BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. PM/NR/2021-22/12224

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

Mywish Marketplaces Pvt., Ltd.,
(PAN: AAJCM9631R)

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 Funds 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 inter-alia found that Mywish Marketplaces Pvt., Ltd., (*hereinafter referred to as "Noticee"*) redeemed units of FI-LDF and FI-UBF amounting to ₹22,11,60,067 between March 6 and March 11, 2020 i.e., before the schemes were wound up. It is to be noted that the Noticee Company is an associate of FT-AMC, wherein Vivek Kudva, Director, FT-AMC and Alok Sethi, Director, FT-Trustee were Directors on the Board of the Noticee Company

5. There was a presentation on concentration and liquidity risk in respect of securities in Debt Schemes in the AMC Board and Trustee meeting held on March 6, 2020, which was attended by Vivek Kudva in his capacity as Director, FT-AMC. Thus, Vivek Kudva was privy to information such as concerns of redemption, concentration and liquidity risk pertaining to the stress in the debt schemes inspected, most of which was not in public domain. Subsequently, the Noticee Company redeemed the units on March 6, 2020 & 11, 2020, which is after the Board meeting and which is allegedly attributable to Vivek Kudva being in possession of non-public information. The timing of redemption of units by the Noticee Company 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 FI-LDF and FI-UBF, 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/20550/2020/1 dated November 27, 2020 (hereinafter referred to as "SCN") was served upon the Noticee mentioning the aforementioned allegations against the Noticee and requiring it 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 it under Section 15HA of the SEBI Act for the aforesaid alleged violation committed by him.

9. The Noticee through its Authorised Representative (AR) vide email dated December 18, 2020 sought inspection of documents. Vide email dated December 23, 2020, the Noticee was informed to carry out inspection of documents not later than January 5, 2021 and thereafter to furnish its reply by January 19, 2021. I note from the records that the Noticee had carried out inspection of documents on January 1, 2021. Further, the AR vide emails dated January 11, 2021 and January 19, 2021 sought additional documents viz., entire Forensic Audit Report, complete letter of FT-AMC and Trustees etc., Further, the Noticee vide email dated March 11, 2021 inter-alia submitted as under:

"It has been brought to our notice from certain media publications that Franklin Templeton has made detailed submissions in relation to show cause notices received from SEBI pertaining to the issue, wherein it has categorically stated that all redemptions were done in the said debt schemes of the mutual fund prior to the in-principle approval to close such schemes. You will appreciate that such information is crucial for the purposes of the preparation of our reply. In light thereof, we request you to provide us with the same at the earliest and/or allow us to have an inspection of all additional information".

10. Vide email dated April 20, 2021, it was informed to the Noticee that all the documents which were relevant and relied upon in the instant proceedings have been provided to it along with the SCN and accordingly the request made by the Noticee for further inspection of documents was rejected. Vide the aforementioned email dated April 20, 2021, the Noticee was provided with one more opportunity to furnish its reply by May 3, 2021. It is noted that since no reply received from the Noticee, vide email dated May 11, 2021, the Noticee was provided with an opportunity of hearing on May 21, 2021. In view of the difficulties faced by all concerned due to Covid-19 Pandemic, the hearing was scheduled to be conducted online through videoconferencing on the Webex platform. The AR vide email dated May 17, 2021 submitted that the Emails dated April 20, 2021 and May 11, 2021 had gone into *"other"* folders in his Email and thus unable to acknowledge the receipt thereof or to respond to the same. In view of the same, the Noticee sought an additional period of two weeks for filing of reply and any date thereafter for the purposes of personal hearing. Having considered the circumstances stated by the AR vide aforementioned email dated May 17, 2021, the Noticee was granted time till May 24, 2021 to furnish its reply, besides rescheduling the hearing from May 21, 2021 to May 28, 2021. However, no reply was received from the Noticee. Thereafter, vide email dated May 26, 2021, the Noticee was provided with the Webex link along with the login credentials for joining the hearing through videoconference. Subsequently, the Noticee vide email dated May 26, 2021 furnished its reply, which is summarized hereunder:

    a) *In the year 2017, the Noticee, with an objective of capital protection and to earn interest on cash in bank at rates above fixed deposit rates as provided by the HDFC Bank Limited (who were the Noticee's bankers), invested INR 83 crores in the Franklin India Low Duration Fund ("FT-LDF") and Franklin*

India Ultra Short Bond Fund ("FTUBF") run by the Franklin Templeton Mutual Fund ("FT-MF).

b) *The onset of the Covid-19 pandemic increased financial stress at the Noticee and induced hardships in relation to payment of salaries, and meeting of other operational expenses. Further, the Noticee's objective of capital protection was disrupted by certain events in the financial markets which led to it suffering losses in its investment in FT-MF.*

c) *On January 24, 2020, CRISIL provided the rationale for downgrading Vodafone Idea Limited's ("Vodafone") non-convertible debentures to "BB" being significant deterioration in Vodafone's financial risk profile on account of the potential pay-out against the adjusted gross revenue (AGR)-related liability, to be payable shortly. Both FT-LDF and FT-UDF had exposure to such security, and on January 26, 2020 FT-MF communicated to the Noticee that it has created a segregated portfolio for Vodafone exposure in these funds. Such fact, came as a shock to the Noticee as other funds with exposure to Vodafone had not side pocketed its securities. Such side-pocketing resulting in a drop in the NAV of the aforesaid schemes of the FT-MF on January 17, 2020. The Noticee's accounting team, informed the management that such fact resulted in a loss of about INR 70-80 Lakhs in the Noticee's investment in FT-MF. Faced with such losses, the Noticee's faith in the FT-MF began to erode and it had to rethink its strategy pertaining to its investments in FT-MF.*

d) *On March 5, 2020, the RBI came out with a circular that limited withdrawal from Yes Bank Limited ("Yes Bank"). From SEBI listings of holdings of the FT-MF, the Noticee came to know that MF-FT had significant exposure to debt securities of Yes Bank. In order to prevent further losses on account on such development, the Noticee contemplated redemption of units of FT-MF. It is significant that on the 6th or 7th of every month, the Noticee had been redeeming units of FT-MF for the payment of salaries to its employees and staff. The subsequent redemptions of units were also undertaken for making payments that were due to certain vendors.*

e) *While the Noticee would have withdrawn INR 2 crores, a decision was taken to withdraw INR 5 crores on March 5, 2020 at night, post the news of the curb on withdrawals from Yes Bank becoming public. Such decision was also prompted by the fact that it was "a salary week", with February 2020 salary of around INR 3.218 crores falling due and payable, that there existed pending payments of INR 1.2 crore in first 10 days of March, and that there were more than INR 2 crores of additional accounts payable. On March 6, 2020, in the morning, the accounts team of the Noticee and two Managing*

Directors met and put together the papers for redemption, which were sent to FT - MF for redemption at 1:39 pm on March 6, 2020.

f) *Within 4 days from such event, on March 10, 2020, a markdown of Anil Dhirubhai Ambani Group ("ADAG") and Essel Infraprojects ("Essel") in the aforementioned schemes of FT-MF took place resulting in the complete loss of faith of the Noticee in FT-MF. On the same day, the Noticee decided to withdraw the full amount invested in the aforementioned schemes of the FT-MF. The documentation for the purposes of the redemption was prepared and sent to FT-MF at 1.55 pm on March 11, 2020.*

g) *It is submitted that the charges contained in the SCN have been framed on the basis of certain alleged evidences against the Noticee. However, such material has not been provided to the Noticee. In this regard, it is significant that the representatives of the Noticee specifically sought an inspection of documents and indicated to SEBI that certain materials had been referred to and relied on in the SCN but had not been provided to the Noticee.*

h) *SEBI, on January 1, 2021, granted an opportunity of inspection, wherein the complete records were requested for and more specifically, the documents mentioned in the email of even date. However, no documents were provided to us. It is submitted that while as per settled law framed by the Hon'ble Supreme Court in Securities and Exchange Board of India vs. Price Waterhouse & Co. and others (CIVIL APPEAL NOS. 6000-6001/2012, dated January 10, 2017), all documents collected have to be provided to the Noticee, SEBI has, in the instant matter, not even provided documents referred to and relied on in the SCN as stated above to the Noticee in spite of numerous requests and reminders during the inspection and thereafter vide e-mails dated January 11, 2021, January 19, 2021, March 11, 2021. SEBI, vide its e-mail dated April 20, 2021, rejected such request made, and in effect relied on wholly contrarian case laws which make it imperative on SEBI to provide the aforesaid documents.*

i) *In light of the above, it is submitted that the SCN is vitiated by violation of principles of natural justice. The SCN is also vague and incoherent. It is to be noted that a show cause notice is provided to a person in the furtherance of sacrosanct principles of natural justice and in specific, the principle of audi alterem partem, which necessitates that the adjudicating authority ought to hear the person against whom proceedings have been initiated. In the absence of a specific show cause notice, the Noticee herein has been gravely prejudiced. In this regard, the Noticee places reliance on the judgements of the Hon'ble Supreme Court in the matter of Food Corporation of India v. State of Punjab and others (2001) 1 SCC 291 and Canara Bank v. Debasis Das, (2003) 4 SCC 557.*

j) It is submitted that the SCN fails to even establish the factum of the flow of information between Mr. Vivek Kudva and the Noticee apart from merely jumping to the conclusion that Mr. Vivek Kudva, being a common-director in the FT-AMC and the board of the Noticee, and allegedly being in possession of confidential information pertaining to concerns of redemption, concentration of liquidity risk pertaining to the stress in the debt schemes inspected, was responsible for the transactions by the Noticee. In this regard, it is significant to note that SEBI has not even attempted to establish that Mr. Vivek Kudva was responsible for the providing information on the basis of which the Noticee had traded. In this regard, it is submitted that sans any evidence being placed on record establishing the same, a serious charge of violation of the PFUTP Regulations cannot be established.

k) The decision to redeem units of the schemes was taken by the two Managing Directors ("MDs") of the Noticee in consultation with the accounts team. It is pertinent that such decision was by no means taken by the board of directors of the Noticee or initiated by any other member of the board.

l) In light of the above, it is vehemently denied that Mr. Vivek Kudva was responsible for the transactions by the Noticee. It is also vehemently denied that there was any flow of confidential information between Mr. Vivek Kudva and the Noticee in relation to the schemes. Further, it is also vehemently denied that the redemptions by the Noticee was undertaken while in the possession of, or that the transactions were in any manner influenced by, any confidential information in relation to the schemes. It is reiterated that the Noticee is a separate legal entity and its treasury operations are handled by the two MDs of the Noticee with support from the accounting team.

m) It is submitted that SEBI has failed to even establish such information flow by the 'preponderance of probabilities' standard given that absolutely no evidence in favour of its allegation that Mr. Vivek Kudva was responsible for the transactions by the Noticee. SEBI is thus put to strict proof of the allegation that Mr. Vivek Kudva was responsible for the transactions by the Noticee and that there was any communication of confidential information about the schemes from Mr. Vivek Kudva to the officials of the Noticee responsible for its treasury operations.

n) As per the chronology of events, information pertaining to stress in the debt schemes only came to be in the possession of Mr. Kudva after March 18, 2020 when he specifically inquired about the same, and was thereafter provided with such data. Further, the decision of closure of the said schemes fructified much after the redemption by the Noticee.

o) *A bare perusal of the redemption data provided in Annexure – 4 clearly brings out the fact that redemptions by all other persons (including Mr. Vivek Kudva) mentioned therein occurred much after the redemptions by the Noticee (barring one redemption by Mr. Sanjay Sapre). The Noticee's case thus stands on a different footing from that of the others whose redemptions occurred after the genesis of confidential information in relation to the stress in the schemes.*

p) *It is significant that in the matter of Shruti Vora vs. the Securities and Exchange Board of India (Appeal No. 308 of 2020, decided on March 22, 2021), the Hon'ble SAT has clarified that a mere existence of one or two attendant circumstances will not definitively lead to the satisfaction of the preponderance of probability standard against a person. In the instant case, indeed, the only attendant circumstance is that there were common directors.*

q) *Further, it is significant that the charge of violation of the PFUTP Regulations is a serious one. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Kanaiyalal Baldevbhai Patel (2017) 15 SCC 7, opined on the standard of evidence required to hold a person liable for a charge under the PFUTP Regulations, and held that – "…The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified."*

r) *In light of the above, it is prayed that the SCN be quashed and set aside immediately.*

11. The ARs appeared before me on the scheduled date of hearing i.e., May 28, 2021 through videoconference and explained in detail the written submissions made by the Noticee vide Email dated May 26, 2021. The ARs also made a reference that on May 27, 2021, an application for settlement of the instant proceedings has been filed by the Noticee. The ARs sought an additional time of 2 days to make fresh submissions, which was acceded to.

12. The Noticee through its AR vide email dated May 31, 2021 made additional submissions, which are summarized hereunder:

a) *It is submitted that the issuance of the SCN discloses a total non-application of mind as it is contrary to material on record on which the SCN seeks to rely. Such fact is borne of two major oversights in the issuance of SCN that wholly vitiates it. Such oversight goes to the root of the allegations contained in the*

SCN and negates its twin premises that (a) Mywish was in possession of confidential information and (b) the redemptions by Mywish were motivated by such confidential information.

b) *The decision to redeem units of the two schemes of FT-MF was one based on commercial sentiments, the details of which were explained in earlier email dated May 26, 2021.*

c) *Even assuming, without admitting, that confidential information was given to the promoter directors on March 6, 2020 it belies any logic as to why such promoters would not sell all holdings on March 6, 2020 itself and wait till March 11, 2020.*

d) *In light thereof, it is submitted that factors such as the commercial nature of the decision to redeem on account of requirement of funds, credit events as well as earlier redemptions displaying a bonafide pattern of redemptions as elucidated in the Reply and hereinabove, is ought to be considered as a mitigating factor. In any event, it is submitted that no gain has been made by the Noticee in respect of the redemptions. However, it has made losses on account of undertaking the transactions in question. No loss has been caused to investors on account of the actions of the Noticee. It is also significant that the Noticee has been facing such charges for the first time, and therefore in no way can the instant alleged violation be said to be repetitive. It may also be further considered that any adverse order would lead to an existential crisis for a start-up such as the Noticee and would consequently jeopardise the livelihood of over 600 of its employees.*

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

CONSIDERATION OF ISSUES, FACTS OF THE CASE AND FINDINGS

14. 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 FI-UBF and FI-LDF 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.

15. 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?

16. 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

17. Before going into the merits of the case, I would like to deal with the primary contention raised by the Noticee with regard to supply of documents including forensic audit report, complete letter of FT-AMC and Trustees etc.,

18. The Noticee has stated that a copy of the forensic audit report has not been provided to it, and hence, it is a gross violation of natural justice as it has restricted his defence to the forensic audit carried out by SEBI. I note that the allegations against the Noticee are clearly delineated in the SCN and the following documents that have been relied upon in the SCN have been provided to the Noticee and it is the Noticee's responsibility to defend his case by referring to the documents on which SEBI has relied upon in the SCN.

    a) *Notice of winding up of six schemes dated April 23, 2020;*
    b) *Letter dated May 27, 2020 addressed to Franklin Templeton Trustee Services Pvt., Ltd., by SEBI;*
    c) *Relevant extract of Audit Report;*
    d) *Relevant extract of reply furnished by FT–AMC and Trustees vide letter dated September 3, 2020;*
    e) *Minutes of FT–AMC and Trustee Board Meeting dated March 6, 2020;*

19. I find that the SCN issued by SEBI to the Noticee contains the findings of forensic audit in respect of the Noticee. As regards, the Noticee's contention that it has not been furnished with the entire forensic audit report, I note that in the present proceeding reliance is being placed on only those documents, which have been provided to the Noticee.

20. In this connection, I would like to refer to the observations of the Hon'ble SAT in the matter of *Mayrose Capfin Private Limited Vs SEBI* (decided on 30.03.2012) wherein SAT observed that:*"……the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry*

officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count...."

21. Further, I note that the Hon'ble SAT, in its order dated February 12, 2020, in the matter of *Shruti Vora vs. SEBI* had made the following observations:

> *"Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceeding wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus, the investigation report is not required to be supplied".*
>
> *"The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)".*
>
> *"A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents, which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."*

22. Further, the Hon'ble SAT in the matter of *Anant R Sathe Vs SEBI* (Appeal No. 150 of 2020) vide Order dated July 17, 2020 has reaffirmed the principle elucidated in

the judgment of Shruti Vora's case, which was reproduced herein above and ruled that *"the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence"*.

23. The Noticee vide email dated March 11, 2021, based on media publication, has sought to know the detailed submissions made by Franklin Templeton in relation to show cause notices received from SEBI pertaining to the issue, wherein Franklin Templeton is stated to have submitted that redemptions were done in the said debt schemes of the mutual fund prior to the in-principle approval to close such schemes. It is pertinent to note that the subject matter before me is to inquire and adjudicate whether the Noticee has violated the provisions of SEBI Act and SEBI (PFUTP) Regulations. In this regard, the documents relied upon while issuing the SCN were duly provided to the Noticee and if any additional information the Noticee seeks thereafter and which is neither in possession of the Adjudicating Authority nor unrelated to the proceedings, the same cannot be provided to the Noticee. Hence, the submissions made by the Noticee in this regard is devoid of any merit.

24. Further, the Noticee referred to the Order passed by the Hon'ble Supreme Court in the matter of SEBI Vs Price Waterhouse (Civil Appeal No. 6003-6004/12) and accordingly sought documents.

25. In this connection, attention is drawn to Hon'ble Securities Appellate Tribunal (SAT) observations in the matter of B Ramalinga Raju Vs SEBI vide Order January 10, 2017, which reads as under:

> *"21. ……Fourthly, Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants."*

26. In view of the above, since all the documents which were relevant and relied upon in the instant proceedings have been provided to the Noticee, I am of the opinion

that principles of natural justice have been duly complied with in the instant proceedings. Therefore, I do not find that the interest of the Noticee has been prejudiced in any manner, and the Noticee has not explained as to how its interest is getting prejudiced by not having a copy of the forensic audit report when the charges/allegations along with documents in support of the show cause have been clearly spelt out in the SCN and the detailed facts on the basis of which those charges have been framed are already contained in the SCN and the relied documents provided therein.

27. The Noticee in its submissions stated that the issuance of the SCN discloses a total non-application of mind as it is contrary to material on record on which the SCN seeks to rely. The Noticee also submitted that the SCN is vitiated by violation of principles of natural justice and that the SCN is also vague and incoherent. In this regard, the Noticee placed reliance on the judgements of the Hon'ble Supreme Court in the matter of *Food Corporation of India v. State of Punjab and others (2001) 1 SCC 291 and Canara Bank v. Debasis Das, (2003) 4 SCC 557*.

28. I note that the violations alleged to have been committed by the Noticee were clearly delineated in the SCN along with the details of the violation of the Securities Laws and the penal provisions. Further, it is to be noted that the Noticee was provided with all the documents that were relied upon while issuing the SCN. The Noticee was also given sufficient opportunities to furnish its reply to the charges alleged in the SCN, besides providing an opportunity of inspection of documents and personal hearing. From the above, it can be seen that the Noticee was given a notice to show cause against the proposed action and sought its reply. Based on a request made by the Noticee, an opportunity of inspection of documents, was accorded to the Noticee. Pursuant to receipt of reply to the charges alleged in the SCN, the Noticee was heard of the oral submissions made by its ARs. Post hearing, the Noticee was given additional time to make fresh submissions. It is pertinent to note that the Noticee was able to furnish its reply to the charges alleged in the SCN.

29. In this connection, I note that any order passed without giving notice is against the principles of natural justice and is *void ab initio*. Further, I note that if the order is passed by the Authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid. However, in the instant case, it

can be seen from the above sequence of events that there is no such case that no notice was served on the Noticee and that the Noticee was not heard. It can be seen that the principles of natural justice have been duly followed in the instant proceedings. It is pertinent to note that the procedure prescribed by law has been strictly followed by the undersigned and the above sequence of events reveals due application of mind and there is no ground for arbitrariness has been made out. Therefore, the contentions raised by the Noticee in this regard are devoid of any merit.

30. I note that Mywish Marketplaces Pvt., Ltd., is an Associate Company of Franklin Templeton Asset Management (India) Pvt., Ltd., (FT-AMC) and by virtue of it, FT-AMC has nominated Vivek Kudva, Director, FT-AMC and Alok Sethi, Director, FT-Trustee, as Directors on the Board of the Noticee Company. Thus, Vivek Kudva was a common Director in the Noticee Company as well as FT-AMC.

31. 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 6 & 11, 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 Vivek Kudva has been a Director of FT-AMC since March 11, 2017. 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) The summary of the transactions done by the Noticee in all the debt schemes inspected for the month of March 2020 and April 2020 is as under:

TABLE I				
SR. NO.	**NAME**	**REDEMPTION DATE**	**SCHEME NAME**	**VALUE (IN ₹)**
1.	Mywish Marketplaces Pvt., Ltd.,	March 11, 2020	FI-LDF	6,55,143
2.		March 11, 2020	FI-LDF	1,34,11,789
3.		March 11, 2020	FI-LDF	14,19,667
4.		March 11, 2020	FI-UBF	4,41,03,935
5.		March 6, 2020	FI-UBF	5,00,00,000
6.		March 11, 2020	FI-UBF	11,15,69,533
TOTAL				**22,11,60,067**

32. Further, I note that the information such as concerns of redemption, concentration and liquidity risk pertaining to the stress in the Impugned Debt Schemes, which were discussed in the AMC Board and Trustee meeting dated March 6, 2020 was not publicly available information. It is to be noted that among others who attended the meeting held on March 6, 2020, Mr. Vivek Kudva was privy to the information of

stress in the fixed income scheme, which is a *non-public information*. Accordingly, the Noticee Company had redeemed its entire holding on March 6 and 11, 2020. It is pertinent to note that Mr. Vivek Kudva, who was aware of the stress in the schemes and his family, had redeemed their entire investment in the debt funds of FT-MF, before the schemes were wound up. In view of the facts mentioned above, it can be seen that the transactions were carried out based on the information provided by Mr. Vivek Kudva. 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.

33. The Noticee submitted that it had redeemed their investment as part of their regular treasury operations and made it clear that they have redeemed the investments purely based on the decision of the promoter directors owing to commercial sentiments. The Noticee further stated that the decision to redeem the investments was not a board-level decision and the nominee directors of FT were not involved in the treasury operations of Mywish and that the promoter directors of Mywish did not have access to any confidential price sensitive information about the Schemes. Further, the Noticee contended that the information pertaining to stress in the debt schemes only came to be in the possession of Mr. Vivek Kudva after March 18, 2020 when he specifically inquired about the same, and was thereafter provided with such data.

34. It is to be noted that in order to establish that the Noticee had redeemed its investments based on non-public information, the evidence of communication /receipt of non-public information needs to be brought out. I note from the records that there is no direct evidence of communication of non-public information by Mr. Vivek Kudva to the Noticee Company. However, given the gravity of the charge, I am of the view that even in the absence of any direct evidence, circumstantial evidence cannot be ignored. Therefore, I find it pertinent to examine the pattern of redemptions undertaken by the Noticee.

35. It can be seen from the table mentioned in Paragraph 31(e) above that on March 6, 2020, the Noticee Company had redeemed its investments in FI-UBF scheme for an amount of ₹5,00,00,000. Thereafter, on March 11, 2020, the Noticee Company had redeemed its investments in FI-UBF Scheme for an amount of ₹15,56,73,468 and

in FI-LDF Scheme for an amount of ₹1,54,86,599. Thus, on March 6 and 11, 2020, the Noticee Company had redeemed its entire investments for an amount of ₹22,11,60,067, which is substantial. It is pertinent to note that the Noticee redeemed its units on March 6, 2020 i.e., when the matter of extreme stress in the fixed income schemes was discussed in the meeting and thereafter on March 11, 2020, i.e., a few days after the meeting.

36. It is to be noted that during the financial year 2019-20, the Noticee had not made any investments in the schemes of FT-MF and had redeemed its investments made earlier.

37. I note that the information Mr. Vivek Kudva was in possession about the management's perspective on the fixed income schemes, which is non-public information. Therefore, I find that Mr. Vivek Kudva was aware of the fact that the information he was in possession will have material impact on the performance of the fixed income schemes which includes FI-UBF, FI-LDF. The circumstantial evidence indicates that Mr. Vivek Kudva had consistently displayed exchange of aid and advice to the Noticee and accordingly the Noticee redeemed the units in these two schemes immediately after becoming aware of the extreme stress in the fixed income schemes. The volume; the nature of transactions and the timing of the transactions in question can leave no matter of doubt that the Noticee was aware of the information parted by Mr. Vivek Kudva. There is no doubt that the quality of information that Noticee possessed at the time of undertaking redemptions was far superior to that of the general investor.

38. 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."

39. 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."

40. 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.

41. From the aforesaid facts of the case and from the circumstantial evidence, the preponderance of probability indicates that the Noticee was in receipt of non-public information that fixed income schemes being under extremely stressed, which was not available to the investors/unitholders and accordingly redeemed its entire investments on March 6, 2020 & March 11, 2020. 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 that the redemptions were made in the normal course of business and due to commercial sentiments.

42. 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—……*

43. 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.

44. 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.

45. 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 SEBI (PFUTP) Regulations 2003.

46. 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'. 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."

47. 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."

48. 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.

49. 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."*

50. 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-UBF and FI-LDF before the schemes were wound up. The facts, attending circumstances and timing of the redemptions made by the Noticee, indicates that the redemptions were based on material non-public information passed on by Mr. Vivek Kudva. It is pertinent to note that vide Order dated June 7, 2021 the Hon'ble Whole Time Member (WTM), SEBI dated June 7, 2021 held that Mr. Vivek Kudva and his family members redeemed their investments in two schemes, before they were wound-up. Accordingly, the Hon'ble WTM inter-alia imposed a penalty of ₹4 crores on Mr. Vivek Kudva and ₹3 crores on his Spouse, besides debarring them from securities market for two years. The timing of redemption of units by the Noticee further corroborates the fact of receipt of non-public information from Mr. Vivek Kudva with respect to stress in the debt schemes. Accordingly, I find that the redemption of units in the impugned debt schemes (FI-UBF and FI-LDF) by the Noticee an 'unfair trade practice' and is in contravention of Regulation 4(1) of SEBI (PFUTP) Regulations, 2003.

51. 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?

52. 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-UBF and FI-LDF scheme, which amounted to an unfair trade practice in securities market. The aforementioned acts of the Noticee are in violation of the provisions of Section 12A(e) and Regulation 4(1) of the 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?

53. 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.

54. 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.

55. The Noticee on the basis of information provided by Mr. Vivek Kudva had redeemed its units in the impugned debt schemes and thus enjoyed an unfair advantage over other investors, who remained invested and were subsequently left in the lurch as their investments were locked up for a considerable amount of time. Therefore, I deem it appropriate to impose such penalty on the Noticee, which acts as a deterrent to the Noticee and others in protecting the interest of investors in securities market.

ORDER

56. 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 ₹5,00,00,000/- (Rupees Five Crores only) on the Noticee i.e., Mywish Marketplaces Pvt., Ltd., under Section 15HA of SEBI Act

57. 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.

58. 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

59. 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

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

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