

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11(4) and 11B (1) of the Securities and Exchange Board of India Act, 1992

In respect of:

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

(The entities mentioned above are individually known by their respective names or Noticee No. and collectively referred to as "Noticees")

In the matter of Ficus Securities Pvt. Ltd. and Others

Background

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received a reference dated August 1, 2017 from National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**") regarding the inspection carried out by NSE of its trading member, Ficus Securities Pvt. Ltd. (hereinafter referred to as "**Ficus**") wherein NSE had observed certain irregularities and certain non-compliances with the applicable regulations / circulars. Noticing the above, an inspection was ordered by SEBI, focus of which was to understand the practices and systems put in place by Ficus with regard to its activities of stock broking operations and related compliance with SEBI regulations and circulars.

2. Simultaneously, considering the gravity of the *prima facie* findings of NSE, SEBI vide an *Interim Order* dated March 20, 2018 *inter alia* had restrained Ficus, Ficus Commodities Pvt. Ltd. (hereinafter referred to as “**Ficus Commodities**”), Mr. Vinod Kumar, Mr. Surender Singh and Ms. Neena Bansal, Mr. Prashant Kumar Nayak, Ms. Poonam Rajbhar, Ms. Tripta Kapoor and Ms. Shabnam John from accessing the securities market and further prohibited them from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever, till further directions. The *Noticees* were also directed to cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions.
3. Subsequently, post decisional hearing was granted to the *Noticees* and after considering their submissions, both oral and written, it was thought fit and proper to continue with the directions issued under the *Interim Order qua* all the *Noticees* except for one Mr. Prashant Kumar Nayak and the same was directed vide a *Confirmatory Order* dated January 17, 2019.

Findings of Inspection, Show Cause Notice, Reply and Hearing

4. SEBI conducted the inspection of Ficus’s broking activities for the period between April 1, 2015 and January 23, 2018 (hereinafter referred to as “**Inspection Period**”). The findings of the said inspection (illustrative in nature and are not all-inclusive) are as follows:
 - 4.1. Ficus failed to provide complete information/data to the inspection team sought from it during inspection.
 - 4.2. It was observed that clients’ funds to the tune of INR 34.71 crore was not available with Ficus to pay its clients’.
 - 4.3. It was observed that clients’ securities to the extent of INR 29.50 crore held in the various demat accounts of Ficus as on January 31, 2018, were actually not available with Ficus.
 - 4.4. There were instances where Ficus had not segregated its own funds and securities from its clients’ funds and securities.
 - 4.5. It was observed that Ficus had not settled the accounts of its clients’.

- 4.6. As on November 13, 2018, a total number of 327 investors' complaints were pending against Ficus.
- 4.7. Ficus had not disclosed two DP accounts to the Exchange.
- 4.8. Ficus had transferred funds to Ficus Commodities and to its other related parties.
- 4.9. Ficus had pledged its client securities.
5. During the inspection it was observed that Ficus and Ficus Commodities are connected with each other on the basis of common address and common Director namely, Mr. Surender Singh. Further, Ms. Tripta Kapoor and Ms. Poonam Rajbhar who were past Directors of Ficus Commodities were appearing in the client master of Ficus. It was also noted that there were fund transfers between Ficus Commodities and Ficus.
6. Based on the afore stated findings brought out during inspection, a common show cause notice dated March 31, 2021(hereinafter referred to as "**SCN 1**") was issued to Ficus Commodities, Ms. Poonam Rajbhar, Ms. Tripta Kapoor and Ms. Shabnam John while a second common SCN dated August 31, 2021 (hereinafter referred to as "**SCN 2**") was issued to Ficus, Mr. Vinod Kumar Bansal, Ms. Neena Bansal and Mr. Surender Singh. In the aforesaid two SCNs it was alleged that Ficus as well as its Directors and Ficus Commodities and its Directors had allegedly violated the following provisions of law:
- SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.
 - SEBI circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016
 - SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009.
 - Clauses 15 and 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 4 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011.
 - Regulations 3(a), (b), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").
 - Conditions of registration as specified under Regulation 9(e) of the Stock Brokers SEBI (and Sub Brokers) Regulations, 1992 hereinafter referred to as "**Stock Brokers Regulations**").

- Regulation 21 of Stock Brokers Regulations.
 - Clauses A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of Stock Brokers Regulations.
7. In view of the above, *Notices* were called upon to show cause as to why suitable directions under Sections 11, 11(4) and 11B (1) of SEBI Act should not be issued against them for the violations alleged herein above.
 8. It is noted from the records that the SCN was served on all the *Notices* through email and post, except for Ficus Commodities on whom the SCN was served through its Directors and by way of affixture at its last known address as available on record. In response to the SCN, *Notices* submitted their replies to the SCN, except for Ficus Commodities. The contention of the *Notices* who have replied on merits, are summarised herein below.
 9. Ms. Poonam Rajbhar vide her email dated April 25, 2021 submitted her reply to the SCN 1 wherein she has denied all the allegations levelled against her in the SCN and additionally *inter alia*, has submitted as follows:
 - 9.1. She was only an employee (administrative manager) of Ficus Commodities and her designation as a Director of Ficus Commodities was mere a namesake. She has submitted her salary slips which also shows Provident Fund deductions to substantiate her submission.
 - 9.2. She had joined Ficus in July 2008 and was later on insisted by Mr. Vinod Bansal to become the Director of Ficus Commodities.
 - 9.3. She was not an authorised signatory of Ficus Commodities for the bank accounts (3 current accounts) which Ficus Commodities maintained with HDFC Bank Ltd., Kasturba Gandhi Marg, New Delhi branch. She has submitted a certificate issued by HDFC Bank Ltd. to substantiate her submission.
 - 9.4. She has neither attended any Board Meeting of Ficus Commodities nor was involved in managing the day-to-day affairs of Ficus Commodities.
 10. Ms. Shabnam John vide her letter dated May 8, 2021 while denying all the allegations levelled against her in the SCN, has submitted on the same lines as that of Ms. Poonam Rajbhar.

11. Ms. Tripta Kapoor vide her letter dated May 24, 2021 has also submitted on the same lines as that of Ms. Poonam Rajbhar and has *inter alia* submitted as follows:

11.1. SCN has been wrongly issued by SEBI as action has already been taken by SEBI for the same cause and under the same provisions of law. For the same cause of action two different proceedings cannot be initiated (Article 20(2) of Constitution of India, 1950) and penalty cannot be levied twice for the same cause of action.

11.2. She has never paid for subscription money or share application money to subscribe to the shares of Ficus Commodities and she has never applied for the allotment of 49% shares of Ficus Commodities.

12. Mr. Vinod Bansal vide his letter dated October 8, 2021 submitted a reply to the SCN2 on behalf of Ficus, Ms. Neena Bansal and himself and the contentions are as follows:

12.1. The allegation with respect to non-submission of information is incorrect. In response to SEBI letter dated August 30, 2017 addressed to Ficus seeking the requisite information, the requisite information was provided to SEBI vide letter dated September 15, 2017. Further, the aforesaid three *Noticees* have provided all the requisite information through questionnaire pertaining to the inspection period as per available record and to the best knowledge and belief of the *Noticees*.

12.2. There was no misuse of clients' funds and securities. Ficus wanted to expand its business and in furtherance of that it had opened its new offices in Mumbai, Jaipur and in Punjab. Ficus was in need of finances for the said purposes and therefore, approached its various reputed clients for financial help. The clients of Ficus had agreed to lend financial help to it either directly financially or by transferring their holding in the proprietary account of Ficus. Mr. Vinod Bansal has submitted a list of such clients who had agreed to help Ficus to substantiate his submission. Further, for the verification of said submission, Delivery Instructions Slip (hereinafter referred to as "**DIS**") duly executed by the clients of Ficus as may be available with CDSL can be perused, as the aforesaid *Noticees* are unable to produce the same. The bare perusal of the reason for transfer of shares would reflect the purpose of transfer of those shares which is mentioned as for loan/margin. Moreover, securities were pledged from the proprietary account of

Ficus for the purposes of raising finances and there has been no allegation made by the clients that their securities were taken illegally from their demat account without their consent.

12.3. Ficus had suffered losses and thus, the securities which were transferred by its holders as loan/financial assistance to it were lost. Therefore, there is no misuse of client's securities/funds. The aforesaid three *Noticees* are still making *bona fide* attempt to settle the claims of the persons / clients who had financially helped Ficus.

12.4. Ficus and Ficus Commodities are two different entities. For the purpose of cost cutting, both the entities were operating its business from common office. A perusal of MCA record would reveal that both the companies were earlier having different offices. The website, <http://ficuswealth.com>. is the official website of Ficus. The website belonged only to Ficus and not to Ficus Commodities.

12.5. Ficus and Ficus Commodities were clients of each other's. The fund transfers took place between them in the normal course of their transactions. Since Ficus was a client of Ficus Commodities for trading and investments, so the *inter se* transfer of funds was of routine in nature and there was no outstanding amount at the end.

12.6. In the SCN-2, it is alleged that there are 327 complaints and claimed amount is INR 95.43 crore, whereas as per stock broker's ledger, total credit including clients' securities was approximately INR 63 crore. Further, in the SCN 2 it has also been alleged that there is shortage of funds to the tune of INR 34.7 crore and shortfall of client securities is shown as INR 29.4 crore. Thus, there is a mismatch of INR 32 crore. Moreover, there are various clients, who had raised exaggerated claims in NSE.

12.7. The allegation with respect to non-disclosure of two demat accounts maintained with two different Depository Participants is also incorrect and denied.

13. In response to the SCN 2, Mr. Surender Singh vide his letter dated October 12, 2021 has submitted as follows:

13.1. He was a Director in Ficus for the period November 2, 2017 to March 1, 2019. He was made a Director only because the old Directors had resigned from their position all of a sudden.

13.2. He has nothing to do with the corporate and business activity of Ficus. He is also not a shareholder in Ficus.

14. After receipt of the aforesaid written replies, a personal hearing in the instant matter was scheduled on May 11, 2022. *Noticees No. 1, 3 and 5 to 8* were informed about the hearing via email dated March 10, 2022 while for the remaining *Noticees No. 2 and 4*, hearing notice was issued through public notice.

15. On the day of the scheduled hearing, *Noticee No. 3* appeared in person on behalf of himself as well as on behalf of *Noticee No. 1* and *Noticee No. 5*. Mr. Amit Gupta, Advocate, appeared on behalf of *Noticee No. 2* and *Noticee No. 7* while *Noticee No. 4*, *Noticee No. 6* and *Noticee No. 8* appeared in person. All the *Noticees* reiterated their submissions already made in their respective written replies to the SCN.

Consideration of Issues and Findings

16. Before delving into the merits of the case, I would like to address the preliminary issue raised by Ms. Tripta Kapoor. She has contended that for the same cause of action two different proceedings cannot be initiated and penalty cannot be levied twice for the same cause of action and any attempt to do so would be violating Article 20(2) of Constitution of India, 1950. The contention of Ms. Tripta Kapoor is patently erroneous. The extant proceedings which have been initiated under Sections 11 (4) and 11B of SEBI Act is nothing but a continuation of the proceedings which have been initiated under Sections 11 (4), 11B and 11 D of SEBI Act vide the *Interim Order* dated March 20, 2018. I note that under Section 11B of SEBI Act, SEBI has been invested with powers to prevent the affairs of any intermediary from being conducted in a manner which is detrimental to the interest of investors of securities market and also to secure proper management of such intermediary. In the extant matter, based on the *prima facie* findings arrived at in the *Interim Order* dated March 20, 2018, with respect to the liabilities of Ficus and Ficus Commodities and the illegal transfer of clients' funds and securities from Ficus to Ficus Commodities, it was essential to take urgent steps against Ficus, Ficus Commodities and their Directors. Since the *Interim Order* dated March 20,

2018 was passed pending a detailed inquiry, there was no finality to the findings made in the *Interim Order* dated March 20, 2018. Now, after completion of a detailed inquiry in the matter, in order to adjudicate the findings of the said detailed inquiry, SCNs in the matter have been issued to the *Noticees*. Thus, it is incorrect to contend that two different proceedings have been initiated for the same cause of action since the present proceedings intends to take a final view on the interim direction that were issued based on *prima facie* findings in the order dated March 20, 2018. Further, the contention that Article 20(2) of Constitution of India, 1950 is applicable in the present matter, is without any merit, as Article 20(2) of Constitution of India, 1950 provides that no person shall be prosecuted and punished for the same offence more than once. These are not criminal proceedings. This is a civil action for violation of the regulatory mandate relating to the securities market. In any case, in the extant matter, no penal action has been taken against the *Noticees* and the restraint that had been imposed on the *Noticees* vide the *Interim Order* dated March 20, 2018 was an *interim* remedial measure to prevent the *Noticees* from continuing to act in a way detrimental to the interests of its clients and that of the securities market. Thus, even on that count, the contention of Ms. Tripta Kapoor does not hold good.

17. Now, I proceed to deal with the merits of the issue. It will be appropriate here to note that the findings in the inspection report of SEBI are based on analysis of samples and test checking of various books and other records maintained by Ficus, as well as the written/oral information furnished by Ficus and its Directors / officials during the inspection. Consequently, the instances of irregularities/observations pointed out in inspection report are illustrative in nature and are not all-inclusive. In the light of the aforesaid factual position, I proceed to adjudicate the matter, based on materials available on record and the written replies and submissions filed by the *Noticees*, the contents of which have already been highlighted in the preceding paragraphs. After going through all the material, as aforesaid, available on record, I find that essentially, following issues arise for determination in the present matter:

- 17.1. Whether Ficus and Ficus Commodities have violated various provisions of the SEBI Act, Rules, regulations and circulars issued by SEBI from time to time relating to broking operations?

17.2. If answer to the aforesaid question is in affirmative, whether the conduct of the *Notices No. 3 to 8* have resulted in the violation of the applicable provisions of securities law, as alleged in the SCN?

17.3. Whether directions, if any, needs to be issued against the *Notices*?

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

Whether Ficus and Ficus Commodities have violated various provisions of the SEBI Act, SCRA, Rules, regulations and circulars issued by SEBI from time to time relating to broking operations?

19. In this regard it would be relevant to highlight the findings of the inspection which are as follows:

19.1. Non-settlement of claims of clients

Before proceeding, I would like to refer to the applicable provisions of SEBI circulars which read as under:

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

Running Account Authorization

...

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

...

(e) The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

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

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

It was noted at the time of inspection that Ficus has not done actual settlement of funds and securities (on monthly / quarterly basis) in case of 87 instances out of total 100 instances verified (during inspection) pertaining to 50 clients. An illustrative list highlighting a few of such instances is reproduced hereunder:

Table No. 1

S.No.	Client Code	Client Name	Period of settlement	Settlement date	Retention sheet / Statement issued- Date	Financial balance as on date of settlement	Securities valuation as on date of settlement	Total amount not settled
1	C0277	Gaurav Credits Private Limited	Jul16-Sep16	Not settled	Not send	25,80,181.20	68,52,561.00	94,32,742.20
2	MUM070	Geeta Prakash Shah	Jul16-Sep16	Not settled	Not send	-	42,08,428.75	42,08,428.75
3	VR050	Jatinder Bhasin	Jul16-Sep16	Not settled	Not send	68,00,238.67	21,67,510.90	89,67,749.57
4	C0080	Amg Mercantile Pvt Ltd	Jul16-Sep16	Not settled	Not send	92,748.99	-	92,748.99
5	C0031	Ontime Consultants India Private Limited	Jul16-Sep16	Not settled	Not send	18,22,119.68	-	18,22,119.68

Further on verification of trial balance and register of securities as on December 31, 2016 it was observed that Ficus has not settled the clients' accounts having credit balances of funds and securities who were inactive for more than 3 months in 106 instances amounting to INR 52.79 lakh. An illustrative list highlighting a few such instances is reproduced hereunder:

Table No. 2

S. No.	Account Head Name	Credit Closing Bal as on 31-12-16	Security valuation as on 31-12-16	Total	Last Trade Date
1	Mukesh Kumar Garg	1132969.98	553776.2	1686746.18	16/09/2016
2	Satvik Bansal	270504.36	0	270504.36	05/08/2016
3	Ravi Khullar	167239.18	220576.2	387815.38	16/05/2016
4	Vijay Kumar Goel	99340.51	0	99340.51	14/03/2016
5	Himanshu Rajnikant Sanghvi	92876.83	0	92876.83	24/06/2016

I note that as per SEBI circular dated December 3, 2009, the actual settlement of funds and securities has to be done by the stock broker, at least once in a calendar quarter or in a month, depending on the preference of the client. However, it is observed from the above tables that during the quarter ending September 2016 and December 2016, there were substantial number of clients having significant outstanding credit balances in their trading accounts that remained unsettled when SEBI circular dated December 3, 2009 specifically required stock broker to settle the funds of client at least once in a calendar quarter or in a month, depending on the preference of the client. Thus, Ficus instead of taking steps to ensure compliance with the mandatory provisions of SEBI circular dated December 3, 2009, was progressively defaulting in its obligations to comply with the circular. It is pertinent to note that by not receiving the statement of account on time as stipulated by SEBI Circular, the clients were kept in dark with respect to the state of affairs in their running accounts maintained with the stock broker, giving rise to the possibility of these accounts of such inactive clients being misutilised for unauthorised trading by employees, authorized persons, etc. of the stock broker. Clients, whether active or inactive, are entitled to receive the settlement statement periodically as per their preference. This is a prudential norm prescribed by SEBI in the interest of investors so that their funds are not kept unsettled by the stock broker for indefinite periods on any pretext. I note that the aforesaid circular was issued with a view to instill greater transparency and discipline in the dealings between the clients and the

stock brokers and to protect the interests of investors in the securities market. The objective of the mandatory provisions of the circular is not only to keep the investor periodically informed about his/her account, so as to curb any misutilization of funds, but also to inform and update the investors about their respective exposures to the quantum and value of various securities to ensure that the clients periodically monitor their exposure to securities market and assess if their exposure is proportionate to their potential. However, in the instant case such a regulatory intent and mandate has been completely disregarded by Ficus. Hence, I find that the commission of the above acts of not settling the funds and securities of client by and on behalf of Ficus certainly fall within the mischief of clause 12 (e) of SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 3, 2009 and clause 33 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 4 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011.

19.2. Misutilisation and Non-availability of client funds

Moving on to this issue, at the onset it would be pertinent to refer to the relevant provisions of the SEBI circular no. MD/SED/CIR/93/23321 dated November 18, 1993, Clause 15 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 4 of the SEBI Circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011, clauses A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of SEBI Stock Brokers Regulations read with regulations 3(a), (b), (c) and (d) of the PFUTP Regulations. The text of the aforesaid provisions is reproduced here under:

SEBI Circular dated November 18, 1993

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

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

- i. Moneys received from or on account of each of his clients and,*
- ii. the moneys received and the moneys paid on Member's own account.*

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

C] What moneys to be paid into "clients account". No money shall be paid into clients account other than –

- i. money held or received on account of clients;*
- ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;*
- iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;*
- iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.*

SEBI Circular dated August 22, 2011

"TRANSACTIONS AND SETTLEMENTS

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

Regulations, circulars, notices, guidelines of SEBI and/or Rules, Regulations, Bye-laws, circulars and notices of Exchange.

Stock Brokers Regulations

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

...

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

(b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

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

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

In order to arrive at the findings of misuse of clients' funds by Ficus, the following information/data were gathered and perused during the course of inspection:

- Trial balance dated January 23, 2018.
- HDFC bank statements for the period of April 1, 2015 to January 31, 2018.
- Total funds available with the clearing member and Exchange.

In the instant matter the following data was collected by the inspection team:

As per Ficus's trial balance dated January 23, 2018, The position with respect to the creditors and debtors was as under: -

Table No. 3

Account Head Name	Amount (INR)
Creditors	36,31,92,591.64
Debtors	1,78,68,292.35

The total availability of funds in broker's bank a/c(s) as on January 31, 2018 were as follows: -

Table No. 4

Name of the Bank a/c	Bank account no.	Amount (INR)
HDFC NSE Client A/c	00030340030695	124.73
HDFC NSE Business	00030340025552	439.63
HDFC NSE CD Client A/c	0030340036361	148.42
HDFC NSE Clearing A/c	00990610008376	0.00
HDFC Mutual Fund Sett A/C	90090610010177	46.42
HDFC NSE Client A/C	05982340006283	298.55
Total		1057.75

The total funds available with the Clearing Member and Exchange as on January 22, 2018, were as under: -

Table No. 5

Account Head Name	Amount (INR)
NSCCL Security Deposit	1,500,000.00
NSE F&O	2,500,000.00
NSE Security Cash	11,000,000.00
Total (A)	1,50,00,000.00
Funds available with CM	95,226.64
IFSD available with CM	2,00,000.00
FDR available with CM	8,00,000.00
Total (B)	10,95,226.64
Total (A+B)	1,60,95,226.64

The analysis of the aforesaid three tables will lead to an inevitable conclusion that Ficus was not having sufficient funds so as to be in a position to pay to its clients who are shown to be its creditors as Ficus was falling short of funds by a big margin. The total amount of funds shortage with Ficus as at the end of January 2018 was as under: -

Table No. 6

	Account Head Name	Amount (INR)
A	Funds with clearing member	10,95,226.64
B	Bank balance as per bank statement	1,057.75
C	Deposit with NSE (Encumbered against IGRP proceedings)	1,50,00,000
D	Total funds available (A+B+C)	1,60,96,284.39
E	Creditors	36,31,92,591.64
	Shortage of funds (D-E)	34,70,96,307.25

The aforesaid factual conclusion that Ficus had a huge shortage of fund, leads to a consequent finding that if the funds which were supposed to be available with Ficus to pay out to the clients with credit balances were not available with it, then the said funds have been diverted and utilised by Ficus for purposes other than for paying to its credit clients. Thus, not only Ficus had comingled its clients' funds with its own funds but it has also misappropriated / utilised its clients' funds for its own purposes other than the purposes for which such funds were entrusted with it by the clients in connection with their trading activities. Credibility to the aforementioned finding is further adduced from the finding of the forensic auditor

appointed by NSE which discovered that during the audit period, INR 0.15 crore was received in client bank account (HDFC 30340030695) and INR 0.01 crore was paid from the same account to certain entities who were not registered as clients of Ficus. It shows that client funds have been routed/diverted to entities that were not Ficus's trading clients and in the absence of any justification furnished by the *Noticee* to substantiate such transactions, it certainly amounts to mis-utilisation of client funds.

In this respect, Mr. Vinod Bansal has already candidly admitted that Ficus was in the mode of expanding its business and had opened new offices in few cities for which Ficus was in need of finances. Since, Ficus was in need of money, few clients were approached by it who have helped Ficus financially. In support of his submission, Mr. Vinod Bansal has submitted a list of clients who, as per him knowingly offered to support him financially. Having gone through the record and submission made in this behalf, I note that the regulatory provisions categorically prescribe the purposes for which the funds and securities of clients can be utilized by a stock broker and the alleged acts of appropriating the clients' securities under the garb of taking financial help from clients with their consent don't fall in any of the instances / purposes so mentioned under the relevant provisions. Additionally, it is also observed that though Mr. Vinod Bansal claims to have obtained the consent of certain clients to the effect that their securities available with Ficus could be utilized for business expansion of the Ficus, however, the aforementioned submission of Mr. Vinod Bansal is not supported by any third party independent documentary evidence. The clients list submitted by Mr. Vinod Bansal has no evidentiary value as it contains merely a scrip wise demat holding of clients as on January 31, 2018. It does not of its own, demonstrate that the clients whose names appear on the said list have agreed to help Ficus financially. No correspondence either by way of email or physical letter or bank statements showing transfer of funds from clients' bank accounts to Ficus's own bank account etc. has been submitted by Mr. Vinod Bansal. The allegation here is about the huge shortage of clients funds / misutilisation of clients funds by Ficus which anyway cannot be responded to, by stating that the clients had agreed to financially help Ficus. As Ficus had a mandatory obligation to settle its clients' funds first. It should have first settled their accounts, refunded

them their credit balances and then, it could have entered into any other financial transaction, with them separately to take financial help from them. If Ficus had settled its clients' funds, then there would have been no shortage of funds in the records of Ficus. Subsequently, it was always open to Ficus to enter into an independent financial transaction with these entities which is not the scenario in the instant case. Thus, the contention of Mr. Vinod Bansal that clients' funds were used for business expansion with their consent, is not borne out of the facts and circumstances of the case.

I note that the measures taken by SEBI by issuing various circulars, code of conduct etc., as cited earlier on the issue of Broker – Client transactions, settlement of funds and securities etc., are primarily intended to increase transparency in management of securities of clients and funds by the stock brokers. The funds in the client's accounts cannot be applied for any purpose other than what is permissible under SEBI rules and regulations. The objective of opening and maintaining a separate account for the client's funds is to segregate and identify them separately and to prevent its misuse either for trades of other clients or of the stock broker itself or any other purposes so that they are beyond the reach of the stock broker and / or its employees. The aforesaid actions of Ficus wherein, the stock broker has misused its clients' funds and has also transferred the funds of its clients' to entities who are not his clients, as per its own convenience without paying any heed to its statutory obligation to maintain separate account for its client and for itself (proprietary account), cannot be viewed leniently. Thus, I find that Ficus has grossly violated the provisions of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, clause 15 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 4 of the SEBI circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011, clauses A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of Stock Brokers Regulations and regulations 3(a), (b), (c) and (d) of PFUTP Regulations.

19.3. Non-availability and Misutilisation of client securities

As per SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, it shall be compulsory for all the member brokers to make payment to their clients or

deliver to the clients the securities purchased for them within two working days of pay-out, unless the client has requested otherwise.

During the course of inspection, it was observed from the scrip wise breakup of all the securities as per register of securities (hereinafter referred to as “**ROS**”) that there were shortfalls of clients’ securities. Some of such instances as on January 31, 2018 are as follows:

Table No. 7

Scrip	Qty as per ROS	Total Qty available in beneficiary, clearing member and pledge accounts	Difference	Rate	Non-Availability (INR)	As per ROS (INR)
3I Infotech Ltd.	1449	0	1449	8	11592	11592
Alok Industries Ltd	379050	0	379050	3.9	1478295	1478295
Century Plyboards (I) Ltd	1481	2	1479	339.25	501750.75	502429.25
Greaves Cotton Ltd.	200	45	155	137.1	21250.50	27420
GVK Pow & Infra Ltd.	30000	500	29500	18.65	550175	559500

The available records also show the position of securities available with Ficus as on January 31, 2018 as under:

Table No. 8

Account Head Name	Amount (INR)
Value of client securities as per ROS	295,937,882.44
Actual Value of client securities available in beneficiary accounts, clearing member and pledge with NBFC	(974,491.44)
Shortfall of client securities	294,963,391

From the above table it is observed that client securities to the extent of INR 29.50 crore supposedly held in various demat accounts of Ficus as on January 31, 2018, was actually not available in those demat accounts. The same demonstrates that once the securities were purchased, pay-out was not made to the clients within two days, as mandated by SEBI Circular dated November 18, 1993. There is no material available on record which would show that the clients of Ficus had requested to it

otherwise with respect to the securities that belonged to them. Consequently, it can be strongly inferred that if the securities were not delivered to the clients on behalf of whom it was bought and the same were also not available with the stock broker in those demat accounts coupled with absence of any plausible explanations by Ficus to explain the absence of those shares from the demat accounts where these shares were supposedly kept on behalf of the clients, it leads to an irresistible conclusion that the securities were misappropriated / misused by the stock broker for the purposes other than for what it was meant for i.e. in sum, these shares have been used by Ficus for its own purpose.

Credence to the aforesaid finding is further lent from the finding of the Forensic Auditor which shows that substantial amounts were raised by Ficus by pledging clients' securities during the inspection period.

Table No. 9

Pledged	INR in crore		
	Paid	Received	Net (Received)/ Paid
ILFS	5.12	32.90	(27.78)
Globe Fincap Ltd	32.14	50.16	(18.02)
Aditya Birla Finance Ltd	3.71	0.03	3.68
Net Amount Paid / (Received)	40.97	83.09	(42.12)

From the aforesaid, it can be observed that funds to the tune of INR 83.09 crore raised by Ficus by pledging clients' securities and those funds were received in Ficus's bank account (HDFC Bank a/c:30340025552) instead of clients bank accounts. Moreover, it is observed that on certain instances when the pledged shares were released by the pledger, the said securities were sold through another member Globe Capital Market Ltd. on BSE Ltd. The funds received from the sale of such securities were utilised either for meeting pay-in obligations of the stock broker or for making repayment to the pledger. I find six (6) such sample instances amounting to INR 2.72 crore were observed when Globe Fincap released the shares to Ficus's client beneficiary account no. 12020600-00448228 and those shares were onward sold on BSE Ltd. These instances are reproduced below:

Table No. 10

Date	Scrip	Qty sold in BSE through Globe Capital Market Ltd.	Rate (INR)	Amount (INR)	Qty held in PRO code as per ROS on the date of selling
09/09/2016	IBULHSGFIN	3583	799	28,62,817	-989
26/10/2016	IBULHSGFIN	18000	855	1,53,90,000	-3972
17/08/2016	LUPIN LTD.	521	1594	8,30,474	-4800
08/09/2016	INDIABULLS VENTURES	47067	28.5	13,41,409.50	-271305
09/09/2016	INDIABULLS VENTURES	105119	28.5	29,95,891.50	-318372
15/07/2016	SUN PHARMACEUTICAL	5000	770	38,50,000	2964
				2,72,70,592	

One must note that the securities lying with the stock broker are held by the stock broker in a fiduciary capacity. The stock broker has to credit the securities to the demat account of its clients if the securities are fully paid. Even for some reason, if the securities of the clients are lying with the stock broker, the stock broker has been prohibited under law from using those securities for its own purpose, which in the instant case as revealed from the aforestated factual finding including the above noted instances of sale of clients shares on BSE Ltd. after those shares were released from pledge, has been blatantly violated on numerous occasions by Ficus by illegally pledging the securities belonging to its clients to the lenders. Ficus has thus knowingly misrepresented the truth to its clients that it is holding the shares on their behalf in its fiduciary capacity and has also knowingly concealed the fact from its lenders that it was not the actual beneficial holder of those securities that were being pledged by it with the lenders. The acts of Ficus in dealing with the shares of its clients in a deceitful manner by which it has intentionally, being fully aware of the consequences, pledged the shares of its clients lying in its custody, to avail loan and thereby has acted in severe detriment to interest of its clients. Considering the material on record and absence of any evidence suggesting anything contrary to the allegations, I am of the firm view that Ficus has not only defrauded its clients but has also engaged in acts which have severe adversarial ramifications on the business of lending in the financial sector by genuine Lenders. Consequently, I am constrained to hold that the above act of Ficus is not in consonance with the securities laws.

Furthermore, on a comparison of the trade data with the transaction statements, it was observed that Ficus has sold securities in its proprietary code without possessing those securities in its proprietary account. Since, Ficus was able to meet its own proprietary pay-in obligations to the Exchanges despite its financial constraints, it can be easily inferred that client securities were utilised for meeting the pay-in obligations arising out of its proprietary trading. 23 such sample instances amounting to INR 1.50 crore were observed in NSE. The details of the same are as follows:

Table No. 11

Date	Symbol	Settlement Number	Net sell	Rate (INR)	Amount (INR)	Qty as per ROS in PRO after considering opening balance before selling
12-Jul-16	ARVIND	2016130	400	352.95	1,41,180	0
24-Jun-16	BALAJITELE	2016119	1,000	84.15	84,150	0
04-Jul-16	BALAJITELE	2016125	1,000	84.15	84,150	-1000
08-Nov-16	BALKRISHNA	2016210	444	75.15	33,366.60	0
03-Jun-16	EDELWEISS	2016104	20,000	97.6	19,52,000	298
14-Jun-16	EDELWEISS	2016111	1,000	97.6	97,600	-19702
25-Oct-16	KAYA	2016200	2,000	707.5	14,15,000	433
28-Oct-16	KAYA	2016203	100	707.5	70,750	-1567
03-Nov-16	KAYA	2016207	200	707.5	1,41,500	-1667
18-Nov-16	KAYA	2016217	100	707.5	70,750	-1867
26-Aug-16	IBULHSGFIN	2016162	989	650.25	6,43,097.25	3011
27-May-16	POWERGRID	2016099	435	183.5	79,822.50	0
14-Sep-16	TATASTEEL	2016173	2,000	391.25	7,82,500	645
14-Sep-16	TATASTEEL	2016173	955	391.25	3,73,643.75	1045
03-Nov-16	TATASTEEL	2016207	170	391.25	66,512.50	130
27-May-16	IBVENTURES	2016099	4,000	20.5	82,000	0
19-Oct-16	LUPIN	2016196	898	1486.95	13,35,281.10	-5162
30-Mar-16	LUPIN	2016060	191	1486.95	2,84,007.45	9
28-Apr-16	LUPIN	2016078	2,376	1486.95	35,32,993.20	24
10-Jun-16	LUPIN	2016109	86	1486.95	1,27,877.70	-2298
28-Jun-16	LUPIN	2016121	833	1486.95	12,38,629.35	-2384
05-Jul-16	LUPIN	2016126	100	1486.95	1,48,695	-3217
26-Jul-16	LUPIN	2016140	1,500	1486.95	22,30,425	-3517
					1,50,15,931.40	

Mr. Vinod Bansal has submitted that if the DIS executed by Ficus's clients are checked it will reflect that the purpose of shares transfers by the clients was for extending loan / margin support to Ficus. Moreover, there is no allegation by the clients that the shares were taken illegally from their demat account. With respect to the aforesaid submissions of Mr. Vinod Bansal, it is noted that he has not submitted any DIS to substantiate his submission. Even if the bald assertion of Mr. Vinod Bansal is accepted for a moment, it is noted that the purpose mentioned therein (DIS) does not unequivocally brings out that shares were in fact allowed by the clients to be transferred to Ficus's account for the purpose of loan. The particulars mentioned on the DIS as loan / margin which could very well mean that the shares were transferred for the purpose of margin requirement of the clients themselves (and not for proprietary account of Ficus) to enable the clients to trade in the market. Thus, in the absence of any correspondence between the clients and the stock broker to explain the specific reason for transfer of shares from the clients demat accounts, the particular mentioned on the DIS cannot be taken at face value to mean that the words 'loan / margin' mentioned in such DIS only meant that the clients had given those DIS willingly to transfer their shares in favour of the stock broker so as to financially help the stock broker. Further, the submission of Mr. Vinod Bansal that there is no allegation from the clients that shares were transferred illegally from their demat accounts is factually incorrect. It is noted from records that one Mr. Prakash Shah has made a complaint against Ficus that the stock broker has transferred the securities from his account to its own personal demat account to the tune of INR 5 crore. Further, there were several complaints pending in SCORES as on November 13, 2018 which pertained to non-receipt of securities by the clients. Moreover, in the preceding paragraphs it has already been factually demonstrated that Ficus has misappropriated / misused its clients' securities by pledging them and by using them to meet its own pay-in obligations and there is nothing on record to show that the clients had consented for the aforesaid actions of Ficus. Thus, such actions of the Ficus strongly indicate that the securities of the clients were used by Ficus illegally to meet its own pay-in obligations and other financial needs.

In view of the aforesaid discussion, I am constrained to hold that on multiple occasions, Ficus has used its clients' securities for settlement of its own pay-in obligations and has also transferred clients' securities to other entities or has pledged those securities to avail funds for itself. The numerous instances as highlighted in preceding paragraphs have taken place across months, show that using client's securities was not a onetime matter or an inadvertent error on the part of the stock broker, rather, Ficus was habitually doing it, in blatant disregard to the securities laws. Such actions of Ficus, which led to non-availability of clients' securities and misappropriation of clients' securities not only audaciously defies the transparency that SEBI is trying to achieve through its circular pertaining to handling of client's securities by the stock broker's, but also has caused a severe blow to the confidence of the investors in the securities market and at the same time, has also compromised the integrity of the market. Such actions of Ficus have to be viewed seriously. As noted above, no explanation has been furnished by the *Notices* rebutting or disputing the above findings from the inspection of SEBI and the consequent allegations made in the SCN, thereby leaving no doubt in my mind that the aforesaid acts on the part of the Ficus of using clients' securities either for its own benefit or for the beneficial interest of other entities who did not own those securities, have violated the provisions of SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, clause 15 of Rights and Obligations document for Stock Broker, Sub-Brokers and Clients as prescribed in Annexure 4 of the SEBI circular no. CIR/MIRSD/ 16/2011 dated August 22, 2011, clauses A (1), (4) and (5) of the Code of Conduct prescribed for the Stock brokers under Regulation 9 of Stock Brokers Regulations and regulations 3(a), (b), (c) and (d) of PFUTP Regulations.

19.4. Non-redressal of investor grievance

Adverting to the above issue, it would be appropriate to reproduce the applicable provisions:

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

Conditions of registration.

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

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

It is noted that as on November 13, 2018, the total number of complaints received against Ficus were 81, out of which 38 are still pending. Further, the updated status (as on November 13, 2018) about the claims received by NSE against Ficus, is as under:

Table No. 12

Exchange	No. of claims	Value of Claim in INR
NSE	327	95,43,61,510

From the above, I note that Ficus has not addressed all of its investors complaints. Mr. Vinod Bansal while not replying specifically on the allegation of pending investors complaints has raised the issue of exaggerated claims by the clients of Ficus in their respective complaints. In this regard, I note that by making the above submission, Mr. Vinod Bansal has admitted that there are investor complaints which are yet to be resolved by Ficus even if he disagrees with the claim amount as mentioned in the said investors' complaint. It will be appropriate here to note that the issue before me is whether or not all the investor complaints pending against Ficus as per SCORES have been redressed by it in a timely manner or not and the answer to the said question has already been given in the negative as stated above. With respect to the dispute raised by Mr. Vinod Bansal regarding exaggerated claims, the same is a matter of details which can't be gone into and adjudicated in the instant proceedings. This grievance of him can be raised by him at the appropriate forum, provided and only after he makes genuine efforts to settle the claims client wise with right earnest which as the records indicate has not been attempted by him at all.

In the light of the aforesaid discussions, I note that speedy and effective redressal of grievances is an important hallmark for the healthy and steady development of the securities market. If investors do not get the replies or their dues from the stock broker on time or do not get their shares demated expeditiously, it leads to

frustration and they may be discouraged to invest in the securities market so as to avoid falling prey to such unprofessional and illegal practices being adopted by deviant stock brokers like Ficus. This may, therefore, adversely affect the growth of capital market. Hence the importance of complaint redressal, cannot be undermined and its sanctity has to be maintained by all the intermediaries' / market participants. In the instant matter, as per available records, the default to redress investors' grievances in question had continued unabated for a considerable period of time, well beyond the time period of one month prescribed under the applicable regulations and circular. This is a blatant violation of law and I find that Ficus by taking no effective steps towards redressal of grievances of its clients has violated regulation 9 (e) of SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992.

19.5. Failure to furnish information to SEBI inspection team

The applicable regulation on this issue is as follows:

SEBI (Stock Brokers and Sub- Brokers) Regulations

Obligations of stock-broker on inspection by the Board.

21. (1) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require.

(2) 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 or any other person and also provide copies of documents or other materials which, in the opinion of the inspecting authority are relevant.

(3) The inspecting authority, in the course of inspection, shall be entitled to examine or record statements of any member, director, partner, proprietor and employee of the stock-broker.

(4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock broker to give to the inspecting authority all assistance in connection with the inspection, which the stock broker may reasonably be expected to give.

It is noted from the materials made available on record that vide a Notice under Section 11(2)(i) of SEBI Act dated August 30, 2017, certain information was sought from Ficus. Ficus vide its letter dated September 15, 2017 replied to the aforesaid Notice and had furnished all the information except for the information related to loans and advances given by Ficus as on August 31, 2017. The same has also been submitted by Mr. Vinod Bansal. There is no material on record to highlight the inadequacy / veracity, if any of the information submitted by Ficus. Subsequently, Ficus was called for a meeting on October 4, 2017 which the representatives of Ficus failed to attend. The material on record don't show that a follow up questionnaire was sent to Ficus when its representatives failed to attend the meeting. The allegation that has been levelled in the SCN is the failure of Ficus to submit the information sought from it, which however, as the records reflect has been largely complied by Ficus. Thus, in the given facts and circumstances of the matter, I find that the allegation of failure to furnish information to SEBI, does not hold good against Ficus.

19.6. Non-disclosure of two DP accounts to the Exchange

On verification of beneficiary accounts of Ficus, it was observed that the stock broker was maintaining two more DP accounts which have not been declared by it to the Exchange. Details of such demat accounts are as under: -

Table No. 13

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

Mr. Vinod Bansal while not denying the existence of the aforesaid two demat accounts has submitted that Ficus had disclosed the said two demat accounts to the Exchange. The said submission of the Mr. Vinod Bansal is not supported by any documentary evidence which would show as to how and when the information pertaining to the said two demat accounts was informed / furnished by Ficus to the Exchange. Therefore, I am not convinced by the above submission of Mr. Vinod

Bansal, consequently, it is held that Ficus has violated clause 2 (2.2) of the SEBI Circular SEBI/HO /MIRSD/ MIRSD2/CIR /P/2016/95 dated September 26, 2016 which puts an obligation on the stock broker to inform the Stock Exchanges of all existing and new demat account(s) maintained by a stock broker.

20. The findings of the inspection as narrated in the SCN with respect to Ficus Commodities are as follows:

20.1. It was observed that Ficus and Ficus Commodities are connected with each other. The basis of their *inter-se* connection rests on the following acts:

20.1.1. Upon perusal of website of Ficus i.e. <http://ficuswealth.com> the name of Ficus Commodities is appearing on the said homepage.

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

20.1.3. Both Ficus and Ficus Commodities shared the same office (810, Indra Prakash Building, Connaught Place, New Delhi-110001).

20.1.4. The names of past Directors i.e. Ms. Tripta Kapoor and Ms. Poona Rajbhar of Ficus Commodities were appearing in the client master (extracted from the back office) of Ficus and they were also found to be the employees of Ficus.

20.1.5. Ms. Neena Bansal who was a Director in Ficus was a subscriber to the Memorandum of Association of Ficus Commodities.

20.1.6. There were huge fund transfers between Ficus and Ficus Commodities. During the period April 1, 2015 to January 30, 2018, Ficus has transferred INR 87.28 crore to and has received INR 80.23 crore from Ficus Commodities.

20.2. On a scrutiny of bank statement of Ficus, it was noted that during the period of April 2015 till December 31, 2016, from its HDFC NSE Client a/c no. 30340030695 Ficus has transferred INR 48.28 crore to Ficus Commodities's HDFC a/c no. 00030340037043 and has received INR 48.94 crore during the said period from Ficus Commodities. This transaction was done at the same time when Ficus was not in a position to repay / settle funds due to its credit clients. It has already been held in the preceding paragraphs that Ficus has misutilised its clients' funds for purposes other than what it was meant for. Further, it has also been noted that

clients' securities were not available with Ficus as it had pledged its clients' securities to avail loan from financial institutions and consequently was not settling the accounts of its clients on a monthly / quarterly basis. All the aforesaid factors aptly demonstrate that the financial health of Ficus was unsound. Given the aforesaid circumstances, the transfer of funds regularly, almost every other day for 21 months by Ficus from its account to one of Ficus's connected entity i.e., to Ficus Commodities, on a preponderance of probability basis, can be said to be nothing but diversion of those funds which were meant to be refunded to its clients to settle their credit balances. The above findings find strength from the fact that Ficus was having a poor financial health because of which it was found to be using securities and funds belonging to its clients, for its own proprietary use. Though, Mr. Vinod Bansal has advanced a submission that Ficus was a client of Ficus Commodities, however, no justification with supportive evidence has been furnished to lay credence to the above claim or to otherwise justify the frequent transfer of funds made by Ficus to its own entities. The above acts of transfer of funds on a frequent basis by a defaulter stock broker who defaulted in settling the accounts of its clients was apparently due to the fact that Ficus was found utilizing clients' money as well as securities to meet its own obligation and for other purposes not permissible under the law. Therefore, given the fact that Ficus and Ficus Commodities have common Promoter, common Director and ex-employees of Ficus were Directors of Ficus Commodities apart from sharing the same office and website, the aforesaid transfer of funds by Ficus to Ficus Commodities at a time when Ficus needed the funds the most to repay to its clients, cannot be said to be a fortuitous act but was deliberately done pursuant to an illicit design, wherein both the *Noticees* were aware that Ficus was prohibited under the law to transfer funds belonging to its clients to its connected entity, Ficus Commodities. Thus, Ficus Commodities has visibly aided and abetted Ficus in diverting its clients' funds for being misutilised for private gain of Ficus in a fraudulent manner. To put it differently, but for Ficus Commodities, Ficus could not have diverted funds belonging to its clients.

Mr. Vinod Bansal has submitted that Ficus and Ficus Commodities are different companies and for the purpose of cost cutting, both the *Noticees* were operating from a common office. As already noted in preceding paragraphs, both the *Noticees*

at some point in time or the other had common Promoter and Director too, with ex-employees of Ficus being Directors of Ficus Commodities and both the entities even shared a common website. The record also shows that in the then active bank accounts of Ficus Commodities, Mr. Vinod Bansal, Ms. Neena Bansal and Mr. Mayur Bansal (nephew of Mr. Vinod Bansal) were the authorized signatories. Thus, not only the key personnel of both the *Noticees* were common but their functioning was also intricately linked with each other (through common website and authorised signatories, fund transfers etc.). Therefore, the submission of Mr. Vinod Bansal that Ficus and Ficus Commodities are different companies cannot brush aside the truth that both the so called different corporate entities were in fact intricately linked to each other and were practically run by same set of common key persons, hence, were in fact acting in concert as far as the aforesaid alleged transactions are concerned.

Mr. Vinod Bansal has further contended that the fund transfers between Ficus and Ficus Commodities were done in the normal course as both were clients of each other. In this regard, I have noted above that Ficus Commodities as a client of Ficus has not done any trading in the period from April 2015 till December 2016. Nevertheless, during this period itself, Ficus had transferred INR 48.28 crore to Ficus Commodities and had received INR 48.94 crore from Ficus Commodities. Thus, in absence of any trading relationship with Ficus Commodities, the contention of fund transfers being routine business transaction holds no ground.

In view of the aforesaid discussion, I have to hold that Ficus Commodities, by aiding Ficus in diverting clients' funds of Ficus's, has violated clauses A (1) and A (5) of code of conduct of Stock Brokers Regulations read with SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.

21. To sum it up, I observe that the information and data gathered at the time of inspection unequivocally bring to light, the various flagrant regulatory lapses noticed from the way both Ficus and Ficus Commodities were operating, specially the way Ficus was mis-managing its clients' funds and securities. Further, the violations committed by Ficus and Ficus Commodities are undoubtedly grave in nature which have been carried out for a considerable period of time unabatedly despite the fact that the *Noticees* very well

knew that what they were doing are not at all permissible under the extant SEBI regulations and circulars pertaining to dealing in clients' funds and securities. Now, the next issue that arises for determination is whether *Notices No. 3 to 5* who were part of the Board of Ficus and *Notices No. 6 to 8* who were part of the Board of Ficus Commodities, were responsible for the violations of applicable provisions of securities law, as alleged in the SCNs and as held to be established in the foregoing paragraphs.

22. It is noted from records that the following persons were the Directors of Ficus and Ficus Commodities at relevant points of time:

Table No. 14

Sl. No	Noticee Name	Tenure of the Director
A	Ficus Securities Private Limited	
1	Present Directors	
a.	Mr. Vinod Kumar Bansal	14/04/2003-till date
b.	Mr. Surender Singh	02/11/2017- 01/03/2019
2	Past Directors	
a.	Neena Bansal	16/04/1992 to 02/11/2017
B	Ficus Commodities Private Limited	
1	Present Directors	
a.	Mr. Prashant Kumar Nayak	30/12/2017-20/10/2018
b.	Mr. Surender Singh	02/11/2017- 05/04/2019
2	Past Directors	
a.	Ms. Poonam Rajbhar	30/09/2009 to 03/11/2017
b.	Ms. Tripta Kapoor	06/10/2006 to 03/11/2017
c.	Ms. Shabnam John	12/06/2006 to 30/12/2017

23. I note from SCN that *Notices No. 3 to 5* have been attributed to be liable for the deeds of Ficus and *Notices No. 6 to 8* for the deeds of Ficus Commodities. It has to be acknowledged that all the acts which are executed in the name of incorporated entity, are done by the natural persons who by their own minds and wisdom, are controlling the affairs and management of such artificial juristic person (company) in the capacity of its Directors. The company, being an artificial entity, cannot function on its own volition and will move only in such direction, as may be desired and dictated by the Directors who are controlling the overall functioning of the company. I note that the position of a 'Director' in a company comes along with various onerous responsibilities and compliances under law that are associated with such position, which have to be adhered to by such Director and in case of default, he / she has to face the consequences thereof. The Directors of a company are persons appointed to direct and supervise the

management of the affairs of the company. They are expected to diligently perform their duties with honesty, fairness, skill and care in administering the affairs of the company. Such a duty requires the Directors to devote adequate time and attention to the affairs of the company so as to be able to take decisions that do not expose the company to unnecessary risks / actions by enforcement agencies. This implies a high degree of accountability and knowledge of the overall functioning of the company. Therefore, the Director cannot wriggle out from his / her liability arising out of any wrongdoing by the company.

24. With respect to *Notices No. 3*, I note that apart from being the Director of Ficus, he was also a co-Promoter of Ficus. Further, during the personal hearing, he has admitted that it was he, who was primarily and principally managing and was responsible for running the affairs of Ficus and Ficus Commodities. Thus, based on his own admission and by virtue of holding a key managerial position in Ficus and Ficus Commodities, it has to be held that *Noticee No. 3* is responsible and liable for the acts of Ficus and Ficus Commodities.
25. With respect to *Noticee No. 4*, I note that he became the Director of Ficus and Ficus Commodities on November 2, 2017. From the records it is noted that the last transaction of Ficus as a stock broker on NSE's platform was made on December 4, 2017 and the last transaction of Ficus Commodities as a member on MCX's platform was on December 27, 2017. Thus, when Ficus and Ficus Commodities were in operation, *Noticee No. 4*, was associated with them for a very brief period. As per him, he was made the Director in Ficus and Ficus Commodities only because other Directors had resigned. The same is also borne out of the tenures of the Directors who had resigned from Ficus and Ficus Commodities prior to he became a Director. Further, unlike *Notices No. 3* and 5, he is neither a promoter of Ficus / Ficus Commodities nor a shareholder in any of the companies. Moreover, apart from the fact that *Noticee No. 3* has admitted that he was running the day to day affairs of Ficus and Ficus Commodities, there is no material on record to suggest that *Noticee No. 4* was actively associated with the day to day functioning of Ficus and Ficus Commodities viz., signatures seen on the official documents of the companies, details of authorised signatories of the bank accounts etc., during the relevant period to indicate that *Noticee No. 4* was involved in any omissions and commissions in any of the alleged acts recorded in the SCN. Therefore, in the given

facts and circumstances of the matter, I am inclined to give *Noticee No. 4*, a benefit of doubt that during his tenure as a Director of Ficus and Ficus Commodities, he was not involved in the day to day affairs of the companies.

26. *Noticee No. 5* has submitted at the time of hearing that it was *Noticee No. 3* who was running the affairs of Ficus and she was just a name sake Director. In this regard, I note that *Noticee No. 5* has been associated with Ficus in the capacity of its Director for a considerable period of time which at the very least, would have made her familiar with the overall functioning of Ficus as she was part of the management of Ficus. Moreover, it is noted that she was a co- Promoter of Votary Investments Pvt. Ltd. which in turn holds 100% shares of Ficus. Furthermore, *Noticee No. 5* was a designated Director of Ficus as per the records of Stock Exchanges. Her digital signature / physical signature was there on the filings of Ficus made on MCA's portal and to the Stock Exchanges. Further, from the analysis of bank accounts of Ficus, it is observed that during the period April 1, 2015 to January 31, 2018, INR 11,50,666.52 appeared as debit balances in the accounts of Ficus in the name of *Noticee No. 5*. Thus, the official records of Ficus show *Noticee No. 5* as a key managerial personnel who was associated with Ficus for a long time. although it is a fact that *Noticee No. 3* has admitted that he was responsible for the actions of Ficus, yet that does not absolve *Noticee No. 5* from her statutory duty to act diligently with honesty, fairness, skill and care while administering the affairs of the company as one of the Directors of Ficus. Therefore, even if it is accepted that it was *Noticee No. 3* who was running the operations of Ficus and she being the wife of *Noticee No. 3* was made Promoter and Director in *Noticee No. 1*, *Noticee No. 5* cannot be given a complete escape route by absolving her and pinning all the liabilities on *Noticee No. 3*, as that would show that she had knowingly abdicated all her responsibility and duty as a Director of Ficus in favour of *Noticee No. 3* which is again not permissible under law. Therefore, in the given facts and circumstances of the matter appropriate directions need to be issued against *Noticee No. 5* so as to curb such kind of activities where a Director knowingly abdicates all his / her statutory responsibilities that he / she should shoulder in order to provide a fair and efficient management to the company.

27. *Notices No. 6 to 8* have contended that they were not involved in any decision taken by the management pertaining to the operations of Ficus Commodities and they were merely employees of Ficus / Ficus Commodities who became Directors of Ficus

Commodities under instructions of *Noticee No. 3*. I note from the records that *Notices No. 5 to 8* were associated with Ficus Commodities as its Directors for a substantial period of time. Additionally, *Notices No. 7 and 8* were the only shareholders of Ficus Commodities. However, during the hearing, it has been vehemently submitted that they were employed with the *Noticee Company* and it was at the insistence of *Noticee No. 3* that they became the Directors. It was also submitted by these two *Notices* that for subscribing to the shares of the *Company* the consideration was not paid by them. I find that the said submissions have not been disputed by *Noticee No. 3* and instead he has made a fair and candid admission of this claim made by the above noted two *Notices*.

28. Having carefully considered the aforesaid submissions and the factual positions surrounding the role and functions performed by these *Notices* in the affairs of the *Noticee Companies*, I find that there is merit in the contentions and the arguments advanced by these two *Notices*, more so, when it is now clear that it is *Noticee No. 3* who was principally running the business of the two *Noticee Companies* and has admittedly taken all those business and operational decisions that have resulted in serious contraventions of law and regulations, including contraventions of PFUTP Regulations,. Under the circumstances, there is enough material on record to suggest not only various acts of omission and commission but also passive collusion or connivance by the rest of *Noticee* Directors of Ficus and Ficus Commodities in the commissions of those offences and violations (even though admittedly committed by *Noticee No. 3*), it needs to be noted that being designated as Director on the Board of the Company, the Directors were expected to be the guiding body of the Company as the Board of Director is supposed to act as the repository of knowledge and wisdom to supervise the functioning of the management. Therefore, it will be not fair to entirely exonerate these *Noticee* Directors only on the basis of the fact that the *Noticee No. 3* was primarily running the affairs of the two *Companies*. Notwithstanding the fact that these *Noticee* Directors were engaged in different other activities during the relevant period which did not amount to running the affairs of Ficus and Ficus Commodities, by being part of the Board as Directors cast onerous duties on these *Notices* to remain vigilant and adopt due diligence at all times to prevent the commissions of such contraventions which they are now very conveniently attributing to *Noticee No. 3*. Therefore, these *Notices* cannot be allowed to escape from their statutory responsibilities as directors

of the *Company* without explaining with sufficient evidence as what steps they had taken from their side to protect the interest of the clients or to ensure due compliance by the *Company* with various provisions of regulations and instructions issued by SEBI from time to time. Therefore, completely exonerating these *Notices* from the charges levelled against them in the SCN will be against the basic cannons of law which expect these *Noticee* Directors to remain vigilant and take all preventive measures for good governance of the *Companies* which were also registered Intermediaries in securities market. Therefore, I hold that the rest of the *Noticee* Directors who are claiming innocence have also erred in compromising the statutory and sacrosanct duties vested in them as Directors of Ficus and Ficus Commodities during the relevant period of time.

29. Admittedly, there is nothing on record to show that they have paid for the subscription money from their own funds, but, I can't close my eyes to the fact that they were aware about that their names reflecting in the *Company's* records as its shareholder for which they must have signed in the requisite share application forms before shares were allotted in their names. Considering the undisputed fact that *Noticee No. 3* was running the day to day affairs of Ficus Commodities single handedly and the fact that his name appears as the authorised signatory in the bank accounts of Ficus Commodities, it leads to an inference that *Notices No. 6 to 8* were not actively involved in running the day to day affairs of Ficus Commodities but as noted in preceding paragraphs with respect to *Noticee No. 5*, such activities of being name lending Directors has to be curbed of companies that too on the Boards of SEBI registered intermediaries. Therefore, *Notices No. 6 to 8* have to be held responsible for their omission to act diligently with honesty, fairness, skill and care when they were holding the designation of Director of Ficus Commodities. Nevertheless, without prejudice to the observations made as aforesaid, considering the fact that these *Noticee* Directors have already undergone debarment for more than 4 years, in my considered view, the said period of debarment constitutes a reasonable remedial measure proportionate to the extent of negligence and omissions by these *Notices* in discharging their duties as Directors.

30. After finding Ficus, Ficus Commodities and *Notices No. 3, 5 to 8* guilty of contravening various provisions of SEBI Act, regulations and circulars, the next step would be to evaluate what directions, if any, should be issued against them which would be commensurate with the violations committed by them. I note that a stock broker being

a vital securities market intermediary, is strictly prohibited from indulging in any act detrimental to the investors' interest or which leads to interference with the fair and smooth functioning of the market. A stock broker is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and shall have to ensure that its interests is not in conflict with its clients. In the given facts situation, Ficus has not only failed to fulfil its avowed duty towards its clients, be it redressing their grievances or settling the funds due to its clients, but has gone to the extent of misutilising its clients' funds and securities. The gravity of lapses and contraventions of the statutory provisions committed by Ficus and Ficus Commodities, as alluded at length in preceding paragraphs, can also be gauged from the fact that Ficus has been expelled from both the Exchanges since March 2018 by declaring it as a defaulter while Ficus Commodities has been declared defaulter by NCDEX on May 24, 2018. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and protect the integrity of the securities market. Since the conduct of Ficus, Ficus Commodities and *Notices No. 3, 5 to 8*, is not in the interest of investors in the securities market, appropriate directions need to be issued against them, else it may lead to loss of investors' trust in the securities market. I also note from the records that *Notices No. 5 to 8* have already undergone more than 4 years of period of restrain and debarment from the securities market. Thus, a balance has to be struck while arriving at any direction that has to be passed against them.

Directions

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

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

31.2. *Notices No. 5 to 8* have already undergone restraint and debarment from securities market for than 4 years. Hence, in the given facts and circumstances of the matter the same is appropriate and no further directions needs to be passed

against them. Therefore, the directions issued under paragraph 31 of the *Interim Order* so far as it relates to *Notices No. 5 to 8*, shall stand vacated. Further, *Notices No. 5 to 8* are cautioned and directed to be careful before associating themselves as a Director in any intermediary of the securities market.

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

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

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

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

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

- 31.8. Since Ficus was majorly active on NSE, NSE Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated demat account where all the securities lying in the demat accounts of Ficus shall be transferred.
- 31.9. The NSE Defaulters Committee shall open and operate a dedicated interest bearing bank account with a Nationalized Bank where all the funds lying in various bank accounts held in the name of Ficus and Mr. Vinod Bansal shall be transferred.
- 31.10. Similarly, NCDEX's Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated demat account where all the securities lying in the demat accounts of Ficus Commodities shall be transferred.
- 31.11. The NCDEX's Defaulters Committee shall open and operate a dedicated interest bearing bank account with a Nationalized Bank where all the funds lying in various bank accounts held in the name of Ficus Commodities and Mr. Vinod Bansal shall be transferred.
- 31.12. The modalities of selling the assets, depositing the proceeds thereof in the Escrow Account(s) opened in accordance with the directions contained in paragraph 31.8 to 31.11 above and disbursing the amounts to the clients / investors after verifying the claims shall be worked out by NSE and NCDEX by their mutual co-ordination. NSE and NCDEX shall have a lien on the remaining amount, if any, lying in the Escrow Account(s), after satisfying the claims of the investors/clients. The lien shall be up to the extent of total money disbursed by the Exchanges out of their IPF accounts to the clients/investors of Ficus and Ficus Commodities.
- 31.13. NSE and NCDEX shall deal with the claims of their clients / investors in accordance with their respective bye-laws and procedures, after adjusting the disbursements made through the Defaulters' Committee mechanism.
- 31.14. NSE for *Notices No. 1 and 3* and NCDEX for *Notices No. 2 and 3* shall proceed with the recovery of funds and securities from the assets of respective *Notices* to cover any shortfall in funds and securities in the Escrow Accounts(s) and Demat Account, opened pursuant to the directions above.
32. The Order shall come into force with the immediate effect.

33. A copy of this order shall be forwarded to the *Notices*, all the recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents for ensuring compliance with the above directions.

-Sd/-

Date: August 25, 2022

Place: Mumbai

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