

WTM/AB/NRO/MIRSD/6519/2019-20

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
CONFIRMATORY ORDER**

UNDER SECTIONS 11(1), 11(4), 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 35 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

In respect of:

Noticee no.	Noticee Name	PAN No.
1.	Fairwealth Securities Limited	AAACF8795N
2.	Dhirender Gaba	AFUPG9615E
3.	Naveen Gaba	AAEPG8929N
4.	Shripad Sadanand Desai	AMGPD5283J
5.	Sandeep Jindal	AETPJ4553L
6.	Shitla Prasad Shukla	AAJPS3925M
7.	Roop Lal Aggarwal	ABIPA6590N
8.	Kamla Prasad Shukla	BHZPS7715M
9.	Aagas Software Solutions Pvt. Ltd.	AAICA5378C
10.	Katashraj Securities Pvt. Ltd.	AACCK7144E
11.	Reets Plastics Pvt. Ltd.	AACCR2424A
12.	Shyam Sunder Jolly	ADBPJ6001G
13.	Chahek Housing Pvt. Ltd.	AAHCC0112H
14.	Vikram Kumar	AROPK2904N

(The aforesaid entities are hereinafter referred to by their respective names / noticee numbers or collectively as “the Noticees”)

1. SEBI had passed an *ex-parte ad-interim order* dated October 11, 2019 (hereinafter referred to as ‘**the interim order**’) against Fairwealth Securities Ltd. (hereinafter referred to as ‘**FSL**’/‘**the company**’/‘**trading member**’) and the aforementioned Noticees, *inter alia* restraining them from accessing the securities markets and further prohibiting them from buying, selling or otherwise dealing in securities, either directly or indirectly. The Noticees were given time of 21 days from the date of receipt of interim order to file their replies, if any, and an opportunity of personal

hearing was also granted to them on November 15, 2019. On the said date of hearing Noticee no. 4,5,6,7,8,12 and 14 were heard. Noticee no. 2 and 3 had sought for an adjournment on medical grounds. Accordingly, matter was adjourned to December 2, 2019, on which date, Noticee no. 1,2,3,9, 10,11 and 13, were heard.

- 2 I have considered the submissions made by the Noticees at the time of personal hearing and I have perused the replies tendered by them. My finding on the contention raised by the respective Noticee is given in the following paras.

Noticee no. 1. 2. 3. 9 10. 11 and 13:

- 3 Noticee no. 1, 2, 3, 9, 10, 11 and 13, vide their reply dated November 30, 2019 and during the hearing held on December 2, 2019, have *inter alia* raised the following contentions to the interim order:
 - a. FSL have been facing financial difficulties since some time which has resulted in severe operational losses being suffered by FSL. The Noticees further submits that they themselves are not in good financial position as they have themselves invested heavily in FSL, to reduce the operational losses in FSL. The Noticees submit that they have mortgaged majority of their assets to enable them to raise funds which could be invested in FSL. However, the interest burden continued to increase, which in turn resulted in the increase in the financial losses. These financial difficulties started affecting the day-to-day functions of the broker and in light of such severe financial distress, there was

no other option left with the broker to fulfill its obligations towards both its clients and the exchanges to avoid any instances of default.

- b. The cease and desist order against the Noticees have effectively resulted in the entire business of the Fairwealth Group brought at a standstill. This has resulted in non-fulfilment of the various obligations to the exchange and/or clients of Fairwealth Comodity Broking Pvt. Ltd. (**'FCBL'**). The Noticee submits that the cease and desist order issued against them should be vacated and the Noticees should be allowed to operate their commodity business which is being carried out through FCBL. The Noticees submit that there are no violation of any SEBI rules, regulations and circulars in FCBL.
- c. Similarly, with regard to the NBFC activity carried out through Fairwealth Financial Services Ltd. (**'FFSL'**), since the Gabas are the promoters and directors of FFSL, the cease and desist order is indirectly applicable to FFSL as well.
- d. With regard to para 2 read with para 6A & para 6B of the interim order, it is submitted that there are following discrepancies:
 - i. The total value of client securities as mentioned to be sold from the five client accounts in para 2 is said to be Rs. 82.15 crore, however, in the table at page 6 of the interim order after point 6B, the total value of securities so sold from the accounts of five clients is Rs. 73.30 Crores
 - i. It is submitted that out of the total securities available in ROS but not in DP as per the table at page 5 in point 6B is Rs. 103.84 Crores, however, at point 2 the value of securities not available in DP as per point 2 is only Rs. 88 Crores

In view of the aforesaid discrepancies, the Noticees submit that the implementation of the present order should be quashed till the investigation in the present matter is complete.

- e. In the meantime, the Noticee be allowed to operate its business so as to enable them to earn some profits so as to be in position to repay the obligations towards its clients. While proposing the aforesaid, the Noticee submits that whatever was done by the Noticees was done to fulfill the operational losses in lieu of the ever increasing interest burden, so as to ensure that there is no default in its obligation towards the clients and Exchanges.
- f. Here the Noticees would once again like to stress that they have not siphoned off the funds which would have been generated from the sale of securities. All the funds which was generated was ploughed back into the securities to meet the day to day obligation towards the Exchanges and its clients. In this regard it is submitted that no payout is given to the five clients from whose accounts the securities were sold and, if any, payout was ever given the same was once again the ploughed back into FSL to meet its obligations.
- g. Furthermore, the Noticees submit that they have sold and/ or mortgaged / pledged all their assets so as to enable them to invest in FSL, so as to meet the ever increasing interest burden and the resultant operational losses.
- h. With regard to the relationship with entities from whose accounts the shares have been sold, it is submitted that the demat and trading account and the bank accounts linked with such trading accounts were operated by the Noticees and these five entities did not have any role what so ever in the transactions executed in such accounts.

- i. With regard to the directorship and shareholding in such companies, it is submitted that the entities were made directors and / or shareholders as per the instructions of the Noticees and the actual directors and / or shareholders had no say whatsoever in such appointments. It is further submitted that these entities were merely titular director and / or shareholder, all decisions pertaining to the companies were taken by the Noticees.
 - j. With regard to the allegation of negative networth it is submitted that the Noticees were doing all that was required to infuse funds in FSL, so as to ensure that the networth of FSL should remain positive.
 - k. In light of the aforesaid submissions and the present financial conditions of the Noticee no. 1, the Noticees once again request your goodself to uplift the cease and desist order issued against the Noticees and also that all the Noticees to start the operation of FSL.
4. At the outset Noticee no. 2 and 3 have denied that they were absconding at the time when NSE officials had visited their office on October 1, 2019. Noticee no. 1, 2 and 3 have not denied the findings of the interim order in respect of 'misappropriation of client securities' and 'non-availability of client securities'. Rather, said Noticees have presented a proposal which suggests that SEBI may relax the directions contained in the interim order that would enable FSL to conduct its business as usual, and the income generated out of such business would be used to repay the existing claims of its clients. The said Noticees have admitted that the securities that were sold through the trading accounts of Noticee no. 9 to 13, were not belonging to Noticee no. 9 to 13, rather they were belonging to the other clients of FSL. I note that Noticee no. 1, 2 and 3 have submitted that the

funds generated from the sale of the securities from five client accounts have been ploughed back into FSL, however, the said Noticees have failed to provide any proof in support of their claim, except for providing the bank statement of only one out of the five alleged entities, from whose trading account the client securities have been sold. I note that the proposal floated by the said Noticees cannot be accepted from such entities who have misappropriated the securities of the clients. The proposal cannot be accepted also for the reason that the said Noticees have failed to make any payment to the clients in respect of their claims despite interim order allowing them to use funds lying in their bank accounts for the purpose of making payments to the clients under supervision of NSE/BSE or failed to provide any proof of any payment so made. Furthermore, I also note that a forensic Audit by NSE is already underway and exact extent of misappropriation of clients' securities and diversion of funds would emerge only after the completion of the forensic audit. Hence, the proposal floated by Noticee no. 1, 2 and 3 cannot be accepted at this stage.

5. Noticee no. 9, 10, 11, and 13 have not disputed the findings of the interim order that the alleged sale of client securities was done through their trading accounts. Neither have they raised any objection to the finding of 'Relationship with FSL', as noted in Para 6C of the interim order.

Noticee no. 4:

6. Noticee no. 4 vide his reply dated November 17, 2019 and during the hearing held on November 15, 2019, has *inter alia* raised the following contentions to the interim order:

- a. The interim order neither substantiates, nor sufficiently corroborates the allegations. The interim order also fails to record any *prima facie* findings or explicitly mentioning or illustrating the role played by me in the alleged violations.
- b. I was working as Systems Administrator (Executive) in IT Department of FSL. I was appointed as Additional Director on the Board of FSL on September 23, 2019. I had agreed to become the director on the insistence of Noticee no. 2, since Noticee no. 2 was my senior and I treated his insistence as my order.
- c. Neither as an employee, nor as an Additional director, I had no signing authority in respect of any business matter related to FSL.
- d. The interim order fails to mention the specific charge exacted against me and it has put a detriment to defend myself in the absence of a specific charge.
- e. I submit that neither my bank account or demat account was used for dealing in the securities or funds or clients of FSL, nor the same is the case of SEBI against me.
- f. It is incumbent that your good-self should have been satisfied that SEBI has been able to establish the existence of a *prima facie* case against me, the balance of convenience lies in SEBI's favour and that non-exercise would cause or is causing an irreparable loss or grave injury to the public/investors at large. It is submitted that in the facts and circumstances of the present case, none of the aforesaid conditions are satisfied by SEBI.
- g. It is pertinent to note that I was appointed as Additional director on the Board of FSL with effect from September 23, 2019, exactly 09 days prior to October

01, 2019, the day when NSE officials visited the office of FSL. It is to be noted that only 09 days had elapsed since I got associated to FSL as its director.

7. I note that Noticee no. 4 was appointed as non-executive director in FSL from September 23, 2019 and continues to be a director till date. I also note that Noticee no. 4 is also a director of Noticee no. 9, 11 and 13. It is pertinent to note that Noticee no. 9, 11 and 13 are group companies of Fairwealth Group, as claimed by Noticee no. 1, 2 and 3, in their reply, and these companies have only two directors namely Noticee no. 4 and Noticee no. 14. It is also pertinent to note that the trading accounts of Noticee no. 9, 11 and 13 were used to trade in securities of other clients of Noticee no. 1, but neither Noticee no. 4 nor Noticee no. 14, being the only directors of Noticee no. 9, 11 and 13, have raised any complaint with Exchanges/SEBI, either before or after the interim order, in respect of the alleged unauthorized use of these trading accounts for the alleged trades. I note that Noticee no. 4 has merely denied that he had any control over the affairs of Noticee no. 9, 11 and 13. However, the contention of Noticee no. 4 to the effect that the trading account held in the name of Noticee no. 9, 11 and 13, in which he continues to be the director, was used for the trading of securities of FSL's clients without his knowledge, at a time when he continues to be a director at FSL as well, is not convincing. Hence, I do not agree with the contentions raised by Noticee no. 4, and I find that no case is made out by Noticee no. 4 to revoke the interim directions.

Noticee no. 5:

8. Noticee no. 5 vide his written submissions tendered at the time of hearing on November 15, 2019, has *inter alia* raised the following contentions to the interim order:
- a. Noticee no. 5 has been made Additional Director twice in FSL, firstly from March 06, 2017 to August 31, 2017 and thereafter from June 12, 2018 to September 23, 2019. That both times, Noticee no. 5 only became Additional Director in order to get FSL out of financial crunch by getting them overdraft facility for which Noticee no. 5 has kept his residential house as a collateral. That first time when Noticee no. 5 has given his house as collateral, the loan was repaid by FSL and Noticee no. 5 got his original papers back from Kotak Mahindra Bank.
 - b. Noticee no. 5 was never part of day to day affairs of FSL.
 - c. No specific charge is made out against Noticee no. 5 in the interim order. The interim order does not provide any details relating to the allegations levelled against him, nor the role played by him in the violations alleged against FSL. It must be appreciated by your goodself that the aforesaid factors make Noticee no. 5 vague and incapable of an effective representation.
 - d. Noticee no. 5 was not in any way directly associated with the dealings of the securities of the clients of FSL. The Noticee had no say in whatsoever in where the securities of the clients were kept. The Noticee has no access to the pool account of FSL. That Noticee no. 5 has never been an authorized signatory on behalf of FSL and hence had no control over the business of FSL.
 - e. FSL owes more than 1.5 Crores to Noticee no. 5 and further the residential house of Noticee no. 5 is mortgaged against the overdraft facility taken by FSL. Hence, the direction to utilize money or security of Noticee no. 5 for the purpose

of payment to the clients of FSL is disproportionate and excessive in the facts of the instant case.

- f. In view of the above, Noticee no. 5 requests that the order against him ought to be quashed and all charges, inquiries and investigations against him be dropped.

- 9. Noticee no. 5 has stated that he became the director of FSL on two occasions only for the purpose of enabling FSL to raise loans. I note that Noticee no. 5 has admitted that, had he not provided for the security/guarantee for the loans of FSL, FSL would not have been able to raise finance. He further states that FSL owes a sum of Rs. 1.5 Crores to him. Without necessarily agreeing with the contentions of Noticee no. 5, from the reply and the accompanying documents furnished by Noticee no. 5, the following observations emerge:

- i. From the copy of the Sanction Letter dated March 29, 2019, issued by Punjab National Bank Bhiwandi Branch (annexed with reply of Noticee no. 5), I note that the overdraft facility of 2.95 Crore availed by FSL, was based on the condition that Noticee no. 5 shall be the promoter director of FSL and his shareholding in FSL shall not at any point of time be reduced to less than 19% in FSL.
- ii. Noticee no. 5 is the promoter director of one company namely Vanshi Buildtech Pvt. Ltd. From the documents such as bank statements of Vanshi Buildtech Pvt. Ltd., annexed with the reply of Noticee no. 5, I find that Vanshi Buildtech Pvt. Ltd. has received funds from FSL at regular intervals in the Year 2016, 2017, 2018 and 2019.

10. In view of the above, including the role played by Noticee no. 5 in providing guarantee/security for the Company, it appears that Noticee no. 5 was involved in the operations of FSL. Hence, I find that, no case is made out by Noticee no. 5 for revocation of interim directions against him.

Noticee no. 6:

11. Noticee no. 6 vide his reply dated November 13, 2019 and during the hearing held on November 15, 2019, has *inter alia* raised the following contentions to the interim order:
 - a. He was the director in FSL from October 25, 2017 to July 16, 2019. He was escalated as the Executive Director of the Board only on September 29, 2018. It is pertinent to note that other than mentioning that the Noticee was the director of FSL, at a particular point, no other observations have been made against the Noticee in the interim order.
 - b. The Noticee is Intermediate qualified and served as a Legal Officer and Authorised Representative of FSL.
 - c. He was just an employee of Fairwealth Group and had become director of FSL, only on insistence of directors and promoters of FSL. When he was being appointed as director in FSL, the Noticee raised his concern with the promoters of FSL, in lieu of the same, Noticee no. 2 had issued a letter dated October 27, 2017 to assure Noticee no. 6 of his role and his liabilities in FSL.

- d. He was never associated with the working of the Trading Member. He was just the Legal Officer of Fairwealth Group and his job required him to deal with just legal issues and regulatory issues between Fairwealth Group and its clients. The Noticee, during his tenure as an employee or as a director, has not come across any instance of any complaint of any clients of FSL. Furthermore, there have been no allegation that the trading done by him, during the period he was the director of FSL, was in any way contradictory to the interests of the clients of FSL. It is further submitted that there is no allegation as to using of account of the Noticee to deal with the securities of the clients. The claim of the Noticee is supported by the declaration dated October 19, 2019 received from the promoters of FSL.
- e. The Noticee submits that he was not associated with the decision making process of FSL, as he was accustomed to work as per the directions of the promoters of FSL i.e. Noticee no. 2 and 3.
- f. The Noticee submits that he has not benefited in any manner from the alleged dealings in securities of the clients of FSL. In view of the aforesaid, the direction to freeze the bank account of the Noticee is not correct and should be revoked with immediate effect.
- g. It is incumbent that your good-self should have been satisfied that SEBI has been able to establish the existence of a prima facie case against me, the balance of convenience lies in SEBI's favour and that non-exercise would cause or is causing an irreparable loss or grave injury to the public/investors at large. It is submitted that in the facts and circumstances of the present case, none of the aforesaid conditions are satisfied by SEBI.

h. The interim order neither substantiates, nor sufficiently corroborates the allegations. The interim order also fails to record any *prima facie* findings or explicitly mentioning or illustrating the role played by me in the alleged violations.

12 I note that Noticee no. 6 was the director in FSL from October 25, 2017 to July 16, 2019. He was the Whole Time Executive Director of FSL from September 29, 2018 to July 16, 2019. Though he has denied his involvement in any managerial decisions taken by FSL, by taking refuge under a purported letter dated October 24, 2017 issued by FSL. However, I note that liability arising from an statute, cannot be assigned/reassigned or contracted out by mutual agreement between parties. Further, even for the sake of argument, if it were presumed that the said letter did identify his role as non-executive director in FSL, however, the same cannot be construed to be valid for his re-assigned role as Executive Whole Time director of FSL from September 29, 2018. Noticee no. 6 has also relied upon an undertaking purportedly given by Noticee no. 2 whereby Noticee no. 2 is taking full responsibility of the working of FSL and discharging Noticee no. 6 from any liability. I reiterate that the liability arising out of an statute, cannot be assigned/reassigned or contracted out by mutual agreement between parties. Hence, the undertaking dated October 19, 2019 issued by Noticee no. 2 for the benefit of Noticee no. 6, cannot be relied upon. The undertaking also appears to be an 'after thought', in order to evade the consequences of the present proceedings since, it was issued by Noticee no. 2, only after the passing of the interim order. I note that Noticee no. 6 was the whole time executive director of FSL for almost 10 months. His exact role, if any, in the wrongdoings by FSL, may be known only after the completion of

Forensic Audit. Therefore, I do not find any justification for revocation of interim directions issued against the Noticee no. 6, at this stage.

Noticee no. 7:

13. Noticee no. 7 vide its reply dated October 22, 2019 and during the hearing held on November 15, 2019, has *inter alia* raised the following contentions to the interim order:

- a. I am a practicing lawyer since 1984, practicing profession of law in the District Court at Gurugram.
- b. I am suffering from SC12A akin to parkinsons (incurable rare kind of progressive disease). I have thus not been able to sign, even my bank account. As a metter of fact, I never consented and/or offered to act as a 'director' of FSL, nor was I in a physical condition to so act. Instead Noticee no. 2, suggested that his company will appoint me as additional director without any obligation of any kind whatsoever. Infact, the company in this behalf addressed a letter dated May 8, 2018, to me which carried the assurances. I never signed in the name of the company as a director.
- c. I have for the first time noticed from your interim order that I have been shown to be a 'director' from May 07, 2018 to July 16, 2019 in FSL, made fraudulently by forging my signatures in full knowledge of the fact that I am totally disabled to embark for a position of a director.

- d. I have at no point of time acted as a director of the company other than providing professional legal services. I am not included in any business activity of the company and only look after the court work in Gurugram.
 - e. I have no knowledge regarding the shares business to handle the company work or to do any act against the law.
 - f. I am completely unaware of the subject matter of the interim order.
14. I note that Noticee no. 7 was a non-executive director in FSL for the period from May 07, 2018 to July 16, 2019. I do not find any other material on record that would show that Noticee no. 7 was involved in the day to day operations of the Company or was involved in any *prima facie* wrongdoings as committed by FSL. Hence, at this stage, continuing of directions issued in the interim order against Noticee no. 7 is not called for. However, if any evidence of violation of securities laws by these Noticees is found after conclusion of forensic audit directed in the matter and/or other examination/investigation, if any, conducted by SEBI, action against these entities shall follow, in accordance with law.

Noticee no. 8:

15. Noticee no. 8 vide its reply dated November 13, 2019 and during the hearing held on November 15, 2019, has *inter alia* raised the following contentions to the interim order:
- a. He has been associated with the Fairwealth Group since 2006. He was appointed as director on the Board of FSL on November 2, 2016.

Thereafter, he was escalated to the position of Executive Director from September 29, 2017. The Noticee did not have any signing authority in respect of any matter related to business carried out by FSL.

- b. A period of almost two years have elapsed since the Noticee ceased to be associated with FSL, in his capacity as director of the company. It is further submitted that the violations that have been alleged in the SCN, pertains to the current date and the Noticee was not in any position to any access to pool account or client account of securities to have in any way misutilised the securities. The claim of the Noticee is further supported by the declaration dated October 19, 2019, received from the promoters of FSL.
- c. He was never associated with the working of the Trading Member. He was just a Branch Manager at Nehru Place Branch, New Delhi and his job required him to pitch the services of FSL to the prospective clients. The Noticee, during his tenure as an employee or as a director, has not come across any instance of any complaint of any clients of FSL. Furthermore, there have been no allegation that the trading done by him, during the period he was the director of FSL, was in any way contradictory to the interests of the clients of FSL. It is further submitted that there is no allegation as to using of account of the Noticee to deal with the securities of the clients. The claim of the Noticee is supported by the declaration dated October 19, 2019 received from the promoters of FSL.
- d. The Noticee submits that he has not benefited in any manner from the alleged dealings in securities of the clients of FSL. In view of the

aforesaid, the direction to freeze the bank account of the Noticee is not correct and should be revoked with immediate effect.

- e. It is incumbent that your good-self should have been satisfied that SEBI has been able to establish the existence of a *prima facie* case against me, the balance of convenience lies in SEBI's favour and that non-exercise would cause or is causing an irreparable loss or grave injury to the public/investors at large. It is submitted that in the facts and circumstances of the present case, none of the aforesaid conditions are satisfied by SEBI.
- f. The interim order neither substantiates, nor sufficiently corroborates the allegations. The interim order also fails to record any *prima facie* findings or explicitly mentioning or illustrating the role played by me in the alleged violations.

16. I note that Noticee no. 8 was the director in FSL from November 02, 2016 to October 25, 2017. He was working as executive director for the period from September 29, 2017 to October 25, 2017 i.e. for less than a month. Without necessarily agreeing with the contentions raised by Noticee no. 8, I find that Noticee no. 8 was the executive director in FSL for less than a month and thereafter ceased to be a director in the company. Apart from his such short tenure as executive director, I do not find any other material on record that would show his involvement in wrongdoings of the Company. Hence, at this stage, continuing of directions issued in the interim order against Noticee no. 8 is not called for. However, if any evidence of violation of securities laws by these Noticees is found after conclusion of forensic audit directed in the matter and/or other examination/investigation,

if any, conducted by SEBI, action against these entities shall follow, in accordance with law.

Noticee no. 12:

17. Noticee no. 12 vide its reply dated November 5, 2019 and at the personal hearing held on December 2, 2019, has raised the following objections to the interim order:
 - a. I have demat and trading account with FSL which has been allegedly utilized for the purpose of selling the securities of the clients of FSL. In this regard, it is submitted that subsequent to the opening of the demat account, the authority to operate the account was shifted to the promoters of Fairwealth Group at the behest of Noticee no. 2 and accordingly the operations of the accounts were also carried out by him. All the documents for operating the account were signed over by me in their favour. It is submitted that the lending of my accounts was done at the behest of Noticee no. 2, after yielding to societal and employment pressure.
 - b. Though the promoters of Fairwealth Group were using my account, I was not in any way compensated for such usage. It is submitted that a separate bank account was opened by Noticee no. 2, which was linked with my impugned trading account and the operations in the said trading account was not carried out by me. I used to sign any papers required for the operation of the said bank account, as per instructions of Noticee no. 2.

- c. I was not aware that the transactions which were executed in the impugned trading account were executed with the alleged intention of selling the securities held by the clients of FSL. It is important to note that no communication for the transactions executed in the trading account and bank account linked there to, were received by me and accordingly, I was in no position to verify the transactions therein. I had the knowledge about these transactions for the first time only in February 2019, through the Consolidated Account Statement of NSDL, which was received in my Fairwealth email id. Subsequently, through repeated reminder emails to Noticee no. 2 including email dated February 28, 2019 and May 20, 2019, request was made to Noticee no. 2 to stop transactions in the said accounts and close the same.
- d. Vide Affidavit dated October 22, 2019, Noticee no. 2 has acknowledged that the bank accounts, demat accounts and trading accounts were opened and operated by him and I had no knowledge or say in the operation of these accounts, nor did I receive any benefits for the same. Furthermore, it is important to point out that the money required to purchase the shares was also provided by Noticee no. 2, and the same has been admitted by him in the aforementioned affidavit.
- e. There is no *prima facie* evidence or finding against me to show that I was part of the manipulation which has taken place or I had any knowledge of the said manipulation/ transaction.
- f. The interim order is silent and does not provide any details as to when the shares are sold, what were the sale proceeds and what did FSL do with the money received by them.

- g. It is incumbent that your good-self should have been satisfied that SEBI has been able to establish the existence of a *prima facie* case against me, the balance of convenience lies in SEBI's favour and that non-exercise would cause or is causing an irreparable loss or grave injury to the public/investors at large. It is submitted that in the facts and circumstances of the present case, none of the aforesaid conditions are satisfied by SEBI.
 - h. I am not a threat to the genuine investor and not a frequent trader in the market. In the light of the said events, the said interim order passed against me is highly detrimental to my reputation and is also a cause of monetary loss to me.
- 18. Noticee no. 12 has not disputed the findings of the interim order that the alleged sale of client securities was done through his trading account. Neither has he raised any objection to the finding of 'Relationship with FSL', as noted in Para 6C of the interim order. However, Noticee no. 12 has claimed that he did not make any transaction in his account rather these transactions were done by the promoters of FSL i.e. Noticee no. 2 and 3.
- 19. I note that Noticee no. 12 is the brother in law of Noticee no. 2 and he claims to have given the necessary authorization to Noticee no. 2 to open and operate the trading account, demat account and bank account, in the name of Noticee no. 12. Noticee no. 12 states that he never knew that his accounts would be used by Noticee no. 2 to sell the securities of the clients of FSL. Similarly, Noticee no. 12 also furnishes an Affidavit wherein, Noticee no. 2 claims that he was operating the

bank account, demat account and trading account, belonging to Noticee no. 12. The submissions made by the Noticee no. 12 indicates that the operation of his trading/demat/bank account by Noticee no. 2 was with the consent of Noticee no. 12 and at the time of operation of such accounts by Noticee no. 2, Noticee no. 12 was aware and also it is noted that Noticee no. 12 is the close relative of Noticee no. 2 i.e. brother –in-law of Noticee no. 2. As such Noticee no. 12 must be held responsible and liable for liabilities arising out of all the transaction which had taken place in these accounts and merely contending that he was not aware of such operations in his bank/demat/trading accounts cannot be accepted in the facts and circumstances of this case.

Noticee no. 14:

20. Noticee no. 14 vide its reply dated October 15, 2019 and during the hearing held on November 15, 2019, has raised the following contentions:
 - a. I have been fraudulently made the director of FSL by Noticee no. 2, without my knowledge and consent. I was not informed that I was promoted in June 2019.
 - b. Noticee no. 14 has also annexed a copy of police complaint lodged with the Bhikaji Cama Place Police Station, New Delhi on October 15, 2019, alleging that his Aadhar Card, Voter id Card and PAN Card has fraudulently been used by Noticee no. 2 to make him the director of FSL.
21. Noticee no. 14 has submitted that fraud has been played upon him by Noticee no. 2 by fraudulently making him the director at FSL. However, I note that the interim

order does not implicate Noticee no. 14 as being director of FSL. On the other hand, the interim order implicates Noticee no. 14 as one of the directors of Noticee no. 9, 11 and 13. It is pertinent to note that Noticee no. 9, 11 and 13 are group companies of Fairwealth Group (as claimed by Noticee no. 1, 2 and 3, in their reply), and they have only two directors namely Noticee no. 4 and Noticee no. 14. It is also pertinent to note that the trading accounts of Noticee no. 9, 11 and 13 were used to trade in securities of other clients of Noticee no. 1, but neither Noticee no. 4, nor Noticee no. 14, being the only directors of Noticee no. 9, 11 and 13, have raised any complaint with Exchanges/SEBI, either before or after the interim order, in respect of the alleged unauthorized use of these trading accounts for the impugned trades. In view of the above, at this juncture, as these trading accounts were used for misappropriation of securities of the clients of FSL and forensic audit is presently underway. I find that Noticee no. 14 has not made out a case in favour of vacating the interim directions against him.

- 22 The Noticee no. 2 and 3 have also contended that the cease and desist order issued against them should be vacated and the Noticees should be allowed to operate their commodity business which is being carried out through FCBL. The said Noticees have stated that there are no violations of any SEBI rules, regulations and circulars by FCBL. I note that the interim directions were issued against FSL (Noticee no. 1), Mr. Dhirender Gaba (Noticee no. 2) and Mr. Naveen Gaba (Noticee no. 3), after findings of 'misappropriation of client securities', that were observed by NSE. Thus, in order to protect the interest of investors and to protect the integrity of the securities market, the cease and desist order was issued against the said Noticees. Hence, even if it is presumed that FCBL may not have violated any of

the SEBI circulars/regulations, but that by itself cannot be a ground to relax the interim directions in favour of Noticee no. 2 and 3, who are promoters and directors of FSL and they have admitted in their reply dated November 30, 2019 that the securities that were sold through the trading accounts of Noticee no. 9 to 13, were not belonging to Noticee no. 9 to 13, rather they were belonging to the other clients of FSL. It is also pertinent to note that FCBL is not a noticee in this matter and it has been declared as defaulter by MCX, NCDEX and ICEX for violations of their respective bye-laws, as a member of the respective exchange and not because of directions issued in the interim order.

23. In view of the above findings against the Noticees, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B and 11D read with Section 19 of the Securities and Exchange Board of India Act, 1992, and Regulation 35 of SEBI (Intermediaries) Regulations, 2008, in the facts and circumstance of case, hereby,
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- a. confirm the directions issued in the interim order date October 11, 2019 against Noticee no. 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13 and 14 till further directions; and
- b. revoke the directions issued in the interim order date October 11, 2019 against Noticee no. 7 and 8. However, if any evidence of violation of securities laws by these Noticees is found after conclusion of forensic audit directed in the matter and/or other examination/investigation, if any, conducted by SEBI, action against these entities shall follow, in accordance with law.

24. This order shall come into force with immediate effect.
25. The present order has been passed under disciplinary proceedings against the Noticees for the violation of the Securities Laws. Claims of clients of FSL shall be entertained or disposed of as per the bye-laws of stock exchanges/depositories.
26. A copy of this order shall be sent to all the Noticees, recognised stock exchanges, depositories, Banks and RTA's of mutual funds to ensure compliance with the above directions.

Sd/-

Place: Mumbai

ANANTA BARUA

Date: January 24, 2020

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA