BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No. PM/AN/2020-21/9261]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:
Brickwork Ratings India Pvt. Ltd.
(SEBI Registration No. IN/CRA/005/2008)
PAN- AADCB3136C

BACKGROUND OF THE CASE

1. **Brickwork Rating India Pvt. Ltd.** (hereinafter referred to as 'BRIPL'/ 'Noticee') is a '*credit rating agency*' ('CRA') registered with Securities and Exchange Board of India ('SEBI') under the SEBI (Credit Rating Agencies) Regulations, 1999 (hereinafter referred to as 'CRA Regulations') bearing SEBI Registration No. IN/CRA/005/2008.

2. A joint inspection of the Noticee was conducted by SEBI and the Reserve Bank of India ("RBI") during November 12– 16, 2018. The period of inspection was from 01 April 2017 to 30 September 2018. Based on the findings of inspection of SEBI and RBI, SEBI initiated adjudication proceedings against the Noticee under the provisions of Section 15HB of the SEBI Act, 1992 (hereinafter referred to as "SEBI Act") for the alleged violations of the provisions of the below mentioned SEBI Regulations and Circulars:

   a. Clause 8 of Code of Conduct for CRAs read with Regulation 13, Regulation 15(1), 16(1) and 24(2), 24(7) of CRA Regulations

   b. Clause 1 A and B of SEBI Circular no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017. ("SEBI Circular dated June 30, 2017")

   c. Clause 3 read with Annexure A points 2.A.I.a), D.I and D.II, 4.B. and 5.C.IV of SEBI Circular SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016. ("SEBI Circular dated November 1, 2016")

   d. Clause 2 and 3 of SEBI/HO/MIRSD/DOP2/CIR/P/2018/95 dated June 06, 2018. ("SEBI Circular dated June 06, 2018")

   e. Clause 3 and 4 of SEBI Circular CIR/MIRSD/3/2012 dated March 01, 2012 ("SEBI Circular

dated March 01, 2012")

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as an Adjudicating Officer vide communique dated July 10, 2019 to conduct adjudication proceedings in the manner specified under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") read with section 15-I of SEBI Act, 1992 for the above alleged violations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice no. EAD/ADJ/PM/AB/OW/18434/1/2019 dated July 22, 2019 (hereinafter referred to as 'SCN') was issued to the Noticee to show-cause as to why an inquiry should not be initiated against the Noticee in terms of Rule 4 of the SEBI Adjudication Rules read with section 15I of SEBI Act and penalty be not imposed under section 15HB of SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

5. The following violations were alleged to have been committed by the Noticee in the SCN:

A. Lack of surveillance mechanism

I. During inspection it was observed that the Noticee does not have proper alert mechanism for tracking the interest/ principle repayment schedule of issuers or other material events that may impact the creditworthiness of the issuer, to yield timely and accurate ratings.

II. The Noticee claimed to have a technology platform wherein it gets data from NSDL website daily regarding availability or otherwise of information regarding timely payment.

III. However, the Noticee failed to provide demonstration of such system during the inspection and the system shown was at development stage. Further, the input data in the system was also wrong. Moreover, the Noticee failed to obtain data from Depository website when asked by the inspection team implying that there was no system for tracking interest/ principle payment till the time of inspection.

IV. It is, therefore, alleged that by not maintaining a proper surveillance system for tracking the interest/ principle repayment schedule of issuers or other material events that may impact the creditworthiness of the issuer the Noticee has violated Clause 8 of Code of Conduct for CRAs read with Regulation 13 of CRA Regulations and Clause 1 of SEBI Circular dated June 30, 2017.

B. Delay in recognition of default of NCDs of Diamond Power Infrastructure Limited ("DPIL")

I. It is alleged that the Noticee delayed the recognition of default of NCDs of DPIL (Rs. 1059.7 Mn issue): In the NCDs of DPIL, the annual review of ratings was due on April 20, 2017,

however, the Noticee has sought information from the issuer only on April 21, 2017 and April 26, 2017 and, subsequently, downgraded the rating from BB- to D, with "Issuer Not Cooperating" suffix, on May 29, 2017.

II. The Noticee failed to issue any advisory/ disclosure on its website with regard to the annual review of the rating being overdue but not been undertaken.

III. The due date for payment of NCD was at the end of June-2016 and the Noticee was aware that DPIL was in the process of implementing strategic debt restructuring. However, the Noticee sought the feedback from the bankers only on May 05, 2017.

IV. The Noticee was intimated on May 11, 2017 by the banker of DPIL, that the account of DPIL was classified as NPA as on March 31, 2017 and there was a delay in payment of interest or principal by the company post restructuring. However, the rating was downgraded to D on May 29, 2017, i.e. after 18 days.

V. Subsequently, the press releases dated May 29, 2017 and June 11, 2018 issued by the Noticee does not mention the details of the instrument such as date of issuance, coupon rate and maturity date.

VI. It is, therefore, alleged that by its delay to downgrade the rating of instrument to default despite having material information on record to that effect and by failing to make relevant disclosures on the CRA's website and press releases, the Noticee violated Regulation 15(1) and Clause 8 of the Code of Conduct for CRAs read with Regulation 13 of CRA Regulations, 1999 and Clause 3 read with Annexure A points 2.D.I and 2.D.II, 4.B, 5.C.IV of SEBI Circular dated November 1, 2016.

C. Failure to review rating and withdrawal of rating of NCDs of Great Eastern Energy Corporation Limited ("GEECL")

I. The noticee rated the NCDs of GEECL with an issue size of Rs. 815.6 Million and assigned the rating "BB" to the said NCDs on March 18, 2017.

II. Subsequently, another CRA (Care Ratings) downgraded the NCDs to "C" on April 21, 2017 due to *"delays in debt servicing of bank facilities on account of tightening of liquidity"*. Care upgraded the rating to BB+ in December, 2017. However, the Noticee maintained the rating at BB, assigned on March 18, 2017, and subsequently withdrew the rating on June 29, 2018.

III. It is thus alleged that the Noticee failed to review the rating of NCDs of GEECL in the period between March-2017 to June-2018, despite the information on delays in payment of other obligations by the issuer company, which resulted in downgrade of rating of such instrument(s) by other CRA.

IV. The Noticee allegedly sought information from the issuer only on March 12, 2018 and published

press release, maintaining the rating at BB with "Issuer not cooperating" suffix on March 14, 2018. Therefore, it is alleged that the CRA failed to adequately follow-up with the issuer to obtain the necessary information for carrying out rating review and categorised the rating as "Issuer not cooperating" only two days after seeking information from the issuer.

V. The Noticee has thus allegedly violated Regulation 15(1) and 24(7) of CRA Regulations and clause 1.B of SEBI Circular dated June 30, 2017 by failing to review the rating granted to NCDs of GEECL.

VI. Further, it was observed that the tenure of NCDs was from January 21, 2014 while the maturity date is March 31, 2020, i.e. around 6 years. As per SEBI Circular dated June 6, 2018 a CRA can only withdraw rating subject to the CRA having rated the instrument continuously for 5 years or 50 per cent of the tenure of the instrument, whichever is higher, and received an undertaking from the Issuer that a rating is available on that instrument. Since the Noticee withdrew its rating only after rating it for a period of 15 months, it is alleged that the Noticee has violated Clause 2 of the SEBI Circular dated June 6, 2018.

VII. The Noticee failed to assign a rating to NCDs of GEECL at the time of withdrawing rating thereby allegedly violating clause 3 of the SEBI Circular dated June 6, 2018.

VIII. The Noticee also failed to mention the details of the NCDs of GEECL such as the date of issuance, coupon rate and maturity date in its press releases dated March 14, 2018 and June 29, 2018 thus allegedly violating Clause 3 read with Annexure A points 2.D.I and 2.D.II. of SEBI Circular dated November 1, 2016.

D. Failure to recognize default in NCDs ratings of Essel Group Entities

I. It was observed that the Noticee had rated NCDs of Essel Corporate Resources Pvt. Ltd. ("ECRPL") and Zee Entertainment Enterprises Limited ("ZEEL").

II. As per the terms of the NCDs of ECRPL, it had a credit enhancement feature by way of pledge of equity shares of ZEEL (listed on BSE & NSE). As per the structure of the instrument, the initial collateral cover of the pledge shall not be less than 1.60 times the principal amount at inception. If at any time before the redemption, the share cover falls below 1.50 times of the outstanding amount, the borrower shall top-up in the form of additional pledge of shares or deposited appropriate cash amount in the Designated Account.

III. Sometime around end of January, 2019 there was a fall in price of shares of ZEEL and the various Mutual Funds agreed to reschedule the payment obligation of Debt Securities to a later date to avoid invoking pledge of shares.

IV. It was observed that the Noticee, vide Press Release dated January 31, 2019, regarding "Credit

Update" on ECRPL, reaffirmed the rating at AA- (SO) along with Credit watch with developing implication. The Noticee, while informing regarding the standstill agreement between ECRPL and the lenders, inter alia, mentioned as under:

"BWR takes comfort from reported agreement with lenders that there will not be any event of default declared due to steep fall in price. Out of the total promoter's holdings, ~70% is Indian holding and balance ~30% is held by promoters foreign entities. Currently the promoter and promoter group have pledged ~60% of their total holdings (as of quarter ending Dec. 18 as per BSE)."

V. Subsequently, the Noticee, vide Press Release dated February 18, 2019, while downgrading the rating from AA- (SO) to A+ (SO), mentioned that – "*The rating of the NCD issues of Essel Corporate Resources Pvt. Ltd has been downgraded on account of increase in pledge levels in promoters shareholding in ZEEL and also increase in volatility in share price thereby impacting the security cover. It also takes note of the position that financial flexibility of the Group is impaired, and the promoters' ability to top-up, as required in the terms, is weakened on account of high percentage of pledge.*"

VI. It is, therefore, clear that there was a breach of security cover due to drop in security price. In order to maintain the security cover, the borrowers have to bring in either more shares or money to restore the security cover. However, lenders entered into a standstill agreement to avoid invoking of the pledge of ZEEL shares, since that would have resulted in further decline of the said share prices and top-up in the form of additional pledge of shares was highly constrained due to the already high percentage of shares pledged by the promoters, thereby avoiding probable default. (As on March 31, 2019, promoters held 38.20% shareholding in ZEEL, out of which 66.48% (i.e. 25.28% of the total shareholding) had been pledged, as per disclosure on BSE website.) Thus, it was clear that it was neither possible for the borrowers to bring in additional money or shares to maintain the security cover. A breach of covenant dealing with security cover would normally result in multi-notch downgrade or default.

VII. However, by entering into the standstill agreement with lenders, the borrowers managed to avoid bringing in any funds/securities to restore security cover and avoided any possible default. The lenders rescheduled the payment of NCDs to September 30, 2019 so as to avoid any default on the NCDs. However, it was clear that the borrowers had financial as well as liquidity issues which were apparent from January, 2019. However, the Noticee allegedly did not examine all these factors and only downgraded the ratings by only one Notch which shows that the Noticee failed to recognize the default in terms of Clause 3 read with Annexure A point 2.A.I.a) of SEBI Circular dated November 1, 2016 and Regulation 24(2), 24(7) and Clause 8 of Code of Conduct for CRAs read with Regulation 13 of CRA Regulations.

E. Violations while rating SOs

I. The SO rating methodology furnished by the Noticee is allegedly sketchy in nature and lacked clarity on the various critical parameters to be examined by the analysts.

II. The Noticee allegedly was not independently assessing the enforceability, revocability and other important aspects of the underlying assurance while undertaking rating of SO. Further, the documents furnished by the lenders were taken as such without any independent examination.

III. It is observed from the SO ratings assigned by the Noticee with top rating grades (viz., AAA, AA+, AA, AA-, A+, A and A- and the corresponding short term grades), that in respect of 12 SO ratings, the support provider itself had defaulted in their own credit obligations to bank at some point of time or the other during the last two years. This an alleged violation on part of the Noticee in evaluating the strength of the support provider in a diligent manner while assigning the SO rating.

IV. It is further alleged that the as per its rating manual Noticee was not examining all the important parameters of the support extended as mentioned below:

CRA	**Parameters not being examined as evidenced from the methodology**
Guarantee	
Brickwork Ratings	Enforceability, entirety, guarantee for payment, payment mechanism, payment on first demand, payment without deduction, waiver of rights of supporter, guarantor being primary obligor and insolvency aspects
Future flow transaction/ Escrow Mechanism	
Brickwork Ratings	Recourse to lenders, legal and documentation aspects, performance risk, obligor's creditworthiness, borrower's other obligations, structure and payment risk

V. The Noticee had assigned SO ratings in 58 cases on the basis of Letter of Comfort despite assessing from the documentation that the support extended was not irrevocable, unconditional and legally enforceable. Further, in the case of Om Shakthy Technopark Pvt Ltd, the Noticee has assigned SO rating merely on the basis of group strength without even a documented support which was subsequently downgraded to default.

VI. It is thus alleged that the Noticee has failed to comply with Clauses 3 and 4 of SEBI Circular dated March 01, 2012.

6. The SCN was issued to the Noticee via Speed Post Acknowledgement. Further, in the interest of natural justice, an opportunity of personal hearing was provided to the Noticee on November 14,

2019, which was duly taken up by the Noticee. The Noticee has submitted its reply vide its letter dated 15.10.2019 and made additional submissions vide its letter dated 28.11.2019. Further, an opportunity was provided to the Noticee vide email dated August 31, 2020 to file further submissions, if any. The Noticee vide its email dated September 15, 2020 has filed additional submissions in the matter. Following have been submitted by the Noticee vide its letter dated 15.10.2019 and 28.11.2019 and email dated 15.09.2020.

Reply of the Noticee dated 15.10.2019

1. *We write with reference to the captioned SCN.*

2. *At the outset, we deny the contents of the SCN. Nothing herein ought to be considered as an admission on our part to the allegations and / or observations contained in the SCN for want of specific traverse.*

Allegations in the SCN

3. *The SCN is an outcome of a joint inspection that was conducted by SEBI and the RBI between November 12, 2018 and November 16, 2018.*

4. *Broadly, the allegations in the SCN against the Noticee may be summarised as follows:-*

   a. *The Noticee allegedly lacked a surveillance mechanism for tracking repayment schedule of issuers and other material events;*

   b. *In connection with ratings for the non-convertible debentures ("NCDs") of Diamond Power Infrastructure Limited ("DPIL"), the Noticee allegedly:-*

      i. *delayed reviewing the ratings previously assigned by the Noticee;*

      ii. *failed to disclose that the ratings were overdue; and*

      iii. *failed to disclose particulars of the NCDs, which were rated including date of issuance, coupon rate and maturity date ("NCD Issue Terms") in the allegedly delayed disclosures that were made;*

   c. *In connection with the NCDs of Great Eastern Energy Corporation Ltd. ("GEECL"), the Noticee allegedly:-*

      i. *wrongly re-affirmed the previous rating, "BB" on March 18, 2017, and purportedly failed to take into account delay in payment of other obligations by GEECL and a downgrade in the rating of the NCD by another CRA (CARE Ratings Ltd);*

      ii. *prematurely disclosed that GEECL was not co-operating, allegedly just two days after seeking information from it;*

      iii. *failed to disclose in the press releases dated March 14, 2018 and June 29, 2018 (when it disclosed that GEECL was not co-operating), the NCD Issue Terms*

iv. *failed to comply with the conditions for withdrawal of a rating in the SEBI Circular dated June 6, 2018; and*

v. *failed to assign a rating at the time of withdrawal;*

d. *In connection with NCDs of Essel Corporate Resources Private Ltd. and Zee Entertainment Enterprises Ltd. ("Essel Group Entities"), the Noticee allegedly:-*

i. *failed to recognize that there was a default, as it downgraded the rating by one notch, instead of a multi-notch downgrade;*

ii. *did not take into account that the borrowers had financial as well as liquidity issues; and*

iii. *and did not take that the standstill agreement entered into by Essel Group Entities with the lenders, only enabled the borrowers to avoid bringing any funds, as the lenders rescheduled repayment of the NCDs on September 30, 2019, with a view to avoid a default.*

e. *In connection with rating of Structure Obligations ("SO"), the Noticee allegedly:-*

i. *had a rating methodology that was allegedly sketchy and lacked clarity on critical parameters;*

ii. *failed to independently asses the enforceability, revocability and other important aspects of the underlying assurance;*

iii. *failed to evaluate the strength of the service provider in a diligent manner as in respect of 12 SO ratings, the service provider itself had defaulted on their own credit obligations to the bank; and*

iv. *failed to examine all important parameters of support extended, as part of its rating methodology.*

5. *The SCN alleges that the Noticee, consequently has allegedly contravened the following provisions of law:*

a. *Clause 8 of the Code of Conduct for CRAs r/w Regulation 13, Regulation 15(1), 16(1) and 24(2), 24(7) of the SEBI (Credit Rating Agencies) Regulations, 1999 ("CRA Regulations");*

b. *Clause 1 A. and B. of SEBI Circular SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated 30 June 2017 ("SEBI 2017 Circular");*

c. *Clause 3 read with Annexure A points 2.A.I. a) , D.I and D.II, 4.B and 5.C.IV of SEBI Circular SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated 1 November 2016 ("SEBI 2016 Circular");*

d. *Clause 2 and 3 of SEBI/HO/MIRSD/DOP2/CIR/P/2018/95 dated 6 June 2018 ("SEBI 2018 Circular"); and*

e. *Clause 3 and 4 of SEBI Circular CIR/MIRSD/3/2012 dated 1 March 2012 ("SEBI 2012 Circular")*

6. *Each of the aforesaid Circulars are collectively marked as Annexure A and appended hereto.*

7. *The SCN calls upon the Noticee to show cause why a monetary penalty ought to not to be imposed under Section*

15HB of the Securities Exchange Board of India Act, 1992 ("SEBI Act").

Outline of the Noticee's submissions

8. *In a nutshell, no regulatory intervention is at all required, much less any imposition of penalty warranted, for the following reasons :-*

   a. *The inference drawn about a lack of surveillance mechanism are premised solely on the failure to demonstrate the functioning of a technology platform to download data from NSDL's website that was only recently deployed by the Noticee, at the time of the inspection. The absence of a fully functioning and voluntarily adopted technology platform, does not and cannot, mean that the Noticee had no mechanism at all to track repayment schedules;*

   b. *Repayment schedules were indeed tracked by monitoring publicly available information and inter-alia by relying on information sharing arrangements with debenture trustees who are SEBI registered intermediaries and who have a greater degree of insight into the likelihood of default by an issuer;*

   c. *Allegations relating to a delay in recognizing a default in NCDs by DPIL overlook the fact that DPIL was undergoing a Strategic Debt Restructuring ("SDR") which would have entailed conversion of the loan into equity and it would have been premature and indeed misleading for the Noticee to assign a rating, till specific terms of the SDR were provided to it, to enable it to take an informed decision;*

   d. *When an instrument has already been rated by a CRA and when the rating is up for review or surveillance and an issuer fails to co-operate, there is no requirement to disclose the terms of issue of the debt instrument, since this information has already been disclosed when the initial rating was assigned;*

   e. *The SCN has wrongly assailed the appropriateness of ratings assigned by the Noticee to the NCDs of GEECL, the Essel Group entities and SO instruments, contrary to the explicit scheme of the CRA Regulations which does not permit a review of the appropriateness of ratings except for exceptional and compelling reasons, none of which have been noticed, let alone, demonstrated in the SCN;*

   f. *Even on merits, the ratings assigned by the Noticee in each of these cases are bona-fide and correct. It is not open to SEBI to substitute the wisdom of the CRA on the appropriateness of a rating assigned to a payment obligation with its own wisdom, with the benefit of hindsight and that too merely because other rating agencies have come to a different view or the inspection team came to a different view; and*

   g. *The foundational flaw in the SCN's approach is to treat every minor irregularity discovered in an inspection, as worthy of regulatory intervention which is contrary to the well settled law that the purpose of the inspection is not punitive but a remedial and facilitative process;*

Preliminary Submissions: Fair opportunity of Inspection denied

9. *On receipt of the SCN, the Noticee sought inspection of documents and records vide letter dated August 16, 2019. Inspection was granted on September 06, 2019. At the inspection, the Noticee's authorized representative was shown the SCN and the annexures. A copy of the final inspection report available on the file, was shown to the*

Noticee but the investigation department has refused to provide a copy of the same. The Noticee has only been provided a report dated March 11, 2019 which precedes the final report of inspection available on the file.

10. *Regulation 32 of the CRA Regulations requires the inspecting office to submit a report to the Board. Regulation 33 empowers the Board or the Chairman of SEBI to take such action as may be deemed fit, "after consideration of inspection or investigation report". Therefore, to suggest that the final inspection report is not relevant to the Noticee is wrong and untenable.*

11. *If the final inspection report did not consider all relevant facts and took into account irrelevant ones, the Noticee would be entitled to point out that the SCN (based undoubtedly on the outcome of the final inspection report), was deficient and there is no basis for the allegations made in the SCN. The Noticee reserves its rights in this regard and will be addressing detailed submissions before the Learned Adjudicating Office at the personal hearing on the need for a copy of the final report of inspection to enable the Noticee to understand the reasons that weighed with inspecting officer and the manner in which the Noticee's responses, to the interim inspection report, were addressed.*

12. *It is also untenable and contrary to the principles of natural justice for SEBI to deny documents merely because SEBI has not relied on the same. It is well settled that whether or not documents are "relied" upon is not the test but whether or not a document would support or undermine a charge is what makes it "relevant"; what is "relevant" to a Noticee cannot depend on the subjective satisfaction of the authority levelling the charge. Indeed, all documents collected during the course of the inspection and/or investigation are required to be provided. The Hon'ble Supreme Court has clearly articulated this principle in SEBI v Pricewaterhouse & Co (Appeal No 6000-6001/2012, Order dated January 10, 2017). The repeated failure to do so by the department is a gross violation of judicial discipline. The reply is being filed strictly without prejudice to the Noticee's rights to seek inspection of the final inspection report which led to the SCN being issued.*

Submissions on merits

Noticee had a surveillance mechanism to monitor repayment schedules

13. *At the threshold, it is first important to understand that a credit rating agency ("CRA") renders an opinion on the likelihood of a default or the likelihood of a risk of default by an issuer of securities. Ascertaining the likelihood of a default or assessing the creditworthiness, is based on analytical tools developed by the CRA which are then applied to information made available to the CRA by the issuer companies and other intermediaries.*

14. *The CRAs are therefore not the source of such information. They rely on information provided to them by these entities. For instance, in connection with debentures, debenture trustees who are intermediaries registered with SEBI, are specifically entrusted with the obligation of ensuring that information which may have a bearing on the credit rating of an instrument is furnished on a timely basis to a CRA. Similarly, issuer companies are obliged to keep the stock exchanges and thereby the public, informed about material events and developments under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations").*

15. *Under the Code of Conduct to the SEBI (Debenture Trustee) Regulations, 1993 ("Debenture Trustee*

Regulations"), debenture trustees are required to disseminate information with regard to client companies to registered credit rating agencies. This is to enable the CRAs to get access to such information and thereby discharge their task of credit rating effectively. SEBI has acknowledged the need for information sharing arrangements between a debenture trustee and a CRA. Indeed, it issued a circular dated March 15, 2013 (Ref: CIR/MIRSD/3/2013) expressly dealing with this issue which requires exchange of information relating to issuer companies, between a debenture trustee and a CRA. In particular, the circular required a debenture trustee to notify the CRA of any information relating to defaults by the issuer. A copy of the SEBI Circular dated March 15, 2013 is annexed as Annexure B.

16. *Since a debenture trustee would have a greater degree of insight into an issuer company than a CRA, it would be in the position to have timely access to potentially material information relating to the ability of an issuer company to service its debt. Clause 4 of the SEBI Circular dated March 15, 2013 in fact requires CRAs and debenture trustees to designate an email ID for exchange of information.*

17. *Apart from the above, the Noticee has in place a dedicated team that monitors the websites of the National Stock Exchange, Bombay Stock Exchange, National Securities Depository Limited and the relevant debenture trustee ("Monitoring Team") on a daily basis, for any material information disseminated by the issuer company. The Monitoring Team then shares the information gathered from the aforementioned websites with the concerned analysts. In addition to the above, the analysts of the Noticee have google alerts for their respective issuer companies, to ensure that action can be taken as soon as any material information with respect to such issuer companies are made public.*

18. *It is also noteworthy that issuer companies which have issued non-convertible debt instruments such as NCDs, are required under the LODR Regulations, to inter-alia disclose:-*

    "details of any letter or comments made by debenture trustees regarding payment/non-payment of interest on due dates, payment/non-payment of principal on the due dates or any other matter concerning the security, listed entity and /or the assets along with its comments thereon, if any"

    (Emphasis Supplied)

19. *Therefore, the Noticee also relies on the timely compliance by the issuer of a non-convertible debt instrument of its obligations under the LODR Regulations to disclose information which would have a bearing on its ability to adhere to a prescribed repayment schedule. Even the SEBI 2017 Circular requires the CRAs to monitor websites of the stock exchange and does not specify any type of system or technological platform that a CRA must put in place for monitoring adherence to repayment schedules by issuer companies.*

20. *SEBI's case in the SCN is that the technology platform adopted by the Noticee voluntarily to obtain data from NSDL's website on repayment schedules, was not functioning at the time of the inspection.*

21. *Unfortunately, without noticing the existing mechanisms such as information exchange arrangements with debenture trustees that are already in place, the SCN has erroneously concluded that there is no mechanism to monitor repayment schedule of issuer companies. The failure of a technology platform which was at a nascent stage of*

development at the time of inspection and is not even a mandatory requirement, does not mean that no mechanisms whatsoever existed. Indeed, Clause 8 of the Code of Conduct to the CRA Regulations does not require any particular type of technological platform to be adopted by the Noticee. Clause 8 provides as under:-

"A credit rating agency shall keep track of all important changes relating to the client companies and shall develop efficient and responsive systems to yield timely and accurate ratings. Further a credit rating agency shall also monitor closely all relevant factors that might affect the creditworthiness of the issuers"

(Emphasis Supplied)

22. *Clause 8 is a principle-based regulation and is not prescriptive about the processes and systems a CRA can deploy to ensure that important changes relating to the client companies, are tracked. In fact, the technology platform deployed by the Noticee was an effort at automating the process for downloading information from the NSDL website. Rather than lauding the Noticee for seeking to improve its existing systems and processes, the SCN seeks to find fault with a voluntary endeavour of the Noticee to make the process of tracking more efficient.*

23. *The SCN has overlooked the fact that the technology solution deployed by the Noticee only supplemented and sought to improve existing processes and, did not supplant them. The Noticee adopted a technology platform which would (a) gather data relating to ISINs, coupon and principal payment due dates in relation to the Issuers, (b) act as a reminder system, and (c) facilitate data updating.*

24. *Had the inspection actually examined the surveillance processes in place rather than focus on the new processes being developed, it would not have arrived at the erroneous finding that the Noticee had no surveillance mechanism. The SCN simply accepts the finding in the inspection report and does not appear to have even examined whether such a matter is at all worthy of a regulatory intervention.*

25. *The Hon'ble Securities Appellate Tribunal has on numerous occasions observed that every minor irregularity, even assuming for the sake of argument, that there was at all a minor irregularity, noticed in the inspection cannot become the basis for punitive proceeding. The Hon'ble SAT in Religare Securities v SEBI (Appeal No. 23 of 2011, Order dated June 16, 2011), observed that:*

"*It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent."*

(Emphasis Supplied)

26. *When the inspection by SEBI took place in November 2018, the technology platform had just been put in place,*

as a result of which it was not feasible to demonstrate all the features of the platform. We also wish to clarify that the platform has thereafter been improved and is fully operational. It sends alerts to the issuers, a week before the due date of repayment as well as on the due date. Thereafter, e-mails are sent to our rating team to take up the matter with the Issuer, if public information or feed-back from the Issuer's debenture trustee is not available. A copy of the Standard Operating Procedure followed by us as well as screenshots demonstrating is functionality are attached as Annexure C.

No delay in recognition of default of NCDs by DPIL: DPIL was undergoing a Strategic Debt Restructuring

27. *In connection with the ratings of NCDs issued by DPIL, the charges in the SCN may be broken up into the following three aspects, each of which are dealt with separately:-*

    a. *Alleged delay in recognizing default of NCDs by DPIL;*

    b. *Alleged failure to make disclosures that the ratings were overdue; and*

    c. *Alleged failure to disclose details of the instruments for which ratings were assigned in the press release, where the Noticee disclosed that DPIL had not co-operated.*

28. *The delay by the Noticee in recognition of default of NCDs by DPIL is not a matter that requires regulatory intervention, in light of the following facts:-*

    a. *In April 2016, the Noticee rated the NCDs of Rs 105.97 crores and bank facilities (both short and long term) aggregating to Rs 2752.94 crores. The NCDs and long term bank facilities were rated as "BWR BB-", indicating a moderate risk of default.*

    b. *Shortly after, on June 30, 2016, DPIL announced that its lenders had invoked strategic debt restructuring ("SDR"). This was just prior to the NCDs becoming due for repayment. It may be noted that the NCDs were privately placed and the lender banks who were part of the lenders forum and involved in the SDR process, were themselves the subscribers to the NCDs and therefore already had a greater degree of insight into the SDR process than the Noticee had;*

    c. *Between, December 2016 and April 2017, the SDR package was sought to be implemented, which entailed DPIL's lenders converting a part of their debts into equity. The Noticee continuously monitored the press releases and other information provided by the lenders and DPIL on the SDR. Since the SDR entailed conversion of loan into equity and restructuring of the debt, the Noticee was awaiting information on the terms of the SDR including the exact amount of debt that would be converted into equity, and also a proposal of conversion of other high cost debt into 0.01% Optionally Convertible Redeemable Preference Shares, payable in 18 years. Such information was necessary in order for the rating to be assigned by the Noticee to be an informed one;*

    d. *On April 20, 2017 (when the rating was due), DPIL held a Board meeting on and shortly after on the same date, it disclosed the exact amounts of debt that had been converted to equity as part of the SDR package. On*

April 21, 2017 and April 26, 2017, the Noticee reached out to DPIL for clarifications on the SDR which was not forthcoming. Further, the Noticee had also sent an email to the debenture trustee on May 17, 2017, to which the Noticee received no response from the debenture trustee;

e. *The Noticee sought feedback from bankers of DPIL regarding the servicing of residual debt after a gap of two weeks on May 17, 2017, as it is generally understood to be a reasonable time to observe the conduct of residual debt servicing;*

f. *On May 11, 2017, the Noticee received responses from Bank of Baroda (one of DPIL's bankers) that the account was classified as a non-performing asset ("NPA"). However, Exim Bank telephonically informed that the account was 'standard'. Given that two member banks of the consortium banking arrangement reported different statuses of the DPIL account, we considered it appropriate to wait for the feedback from the debenture trustee of DPIL regarding the NCDs. The debenture trustee neither confirmed nor denied the default within the reasonable time period of two weeks;*

g. *Consequently, on May 29, 2017, the Noticee published its report assigning "D" rating while also disclosing that DPIL was not-co-operating i.e. just over two weeks after one of the banks had stated that the account was declared as NPA.*

29. *A CRA is duty bound to ensure that any rating it assigns is based on credible and verifiable information and the opinion formed, is an informed one because the CRA's role is an important one affecting various stakeholders. Clause 12 of the Code of Conduct for CRA appended to Schedule III of the CRA Regulations requires every CRA to ensure inter-alia that there is no misrepresentation in the disclosures in any documents or reports or information published to the public at large. Therefore, no hearsay evidence can be relied upon.*

30. *Regulation 24(7) requires a CRA to exercise due diligence to ensure that the rating is fair and appropriate. Nothing contained in the SCN shows that the Noticee failed to exercise due diligence. Indeed, an identical issue was considered by the Hon'ble Securities Appellate Tribunal involving the Noticee in Brickworks Limited v SEBI (Appeal No.439 of 2018, Order dated June 3, 2019) where the Hon'ble Tribunal in similar circumstances, where a debt restructuring was underway, found that the Noticee did not fail to exercise due diligence. The Hon'ble SAT observed:*

"The aforesaid provision indicates that a CRA is required to exercise due diligence in order to ensure that the rating given is fair and appropriate. In the instant case, we find that a conscious decision was taken by the Central Rating Committee of the appellant and considering the default as well as the dialogue between the Company and with the 6 investors with regard to re-schedulement of the default the appellant recommended a revision of rating from "BWR A" to "BWR BB-". In our opinion due diligence was exercised. Thus, the order of the AO to this extent is not correct and cannot be sustained"

(Emphasis Supplied)

31. *It would have been premature and indeed incorrect for the Noticee to assign a rating when a SDR was underway and its terms were not yet clear. The Noticee could have been charged with purveying false and misleading information*

without waiting for clarity on the SDR process. Rather than facilitate a debt restructuring, disclosing that a rating was overdue or assigning a default rating, would have had a material adverse effect on recovery attempts by banks and undermined the SDR process. Therefore, it was incumbent on the Noticee to await further clarity on the terms of the SDR before assigning a rating. DPIL's case was an extraordinary and an outlier case where the terms of the SDR were not fully disclosed till the last day when the rating was to be reviewed, and even thereafter, there was no clarity on the terms of the SDR.

32. *The alleged delay was just over 18 days and by no stretch is a matter that warrants regulatory intervention let alone penal action contemplated in the SCN. The Banks involved in the SDR process were the subscribers to the NCDs and the adverse financial condition of DPIL was well known to the market. Therefore, given that the contravention, if at all was a minor irregularity, was bona-fide and technical, the same does not warrant punitive action.*

Disclosures of NCD Issue Terms, not required, when ratings are coming up for review and issuer does not co-operate

33. *The SCN also has alleged that the Noticee's press releases dated May 29, 2017 and June 11, 2018 in connection with DPIL's NCDs, do not specify the details of the instrument such as date of issuance, coupon rate, maturity date etc. This, the SCN alleges, was contrary to Clause 2.D.I and Clause 2.D.II of Annexure A to the SEBI 2016 Circular which requires the press release issued by a CRA to contain such information in a standardised template prescribed in Annexure A2 to the SEBI 2016 Circular. Clause 2.D.I and 2.D.II provides as under:-*

"D. Standardization of Press Release for Rating Actions

I. CRAs are mandated to issue a Press Release after assigning a rating. With a view to harmonizing the format of the Press Release, it has been decided that all CRAs shall follow a standardized template, which is attached as Annexure-A2. It may be noted that this template specifies the minimum information that must be covered in the Press Release. CRAs can include additional information, while maintaining the basic format of the Press Release.

II. While the Press release for the initial rating of bonds, debentures, etc. shall disclose information about the rated amount of the instrument, the subsequent Press Releases shall also disclose additional details of the rated instrument, viz. coupon, maturity date, etc"

34. *At the threshold, Clause 2.D.1 and 2.D.II are not applicable to a case where an issuer has not co-operated. Indeed, disclosures to be made by a CRA in cases where the issuer has not co-operated are governed by Clause 5 of the SEBI 2016 Circular which is a special provision. Clause 5.C of the SEBI 2016 Circular, provides as under:-*

"5. Policy in respect of non-co-operation by the issuer

A. In case of non-cooperation by the issuer (such as not providing information required for rating, non-payment of fees for conducting surveillance), in line with the existing Regulations, the CRA shall continue to review the instrument, on an ongoing basis throughout the instrument's lifetime, on the basis of best available information, in accordance with the rating process and policies set forth in its Operations Manual/ Internal governing document.

B. In such cases the credit rating symbol shall be accompanied by "Issuer did not co-operate; Based on best available information" in the same font size.

C. The rating action(s) in such cases shall be promptly disclosed through press release(s),which shall mention, at least, the following:

"I. Date of Press Release

II. Details of Instrument

III. Rating Action and Indicative/updated rating based on best available information

IV. A brief write-up on the non-co-operation by the Issuer/ Borrower and the consistent follow-up done by the CRA for getting the information.

V. Hyperlink/ reference to the applicable "Criteria"

VI. Limitations regarding information availability (shall have a suitable caveat cautioning the investors/lenders /public)

VII. Rating History for last three years

VIII. Name and contact details of the Rating Analyst(s)"

(Emphasis Supplied)

35. *Therefore, Clause 5 of the SEBI 2016 Circular is a special provision that governs the disclosures to be made by a CRA, where the issuer does not co-operate. Moreover, Clause 5 obviously applies to a case where the instrument has already been rated in the past and the ratings are up for review or surveillance. Clause 2 on the other hand evidently is a general provision that applies where the issuer has indeed co-operated and provided the CRA with the necessary information for a rating. It is settled law that a general provision would have to yield to a special provision in the event of a conflict.*

36. *Had SEBI intended that disclosures in the press release issued under Clause 5.C should also contain the information required in Clause 2 along with the template, it would have expressly specified in Clause 5.C that the press release should also contain the information specified in Clause 2 and linked it to the standard template in Annexure A-2. Not having done so, it is not open to SEBI to allege that the press release issued by the Noticee did not contain the information in Clause 2 of the SEBI 2016 Circular.*

37. *There is yet another reason why the interpretation of the SEBI 2016 Circular advanced in the SCN is incorrect. If the press release in Clause 5.C is required to contain information on date of issuance, coupon rate, and date of maturity, it leads to an absurd consequence inasmuch as stakeholders would be buried with an avalanche of trivial and meaningless information, in a press release whose primary purpose is draw the stakeholders' attention to the material fact that the issuer has refused to co-operate. Information on date of issuance, coupon rate and date of maturity (each of which have already been previously disclosed when the initial rating was assigned) has no relevance*

at all, in the context of an issuer whose instruments have already been previously rated and who refuses to co-operate, when the ratings are sought to be reviewed.

38. *Admittedly, all the details required to be disclosed in Clause 5, have indeed been disclosed by the Noticee in the press release issued by it in May 2017 and June 2018. Therefore, the charge that the Noticee has contravened Clause 2 of Annexure A of the SEBI 2016 Circular is not sustainable.*

39. *Similarly, the allegation that the Noticee contravened Clause 5.C.IV of the SEBI 2016 Circular is also untenable as the press releases dated May 29, 2017 and June 11, 2018, issued by the Noticee did contain a brief explanation of the failure of DPIL to co-operate and provide requisite information to the Noticee.*

40. *Therefore, to sum, up, even if the Learned Adjudicating Officer were to come to a view that the Noticee ought to have acted differently and disclosed that the rating was overdue, the alleged contravention, if at all, was bona-fide, technical and venial. The same does not warrant imposition of a monetary penalty.*

41. *The Hon'ble Securities Appellate Tribunal in PG Electroplast Ltd. & Ors. v SEBI (Appeal No. 281 of 2017, Order dated August 2, 2019), has observed that the adjudicating officer has the discretion not to impose a penalty if the circumstances so warrant. The Hon'ble Tribunal observed:-*

"Penalty can be imposed for failure to carry out a statutory obligation under the SEBI's Act. Factors contemplated under Section 15J are required to be taken into consideration before imposing a penalty. If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act."

(Emphasis Supplied)

42. *None of the factors specified in Section 15J of the SEBI Act are at all attracted inasmuch as: (i) the alleged violation is not repetitive and is in fact an extraordinary one-off occurrence in an outlier case, (ii) no harm has been caused to investors and (iii) no gain let alone any disproportionate gain has accrued the Noticee. Therefore, no penalty, is at all warranted.*

Ratings of GEECL correctly retained: Other rating agencies did not downgrade and in fact, upgraded rating

43. *The allegations in the SCN in this context may be broken up into four distinct aspects, which are dealt with separately :-*

a. The appropriateness of the Noticee's decision to maintain its initial rating of "BB" (moderate risk of default) for the NCDs issued by GEECL for Rs 815.6 million, despite information on delays in payment of other obligations by GEECL, which resulted in another rating agency (CARE) purportedly downgrading the ratings on the NCDs

b. Conduct of the Noticee in disclosing that GEECL was not co-operating on March 14, 2018, allegedly just two days after it sought information from GEECL on March 12, 2018;

c. Conduct of the Noticee in subsequently withdrawing the rating on June 29, 2018 when the conditions for the withdrawal as specified in the SEBI 2018 Circular were allegedly not met;

d. The alleged failure of the Noticee to disclose the NCD Issue Terms in the press releases dated March 14, 2018 and June 29, 2018.

Fundamental error in assailing merits of the rating, contrary to the scheme of the CRA Regulations

44. *The fundamental flaw in the SCN and the inspection that preceded it, is to lightly assail appropriateness of ratings assigned by the Noticee, contrary to the explicit scheme set out in the CRA Regulations, merely because another rating agency has come to a different view.*

45. *A credit rating is ultimately an opinion expressed on the likelihood of a risk of an issuer defaulting on a financial obligation. Opinions as to the appropriateness of a rating are bound to differ. A credit rating is based not just in historical data but also involves an examination of projected performance in the future and to that extent, it is forward looking. Therefore. it is indeed possible that two rating agencies may come to a different view in respect of the same issuer.*

46. *Indeed, it is for this reason that SEBI in its wisdom has in the CRA Regulations expressly barred the inspection from going into the appropriateness of ratings assigned on merits, in the absence of complaints of a serious nature. No such case has been made out in either the SCN or the inspection report.*

47. *SEBI was conscious of the need not to routinely second guess ratings assigned by a CRA and substitute the CRA's opinion on the merits of a credit rating with its own wisdom of what the appropriate rating should be. It is apparent that the inspection was done in disregard of the carefully laid out scheme in Regulations 29(3), (4) and (5) of the CRA Regulations and therefore the SCN, based on a flawed inspection, also stand vitiated.*

48. *The provisions of Regulation 29 of the CRA Regulations, that are relevant to the issue at hand, are extracted below:-*

Board's right to inspect

29. (1)….

(2)…

(3) The inspections ordered by the Board under sub-regulation (1) shall not ordinarily go into an examination of the appropriateness of the assigned ratings on the merits.

(4) Inspections to judge the appropriateness of the ratings may be ordered by the Board, only in case of complaints which are serious in nature.

(5) Inspections referred to in sub-regulation (4) shall be carried out either by the officers of the Board or independent

experts, with relevant experience or combination of both"

(Emphasis Supplied)

49. *It is clear that the provisions of Regulation 29 have been overlooked, vitiating the process. On this ground alone, the charges against the Noticee ought to be dropped.*

SCN vitiated by material errors of fact in its reading of CARE's report

50. *Even on merits, the decision of the Noticee to retain the ratings was an informed one, for the following reasons:-*

i. *On March 18, 2017, the Noticee had assigned a rating of 'BWR BB (Outlook: Negative)' to GEECL's NCDs, which is a non-investment grade rating, thereby indicating a moderate risk of default. It is noteworthy that the outlook on the rating of the NCDs was already 'BWR A - Negative' since February 2016 in view of the negative industry outlook and the lower than expected financial and operational performance of GEECL. In fact, on March 18, 2017, the rating was downgraded to 'BWR BB (Outlook Negative)' At that time, there were no disclosures of delays in servicing of the NCDs by GEECL on the website of the debenture trustee, Vistra ITCL (India) Limited. The debenture trustee also did not inform the Noticee that there was a likelihood of default or delay in servicing the NCDs by GEECL;*

ii. *The SCN has made a fundamental error in coming to the view that CARE downgraded the NCDs of GEECL to "C". In fact, CARE in its report of April 21, 2017 has "re-affirmed" its previously assigned rating of "C" in October 2016. Therefore, CARE too did not downgrade the rating as wrongly alleged in the SCN. On this ground alone, the charges against the Noticee ought to be dropped as the SCN has erred on a fundamental question of fact. A copy of CARE's report dated April 21, 2017, is annexed hereto and marked as Annexure D;*

iii. *It is noteworthy that CARE subsequently revised the rating of the NCDs, in its report of December 6, 2017 to "CARE BB+ ; Stable (Double B Plus; Outlook Stable)", taking into account "the timely interest and principal payments of its term loan its NCD's…". Therefore, no fault can be found with the Noticee of retaining its rating of the NCDs. The entire premise of the SCN stands belied. Indeed, the allegations in the SCN itself underscore the pitfalls of comparing ratings assigned by two rating agencies and treating ratings as if they were the outcome of a mathematical formula, when they clearly involve a degree of subjectivity. A copy of CARE's report of December 6, 2017 is annexed as Annexure E.*

iv. *GEECL too did not co-operate with the Noticee and share information. During the course of the year, Noticee had on June 15, 2017, August 1, 2017 and March 12, 2018 followed up with GEECL over telephone calls, seeking information for review, and also stated that appropriate rating action would also be initiated in the event of no response from GEECL. In the internal presentation placed before the Noticee's rating committee, it has also been expressly noted that GEECL was not co-operating. Based on the Noticee's assessment of GEECL's operational and financial risks and taking into consideration that no delays were reported in NCD servicing, the Noticee downgraded the rating of the NCDs to 'BB' with continuation of negative outlook. For*

these reasons and in accordance with the SEBI 2016 Circular, the rating was migrated to the 'Issuer Not Cooperating' category; and

v. *Moreover, CARE in its report of October 15, 2018, which the SCN does not take notice of, also migrated the rating to the "Issuer not co-operating" category. The report noticed that GEECL had refused to respond to numerous requests and co-operate. A copy of CARE's report of October 15, 2018 is annexed as Annexure F.*

51. *For the foregoing reasons, no fault can be found with the Noticee for retaining its previously assigned rating of the NCDs issued by GEECL. Regulation 24(7) requires the CRA to exercise due diligence. There is nothing in the CRA Regulations or the SEBI Circulars that requires a Noticee to downgrade the ratings to "default"*

52. *The Noticee's view that GEECL was not co-operating was a bona-fide and reasonable view, shared by other CRAs.*

Noticee acted bona-fide in disclosing that GEECL had no co-operated: GEECL had sufficient time to respond and yet refused to co-operate

53. *As regards the alleged delay in seeking information from GEECL, the same is incorrect as numerous attempts were made to seek information from GEECL. The SCN wrongly suggests that information was sought from GEECL only on March 12, 2018, which too was nearly a week before the ratings became due for a review, on March 18, 2018. In fact, even prior to March 12, 2018, Noticee had made numerous calls to GEECL for provision of information which was not forthcoming.*

54. *The request on March 12, 2018 was a culmination of numerous efforts made by the Noticee, even prior, to obtain the requisite information. The issuer, GEECL was also informed that the failure to respond would lead to appropriate ration action. GEECL failed to do so. Viewed in this light and in the backdrop of prior efforts to engage with GEECL, two days is more than sufficient time, for GEECL to have responded especially when the SEBI 2017 Circular states that information on delay in servicing a debt obligation, ought to be disclosed within two days. Indeed, it is not even SEBI's case that the issuer did not have sufficient time to respond to the Noticee's queries. This was clearly a deliberate pattern of conduct since GEECL did not co-operate with CARE as well leading to CARE too, disclosing that GEECL had not co-operated in its report of October 2018.*

55. *There is also a fundamental contradiction in the approach of the SCN. In connection with DPIL, it alleged that the Noticee ought not to have waited to obtain clarity on the SDR process an ought to have promptly disclosed that DPIL was not co-operating. Yet, in connection with GEECL, when the Noticee promptly disclosed that it was not co-operating, the SCN finds fault with the Noticee for acting too early.*

Conditions for withdrawal not applicable

56. *The SCN then alleges that the Noticee's decision to withdraw the rating to the NCDs after rating it for 15 months, was contrary to the SEBI 2018 Circular. The decision to withdraw the rating was inter-alia based on a request*

from GEECL.

57. Clause 2 of the SEBI 2018 Circular provides that a CRA may withdraw a rating, subject to the CRA having:

"i. rated the instrument continuously for 5 years or 50 per cent of the tenure of the instrument, whichever is higher;

ii. received an undertaking from the issuer that a rating is available on that instrument."

(Emphasis Supplied)

58. *The tenure of the NCDs was from January 2014 and maturity was March 31, 2020 i.e. for six years. The SCN alleges that since the Noticee withdrew the rating on June 29, 2018 after rating the NCDs for 15 months, it had contravened Clause 2(i) of the SEBI 2018 Circular.*

59. *The 2018 SEBI Circular was issued pursuant to an amendment to Regulation 16(3) of the CRA Regulations by the SEBI (CRA) (Amendment) Regulations, 2018 ("2018 Amendment") that came into force on May 30, 2018. The 2018 Amendment inter-alia enabled SEBI to prescribe conditions pursuant to which a CRA may withdraw a rating.*

60. *Therefore, the SEBI 2018 Circular can apply prospectively and inter-alia where a debt instrument carries a tenure of at least five years as on the date of the circular. This is because the question of withdrawal can arise only where the debt instrument has been rated continuously for a period of five years or 50 percent of its tenure whichever is higher i.e. the five years is the minimum period for which a NCD would have to be rated, for a CRA to withdraw the rating.*

61. *It may also be noted that the Noticee issued its press release on June 29, 2018 i.e. just over three weeks from the date on which the SEBI 2018 Circular came into force. The Noticee required some time for the contents of the circular to be assimilated and communicated to the relevant department.*

62. *As regards Clause 2(ii) of the SEBI 2018 Circular, it is submitted that the NCDs were being rated by CARE and an existing rating was already available. The rating was withdrawn pursuant to a request from GEECL.*

Failure to assign a rating at the time of withdrawal

63. *At the time of the withdrawal, the Noticee did not assign a rating to the instrument owing to a human error. The error was bona-fide, technical and venial. No prejudice was occasioned to any person. The Noticee has already taken remedial measures. With effect from March 20, 2019, the Noticee has amended the standard form agreements it enters with issuer companies, which incorporates the withdrawal guidelines.*

64. *The withdrawal of ratings was therefore bona-fide, did not cause any adverse impact on the issuer or the subscribers as a request was made by the issuer and another rating was already available. Strictly without prejudice to the Noticee's submissions, even if the Learned Adjudicating Officer comes to the view that there is a contravention of the SEBI 2018 Circular, the same, if at all, is technical and venial. The submissions of the Noticee above, on the*

need for a lenient view and the factors under Section 15J of the SEBI Act not being attracted, are reiterated. In the interests of brevity, the same are not being repeated.

Ratings of NCDs of Essel group Entities: No default occurred

65. *At the threshold, issues relating to the Essel Group entities were not even part of the inspection. These allegations appear to have been made solely on the basis of a press article published in the Bloomberg Quint, titled "Brickwork Ratings: Treading the Fine Line between Technicality and Reality" on April 12, 2019. SEBI vide their email dated May 3, 2019 sought our comments on the same, which was provided on May 6, 2019. Copies of the emails are annexed as Annexure G.*

66. *The Noticee has already submitted that the scheme of the CRA Regulations, do not allow an inspection to ordinarily judge the appropriateness of the merits of a rating assigned by a CRA, except for compelling reasons and that too on receipt of complaints of a serious nature. Even where such an inspection is ordered, the CRA Regulations require the inspection to be conducted by officers of SEBI or independent experts, who have relevant experience.*

67. *It is well settled that what cannot be done directly cannot be done indirectly. If the appropriateness of a rating on merits cannot ordinarily be gone into in an inspection, it would not be open to SEBI to go into the merits of a rating that too based on the contents of a press article. This would defeat the carefully laid out scheme of the CRA Regulations that regulate the circumstances in which such an inspection should be conducted and who ought to undertake the inspection. Therefore, since the SCN does not set the compelling circumstances based on which the merits of a rating are assigned by The Noticee are assailed, it is clear that the provisions of the CRA Regulations have been overlooked. On this ground alone, the charge against the Noticee ought to be dropped.*

No case for recognition of default on the NCDs of the Essel Group

68. *At the outset, the SCN is not clear about which specific NCDs of Essel Group are being referred to. Nevertheless, the Noticee has endeavoured to provide a response.*

69. *The SCN proceeds on an erroneous premise that the Noticee ought to have recognized a default when the date of repayment of the NCDs, was admittedly re-scheduled. It has ignored the rationale articulated by the Noticee in its reports of January 31, 2019 and February 18, 2019 and extracted only selectively from these two press releases. In the press release dated January 31, 2019, the Noticee with reference to the Essel Group, has clearly stated that:-*

"Group's financial flexibility has diminished on account of these events, and hence refinancing risk is higher. However the operating and financial performance of ZEEL, the flagship company of the group, continues to remain satisfactory and the promoters have announced their plans to demonetize part of their stake for repayments of dues including those which have raised debt by pledge of shares. So far, BWR has not received any intimation of default. In intervening period, the rating continues on "Credit Watch with Developing Implications" for above NCDs and BWR has placed the bank loan rating on credit watch with developing implication of Essel Infraprojects Limited.".

70. *Similarly, in the press release of February 18, 2019, extracts of which are not to be found in the SCN, the*

Noticee has stated that:-

"While there has been increase in pledge levels and volatility in stock price, *BWR takes comfort from the reported understanding between the Identified lenders and the promoter group of companies on 26.1.2019 and subsequently majority of lenders agreeing that there will not be any event of default declared till 30th September 2019 and expected liquidity from strategic sale of ZEEL stake to be utilized for repayment of debt against pledge of shares at group level in a time bound manner. BWR also takes comfort that the operating and financial performance of ZEEL (the flagship company of the group), continues to remain satisfactory. BWR has not received any default intimation from Investor/Trustee for the aforesaid NCDs.*"

(Emphasis Supplied)

71. *Therefore, the Noticee took a bona-fide decision not to treat the NCDs as a "default" on account of the following considerations:-*

    a. *The satisfactory operating and financial performance of Zee Entertainment Enterprises Limited ("ZEEL"), the flagship company of the Essel Group;*

    b. *The ability of the promoters to monetize their stake in ZEEL, for repayment of debts;*

    c. *Neither the lenders nor the debenture trustee disclosed that there was a default.*

72. *While the SCN refers to the high percentage of shares pledged by the promoters and the failure of the borrower to bring in funds, it has failed to note that owing to the satisfactory performance of ZEEL, the promoters had the ability to sell their stake in ZEEL to repay the debts. While there undoubtedly was a concern, the inference drawn in the SCN that this ought to have inexorably led to declaration of a default is incorrect and not borne out by the record.*

73. *While the borrowers did not bring in funds/securities to restore the security cover, it may be noted that the same does not mean that the standstill agreement was entered solely with a view to avoid declaration of a default. In fact, it was on account of the promoters' ability to bring in funds owing to their stake in ZEEL, all of which are clearly mentioned in the press releases of the Noticee, that the standstill agreement was entered into. Annexure-A1 of the SEBI 2016 Circular requires that ordinarily re-scheduling of payment terms of a debt instrument would not be recognized as a default except where the "same is done to avoid default or bankruptcy".*

74. *Therefore, the general rule is that a re-scheduling of payment terms in respect of a debt instrument does not ipso-facto constitute a default. If every act of a lender re-scheduling the payment terms of a debt instrument or other payment obligation, is treated as a default, it would cause a catastrophic effect on the market. Every scheme of debt restructuring would entail re-scheduling of payment terms with a view to enable the borrower to revive its business. Indeed, the very r'aison d'etre of a debt restructuring scheme is that temporary liquidity concerns should not result in a borrower whose future prospects are bright, from being declared bankrupt.*

75. *Therefore, one cannot lightly treat every act of re-scheduling of payment terms as being done with a view to avoid*

calling a default. For these reasons, the allegation in the SCN that the Noticee failed to recognize a default are untenable.

76. *The following facts are also noteworthy and underscore the Noticee's position that there was no cause for a default to be declared:-*

    a. *In January 2019, there was a significant fall in the share price of the listed entities of Essel Group. Post this, the Essel Group held a meeting with the investors and informed the stock exchange via a letter dated January 28, 2019 that the group has arrived at an understanding with the investors that there will not be any event of default declared due to the steep fall in share price. The Noticee disclosed the same on its website on January 31, 2019 and also sought information from representatives of the Essel Group on the development;*

    b. *On February 3, 2019, the Essel Group disclosed that there was an understanding with the lenders of Zee Entertainment Enterprises Limited and Dish TV India Limited that there will not be any event of default declared till Sep 30, 2019. The group had reached an understanding with the lenders/investors regarding the re-scheduling of the payment obligations in respect of the NCDs to September 30, 2019;*

    c. *The Noticee thereafter downgraded its rating on February 18, 2019 due to increase in pledge levels of the company's promoters and volatility in share price thereby impacting the security cover marginally. The rating was downgraded by one notch since there was a minor dilution of security cover which was close to the cover as per the term sheet. We had monitored the development specifically with respect to the outcome of strategic stake sale by promoters in a time bound manner. We had also periodically reviewed the ratings, the expected valuation and compliance of covenants. Based on which the Noticee has also downgraded the rating of this company by multiple notches during May 2019;*

    d. *The specific rescheduling of the payment terms of the NCDs in question occurred in the month of March 2019 and April 2019. The re-scheduling of the same was done prior to the due date of the payment of the NCD;*

    e. *The said NCDs are rated as structured obligation secured by pledge of shares of listed companies with initial cover of 1.5x/1.75x. There was a specific provision in the term sheet that the issuer shall deposit all amount payable under the facility in the designated bank account charged to the debenture trustee at least 15 days prior to the maturity date. Upon failure to comply with these terms by the issuer, the debenture trustee has the right to enforce the security created under the pledge agreement and sell the shares before the redemption due date;*

    f. *This clause is one of the factors for giving the specific rating to the said NCD. This clause is a default prevention clause, which gives the debenture trustee and the investor the right to sell the shares in case funding is not done 15 days prior to the due date of NCD redemption;*

    g. *As such in this Structured Obligation rated by us there was adequate cause to prevent default as the security provided are shares of the listed company which is frequently traded and liquid in nature. A time period of 15 days is sufficient to raise funds by sale of shares by the investor/trustee required to redeem specific NCD on or before the due date. Had the complied with the said clause, there cannot be a default. However, in case they had*

sold the shares to redeem the NCD, the company would have suffered a loss. If the investors/Debenture trustee of the said NCD had chosen not to re-schedule, they ought to have sold the shares in the open market in a time period of 15 days on non-funding of escrow by the issuer 15 days prior to the due date so as to prevent default of non-payment on due date.

77. *In view of the above, it is incorrect to state that the re-scheduling was done to avoid default. During the last 6 months, between February 2019 and July 2019, 7 NCDs against share pledge of the group entities amount to Rs.921.50 crores, were redeemed on maturity out of the rated NCDs amounting to Rs.5,643 crores (the details are annexed at Annexure H.*

78. *For the foregoing reasons, the Noticee had a reasonable and legitimate basis to take the view that a default rating on the NCDs was not warranted.*

Rating of SOs: Noticee exercised due diligence

79. *At the threshold, the Noticee reiterates its earlier submissions that it is not open for SEBI to lightly assail the merits of the ratings assigned by a CRA.*

Internal Guidelines on rating of SO were detailed

80. *The SCN wrongly alleges that the rating methodology of the Noticee was "sketchy", based on the criteria available on the Noticee's website. It has ignored the fact that a five page internal guideline followed in respect of 'Structured Obligation' rating was shared with the Inspection team of SEBI. This document contained inter-alia (a) details of the nature of different types of 'structures', (b) requirement for deriving credit enhancement in each case and (b) follow-up mechanism. A copy of the same is attached as Annexure I.*

81. *SEBI has only recently vide a circular dated June 13, 2019, issued fresh guidelines relating to 'Credit Enhancement' ratings and 'Structured Obligation' ratings. Therefore, rating processes and methodologies are constantly being evolved and it is incorrect to jump to the conclusion based on the length of a document which was posted on the website of the Noticee, that its rating methodology was sketchy.*

No obligation to verify underlying documentation

82. *The rating of NCDs happens, generally, before the issue of such NCDs, and hence, at that stage, there are no executed legal documents. Legal documentation in respect of securities is essentially in the domain of a debenture trustee, who has the responsibility to ensure that the documentation obtained is in accordance with the 'Term Sheet', (whose details are also disclosed by the Noticee in the Rating Rationale), and legally enforceable. In this context, the Noticee also relies on other intermediaries and banks.*

83. *Regulation 15(1) of the SEBI (Debenture Trustees) Regulations, 1993 which lists the duties of debenture trustees, inter-alia provides that: (a) a debenture trustee shall take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice, (b) ensure on a continuous basis that the property charged to the debentures is available and adequate at all times to discharge the interest and*

principal amount payable in respect of the debentures and that such property is free from any other encumbrances save and except those which are specifically agreed to by the debenture trustee

84. *Similarly, a banks' sanction letters contain details of stipulations like corporate guarantee, letter of comfort, maintaining escrow accounts to capture cash-flows, or DSRA (Debt Service Reserve Account), etc. Further, banks' legal documentation is generally standard in nature, vetted by law firms or their own legal departments, and in most cases, already obtained by them, even before the assignment of rating.*

85. *Hence, given the multiple layers of scrutiny by independent third parties, the Noticee had taken a bona-fide view that banks do have appropriate and enforceable documentation, in accordance with their internal procedures, and these will protect their interests adequately. Therefore, it is on the bona-fide belief that debenture trustees and banks would have robust processes for vetting documentation, the Noticee did not insist on copies of such documents to verify whether they meet the standard requirement for deriving the credit enhancement;*

86. *Nevertheless, in view of the observations made at the inspection that a CRA should independently scrutinise the documents, and ensure that these are enforceable, etc., the Noticee has decided to hire an in-house legal officer to vet the documents, going forward.*

Strength of service providers/guarantors has indeed been taken into account and there is no default, to the Noticee's knowledge

87. *With reference to the 12 'support providers; who are stated to have defaulted in their own credit obligations to bank at some point of time or the other during the last two years, it may be noted that we are not aware of the source of information about these defaults. SEBI has not substantiated the basis on which these assertions are made. Indeed, these documents were also not made available us, at the time of inspection.*

88. *It may be noted that these companies have their own credit ratings in public domain from various CRAs (including us), and none of them, to the best of our knowledge, are in 'default'. A list of outstanding ratings between 2016 and 2018 available in public domain is provided in Annexure J. It may be noted that wherever our ratings are outstanding, it is based on periodic reviews, and feed-back from the main lenders of an Issuer or debenture trustee.*

89. *Therefore, the Noticee reiterates that it has taken into account the strength of the guarantors or other credit enhancement providers based on available public information. Rating decisions cannot be based on private or confidential information that may be available to only certain regulators or statutory bodies.*

All important parameters taken into account by the Noticee as part of its rating methodology

90. *With reference to the allegation that the Noticee did not examine all important parameters when it comes to credit enhancement derived from a guarantee, the allegation is incorrect. The submissions made above are reiterated. Regarding 'Future flow transaction/Escrow Mechanism' it is to be noted that these are standard structures in certain type of bank loans. For example, in respect of 'Loans against Rental Discounting', it is a standard product across banks, when banks provide loans against future rents receivable from tenants. The loan is based on: (a) types*

of lessees; (b) availability of lease agreement; (c) tri-partite arrangement between the bank, the borrower and the lessee for collection of rent by the bank and pooling it in a separate account ('escrow account'); (d) adequacy of the rent for recovery of EMI with a cushion; & (e) mortgage of the property in question. These requirements being standard for such a loan, and the terms having been clearly mentioned in the loan sanction letter itself. There is no need for the CRA to obtain legal documentation to verify whether these terms are really being followed or enforced by the Bank. A CRA is not expected to start on the premise of suspicion and disbelieve banks and other stakeholders. It is entitled to rely on these institutions and their own processes.

Letter of Comfort cannot be lightly discarded as part of the rating process

91. *The SCN seeks to find fault with the Noticee for assigned ratings on the basis of 'letter of comfort' ("LOC"). It may be noted that a LOC carries weight as the LOC provider undertakes to support the borrower to ensure that the financial obligations are met on time. LOCs are recognised by both lenders and rating agencies.*

92. *In fact, holding companies or flagship companies provide such LOCs for their relatively smaller or newer group companies. Most CRAs, in their guidelines on Credit Enhancement have included LOC as one of the various instruments that may be acceptable for the borrower to establish that it may meet its financial obligations. In fact, the Noticee verifies the terms of the LOC and also insists on a board resolution (by the board of LOC provider) to be provided, before assigning the SO rating. Therefore, there is nothing that the Noticee had done which was either unusual or extraordinary that warrants regulatory intervention.*

93. *With regard to the rating assigned in the case of OmShakthy Techno Park Pvt Ltd., it may be noted that the rating was for a proposed credit facility, and was based on support from their group company OmShakthy Agencies Madras Pvt Ltd. Naturally, when the actual sanction takes place, we would have verified if the LOC/Guarantee was a term stipulated and the same was acted upon. However, we were not informed of the sanction of the loan, and later the client also did not provide any information. As a consequence, the rating was put under 'Issuer did not cooperate' category with a downgrade to 'BB+' (SO) (from BBB-(SO)) in July 2018.*

94. *Subsequently, the Issuer submitted that the Issuer had not availed any credit facility from any bank/financial institution, as it decided to shelve the project and requested for withdrawal of the rating. Therefore, on the request of the Issuer, the rating was finally withdrawn in May 2019. There was no 'Default' as mentioned in the inspection report, as the loan itself was not sanctioned/availed as per our records. Therefore, the allegations in the SCN are untenable.*

Conclusion

95. *In light of the foregoing, no case for regulatory and punitive intervention has been made out. Where necessary, the Noticee has taken remedial measures and duly co-operated with the SEBI inspection. The Hon'ble SAT in Religare has emphasized that the purpose of an inspection ought not to be to penalise the noticee for every minor irregularity that is discovered as part of the inspection.*

96. *Even if the Learned Adjudicating Officer were to come to the view that the Noticee ought to have acted differently*

and there were irregularities, it is submitted that the same are all minor, technical and venial. None of them were motivated by mala-fides and in fact, they were bona-fide. Indeed, the law requires the presumption of bona-fides.

97. *Therefore, it is humbly submitted that the proceedings against the Noticee are liable to be dropped without any further adverse action, observation or comment. The Noticee requests an opportunity of a personal hearing, to enable the Noticee to address the Learned Adjudicating Officer, in perspective.*

Reply of the Noticee dated 28 November, 2019

1. *This Note on Submissions is an aide-memoire of the key arguments made by Counsel for the Noticee, at the personal hearing on November 14, 2019, with a view to assist the Learned Adjudicating Officer in taking an informed view of the matter. These submissions must be read along with our reply dated October 15, 2019 ("Reply").*

2. *Capitalized terms used in these submissions shall have the same meaning as ascribed to them in the Reply. For ease of reference, a convenience compilation was also tendered at the hearing and the page numbers referred to herein, are references to the pages of the convenience compilation.*

Scheme of the CRA Regulations

3. *That a CRA, unlike other licensed intermediaries, has a very distinct role and function, as is evident from the provisions of the CRA Regulations: -*

   a. *A CRA essentially expresses an opinion in a standardized form regarding the securities of an issuer (See definition of "rating" and of "credit rating agency" under Regulation 2(1)(h) and 2(1)(q) @ Page 60);*

   b. *Such expression of opinion is part of the fundamental right to free speech guaranteed under Article 19(1)(a) of the Indian Constitution – therefore, it should not be lightly called into question and even restrictions on the expression must be reasonable;*

   c. *SEBI has envisaged in the formulation of reasonable regulations to govern CRAs, that for a CRA to provide ratings, the CRA must review information provided by the client who is the issuer of the debt, and must depend on co-operation by the client. This is explicitly provided in Regulation 14(1)(d) which requires a CRA to enter into an agreement with client and such agreement is required to contain an obligation on the client to provide "true adequate and timely information for the purpose" (Page 71);*

   d. *Indeed, other market intermediaries have been obliged by law to provide information to the CRA – for example, a debenture trustee is duty-bound under the Code of Conduct in Schedule III of the SEBI (Debenture Trustees) Regulations, 1993 to share information with a CRA regarding issuers of debt (See Clause 16 of the Code of Conduct of the Debenture Trustee Regulations);*

   e. *The CRA Regulations have also taken care to stipulate that the focus should be on the rating processes and not on rating outcomes – in the regulation of CRAs. The focus of the CRA Regulations to achieve fair and appropriate ratings is Regulation 24 setting out various regulatory requirements for conduct of rating process, with Regulation 24(7) providing for exercise of due diligence (Page 75);*

f. *Special care has been taken in Regulation 29(3), which provides for inspection of the CRA by SEBI, to ensure that such inspection shall not "ordinarily go into an examination of the appropriateness of the assigned ratings on the merits" (Page 79);*

g. *Likewise, even for inspection, Regulation 29(4) specially provides that inspection on ratings may be ordered by SEBI "only in case of complaints which are serious in nature" – i.e. where breakdown of integrity and bonafides takes place, or fraud vitiates all solemn acts; and*

h. *Finally, Regulation 29(5), takes further care to ensure that only persons with relevant experience and expertise must staff the inspection teams.*

Allegations in the SCN

4. *Against this backdrop, one would have to examine the allegations in the SCN. The SCN is an outcome of an inspection. The charges in the SCN and the Noticee's answers to each of these charges are provided below.*

5. *Allegation I: Re Noticee's surveillance mechanisms*

That the Noticee allegedly lacked a surveillance mechanism to track repayment schedules of issuers and other material events in alleged violation of Clause 8 of the Code of Conduct to the CRA Regulations.

Noticee's key submissions (See Paras 13-26 of the Reply)

a. *This is a very sweeping and serious charge, made primarily on the basis that the Noticee, at the time of inspection, could not successfully demonstrate the functioning of an automated tool that downloaded material information from the website of the depositories – however, it misses the point that the electronic tool was only an aid to the otherwise robust and available system to track developments about clients in the form of a full-blown research team and analysts;*

b. *An important function of the CRA is its ability to track material developments involving clients. To state that such system does not exist cuts to the very root of the existence of a CRA whereas the Noticee continues to provide rating services;*

c. *The automated tool shown to the inspection team was an attempt by the Noticee to improve its existing monitoring mechanisms. Unfortunately, the fact that the automated mechanism did not function optimally has been misunderstood to wrongly infer that the Noticee had no mechanism at all to track material events. Lacunae in such tools, if perceived, may lead to a conclusion that one could do better or that the tool must be improved, but they can never lead to proceedings to punish and impose penalty;*

d. *The Noticee has a dedicated team that monitors websites of the exchanges and depositories and the relevant debenture trustee, on a daily basis, to track repayment schedules and other material information. It relies for example on google alerts and other publicly available information. The SEBI 2017 Circular itself requires CRAs to monitor websites of the exchanges (See Clause 1(A)(II) of the circular @ Page 50);*

e. *A CRA as stated earlier is required rely on issuer companies and debenture trustees to provide it with information and there is a dedicated team that monitors and analyses such information;*

f. *Neither the SEBI 2017 Circular nor the CRA Regulations require the Noticee to deploy any particular electronic tool to track material information. If the Noticee lacked a system to track repayment schedules, it would not have had the ability to rate the securities including of the very issuer companies, the SCN has sought to find fault with subsequently; and*

g. *This is not a charge that requires warrants penal regulatory intervention as the purpose of the inspection is to improve compliance standards (See para 5 of Religare Securities Limited v SEBI, Appeal No. 23 of 2011, Order dated June 16, 2011) which has also been achieved since the technological platform is up and running. Screenshots of the platform were also provided (See Reply @ Page 99).*

6. *Allegation II: Re: Rating of NCDs of Diamond Power Infrastructure Limited or DPIL:*

The allegations principally relate to: (i) an alleged 18-day delay in downgrading rating of DPIL's NCDs to default despite being informed that the account was classified as NPA; and (ii) the alleged failure to disclose particulars of the instrument as required by the SEBI 2016 Circular, in the press releases dated May 29, 2017 and June 11, 2018.

Noticee's key submissions (See Paras 28-41 of the Reply)

a. *DPIL was undergoing a strategic debt restructuring announced just prior to the NCDs become due for payment. The terms of the SDR was disclosed on April 20, 2017, the same day on which the Noticee's previous rating was up for review. Thereafter clarity on terms of SDR, were sought from DPIL on April 21, 2017 and April 26, 2017 for the Noticee to arrive at an informed opinion, which were not provided;*

b. *The Noticee also received conflicting feedback on whether the account was declared NPA. While Bank of Baroda said that the account had declared it as NPA, Exim Bank maintained that the account was standard. The Banks themselves were subscribers to these NCDs and parties to the SDR. Therefore, the Noticee had reason to believe the Banks would have a greater insight into the SDR process and awaited clarity before assigning a rating;*

c. *The Debenture Trustee whose duty is to inform the Noticee (See Clause 4 of the Annexure to the SEBI Circular dated March 15, 2013 @ Page 98) also did not inform the Noticee about the account becoming NPA. The two principal sources of information for the Noticee to take an informed view - the issuer company and the debenture trustee- did not respond;*

d. *The Noticee could not take an informed view and just 18 days later, the Noticee published its report on May 29, 2017 downgrading the rating to default and declared that DPIL was not co-operating. The Noticee's action were compliant with applicable law. Clause 1B(II) of the SEBI 2017 Circular requires rating to be assigned seven days post a debt restructuring (See SEBI 2017 Circular @ Page 52). Therefore, the Noticee*

was justified in awaiting terms of the debt restructuring;

e. *The Noticee was also required by Regulation 24(7) to ensure its rating is fair and appropriate and thereafter. It was also duty bound to ensure that there is no misrepresentation in its disclosures and therefore it could not have published a rating without such material information. Therefore, the alleged delay of just 18 days, by no stretch is a matter that warrants penal regulatory intervention;*

f. *The charge that the Noticee was not required to disclose in its subsequent press releases reviewing the initial rating, the terms of the instrument, coupon rate etc. is unsustainable as these are matters to be disclosed when the initial rating is assigned. Where the issuer does not co-operate which can only apply, after the initial rating is assigned, the SEBI 2016 Circular expressly provides the particulars to be disclosed in such a press release (See Clause 5.C of the SEBI 2016 Circular @ Page 34);*

g. *The press releases dated May 29, 2017 and June 11, 2018, issued by the Noticee contained all the information required in Clause 5.C of the SEBI 2016 Circular including a brief write up of the non-co-operation. Therefore, the charge of not disclosing the requisite information in the press releases is not correct.*

7. *Allegation III: Re: Rating of NCDs of GEECL*

The allegations primarily are as follows: (i) alleged failure to review the rating of NCDs of GEECL between March 2017 and June 2018, despite information relating to delayed payments and CARE allegedly downgrading the rating; (ii) the Noticee disclosed that GEECL was not co-operating just two days, after seeking information; (iii) the Noticee withdrew the ratings when the conditions for withdrawal were not met; and (iv) the Noticee allegedly failed to disclose particulars of the instrument as required by the SEBI 2016 Circular, in the press releases dated March 14, 2018 and June 29, 2018.

Noticee's key submissions (Paras 44-64 of the Reply)

a. *The charge suffers from two foundational errors: (i) an error of jurisdiction as the inspection team has clearly overlooked Regulation 29(3) which bars the inspection from going into appropriateness of ratings on merits and (ii) a material error of fact as the inspection team as there was no downgrade by CARE and it actually re-affirmed its previous rating of "C";*

b. *Apart from the above, it is important to note that the Noticee in its press release of March 18, 2017, had already downgraded the rating from BWR A- Negative' to BWR BB (Outlook: Negative) i.e. which was a non-investment grade rating indicating a moderate risk of default. At this time, there was no information of delay in servicing of NCDs either from the issuer or the debenture trustee;*

c. *In the period between March 2017 and April 2018, it is noteworthy that CARE actually revised the rating to "CARE BB+; Stable (Double B Plus; Outlook Stable) i.e. CARE's rating was brought on par with the Noticee's rating, far from CARE downgrading the rating as wrongly alleged in the SCN;*

d. *If the ratings assigned by the Noticee are allegedly not appropriate, the inspection report and the SCN also fails*

to set out what would have been the fair or appropriate rating. On this ground alone, the allegation ought to be dropped;

e. *As regards the non-co-operation of the issuer, the Noticee made numerous attempts to reach out to GEECL including on June 15, 2017, August 1, 2017 and March 2, 2018 and followed up telephonically, to no avail. The request on March 12, 2018 was a culmination of these efforts and therefore it is incorrect to allege that, information was sought only on March 12, 2018.*

f. *Since the issuer was not responsive, the Noticee after considering the operational performance and the lack of any information on any default in servicing the NCDs, retained the rating of "BB" and migrated the rating to "Issuer not co-operating". Indeed, CARE too subsequently in its report of October 15, 2018, disclosed that GEECL was not co-operating. Clearly, CARE followed suit which only endorses the correctness of the Noticee's position;*

g. *The SCN also is self-contradictory. In the case of DPIL, it alleged that Noticee was too late (just 18 days) in disclosing the non-co-operation by DPIL and yet in the case of GEECL, it alleges that the Noticee acted too early, in disclosing within two days that GEECL was not co-operating;*

h. *As regards the conditions of withdrawal not being met, it is submitted that the NCDs were issued in January 2014 and were due to mature in March 2010. Therefore, as on date of the SEBI 2018 Circular (See Page 49), they had a tenure of just two years. The condition requiring the instrument to be rated continuously for five years, would have been incapable of being met, as the NCDs would expire in just two years. Therefore, the SEBI 2018 Circular which imposed conditions for withdrawal can only apply to NCDs which has a tenure of at least five years from the date of the SEBI 2018 Circular; and*

i. *As regards the press release dated March 14, 2018, all requisite details which are required by Clause 5.C of the SEBI 2016 Circular which deals with disclosures where an issuer does not co-operate, have been complied with. Details of the instrument, including coupon rate are not required to be disclosed when the rating is up for review. The submissions made above in this regard in the context of DPIL, are reiterated.*

8. *Allegation IV: Re: Rating of NCDs of Essel Group Entities*

The allegation here relates to the actions of the Noticee in not recognizing a default when the date of the NCDs was due, owing to a standstill agreement that was entered by the Essel Group Entities with the lenders, as a result of which the pledge on shares of ZEEL were not invoked. It is also alleged that a breach of covenant dealing with security results in a multi-notch downgrade but the Noticee only downgraded the NCDs only by one notch.

Noticee's submissions (Paras 65-78 of the Reply)

a. *The charge pertains to the merits of the rating assigned by the Noticee which cannot be gone into in view of the express prohibition in Regulation 29(3), except where serious allegations of fraud or mala-fides are made. The submissions made above are reiterated;*

b. *Whether or not there should be a multi-notch or single notch downgrade is a matter left to the discretion of the rating agency since it renders an opinion and one that cannot be assailed lightly merely because SEBI believes a different view is possible;*

c. *Without prejudice to the above, the Noticee's decision to downgrade the ratings by one notch from AA- (SO) to A+ (SO), was justified. It is important to note that the terms of the NCDs of the Essel Group, had a credit enhancement feature i.e. it was linked to the pledge of shares of ZEEL. This was a structured obligation;*

d. *Given the terms of the NCDs, the Noticee took a bona-fide decision not to treat the NCDs as a default as: (a) the operating and financial performance of ZEEL was satisfactory, (b) the promoters had the ability to monetize their stake in ZEEL for repaying the debt and (c) neither the lenders nor the debenture trustee disclosed that there was a default;*

e. *The SCN errs in alleging that the Noticee did not examine the borrowers had financial as well as liquidity issues, as it overlooks the fact that this was a structured obligation and the rating depended not so much on the borrower's balance sheet but on the strength of ZEEL's balance sheet and performance;*

f. *A decision of a lender to reschedule terms of repayment cannot ipso-facto be called an attempt to avoid calling a default, since that is a right given to the lender under the terms of the agreement. The breach of a covenant by the borrower and the consequences that ensue upon such breach, are distinct. Not every breach can inexorably lead to calling of a default since that is the right of the lender. It is open for the lender to postpone or reschedule due date of payment to enable the borrower to repay its debts;*

g. *The factors that the Noticee took into account in effecting a single notch downgrade are clearly articulated in its press release of February 18, 2019 and therefore the allegations in the SCN that it did not take into account borrower's financial condition, is erroneous and misplaced.*

9. *Allegation V: Re: Rating of Structured Obligations*

The SCN alleges that: (a) the methodology of rating structured obligations was sketchy and that (b) it allegedly was not examining important parameters and in 58 cases, assigned ratings based on letter of comfort.

Noticee's submissions (Paras 79-94 of the Reply)

a. *The SCN is vague as it does not explain why the SO rating methodology is "sketchy" and what in the rating methodology was lacking. A five page internal guideline furnished at the time of the inspection, shows the parameters that the Noticee's analysts take into account while rating a SO which the inspection has not found fault with;*

b. *In any case, the mere fact that the Noticee's internal documentation can be improved or better worded is not a ground for penal regulatory intervention. Indeed, an inspection is aimed at bettering standards of conduct of business and not for penalising a notice for every infraction, assuming one at all can be said to exist;*

c. *As regards, reliance on letter of comfort for rating structured obligations, apart from the same being a market*

practice, it may noted that this has been explicitly recognized by SEBI itself in the Circular dated June 13, 2019 (Ref: SEBI/HO/MIRSD/DOS3/ CIR/ P/ 2019/70 (annexed as Annexure A). The SEBI Circular takes note of the fact that:-

"that CRAs are also assigning 'SO' suffix to ratings of instruments other than securitized or asset backed transactions. The 'SO' rating to such instruments is based on some form of explicit credit enhancement from a third party/ parent/ group company, in the form of corporate guarantee/ letter of comfort/ pledge of shares, etc.".

d. *Therefore, it is wrong to allege that a letter of comfort ought not to have been taken into account while rating of a SO. Had SEBI intended to prohibit a CRA from discarding LoCs while assigning a rating, it would have explicitly said so. The fact that other CRAs are also taking into account a LoC, is clear not only from the circular which takes note of extant market practice, but also from reports of other CRAs, annexed as Annexure B.*

e. *As regards the specific case of OmShakthy Techno Park Ltd., the rating was for a proposed loan facility that subsequently was never availed. The rating was initially assigned based on support extended by its group company. When the sanction actually took place, the Noticee would have verified if there was a LoC/Bank Guarantee; and*

f. *However, the issuer did not provide any information and the rating was migrated to issuer did not co-operate category. The rating was subsequently withdrawn as the issuer did not avail of the facility as the project was shelved. There was no downgrading of the rating to default by the Noticee, as wrongly alleged in the SCN.*

10. *For the foregoing reasons, the allegations in the SCN do not warrant penal regulatory intervention. In any case, the Noticee has of its own accord taken remedial measures which is the purpose behind an inspection. Even if the Learned Adjudicating Officer were to come to the view that the Noticee could have acted differently, the infractions, if any are minor and technical in nature and do not warrant imposition of a monetary penalty.*

Additional Submissions of the Noticee dated 15 September, 2020

1. *Further to the submissions contained at Paragraph 64 of the Reply, we wish to supplement our submissions by drawing the attention of the Learned AO to SEBI Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2020/2 dated January 3, 2020 ("Withdrawal Circular"). Under Paragraph 3(b) of the Withdrawal Circular, a CRA may withdraw the ratings for an issuer if the CRA (if there are multiple ratings) if (i) the CRA has rated the instrument continuously for 3 years or 50 per cent of the tenure of the instrument, whichever is higher; and (ii) the CRA has received No-objection Certificate (NOC) from 75% of bondholders of the outstanding debt for withdrawal of rating and (iii) the CRA has received an undertaking from the issuer that another rating is available on that instrument.*

2. *What is noteworthy is that the spirit of the Withdrawal Circular conforms to the spirit in which we withdraw. The NCDs in question were indeed being rated by CARE (as set out in Paragraph 62 of the Reply). The Withdrawal*

Circular further reduces the requisite tenure of a CRA's rating to enable withdrawal. Therefore, what is pertinent is the spirit of the regulations, which was followed by the Noticee.

3. *It is further submitted in furtherance of the submissions outlined at Paragraph 78 that the Noticee has been consistently updating the ratings for Essel Group entities and a copy of the latest statement concerning such ratings is at Annexure A.*

4. *It is further submitted that the regulations cannot be applied in a rule-based manner straight jacketed manner, and need to be applied in a manner considering the totality of the underlining circumstances. This is why SEBI has tweaked and modified its requirements to deal with emergent situations including currently during the Covid pandemic.*

5. *The Noticee wishes to submit, that as outlined in the remainder of the Reply, where there could be technical violations of the CRA Regulations, these technical violations occurred due to real and actual emergent circumstances and the Noticee submits that it has always acted in a manner that is fair to all persons who may be interested in its ratings i.e. the issuer and the public who rely on the ratings.*

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the charges levelled against the Noticee, its replies dated October 15, 2019 and November 28, 2019 and the documents/ materials available on record. The issues that arise for consideration in the present case are :

   a. Whether the Noticee has violated following provisions of the SEBI Act, Regulations and Circulars:

      i. Clause 8 of Code of Conduct for CRAs read with Regulation 13, Regulation 15(1), 16(1) and 24(2), 24(7) of CRA Regulations.

      ii. Clause 1 A and B of SEBI Circular dated June 30, 2017

      iii. Clauses 3 read with Annexure A points 2.A.I.a), D.I and D.II, 4.B. and 5.C.IV of SEBI Circular dated November 1, 2016

      iv. Clause 2 and 3 of SEBI Circular dated June 06, 2018

      v. Clause 3 and 4 of SEBI Circular dated March 01, 2012

   b. Do the violations, if any, attract monetary penalty under Section 15HB of the SEBI Act?

   c. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

8. Before proceeding further to decide the matter on merit basis, concern of the Noticee regarding fair opportunity of inspection denied, raised by the Noticee in its reply dated 15.10.2019, is required to be addressed. Upon perusal of the records, I observe that the Noticee has been given an opportunity to inspect the documents and records on September 06, 2019. Pursuant to inspection, the Noticee had sought certain documents vide its letter dated 10.09.2019. SEBI vide its email dated 14.09.2019 had responded by stating that the Adjudicating Officer had already mentioned the evidences relied on by him while issuing the SCN. The documents sought were internal communication and analysis and in no way constitute the evidences which had been relied on while making the allegations levelled in the Show Cause notice dated July 22, 2019. The observations found during examination undertaken by SEBI that are the basis of allegation and charges are clearly spelt out in the SCN. Since that has been done and copies of all the relied upon documents had been provided to the Noticee to enable it to file its reply, in my view, the principle of natural justice has been duly complied with, in this case.

9. Further, an opportunity of personal hearing was also granted to the Noticee on 14.11.2019 and subsequent to the hearing the Noticee has submitted his detailed reply vide its letter dated 28.11.2019. In view of the above, no prejudice is caused to the Noticee, if SEBI has not provided it with copy of its internal note containing the observations of the examination undertaken in the matter. This view also finds support from the following judgment of Hon'ble SAT on the similar issue in the case of Manoj Gaur Vs. SEBI, in Appeal Number 64 of 2012 decided on October 03,2012: -

"The investigation report is not the evidence on which reliance was placed by the adjudicating officer. Since the adjudicating officer has complied with the statutory requirements, there is no legal obligation on the Board to furnish the entire investigation report to the appellants. Learned counsel for the parties have relied on certain case law relating to principles of natural justice. We do not consider it necessary to refer to all those details in view of the fact that regulation 9 of the Regulations makes it obligatory to communicate the findings in the investigation report and not the whole report. It is nobody's case that such findings were not made available. If the procedure laid down in the regulations has been followed by the adjudicating officer, the grievance of violation of principles of natural justice is without any foundation."

10. In this context, it is pertinent to mention that while dealing with similar arguments as raised by the Noticee, Hon'ble SAT, vide its order dated May 12, 2017 in Satyam Computers case, considered the order dated January 10, 2017 passed by Hon'ble Supreme Court in the matter of Price Waterhouse case and held and clarified that observations made by Hon'ble Supreme Court were general directions given as and by way of clarifications without going into the merits of the case and the same cannot be said to be the ratio laid down by Hon'ble Supreme Court applicable to all other cases. It is also relevant to note that Hon'ble Supreme Court in the matter of Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497], has held that *"...Even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the Authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice..."*

Further, in the matter of Chandrama Tewari Vs. Union of India, Through General Manager, Eastern Railways, (1988) 1 SCR 1102, Hon'ble Supreme Court has held that it is not necessary that each and every document must be supplied to the Noticee facing charges. Only material and relevant documents are necessary to be supplied to him. If a document, even though mentioned in the Memo of charges, is not relevant, or if it is not referred to or relied upon by the adjudicating officer or the punishing authority in holding the charges as proved against the Noticee, no exception can be taken to the validity of the proceedings on the ground of non-supply of the copy of such documents.

11. As the Noticee has been given reasonable opportunities to file written representation and opportunity of personal hearing as per the Adjudication Rules, I am of the view that no prejudice has been caused to the Noticee, if documents not relied upon and internal examination observations were not provided to it. Thus, the concern of the Noticee that the fair opportunity of inspection was denied, has been addressed.

12. Now in order to deal with the argument of the Noticee, it is relevant to deal with the overview of the regulatory architecture for CRAs, the whole scheme of the SEBI Act and the measures taken by SEBI with regard to the role of the CRAs in pursuit of objectives enshrined in the SEBI Act. The SEBI Act, being a social welfare legislation to ensure an orderly growth of securities market and to protect the interest of the investors, has to be interpreted for furtherance of its purpose and not to frustrate it. Hon'ble Supreme Court in SEBI Vs Ajay Agarwal vide its judgment and order dated February 25, 2010 held as under: -

"39. If we look at the legislative intent for enacting the said Act, it transpires that the same was enacted to achieve the twin purposes of promoting orderly and healthy growth of securities market and for protecting the interest of the investors. The requirement of such an enactment was felt in view of substantial growth in the capital market by increasing participation of the investors. In fact such enactment was necessary in order to ensure the confidence of the investors in the capital market by giving them some protection.

40. The said Act is pre-eminently a social welfare legislation seeking to protect the interests of common men who are small investors.

41. It is a well -known canon of construction that when Court is called upon to interpret provisions of a social welfare legislation the paramount duty of the Court is to adopt such an interpretation as to further the purposes of law and if possible eschew the one which frustrates it."

13. Further, I note that there should be liberal interpretation of the beneficial statute in its correct perspective so that the legislative intent behind the statute is achieved, the provisions in the statute granting incentives for promoting growth and development are fructified and the real object of such enactment is not frustrated (Bajaj Tempo Ltd. v. CIT AIR 1992 SC 1622). Therefore, the interpretation of socio-economic legislation such as the SEBI Act and the CRA Regulations, which are also aimed

at social or economic development apart for investor protection, should not be narrowed but should be in the perspective favouring the securities market and investors having regard to 'teleological purpose and protective intendment' of the legislation.

14. Keeping the above principle in mind, in order to give purposeful meaning to the terms used in CRA Regulations, the scheme of the SEBI Act and 'measures' taken thereunder need to be seen as a whole and not in fragmented manner. It is also deemed necessary to look into the background of 'credit rating' requirements necessitated by Regulators so as to understand the entire gamut and scope of responsibilities and accountability of 'Credit Rating Agencies'.

15. The preamble of the SEBI Act describes the objects of SEBI i.e. to protect the interests of investors and to promote the development of and to regulate the securities market and for matters connected therewith or incidental thereto. Section 11(1) broadly prescribes the same objectives as duty of the Board established under Section 3 of the said Act and empowers the Board to take such *'measures'* as it thinks fit for carrying out those objectives and duties. It is relevant to mention here that, shortly after its establishment as statutory expert body, SEBI had issued *"Guidelines for Disclosures and Investor Protection"* vide its circular No. PMD/Cir.4545/92 dated June 11, 1992 (Clause F) and clarification thereto vide circular No. PMD/Cir.4730/92 dated June 18, 1992. (Clause G). These Guidelines/ clarification had mandated the compulsory *'credit rating'* of debentures including NCDs where maturity exceeded 18 months. In addition, vide its circular No. PMD/Cir. 9317/92 dated September 29, 1992, SEBI issued *"Guidelines for Developmental Financial Institutions for Disclosures and Investor Protection"* (Clause H) whereby it again mandated compulsory *'credit rating'* of debentures and bonds issued by companies/ corporations/institutions that are engaged mainly in developmental activities and which play a catalytic role in the industrial/infrastructural development of the country.

16. In pursuit of orderly development of debt/bond market the Central Government and respective sectoral regulators have, from time to time, taken several 'measures'. Vide circular F. NO.1/10/SE/94 dated July 20, 1994, Government of India, Ministry of Finance laid down policy for listing of privately placed debt securities issued by companies and Financial Institutions in order to create a broader and more liquid market for privately placed debt securities issued by such companies/financial institutions. By this circular the Central Government exempted all categories of pure debt securities from the requirements of Rule 19 (2)(b) of the Securities Contracts (Regulation) Rules, 1957 (which applies for listing of securities on any recognized stock exchange) subject to the condition that such securities shall carry a 'credit rating' of not less than investment grade from any of the then existing 'credit rating agencies' namely, The Credit Rating Information Services of India Ltd., Investment Information and Credit Rating Agency of India Ltd., and Credit Analysis and Research Ltd. The list of such pure debt securities included NCDs, the non- convertible portion of partially convertible debentures (PCDs), deep discount bonds and commercial paper. It was further clarified that the privately placed debt

securities already issued but not rated could also be listed on the stock exchange after obtaining the requisite 'credit rating'. This policy was laid down with the view that the requirement of obtaining at least an investment grade 'credit rating' for securities sought to be listed on the stock exchange would ensure protection of the interest of investors and the listing of privately placed securities on the stock exchange was expected to promote the development of an orderly and liquid secondary market for such debt securities.

17. The aforesaid requirement were subsequently consolidated in the SEBI (Disclosures and Investor Protection) Guidelines, 2000 and under Chapter X of the same, the 'credit rating' of debt securities by a 'credit rating agencies' continued as a measure for investor protection and for orderly development of the bond market. Apart from this SEBI also took several measures by issuing circulars with respect to issue, listing and trading of debt securities. For example, in order to provide the greater transparency in issuance and listing of privately placed corporate debt securities and to protect the interest of the investor, vide circulars no. SEBI/MRD/SE/AT/36/2003/30/09 dated September 30, 2013 and SEBI/MRD/SE/AT/46/2003 dated December 22, 2003, SEBI had laid down certain requirements including the mandatory 'credit rating' of not less than investment grade. Those requirements were applied with regard to already listed privately placed debt securities of the companies including PSUs as well. Consequent to these developments the Central Government had withdrawn its aforesaid circular dated July 20, 1994.

18. Further, SEBI had taken several steps based upon the Report of High Level Expert Committee on Corporate Bonds and Securitization of 2005, in view of growing importance of corporate bond market in national economy. The SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations) were notified in order to facilitate development of a vibrant market for corporate bonds in India. The ILDS Regulations, while provided certain relaxations, it emphasized adequate information disclosures, due diligence by involved intermediaries and more importantly *'credit rating'* as the cornerstones of transparency and investor protection. As per Regulation 4(2)(c) of the ILDS Regulations for public issue of debt securities the 'credit rating' should be obtained from at least one 'credit rating agency' registered with the Board and should be disclosed in the offer document. In terms of Regulation 20(b) of the ILDS Regulations for debt securities issued on private placement basis *'credit rating'* should be obtained from at least one *'credit rating agency'* registered with the Board. Further, Regulation 23 of the ILDS Regulations requires that- *"Every rating obtained by an issuer shall be periodically reviewed by the registered credit rating agency and any revision in the rating shall be promptly disclosed by the issuer to the stock exchange(s) where the debt securities are listed."* Similar requirements were prescribed in the applicable listing agreements. Subsequently, by Regulation 55 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 it was re-emphasised that - *"Each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once a year by a credit rating agency registered*

by the Board".

19. It is also pertinent to mention here that prior to 1995 the regulatory framework for registering and regulating the activities and conduct of *'credit rating agencies'* was missing. With effect from January 25, 1995 section 11(2)(ba) of the SEBI Act was amended so as to include registering and regulating the working of *'credit rating agencies'* as one of the *'measures'* referred to in section 11(1). Section 12(1A) was inserted to provide a negative mandate for the *'credit rating agencies'* to act as such only in accordance with the conditions of a certificate of registration obtained from the Board in accordance with Regulations made by the Board. Though the provisions of section 12(1A) existed in the SEBI Act since 1995 there was no regulatory framework for regulation of the *'credit rating agencies'* till SEBI framed the CRA Regulations in 1999. It is also seen that the provisions of section 11(2)(ba) and section 12(1A) of the SEBI Act are co-terminus and must be interpreted to mean that the *'credit rating agencies'* that are registered and regulated by the Board under the CRA Regulations must also carry on their activities in furtherance of the aforesaid twin objectives of promoting orderly and healthy development of the securities market and for protecting the interest of the investors.

20. Regulation 2(1)(h) defines the expression 'credit rating agency' as a "body corporate which is engaged in, or proposes to be engaged in, the business of rating of securities offered by way of public or rights issue". However, being the beneficial legislations, the SEBI Act as amended with effect from January 25, 1995 and CRA Regulations, would apply with regard to debt securities issued and listed prior to coming into force of the said amendment to SEBI Act and commencement of the CRA Regulations and the 'credit rating agency' which has rated the debt securities of the issuers prior to the commencement of the CRA Regulations would be under obligations to comply with the provisions thereof including the code of conduct and all other prudential norms applicable to its 'rating' activities whether the securities are issued to public or not. Further, as the 'rating' obligations mandated under the aforesaid policies is a continuous obligation, the prescribed due diligence, independent assessment/ evaluation, monitoring of assigned 'ratings' and creditworthiness of the issuers shall apply at all times till the obligation under the rated securities is outstanding or the issuer is wound up, whichever is earlier. Accordingly, SEBI can, at any time, look into the conduct of the 'credit rating agency' so as to examine whether it has complied with its obligations or not.

21. The investors in the securities markets deal on the basis of information provided by the company, the stock exchanges and other intermediaries. It has been considered essential by SEBI that for any debt instrument, the investors would need the crucial information of the credit rating assigned by CRAs to the debt instrument. This has been the "raison d'être" of the existence of the CRAs in the first place. For this purpose, it is vital for the CRAs to conduct their business in the earnest that it is warranted. This casts a steep duty to act diligently on the CRAs.

22. Further, the definition of 'rating' has to be understood in the context of a 'credit rating agency'. The

term 'rating' cannot be construed in isolation so as to limit it as any 'opinion' regarding securities expressed in the form of 'standard symbols'. When seen along with the real intent behind CRA Regulations or the role of a 'credit rating agency' as already detailed in the preceding paragraphs, the term 'rating' as defined in Regulation 2(1)(q) must be construed to apply for 'credit rating'. The term 'credit rating' has not been defined in the CRA Regulations but the word 'rating' is defined in regulation 2(1)(q) of the CRA Regulations as *"…. an opinion regarding securities, expressed in the form of standard symbols or in any other standardised manner, assigned by a credit rating agency and used by the issuer of such securities, to comply with a requirement specified by these regulations;"*. Further, considering the contemporary role and responsibilities of 'credit rating agencies' in financial markets and the legitimate expectation towards creditworthiness of borrowers in a dynamic and constantly growing bond market, the content of the CRA Regulations must not be subjected to a narrow/ grammatical approach. Any attempt to truncate the scope of 'credit rating', would be to violate its widest possible amplitude as enshrined in the SEBI Act and the 'measures' taken by SEBI for development of corporate debt market and investors protection.

23. It is a settled position that while interpreting social–economic welfare legislations, there should be more concern with the context and the content of the statute rather than its literal meaning. In this connection, I would like to make reference to the Judgment of the Hon'ble Supreme Court in *Reserve Bank of India vs. Peerless General Finance And Investment Co. Ltd. & Ors.* [(1987) 1 SCC 424] wherein the Hon'ble Supreme Court has stated as reproduced herein below:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the court's construction."

24. It is, thus, clear that the provisions of the CRA Regulations need to be looked at as a whole in setting of the entire SEBI Act and by reference to what preceded the enactment and the reasons for it and roles and responsibilities assumed by 'credit rating agencies' in several measures taken by SEBI and other regulators. Therefore, the definition of 'credit rating agency' and 'rating' should be interpreted

with reference to the contemporary roles and responsibilities of the 'credit rating agencies' so as to apply the CRA Regulations of 1999 in response to the changing needs and conditions of the securities market.

25. As accepted in common parlance a 'credit rating' is an opinion of a 'credit rating agency' as to the borrower's/ issuer's capacity to meet its financial obligations to the lender/ investor on a particular issue or type of instrument in a timely manner. The 'credit rating' measures the relative risk of the borrowers'/ issuers' ability and willingness to repay both interest and principal over the period of the rated instrument. Thus, the 'credit rating' signifies the creditworthiness of instruments and the issuer and also the 'probability of default' of the instrument that is rated. The limitation on this definition of 'rating' as an 'expression of opinion' of the 'credit rating agency' regarding securities is that it cannot be construed as a recommendation to buy, hold or sell the securities (Regulation 18) nor it can predict default nor does it guarantee against loss. But it necessarily includes a qualitative well- informed and analysed opinion that largely influences the investment decisions.

26. It has been a well-accepted position that 'credit rating' quality has become one of the main criteria for investment in corporate bonds. A 'credit rating agency' needs to go through thoroughly into all the relevant information such as the financials of the company, its strengths and weaknesses, its competitive position in the industry and its future prospects before it announces its 'rating' value. Therefore, 'terms' and 'expressions' used in the CRA Regulations must be interpreted in the context of this functional role of a CRA in the contemporary situation instead of the technical and grammatical approach as sought to be contended by BRIPL. Further, the statutory requirements under the SEBI Act and CRA Regulations and obligation of the 'credit rating agency' therein are reasonable restrictions on the fundamental rights under Article 19(1) (a) of the Constitution of India. Though the 'standard symbols' assigned by a 'credit rating agency' with regard to a security is not necessarily a statement of fact, it cannot be construed merely 'a symbol' as sought to be argued. These 'standard symbols' are of considerable significance to the investors in the corporate bond market. A good 'credit rating' can help the issuer to access high value investors both domestic and foreign. These symbols also serve as a benchmark of financial market regulations. Thus, any attempt to say that a "rating" is only a subjective opinion of the concerned CRA, is to nullify the objectivity that is required in the process of rating and undermines the importance that is actually assigned to such ratings by the investors/lenders at large.

27. Regulation 13 of CRA Regulations read with the Code of Conduct contained in Third Schedule of the CRA Regulations provide for the principle- based benchmark for the conduct of a 'credit rating agency', while Regulation 24 provides for the Rating Process and inter alia obligates the 'credit rating agency' to follow a 'proper' rating process, have professional rating committees and should be staffed by analysts to carry out a rating assignment. Regulation 24(7) provides a crucial obligation of a 'credit

rating agency' while 'rating' a security. It commands the 'credit rating agency' to "exercise due-diligence in order to ensure that rating given by the CRA is fair and appropriate".

28. From the aforesaid regulatory scheme, it is noted that while the agreement of a CRA with the client that specifies right and liabilities of each parties also inter alia requires the agreement on periodic review of the 'rating', co-operation of client in providing true, adequate and timely information to the 'credit rating agency'. However, the obligation of the 'credit rating agency' under Regulation 14(d) "to arrive at and maintain true and accurate rating" cannot be diluted by any agreement as Regulation 16(2) clearly enables the 'credit rating agency' to carry out the review of assigned 'rating' on the basis of best available information or in the manner specified by the Board from time to time. Further, the aforesaid benchmarks/ conduct regulations in Regulation 16(2) read with Regulation 14(d), 13 read with Code of Conduct specified in Third Schedule particularly Clauses 1, 2, 3, 4, 5, 6 and 8 and Regulation 24 (7) are not subservient to the agreement between a 'credit rating agency' and its client. In the above scheme of the CRA Regulations, the agreement between the 'credit rating agency' and its client is a part of the aforesaid Code of Conduct and the regulatory requirements, rather than to supplant them.

29. The words 'true', 'accurate', 'fair' and 'appropriate' contained in the CRA Regulations enjoins upon a 'credit rating agency' not merely to accept mechanically the information given by its client but to have an independent professional judgment about the quality of information, creditworthiness of the client and about the probability of default of the respective debt security based on any other available information. This clearly negates the argument of the Noticee that discharge of its obligation is wholly dependent on the cooperation of the client and that the issuer is solely responsible for the quality of information. The presumption of bona fide would help if the compliance with the desired Code of Conduct is shown. I further note that the above scheme of the CRA Regulations does not require existence of mala fide or bad motive in order to bring home the charge. Once it is established that a 'credit rating agency' has failed to comply with its statutory obligations under the CRA Regulations the consequences would follow.

30. It is also a settled position that 'due diligence' means careful and persistent application or effort [*Chander Kanta Bansal Vs. Rajinder Singh Anand* -(2008) 5 SCC 117]. Normally, the degree of prudence in this regard is the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. In *JM Mutual Fund and JM Capital Management Private Limited Vs. SEBI* [SAT order dated 22.11.2004], the Hon'ble Securities Appellate Tribunal had held that –

"40. In our view no hard and fast rule or straightjacket method can be applied with regard to the principles of due diligence. Due diligence is nothing but a watchful caution and foresight as the circumstances of the particular case demands. (see P-Ramanathan Aiyar's Law Lexicon 1997 edition page 599)

41. The due diligence is an obligation to exercise reasonable care. Black's Law Dictionary, 6th edition defines "Due Diligence" at page 457as follows:

"Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case."

31. Thus, the obligation of 'due diligence' varies according to a given situation and the same cannot have or any single sacrosanct formula for determination of 'due diligence'. Under the CRA Regulations, the 'due diligence' expected from a 'credit rating agency' is much more than just to 'trust but verify' the information received from the client. The high standards of the conduct obligations under the aforementioned clauses of Third Schedule entail that the 'credit rating agency' must exercise independent professional judgment at all times in order to achieve and maintain objectivity and independence in rating process. The 'objectivity' and 'independence' is very important and crucial element in the 'due diligence' to be exercised by the 'credit rating agency'. Such 'due diligence' would follow that the 'credit rating agency' should receive the information from the client, independently verify and confirm the 'truthfulness', 'adequacy' of the same for the purpose of arriving at and maintaining 'a true and accurate rating' of the securities of the client {Regulation 14(d)}and if, the client does not cooperate in provide the true and adequate information, then use the best available information {Regulation 16(2)}and exercise independent professional judgment and using rating processes that reflect consistent and international rating standards{Regulation 13 read with Third Schedule and Regulation 24(7)}. In view of the scheme and object of the CRA Regulations as discussed hereinabove, the due diligence obligation of a 'credit rating agency' is a continuing obligation and it has to ensure compliance with the same at all time.

32. CRA Regulations speak on rating of the securities at the first stage and the later stages i.e. initial rating and periodic reviews. It also lays emphasis on dissemination of the information regarding newly assigned ratings and changes in earlier ratings promptly through press releases and websites. Regulation 13 states:

"Every credit rating agency shall abide by the Code of Conduct contained in the Third Schedule."

Clause 8 of Code of Conduct under Regulation 13 states:

"A credit rating agency shall keep track of all important changes relating to the client companies and shall develop efficient and responsive systems to yield timely and accurate ratings. Further a credit rating agency shall also monitor closely all relevant factors that might affect the creditworthiness of the issuers."

33. In furtherance of the aforesaid provisions mentioned above, SEBI has issued circular dated June 30, 2017 which has reiterated the importance of the aforesaid regulations by requiring the CRAs to ensure proactive, prompt and accurate rating. The said circular by laying down emphasis on the surveillance

mechanism for identifying potential defaults has stated the following:

"It has come to notice that there have been instances where Credit Rating Agencies have not taken cognizance of information regarding delays in servicing debt obligations by the Issuer, even though the information has already been discounted by the market. As responsible institutions, CRAs are expected to proactively track all important changes relating to the client companies in order to yield timely and accurate ratings. It is reiterated that CRAs are required to ensure prompt and accurate rating action. Accordingly, the following clarifications in respect of monitoring mechanism, disclosure norms and timelines are being brought to the attention of CRAs for compliance:

1. ***Surveillance Mechanism for identifying potential defaults:***

   As per Regulation 15 of SEBI (Credit Rating Agencies) Regulations, 1999, CRAs are required to continuously monitor the rating of securities and disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases on websites of CRAs as well as all the stock exchanges where the said securities are listed. In order to enable CRAs to develop efficient and responsive systems to keep track of all important changes relating to the client companies as required under clause 8 of Code of Conduct of SEBI (CRA) Regulations, 1999, following is clarified:

   A. Monitoring of repayment schedules:

   I. CRAs have to be proactive in early detection of defaults/ delays in making payments. In this regard, CRAs are required to track the servicing of debt obligations for each instrument rated by them, ISINwise, and look for potential deterioration in financials which might lead to defaults/ delays, particularly before/ around the due date(s) for servicing of debt obligations, on the basis of monitoring of indicators including, but not restricted to, the following:

   a. EBITDA not being sufficient to meet even the interest payments for last 3 years

   b. Deterioration in liquidity conditions of the Issuer

   c. Abnormal increase in borrowing cost of the Issuer

   d. Any other information indicating deterioration in credit quality/ debt servicing capability of the Issuer.

   II. The CRA shall also monitor the Exchange website for disclosures made by the Issuer in this regard.

   III. In case no confirmation of servicing of debt obligation by the Issuer is received by the CRA from the Debenture Trustee within 1 day post the due date, the CRA shall immediately follow up with the Issuer for confirmation of payment. In case no response is received from the Issuer within 2 days of such communication, the CRA shall issue a Press Release as enlisted at point 3B (III) below and disseminate the same on its website and to all stock exchanges where the security is listed.

   IV. The CRA shall also make a reference to SEBI regarding such suppression of information by the issuer/ non-cooperation of Issuer with CRA. Failure to make such reference shall be considered as aiding and

abetting the Issuer in suppression of material information by the CRA which would be in contravention of Clause 12 of Code of Conduct of CRAs and may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by the CRA.

B. Material Events requiring a review:

I. CRAs shall carry out a review of the ratings upon the occurrence of or announcement/ news of material events including, but not restricted to, the following:

a. Quarterly/ Half-yearly/ Annual results

b. Merger/ Demerger/ Amalgamation/ Acquisition

c. Corporate debt restructuring, reference to BIFR and winding-up petition filed by any party /creditors.

d. Significant decline in share prices/bond prices of the issuer or group companies which is not linked to overall market movement

e. Significant increase in debt level or cost of debt of the issuer company

f. Losses, sharp revenue de-growth etc. based on publicly disclosed financial statements, which are not in line with CRA's earlier estimates

g. Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals. h. Disruption/ commencement/ postponement of operations of any unit or division of the listed entity.

i. Any attachment or prohibitory orders against the Issuer

j. Any rating action taken by an International Rating Agency with respect to rating assigned to the Issuer/ Instruments issued by the Issuer.

II. CRAs shall publish on their website press release regarding the rating action (including reiteration of existing rating), if warranted, immediately, but not later than 7 days of occurrence of the said event.

34. Thus, CRAs are expected to proactively track all important changes relating to the client companies in order to yield timely and accurate ratings. They are required to ensure prompt and accurate rating action. Every credit rating agency ought to have their own algorithm to evaluate the credit rating. However, the algorithm requires crucial inputs in form of information such as credit history, credit type and duration, credit utilization, credit exposure, material events occurring and likely to occur etc. In the whole gamut of rating exercise, an efficient and robust system of seeking information is key and the availability of information matrix in CRA would play a pivotal role in assigning new as well as periodic ratings. Proactive and responsive alert mechanism/ system for any CRA is a backbone of its basic structure of assigning ratings given the systemic superstructure position that the CRAs have come to occupy as information and insight gate keepers.

35. The Noticee claimed to have the technology platform/ alert mechanism wherein it got data from NSDL website daily regarding availability or otherwise of information regarding timely payment. However, when asked by the inspection team to demonstrate the alert mechanism, it had failed to provide the demonstration of such system and the system shown was at the development stage. The Noticee's system which was under development was in response to the requirements laid down by SEBI. The failure to demonstrate the alert mechanism in the form of technology platform is of the implication that there was no alert system available for tracking interest/ principle payment till the time of inspection. It was observed by the Inspection Team that the alerts were being generated and processed manually. The same results in delay in conduct of reviews and, consequently, delayed rating actions, pursuant to occurrence of default/ other material events. I note that the Noticee has not denied on the observations made, in its replies.

36. It is, obligatory on the part of the CRA to build a strong and robust information network or system which could help it in discharging its functions effectively. Pro-activeness and responsiveness of the information seeking system would be the key factor to decide on its efficacy. More the system is prompt in capturing the information about the financial health of the clients, more it would be relevant in the context of rating assignment. Any lacunae in the alert mechanism or system of the CRA could render the CRA ineffective and could be detrimental to the whole financial system..

37. It is worth mentioning here that the aforesaid SEBI circular came into existence on June 30, 2017 and the inspection of the Noticee was held in November 2018. It is noted that the inspection was conducted around 16 months after the aforesaid circular came into existence. Despite the time of lag of around 16 months in between the SEBI Circular coming into existence and the inspection undertaken, I note that the way the aforesaid provisions of SEBI Circular had envisaged the surveillance mechanism of CRAs, the Noticee has not been able to develop its surveillance mechanism as per the requirements of the circular. The Noticees' lackadaisical approach in developing its surveillance mechanism is not acceptable keeping in mind the importance of early detection of warning signals / potential defaults. It is the realization of the fact that client may not co-operate with the CRA at some point of time and CRA being an important intermediary catering not only to the needs of the borrower but also of various other stakeholders as well as potential investors, the responsibility is bestowed on the CRA not to stop functioning if the client stop co-operating.

38. In view of the above, the Noticee has violated the provisions of Clause 8 of Code of Conduct for CRAs under Regulation 13 of CRA Regulations and Clause 1 of SEBI Circular dated June 30, 2017 by not maintaining a proper surveillance system for tracking the interest/ principal repayment schedule of issuers or other material events that may impact the creditworthiness of the issuer.

39. As regards the allegation of delay in recognition of default of NCDs of DPIL (Rs. 105.97 Crores issue), I note that in April 2016, the Noticee had rated the NCDs of Rs. 105.97 crores and bank facilities

(both short and long term) aggregating to Rs. 2752.94 crores. The NCDs and long term bank facilities were rated as "BWR BB-", indicating a moderate risk of default. Shortly after, on June 30, 2016, DPIL announced that its lenders had invoked Strategic Debt Restructuring (SDR). This was just prior to the NCDs becoming due for repayment. The annual review of the rating of NCDs of DPIL was due on April 20, 2017. The NCDs were privately placed and the lender banks who were part of the lenders forum, were involved in the SDR process. Between, December 2016 and April 2017, the SDR package was sought to be implemented, which entailed DPIL's lenders converting a part of their debts into equity. After holding a Board meeting on April 20, 2017, the Noticee disclosed the terms of the SDR and clarity was sought from DPIL on April 21, 2017 and April 26, 2017. The reply from the DPIL in respect of the clarity on the terms of the SDR, was not forthcoming and thereafter the Noticee had sent an email to the Debenture Trustee on May 17, 2017, to which the Noticee received no response from the Debenture Trustee. Intimation regarding the account being classified as NPA and there was a delay in payment of interest or principal by the DPIL post restructuring, was received by the Noticee on May 11, 2017 from one of the DPILs' bankers i.e. Bank of Baroda. It is submitted by the Noticee that it also received response from Exim Bank telephonically informing that the account was 'standard'. Given that two member banks of the consortium banking arrangement reported different status of the DPIL account, Noticee considered it appropriate to wait for the feedback from the debenture trustee of DPIL regarding the NCDs. The debenture trustee neither confirmed nor denied the default within the reasonable time period of two weeks. Consequently, on May 29, 2017, the Noticee published its report assigning "D" rating while also disclosing that DPIL was not-co-operating i.e. just over two weeks after one of the banks had stated that the account was declared as NPA.

40. From the above chronology of the events taking place till the NCDs were categorized under the default category, it is clear that the Noticee has failed to exercise due diligence in timely recognition of the default. The SDR taking place in the NCDs of the DPIL after having been rated "BWR BB-", indicating a moderate risk of default, was adequate reason for the CRA to get vigilant and be constantly in touch of the DPIL w.r.t. seeking information about the terms and the status of the SDR. However, I note that efforts were only made by the Noticee as late as on April 20, 2017 (when the review of the rating of NCDs were due), when the Noticee disclosed the terms of the SDR and clarity was sought from DPIL on April 21, 2017 and April 26, 2017. Even when the reply from the DPIL in respect of the clarity on the terms of the SDR, was not forthcoming, the Noticee had sent an email to the Debenture Trustee as late as on May 17, 2017. The Noticee also received no response from the Debenture Trustee. However, Noticee had become aware of the DPIL becoming NPA in between (i.e. on May 11, 2017) when it received an intimation regarding the account being classified as NPA due to delay in payment of interest or principal by the DPIL post restructuring, from one of the DPILs' bankers i.e. Bank of Baroda. However, the Noticee decided to give credence to oral response from from Exim Bank, informing the Noticee that the account was 'standard' over the response

received from Bank of Baorda. It was only when the Noticee did not receive any feedback from the debenture trustee of DPIL regarding the NCDs for two weeks, that the Noticee published its report assigning "D" rating while also disclosing that DPIL was not-co-operating on May 29, 2017 i.e. just over two weeks after one of the banks had stated that the account was declared as NPA.

41. The performance of a credit rating agency is best judged through its default and transition statistics. The 'event of default' on the rated debt and the manner of default recognition are the fulcrum on which a rating agency's default statistics and thereby its performance rest. In most financial markets, bond investors prefer to have default recognized instantly. An early recognition of default will support higher levels of post default recovery as the sooner the creditors are able to move against a defaulting borrower, the better will be their chances of realizing their dues. Even the Insolvency and Bankruptcy Code, 2016, which aims to resolve insolvencies in a time-bound manner, recognizes default as non-payment of debt, in part or whole, once it is due. As per the provisions, creditors (whether financial or operational, secured or unsecured) can initiate insolvency proceedings upon default. SEBI circular CIR/MIRSD/4/2011 dated June 15, 2011 stipulates that instruments which are in default or are expected to be in default soon have to be mandatorily rated as "D".

42. It is a settled position that 'due diligence' means careful and persistent application or effort [*Chander Kanta Bansal Vs. Rajinder Singh Anand* - (2008) 5 SCC 117]. Normally, the degree of prudence in this regard is the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. Under the CRA Regulations, the 'due diligence' expected from a 'credit rating agency' is much more than just to 'trust but verify' the information received from the client. The high standards of the conduct obligations under the clauses of Third Schedule of CRA Regulations entail that the 'credit rating agency' must exercise independent professional judgment at all times in order to achieve and maintain objectivity and independence in rating process. The 'objectivity' and 'independence' is very important and crucial element in the 'due diligence' to be exercised by the 'credit rating agency'. The due diligence obligation of a 'credit rating agency' is a continuing obligation and it has to ensure compliance with the same at all time.

43. The Noticee has failed to exercise proper due diligence and considerably delayed the disclosures and dissemination of information about the terms and status of SDR, non-co-operation of the issuer and also cautioning investors and stakeholders of the issuer about its credit paying ability to meet out its NCDs' repayment obligation. The Noticee inspite of the various negative signals did not act timely to seek information and waited for receipt of information leading to delay in recognizing default. The Noticee has delayed in recognition of default of NCDs of DPIL. The Noticee has, therefore, violated Regulation 15(1) and Clause 8 of the Code of Conduct for CRAs read with Regulation 13 of CRA Regulations, 1999 and Clause 3 read with Annexure A points 2.D.I and 2.D.II, 4.B, 5.C.IV of SEBI Circular dated November 1, 2016.

44. With regard to the allegation of failure to review rating and withdrawl of rating of NCDs of Great Eastern Energy Corporation Limited ("GEECL"). I note that the Noticee in its reply has raised the concern that the charge suffers from two foundational errors: (i) an error of jurisdiction and (ii) a material error of fact. The Noticee has submitted that the inspection team has clearly overlooked Regulation 29(3) which bars the inspection from going into appropriateness of ratings on merits. I note from the observation of the inspection that the charge levied against the Noticee is not regarding the appropriateness of the rating but about the failure to review the rating of NCDs of GEECL after another CRA (Care Ratings) downgraded the NCDs to "C" on April 21, 2017 due to "delays in debt servicing of bank facilities on account of tightening of liquidity". I also observe that the charge levied is well within the jurisdiction of the provisions of the CRA regulations and/ or SEBI Circular, the violations of which have been alleged, which are Regulation 15 (1), 24 (7) of CRA Regulations and Clause 1 B of SEBI Circular dated June 30, 2017.

45. I note that the Noticee rated the NCDs of GEECL with an issue size of Rs. 815.6 Million and assigned the rating "BB" to the said NCDs on March 18, 2017. As observed by the inspection, the NCDs were downgraded to "C" on April 21, 2017 by another CRA (Care Ratings) due to "delays in debt servicing of bank facilities on account of tightening of liquidity". The Noticee has contended that there was no downgrade by CARE and it actually re-affirmed its previous rating of "C". The Noticee has further submitted that in its press release of March 18, 2017, it had already downgraded the rating of NCDs from BWR A- Negative' to BWR BB (Outlook: Negative) i.e. which was a non-investment grade rating indicating a moderate risk of default. However, Noticee has simultaneously submitted that at this time, there was no information of delay in servicing of NCDs either from the issuer or the debenture trustee with them. I observe that after CARE reaffirmed the NCDs to "C" on April 21, 2017 citing reasons "delays in debt servicing of bank facilities on account of tightening of liquidity". Although CARE had reaffirmed its earlier rating, the reason for the same was that there was "delays in debt servicing of bank facilities on account of tightening of liquidity". This observation of CARE should have been an eye opener for the Noticee especially when the Noticee submitted that there was no information of delay in servicing of NCDs either from the issuer or the debenture trustee. The Noticee should have taken this seriously and rating should have been reviewed. Further, it is also observed that the CARE undertook the review of its rating in December 2017 after a period of around 7 months after its reaffirmation of the rating, however, the Noticee has not bothered to review its rating in the year 2017 and sought information from the issuer only in March 2018 despite there being reasons to undertake review. The Noticee sought information from the issuer only on March 12, 2018 and published press release, maintaining the rating BB with "issuer not co-operating" suffix on March 14, 2018. On account of the facts mentioned above, I am of the view that the Noticee should have carried out a review much earlier in line with the regulatory requirements. Therefore, the Noticee has violated the provisions of Regulation 15(1) and 24(7) of CRA Regulations and clause 1.B of SEBI Circular dated

June 30, 2017.

46. Further, I note that that the tenure of NCDs was from January 21, 2014 to March 31, 2020, i.e. around 6 years. I also note that rating was withdrawn on June 29, 2018 "at the request of the Company and as per the NOC from the debenture holder M/s Indostar" vide Press Release dated June 29, 2018 of the Noticee. As per SEBI Circular dated June 06, 2018, a CRA may withdraw a rating subject to the CRA having rated the instrument continuously for 5 years or 50 per cent of the tenure of the instrument, whichever is higher, and received an undertaking from the Issuer that a rating is available on that instrument. The contention of the Noticee is that the SEBI Circular dated June 06, 2018 can apply prospectively and inter-alia where a debt instrument carries a tenure of at least five years as on the date of the Circular. I note that when the rating was withdrawn, provisions of Regulation 16(3) and the SEBI Circular dated June 06, 2018 were in force and applicable. Provisions were related to the withdrawl and was applicable for all outstanding obligations. In view of the same, I note that the conditions of the withdrawl have not been complied with while withdrawing the rating by the Noticee. In view of the above, the Noticee has violated the provisions of Clause 2 of the SEBI Circular dated June 6, 2018.

47. Clause 3 of SEBI Circular dated June 06, 2018 states:

"at the time of withdrawal, the CRA shall assign a rating to such instrument and issue a press release, as per the format prescribed vide Circular dated November 01, 2016. The Press Release shall also mention the reason(s) for withdrawal of rating."

48. I note that the Noticee has failed to assign a rating to NCDs of GEECL at the time of withdrawing rating thereby violating provisions of clause 3 of the SEBI Circular dated June 6, 2018. The Noticee has also failed to mention the details of the NCDs of GEECL such as the date of issuance, coupon rate and maturity date in its press releases dated March 14, 2018 and June 29, 2018. The Noticee has violated provisions of Clause 3 read with Annexure A points 2.D.I and 2.D.II. of SEBI Circular dated November 1, 2016.

49. The Noticee had rated NCDs of Essel Corporate Resources Pvt. Ltd. ("ECRPL") and Zee Entertainment Enterprises Limited ("ZEEL"). As per the terms of the NCDs of ECRPL, it had a credit enhancement feature by way of pledge of equity shares of ZEEL (listed on BSE & NSE). As per the structure of the instrument, the initial collateral cover of the pledge shall not be less than 1.60 times the principal amount at inception. If at any time before the redemption, the share cover falls below 1.50 times of the outstanding amount, the borrower shall top-up in the form of additional pledge of shares or deposited appropriate cash amount in the Designated Account. Sometime around end of January, 2019 there was a fall in price of shares of ZEEL and the various Mutual Funds agreed to reschedule the payment obligation of Debt Securities to a later date to avoid invoking pledge of

shares.

50. It was observed that the Noticee, vide Press Release dated January 31, 2019, regarding "Credit Update" on ECRPL, reaffirmed the rating at AA- (SO) along with Credit watch with developing implication. The Noticee, while informing regarding the standstill agreement between ECRPL and the lenders, inter alia, mentioned as under:

"BWR takes comfort from reported agreement with lenders that there will not be any event of default declared due to steep fall in price.

Out of the total promoter's holdings, ~70% is Indian holding and balance ~30% is held by promoters foreign entities. Currently the promoter and promoter group have pledged ~60% of their total holdings (as of quarter ending Dec. 18 as per BSE)."

51. Subsequently, the Noticee, vide Press Release dated February 18, 2019, while downgrading the rating from AA- (SO) to A+ (SO), mentioned that – *"The rating of the NCD issues of Essel Corporate Resources Pvt. Ltd has been downgraded on account of increase in pledge levels in promoters shareholding in ZEEL and also increase in volatility in share price thereby impacting the security cover. It also takes note of the position that financial flexibility of the Group is impaired, and the promoters' ability to top-up, as required in the terms, is weakened on account of high percentage of pledge."*

52. I note that there was a breach of security cover due to drop in security price. In order to maintain the security cover, the borrowers would have to either bring in more shares or money. However, lenders entered into a standstill agreement to avoid invoking of the pledge of ZEEL shares, since that would have resulted in further decline of the said share prices and top-up in the form of additional pledge of shares was highly constrained due to the already high percentage of shares pledged by the promoters, thereby avoiding probable default. (As on March 31, 2019, promoters held 38.20% shareholding in ZEEL, out of which 66.48% (i.e. 25.28% of the total shareholding) had been pledged, as per disclosure on BSE website.) Thus, it was clear that it was neither possible for the borrowers to bring in additional money or shares to maintain the security cover. A breach of covenant dealing with security cover would normally result in multi-notch downgrade or default.

53. However, by entering into the standstill agreement with lenders, the borrowers managed to avoid bringing in any funds/securities to restore security cover and avoided any possible default. The lenders rescheduled the payment of NCDs to September 30, 2019 so as to avoid any default on the NCDs. However, the Noticee allegedly did not examine all these factors and only downgraded the ratings by only one Notch.

54. I note that Regulation 24 (2) cast upon a responsibility on CRA that every credit rating agency shall, in all cases, follow a proper rating process and Regulation 24 (7) states that every credit rating agency, shall, while rating a security, exercise due diligence in order to ensure that the rating given by the credit

rating agency is fair and appropriate. Further, clause 2. A. I. a) of SEBI Circular dated November 1, 2016 has stated that each CRA shall frame detailed rating criteria, include the same in its Operations Manual/ Internal governing document and disclose the same on its website. For that matter, the circular has also specified rating criteria, which each CRA shall formulate. In this regard, the circular has specified instrument wise definition of default to be followed by all CRA for default recognition in Annexure A1 of the said SEBI circular. The annexure has defined the recognition of default when rated instrument is rescheduled. It mentions that when there is non-servicing of the debt (principal as well as interest) as per the existing repayment terms in anticipation of a favourable response from the banks of accepting their restructuring application/ proposal, shall be considered as a default. It further mentions that rescheduling of the debt instrument by the lenders prior to the due date of payment will not be treated as default, unless the same is done to avoid default or bankruptcy.

55. Clearly, there was breach of the specified security cover of the NCD and a consequent non-servicing of debt as per the existing repayment terms. The repayments were rescheduled owing to a standstill agreement that was entered by the Essel Group Entities with the lenders. This was done to avoid invoking of the pledge of ZEEL shares and if done as per the existing covenant, it would have resulted in further decline of the share prices of ZEEL and top-up in the form of additional pledge of shares or money would have required, however, it was highly constrained due to the already high percentage of shares pledged by the promoters, thereby avoiding probable default. The Noticee was fully aware or should have made itself aware of the situation that the terms such as the security cover of the NCDs have been breached and while the lenders could have entered into a standstill agreement in their commercial interests or interests of investors, it was the Noticee's duty to clearly make it public that there was a default. It is the role of the CRA to identify risks and inform stakeholders in a timely manner CRA is like a mirror– has to reflect reality and cannot be concerned about the reaction of other stakeholders.

56. When a company restructures debt obligations and if the restructuring indicates that the same was done to avoid default this reflects very poor credit quality and the revised rating should indicate the actual picture. It is important that all stakeholders like investors, regulators, media are informed of the seriousness. It is of utmost importance that the CRAs should ensure that any type of default is factored into the rating given by them so that the investors are aware about the happenings of any company.

57. In view of the above, the reply of the Noticee in this regard cannot be accepted. The Noticee has violated the provisions of Clause 3 read with Annexure A point 2.A.I.a) of SEBI Circular dated November 1, 2016 and Regulation 24(2), 24(7) and Clause 8 of Code of Conduct for CRAs read with Regulation 13 of SEBI (Credit Rating Agencies) Regulations, 1999.

58. With regard to violations while rating SOs, I note that the allegations framed against the Noticee are

provisions of Clauses 3 and 4 of SEBI Circular dated March 01, 2012. The said provisions of the SEBI requires the CRAs to follow same stringent norms for the Structured Obligations (SO), as applicable for rating of securities issued by way of public and rights issues.

59. Clause 1 of the Code of Conduct as specified under Regulation 13 of the CRA regulations states:

"A credit rating agency shall make all efforts to protect the interests of investors."

Clause 3 of Code of Conduct:

"A credit rating agency shall fulfill its obligations in a prompt, ethical and professional manner."

Clause 4 of Code of Conduct:

"A credit rating agency shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment in order to achieve and maintain objectivity and independence in the rating process."

SEBI Circular dated March 01, 2012

3. Therefore, it is desirable that in addition to the review/accreditation process put in place by these regulators, if any, such ratings should also be governed by the same stringent norms as applicable for rating of securities issued by way of public and rights issues.

4. In view of the above, it has been decided in consultation with the CRAs and also with other regulators that for the above mentioned ratings, CRAs shall follow the applicable requirements pertaining to rating process and methodology and its records, transparency and disclosures, avoidance of conflict of interest, code of conduct, etc, as prescribed in the Regulations and circulars issued by SEBI from time to time.

60. As regards the Noticee's submission that there is no obligation to verify the underlying documentation of the SO, the same is not tenable in light of the duties and responsibilities cast upon the CRAs by SEBI Act, CRA regulations and various circulars issued thereunder. Structured products with complex financial needs are complicated in nature and are not easy to understand. Due to its complexity, it becomes imperative to independently examine the underlying documents or assurances before the SO is rated. It is also noted that this issue was generally observed across all SO ratings which make it more serious.

61. It is further noted that the Noticee has assigned top rating grades (viz., AAA, AA+, AA, AA-, A+, A and A- and the corresponding short term grades) in respect of 12 SO ratings, the support providers in these ratings itself had defaulted in their own credit obligations to bank at some point of time or the other during the last two years. The Noticee has not acted diligently while evaluating the strength of the support provider while assigning the SO rating. Further, it is noted that Noticee was not examining all the important parameters of the support extended as per its rating manual, as mentioned below:

CRA	Parameters not being examined as evidenced from the methodology

Guarantee	
Brickwork Ratings	Enforceability, entirety, guarantee for payment, payment mechanism, payment on first demand, payment without deduction, waiver of rights of supporter, guarantor being primary obligor and insolvency aspects
Future flow transaction/ Escrow Mechanism	
Brickwork Ratings	Recourse to lenders, legal and documentation aspects, performance risk, obligor's creditworthiness, borrower's other obligations, structure and payment risk

62. The Noticee had assigned SO ratings in 58 cases on the basis of Letter of Comfort despite assessing from the documentation that the support extended was not irrevocable, unconditional and legally enforceable. In the case of Om Shakthy Technopark Pvt Ltd, the Noticee has assigned SO rating merely on the basis of group strength without even a documented support which was subsequently downgraded to default.

63. It is alleged that the SO rating methodology furnished by the Noticee is sketchy in nature and lacked clarity on the various critical parameters to be examined by the analysts. The Noticee has rejected the allegations and has submitted that it has five page internal guideline followed in respect of Structured Obligation. The issue here is not of the availability of SO rating Methodology rather of the methodology whether covering important aspects of undertaking the rating of SOs or not. It is noted that the Noticee was not independently assessing the enforceability, revocability and other important aspects of the underlying assurance while undertaking rating of SO. The documents furnished by the lenders were taken without any independent examination. Noticee in its reply, has submitted that there is no obligation to verify the underlying documentation and given the multiple layers of scrutiny by independent third parties, the Noticee had taken a bona-fide view that banks do have appropriate and enforceable documentation, in accordance with their internal procedures, and these will protect their interests adequately. Therefore, the Noticee did not insist on copies of such documents to verify whether they meet the standard requirement for deriving the credit enhancement.

64. After perusing the replies of the Noticee in this regard and in view of the observations and considering the overview of the regulatory architecture for CRAs, the whole scheme of the SEBI Act and the measures taken by SEBI with regard to the role of the CRA in pursuit of objectives enshrined in the SEBI Act, the Noticee is in violation of the Clauses 3 and 4 of SEBI Circular dated March 01, 2012.

65. In view of the aforesaid findings, the failure on the part of the Noticee is apparently vivid and obvious in this case. I, therefore, find that the Noticee has violated the following provisions of CRA Regulations and SEBI circulars, which read as follows. The Noticee is liable for penalty under Section 15HB of the SEBI Act.

CRA Regulations

Code of Conduct

13. Every credit rating agency shall abide by the Code of Conduct contained in the Third Schedule.

Monitoring of ratings

15(1) Every credit rating agency shall, during the lifetime of securities rated by it continuously monitor the rating of such securities, unless the rating is withdrawn, subject to the provisions of regulation 16(3).

Procedure for review of rating

16(1) Every credit rating agency shall carry out periodic reviews of all published ratings during the lifetime of the securities, unless the rating is withdrawn, subject to the provisions of regulation 16(3).

Rating process

24. (2) Every credit rating agency shall, in all cases, follow a proper rating process.

(7) Every credit rating agency, shall, while rating a security, exercise due diligence in order to ensure that the rating given by the credit rating agency is fair and appropriate.

Third Schedule

8. A credit rating agency shall keep track of all important changes relating to the client companies and shall develop efficient and responsive systems to yield timely and accurate ratings. Further a credit rating agency shall also monitor closely all relevant factors that might affect the creditworthiness of the issuers.

SEBI Circular dated June 30, 2017

1. ***Surveillance Mechanism for identifying potential defaults****:*
As per Regulation 15 of SEBI (Credit Rating Agencies) Regulations, 1999, CRAs are required to continuously monitor the rating of securities and disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases on websites of CRAs as well as all the stock exchanges where the said securities are listed. In order to enable CRAs to develop efficient and responsive systems to keep track of all important changes relating to the client companies as required under clause 8 of Code of Conduct of SEBI (CRA) Regulations, 1999, following is clarified:

A. Monitoring of repayment schedules*:*

I. CRAs have to be proactive in early detection of defaults/ delays in making payments. In this regard, CRAs are required to track the servicing of debt obligations for each instrument rated by them, ISIN-wise, and look for potential deterioration in financials which might lead to defaults/ delays, particularly before/ around the due date(s) for servicing of debt obligations, on the basis of monitoring of indicators including, but not restricted to, the following:

a. EBITDA not being sufficient to meet even the interest payments for last 3 years

b. Deterioration in liquidity conditions of the Issuer

c. Abnormal increase in borrowing cost of the Issuer

d. Any other information indicating deterioration in credit quality/debt servicing capability of the Issuer.

II. The CRA shall also monitor the Exchange website for disclosures made by the Issuer in this regard.

III. In case no confirmation of servicing of debt obligation by the Issuer is received by the CRA from the Debenture Trustee within 1 day post the due date, the CRA shall immediately follow up with the Issuer for confirmation of payment. In case no response is received from the Issuer within 2 days of such communication, the CRA shall issue a Press Release as enlisted at point 3B (III) below and disseminate the same on its website and to all stock exchanges where the security is listed.

IV. The CRA shall also make a reference to SEBI regarding such suppression of information by the issuer/ non-cooperation of Issuer with CRA. Failure to make such reference shall be considered as aiding and abetting the Issuer in suppression of material information by the CRA which would be in contravention of Clause 12 of Code of Conduct of CRAs and may result in violation of the provisions of section 12A of the Securities and Exchange Board of India Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 by the CRA.

B. Material Events requiring a review:

I. CRAs shall carry out a review of the ratings upon the occurrence of or announcement/ news of material events including, but not restricted to, the following:

a. Quarterly/ Half-yearly/ Annual results

b. Merger/ Demerger/ Amalgamation/ Acquisition

c. Corporate debt restructuring, reference to BIFR and winding-up petition filed by any party /creditors.

d. Significant decline in share prices/bond prices of the issuer or group companies which is not linked to overall market movement

e. Significant increase in debt level or cost of debt of the issuer company

f. Losses, sharp revenue de-growth etc. based on publicly disclosed financial statements, which are not in line with CRA's earlier estimates

g. Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.

h. Disruption/ commencement/ postponement of operations of any unit or division of the listed entity.

i. Any attachment or prohibitory orders against the Issuer

j. Any rating action taken by an International Rating Agency with respect to rating assigned to the Issuer/ Instruments issued by the Issuer.

II. CRAs shall publish on their website press release regarding the rating action (including reiteration of existing rating), if warranted, immediately, but not later than 7 days of occurrence of the said event.

SEBI Circular dated November 1, 2016

3. The CRAs shall effectively implement these guidelines within 60 days from the date of issue of this circular.

Annexure A

2. Rating Criteria, Rating Process and their Disclosure:

A. Rating 'Criteria'

I. Each CRA shall frame detailed rating criteria, include the same in its Operations Manual/ Internal governing document

and disclose the same on its website. At the least, the following rating criteria shall be formulated by each CRA:

Criteria on:

a) Default recognition and post-default curing period (Instrument-wise definition of default to be followed by all CRAs is provided in Annexure-A1.)

Annexure A-1

Other Scenarios		
When rated instrument is rescheduled:		Non-servicing of the debt (principal as well as interest) as per the existing repayment terms in anticipation of a favourable response from the banks of accepting their restructuring application/ proposal shall be considered as a default. Rescheduling of the debt instrument by the lenders prior to the due date of payment will not be treated as default, unless the same is done to avoid default or bankruptcy.

D. Standardization of Press Release for Rating Actions

I. CRAs are mandated to issue a Press Release after assigning a rating. With a view to harmonizing the format of the Press Release, it has been decided that all CRAs shall follow a standardized template, which is attached as Annexure-A2. It may be noted that this template specifies the minimum information that must be covered in the Press Release. CRAs can include additional information, while maintaining the basic format of the Press Release.

II. While the Press release for the initial rating of bonds, debentures, etc. shall disclose information about the rated amount of the instrument, the subsequent Press Releases shall also disclose additional details of the rated instrument, viz. coupon, maturity date, etc.

4. Disclosures:

B. In case of delay in periodic review

II. Each CRA shall promptly disclose on its website details of all such ratings where the review became due but was not completed by the due date, as per the timelines specified in the CRA's Operations Manual/ Internal governing document. Details disclosed shall include the name of the issuer, name/ type of instrument, size of the issue, date of last review, reasons for delay in periodic review, hyperlink to the last Press Release, etc.

5. Policy in respect of non-co-operation by the issuer

C. The rating action(s) in such cases shall be promptly disclosed through press release(s),which shall mention, atleast, the following:

IV. A brief write-up on the non-co-operation by the Issuer/ Borrower and the consistent follow-up done by the CRA for getting the information.

SEBI Circular dated June 06, 2018

2. In terms of Regulation 16(3) of SEBI (Credit Rating Agencies) Regulations, 1999, a CRA may withdraw a rating, subject to the CRA having:

i. rated the instrument continuously for 5 years or 50 per cent of the tenure of the instrument, whichever is higher.

ii. received an undertaking from the Issuer that a rating is available on that instrument.

3. At the time of withdrawal, the CRA shall assign a rating to such instrument and issue a press release, as per the format prescribed vide Circular dated November 01, 2016. The Press Release shall also mention the reason(s) for withdrawal of rating.

SEBI Circular dated March 01, 2012

3. Therefore, it is desirable that in addition to the review/accreditation process put in place by these regulators, if any, such ratings should also be governed by the same stringent norms as applicable for rating of securities issued by way of public and rights issues.

4. In view of the above, it has been decided in consultation with the CRAs and also with other regulators that for the above mentioned ratings, CRAs shall follow the applicable requirements pertaining to rating process and methodology and its records, transparency and disclosures, avoidance of conflict of interest, code of conduct, etc, as prescribed in the Regulations and circulars issued by SEBI from time to time.

66. For the purpose of adjudication of quantum of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. The factors stipulated in Section 15J of the SEBI Act, which reads as follows:-

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.

Explanation-For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

67. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. It is also a settled position that the factors under Section 15J are not exhaustive but are inclusive. It is also important to mention that the Noticee is a systematically important intermediary. Though there is no allegation of any *malafide* on the part of the Noticee, the failure by the Noticee is blameworthy and serious considering the degree of responsibility bestowed

upon it by the statute. Considering the role and responsibility of the Noticee in these regards and important obligations cast upon it under the CRA Regulations, in my view, the violations are grave and the gravity of this matter cannot be ignored. Therefore, no lenient view should be taken in this matter and the case deserves imposition of monetary penalty proportionate to the default as found in this case.

68. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 1,00,00,000/- (Rupees One Crore only) on the Noticee *viz.* Brickwork Ratings India Pvt. Limited under section 15HB of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

69. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order by way online payment on SEBI website at following tabs on SEBI website www.sebi.gov.in – ENFORCEMENT -> Orders ->Orders of AO -> Pay Online or by way of using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.In case you face any difficulties in payment of penalties, you may contact the support atportalhelp@sebi.gov.in .

70. The said confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for(like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

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

Date: September 29, 20200
Place: Mumbai

Prasanta Mahapatra
Adjudicating Officer