IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

W.P. No. 7744 of 2020

(WMP Nos.9111 & 9118 to 9120 of 2020)

M/s. Chennai Financial Markets and Accountability
Represented by its President Manoj K Sheth
Having its registered office at
GA Florentina, No.43, 1st Main Road,
Gandhi Nagar, Adyar, Chennai- 600 020.

...Petitioner

Vs.

1. **The Securities and Exchange Board of India,**
Southern Regional Office (SRO),
7th Floor, 756-L, Anna Salai,
Chennai - 600002, Tamil Nadu.
Also having their corporate office at:
Plot No. C 4-A , G Block, Near Bank of India,
Bandra Kurla Complex, Bandra East,
Mumbai, Maharashtra – 400 051.

2. **Franklin Templeton Asset Management India Pvt. Ltd.,**
Indiabulls Finance Ctr, Tower 13th Floor,
Elphinstone Road,
Mumbai - 400013.
Also having regional branch at:
4b, MGR Main Rd,
Kandancavadi, Perungudi,
Chennai - 600096

3. **Franklin Templeton Trustee Services Private Limited,**
Indiabulls Finance Centre,
Tower 2, 12th and 13th Floor, Senapati Bapat Marg,
Elphinstone (West), Mumbai – 400013.

4. **Sanjay Vishwanath Sapre**,
Wholetime Director,
Franklin Templeton Asset Management India Pvt. Ltd.,
Flat 41/A, Embassy Apartments,
46 Nepean Sea Road,
M Hill, A K Marg,
Mumbai 400036.

5. **Jayaram Subramaniam Iyer**,
Director,
Franklin Templeton Asset Management India Pvt. Ltd.,
2001, Tower B3, Godrej Platinum,
Pirojsha Nagar, Near Godrej Memorial Hospital,
Vikhroli East,
Mumbai 400079.

6. **Vivek Kudva**,
Director,
Franklin Templeton Asset Management India Pvt. Ltd.,
Flat 202, 2nd Floor, Vishnu Villa,
7B Worli Sea Face,
Opp Bandra Worli Sea Link,
Worli Colony,
Mumbai – 400030.

7. **Radhakrishnan Venkata Subramaniam**,
Director,
Franklin Templeton Asset Management India Pvt. Ltd.,
Flat No 52, Tower 3, Pebble Bay,
1st Main Road, Dollars Colony,
Near R M V Club,
Bangalore – 560094.

8. **Pradip Panalal Shah**,
Director,
Franklin Templeton Asset Management India Pvt. Ltd.,
72A Embassy Apartments,
7TH Floor, Napean Sea Road,
Mumbai - 400006.

9. Tabassum Abdulla Inamdar
703, Imperial Heights,
Tower B BEST Nagar,
Motilal nagar, Mumbai 400104

10. **Santosh Das Kamath,**
MD & Chief Investment Officer,
Franklin Templeton Asset Management India Pvt. Ltd.,
Indiabulls Finance Ctr, Tower 13th Floor,
Elphinstone Road, Mumbai – 400013.

… Respondents

AFFIDAVIT OF MANOJ K SHETH

I, Manoj K. Sheth, Jain, aged 57 years, President of M/s. Chennai Financial Markets and Accountability, having its registered office at GA Florentina No.43, 1st Main Road, Gandhi Nagar, Adyar, Chennai – 600 020, do hereby solemnly affirm and sincerely state as follows: -

1. We state that we are the Petitioner herein and as such we are well versed with the facts of this case and we are competent and authorized to swear this affidavit.
2. We are filing the present petition in the larger interest of the public. We state that the petitioner is a society bearing Registration No. 3482019 and registered under The Tamil Nadu Societies Registration Act, 1975. We further state that the sole objective of the society is largely to address the public concerns in the areas of banking, insurance, financial or any other domain of public and community interest and provide solution to the aggrieved parties. We would like to state that this is a public interest litigation and we have not filed any other public interest litigation earlier to our knowledge on the same subject matter before any other Hon'ble High Court and also the Supreme Court of India. We state that the present petition has been filed in the larger interest of the public.
3. It is submitted that the petitioner herein had sent a representation to SEBI bearing reference CFMA/003/20-21 dated 28.04.2020 detailing the wide ranging allegations against the 2nd Respondent and its key managerial personnel seeking explanation on the following. The contents in the representation may be treated as a part and parcel of the present writ petition and the said representation is annexed herein along with the typed set of papers.
4. We state that we are filing the present Petition as we are aggrieved that Respondent No.1, a statutory regulator of Mutual Funds in India, has miserably failed in its duties with respect to six debt schemes as particular stated herein that were run by Respondent No.2 to 9. Respondent No.2, under the leadership of Respondent Nos. 3

to 10 has abruptly wound up its six debt schemes which decision has sent shockwaves among scores of unit holders who have been left completely in the lurch. The Petitioner is aggrieved with the apathy of Respondent No.1 who not only failed to monitor the activities of Respondent No.2-10 in relation to the six debt schemes, but merely watched as a silent spectator even when it became aware of the intention of Respondent No.2 to wind-up the six debt schemes. We are hence filing the present Petition, seeking, *inter alia,* orders of investigation into the affairs of Respondent No.2 as managed by Respondent Nos. 3 – 10 qua the six debts schemes as provided under the provisions of the SEBI Act and the Regulations provided thereunder including under Regulation 61 of the SEBI (Mutual Fund Regulations) under the supervision of this Hon'ble Court as morefully described in the prayer to the writ petition.

5. We state that we are filing this present public interest litigation out of our own funds. We have filed this writ petition based on the information obtained from the official records through various sources, while also putting to use our personal knowledge with regard to its filing. We are aware that if this writ petition is found to be vexatious or frivolous, we are liable to be imposed with exemplary costs, by this Hon'ble Court. We have no personal interest in this case. We have filed this writ petition only in the interest of the larger public. We further submit that to our knowledge and belief, no similar PIL has been filed before this Hon'ble Court.

6. We state that the purpose of the present Writ Petition is to pray for an issuance of a direction to the first respondent as a regulator of the securities which has wide ranging powers to investigate into the affairs of a mutual fund AMC company when its affairs are conducted in a manner contrary to the relevant statutory provisions governing it under the supervision of SIT. It is further submitted that the sudden decision of 2nd respondent goes against the very conduct and provisions contemplated and stipulated respectively under the SEBI MF Regulations. I submit that the respondent ought to have taken the interests of the unit holders as its

paramount obligation and the guiding factor for all its activities. I further state that the decision in question is completely against the letter and spirit of the SEBI Mutual Fund Regulations and how the fraud and financial and managerial irregularities have been made out will be explained in detail in the present Writ Petition.

Factual Background

7. I state that 2nd respondent is the Asset Management Company (AMC). The sponsor company is an American company namely Templeton International Inc. and the trustee is the 3rd Respondent, i.e., Franklin Templeton Trustee Services Pvt. Ltd. On 23rd April 2020, 2nd respondent had abruptly and without notice or consent of the unit holders, wound down six mutual fund debt fund schemes having Assets Under Management (hereinafter referred to as 'AUM') of about Rs.28,000 crores. This was done under the garb and pretext of the extraordinary circumstances that arose due to the spread of the Covi-19 virus. The 2nd respondent **is the 9th largest mutual funds managers and manages 1.16 lakh crores in mutual funds in India.** The 2nd respondent was in fact considered to be the best amongst its peers in India and if this happens to it and the SEBI allows the 2nd respondent to leave its unit holders to their fate for redemption, the trust of the unit holders on mutual fund industry is bound to be affected. In other words, the arbitrary decision of the 2nd respondent is unbecoming of a market leader and the impact of which is surely going to be felt by the investing community. Its disastrous that even after all this while, SEBI is still refusing to take stringent action to protect the interests of the market. SEBI is not discharging its role as an independent regulator. It wouldn't be an overstatement to state that the decision of the 2nd respondent to wind up Six debt Schemes had caused panic in the market and resulted in a contagion effect. The six mutual debt fund schemes that have been prematurely closed down are as follows:

- Franklin India Low Duration Fund
- Franklin India Dynamic Accrual Fund
- Franklin India Credit Risk Fund

- Franklin India Short Term Income Plan
- Franklin India Ultra Short Bond Fund
- Franklin India Income Opportunities Fund

8. The implication of the winding up of the aforementioned schemes is that the unit holders shall be left at the mercy of R2-9 and their apparent ability to recover the investments of the unit-holders in the aforementioned schemes, whether on maturity or on earlier sale thereof.

9. I state that the right of the unit-holders to redeem their investment have been suspended and more importantly the trust of unit holders in Mutual Funds has been shattered. There was general expectation that there would be no erosion of capital or principal amount invested in the, mutual funds. Thus, the decision in question has belied the general expectation of the market and has caused a distressing situation for the various classes of unit holders, which include Senior citizens retirement funds and hardworking honest tax payers. Now, after closing down of the said schemes, they stand to be the biggest losers and sufferers who feel cheated. History has it always, 'gullible investors are always targeted scapegoats'. The massive advertisement campaign carried with the bottom line ***'Mutual Fund Sahi Hai'*** which had the Cricket star celebrities 'Sachin Tendulkar' and 'Mahendra Singh Dhoni' as its brand ambassador now seems to be misleading and has ultimately lured gullible people to invest in the schemes on the belief that the investment would be as safe as a bank deposit. It is indubitable that Mutual funds is albeit a private industry and it manages public money. Thus, Mutual funds are not merely a platform, but investment decision makers acting for and on behalf of unit holders in fiduciary capacity on where to invest and when. Hence it is akin to a private bank with an entry barrier under a regulator like SEBI. Hence, if investigation discloses investment decisions to be taken for wrongful private gains, the Prevention of Corruption Act, 1988 would apply to Mutual Funds as it is applied in the case of public sector banks.

10. I state that the situation at present has become so destabilising due to the shocker delivered by 2nd respondent, that the Reserve Bank of India (RBI) was forced to come out with a scheme of Special Liquidity Fund of Rs.50,000 Crores to prevent default contagion in mutual fund industry in the face of redemption pressure. Why must RBI, custodian of public money bail out the MF industry when its not yet ruled out there was no fraud. At a time when other key players of the Economy like MSMEs, Agro Sectors and other such industries are reeling under financial distress, the diverting of liquidity into Mutual Funds industry has raised many eyebrows. Besides this, SEBI had all the macro and micro indicators available pointing to the stress in schemes having investment in less than highest investment grade papers. This raises doubts as to why SEBI ignored, or missed those indicators. In any case, there was a complete failure of supervision and surveillance systems at SEBI and delayed actions, causing not only huge hair cuts/losses to investors in Six Debt Schemes, but also sizeable exodus of many debt schemes of other AMCs as well. Delayed in announcements by RBI has caused losses to investors in debt schemes of all AMCs including 2nd respondent.

11. I submit that gross professional misconduct has been committed by Fund manager/chief investment officer and MD and CEO of the company in management of the schemes, ultravires to the Rules and Guidelines issued by SEBI, SOP issued by AMFL and best trade practices adopted by few other AMCs of the industry and few are as under:- a) Many of the investments were made in companies in which no other mutual fund had ever invested. As per the report of B&K Securities, they had invested in 28 securities for Rs 7897.17 crore, where 100% investments were made only by the 2nd respondent schemes. Similarly 90% to 100% investments in 3 issues for Rs 241.52 Cr, was made by 2nd respondent schemes. Similarly 80-90% investments in securities issued by 4 issues were made for Rs. 2258.38 Cr, by the 2nd respondent schemes, b) There were large negative cash balances in many schemes of six debt funds operated

by 2nd respondent as on 31/03/2020. As per Nilesh Shah, AMFL Chairman, there were no borrowings (no negative cash balance) in any of the debt schemes across the industry as on 31/03/2020. This showed weaknesses of the confidence of investors and mounting redemption pressures, before Covid problem had started, c) The average maturity periods of investments were enormously adjusted, against the objective stated in offer documents, d) The malicious adjustments in Average Maturity Periods of investments was against:

i) Letter and Spirit of the Offer documents.

ii) And contrary to sound risk mitigation measures.

iii) The treatment given by other similar schemes of other AMCs.

iv) The principles of commercial prudence in making investment of public money.

e) The scheme also had sold AAA/AA rated securities in the month of March and April. This had resulted in 'early' exit of few investors and saddling the 'junk securities' with continuing small and gullible investors, who had remained invested in the scheme. This was robbing 'Paul' to pay 'Peter'. This was in the knowledge of fund manager/ CIO/ MO & CEO and Trustee company.

12. I further state that not only the fund manager of the six debt schemes, but also CIO of AMC, MD and CEO of AMC and Trustees of Trustee ship company and sponsor company in USA had also complete information about mishandling of various schemes and violation of different rules and regulations and malicious use of grey areas of management of the schemes related regulations and continuing such fraudulent management of schemes. Since all of them together are responsible to the Indian investors in a massive way, all of them including foreign sponsor must be held accountable, responsible and liable to make good the losses in six debt schemes.

13. I state that the grounds cited for winding down the schemes, namely, market dislocation and illiquidity caused by the COVID-19 pandemic are untenable, simply because other schemes of 2nd respondent have not been wound down. Secondly, It

is also imperative to notice that COVID -19 had led to uncertainty in financial markets and at a time when the entire world has come to a standstill, the decision of the 2nd respondent to wind up the schemes has added fuel to fire. The decision was therefore self-serving and reckless. Thirdly, even as on 31.3.2020, the Net Asset Value of many of the schemes of the 2nd respondent was negative. It has been further reported that recently, all of these six funds had written down their respective exposure to troubled bonds of Vodafone Idea Ltd and a few of these also wrote down their exposures to Yes Bank Ltd. Furthermore, it has been understood that the crisis with the 2nd respondent actually started much earlier as will be reflected in their statutory returns filed from time to time. Therefore, for the 2nd respondent to cite the COVID-19 pandemic outbreak as the proximate cause for the illiquidity that has forced them to wind up the debt schemes would be akin to them trying to wash off their hands from their acts and omissions, and is nothing but a futile attempt to escape from the clutches of law. It appears that the 2nd respondent has used the excuse of COVID-19 to suppress the real reasons for the ill-performance of their Mutual Funds caused purely as a result of complete mismanagement and the throwing of caution to the wind by the managers of the 2nd respondent. This necessitates an interdict to be slapped upon the 2nd respondent restraining them from launching any new schemes so that it does not misuse its fiduciary role to take the public for a ride any more.

14. I submit the Respondent No. 2 had various options which it failed to exercise.
    a. If the investment opportunities were not available in the market for deployment of funds in the requisite rating companies, Respondent No. 2 instead ought to have stopped accepting the amounts from the unit holders than to deploy the funds in companies with high risk.
    b. If was also possible to impose more restrictions for withdrawal to ensure stability in the scheme for all unit holders.

15. I submit that the probable reasons for lack of liquidity for the assets held under the six schemes seem to be poor asset quality and aggressive and imprudent investment decisions. By giving small disclaimers, the 2nd respondent can't legitimize their imprudent investment decisions. Now they want to hide their non-performance behind the current market condition arising out of COVID-19 and pass on the losses to their unit holder. Further, the reports suggest that the 2nd respondent has violated the norm of exposure limits or concentration limits. Many of the securities in which investment was made were at the lower end of the investment grade, which were susceptible to downgrade to below investment grade with some deterioration in business environment. When even ordinary prudent retail investor desists from making investment in troubled entities like Vodafone and Yes Bank Ltd based on information available in public domain, there was no reason for the 2nd respondent to invest unit-holders money in the debt of these entities and furthermore, it is the cascading effect of such poor investments which is leading to value-destruction for the 2nd respondent unit-holders. Investment of securities of private limited and unlisted securities was in violation of SEBI guidelines and circulars issued by SEBI. It was the duty of the regulator to ensure that the concentration and exposure norms were strictly adhered to and the fund managers do not take undue risk by exceeding the limit set even for credit risk funds by huge margin. It is reported that the 2nd respondent hoodwinked the regulator by winding down the schemes before the deadline given for compliance of exposure/concentration norms. It was also the duty of fund manager/AMC to abide by such guidelines and circulars in letter and spirit.
16. I submit that the 2nd respondent owes fiduciary duty like every other mutual fund as they are handling people's hard earned money and they are legitimately expected to be experts and sophisticated money managers. They can't be sleeping when a situation like this arises, as they are paid to foresee and act proactively to mitigate such risk, however, the ill-conceived decision only reveals that chinks in the armour

of the 2nd respondent were exposed in the face of COVID-19. The unit holders place their funds in debt Mutual Fund rather than equity Mutual Fund as the latter is perceived to be high-risk investment. However, the risky debt assets in which the 2nd respondent had invested the unit holders' money goes on to reflect their scant regard for the canons of a fiduciary relationship. Thus, even misfeasance, fraud, criminal conspiracy and misappropriation cannot be ruled out, in investments/disinvestments and operational decisions.

17. I submit that 2nd respondent has stated that the decision was taken "in order to protect value for unit holders via a managed sale of the portfolio". Since these schemes had to be wound down despite SEBI Regulation, complex structure of monitoring, audit, supervision, governance – involving SEBI registered Asset Managers, Investment Committee, Risk Management Committee, Board of Trustees, Sponsors, it is difficult now to trust 2nd respondent to walk the talk when it says that it wants to protect value for unit holders. The fact of the matter is, money of the unit holders is stuck at least till maturity of each scheme. Even on maturity, there is no certainty that at least the capital of the unit holders would be returned. In all probability, the assets may be sold at a later date at huge hair-cut. There is also no certainty that the persons associated with the 2nd respondent who are responsible for the present state of the six schemes would be around to be held accountable. With lapse of time even the unit holders may lose zeal to pursue the matter. Shockingly, as per the second respondent themselves, unit holders will take a big hit and close 20-30% of their investments will have to be written off and this is only principal and interest is completely out of the question. The maximum pay-out which can happen is 81% and the minimum is a shocking meagre 5%. Hence, it becomes all the more important to provide to unit holders by assuring them that at any case, their bond will be sold at par and if it is sold below par, then such loss is either borne by AMC or trustee or sponsors. The company's assets and personal assets of the KMP also

should be attached to secure the returns. This is not a fraud per se against the unit holders alone but any delirious act will affect the entire market.

18. Section 11 of the SEBI Act Chapter IV highlights the Power and Functions of SEBI. One of the important area of functioning of SEBI includes registration and regulation of Mutual Funds. One of the development functions includes promotion of fair business practices. The regulator SEBI enjoys wide powers under SEBI Act for calling for information from the constituents and regulate them. SEBI has installed huge supervision and surveillance systems and software, purchased for crores of rupees. It shows that no such early signals were either received or acted upon by SEBI to stem the rot. Nor any of the inspection carried out by SEBI had pinpointed any lapses in management and conduct of schemes which were public money. The regulator also has found to be wanting in their role as regulator for mutual fund industry.
19. I state that SEBI is mandated to protect the interests of unit holders. As per the CEO of the 2nd respondent Mr. Sapre, they had been in touch with SEBI on continuing basis. This leaves us asking about the steps that were taken by SEBI to solve the liquidity crunch faced by the 2nd respondent. SEBI as the guardian of financial markets in India must have communicated to RBI about lack of liquidity in the markets and the need for immediate steps to avoid cascading effects on the entire mutual fund industry. It is shocking to note our regulatory body has not learnt any lesson from the past crises like those in 2008 and 2013..
20. As a prudent regulator, SEBI should not rule out the possibility of violation of its regulatory norms, and even, fraud, criminal conspiracy, collusion and corruption. Instead of waiting for the schemes to mature and hoping that the assets would be liquidated by the 2nd respondent without any hair-cut, SEBI should have taken every possible preventive action to secure the interests of unit holders, immediately. However, the same was not done. There is a need for this Hon’ble Court to restore trust of the unit holders not only in the Mutual funds, financial stability of the system,

but also that the regulatory framework and its wide ranging powers can protect the interests of unit holders. The extracts of the relevant provisions under the ***SEBI MF Regulations,1996*** are as follows:

- *Section 2 (m) reads 'fraud for the purpose of these regulations has the same meaning as is assigned to it in section 17 of the Indian Contract Act, 1872 (9 of 1872)'. Therefore fraud is established, even if there was a suggestion of a fact which is not true and also through active concealment of facts and a promise made without any intention of deferring it and any act which is fitted to deceive.*
- *Section 18(8) reads 'The trustees shall ensure that the asset management company has been managing the mutual fund schemes independently of other activities and have taken adequate steps to ensure that the interest of investors of one scheme are not being compromised with those of any other scheme or of other activities of the asset management company'. Hence, it is the duty of the trustees to take adequate steps to ensure that the interest of the investors of one scheme are not being compromised with those of any other scheme or of other activities of the asset management company'.*
- *Section 18(10) reads 'Where the trustees have reason to believe that the conduct of business of the mutual fund is not in accordance with these regulations and the scheme they shall forthwith take such remedial steps as are necessary by them and shall immediately inform the Board of the violation and the action taken by them'. It is thus incumbent upon the trustees to inform the board if the conduct of business of the mutual fund is not in accordance with the regulation. It is submitted that the fact that there has been a general causation effect right from IL&FS debacle in August/September, 2018, which is the time when 2nd respondent suffered the pain and onslaught, and in such circumstances, the trustees ought to have informed the board then so that remedial steps could have been initiated at the relevant time to ensure that the investors safety and security are protected appropriately.*
- *Section 18(15) reads - 'The trustees shall obtain the consent of the unitholders— (a) whenever required to do so by the Board in the interest of the unitholders; or (b) whenever required to do so on the requisition made by three-fourths of the unit- holders of any scheme; or (c) when the majority of the trustees decide to wind up or prematurely redeem the units'. Hence, the consent of the unit holder is necessary when majority of the trustees decides to wind up or prematurely redeem the fund. In the present case, they have not sought for consent from the unit holder but have arbitrarily decided to wind up and by doing so they have acted in blatant violation of this provision.*
- *Sec 18 (20) reads 'The trustees shall ensure that there is no conflict of interest between the manner of deployment of its networth by the asset management company and the*

interest of the unit- holders'. This unambiguously makes it clear that the trustees were duty bound to ensure that the investor interest are kept as paramount.

- *Sec 24 (b) (7) reads 'it ensures fair treatment of investors across different products that shall include, but not limited to, simultaneous buy and sell in the same equity security only through market mechanism and a written trade order management system; and'.* ***it's common knowledge that few High Networth individuals were allowed to redeem their investments prior to the announcement of 2nd respondent to wind up the six debt schemes through AAA security bonds leaving the unit hodlers who trusted 2nd respondent in the lurch with junk bonds as security.***
- *Sec 25(6) and (6a) reads - '(6) Notwithstanding anything contained in any contract or agreement or termination, the asset management company or its directors or other officers shall not be absolved of liability to the mutual fund for their acts of commission or omission, while holding such position or office.*

(6A) The Chief Executive Officer (whatever his designation may be) of the asset management company shall ensure that the mutual fund complies with all the provisions of these regulations and the guidelines or circulars issued in relation thereto from time to time and that the investments made by the fund managers are in the interest of the unit holders and shall also be responsible for the overall risk management function of the mutual fund'. Thus, the provision makes it absolutely clear that the Chief Executive Officer of the Asset management company as well as the fund manager should ensure that all decisions are taken in the interest of the unit holders and it further goes on to state that the directors shall be liable for omissions and commissions.

- *Sec 25 (20) reads - 'The asset management company and the sponsor of the mutual fund shall be liable to compensate the affected investors and/or the scheme for any unfair treatment to any investor as a result of inappropriate valuation'. This provision imposes liability on the asset management company inappropriate valuation and any unfair treatment to any investor.*
- *These schemes were open ended schemes. The AMC as well as the trustee as well as the key managerial personnel cannot be held to be KMP as per Sebi Intermediary regulation and must be declared as such by SEBI.*
- *The compliance officer appointed in terms of Regulation 18(4) (b) read with 18(4a) has failed in its duty because he did not ensure that the rules, regulations issued by the board were complied with, neither did he intimate SEBI that such risky investments were made in junk bonds. The trustee have also been in violation of Regulation 18(17 and 18) because they did not exercise due diligence to review all transactions in the best interest of the unit holders. There is also a violation of 18(25a and b), when types of illiquid investments were made in junk bonds, the same should have cropped up in the*

internal audit reports from the independent auditors. The trustee never intimated to the board. i.e SEBI any of the special developments. The AMC also should be debarred as not a fit and proper person in accordance with Regulation 21(1) (aa).

- *The AMC is also in violation of Regulation 25(1), 25(2), 25(3) because they did not exercise their due diligence in its investment decisions. It is pertinent to mention that such illiquid investments is only to 2nd respondent. It is also clear that the AMC has not complied with the code of conduct as specified in the 5th schedule. It is also submitted that there is a violation of Regulation 18(15) because the trustees never obtained the consent of the unit holders prior to passing of the order deciding to wind up the schemes.*
- *Regulation 15(1) read with the third schedule speaks about obligations of the trustee which is to be included in the trust deed and it is clear that the trustee have failed to fulfil their obligations under these clauses primarily clause No.3 to 8.*
- *The SEBI master circular for mutual funds has also been violated as the AMC as well as the trustees have not fulfilled their obligations in terms of Regulation 5.178.1. The auditor has also failed in his duty because he has not pointed out any grey areas or red flags in the investment and therefore there is a violation of 6.10 to 6.15.*
- *Sec 61 reads - '(1) The Board may appoint one or more persons as inspecting officer to undertake the inspection of the books of account, records, documents and infrastructure, systems and procedures or to investigate the affairs of a mutual fund, the trustees and asset management company for any of the following purposes, namely :— (a) to ensure that the books of account are being maintained by the mutual fund, the trustees and asset management company in the manner specified in these regulations; (b) to ascertain whether the provisions of the Act and these regulations are being complied with by the mutual fund, the trustees and asset management company ; (c) to ascertain whether the systems, procedures and safeguards followed by the mutual fund are adequate ; (d) to ascertain whether the provisions of the Act or any rules or regulations made thereunder have been violated ; (e) to investigate into the complaints received from the investors or any other person on any matter having a bearing on the activities of the mutual funds, trustees and asset management company ; (f) to suo motu ensure that the affairs of the mutual fund, trustees or asset management company are being conducted in a manner which is in the interest of the investors or the securities market'. It is amply clear that SEBI has wide ranging powers to inspect and investigate.*
- *Sec 68 reads - 'Procedure For Action In Case Of Default', giving SEBI wide and unfettered powers to pass penal orders in accordance with SEBI imposing of penalty under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.*

21. It is also submitted that's its not known what were the warning signals given by the AMC and the fund managers to the Board of Trustees regarding the risk in these six funds in terms of specific due diligence required of the trustees. ***The record should be made available whether the Board of Trustees did see audit reports, compliance certificate, communicate to the AMC in writing the deficiencies and check the rectification of deficiencies. This is relevant in view of the change desired by SEBI in reduction of concentration to 10% in unlisted bond within one year by June, 2020 and what measures did AMC take. Further, Regulation 18(15) has also been violated because it states that the trustees shall obtain the consent of the unitholders when the trustees decide to wind up. Hence, prior closure without the consent of the Unit Holders is illegal. Further the Board of Trustees have even commenced the procedure of appointing an auditor to liquidate the investments according to media reports. This is even more disturbing considering that unit holders might lose huge monies. There is also a violation of 18(15A)*** *because Board of Trustees have consented to closure of the schemes when it was a fundamental contractual change in the attribute of the scheme when they were required to give a public advertisement to all unit holders and they have to be given the right to exit at prevailing NAV.)*

22. As per the 7th schedule to Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 [Regulation 44(1)]:-

RESTRICTIONS ON INVESTMENTS
[1. ***A mutual fund scheme shall not invest more than 10% of its NAV in debt instruments comprising money market instruments and non-money market instruments issued by a single issuer which are rated not below investment grade by a credit rating agency authorised to carry out such activity under the Act. Such investment limit may be extended to 12% of the NAV of the scheme with the prior approval of the Board of Trustees and Board of Directors of the asset management company:***
Provided that such limit shall not be applicable for investments in Government Securities, treasury bills and collateralized borrowing and lending obligations:
Provided further that investments within such limit can be made in mortgaged backed securitised debt which are rated not below investment grade by a credit rating agency registered with the Board:

Provided further that the schemes already in existence shall with an appropriate time and in the manner, as may be specified by the Board, conform to such limits.]

It is submitted that this 10% prudential norm was breached and not complied even post SEBI decision which is a significant departure from restriction on investment as per SEBI regulation. Further companies which had major regulatory challenges were also in the portfolio and it needs to be seen when were these investments made and what corrective actions were initiated post knowledge of these securities being involved in regulatory mess (eg. Yes Bank, DFHL and Vodaphone.)

23. I state that its very clear that SEBI has failed in its exercise and the facts would reveal that their systems as not being vigilant, with no monitoring, no discipline, no surveillance, no risk taking and no checks and balances on quality of securities. SEBI did not carry out sufficient periodic surveillance of investments, which were made with gross violations as to object of the scheme. By adjusting average maturity periods, securities of longer tenure were mixed up and bought, which were contrary to the objective of the scheme. This blatant violation was so obvious and patent when compared with investments made by other AMCs, but had remained unnoticed by SEBI shows utter failure and defiency in monitories and surveillance services by the Regular SEBI. Also was there failure of audit committee, AMC and Trustee company to take early steps for mending ways of investment by Fund Manager/CIO. In this a case of connivance of all, need detailed unbiased investigation. SEBI should be alive to the risk of contagion and also risk to financial stability. Therefore, SEBI should immediately conduct a third party inquiry/investigation in the manner required / provided under the provisions of the SEBI Act, the Rules and Regulations made thereunder and in particular u/s 61 of SEBI MF Regulations under supervision of the SIT as stated above against the 2nd respondent. The scope of the inquiry should include:

- A full-fledged Forensic audit and process audit of six schemes to examine – (i) Risk-assessment in investments in various securities – including the stress tests,

(ii) valuation of the securities, (iii) to ensure that there is no conflict of interest, (iv) whether documentation is in consonance with the SEBI MF Regulations. If during audit by the regulator & investigation by the Court Committee, any irregularity including corruption or fraud or cheating is found, then the personal wealth of such errant individuals should be taken away and if the Company too is found to have been benefited by any illegal means, then its assets should also be taken away in proportion to the loss amount.

- Calling for the list of unit-holders who got their investments redeemed during a month prior to 23rd April 2020.
- Whether the AMC, Trustees, Sponsors, Members of Investment Committee, Risk Management Committee, Board of Directors, KMPs, Auditors, and Credit Rating Agencies continue to fulfil 'Fit and Proper' criteria.
- To find out the analysis that was done to check health of the schemes and when the first trigger was received and whether it was informed to the unit holders.
- Seek explanation from 2nd respondent why the consent was not taken from, or notice was not given to unit-holder before taking unilateral decision to wind down six schemes.
- To investigate and examine the particulars of all investments made by the 2nd respondent in the last 2 years.
- To check for fraud, including investigating wealth of the fund manager against his disclosed source of income and if found guilty, then penal provisions should be invoked in addition to regulatory law/provisions.
- To check whether there was any conflict of interest between KMPs of the 2nd respondent and the companies in which they invested and auditors and verify whether any intermediary was involved in raising money or investing.
- To verify with Orient company and SEC as to whether these are the best practices adopted by the 2nd respondent globally and whether an action in India

can disturb their operations in US. The manner in which they would they disclose this risk globally should also be found out and whether there would be any disciplinary action in such a scenario.

24. With a view to ensure that findings and recommendations made after inquiry/investigation can be implemented against the 2nd respondent, it is humbly prayed that the following preventive steps need to be taken by this Hon'ble Court:
    - The Directors, Fund Managers, CEOs and KMPs should be asked to state their personal assets on affidavit to the HC.
    - Direct 2nd respondent to deposit all the commission charged in an interest-bearing escrow account.
    - Bar the AMC as well as its existing management from resigning and taking up other assignment till full recovery is made.
    - The Company and its Directors, Fund Managers, CEOs and KMPs and also their rating agencies should be prohibited from alienating the company and personal assets.
    - The mere availability of insurance shouldn't allow the Fund manager and KMPs to leave until the insurance amount is realized.

Declaring the Key Managerial Personnel-Not Fit and Proper- SEBI Regulations

25. It is submitted that the key managerial personnel of the 2nd respondent may be declared as 'Not fit and proper' to hold office as they have acted in violation of SEBI (Fit and proper Regulations) and further restrain them from operating into the mutual fund market until a full fledged enquiry is conducted by SEBI. The application of 'fit and proper' criteria has to be consistent to preserve the integrity of the market as a whole and should not be conducted in a piecemeal approach.

26. I state that Regulation 5A of the Broker Regulations states that the criteria specified in Schedule II of the Securities & Exchange Board of India (Intermediaries) Regulations, 2008 will be applicable for determination of whether an applicant/stock

broker/sub-broker/trading member/clearing member is a fit and proper person. For the sake of convenience, the regulation is reproduced below:

Criteria for fit and proper person*.*

5A. For the purpose of determining whether an applicant or the stock broker, sub-broker, trading member and clearing member is a fit and proper person, the Board may take into account the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 is reproduced below for the sake of convenience:

For the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, ***the principal officer, the director, the promoter and the key managerial persons by whatever name called-***

a) *Integrity, reputation and character;*
b) *Absence of convictions and restraint orders;*
c) *Competence including financial solvency and net worth;*
d) *Absence of categorization as a wilful defaulter.*

27. I submit that it is shocking to note the failure on the part of SEBI to exercise its own statutory powers under Section 27 of the SEBI Act. The provision is extracted hereunder:

Offences by Companies. –

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall

also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Explanation. – For the purposes of this section, –

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

28. The above said provision makes it most abundantly clear that in case of an offence committed by a company under the SEBI Act and rules, every person in charge of the company at the time the offence was committed shall be guilty of the offence. This was clarified by the Hon'ble Supreme Court in *Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors.* wherein it had cleared all doubts as to the expression 'offence' being not confined to a criminal offence alone while upholding the applicability of a provision similar to Section 27 of the SEBI Act.

29. I state that SEBI has ignored its own order against Credit Suisse First Boston dated 27.11.2002 wherein it noted that when the reputation of a body corporate is seen, the reputation of the persons who are managing the body corporate is also to be seen. Also, the SEBI in the matter of *Altius Finserv Private Limited*, has held that while determining whether a person is fit and proper person, SEBI not only has to look into the integrity of the corporate entity, but also the directors / key managerial personnel who are responsible for the acts and conduct of such corporate entity.

30. Reference is also drawn to SEBI orders against *M/s. Aryaman Financial Services Ltd.* dated September 20th, 2002 and SEBI order in the matter of *Rajesh Exports Ltd.* dated January 21st, 2003 where failure of merchant banker to exercise due diligence in the issues managed by it led to a finding that it is not fit and proper to be registered as debenture trustee.

31. In the context of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 itself it has been observed that 'fit and proper person' criteria introduced in 1998 has been inherent in the regulations. Lifting the corporate veil and finding that the promoter director, whose control over the corporate entity was all pervasive, it denied (in the matter of *C. Mackertich Limited* dated January 20th, 2005) the 'fit and proper person' status to the

corporate entity as long as the promoter director continued to be a person notified under the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992.

32. In fact, there are instances where investigation in respect of matters pertaining to the period prior to the grant of registration had led to disqualification for continuance as 'fit and proper' person. Reference is drawn to SEBI order no. CO/105/ISD/08/2003 against *Vivenasri Financial Services Limited* dated August 25th, 2003.

33. I state that attention must also be paid to the pressure that is being imposed on Credit rating agencies (CRAs) to freeze, or stand-still their ratings. The plausible Object for doing so would be to help MFs to tide over the lock-down redemption pressures but it is being done at the cost of suppressing the vital information from unit holders. Such pressure coming from the Regulators puts interests of intermediaries above those of unit holders. This indifferent treatment of unit holders needs to be shunned and curbed especially when their sentiments are at an all-time low.

34. I state that the SEBI has in past declared other companies 'Not Fit and Proper' merely on the ground that one of the associate companies or its director has been declared 'Not Fit and Proper'. The relevant case to highlight here is that of *Sahara Asset Management Company Pvt. Ltd.* where the Securities Appellate Tribunal in its order dated 28.07.2017 upheld the order passed by SEBI dated 28.07.2015.The Hon'ble Tribunal had cancelled the certificate of registration of Sahara Mutual Fund on finding that Sahara India Financial Corporation was not a fit and proper person because its promoter director was not a fit and proper person and consequentially Sahara Mutual Fund was no longer fit and proper person to carry on the business of Mutual Fund. The Securities Appellate Tribunal dated 28.07.2017 upheld the order of SEBI dated 28.07.2015. This order of SAT has been upheld by the Hon'ble Supreme Court as well. For the sake of clarity, the relevant portion of the order is extracted hereunder:-

"In the securities market, SEBI Act empowers SEBI to take action in the interest of protecting the interests of the investors and hence lifting the corporate veil to the extent to identify who controls a regulated entity cannot be faulted. Without such a power SEBI will be mute spectator to many of the corporate misdeeds which may jeopardize the interests of the investors. Given the mandate of SEBI to protect the interests of the investors in the securities market SEBI is statutorily empowered to lift the corporate veil and find out the truth whenever interests of the investors are affected or likely to be affected. In the instant case, SEBI itself found that two group companies of Sahara and its Directors were not conducting their business following the riles relating to public issue and were restrained from associating themselves with any listed Company or Company which intends to raise money from the public. It was also found that one of the Promoter/Directors is prima facie holding absolute control over the group companies. Given these facts and circumstances lifting the corporate veil to the extent of identifying the role of the Promoter/Director in the impugned order cannot be faulted"

35. I submit that applying the above yardstick, the Mutual Fund Regulations of SEBI also lays down criteria for fit and proper persons and hence proceeding should be initiated to declare the Respondents No.5 to 10 who are the key managerial personnel as not fit and proper to be associated in any manner with the Securities Market in accordance with the SEBI (Intermediaries Regulations), 2008. I state that since the errant entire key managerial personnel are involved in fraudulent trading and have put the entire mutual fund market and the unit holders in disarray, it is therefore just and necessary that the directors/promoters of the key managerial personal must be restrained from accessing to the securities market.

36. I submit that the abrupt actions of the 2nd respondent which owes its fiduciary duty like every other mutual fund as they are handling the earned money of the investor and therefore when these situations arise, the SEBI as a regulator can exercise its wide ranging powers and it is not something SEBI as a regulator has not done in the past. In fact they have gone to an extent of curbing of information leak and have called upon to furnish trading details of those individuals. In the case of *Sahara Real Estate Management Ltd. v SEBI,; 2013 1 SCC 1*; the Hon'ble Supreme Court have in fact clarified the position and have in fact given wider powers to the regulator namely SEBI. In fact in Para 73,

74 of the order dated 12.08.2012, the Hon'ble Supreme Court have gone on to state that:-

"The power of administration of sections 56, 62, 63, and 73 of the Companies Act with respect to issue of OFCDs lies with SEBI and not with the Central Government since they relate to issue of securities."

"From a collective perusal of Sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a standalone enactment, and the SEBI's powers thereunder are not fettered by any other law including the Companies Act, is fully justified."

Thus, it is amply clear that SEBI has the power to administer and regulate the affairs of the public companies and are empowered to regulate the activities of the erring entities who have acted in violation of their own regulations. Applying the above yardstick, this Hon'ble Court has got its powers under Article 226 of the constitution of India to direct SEBI to conduct a thorough fact finding investigation into the affairs of 2nd respondent. It is further submitted that the details of meetings between the trustee and asset Management Company are required and the same must be verified by the expert body and forensic auditor to see if the trustee and AMC have fulfilled their obligations as per law.

37. Other crucial points :-

- The Franklin Templeton's (the 2nd respondent) global chief has blamed a rule introduced in October 2019 by India's capital market regulator namely SEBI wherein the 2nd respondent CEO namely Jennifer Johnson has stated that "in India anything below AAA rated is considered non-investment grade and the high yield market is still immature there. So we have had a large fund. It's actually six funds that were invested with a lot of this kind of private debt and in October 2019, unfortunately SEBI came out with new guidelines saying that any investments in unlisted instruments, you can't have more than 10% in a fund and you can't trade them". This rule introduced by SEBI is what has been stated by the 2nd respondent CEO as the reason for the crisis.

- It's an inherent contradiction because earlier the 2nd respondent itself had stated that it is because of COVID-19 Pandemic that it has decided to wind up the schemes and now the 2nd respondent is saying that it is because of the SEBI rule in October 2019 that forced it to wind up the scheme. Therefore, it is clear that they are singing different tunes and are approbating and reprobating in their stand.
- SEBI in its press statement has clearly stated that despite the regulations being clear some Mutual Fund schemes seems to have chosen to have high concentration of high risk unlisted, opaque, bespoke, structured debt securities with low credit ratings and seems to have chosen not to rebalance their portfolios even during the almost 12 months that were available to them so far.
- It is fraud writ large because SEBI allowed Mutual Funds to keep exiting investments until maturity. If really the investments made by the 2nd respondent was secured and the underlying assets were so strong they could have exited in November, December, January or even February. Therefore to say that it is because of COVID-19 that they could not exit is a lie and that amounts to fraud. The reality is because of their underlying security and the Assets under Management (AUM) being illiquid and not being able to actually be sold and fetch returns that the 2nd respondent decided to wind up its schemes. Thus, Forensic Audit is mandatory to find out the reason why money was invested in illiquid instruments.
- The sponsor namely Franklin Templeton Inc., has 717 Billion US dollars of AUM. If only it invests 4 Billion US$ it can give an exit to all the lakhs of investors who have been trapped because of its Indian subsidiary. The sponsor cannot be allowed to go scot free.
- It is submitted that the borrowing can only be 20% of the assets under management, whereas in five out of six schemes which have been wound, the

borrowing is to the extent of 40%. Of course, the trustees and AMC's will take a defense that the same was done with the approval of SEBI, however one begs to ask the question, what was the need of such level of borrowings.

- It is clear that the six schemes have been mismanaged because no other mutual fund scheme is facing the similar problem as the six schemes were. It is interesting to note that the head of Franklin Templeton Inc sponsor entity had issued a statement that the reason to wind up the six schemes was because of the regulatory stringency allegedly imposed by SEBI. SEBI on the other hand also has issued its own press statement, wherein SEBI has stated that the six schemes were mismanaged. It is appalling as to how the sponsor namely the US entity chooses to leave India investors in a lurch and thereafter goes on to blame the regulator and thereafter the regulator still does not take any stringent action.
- It is submitted that many unit holders have been allowed to redeem prior to the announcement of April 26, and the highly rate securities with AAA above have been utilized for redemption which necessarily means that only the junk bonds remain for the innocent investors who continue to trust and faith the AMC and its trustee. The disbursement did not happen pro rata across all unit holders and hence there has been arbitrary division of unit holders
- SEBI had clearly mentioned that one year is the time period for them to wind up which expires only in June 2020. However, they wound up the schemes in April 2020 itself.
- The assets under managements in the mutual fund industry is 24.72 lakh crore out of which 1.65 lac crore is the equity and 14.75 lakh crore is the debt. Considering wide ranging impact it had on the investors, the liquidation order by AMC should be suspended till the forensic audit process is complete and till all wrongdoing is ruled out because they will liquidate at a very low price.

- It is shocking that this has happened to the 2nd respondent, when the 2nd respondent is the 9th largest mutual fund in India. It is clear that there has been a ploy to jeopardize the interest of unit holders, because in ultra short term bonds which is between 3 to 6 months , 28% of the said funds was invested in securities which had credit rating of A and below. In low duration funds, the figure was close to 44%.This is blatantly illegal because the schemes which were to expire three to six months, 12 months, such illiquid securities could never have been invested. This shows that there was far more sinister.
- 2nd respondent also invested in DHLF, Essel Group, Reliance Anil Ambani group, Yes Bank, all of which have proven to be ridden with fraud. Hence it is anybody's guess as to what the risk management team was doing when it is clear that the trustee has failed in its duty. This is the classic case of the investor taken for a ride because the investor promised high returns for the debt schemes and are now being left high and dry. In market parlance this is nothing but a junk bond investment.
- Since the portfolios are segregated the Chief Investment officer and the fund manager should not be allowed to draw any bonus. The audit report of the regular auditors are to be submitted before court so that no tampering of records takes place.
- ***"According to a Mint analysis, the six debt schemes which were wound up have high exposure to AA and below rated paper, in one scheme -- Franklin India Low Duration Fund — the exposure is as high as 64.7 percent, Dynamic Accrual Fund has 44.6 percent, Credit Risk Fund 50.2 percent, Short Term Income Plan 58.9 percent, Ultra Short Term Bond Plan 23.9 percent and Income Opportunities Fund 41.3 percent"***
- It is clear from above, 2nd respondent fraudulent way of managing public/investor money, risk diversification strategy, and the selection of

papers the fund chose to invest are questionable. Such kind of suspicious decisions of 2nd respondent would give rise to doubt that what was need of high exposures in below rated papers, whether any quid pro quo between borrowers and 2nd respondent directors and officers need to be investigated.

- ***"Most of the investments that these funds made under the credit risk category were for AA and below rated companies. The cash flows of these companies were severely impacted in a slowing economy. These include firms like Piramal Capital and Housing Finance Ltd (PCHFL), and Essel Infraprojects, which have 100 percent exposure to Franklin Templeton's funds. SBFC Finance, another firm in Franklin's list, posted a net profit of Rs 24.4 crore in March, 2019 and has a total debt of Rs 842 crore."***
- When the the 2nd respondent and 3rd respondent claimed to be global leaders in mutual fund industry who handled lakhs of crore of investment then what was need of lending huge amount of Rs.824Cr. to dubious company 'SBFC Finance' whose yearly profit barely Rs.24.4Cr. Is it bad commercial decision OR intentional fraudulent lending of investors hard earned money for self-enrichment?. The Investors were under the impression that they entrusted their money with safe hand until above revelation.
- **"The 2nd respondent was the sole lender to 26 of 88 top borrowers in its six debt schemes, according to a report by B&K Securities. In other words, these firms had 100 percent exposure to Franklin schemes for overall borrowing of Rs 7,697 crore. The names include Small Business Fincredit, Incred Financial Services, India Shelter Finance Corp, Renew Solar Power, Xander Finance, OPJ Trading Pvt Ltd, Vistaar Financial Services"**

- ***"It also put money into several lesser-known companies such as Aadarshini Real Estate Developers, Small Business Fincredit, Rishant Wholesale Trading, Northern ARC Capital, and so on".***
- It is blatant wrongdoing on the part of the 2nd respondent & 3rd respondent that chosen lesser known companies for lending public money. What was relation between borrowers and 2nd respondent & 3rd respondent officials and criteria of selecting borrowers needs to be investigated.

38. It is submitted that in exceptional circumstances, this petitioner is entitled to seek for a positive mandamus before this Hon'ble Court and this case is one such matter in which the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India can be exercised and hence the present petition.
39. No earlier writ petition has been filed by this petitioner in respect of the same subject matter pertaining to the respondents nor is any proceeding pending before any court, with regard to the same cause of action. This is the first litigation initiated by this Petitioner in the present subject matter- cause of action.

Scope of Issuance of a positive mandamus by this Hon'ble Court under Article 226 of the Constitution of India

40. I state that the it has been held in the case of ***SM.Anantha Murugan vs. Bar Council of India and Others reported in 2015 6 CTC 22*** that the extraordinary circumstances warrants extraordinary remedy. In the present case, in account of the sudden and the arbitrary decision that has lead to a precarious situation where the unit holders now have an apprehension about the recovery of their investments, it surely warrants the exercise of extraordinary remedy.
41. We submit that in the case **2018 3 CTC 729**; it has been held that when fraud is involved technicalities do not matter and equity jurisdiction can be invoked by this Hon'ble Court to pass any order in the interest of justice. Further in **2019 6 MLJ 583**, it has been held that the equity jurisdiction under Article 226 can be utilised to pass positive

mandamus and a positive direction/command is maintainable. Thus, in the present case, which has manifested itself in such a way that it could potentially jeopardize the financial interests of scores of unit holders, it is submitted that the reliefs claimed for are maintainable and that in the larger interest of justice, a positive mandamus should be issued.

42. It has been settled through judicial pronouncements that this Hon'ble Court has wide ranging powers to constitute SIT under article 226 of the Constitution of India vide 2013 15 SCC 578 and 2013 1 CTC 1. There are clear and obvious deficiencies in the system and this Hon'ble Court must come to the rescue of the affected persons and the market. Right from DHFL case to Yes Bank to IL&FS episode, its clear that there has been a regulatory failure and unless this Hon'ble Court steps in at this juncture, justice would not be done. It is just and necessary that there is a necessity for impartial and competent investigation in the matter so that the truth can be arrived at. Hence, the prayer for constitution of SIT.

43. It is submitted that the petitioner herein had sent a representation to SEBI detailing the wide ranging allegations against the 2nd Respondent and its key managerial personnel seeking explanation on the following. The contents in the representation may be treated as a part and parcel of the present writ petition and the said representation is annexed herein along with the typed set of papers. However, no positive action has been taken on the representation of the petitioner.

Cause of Action

44. It is submitted that the cause of action in the present public interest litigation has arisen within the jurisdiction of this Hon'ble Court whereby the 1st respondent being the regulatory body, has its regional office in Chennai overseeing the conduct and operations of NSE & BSE brokers in Chennai and rest of Tamil Nadu, who are authorized to invest on behalf of investors with mutual fund operators, being asset management companies, of which the 2nd respondent is one of such AMC. It is an established fact that many investing clients have been affected by investing with the

2nd respondent either with their Chennai branch or their branches in the state of Tamil Nadu or through NSE and BSE registered brokers carrying on business at Chennai at the time of investment or during the time of the 2nd respondent scam which has lead to abrupt closure of 6 debt fund schemes, by which Chennai and rest of Tamil Nadu investors have also been duped of their hard-earned monies. As on date 5% namely Rs. 1,10,800 crore is invested from Tamil Nadu, out of total investment of Rs. 23,19,200 crore from all Indian states in mutual fund. The investors are also from the state of Tamil Nadu of which Chennai and other parts of Tamil Nadu contribute to the growth of this business as could be seen from the statistics. It is also submitted that there are various NSE and BSE brokers who are based out of Chennai and other parts of Tamil Nadu and furthermore many investing clients from Chennai also invest in mutual funds using the platform of NSE & BSE on a daily basis. The 2nd respondent has a sizable presence in Chennai and other parts of Tamil Nadu and hence this Hon'ble Court has sufficient jurisdiction to entertain the present writ petition. The actions, inactions, omissions and commissions of the 2nd respondent has had an impact on gullible investors from Chennai and the rest of the state of Tamil Nadu who have been deprived of any opportunity to voice their opinion against abrupt closure of the 6 schemes of the 2nd respondent and with the 1st respondent, who is the watchdog also for mutual fund operators and investors, has been a silent spectator to this massive scale of fraud being played on gullible investors. The annual report filed of the 2nd respondent also clearly reveals that Chennai and other parts of Tamil Nadu have voluminous investors and hence cause of action has definitely arisen within the jurisdiction of this Hon'ble Court. The Petitioner is a registered society under the Societies Registration Act, 1861 and since the matter involves huge public interest, the present petition ought to be entertained by this Hon'ble Court.

45. From the disclosure of statement of commission paid to 1073 the 2nd respondent distributors identified by AMFI for the FY 2018-19, commission of a value of Rs. 44,933

lacs have been paid by the 2nd respondent for gross inflows of investments for a value of Rs. 71,10,583 lacs. Almost 75% of these 1073 distributors of the 2nd respondent have their operation in Chennai within the jurisdiction of this Hon'ble Court, bringing in investments of investors to the 2nd respondent.

46. The 1st respondent have operations in Chennai catering to the requirements of the public in Chennai for the purpose of conducting business and also for monitoring and audit purposes. The 2nd respondent also has its regional office in Chennai for investors from Chennai to invest in their mutual fund schemes. The registered fund advisors/distributors are based in Chennai who present the dynamics and strength of the 2nd respondent to investors based in Chennai and accordingly investments are made at Chennai thru the registered brokers/distributors of BSE and NSE, who are compulsorily registered with the 1st respondent and or directly with the 2nd respondent who have their regional office at Chennai.

47. It has been settled that purity of the market is a sine qua non for the financial health of the country and hence it is submitted that the 2nd respondent scam has affected many people within the jurisdiction of this Hon'ble Court as well as the markets which is very much vibrant and active within the jurisdiction of this Hon'ble Court. Hence this Hon'ble Court has jurisdiction to maintain the present writ petition.

48. It is submitted that the cause of action in the present public interest litigation has arisen within the jurisdiction of this Hon'ble Court whereby many investing clients have been affected by investing their hard earned monies with the 2nd respondent which carries on business at Chennai also and as established in the paragraphs above, it is impregnable that the 2nd respondent stands absolutely beholden to its clients. The 2nd respondent has a sizeable presence in Chennai and other parts of Tamil Nadu and hence this Hon'ble Court has sufficient jurisdiction to entertain the present writ petition. The Petitioner is a registered society under the Societies Registration Act, 1861

and since the matter involves huge public interest, the present petition ought to be entertained by this Hon'ble Court.

49. It is pertinent to mention that the 2nd respondent has operations in Chennai catering to the requirements of the public in Chennai for the purpose of conducting business and also for monitoring and audit purposes. The 2nd respondent caters to the needs of the unit holders in the Mutual Funds industry throughout the country and the state of Tamil Nadu and Chennai city in specific is no exception to it. Hence this Hon'ble Court has jurisdiction to maintain the present writ petition.

50. The Petitioner craves leave to add additional grounds, file additional affidavits and circulate additional typed set of papers at the time of hearing and as and when such need arises.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to pass an order of INTERIM DIRECTION directing that the Respondent Nos. 4-10 being the principal executive personnel, managing the schemes of Respondent No.2 be directed not to leave the country without prior approval of this Hon'ble Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court be pleased to pass an order of INTERIM INJUNCTION restraining the Respondent Nos. 4 to 10 from resigning from or leaving the employment of and / or engagement with Respondent No.2 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court be pleased to pass an order of INTERIM INJUNCTION, restraining the

Respondent Nos. 4 to 10 from taking up any other role or assignment with any other person other person and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court be pleased to pass an order of INTERIM DIRECTION directing the Respondent Nos. 4 to 10 to disclose on oath, the assets and properties owned by them and their immediate families to this Hon'ble Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court be pleased to pass an order of INTERIM DIRECTION restraining the Respondent Nos. 2 to 10 from selling, transferring, alienating or in any manner dealing/encumbering or creating third party interests with their assets and properties and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court be pleased to pass an order of INTERIM DIRECTION directing the Respondent Nos. 2 to 10 to rigorously pursue recoveries against entities with whom they have invested moneys from the six debt schemes that have been announced to have been wound up and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court be pleased to pass an order of INTERIM DIRECTION to constitute a Special Investigation Team comprising a retired Judge of this Hon'ble Court and consisting of

such other independent members which may include one domain expert, one senior ex-official of regulator, one C.A. and one technology expert to supervise investigations by Respondent No.1 in respect of the affairs of Respondent No.2 carried out by Respondent Nos. 3 to 10 and submits reports before this Hon'ble Court and for further directions to be issued by this Hon'ble Court on the basis of such report and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court be pleased to pass an order of INTERIM DIRECTION to direct the Respondent No.1 to initiate an investigation into the affairs of Respondent No. 2 as carried out by Respondent Nos. 3 to 10 under the provisions of the SEBI Act and the Rules and Regulations made thereunder, in particular under Regulation 61 of the SEBI (Mutual Fund) Regulations and report the same to the Special Investigation Team appointed by this Hon'ble Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice;

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to pass an order of INTERIM DIRECTION directing the 1st Respondent to launch a third party forensic investigation forthwith into this whole fiasco, to examine the affairs of the 2nd respondent including but not limited to the points of enquiry as mentioned in the schedule hereto and to find the *raison d'etre* behind the arbitrary decision of it which has put its unit holders in shock and misery and submit the same to this Hon'ble Court within a time frame to be fixed by this Hon'ble Court and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to pass an order of INTERIM DIRECTION directing the 1st

Respondent to initiate appropriate proceedings to hold the directors, principal officers, and key managerial personnel of the 2nd Respondent and its Management being respondents 4 to 10 as NOT FIT AND PROPER as per the SEBI Mutual Finds Regulations,1 996 read with the SEBI Act, 1992 and rules and regulations issued thereunder and and further restrain them from operating into the mutual fund market and/or pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to pass an order of INTERIM DIRECTION Directing the 2nd respondent to Disclose on Oath as to how many investments made by the 2nd Respondent are mortgaged and what is the present value of mortgaged securities and thus render justice.

Therefore, for the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to issue a writ in the nature of WRIT OF MANDAMUS by exercising the inherent jurisdiction under Article 226 of the Constitution Of India and directing the Respondent No.1 to initiate appropriate proceedings including but not limited to appropriate penal/criminal proceedings against the Respondent Nos. 2 to 10 under the provisions of the SEBI Act and the Rules and Regulations thereunder in the larger interests of the market as well as unit holders and further direct the Respondent No. 1 to ensure that the Respondent Nos.2 to 10 complete repayment of the investments of the Unit-Holders in the six-debt schemes in a time bound manner under the supervision, guidance and aegis of this Hon'ble Court and/or and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai Before me,
on this the 13th of May, 2020
and signed his name in my presence. Advocate, Chennai

SCHEDULE :-

- A full-fledged Forensic audit and process audit of six schemes to examine – (i) Risk-assessment in investments in various securities – including the stress tests, (ii) valuation of the securities, (iii) to ensure that there is no conflict of interest, (iv) whether documentation is in consonance with the SEBI MF Regulations. If during audit by the regulator & investigation by the Court Committee, any irregularity including corruption or fraud or cheating is found, then the personal wealth of such errant individuals should be taken away and if the Company too is found to have been benefited by any illegal means, then its assets should also be taken away in proportion to the loss amount.

- Calling for the list of unit-holders who got their investments redeemed during a month prior to 23rd April 2020.

- Whether the AMC, Trustees, Sponsors, Members of Investment Committee, Risk Management Committee, Board of Directors, KMPs, Auditors, and Credit Rating Agencies continue to fulfil 'Fit and Proper' criteria.

- To find out the analysis that was done to check health of the schemes and when the first trigger was received and whether it was informed to the unit holders.

- Seek explanation from 2nd respondent why the consent was not taken from, or notice was not given to unit-holder before taking unilateral decision to wind down six schemes.

- To investigate and examine the particulars of all investments made by the 2nd respondent in the last 2 years.

- To check for fraud, including investigating wealth of the fund manager against his disclosed source of income and if found guilty, then penal provisions should be invoked in addition to regulatory law/provisions.

- To check whether there was any conflict of interest between KMPs of the 2nd respondent and the companies in which they invested and auditors and verify whether any intermediary was involved in raising money or investing.

- To verify with Orient Company and SEC as to whether these are the best practices adopted by 2nd respondent globally and whether an action in India can disturb their operations in US. The manner in which they would they disclose this risk globally should also be found out and whether there would be any disciplinary action in such a scenario.