

WTM/ AB / SEBI/ NRO/ 07 /2018-19

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: ANANTA BARUA, WHOLE TIME MEMBER

ORDER

Under Sections 11(4), 11B and 11D of the Securities and Exchange Board of India Act, 1992 read with Regulation 35 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Noticee No.	Name of the Noticees	PAN
1	F6 Finserve Private Limited	AABCF0080D
2	F6 Commodities Private Limited	AACCF1155G
3	Mr. Pankaj Goel	ACTPG7828D
4	Mr. Parveen Sharma	ACDPS3164Q
5	Ms. Meenu Goel	AFSPG7531F
6	Mr. Sanjay Anand	AADPA9398N
7	Ms. Kavita Anand	ABHPA9289M
8	Ms. Asha Sharma	AWHPS6616H
9	Mr. Deepak Goel	ADEPG1122G
10	Ms. Ruchika Goel	AIAPG7306B

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

Background:

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) vide an ad interim ex-parte order dated May 29, 2018 (hereinafter referred to as “interim order”) had restrained F6 Finserve Private Limited (hereinafter referred to as “F6 Finserve/ company/ broker”), F6 Commodities Private Limited (hereinafter referred to as “F6 Commodities”), Mr. Pankaj Goel, Mr. Parveen Sharma, Ms. Meenu Goel, Mr. Sanjay Anand, Ms. Kavita Anand, Ms. Asha Sharma, Mr. Deepak Goel and Ms. Ruchika Goel 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 and 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.

2. NSE and SEBI had carried out inspection of F6 Finserve and made the following observations based on analysis of samples:
 - a. The broker had not maintained segregation between own and clients' securities. The broker met its proprietary ("PRO") pay-in obligations from the client's securities.
 - b. NSE in its inspection had found that the broker had utilized securities belonging to other clients to meet pay-in obligations of client K. K. Advisor Pvt. Ltd on 100 instances. During the inspection conducted by SEBI, it was informed that three of its employees acting in collusion with the client had sold shares of its clients and that it had filed an FIR against the said employees. SEBI observed that the broker had failed to exercise due diligence which led to mis-utilization of client securities.
 - c. There was a difference between quantity of securities available in Register of Securities (RoS) and holding statement of beneficiary accounts.
 - d. The broker had availed overdraft facilities by pledging client securities.
 - e. The broker mis-utilized client funds by transferring them to an overdraft account of the broker to reduce the burden of interest on the said overdraft exposure. Some client funds having credit balance were used to allow exposure to clients having debit balance.
 - f. The broker had failed to carry out actual settlement of client fund and securities.
 - g. The broker had incorrectly reported margin collected from clients trading in Future & Option segment.
 - h. The broker had used client beneficiary demat accounts for purposes other than specified such as on one instance the broker received 31 Lac shares of MEP Infrastructure Developers Ltd. in its client beneficiary account from one Mr. Mhaishkar Dattaray Pandurang who is not a registered client of the broker.
 - i. The broker failed to provide complete information/ data to the inspection team sought during inspection.

3. Based on the inspections carried out by SEBI and NSE at the premises of F6 Finserve, the interim order noted that F6 Finserve prima facie appears to have violated the following:
- a. SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009 on account of not settling the accounts of inactive clients.
 - b. SEBI circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 on account of the following:
 - *Funds from clients received in client A/c were transferred to the overdraft Bank account of the broker to reduce the burden of interest on the said overdraft exposure. Further, it is also observed that on certain instances funds received from clients are paid to other clients/ transferred to Business A/c of F6 Finserve or were paid to Mr. Pankaj Goel, Director of F6 Finserve.*
 - *Use of securities of certain clients for meeting the obligation of another client (KK Advisors Private Limited).*
 - *Securities of clients have been mis-utilized for settlement of Proprietary (PRO)/Own obligation.*
 - *Received securities from third party (not a client of F6 Finserve) in its client a/c indicating that the client beneficiary a/c has been used for purposes other than the specified purpose.*
 - *Not maintained inter-se client segregation of securities.*
 - c. Non-compliance with SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and SEBI Circular MRD/DoP/SE/Cir- 11/2008 dated April 17, 2008 on account of mis-utilizing funds of credit balance clients to fund debit balance clients/for own purposes.
 - d. SEBI Circulars no. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 and SMD/SED/CIR/93/23321 dated November 18, 1993 for raising funds by pledging securities of clients.

- e. Not fully complied with SEBI Circular CIR/DNPD/7/2011 dated August 10, 2011 read with SEBI Master Circular No. CIR/DNPD/1/2012 dated January 02, 2012 regarding short collection/non collection of client margins in derivatives segment by making wrong reporting about margin collection. Further, F6 Finserve has not fully complied with the provisions of NSE Circular No. NSE/INSP/19583 dated December 14, 2011.
 - f. Regulation 21 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as “Stock Broker Regulations”) for failing to cooperate with the inspecting authority and failing to provide complete information to the inspecting authority.
 - g. Failure to comply with Clauses A (2) and A (5) of the Code of Conduct read with Regulation 9 (f) of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
4. The interim order directed the noticees were to file their objections / replies, if any, within twenty one (21) days from the date of the interim order and, if they so desire, to avail themselves of an opportunity of personal hearing before SEBI on a specific request, received from them in writing.

Replies of Noticees and Personal Hearing

5. Vide letters dated May 30, 2018 the interim order was sent to all the Noticees. The letter along with the order was served on Noticee nos. 4, 6, 7 and 8 through Speed Post. The letters sent to Noticee nos. 1, 2, 3, 5, 9 and 10, namely, F6 Finserve, F6 Commodities, Mr. Pankaj Goel, Ms. Meenu Goel, Mr. Deepak Goel and Ms. Ruchika Goel were returned undelivered. However, vide letter dated June 18, 2018, SEBI received a common reply from Noticee nos. 9 and 10 namely, Mr. Deepak Goel and Ms. Ruchika Goel respectively wherein the said notices sought inspection of documents. Inspection of documents was provided to the Noticees nos. 9 and 10 by SEBI, NRO at New Delhi on August 14, 2018. Copies of interim order, FIR provided by F6 Finserve, email correspondence with F6 Finserve, SEBI letter dated January 29, 2018 and February 02, 2018 and F6 Finserve’s reply to the pre-inspection questionnaire were provided to the said notices nos. 9 and 10 during the inspection.

6. As the interim order sent to Noticee nos. 1, 2, 3 and 5 returned undelivered, SEBI made an attempt to affix the order at the last known address of the said Noticees. The order was served by the affixture at the last known address of Noticee nos. 1 and 2. However, the order could not be affixed at the address of Noticee no. 3 and 5 as SEBI was not allowed to do so by the present occupant of the premises. Therefore, a public notice was issued in the local Newspaper, 'Dainik Jagran' (Hindi) and 'Times of India' (English) on August 07, 2018. Till date no reply has been received from Noticee nos. 1, 2, 3 and 5. Replies were received from Noticee nos. 4, 6, 7, 8, 9 and 10 through various letters which were discussed in the following paragraphs.

7. The replies of Noticee nos. 4, 6 to 10 are summarized as under:

A. Reply of Mr. Parveen Sharma, Noticee no. 4 submitted vide letter dated June 3, 2018

- i. He was a former non-executive Director of F6 Finserve.
- ii. He knew Mr. Pankaj Goel through his wife Mrs. Meenu Goel who was Mr. Parveen Sharma's wife's friend. Mr. Pankaj Goel had approached him for a loan in November, 2013 for some business venture and promised to return the funds. The Noticee has stated that he had given a total loan of Rs. 45 Lakhs. Mr. Pankaj Goel in Jan, 2016 offered him to join his business when in lieu of repayment of his funds.
- iii. Mr. Parveen Sharma along with his wife Ms. Asha Sharma joined F6 Finserve as Additional Non-Designated Directors w.e.f. April 11, 2016 and had nothing to do with the working of the company. He was only taking care of the Computer Department and making of an online trading app.
- iv. He has never dealt with any client, signed any bank loan papers or cheques, nor received any payment in FY 2017-18 and has not signed on any of the company's balance sheet.
- v. That Kotak Mahindra Bank informed him that they have his personal guarantee along with other directors to repay loan which is approx. Rs. 21 crores, and he does not recall signing personal guarantee papers as the bank never given a copy of the signed papers.
- vi. The Noticees have also enclosed copies of the following:
 - a) Complaint dated May 25, 2018 to the SHO, Gurugram Police Station against Mr. Pankaj Goel,

- b) MCA21 records of directorship of Noticee nos. 4 and 6 to 10, and
- c) Terms of Sanction of Agreement by Kotak Mahindra Bank wherein the property of the Noticees is given as mortgage for working capital and the Noticees 4 to 10 have also given their personal guarantee.

B. Reply of Mr. Sanjay Anand and Ms. Kavita Anand, Noticee no. 6 and 7, submitted vide separate letters dated June 12, 2018

- i. Mr. Sanjay Anand and Ms. Kavita Anand have denied all the allegations made in the interim order cum show cause notice. The Noticees have resigned from the non- executive directorship of the company w.e.f. January 01, 2018 and the said fact was duly communicated/intimated to RoC.
- ii. The inferences made in the interim order are vague, misconceived and speculative based on assumptions and conjecture contrary to the factual position.
- iii. The interim order is violative of the principles of natural justice as did not allow the noticees to examine the documents based on which the interim order was passed and did not allow any opportunity to present the facts as known to them.
- iv. The interim order is excessive and improper exercise of powers conferred under Section 11 of the SEBI Act as there was no emergent scenario prevailing at the time of passing of the order warranting such harsh directions against the Noticees. Further, SEBI has failed to provide justification for a blanket ban on the Noticees' activities in the securities market.
- v. With regard to non-supply of documents, the Noticees have no information or knowledge of documents/ information requisitioned from the company.
- vi. Noticees had no role to play in the operation of the company and was not involved in any decision taken by the management.
- vii. Noticees were not in control of the day to day affairs of the company and were merely associated in the capacity of the Non-Executive Director.
- viii. Noticees have not held any shares in F6 Finserve and F6 commodities and has no role to play in respect of trades or business of these companies. They have no relation with the director, promoters, preferential allottees or any other shareholders of the company.
- ix. The Noticees did not derive any benefit from the any of the alleged transactions.

- x. There are no provisions under the SEBI Act which mandatorily requires the undersigned to disclose his personal information pertaining to assets he owns and therefore to this extent the impugned order exceeds jurisdiction.
- xi. The Noticees have also provided two Affidavits signed and notarized on April 12, 2018 and undertaking dated April 12, 2018 given by Noticee no. 3 i.e. Mr. Pankaj Goel stating that all responsibilities and liabilities *inter alia* incidental, consequential, supplemental and any other liabilities which are de- hors, whether past or present, are assumed by Mr. Pankaj Goel for all transactions and business carried on by the said company (keeping Mr. Sanjay Anand and Ms. Kavita Anand indemnified at all times) and that no other director is liable.
- xii. Mr. Sanjay Anand also submitted that he had given a loan of Rs. 73 lakhs to Mr. Pankaj Goel in 2012. When he demanded his money back, Mr. Pankaj Goel promised to repay the borrowed amount by way of transferring monthly salary to Ms. Kavita Anand, wife of Mr. Sanjay Anand if she became the director of the company, and that once the amount is repaid she can leave the company. Further, as Mr. Sanjay Anand was looking for business opportunities he was induced to become the director of the company by Mr. Pankaj Goel. The said offer was accepted by both Mr. Sanjay Anand and Ms. Kavita Anand. He was also pressurized to mortgage his house with the bank to bring new funds for an IPO which the company was planning to come out with. The Noticees mortgaged their house which is jointly owned by them to Kotak Mahindra Bank against a pre - existing banking facility arrangement which was further enhanced and availed by F6 Finserve and F6 Commodities. Further, the Noticees further extended a loan of Rs. 32 lakhs in 2015. Vide loan Agreement dated December 18, 2017, Mr. Pankaj Goel admitted to a loan liability of Rs.2.10 Crore.
- xiii. The Noticees themselves are victims of the fraud played by Mr. Pankaj Goel and therefore, SEBI is requested to withdraw/ revoke the directions against them.

C. Reply of Mr. Deepak Goel and Ms. Ruchika Goel, Noticee nos. 9 and 10 submitted vide letter dated June 18, 2018

- i. The Noticees have submitted that they were past directors of the company at the time of passing of the interim order.
- ii. Even during their tenure as directors they were not involved in the regular day to day activities of F6 Finserve.

- iii. They have never been shareholders of F6 Finserve, and hence had no controlling interest in the functioning of the company.
- iv. Mr. Pankaj Goel and Ms. Meenu Goel were designated directors registered with SEBI and Stock Exchanges for carrying out all statutory responsibilities of the company.
- v. As on the date, the Noticees themselves have receivable from F6 and therefore they are also victims of the wrongs committed by Mr. Pankaj Goel.
- vi. The interim order is in gross violation of the basic principles of *audi alteram partem*.
- vii. The role and involvement of the Noticees is not explained. The interim order is generic and vague since it does not elucidate in clear terms as to exact nature of violation committed by them. The Noticees have relied on the observations of the Hon'ble Securities Appellate Tribunal (hereinafter, "SAT") in *Vikas G. Bengani v. Adjudicating Officer* (Appeal no. 283 of 2009) wherein the Hon'ble SAT has observed that when fraud is being alleged the particulars thereof have to be indicated in the show cause notice.
- viii. The Noticees submitted that they had no role to play and that they been wrongly clubbed with other entities without examining the peculiar facts. In this regard, they have relied on the following orders to support their claim.
 - *Pepsico India Holdings Pvt. Ltd. vs. Food Inspector and Another* [(2011) 1 SCC 176],
 - *Ashoke Mal Bafna vs. M/s Upper India Steel Mfg. & Engg. Co. Ltd.* [2017 SCC Online SC 705],
 - *Pooja Ravinder Devidasani vs. State of Maharashtra and Another* [(2014) 16 SCC 1],
 - *K. K. Ahuja vs. V. K. Arora and Another* [(2009) 10 SCC 48]
- ix. The Noticees submitted that impugned transactions were carried out without their knowledge and consent, and therefore, they ought not to be made liable for any penal action since no fault is committed by them.
- x. The case of the Noticees falls under the proviso to section 27 of the SEBI Act.
- xi. The Noticees deny that they violated any circular issued by Stock Exchange and/ or SEBI, Regulation 21 of Stock Brokers Regulations and Clauses A (2) and A (5) of the Code of Conduct read with Regulation 9 (f) of Stock Brokers Regulations.
- xii. The proceedings against Noticee no. 9 and 10 may be dropped in light of the above submissions.

8. Hearing in the matter was scheduled on November 02, 2018 through video IP phone between SEBI's Northern Regional Office in New Delhi and SEBI, Head Office, Mumbai. The notice of hearing was communicated through letter dated October 08, 2018 which was served on Noticee nos. 4, 6 to 10. Noticee nos. 9 to 10 vide email dated October 26, 2018 sought an adjournment. Accordingly, hearing of Noticee nos. 9 and 10 was fixed on November 16, 2018. As regards Noticee no. 1, 2, 3 and 5 the said notice could not be delivered through Speed Post. Affixture was also not allowed at the premises of the Noticees. Therefore, hearing notice to noticee nos. 1, 2, 3 and 5 was published in Times of India, English newspaper and Dainik Jagran, Hindi newspaper on November 13, 2018. The hearing was scheduled on November 27, 2018. Noticee nos. 1, 2, 3, 5, 9 and 10 failed to appear for hearing on the assigned dates. I note that they have neither collected the interim order cum show cause notice dated May 29, 2018 nor attended the personal hearing.
9. Noticee nos.1, 2, 3 and 5 neither filed any reply nor availed the opportunity of hearing before me. Noticee nos. 9 & 10 have filed their reply but did not choose to attend personal hearing. Noticee nos. 4, 6, 7 and 8 appeared before me through video IP telephony between SEBI NRO and SEBI HO and reiterated the submissions made in their replies. Pursuant to the hearing, the noticees made additional submissions and furnished additional documents, details of which are as under:

In the additional submissions by the Noticee no. 4 i.e. Mr. Parveen Sharma, he *inter alia* stated that they have taken the following steps against F6 Finserve and Mr. Pankaj Goel

- (i) Filed an online FIR,
- (ii) Complaint to Ombudsman of RBI against Kotak Mahindra Bank,
- (iii) Complaint filed by one Mr. Suresh Gupta, client of F6 Finserve, under section 138 of the Negotiable Instruments Act has been withdrawn against all the Directors except Mr. Pankaj Goel and Ms. Meenu Goel when he met the said noticees and realized that they have also been duped by Mr. Pankaj Goel.

In the additional submissions by Noticee nos. 6 & 7 Mr. Sanjay Anand and Ms. Kavita Anand it was *inter alia* stated that they have taken the following steps against F6 Finserve and Mr. Pankaj Goel and furnished the following documents:

- (i) Criminal complaint dated April 25, 2018,
- (ii) Representation dated April 25, 2018 submitted to Kotak Mahindra Bank by Noticees,
- (iii) Notice dated May 04, 2018 received from Kotak Mahindra Bank and its reply dated May 12, 2018,
- (iv) Copy of complaint under section 138 of Negotiable Instruments Act against Mr. Pankaj Goel,
- (v) Copy of complaint under section 156 (3) of Criminal Procedure Code against Mr. Pankaj Goel,
- (vi) Copy of order sheet dated July 10, 2018 in the complaint, and
- (vii) Kotak's notice of demand under section 13(2) of the SARFAESI Act and its reply.

Consideration of Replies and Submissions in Personal Hearing

10. I have perused the interim order cum show cause notice, replies, submissions filed by the noticees and documents available on record to consider whether the interim order dated May 29, 2018 shall be confirmed or not. At the outset, as regards the submissions of the noticees that the principles of natural justice have not been followed while passing the ad-interim ex-parte order, I note that the interim order has been passed under sections 11 (4), 11B and 11C of the SEBI Act on the basis of prima facie findings observed during the preliminary examination/inquiry undertaken by SEBI, and they have been given an opportunity of hearing before passing of this order. The facts, circumstances and the reasons necessitating issuance of directions by the interim order have been examined and dealt with in the said interim order. The interim order has also been issued in the nature of a show cause notice affording the Noticees a post-decisional opportunity of hearing. I also note that the power of SEBI to pass interim orders flows from sections 11 and 11B of the SEBI Act which empower SEBI to pass appropriate directions in the interests of investors or securities market, pending investigation or inquiry or on completion of such investigation or inquiry. The relevant provisions in the aforesaid sections are reproduced as under:

Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

...

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

...

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

...

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation :

Power to issue directions.

11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

- (i) in the interest of investors, or orderly development of securities market; or
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,—
 - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
 - (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

11. While passing such directions, it is not always necessary for SEBI to provide the entity with an opportunity of pre-decisional hearing. The law with regard to doing away with the requirement of pre-decisional hearing in certain situations is also well settled. The following findings of the Hon'ble Supreme Court of India in the matter of *Liberty Oil Mills & Others v. Union Of India & Other* (1984) 3 SCC 465 are pertinent:

“It may not even be necessary in some situations to issue such notices but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case. Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad-interim orders may always be made ex-parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party have, nevertheless, always the right to make appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at the request.”

12. Therefore, considering the facts and circumstances of this case, an ad-interim ex-parte order could be passed by SEBI in the interests of investors or the securities market. It is pertinent to note that the interim order in the present case was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act. The second proviso to section 11(4) clearly provides that “Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned”. Further, various courts while considering the aforesaid sections of the SEBI Act have also held that principles of natural justice will not be violated if an interim order is passed and a post-decisional hearing is provided to the affected entity. In this regard, the Hon'ble Bombay High Court in the matter of *Anand Rathi & Others v. SEBI* (2002) 2 Bom CR 403, has held as under:

“Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded.” I, therefore, do not find that the interim order is vitiated for want of a personal hearing prior to passing of the order.”

13. Before proceeding with the submissions of the Noticees in their replies and personal hearing, it is pertinent to look into the details of directorship of the Noticee nos. 3 to 10 in F6 Finserve which is as under:

Sr. no.	Name of the director	Designation	Change in designation, if any	Tenure
1	Mr. Pankaj Goel	Director		26/12/2012 – till date
2	Mr. Parveen Sharma	Additional Director	Non - Executive Director on 03/04/2017	11/04/2016 – 02/01/2018
3	Ms. Meenu Goel	Director		26/12/2012 – till date
4	Mr. Sanjay Anand	Additional Director	Non - Executive Director on 03/04/2017	10/02/2015 – 01/01/2018
5	Ms. Kavita Anand	Additional Director	Non - Executive Director on 03/04/2017	10/02/2015 – 01/01/2018
6	Ms. Asha Sharma	Additional Director	Non - Executive Director on 03/04/2017	11/04/2016 – 01/01/2018
7	Mr. Deepak Goel	Director	Non - Executive Director on 03/04/2017	27/01/2005 – 01/01/2018
8	Ms. Ruchika Goel	Director	Non - Executive Director on 03/04/2017	24/10/2016 – 01/01/2018

14. The Noticee no. 4, 6, 7 & 8 have contended that they were past non-executive directors of the company, and hence they cannot be held liable for the violations committed by the company. The notice nos. 9 & 10 have contended that they were past directors of the company at the time of passing the interim order and not involved in the day to day activities of the company. In this regard, I note that the noticees were directors of F6 Finserve when the violations alleged in the interim order had occurred.

15. The Noticees in their replies have stated that they are Non-Executive directors and were not involved in the management of the company. Section 166 of the Companies Act, 2013 which is also applicable private companies clearly lays down the duties and responsibilities of directors without making a distinction between executive and non- executive directors. As per

section 166 (3), a director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. However, it is pertinent to examine section 149 (12) of the Companies Act, 2013 which states that a non-executive director shall be held liable only under certain circumstances. The aforesaid is reproduced as under:

149. Company to have Board of Directors

...

...

...

(12) Notwithstanding anything contained in this Act,—

(i) an independent director;

(ii) a non-executive director not being promoter or key managerial personnel,

shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

16. From the aforesaid provisions of the Companies Act, it is clear that a non-executive director shall be liable in respect of such acts of omissions or commissions by a company where inter alia he had not acted diligently. I note that the Noticees by their own admission, have stated that they became directors of the company to recover the loans (loan details recorded in paras 7 (A) (ii) and 7 (B) (xii) of this order) provided by them to Mr. Pankaj Goel. They have not adduced any evidence to show that they have taken any corrective measures as regards the violations committed by F6 Finserve. It is only in 2018, after SEBI started examining the affairs of F6 Finserve and its other directors namely, Mr. Pankaj Goel and Ms. Meenu Goel i.e. after the inspections of F6 Finserve conducted by NSE and SEBI that the Noticees have taken steps against Noticee nos. 1, 2, 3 and 5 as stated in their reply and additional submissions which are recorded in para 7 and 9 of this order. The Hon'ble Supreme Court in *Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602* has observed that

“A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially”.

Therefore, I am not inclined to accept the said contention of the Noticees that they had resigned or that they are non-executive directors, and hence, are not liable for violations committed by the company.

17. Mr. Parveen Sharma along with reply has enclosed letter dated April 05, 2017 from Kotak Mahindra Bank, Delhi Aerocity Branch to F6 Finserve which refers to its earlier sanction letter dated June 17, 2016 conveying sanction for the facilities to F6 Finserve. Through the said letter, the company was informed that the facilities in the annexure were renewed/ reviewed/ enhanced. The details are as under:

Terms of Sanction						
Sr. no.	Facilities	Margin	Existing Amount (in Cr.)	Proposed Amount (in Cr.)	Status	Validity
1	Overdraft against property	153.8%	14.00	16.00	Renewed with Enhancement	March 26, 2018
2	Margin STL	-	5.00	6.00	Renewed with Enhancement	
3	Financial BG	50%	10.00	12.00	Renewed with Enhancement	
4	Adhoc limit – Margin STL	-	1.00	1.00	Renewed with Enhancement	
Total			25.00	29.00		

For the facility at sr. no. of the above Table, the following security / first and exclusive mortgage charge had been created:

Sr. no.	Name of the owner	Description of the Property
1	Mr. Pankaj Goel and Ms. Meenu Goel	206 (S.F.), Sewa Corporate Park, M. G. Road, Gurgaon, Haryana

2	Mr. Pankaj Goel and Ms. Meenu Goel	407 (F.F.), Sewa Corporate Park, M. G. Road, Gurgaon, Haryana
3	Mr. Sanjay Anand and Ms. Kavita Anand	B-11/2, DLF Phase 1, Qutab Enclave, Gurgaon
4	Mr. Parveen Sharma and Ms. Asha Sharma	Plot no. 122 L, Model Town, Rewari, Haryana
5	Mr. Parveen Sharma and Ms. Asha Sharma	Flat no. 902, 9 th floor, Tower no. 12, Valley View Estate, GWAL Pahadi, Gurgaon
6	Mr. Deepak Goel and Ms. Ruchika Goel	CF – 015, Ground Floor, The Palm Spring Plaza, Golf Course Road, DLF City Phase V, Gurgaon

From the two tables above, it is observed that F6 Finserve has availed loans to the extent of Rs. 29 Crore from Kotak Mahindra Bank, Delhi Aerocity Branch. All the directors of the company including Noticee nos. 4, 6, 7, 8, 9 and 10 who are non- executive directors had provided their personal properties as security for the loan availed by F6 Finserve and had also given personal guarantee. These properties were also used as security for the overdraft facility limit of Rs. 2 Crore to F6 Commodities. From the aforesaid, it is difficult to conclude being directors of the company, having mortgaged their personal properties and acting as guarantors for the company, the Noticees were not aware of the way the affairs of the company were being conducted and the violations committed by the company as stated in para 2 and 3 of this order.

18. In view of the above, I note that the Noticees had failed to exercise reasonable care and had failed to act diligently. Even though the following observations made by the Hon'ble Supreme Court were in the context of a listed company in *N Narayanan v. Adjudicating Officer, SEBI* the principle relied therein is equally applicable in the context of a director's duty to act diligently:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally

with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

19. Noticee no. 9 and 10 have relied on the order of the Hon’ble SAT in *Vikas Bengani v. Adjudicating Officer and SEBI, Pepsico India Holdings Pvt. Ltd. v. Food Inspector and Another* to submit that the interim order does not elucidate the nature of the violation committed by them and that they have been bundled up with other directors. The said submissions have also been made by the other Noticees. I note that the interim order states in para 21 that in terms of section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the said order further notes that the Board of Directors being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual directors also. I also note that the order relies on the observation of the Hon’ble Supreme court while describing what is the duty of a Director of a company held in *Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602* which has also been quoted above at para 16.
20. Noticee no. 9 and 10 have also relied on *Pooja Ravinder Devidasani v. State of Maharashtra and Another* and *K. K. Ahuja v. V. K. Arora and Another* to further their case. I note that the case relied by them have been decided under the provisions of the Negotiable Instruments Act. In this regard, I note the observations of the Hon’ble SAT in *Akhil Chandra Saha v. SEBI* (Appeal no. 316 of 2017, decided on November 27, 2017) wherein the decision in *K. K. Ahuja* was sought to be relied on. The Hon’ble SAT observed that the said decision is not relevant as it is in the context of the role of director as an officer in default under the Negotiable Instruments Act. In the present context the role of the Director is to be seen as under the provisions of the Companies Act, 1956 and SEBI Act, 1992. Therefore, the decisions relied on by Noticee no. 9 and 10 do not aid their submissions.

21. Noticee nos. 4, 6, 7 and 8 have also contended that a complaint filed by one Mr. Suresh Gupta, client of F6 Finserve under section 138 of the Negotiable Instruments Act was withdrawn as against Noticee nos. 4, 6 to 10 after meeting the Noticees as he was convinced that the Noticees are not guilty of the offence. I note that the proceedings under the N.I. Act have no bearing on the present proceedings.

22. The Noticees have also relied on an undertaking submitted by Mr. Pankaj Goel claiming full responsibility for the acts done by F6 Finserve. In this regard, I note that the liability of directors is a statutory liability which cannot be done away with an undertaking in the nature of one furnished by the Noticees. I note the observations of the Hon'ble High Court of Calcutta in the matter of *Universal Petrochemicals Ltd. v. Rajasthan State Electricity Board* decided on April 17, 2001:

“49. The proposition that a contract between the parties will prevail over an overriding statutory provision is contrary to basic norms of jurisprudence. A statutory provision is the sovereign will of the legislature and the same binds every one and certainly the parties who are coming under it unless the provision is made subject to contract or the law is repealed or declared unconstitutional by a competent Court. If the proposition laid down in Ganpatrai (supra) is followed the same will lead to disastrous consequences. Any two individuals would be allowed to contract out of a statutory liability. It is well settled that there can be no contract which could defeat the provision of any law. This is one of the important facets of section 23 of the Contract Act.”

23. Notwithstanding the above, presently the matter is under examination/ forensic audit and the exact involvement of each of the Directors/ Noticees would be fixed based on all the documents, evidences etc. that may be ascertained. Till such time, it is necessary in the interest of investors, that the interim order dated May 27, 2018 to be continued.

24. As per information provided by Banks, Stock Exchanges, Depository Clearing member, and Depositories, the total available funds and securities as on December 04 & 05, 2018 in the accounts of F6 Finserve & F6 Commodities are as under-

Deposit & Claims with Exchanges				
Entity name	Deposit available with Exchange (s)	Deposit available with Clearing Corporation	Total No. of claims received	Claim Value (In Rs.)
BSE	24,30,307.00	Nil	95	9.00 crs
NSE	Nil	Nil	324	15.58 Cr
Total	24,30,307.00	Nil	419	24.58 Cr
NCDEX	3,66,769.29	Nil	02	Nil
MCX	Nil	Nil	47	0.49 Cr
NMCE			8	
Total	3,66,769.29	Nil	57	0.49 Cr

a) The Clearing Corporation (NCCL) dues are Rs 16,900.64.

b) **Deposit available with Clearing Member- Edelweiss Custodial Services Ltd**

- Funds approx. Rs 0.06 crores
- Value of securities as on 4th Dec2018 is approx Rs 0.29 crores.

With respect to balance lying in the bank accounts, reply has not been received from Kotak Mahindra Bank, till date. Hence, updated bank balance available in the bank accounts of Noticee nos. 01 and 02 is not available. The value of securities as on December 05, 2018 is as under-

BOID	BO Name [PAN]	Valuation (in Rs.)
1201910103707157	First/Sole Hldr : F6 FINSERVE PVT LTD . [AABCF0080D]	60,565,712.70
1201910103707180	First/Sole Hldr : F6 FINSERVE PVT LTD . [AABCF0080D]	768,631.27
12077700000000016	First/Sole Hldr : F6 FINSERVE PVT LTD . [AABCF0080D]	18,195.40

1207770000000020	First/Sole Hldr : F6 FINSERVE PVT LTD . [AABCF0080D]	7.00
1207770000000041	First/Sole Hldr : F6 FINSERVE PVT LTD . [AABCF0080D]	11,456,926.25
Total		72,809,472.62

25. I, therefore, find that at this stage, the Noticees have failed to give any plausible reasoning/ explanation for their acts and omissions as described in the interim order and have not been able to make out a prima facie case for revocation/ modification of the interim order. I, therefore, reject the prayers, if any of such Noticees for setting aside the interim order or for complete removal of the restraint imposed by it. I, therefore, do not see any reason to change or revoke the ad interim order as against the noticees.

Order:

26. Considering the above, I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, read with Sections 11(1), 11(4) and 11D thereof, hereby confirm that the directions issued vide ad interim ex parte order dated May 29, 2018 as against the Noticees mentioned above, shall continue until further orders.

27. In the matter of Amrapali Aadya Trading & Investment Pvt. Ltd. decided on October 31, 2018 wherein similar circumstances existed, to protect the interest of clients/ investors it was directed that a separate demat account and separate interest bearing bank account shall be opened wherein the securities and funds belonging to the Noticee therein would be transferred. In the extant matter, the interim order dated May 29, 2018 directed the depositories, Registrar and Transfer Agents and banks that no debits/ transfer is made from the accounts of the Noticees. I, therefore, direct as under:

- a. Since the claim value is higher at 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 F6 Finserve shall be transferred.

- b. 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 F6 Finserve, Mr. Pankaj Goel and Ms. Meenu Goel, shall be transferred.
 - c. Since the claim value is higher at MCX, the MCX'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 F6 Commodities shall be transferred.
 - d. The MCX'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 F6 Commodities shall be transferred.
28. This order is without prejudice to any enforcement action that SEBI may deem necessary against the Noticees pursuant to the investigation in the matter. This order shall continue to be in force till further directions.
29. A copy of this order shall be served on all recognized Stock Exchanges, Commodity Derivatives Exchanges, Registrars and Transfer Agents and depositories to ensure compliance with above directions.

Sd/-

Place: Mumbai

Date: December 14, 2018

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA