

Gujarat High Court rules that stay on Franklin e-voting process continues

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MUMBAI : The Gujarat High Court in a late night order on Monday rejected Franklin Templeton India plea to vacate the stay on the company's e-voting process involving Franklin's unitholders. This comes as a setback for Franklin which was to begin the crucial e-voting process on Tuesday seeking authorisation from unitholders to monetize the underlying assets of the six shuttered debt schemes.

"Pursuant to the order dated 8 June 2020 issued by the Honourable High Court of Gujarat, the e-voting scheduled for 9 – 11 June 2020 and unitholder's meeting on 12 June 2020, related to the schemes under winding up, stands suspended till further communication," said a spokesperson for Franklin Templeton India in a statement.

Gita Gopi, Judge, Gujarat High Court found merit in the argument that winding up decision itself needed the consent of unitholders.

No winding-up process could be concluded without the consent of the unit-holders, as has been laid down in sub-regulation 15(c) of regulation 18 of the regulation. The Trustee shall have to obtain the prior consent of the unit-holders when a majority decide to windup or prematurely redeem the units," said the order.

Section 18 - 15 (c) of Securities and Exchange Board of India (Sebi) mutual fund regulations which says trustees need to take the consent of unitholders to wind up or prematurely redeem units.

The court ruled that the stay continues till Sebi's forensic audit report comes out in public domain. Mint had reported on 2 June that the market regulator has ordered an audit in the six debt schemes shut down by Franklin Templeton. The audit being done by Choksi and Choksi is whether the investments were made in best interest of the investors, investment rationale, whether the fund's investments met fiduciary requirements, failure of risk management measures if any.

Paritosh R Gupta, of Gupta Law Associates, counsel for petitioners, Khambatta family (promoter director of Rasna) said that the stay will remain in effect till the forensic audit report comes out in public domain.

"Or till such time the main petition is heard and ruled on. In that case the stay order will get subsumed in main order. The main petition is being heard on 12 June," said Gupta.

Sebi had given Choksi and Choksi, 30 days to finish the audit. So the audit should ideally finish by the end of the month.

"It means, unless stayed by Supreme Court, the pressure is on Sebi to finish forensic audit sooner and inform the same to unitholders, either as a report or press release or as an ex parte ad interim order which Sebi routinely pass. For investors it means to wait for at least 30 days to know what Sebi has audited." said Sumit Agrawal, Founder, Regstreet Law Advisors & former Sebi official.

Interestingly the high court found merit in the argument that consent of unit holders is needed in winding up process. Even though counsel appearing on behalf of Sebi argued that in the winding-up decision, no consent of the unit-holder is necessary.

"Stay of this Court would put the scheme in suspension and there would be delay in winding-up process and it would be contrary to the interest of the investors and for expeditious process, the stay may be vacated," said Mihir Joshi, senior counsel, appearing for Sebi.

Sebi counsel had also argued that the forensic audit report is for internal information of the market regulator and it cannot be made a ground for continuation of interim relief.

Typically the findings of forensic audit are made public by Sebi by way of either an interim order or a final order.

"Order reasons that there will be no fruitful purpose of having an e-voting exercise if investors / unitholders do not even have full picture which may come out only from Sebi's forensic audit report. Rejecting Sebi and FT's supporting contentions, the court has harmoniously read the provision in MF

regulations to hold that the consent of the unit-holders is necessary for winding up or premature redemption," said Agrawal.

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