BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. PM/NR/2021-22/12219

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Jayaram S Iyer
(PAN: AAAPI2333L)

In the matter of inspection of Six debt schemes of Franklin Templeton Mutual Fund

BACKGROUND

1. Franklin Templeton Trustee Services Pvt., Ltd., ("Trustees") vide a Notice dated April 23, 2020, had inter alia informed the concerned unitholder(s) that it had decided to wind up the following schemes of Franklin Templeton Mutual Fund (FT-MF) pursuant to the provisions of Regulation 39(2)(a) of the SEBI (Mutual Funds) Regulations, 1996 ("Mutual Funds Regulations"), viz.:

    i. Franklin India Low Duration Fund ("FI–LDF");
    ii. Franklin India Ultra Short Fund/Ultra Short Bond Fund ("FI–UST");
    iii. Franklin India Short Term Income Fund/Plan ("FI–STIP");
    iv. Franklin India Credit Risk Fund ("FI–CRF");
    v. Franklin India Dynamic Accrual Fund ("FI–DAF");
    vi. Franklin India Income Opportunities Fund ("FI–IOF").

2. Based on certain media articles and complaints received by SEBI, a Forensic Audit/Inspection ("Inspection") was initiated with regard to FT-MF in terms of Regulation 66 of the Mutual Fund Regulations to verify the compliance with provisions of the Securities laws such as Securities Contracts (Regulation) Act, 1956, SEBI Act, 1992 ("SEBI Act") and the Rules, Regulations including Mutual Funds Regulations, Bye–laws, Guidelines, Directions or Circulars issued there under.

3. Pursuant to the above, SEBI appointed M/s. Chokshi and Chokshi LLP, Chartered Accountants ("Auditor") to conduct a forensic audit/inspection of FT-MF, including of

its in–house RTA activities, its Asset Management Company (AMC) and Board of Trustee/Trustee Company with respect to the debt schemes viz FI–LDF, FI–UST, FI–STIP, FI–CRF, FI–DAF and FI–IOF ("debt schemes inspected") amongst other schemes.

4. The Auditor *inter-alia* examined purchases and redemptions of units of debt schemes by the key personnel/entities (viz. Employees/Directors of FT–AMC & Trustees and their relatives) for the period April 1, 2019 to April 23, 2020. and found that Jayaram S Iyer, Director, FT-AMC (*hereinafter referred to as "Noticee"*) redeemed units of FI-STIP amounting to ₹4,56,768 on March 23, 2020.

5. There was presentation on concentration and liquidity risk in respect of securities in Debt Schemes in the AMC Board and Trustee meeting dated March 6, 2020, which was attended by the Noticee. Further, there were increase in borrowing limits in respect of FTLDF, FTSTIP schemes on March 23, 2020 beyond regulatory limits with permission from SEBI, which are extra ordinary events. From the above, it is observed that as AMC Director, Jayaram S Iyer knew of the stress in the fixed income schemes. Accordingly, the Noticee redeemed the units on March 23, 2020, which is after the Board meeting. The timing of redemption of units by the Noticee further corroborates the fact of possession of non-public information with respect to stress in the debt schemes.

6. Accordingly, it is alleged that the aforesaid redemption of units by the Noticee in one of the debt schemes viz., FI-STIP, while in possession of non–public information with respect to stress in the debt schemes inspected, amounted to an unfair trade practice in securities market and a fraud on the other unsuspecting unit holders of said debt schemes who were not privy to such confidential information and therefore, could not redeem their investments. Accordingly, the Noticee is alleged to have violated the provisions of Section 12A(e) of the SEBI Act and Regulations 3(a), 4(1) and 4(2)(q) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations, 2003").

APPOINTMENT OF ADJUDICATING OFFICER

7. Pursuant to inspection, the findings therein, were forwarded to FT-MF and upon analysis of the reply furnished by FT-AMC & Trustees, SEBI initiated Adjudication proceedings against the Noticee and appointed the undersigned as Adjudicating Officer vide Order dated November 11, 2020 under Section 19 read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (*hereinafter referred to as "SEBI Adjudication Rules"*) to inquire into and adjudge the alleged of the provisions of Section 12 A (e) of SEBI Act, 1992 and Regulation 3(a), 4(1), 4(2)(q) of SEBI (PFUTP) *Regulations*, the Noticee under Section 15HA of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A Show Cause Notice ref. no. EAD-8/PM/NJMR/20548/2020/1 dated November 27, 2020 (hereinafter referred to as "SCN") was served upon the Noticee mentioning the aforementioned allegations against the Noticee and requiring him to show cause within 14 days of receipt of the SCN, as to why an inquiry should not be held and penalty be not imposed against him under Section 15HA of the SEBI Act for the aforesaid alleged violation committed by him.

9. The Noticee vide email dated December 8, 2020 sought extension of eight weeks to furnish his reply in view of logistical challenges and disruptions resulting from the ongoing impact of the Covid-19 pandemic, besides professional commitments. The Noticee was given extension of time till January 15, 2021 to submit his reply, which was communicated vide email dated December 10, 2020. The Noticee vide email dated January 7, 2021 once again sought extension of time till January 29, 2021 to furnish his reply, which was acceded to and a communication in this regard was sent to the Noticee vide email dated January 12, 2021.

10. The Noticee vide email dated January 29, 2021 submitted his reply, which is summarized hereunder:

    (a) The redemption was undertaken solely to meet my financial requirements at the relevant time, and is not based on non-public information, as alleged. The redemption was a bona fide transaction and cannot be challenged or penalised as being based on 'non-public' information, or as a fraudulent trade practice. There is no unlawful profit or loss avoided in the redemption.

(b) *The redemption was neither intended to nor has, in any manner, induced any other person to deal in securities. In the absence of the essential ingredient of 'inducement', a violation of the PFUTP Regulations under Regulations 3(a) and 4(1) cannot be sustained. The redemption was undertaken in the ordinary course to meet my financial requirements. While the Notice makes allegations of 'fraud' and 'unfair trade practice', no material has been placed on record in support of the same. It is a well-settled principle that allegations of fraud cannot survive on mere surmises and conjectures. In any case, I have neither committed any fraud nor indulged in any unfair trade practice*.

(c) *The present case does not relate to any knowledge of a substantial impending transaction in the units of FI-STIP or the securities held by FI-STIP. Therefore, the Redemption does not, by any stretch, constitute 'front-running' or 'trading ahead' and does not attract the provisions of Regulation 4(2)(q) of the PFUTP Regulations.*

(d) *The provisions of Section 12A(e) of the SEBI Act are also wholly inapplicable to the present case as this provision is attracted only where the dealing in securities (while in possession of material or non-public information) is in contravention of the provisions of the SEBI Act or the rules or regulations made thereunder. Therefore, in the absence of any underlying violation, Section 12A(e) of the SEBI Act is also not attracted.*

(e) *At the time of the redemption, material information pertaining to FI-STIP was publicly available and regularly reported to investors in consonance with the SEBI regulations. It is incorrect to suggest that information about concentration and liquidity was not available in the public domain and that investors had no awareness of the same. The option to wind-up FI-STIP was not even under consideration at the time of the Redemption. The non-public information did not have any impact on my decision to undertake the redemption.*

(f) *During the months of March and April 2020, several thousand investors redeemed their investments in FI-STIP aggregating several crores of Rupees. The redemption orders placed by the investors until April 23, 2020 were processed by FT-MF in the normal course and no preference whatsoever was accorded to the redemption. Further, the investors who redeemed their units after me benefitted from the increase in the net asset value ("NAV") after the date of the redemption. This clearly establishes that other investors have not been disadvantaged by the Redemption in any manner, and that I have neither made unlawful profits nor avoided losses.*

(g) *There has been no breach of fiduciary duty owed by me as a Director of FT-AMC. The Redemption was undertaken solely to meet my financial requirements*

at the time, and it is incorrect to suggest that such redemption was, in any manner, motivated by any incremental information that possibly may have been available to me in my professional capacity.

(h) It is relevant to refer to the decision of the Hon'ble Supreme Court in SEBI v. Kanaiyalal Baldevbhai Patel and Ors., ("Kanaiyalal Case"), wherein the court held that with respect to the ingredients of 'fraud' under the PFUTP Regulations, "The emphasis is on the act of inducement".

(i) I continue to hold substantial investments in the Debt Schemes and this is demonstrative of my actions having been taken in good faith, in the ordinary course, and without any intent to take any undue advantage of my position or to cause any prejudice or loss to any person.

(j) The Noticee would like to place reliance on the Kanaiyalal Case, in terms of which, the Hon'ble Supreme Court held that Regulation 4(2)(q) applies to 'trading ahead', which is a form of 'front running'. The court further observed that 'front running' may comprise of three main forms of conduct, as below:

> *"(1) trading by third parties who are tipped on an impending block trade ("tippee" trading); (2) transactions in which the owner or purchaser of the block trade himself engages in the offsetting futures or options transaction as a means of "hedging" against price fluctuation caused by the block transaction ("self-front-running"); and (3) transactions where a intermediary with knowledge of an impending customer block order trades ahead of that order for the intermediary's own profit ("trading ahead")." The Hon'ble Supreme Court further observed that: "It is important to note that trading ahead has been explicitly recognized under Regulation 4(2)(q) of FUTP 2003."*

(k) It is nobody's case that I had any prior knowledge of a substantial impending transaction in the units of FI-STIP or the securities held by FI-STIP and no allegations to this effect have even been made in the Notice. If the allegation were to be in any event related to the subsequent winding-up of FI-STIP, it may be noted that, - the option of winding-up of FI-STIP was not even under consideration at the time of the Redemption. Therefore, the Redemption did not, by any stretch, constitute 'front-running' or 'trading ahead' and does not attract the provisions of Regulation 4(2)(q) of the PFUTP Regulations.

(l) Global standards on materiality of the non-public price sensitive information indicate that information may be considered as likely to have a 'material' or 'significant' impact on price of securities, if it is likely to form the basis of a reasonable investor's investment decision. While the mutual funds framework does not provide any specific definition, the definitions in understanding the ambit

of the terms 'material' or 'price sensitive' as generally understood in securities law viz., SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI ((Prohibition of Insider Trading) Regulations, 2015.

(m) The mutual funds regulatory framework in India does not provide for a specific definition of 'material' or 'price-sensitive' information. However, on the basis of the above, it is clear that not all information in an organisation can be treated as such.

(n) In paragraphs 9 and 11 of the Notice, reliance has been placed on the proceedings at the board meeting of FT-AMC held on March 6, 2020. It is submitted that such reliance is misplaced. I understand, on the basis of the extracts of the minutes of the said board meeting provided to me as part of the Notice, that the reference to the source of the alleged 'non-public' information in my possession is to the presentation made by the Head - Risk Management ("March 6 Presentation"). It is respectfully submitted that presentations covering a host of considerations pertaining to all schemes operated by FT-MF, including concentration and liquidity risks, were a regular feature of board meetings and reflected a regular tracking of various market and portfolio risks in the ordinary course. The March 6 Presentation was no different in this regard and presented data as of January 2020.

(o) I respectfully submit that, merely on the basis that increase in borrowing limits for FI-STIP was allegedly an extraordinary event and that such approval was accorded by SEBI on the same date as the date of the redemption, SEBI has erroneously assumed that I was aware of such approval for increase in borrowing limits for FI-STIP at the time of the redemption. It is respectfully submitted that the SEBI approval letter of March 23, 2020 was received by the Compliance Officer of FT-MF at 5:33 p.m. on March 23, 2020 (i.e., well after the cut-off time for placement of redemption orders for the day). Therefore, I did not have any information regarding the approval until the evening of March 23, 2020, while the order for the redemption was already placed at 9:45 am on that day.

(p) In fact, at the time of the redemption, I was not even aware of the application made by FT-AMC for such approval. This is also confirmed by the findings of the auditor who has specifically recorded at page 50 of the Audit Report (Annexure 4 to the Notice) that no communication was found addressed to me in this regard. In any case, except for what is shared in the board meetings of FT-AMC, I am not privy to any non-public information regarding the affairs of the schemes of FT-MF. Borrowings are a part of normal fund operations and the details of borrowings or the borrowing limits are not shared with the directors of FT-AMC in the normal course. Therefore, I had no knowledge regarding the enhancement or the impending enhancement of the borrowing limits at the time of the redemption.

(q) It is reiterated that at the time of the redemption, the option of winding-up of FI-STIP was not on the horizon and, to the best of my knowledge, this came up as a possible option for the first time, only in the board meeting of FT-AMC on April 19, 2020, and a decision to wind-up the Debt Schemes was taken by the board of directors of the Trustee only on April 23, 2020. It is incorrect to suggest that I had any knowledge whatsoever regarding such possible event at the time of the redemption.

11. I note that the Noticee had filed an application for settlement of the proceedings under the provisions of SEBI (Settlement Proceedings Regulations), 2018, which was subsequently rejected by the Competent Authority.

12. Thereafter, in order to conduct an inquiry in the matter, in terms of Rule 4(3) of SEBI Adjudication Rules, the Noticee was given an opportunity of personal hearing on May 20, 2021, which was communicated vide notice dated May 11, 2021. In view of the difficulties by all concerned owing to Covid-19 pandemic, the hearing was conducted through videoconference on Webex platform. On the scheduled date of hearing i.e., May 20, 2021, the Authorized Representatives (Mr. Darius Khambata, Senior Advocate and Mr. Mustafa Doctor, Senior Advocate) of the Noticee appeared before me through videoconference and reiterated the submissions made by the Noticee vide email dated January 29, 2021.

CONSIDERATION OF ISSUES, FACTS OF THE CASE AND FINDINGS

13. It is alleged in the SCN that the Noticee while in possession of non–public information with respect to stress in the debt schemes had redeemed units in one of the debt schemes viz., FI-STIP and thereby violated the provisions of Section 12A(e) of the SEBI Act and Regulations 3(a), 4(1) and 4(2)(q) of the SEBI (PFUTP) Regulations, 2003.

14. After perusal of the material available on record, I have the following issues for consideration viz.,

    I. Whether the Noticee has violated the provisions of Section 12A(e) of the SEBI Act and Regulations 3(a), 4(1) and 4(2)(q) of the SEBI (PFUTP) Regulations, 2003?

    II. Whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act?

III. If so, what quantum of monetary penalty should be imposed on the Noticee?

ISSUE I: Whether the Noticee has violated the provisions of Section 12A(e) of the SEBI Act and Regulations 3(a), 4(1) and 4(2)(q) of the SEBI (PFUTP) Regulations, 2003?

15. Before moving forward, it is pertinent to refer to the relevant provisions of Section 12A(e) of the SEBI Act and Regulations 3(a), 4(1) and 4(2)(q) of the SEBI (PFUTP) Regulations, 2003:

SECTION 12A(e) OF SEBI ACT

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

12A. No person shall directly or indirectly—

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

REGULATIONS 3(a), 4(1) and 4(2) (q) OF SEBI (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;

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities. ……..."

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves any of the following:

(q) any order in securities placed by a person, while directly or indirectly in possession of information that is not publicly available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;

FINDINGS

16. The chronology of events leading from the AMC and Trustee meeting held on March 6, 2020 to the redemption of units in the FI-STIP made by the Noticee on March 23, 2020 are captured hereunder:

(a) I note from the records that the matter pertaining to *"Update on risk management framework for equity and fixed income schemes"* was discussed in the meeting held on March 6, 2020, wherein Mr. Deepak Balachandran, Head- Risk Management made a presentation on the investment risk management framework for both Fixed Income and Equity portfolios. The presentation included a review of performance and its attribution, liquidity, Stressed Issuers and Other issuers showing Early Warning Signs. The Board (AMC) noted that the presentation made by the CIO-Fixed Income has also covered the issues identified by the Risk team and the progress made in addressing the issues.

(b) The Board (AMC) noted that in some instances fixed income schemes of Franklin Templeton appeared to be holding the entire issuance of certain debentures. However, this may not reflect the total borrowing of that issuer. The Board advised that the comparison of investment by Franklin Templeton vis a vis total debt of the issuer should be presented. The Board also noted that the list of issuers showing Early Warning Signals as per assessment of Risk Management team did not include any categorisation or classification of severity. The Board advised the Risk Manager to categorise the list based on risk assessment of the issuers such that a more focused discussion could take place around such issuers.

(c) While reviewing the total exposure to issuers across Debt and Equity, the Board noted that there was no significant overlap. Board asked Management to continue to monitor consolidated exposure to an issuer / group across Debt and Equity.

(d) I note that Jayaram S Iyer has been a Director of FT-AMC since September 12, 2014. It is a matter of record that the aforementioned meeting held on March 6, 2020 was attended by the Noticee in the capacity of Director, FT-AMC.

(e) It is further noted that on March 19, 2020, the CEO, FT-AMC made a request to SEBI to increase the borrowing limits from 20% to 30% in FI-LDF and FI-STIP schemes to meet redemption requirements.

(f) SEBI vide letter dated March 23, 2020 had conveyed the approval for increase in the borrowing limits from 20% to 30% in accordance with the provisions of Regulation 44(2) of Mutual Funds Regulations, subject to the following:

(i) The incremental borrowing limit shall only be utilized for the purpose of redemption of units;

(ii) The cost of the incremental borrowing shall be borne by the AMC and not by the scheme;

(iii) The incremental borrowing limit is provided for a period of 90 days from the date of this letter i.e., March 23, 2020;

(g) On March 23, 2020 the Noticee had redeemed units in FI-STIP scheme, the details of which are furnished hereunder, which has not been disputed by the Noticee:

TABLE				
SR. NO.	**NAME**	**REDEMPTION DATE**	**SCHEME NAME**	**VALUE (IN ₹)**
1.	Jayaram S Iyer	23 March 2020	FI-STIP	4,56,768
TOTAL				**4,56,768**

17. The Regulation 44(2) of Mutual Funds Regulations provides for borrowing not more than 20% of the net asset of the scheme to meet temporary liquidity needs of the mutual funds for the purpose of repurchase, redemption of units or payment of interest or dividend to the unitholders. Pursuant to a request made by FI-AMC for increase in borrowing limits from 20% to 30% to meet redemption requirements, SEBI vide letter dated March 23, 2020 had conveyed its approval. It is pertinent to note that the increase in borrowing limits indicates extreme stress in the fixed income schemes and is an extraordinary event, which is a red flag for the stakeholders.

18. I also note that the Noticee, excepting the redemption made on March 23, 2020, had not redeemed units in any scheme of the FT-MF during the financial year 2019-20. Further, I note that the presentation on concentration and liquidity risk in respect of

securities in Debt Schemes in the AMC Board and Trustee meeting dated March 6, 2020 and also the request made by FT-AMC for increase in borrowing limits was not publicly available information. It is to be noted that among others who attended the meeting held on March 6, 2020, the Noticee was privy to the information of stress in the fixed income scheme, which is a non-public information. Accordingly, the Noticee, after having come to known of the concentration and liquidity risk in the meeting held on March 6, 2020 and also pursuant to a request made by FT-AMC for increase in the borrowing limits on March 19, 2020, had redeemed the units in FI-STIP on March 23, 2020 i.e., on the same day when SEBI had conveyed its approval for increase in borrowing limit. The timing of redemption of units by the Noticee further corroborates the fact of possession of non-public information with respect to stress in the debt schemes.

19. The Noticee in his submissions has contended that all material information about FI-STIP was publicly available and regularly reported to investors, which included the publication of the NAV of FI-STIP daily. While the submissions of the Noticee prima facia appears to be impressive, however upon close scrutiny of the data relied upon by the Noticee in his defence, I find there is misrepresentation of facts. It is a matter of record that FT-MF has been providing information to investors periodically about the performance of the FI-STIP by way of the risk overview, credit ratings upgrades & downgrades, top 20 exposures, performance relative to peers and benchmarks, besides publishing Net Asset Value (NAV) of the Scheme every day for the information of all the unitholders. While the aforesaid information provided by FT-MF to all the unitholders periodically, signifies the performance of the scheme, the facts remain to be noted that certain events viz., management's perspective on certain funds, based on the risk management, increase in borrowing limits and extreme stressed assets, which are extra ordinary and which are discussed at the highest level viz., Board meetings, the investors would not come to know of the same until the same is made public. The persons who are at the helm of affairs at the AMC and Trustees would know the deeper insights of the discussions held on various issues and the decisions taken thereof, which is a non-public information. I note the Noticee being privy to the information regarding the redemption pressure, liquidity profile of the assets held by the scheme, and the borrowing limits getting exhausted, could reasonably be expected to have material non-public information relating to the

Impugned Debt Scheme. Therefore, I find that the argument put forth by the Noticee in his defence that the information which he was privy to on the performance of the fixed income schemes including that of FI-STIP is a publicly available information, is devoid of any merit.

20. Further, the Noticee submitted that presentations covering a host of considerations pertaining to all schemes operated by FT-MF, including concentration and liquidity risks, were a regular feature of board meetings and reflected a regular tracking of various market and portfolio risks in the ordinary course. For the sake of assumption, the meeting held on March 6, 2020 between FT-AMC and Trustees was even though a routine, the point to be noted here is of the non-public information of stress in the fixed income schemes, which the Noticee possessed and the subsequent steps taken by the FT-AMC for raising the borrowing limit and based on which the Noticee redeemed the units. Thus, the Noticee acted in a way to take benefit from the information he possessed, which was not publicly available to the unitholders. Therefore, I find no merit in the arguments put forth by the Noticee in this regard.

21. The Noticee in his submissions stated that mere access to information that may come into possession in his professional capacity on account of proprietary and other business considerations should not, ipso facto, result in the conclusion that all such information will have a 'material impact' on the investment decisions of a reasonable man. Such an interpretation would result in the unviable inference that all information available to persons in the ordinary course of discharge of their professional responsibilities is material. Further, the Noticee stated that the assessment of whether certain information is material or price sensitive is a mixed question of fact and law, and depends on the facts and circumstances of each case, which will have to be looked into to ascertain the materiality of its potential impact. The Noticee also stated that while the mutual funds framework does not provide any specific definition, the definitions in understanding the ambit of the terminology '*material*' or *'price sensitive'* as generally understood, in securities law viz., SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and SEBI ((Prohibition of Insider Trading) Regulations, 2015.

22. From the perspective of unitholders / investors, I am of the view that materiality of an event or development requires a contextual determination that takes into account

all of the relevant circumstances, including the nature of the event or development and its consequences thereof. The test for materiality is objective in nature and is not affected by the subjective assessment. I note that in the instant case, the information the Noticee was in possession about the management's perspective on the FI-STIP scheme is a material information and an extraordinary event. However, I am of the view that what constitutes 'material' information is extremely important from an ordinary investor's perspective. Therefore, I find that the Noticee was aware of the fact the information he was in possession will have material impact on the performance of the fixed income schemes which includes FT-STIP and accordingly redeemed the units in FT-STIP before the scheme was wound up. It is pertinent to note that the information the Noticee possessed was not public information and the investors were unaware of the FT-STIP scheme being under extremely stressed. Accordingly, the submissions made by the Noticee in this regard are negated.

23. Further, the Noticee claimed that the redemption of units in FI-STIP was undertaken to meet his financial requirements viz., return of security deposit to his tenant, refurbishing the let out flat and for retaining the balance amount in anticipation of uncertain times in view of the Covid-19 pandemic. I am of the view that the arguments put forth by the Noticee in this regard is an afterthought, which does not signify his genuine intention for redemption of the units. Even if it is assumed that the Noticee had redeemed the units for meeting his financial requirements, I note from the replies submitted by the Noticee that there is no documentary evidence viz., bank statements, receipts etc., to justify his action. Therefore, I find no merit in the submissions made by the Noticee in this regard.

24. The Noticee tried to justify his action by stating that the investors who redeemed their units after him benefitted from the increase in the net asset value after the date of the redemption exercised by him and therefore the other investors have not been disadvantaged by the redemption in any manner, and that he has neither made unlawful profits nor avoided losses. It is to be noted that laws dealing with asymmetric access to information seeks to prevent persons having access to superior material information, not legally available in the public domain, from exploiting such asymmetric informational advantages in order to protect the integrity of markets and maintain investor confidence. What the laws strive to achieve is to

prevent people with such superior access to information from trading while in possession of such information.

25. In this regard, I note that even though the Impugned Debt Scheme was witnessing heavy redemption pressure, by the time the Noticee had started redeeming units, the borrowing limits (including the enhanced limit pursuant to SEBI approval) had not been exhausted and therefore the schemes would have resorted to additional borrowing to meet redemption before embarking on a forced liquidation of assets. It is, however, pertinent to note that the cost of the additional borrowings as per the MF Regulations has to be met by the AMC and therefore even when approval for additional borrowing is obtained from SEBI, there would always be a point beyond which an MF would have to resort to forced liquidation of the assets. As long as the scheme is able to meet redemption demands out of borrowings, the impact on the NAV may be minimal. But once the forced sale of securities starts, the dent on NAV will be significant. Further, the chances of an AMC resorting to 'forced sales' would be higher when the redemption pressure is sustained over a period and is not a one-off event. The adverse impact of forced sales on NAV was clearly on the cards, especially given the illiquid nature of the bonds in the portfolio, which was very much in the knowledge of Noticee. There is no doubt that the quality of information that the possessed at the time of undertaking redemptions was far superior to that of the general investor. Eventually, the AMC decided to wind up the Impugned Debt Schemes on April 23, 2020 and thereby avoided 'forced sale' of assets.

26. The fact to be noted that the investments in mutual funds are subject to market risk and the NAV is increased or decreased post redemption of units by the Noticee is not material. The determination of price by a market at a given day depends on number of facts, information, the trend in the segment etc., Therefore, the contention of the Noticee is that the redemption of the units made by the Noticee was not beneficial as compared to the subsequent redemptions made by the investors, does not merit any consideration.

27. The Noticee in his reply made a submission that there has been no breach of fiduciary duty owed by him as a Director of FT-AMC. I note that fiduciary capacity within which the Noticee has to act enjoins upon him a duty to act on behalf of the AMC with utmost good faith, utmost care and due diligence and in the interest of the

AMC. I note that the Noticee being a Director, FT-AMC in his fiduciary capacity was privy to undisclosed information, for a corporate purpose and is expected to not use the undisclosed information for personal benefit on the principle that there is inherent unfairness when the Noticee takes advantage of such information knowing that it is unavailable to others. Consequently, it is only when the information is being misused for personal benefit or where a person takes advantage of such information that there would be a contravention of fiduciary obligation cast upon the corporate insider who is in possession of the material information. In this instant case, it is established that the Noticee was privy to the information of stress in the fixed income schemes and increase in borrowing limits, which is a non-public information and based on the information he had redeemed the units, before the scheme was wound by FT-MF. Thus, I find no merit in the contentions put forth by the Noticee that he had acted in fiduciary duty owned by him as Director, FT-AMC.

28. The Noticee in his reply contended that, except for what is shared in the board meetings of FT-AMC, he was not privy to any non-public information regarding the affairs of the schemes of FT-MF and that borrowings are a part of normal fund operations and the details of borrowings or the borrowing limits are not shared with the directors of FT-AMC in the normal course. Therefore, the Noticee stated that he had no knowledge regarding the enhancement or the impending enhancement of the borrowing limits at the time of the redemption. In this regard, it is to be noted that in cases pertaining to trades done on the basis of non-public information, obtaining direct evidence is always difficult and a conclusion more often than not has to be reached based on the circumstances leading up to such trades and the material non-public information which the person executing such trades can reasonably be expected to be in possession, while undertaking the said trades.

29. In this regard, I find it appropriate to refer to the judgment of the Hon'ble Supreme Court in the matter of Securities and Exchange Board of India v. Kishore R. Ajmera (2016) 6 SCC 368, wherein the Hon'ble Supreme Court held that,

> *"26. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain*

basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

30. In SEBI vs. Rakhi Trading (P) Ltd. (2018) 13 SCC 753, Supreme Court held that in the quasi-judicial proceedings before SEBI, the standard of proof is preponderance of probability and that proof of manipulation depends on inference drawn from a mass of factual details. The Supreme Court held that;

"The proof of manipulation in the circumstances always depends on inferences drawn from a mass of factual details. Findings must be gathered from patterns of trading data and the nature of the transactions, etc. Several circumstances of a determinative character coupled with the inference arising from the conduct of the parties in a major market manipulation could reasonably lead to conclusion that the Broker was responsible in the manipulation. The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved."

31. From the aforesaid decisions, it can safely be inferred that it is not necessary that there has to be a clinching evidence or that the intention has to be proved in order to impose penalty under the SEBI Act. The standard of proof is preponderance of probability and the proof of manipulation always depends on the inferences drawn from a host of circumstances. A finding has to be arrived at from the transaction pattern. Circumstantial evidence could be sufficient to raise a presumption with regard to the existence of a fact which is sought to be proved.

32. It can be seen from the findings in the previous paragraphs that the Noticee was privy to the information of the stress in the fixed income schemes which was discussed in a meeting between FT-AMC and the Trustees on March 6, 2020. It is a matter of record that pursuant to a request made by FT-AMC for increase in borrowing limits on March 19, 2020, the Noticee had redeemed the units on March 23, 2020. From the aforesaid facts of the case and from the circumstantial evidence, the preponderance of probability indicates that the Noticee was aware of the extraordinary events viz., stress in the fixed income, increase in borrowing limits and accordingly redeemed the units in FI-STIP scheme. In view of the above and the

ratio decidendi from the judgment of the Hon'ble Supreme Court as mentioned above, I find no merit in the submissions made by the Noticee in this regard.

33. The Noticee contended that he continued to have exposure to the impugned debt schemes even after April 23, 2020 and accordingly claimed absence of any intent to profit from alleged non-public information or to take any undue advantage of my position. However, from the facts and circumstances brought out in the preceding paragraphs, it can be clearly seen that the redemption was carried out on the basis of non-public information which was material in nature. Therefore, I find no merit in the argument put forth by the Noticee in this regard.

34. Now I proceed to deal with prima facie violation of applicable provisions of SEBI (PFUTP) Regulations. The said provisions deal with 'fraud' in the securities market. Fraud has been defined under regulation 2 (1)(c) of SEBI (PFUTP) Regulations as follows: "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss and shall also include—……

35. I note that the Noticee in his reply, relying on the observations made by the Hon'ble Supreme Court in the matter of Kanaiyalal (supra), has submitted that the factum of inducement is critical for proving a charge of 'fraud'. The Noticee also further contended that as the redemption of units by the Noticee could not have been an inducement for any other person to redeem units, the conduct of the Noticee does not satisfy the parameters of 'fraud' as defined by the Hon'ble Supreme Court. In view of the same, I consider it appropriate to refer to the observations made by the Hon'ble Supreme Court in this regard in the matter of Kanaiyalal Baldevbhai Patel, which reads as under:

"50. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement

and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".”

36. It can be noted that Hon’ble Supreme Court has held that the critical factor while determining whether an act can be considered as ‘*fraudulent*’ is the presence of an element of inducement. In this regard, I note that details of individual redemptions made in open ended mutual fund schemes would not be available in the public domain; further, in such cases the fund would be the counter party to the redemption as opposed to trades executed over the stock exchange platform where another investor would be the counter party. I also note that the SCN does not allege that the redemptions of units by Noticee had resulted in inducing or otherwise affecting the conduct of the other unit holders in the Impugned Debt Schemes.

37. I further note that it has been alleged that the conduct of the Noticee has been in violation of regulation 4(2)(q) of the PFUTP Regulations 2003. I, however, note that to sustain a charge under this provision, it would have to be shown that the Noticee had specific knowledge regarding certain impending redemptions and based on that information he redeemed ahead of others. The charge cannot be sustained on the basis that the Noticee being privy to information regarding the pattern of redemptions till that point in time, could reasonably be expected to have information related to the redemptions continuing in the future too. I note that the SCN does not identify any instance of the Noticee having specific information regarding a 'substantial impending transaction' in the units of the Impugned Debt Schemes.

38. In view of the same, I find it difficult to hold that redemption of units by the Noticee satisfies the parameters of ‘fraud’ as defined under regulation 2(1)(c) read with regulation 3(a) of the PFUTP Regulations 2003. I also hold that the conduct of the Noticee does not satisfy the requirements for sustaining the charge under regulation 4(2)(q) of PFUTP Regulations 2003.

39. I note that the term ‘*unfair trade practice’* is not defined under the SEBI (PFUTP) Regulations, 2003. However, the Hon’ble Supreme Court in the matter of Kanaiyalal(supra) had observed that the term is broader in scope than the term ‘fraudulent’ and includes the concept of ‘deception’ or ‘fraud’.

40. In this regard a reference is made to the observations of Hon'ble SC in the matter of SEBI and Ors. vs. Shri Kanaiyalal Baldevbhai Patel and Ors. 2017 SCC Online SC 1148, wherein the Hon'ble Court observed as follows:

> *"31. Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case-to-case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover, the concept of 'unfairnesses appears to be broader than and includes the concept of 'deception' or 'fraud'.*
>
> *… 60. Coupled with the above, is the fact, the said conduct can also be construed to be an act of unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities."*

41. The Hon'ble Supreme Court in this matter had gone on to observe that while "Regulation 3 prohibits a person from committing fraud while dealing in securities… Regulation 4 prohibits manipulative, fraudulent and unfair trade practices". The Hon'ble Court observed that "It is to be noted that the Regulation 4 (1) starts with the phrase 'without prejudice to the provisions of Regulation 3'. This phrase acquires significance as it portrays that the prohibitions covered under the Regulation 3 do not bar the prosecution Under Regulation 4 (1). Therefore Regulation 4 (1) has to be read to have its own ambit which adds to what is contained Under Regulation 3."

42. It can therefore be noted that the Hon'ble Supreme Court has observed that the scope of the term 'unfair trade practise' is wider than that of the term 'fraud' and activities which do not satisfy the parameters of 'fraud' could independently be proceeded under Regulation 4(1) if it can be considered as an 'unfair trade practice'. I note that the observations made by the Hon'ble Supreme Court in the matter of

Kanaiyalal (supra) in relation to 'unfair trade practice' as contained under the PFUTP Regulations are very pertinent to the facts of the present case.

43. The primary purpose for having laws prohibiting trading on the basis of asymmetric access to information is to foster confidence in the securities markets. Prevalence of such trades erodes the confidence of the ordinary investors in the fairness and integrity of the securities markets. I think it would be appropriate, at this juncture, to refer to the observations made by the Hon'ble Supreme Court in the matter of Kanaiyalal (supra), wherein it was noted that *"unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities."*

44. In the instant case, it can be seen that the Noticee by using non-public information with respect to the stress in the fixed income schemes had redeemed its entire investments in FI-STIP before the schemes were wound up. From the facts, circumstances and timing of the redemption made by the Noticee, I hold that redemption of units in the Impugned Debt Scheme by the Noticee is an 'unfair trade practice' and is in contravention of Regulation 4(1) of SEBI (PFUTP) Regulations 2003.

45. I note that the Noticee has contended in their reply that other than Section 12A(e) of the SEBI Act, the SCN does not refer to any other provision either under the SEBI Act or under any rules or regulations that refers to dealing in securities while in possession of material or non-public information. It is to be noted that in the year 2002, Section 12 A was inserted in the SEBI Act, which has now become the main statutory source from which SEBI derives its powers to act against fraudulent and unfair trade practices and insider trading. Therefore, I find that the argument put forth by the Noticee finds no merit.

46. I further note that Regulation 18(25)(B)(vi) and Regulation 18(27)(vi), respectively of SEBI (Mutual Funds) Regulations, requires the Trustees and the independent directors of the AMC/Trustee to put in place a 'code of ethics' which is designed to prevent fraudulent, deceptive or manipulative practices by insiders in connection with personal securities transactions. I further note that the AMC had formulated a

Policy on Conflict of Interest in compliance with the SEBI circular No. CIR/CFD/CMD1/168/2019 dated December 24, 2019. Paragraph 5(g) of the Policy provides as under, -

"Approach for managing conflict of interest
…
f. Restrict the dealing in securities while in possession of material non-published information"

47. The standard of conduct expected from a key decision-making official of an AMC should be exemplary and beyond reproach. Having made a sizeable investment in the Impugned Debt Schemes, the Noticee should have upfront declared his investments to the AMC and should have sought to recuse himself from any decisions related to the Impugned Debt Schemes. Further, he should have refrained himself from accessing any non-public information relating to the schemes, material or non-material. Hence, I am constrained to note that conduct of the Noticee in redeeming units in the Impugned Debt Schemes while in possession of material non-public information is not in line with the high ethical standards expected of a person vested with such quasi-fiduciary responsibilities. I further note that such conduct is also not in compliance with the 'code of ethics' and the 'Conflict of Interest Policy' of the AMC which clearly spelt out restrictions on dealing in securities while in possession of material non-public information. It is also noted that the Policy mandates pro-active reporting of any actual, perceived or potential conflicts of interest. I note that there is nothing on record to justify that the Noticee has made any pro-active reporting of any potential conflicts of interest.

48. It is further noted that paragraph 6 of the Policy, which lists the obligations of the relevant persons, inter alia, requires employees and directors to "not [participate] in decision making in case person [is] having actual perceived or potential conflicts of interest in the transaction" and also requires them to "pro-actively report any actual perceived or potential conflicts of interest.". I note that the Noticee is a person having wide experience in the securities market and it is just, fair and reasonable to expect that his conduct would be in line with the quasi-fiduciary responsibility that a director of an AMC owed to the unit holders of the mutual fund.

49. I hold that while the directors are not prohibited from trading in units of the schemes managed by the AMC, they should ensure that such trading conforms to ethical and moral standards and legal norms expected to be complied by a person entrusted with quasi-fiduciary responsibilities. Redemption of units by a director of the asset management company of a mutual fund while being privy to material non-public information cannot be considered as fair conduct. In view of the same, I hold that redemption of units by the Noticee while being privy to material non-public information is an 'unfair trade practice'. Further, I find that the Noticee as a Director of FT–AMC, should have acted in a fiduciary capacity and should not have, directly or indirectly, sold or otherwise dealt in any units of the debt schemes or indulge in any unfair trade practice in securities market, while dealing in units of the schemes which were under extreme stress and which were subsequently wound up by FT–MF.

50. From the aforementioned findings and from the ratio laid down by the Hon'ble Supreme Court in various judgments as quoted above, I conclude that the Noticee has violated the provisions of the Section 12A(e) of SEBI Act and Regulation 4(1) of the SEBI (PFUTP) Regulations 2003.

ISSUE II: Whether the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act?

51. It is established from the aforesaid findings that the Noticee while in possession of non–public information with respect to stress in the debt schemes redeemed units in FI-STIP scheme, which amounted to an unfair trade practice in securities market. Further, it is noted that the Noticee being a Director of FT–AMC, should have acted in a fiduciary capacity and should not have taken advantage of non-public material information which was in his possession, while dealing in units of the scheme which was under extreme stress and which was subsequently wound up by the FT-MF. The aforementioned act of the Noticee is in violation of the provisions of Section 12A(e) of SEBI Act and Regulation 4(1) of the SEBI (PFUTP) Regulations 2003. Accordingly, I find that the Noticee is liable for monetary penalty under Section 15HA of the SEBI Act. The provisions of Section 15HA of SEBI Act are reproduced hereunder:

Section 15HA of SEBI Act

"If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher".

ISSUE III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

52. While determining the quantum of monetary penalty under Section 15HA of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 15J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 15 - I, the Adjudicating Officer shall have due regard to the following factors, namely:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

53. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default.

54. I note that the Noticee, who was privy to the information of stress in the fixed income schemes, which is a non-public information, had misused his position and based on the information he had redeemed the units, before the scheme was wound by FT-MF. It is obligatory on the part of the Noticee to ensure that there is no breach of fiduciary duty owed by him as Director, FT-AMC, which he failed to maintain and thus breached the trust and confidence reposed by Franklin Templeton AMC in particular and unitholders of Franklin Templeton Mutual Fund in general. Therefore, I deem it appropriate to impose such penalty on the Noticee, which acts as a

deterrent to the Noticee and to others in protecting the interest of investors in securities market.

ORDER

55. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose a penalty of ₹25,00,000/- (Rupees Twenty-five lakhs only) under Section 15HA of SEBI Act on the Noticee i.e., Jayaram S Iyer.

56. The said penalty imposed on the Noticee, as mentioned above, is commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

57. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

58. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-IV, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

59. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: June 14, 2021 **PRASANTA MAHAPATRA**
Place: Mumbai **ADJUDICATING OFFICER**