 A (1) and (2) of the SCRA, 1956 imposing monetary penalty as stated in Section 15HA of the SEBI Act and Sections 23D and 23H of the SCRA, 1956.

6.8. It would be relevant to place hereunder the extracts of the appropriate penalty provisions for facility of reference:

Penalty for fraudulent and unfair trade practices. Section 15HA of SEBI Act, 1992: "*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 failure to segregate securities or moneys of client or clients. 23D, SCRA, 1956. *"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."*

Penalty for contravention where no separate penalty has been provided. Section 23H, SCRA, 1956. *"Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India*

for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

6.9. Upon a consideration of the aforementioned penalty provisions, I find that Section 15 HA has been invoked for fraudulent and unfair trade practices employed by FSL and FCBL *inter alia* in the misappropriation of the securities and funds of the clients. In respect of FSL and FCBL, these violations were carried out were carried out during the periods Dhirender Gaba and Naveen Gaba were in charge of the day-to-day affairs of the said companies. I, therefore, find that penalty under Section 15 HA is clearly attracted in respect of FSL and FCBL and Dhirender Gaba and Naveen Gaba, the Directors and promoters of the said companies.

6.10. I further note that Section 23D of the SCRA has been invoked against the Noticees for failure to segregate securities or moneys of client or clients. It has been clearly brought out in the Order that as a matter of practice the securities of the clients were used by FSL as its own and pledged, and also sold through related parties. Thus, it is evident that there was no segregation of the funds as well as the securities of the clients vis-à-vis that of FSL. Similarly, in respect of FCBL, it has been brought out in the Order that during inspection it was noted that certain transactions not relating to clients had been found in client bank accounts. Again this is evident of the fact that that there was failure of the part of FCBL in segregating the funds the clients from that of its own. I, therefore, find that penalty under Section 23D of the SCRA is clearly attracted in respect of FSL and FCBL and Dhirender Gaba and Naveen Gaba, the Directors and promoters of the said companies.

6.11. I further note that Section 23 H of the SCRA, 1956 has been invoked against the Noticees. The said provision provides for imposition of penalty for violation of the provisions of the SCRA, 1956 for which no separate penalty has been provided. I note that in respect of FSL, it has already been brought out that

FSL by selling the securities of clients through off-market transactions, without any transfer of consideration, has violated Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of the SCRA, 1956. That being the case, I find that penalty under Section 23H of the SCRA is clearly attracted in respect of FSL and Dhirender Gaba and Naveen Gaba, the Directors and promoters of FSL. In respect of FCBL, the Inspection report has brought out violations that satisfy the conditions mentioned in Section 23H, SCRA 1956. In view of the same, penalty on FCBL and Dhirender Gaba and Naveen Gaba (in their capacity as directors of FCBL) under Section 23H is attracted.

6.12. With respect to the related entities i.e., Aagas Software Solutions Pvt. Ltd., Katashraj Securities Pvt. Ltd., Reets Plastics Pvt.Ltd., Shyam Sunder Jolly, Chahek Housing Pvt. Ltd., Vikram Kumar and Fairwealth Financial Services Ltd., it is noted that the violation established is that of Section 12A of the SEBI Act, 1992 read with Regulation 3 (d) and 4(1) of the PFUTP Regulations. That being the case the imposition of penalties under Section 23D and Section 23H which are premised on the violation of the stipulations in the SCRA, 1956 are clearly ruled out. Imposition of penalty in respect of the above-mentioned Noticees that can be considered is under Section 15HA of the SEBI Act. In this respect, it has been acknowledged in the Order that individual related entities, namely, Shyam Sunder Jolly and Vikram Kumar have submitted documents which suggest that for the said acts they had not made any perceptible/substantial gains. Accordingly, debarment would suffice and the imposition of penalty may not be required. Similarly, with regard to corporate related parties, it is inferred that the ultimate financial benefit of the scheme accrued to FSL and as such to Dhirender Gaba and Naveen Gaba. Accordingly, in respect of these Noticees also debarment would suffice and the imposition of penalty may not be required.

6.13. With respect to the other Directors of FSL (barring Dhirender Gaba and Naveen Gaba) i.e., Shripad Sadanand Desai, Sandeep Jindal and Shitla Prasad Shukla, the violations established are same as the violations

established in respect of FSL. So, imposition of penalty in respect of the above-mentioned Noticees can be considered under Section 15HA of the SEBI Act, Section 23D of the SCRA, 1956 and Section 23H of the SCRA, 1956. That being the case, it has been acknowledged in the Order that the said Noticees may have been limited in exercising due-diligence and other actions as Directors by the fear of losing their jobs. Also, Shripad Sadanand Desai and Shitla Prasad Shukla have also demonstrated that they had not earned any substantive amounts as a consequence of their association with FSL. Accordingly, in respect of these Noticees also debarment would suffice and the imposition of penalty may not be required.

6.14. It is relevant to mention here that for the imposition of penalty under the provisions of the SEBI Act, 1992, guidance is provided by Section 15J of the SEBI Act,1992. The said provision reads,

"Factors to be taken into account while adjudging quantum of penalty. 15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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.

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

Similarly, I note that for the imposition of penalty under the provisions of SCRA, Section 23J of the SCRA provides as follows:

"*Factors to be taken into account while adjudging quantum of penalty. 23J. While adjudging the quantum of penalty under section 12A or section 23-I, the*

Securities and Exchange Board of India or 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section."

6.15. As already brought out in view of the above-mentioned facts, I have also considered the factors provided in Section 15 J of the SEBI Act and 23 J of the SCRA, 1956 for imposition of monetary penalty.

6.16. In consideration of the above, I shall now proceed with the directions and imposition of monetary penalties.

7. Directions –

7.1. I, in exercise of powers conferred upon me under sections 11 (1), 11 (4), 11 B(1), 11 B(2) and 11D of SEBI Act, 1992 read with Section 15HA of the SEBI Act, 1992 and Section 12A(1) and 12A(2) of SCRA, 1956 read with Section 23D & 23H of SCRA, 1956 read with Regulation 35 of SEBI (Intermediaries) Regulations, 2008 do hereby pass the following directions :–

PART A

7.1.1. The directions in respect of FSL, its Directors and related parties are as under:

a. The Noticees, as listed in the table below, shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions –

Noticee No.	Name of the Noticee	Whether debarred by the Interim Order/Confirmatory or not ?	Period of Debarment
1	Fairwealth Securities Limited	Yes	7 years
2	Dhirender Gaba	Yes	7 years
3	Naveen Gaba	Yes	7 years
4	Shripad Sadanand Desai	Yes	Till the date of this Order
5	Sandeep Jindal	Yes	Till the date of this Order
6	Shitla Prasad Shukla	Yes	Till the date of this Order
7	Aagas Software Solutions Pvt. Ltd.	Yes	5 years
8	Katashraj Securities Pvt. Ltd.	Yes	5 years
9	Reets Plastics Pvt.Ltd.	Yes	5 years

10	Shyam Sunder Jolly	Yes	5 years
11	Chahek Housing Pvt. Ltd.	Yes	5 years
12	Vikram Kumar	Yes	5 years
13	Fairwealth Financial Services Ltd.	No	5 years

b. It is clarified that while calculating the period of debarment as directed at 7.1.1 (a), the period already undergone by the Noticees 1,2,3,7,8,9,10,11 and 12 in pursuance of the Interim Order/Confirmatory Order, shall be taken into consideration and the same shall be set-off to give effect to the directions of restraint and prohibition as detailed above.

c. The Noticees, as listed in the table below, are hereby imposed with, the monetary penalties, as specified hereunder:

Noticee	Name of the Noticee	Provisions under which penalty imposed	Amount of Penalty (Rs.)	Total
1	Fairwealth Securities Limited	Section 15 HA of the SEBI Act	1.50 crore	2 crore
		Section 23 D of the SCRA	50 lakh	
		Section 23 H of the SCRA	50 lakh	
2	Dhirender Gaba	Section 15 HA of the SEBI Act	25 lakh	75 lakh
		Section 23 D of the SCRA	25 lakh	

		Section 23 H of the SCRA	25 lakh	
3	Naveen Gaba	Section 15 HA of the SEBI Act	25 lakh	75 lakh
		Section 23 D of the SCRA	25 lakh	
		Section 23 H of the SCRA	25 lakh	
4	Shripad Sadanand Desai	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL
5	Sandeep Jindal	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL
6	Shitla Prasad Shukla	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL
7	Aagas Software Solutions Pvt. Ltd.	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL
8	Katashraj Securities Pvt. Ltd.	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL
9	Reets Plastics Pvt.Ltd.	Section 15 HA of the SEBI Act, Section	No Penalty	NIL

		23 D of the SCRA and Section 23 H of the SCRA		
10	Shyam Sunder Jolly	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL
11	Chahek Housing Pvt. Ltd.	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL
12	Vikram Kumar	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL
13	Fairwealth Financial Services Ltd.	Section 15 HA of the SEBI Act, Section 23 D of the SCRA and Section 23 H of the SCRA	No Penalty	NIL

d. The above-mentioned Noticees are directed to pay the penalty as detailed above within forty-five (45) days from the date of service of this order through online payment by using the pathway: www.sebi.gov.in/ENFORCEMENT → Orders → Orders of Chairman/ Members → Click on PAY NOW or by using the web link: https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. Noticees 2 and 3 shall forward the details/confirmation of penalty so paid through e-payment to "**The General Manager, SEC 1- MIRSD, Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C -7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051**" in the format given in the table below:

Case name	Final Order in the Matter of Fairwealth Securities Limited and Fairwealth Commodity Broking Pvt. Ltd.
Order No.	WTM/ASB/MIRSD/MIRSD_DPIEA/27868/2023-24
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

e. Noticees 1, 2 and 3 are directed to provide NSE/BSE/Metropolitan Stock Exchange of India an updated list of inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, DEMAT accounts and mutual fund investments as well as the details of any loans or advances, recoverable by them as on the date of this Order, immediately but not later than 10 working days from the date of receipt of this Order.

f. NSE/BSE/Metropolitan Stock Exchange of India shall deal with the claims of clients of FSL in accordance with their respective bye–laws and procedures, after adjusting the disbursements made through the Defaulters' Committee mechanism. Further, the funds, securities and assets of Noticees 1, 2 and 3 recovered by NSE/BSE/Metropolitan Stock Exchange shall be used for the payment of the clients of FSL, in precedence over all other resources available

to NSE/BSE/Metropolitan Stock Exchange under law. Further, Noticees 1, 2 and 3 are directed to fully cooperate with Stock Exchanges in ensuring the compliance of the aforesaid direction including in liquidating the funds, securities, charge, recoverable dues, advances and any other movable and immovable assets.

PART B

7.1.2. The directions in respect of FCBL and its Directors are as under:

a. The Noticees, as listed in the table below, shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions:

Noticee	Name of the Noticee	Period of Debarment
14	Fairwealth Commodity Broking Pvt. Ltd.	3 years
2	Dhirender Gaba	3 years
3	Naveen Gaba	3 years

b. The Noticees, as listed in the table below, are hereby imposed with, the monetary penalties, as specified hereunder:

Noticee	Name of the Noticee	Provisions under which penalty imposed	Amount of Penalty (Rs.)	Total
1	Fairwealth Commodity Broking Pvt. Ltd.	Section 15 HA of the SEBI Act	1 crore	1.40 crore
		Section 23 D of the SCRA	20 lakh	
		Section 23 H of the SCRA	20 lakh	
2	Dhirender Gaba	Section 15 HA of the SEBI Act	10 lakh	30 lakh
		Section 23 D of the SCRA	10 lakh	
		Section 23 H of the SCRA	10 lakh	
3	Naveen Gaba	Section 15 HA of the SEBI Act	10 lakh	30 lakh
		Section 23 D of the SCRA	10 lakh	
		Section 23 H of the SCRA	10 lakh	

c. The above-mentioned Noticees are directed to pay the penalty as detailed above within forty-five (45) days from the date of service of this order through online payment by using the pathway: www.sebi.gov.in/ENFORCEMENT → Orders → Orders of Chairman/ Members → Click on PAY NOW or by using the web link: https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. Noticees 2 and 3 shall forward the details/confirmation of penalty so

paid through e-payment to "**The General Manager, SEC 1- MIRSD, Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C -7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051**" in the format given in the table below:

Case name	Final Order in the Matter of Fairwealth Securities Limited and Fairwealth Commodity Broking Pvt. Ltd.
Order No.	WTM/ASB/MIRSD/MIRSD_DPIEA/27869/2023-24
Name of payee	
Date of payment	
Amount paid	
Transaction No.	
Bank details in which payment is made	
Payment is made for	Penalty

d. Noticees 2, 3 and 14 are directed to provide MCX/NCDEX an updated list of inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, DEMAT accounts and mutual fund investments as well as the details of any loans or advances, recoverable by them as on the date of this Order, immediately but not later than 10 working days from the date of receipt of this Order.

e. MCX/NCDEX shall deal with the claims of clients of FCBL in accordance with their respective bye–laws and procedures, after adjusting

the disbursements made through the Defaulters' Committee mechanism. Further, the funds, securities and assets of Noticees 2, 3 and 14 recovered by MCX/NCDEX shall be used for the payment of the clients of FCBL, in precedence over all other resources available to MCX/NCDEX under law. Further, Noticees 2, 3 and 14 are directed to fully cooperate with MCX/NCDEX in ensuring the compliance of the aforesaid direction including in liquidating the funds, securities, charge, recoverable dues, advances and any other movable and immovable assets.

7.1.3. Noticees 1, 2, 3 and 14 are directed to not dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets including money lying in bank accounts till the settlement of all claims as directed at 7.1.1 (f) and 7.1.2 (e).

7.1.4. The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by 1, 2, 3 and 14 except for the purpose of compliance of directions at 7.1.1 (c) and (f) and 7.1.2 (b) and (e) above.

7.1.5. The periods of prohibition/restraint in respect of Noticees 2 and 3 in Part A and Part B shall run concurrently.

7.1.6. The directions in the Interim Order/Confirmatory Order in respect of Noticees 4,5 and 6 shall stand vacated.

7.2. The above directions shall come into force with immediate effect.

7.3. A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognised Stock Exchanges and the Depositories for necessary action.

Place: Mumbai **ASHWANI BHATIA**

Date: June 28, 2023 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA