**BEFORE THE ADJUDICATING OFFICER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER/SS/AS/2019-20/6282]**

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**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.**

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In respect of:

**India Ratings and Research Private Limited**
(SEBI Registration No. IN/CRA/002/1999)
Wockhardt Tower, 4th Floor,
West Wing, Bandra Kurla Complex,
Mumbai–400 022

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1. India Ratings and Research Private Limited (hereinafter referred to as 'IRRPL'/ 'Noticee') is a credit rating agency 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 Reg. No. IN/CRA/002/1999.

2. By a common *communication-order* dated March 25, 2019, this case, pending before an erstwhile Adjudicating Officer appointed to conduct inquiry and adjudication against the Noticee, has been transferred to the undersigned with an advise that except for the change of the Adjudicating Officer, the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'*. The records of proceedings were provided to undersigned on April 05, 2019.

3. On receipt of records it was noted that on being *prima facie* satisfied that there are sufficient grounds to inquire and adjudicate the certain alleged violations of the provisions of theCRA Regulations by the Noticee, SEBI vide a *communication-order* dated December 13, 2018, appointed Shri Suresh B. Menon, CGM ('erstwhile AO') as adjudicating officer to inquire and adjudge under Rule 3 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) and section 15HB of the SEBI Act, the alleged violations of the provisions of Regulation 24(7) and Clauses 4 and 8 of Code of Conduct of the CRAs read with Regulation 13 of the CRA Regulations. The text of the provisions of Regulations 13, 24(7) and Clauses 4 and 8 of Code of Conduct of the CRA Regulations and provisions of section 15HB of the SEBI Act are reproduced as following: -

***Code of Conduct***

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

***24(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.*

***Code of Conduct for Credit Rating Agencies***

4. *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.*

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 Act***

***Penalty for contravention where no separate penalty has been provided.***

***15HB.*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

4. The erstwhile AO had issued the notice to show cause no. SEBI/EAD-1/SBM/34473/2018 dated December 17, 2018 ('the SCN') to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under section 15HB of the SEBI Act for the aforesaid alleged violations. The charge in the SCN was leveled in view of the following observations/ findings observed by SEBI during its examination-

   A. On account of default committed by Infrastructure Leasing & Financial Services Limited (hereinafter referred to as 'IL&FS' / 'Issuer') and its subsidiary company IL&FS Financial Services Ltd. (hereinafter referred to as 'IFIN') on their obligations in respect of the Commercial Paper ('CP'), inter-corporate deposits ('ICD') and also default on interest payments on its Non-convertible Debentures(NCDs'), SEBI conducted an examination with respect to the role of the Credit Rating Agencies ('CRA'), including the role of the Noticee in assigning rating to various NCDs of IL&FS. It was observed that IL&FS had defaulted on its obligations in respect of the CP and ICDs which was due for payment on September 14, 2018. The said CP was rated by the

Noticee amongst other CRAs. Subsequently, IL&FS also defaulted in the interest payments on its NCDs on various dates i.e. September 17, 21, 26 and 29, 2018.

B. SEBI observed that the Noticee had downgraded the ratings of the NCDs issued by IL&FS on various occasions as follows:

| Date | Rating assigned by Noticee |
|---|---|
| March 01, 2018 | AAA assigned to proposed NCDs |
| Aug 24, 2018 | Downgraded from AAA to AA+. |
| Sept 11, 2018 | Downgraded from AA+ to BB. |
| Sept 18, 2018 | Downgraded from BB to D. |

C. SEBI, in its assessment of the role of the Noticee in assigning the aforementioned ratings at various stages, alleged the following deficiencies on the part of the Noticee: -

I. **<u>Allegation regarding excessive reliance placed by the Noticee on the submissions of the management of IL&FS</u>**

i. The Noticee had placed excessive reliance on the information provided by the Management of IL&FS with regard to updates on the status of implementation of various projects / deals / fund raising plans such as signing of agreement, decisions made during its board meetings etc. and failed to carry out independent due diligence to ascertain the veracity of the updates provided by the management of IL&FS. The Noticee also failed to keep track of the various disclosures available on the website of BSE, as made by IL&FS from time to time.

ii. From the information provided by IL&FS to the Noticee vide email dated July 24, 2018, it was observed that the Board of Directors of IL&FS, in its meeting held on July 21, 2018, approved equity infusion up to ₹4500 crore by way of rights issue. Further IL&FS had, in the disclosure made to BSE, disclosed about the appointment of Mr. Hemant Bhargava, as the Non-Executive Chairman consequent to the resignation of Mr. Ravi Parthasarthy from the position of Non-Executive Chairman of IL&FS but had not disclosed the approval of the aforesaid equity infusion up to ₹4500 crore by way of rights issue.

iii. From the Press Release dated August 29, 2018 of IL&FS available on its website, it was observed that its Board of Directors had, in the meeting dated August 29, 2018, *inter alia*, approved a rights issue amounting to ₹4500 crore and specific asset divestment plan to reduce the overall debt by ₹30,000 crores. A copy of the said Press Release was also forwarded to the Noticee by IL&FS. However, in the disclosure made to BSE with regard to the outcome of the said board meeting, IL&FS had only disclosed information regarding approval of fund raising by way of Public Issue of Secured Redeemable NCDs, for an amount not exceeding ₹50 Billion, of which there was no mention in the aforesaid Press Release.

iv. It is alleged that the abovementioned disparity in the disclosures made by IL&FS in its Press Release and the information submitted to BSE had, *prima facie*, warranted greater due diligence and care on the part of the Noticee in order to ascertain the veracity of the updates provided by the management of IL&FS to the Noticee. However, the Noticee failed to take note of the abovementioned disparity in the disclosures made by IL&FS.

v. From various rating committee notes it was observed that, despite the declining financial indicators of IL&FS *viz.* the stressed balance sheet, asset-liability mismatch, debt to equity ratio being predominantly negative, the Noticee continued to assign the highest possible rating (AAA) to the NCDs issued by IL&FS, based mainly on institutional parentage of IL&FS and the assurances given by IL&FS management to the Noticee from time to time. In view of the same, it is alleged that the Noticee has failed to exercise proper due diligence by way of independent confirmation of various claims made by the management of IL&FS which ultimately led to misrepresentation of financial health of IL&FS in the eyes of the investors.

II. **Allegation regarding over-reliance on the statements made by the Management of IL&FS regarding the proposed rights issue towards meeting the debt obligations**

i. From the minutes of the meeting of the Noticee with the Management of IL&FS, held on August 09, 2018, it is noted that the management of IL&FS had informed the Noticee that equity capital from the rights issue of ₹4500 Crore would be infused by September 15,2018. However, various obligations of IL&FS towards inter-corporate deposits, CP repayments, etc. towards the repayment of CP were due from September 14, 2018 i.e. even before the date of the receipt of funds from the aforementioned rights issue. Therefore, it is alleged that the Noticee has failed to exercise due diligence and prudence as it did not take into account the fact that the funds from the proposed rights issue of IL&FS would be received by it on a date which is subsequent to the due date of its discharging the CP obligations. It is also alleged that the Noticee failed to take appropriate steps while assigning its ratings to the debt instruments offered by IL&FS.

ii. Subsequently, IL&FS, in the Press Statement made on its website on August 29, 2018, stated that its Board had approved the Rights Issue of ₹4,500 crores to shore up the capital of the IL&FS and the same would be completed by October 30, 2018. In view of this, it is alleged that, despite the fact that the due date of payment of the aforesaid CP was near and the rights issue was being delayed substantially, the Noticee failed to take appropriate timely action by way of reduction in the ratings assigned to NCDs issued by IL&FS.

III. **<u>Allegation regarding failure to change the Rating Outlook or place the rating under Credit Watch</u>**

i. The Noticee had maintained the Rating Outlook on the NCDs of IL&FS as "Stable" throughout the rating period despite the slow pace at which the asset monetization and deleveraging steps of IL&FS was taking place. From the Press Release dated March 01, 2018 of the Noticee, it was observed that the Noticee has mentioned the following under the section on "*Rating Sensitivities" – "Negative : A significant deviation from the management's deleveraging plan is likely to trigger a downward rating action. The possibility of a significant impact on equity on account of material write-downs on its investments would be credit negative, as also continued weakened liquidity buffers."* Despite the same, the Rating Outlook was still kept as "Stable".

ii. The ratings were placed under "*Rating Watch Negative*" only in August 24, 2018, while downgrading the rating to AA+, on account of "*stress in some of the investments, which could have a material impact on the company's tangible equity buffers*". In view of this, it was alleged that the Noticee had failed to exercise its duty to the investors at large and failed to intervene in the matter on time by downgrading the ratings of NCDs of IL&FS despite having knowledge of the deteriorating financials of the issuer.

IV. **<u>Allegation regarding failure to consider updated Asset Liability Mis-match (ALM) statement/ Maturity Profile of the issuer</u>**

i. It is observed from the Rating Committee Note dated February 26, 2018 that the Noticee has considered the ALM statement / Maturity Profile of IL&FS as on March 31, 2017, which was 11 months old from the Rating Committee date i.e Rating Committee meeting was held on February 26, 2018, whereas the Noticee allegedly considered the ALM statement/Maturity profile statement of IL&FS as on March 31, 2017. In this regard, it is observed that IL&FS had, vide email dated October 24, 2017, furnished ALM Maturity Profile as on June 30, 2017 to the Noticee, however, the Noticee allegedly failed to take into account the ALM statement dated June 30, 2017 into account for the purpose of assigning rating to the debt instruments of IL&FS.

ii. In this regard, it is further observed that, as part of its due diligence, other Rating agencies which were rating various debt instruments of IL&FS had called for the latest ALM statement *viz.* of December 31, 2017, while taking a position in respect to the rating outlook in relation to the debt instruments of IL&FS. In view of this, it is alleged that, considering the constant deterioration in the financials of the issuer, the Noticee, by considering a one-year old ALM statement, failed to undertake proper care and due diligence, even though a more recent statement (dated June 30, 2017) was available with it on record and did not seek ALM statement as on December 31, 2017.

5. In view of the above, SEBI found that the Noticee, while assigning its '*credit rating*' to the NCDs issue of IL&FS, failed to exercise proper skill, care and due diligence while discharging its responsibilities as a '*credit rating agency*'. It was also found that the Noticee, being a responsible '*credit rating agency*' registered with SEBI, should have anticipated the mounting credit risks, the stressed balance sheet position of the issuer and placed the ratings accordingly to alert the market in advance regarding the deteriorating financial profile of the issuer. In view of the above, the Noticee is alleged to have violated the provisions of Regulation 24(7) and Clauses 4 and 8 of Code of Conduct of the CRAs read with Regulation 13 of the CRA Regulations. Vide letter dated January 07, 2019, the Noticee submitted its reply to the SCN. On January 24, 2019, the Noticee had informed erstwhile AO that it is in the process of filing an application for settlement under SEBI (Settlement Proceedings) Regulations, 2018 ('Settlement Regulations'). On February 27, 2019, the Settlement Division of SEBI had informed erstwhile AO that the Noticee had filed settlement application under the Settlement Regulations seeking to settle the instant proceedings and had advised him to keep the instant proceedings on hold till the disposal of the settlement application of the Noticee.

6. On July 03, 2019, the Settlement Division of SEBI informed about the rejection of the settlement application of the Noticee in terms of Regulation 5(4) of the Settlement Regulations and requested undersigned to proceed with the instant proceedings. Accordingly, vide notice dated July 10, 2019 the Noticee, was provided an opportunity of personal hearing in terms of Rule 4(3) of the Adjudication Rules on July 25, 2019. However, vide letter dated July 17, 2019, the Noticee through its authorized representative ('AR') FINSEC Law Advisors stated that - on January 07, 2019, the Noticee had filed a short reply to the SCN due to paucity of time and with intent of filing a subsequent settlement application. The Noticee further made request for inspection of relevant documents in relation to the SCN, in order to enable it to file an effective reply and also requested for providing it with investigation

report, other evidence, letters, records, opinions, statements, documents, noting, reports, complaints, etc. referred to and relied upon in the SCN. Since, erstwhile AO had acceded to the request of inspection of the relied upon documents of another rating agency in similar matter, in line with the same and to maintain consistency in the proceedings of similar subject matters, undersigned forwarded the request of the Noticee to the Enforcement Department of SEBI on July 18, 2019 for granting inspection of documents/ records relied upon in the matter to the Noticee. A communication in this regard was also forwarded to the Noticee and its AR vide letter and e-mail dated July 18, 2019.

7. On September 20, 2019, the concerned department informed that the Noticee's ARs had undertaken inspection of the relied upon documents in the matter on September 19, 2019. Thereafter, vide notice dated September 20, 2019 the Noticee, was provided an opportunity of personal hearing in terms of Rule 4(3) of the Adjudication Rules on October 03, 2019 and also allowed to file its reply to the SCN on or before the said hearing as last opportunity. After seeking adjournment, the Noticee availed the opportunity of hearing on October 16, 2019, when Learned Advocate Shri Sandeep Parekh and others appeared before me and tendered the reply of the Noticee dated October 14, 2019 and made submissions on the lines of the said reply. He vehemently submitted that the procedure prescribed under Regulation 30 of the CRA Regulations has not been followed in the instant case as the prescribed notice under Regulation 30(1) was not given to the Noticee. Further, any order under Regulation 30(2) dispensing with the requisite notice has either not been passed or if passed the copy thereof has not been provided to the Noticee. The Regulations do not permit SEBI to conduct examination. Further, all the rules and regulations were complied with by the Noticee while assigning the ratings to the NCDs of IL&FS. The Noticee follows best national and international practices. The rating which is an expression of opinion was assigned based on the information provided and was based on probability. The primary source of information under Regulation 14(d) is the client who is bound to cooperate in providing information. Regulation 29 of the CRA Regulations bars SEBI from 'double guessing' and going into the *"appropriateness of the assigned ratings on the merits"*. Learned Advocate also requested for 3 days' time to submit monthly '*No Default Statement*' of IL&FS. The said request was allowed and vide letter dated October 18, 2019, the said '*No Default Statement*' was filed on record.

8. The replies and submissions of the Noticee are as under: -

   i. The Noticee is an indirect wholly owned subsidiary of Fitch Ratings Inc., a global leader in credit ratings and research. As a CRA, it maintains credit coverage of corporate issuers, financial institutions (including banks and insurance companies), finance and leasing companies, managed funds, urban local bodies, and structured finance and project finance companies. It has never been subject to any disciplinary, adjudication or other proceedings by SEBI, Reserve Bank of India

('RBI'), National Housing Board or any other regulatory or governmental authority prior to the issuance to the SCN. The Noticee has a spotless track record in regulatory compliances as a CRA in India and carries the reputation of a professional and diligent CRA.

ii. The roles of various players, including the then statutory auditors of IL&FS, leading to failure in early detection of default by the IL&FS Group are being investigated by various regulatory and investigation agencies, such as, the Serious Fraud Investigation Office, the Enforcement Directorate, RBI and SEBI. Further, by way of an order dated January 01, 2019, the NCLT allowed Union of India ('UoI') application for re-opening and recasting of the books of accounts of IL&FS and its two group companies for the last 5 years for alleged misstatements in the financial statements of IL&FS Group.

iii. Regulation 24 of the CRA Regulations requires all SEBI registered CRAs to formulate and specify a rating process and file it with SEBI. It further requires CRAs to have professional rating committees, comprising of members who are adequately qualified and knowledgeable to assign the ratings. Additionally, SEBI circular dated November 01, 2016 also provides for detailed guidelines on this point. The Noticee has formed its rating process in compliance with the relevant provisions of the CRA Regulations and circulars issued by SEBI.

iv. In accordance with the Noticee's rating process and the Code of Conduct to the CRA Regulations, the rating actions (including decisions regarding changes in rating) with respect to the NCDs of IL&FS were taken through meetings of professional rating committees, comprising of qualified and knowledgeable analysts, including at least one independent analyst with appropriate experience in the field of credit ratings. In addition, the Noticee used its procedures and systems which were designed to keep a track of important changes and monitor the relevant factors that might affect the creditworthiness of the issuer.

v. The Noticee maintained an objective and independent rating process and used proper skill and care throughout the process of rating the NCDs of IL&FS, including by conducting independent verifications of the information provided to it and making appropriate and timely enquiries with the management of IL&FS.

vi. The Noticee's adherence to its objective and independent rating process for assigning and reviewing credit ratings in a timely manner is, in part, demonstrated by the rating actions that resulted in downgrading and placing on Rating Watch Negative of IL&FS's NCDs prior to its defaults in late September 2018. In particular, the Noticee independently decided to downgrade the ratings assigned to IL&FS's NCDs at a committee meeting on August 20, 2018. This decision was published on August 24, 2018. The committee and subsequent publications were over 3 weeks before IL&FS's default on the interest payments on the NCDs on September 17, 2018. In addition to downgrading, the Noticee independently placed IL&FS's NCDs on Rating Watch Negative. A rating watch is event-driven (anticipated or which has already occurred event) that is required to be resolved in a short period within which further information is gathered and appropriate analysis is done. Rating Watches indicate that there is a heightened probability of a rating change and the likely direction of such a change.

vii. The Noticee decided to further downgrade the ratings assigned to IL&FS's NCDs at a committee meeting on September 07, 2018. This decision was publicized on September 11, 2018. The committee meeting was held over a week before the default on the interest payments on the NCDs on September 17, 2018.

viii. In following its rating process and conducting a thorough analysis of all relevant information available to it, the Noticee exercised an adequate level of due diligence as may be reasonably expected from a CRA placed in the same situation and used its independent professional judgment to express credit rating opinions on the NCDs.

ix. The ratings provided to IL&FS's NCDs were based on a robust, globally accepted and time-tested process which was conducted diligently and dutifully by the Noticee. However, if the financial statements and other information relied on by the Noticee for the purpose of its ratings are found to be misleading, and then the analysis of creditworthiness by the Noticee will become adversely impacted and potentially incorrect.

x. Assigning and reviewing of credit rating involves *"forward-looking credit opinions that reflect its expectations of credit behaviors over a range of scenarios as indicated by its ratings"*. This process entails the following:

a. **Collection of Information**: Primary source of information for a CRA is the issuer of debt instruments. Since the CRA is engaged by the issuer for rating its debt instruments, it is important for the issuer to provide true, accurate and timely information to the CRAs. CRA also gathers information received from independent sources and external entities such as, auditors, bankers, debenture trustees, etc. of the issuer. Additionally, external sources of information, such as, data, forecasts, risk reports, on-site visits, and teleconferences are used to gather information regarding the issuer. Similarly, qualitative factors and macroeconomic conditions including market events, etc. are also taken into account while rating the debt instruments.

b. **<u>Verification of information collected</u>:** Post collection of information, the credibility of the information collected is tested through reasonable investigation of <u>data accuracy and verification from reliable sources</u>. These include, communicating with professional experts, such as, statutory auditors with respect to financial information, and bankers of the issuer. The Noticee also relies upon documents and undertakings obtained from the issuer entity, which include obtaining no-default statements from issuer on a monthly basis. Analysts document the results of their reasonable investigations in committee packages that are circulated in advance of the meeting of a rating committee.

c. **<u>Rating of debt instruments</u>**: Pursuant to receipt of documents prepared by the analysts, a rating committee analyses the information provided to them collected from various sources. Committees consider the information contained in the committee package, and a consensus decision is reached on an appropriate rating, including, where appropriate, a Rating Outlook or Rating Watch designation. The committee typically comprises of at least four analysts, with at least one independent member from outside the immediate asset class, subsector or geographic area of the entity under the review. This is important as independent professional judgment is a must while according credit ratings to various instruments. Dissents, if any, are duly recorded.

Besides the above stated quantitative and qualitative information, institutional parentage of the issuer is also taken into consideration to determine the creditworthiness of the issuer. With regard to the role of parent/subsidiary/group companies, it is submitted that their financial position has always been considered as an important element while rating the debt instruments of an issuer. In this regard, the Consultation Paper issued by SEBI on CRAs states as follows:

*"<u>Support from the holding/parent company is a major consideration</u> while rating instruments of subsidiaries. Hence, an analysis of the financials of the holding company and the group as a whole helps the public at large in getting a holistic picture about the creditworthiness of the entire group."*

d. **<u>Review of existing credit ratings</u>**: The credit ratings given to issuers and debt instruments are regularly reviewed. The frequency of review may vary as the Noticee may deem fit and in accordance with regulatory obligations. Analysts may convene a committee promptly to review a rating instead of waiting for the next review if a business, financial, economic, operational or other development can reasonably be expected to result in a rating action for example, operational or fiscal deterioration, an acquisition, a divestiture or the announcement of a major share repurchase will trigger an immediate rating review.

**Allegation regarding excessive reliance placed on the submissions of the management of IL&FS**

xi. The primary source of information for every CRA is the information and documents supplied by the issuer entity itself. The CRA Regulations recognizes the importance and significance of timely and accurate information from the issuer entity as a critical part of credit rating process. Regulation 14 of the CRA Regulations obliges issuers to provide CRAs with true, adequate and timely information for the purpose of credit rating and to co-operate with CRAs. The Noticee had relied upon information provided by IL&FS as its primary, but not sole, source for providing the 2018 Ratings to IL&FS's NCDs (as contemplated by CRA Regulations). The Noticee conducted its own diligence, in addition to the information received from the issuer, by seeking to verify such information through other sources available to it, including the disclosures made by IL&FS to the BSE and media reports available on IL&FS's business developments.

xii. The Noticee, as part of its credit rating process, carried out reasonable additional investigation from credible sources to supplement and determine the veracity of the information provided by the issuer entities in accordance with its regulatory obligations. The Noticee conducted independent verification, and a critical analysis, of the information provided by IL&FS and did not put excessive reliance on the information provided by IL&FS when providing the 2018 Ratings to the NCDs.

xiii. To take updates on financial standing and funding flexibility of IL&FS, the Noticee had detailed communications with the auditors and bankers of IL&FS, which were shared by the Noticee with SEBI in the e-mail, dated November 28, 2018. A summary of such communication during the Financial Years 2017 and 2018 is provided below:

a. The Union Bank of India informed the Noticee that IL&FS has not used its cash credit limit and that the bank guarantee limit of ₹75 crore was never invoked. Similarly, Vijaya Bank confirmed that there were no delays / overdrawing by IL&FS and same was assured by the Central Bank of India. The Jammu & Kashmir Bank informed the Noticee that there was no delay in repayment of loans by IL&FS.

b. The statutory auditor of IL&FS while giving unqualified opinion, informed the Noticee:

*"In our opinion and to the best of our information and according to the explanations given to us, the aforesaid standalone financial statements give the information required by the Act in the manner so required and give a true and fair view in conformity with the accounting principles generally accepted in India, of the state of*

*affairs of the Company as at March 31, 2018, and its profit and its cash flows for the year ended on that date."*

xiv. From September 2013, a Central Repository of Information on Large Credits ("CRILC") is maintained by RBI to collect, store and disseminate data on all borrowers' credit exposures including Special Mention Accounts having aggregate fund-based and non-fund based exposure of ₹50 million and above. This data is accessible to all banking institutions, through which the delinquency status of all borrowers can be verified. During the Noticee's interactions with the bankers of IL&FS regarding their exposure to IL&FS and conduct of its accounts, no indication was provided to the Noticee by the bankers with regard to any abnormal increase in the borrowing cost of IL&FS or deterioration in its liquidity conditions.

xv. Between February 2018 and September 2018, the Noticee met with various officials of IL&FS regularly to keep track of the developments in IL&FS. The information provided during these meetings included an agreement with Soft Bank for setting up solar park, additional financing from LIC and State Bank of India, expected capital infusion, divestment plans, proposed rights issue aggregating to ₹4500 crore, updates on ongoing litigations, etc. Pursuant to receipt of such communications, the Noticee gathered sufficient back-up documents including monthly progress reports issued by independent engineers to various government bodies like National Highways Authority of India, Ministry of Shipping, Road Transport & Highways, Government of India and lenders' independent engineers report submitted to the debenture trustees. Similarly, for various infrastructural projects, analysts from the Noticee attended site visits to check the progress made and obtained certificates from chartered accountants.

xvi. The Noticee regularly communicated with the trustees of IL&FS, Centbank Financial Services Limited, for confirmation on timely payment of interest and principal obligations of IL&FS. Similarly, the Noticee communicated regularly with the debenture trustees for various NCDs issued by IL&FS, seeking details on the status of repayment while assigning the 2018 Ratings.

xvii. As a CRA the Noticee has limited access to an issuer's internal documents and the scope of verifying the veracity of statements made by an issuer becomes limited. Within such limitations, the Noticee had undertaken proper diligence by gathering all possible evidences to check the credibility of IL&FS's statements which was then critically analyzed. In fact, the presentation made by the Noticee to IL&FS specifically provided appropriate disclaimers at the very beginning of the presentation, *"India Ratings & Research's (India Ratings) credit ratings rely on factual information received from issuers and other sources. India Ratings cannot ensure that all such information will be accurate and complete. Further, ratings are inherently forward-looking, embody assumptions and predictions that by their nature cannot be verified as facts, and can be affected by future events or conditions that were not anticipated at the time a rating was issued or affirmed."*

xviii. The Noticee followed a robust internal system to ensure that any relevant market or public information/data from an external source is communicated to and considered by the analysts. In the instant case as well, the Noticee had taken all reasonable steps towards ensuring that it is updated about major developments which may impact the ratingsprovided to IL&FS, including proper enquiry with the issuer and sources, review of information from third party sources and the other steps as outlined above.

xix. The Noticee was diligent in keeping track of all major developments in relation to IL&FS as were available in public domain but the Noticee cannot be expected to ensure or detect whether IL&FS was providing true, accurate and complete disclosures in its various communications. Accordingly, the allegation of excessive reliance on the information provided by management without independently verifying the said information is false and baseless and the Noticee denies the same.

**Allegation regarding highest possible rating despite deteriorating financial indicators**

xx. The Noticee has taken into account all the relevant financial indicators while providing the 2018 Ratings to NCDs issued by IL&FS. It has considered the financial strength of the investors of IL&FS, who had a strong market profile and included LIC and ORIX Corporation. It denies that it mainly relied on the institutional parentage of IL&FS and assurances given by management of IL&FS while assigning the 2018 Ratings to IL&FS's NCDs, but on the contrary the Noticee assigned the 2018 Ratings on the basis of all relevant factors in accordance with its rating process as described above.

xxi. The Noticee followed its publicly available *Financial Institutions Rating Criteria, Non-Banking Finance Companies Criteria, Rating FI Subsidiaries and Holding Companies Criteria*, which is also used for rating other financial institutions while assigning the 2018 Ratings to IL&FS's NCDs. The primary drivers for analysis in this rating criteria include:

(a) industry profile and operating environment
(b) company profile
(c) financial profile

(d) management strategy and corporate governance

(e) ownership support and group factors.

xxii. Prior to the first downgrade rating action taken by the Noticee in early August 2018, the financial analysis of IL&FS did not provide any reasonable indication of financial stress. The financial analysis reflected that IL&FS had maintained considerable liquidity on its balance sheet that would enable it to repay its financial obligations over a period of around six months, even in the scenario of tight liquidity concerns. Subsequently, the Noticee received the financial statements of IL&FS for the quarter ending June 2018, and the Noticee's analysis of the financial statements revealed a weakened liquidity and deteriorated equity buffers under stress case scenario. Hence, the ratings of IL&FS and IFIN were subsequently downgraded by the Noticee.

xxiii. A brief analysis of IL&FS's financial position is as follows:

a. **Profitability:** IL&FS's primary source of income was interest, dividend and rental income from the premises it had leased out. These sources of income were adequate for IL&FS to service its cost of financing. Apart from this, divestment income provided periodic boost to the profitability of IL&FS. For example, in the previous year, i.e. in 2017, the agreement to sell IL&FS Securities Services Limited to IndusInd Bank for ₹300 crore was a profitability booster for IL&FS. Future estimates of profitability also took into account the divestment plans of IL&FS as freeing up of capital and its successful deployment in newer assets would have supported the profitability of IL&FS.

b. **Funding:** IL&FS carried a strong funding profile as it had an easy access to wide gamut of investors, including banks, mutual funds, provident and pension funds, and also foreign currency loans. In fact, in the past IL&FS had secured funding from international multilateral agencies that were guaranteed by the Government of India and United States Agency for International Development.

c. **Regulatory leverage and capital ratios:** For financial institutions, such as, IL&FS, the financial leverage is capped at 2.5x by RBI. With respect to IL&FS, the said ratio was 2.47x in 2015-16, 2.23x in 2016-17 and 2.33x in 2017-18. Hence, it is submitted that the financial statements of December 2017 did not reflect any significant deterioration of capital buffers and IL&FS's ratios were always within the regulatory leverage permitted to IL&FS. Similarly, the debt - equity ratio of IL&FS was in moderate category during the financial year 2017-18, thereby not giving any reason to the Noticee to downgrade the credit ratings.

d. **<u>Stress test</u>:** The Noticee had performed the combined stress test for IL&FS and its subsidiary, IFIN by factoring in the deterioration in the investment value and its impact on the equity buffers. Brief analysis of stressed Asset Liability Maturity ("ALM") as on March 31, 2018 shows maximum negative gap at any time was just 3% of assets, i.e. ₹750 crores. Further, as per the analysis, the liquidity buffers were reasonable and fairly matched the asset liability tenor for up to one year. Besides this, the Noticee noted that given the nature of its activities, operation risk was managed reasonably well with no reported history of loss due to fraud in its operations.

e. **<u>On-balance sheet liquidity</u>:** IL&FS maintained adequate liquidity profile supported by long-tenure borrowings. It also carried sufficient liquid assets on its balance sheet to support repayments for more than 6 months even in the scenario of tight liquidity conditions. As on March 31, 2018, IL&FS had about ₹25 billion of cash and liquid investments along with listed investments having a market value of around ₹18 billion on its book as compared to total debt obligations of ₹41 billion due till September 2018.

f. **<u>ALM statements:</u>** The Noticee was provided with and had looked into the ALM statements for March 2017 and March 2018, and maturity profile for December 2017. All these statements reported positive cumulative surplus.

**<u>Allegation regarding failure to change the Rating Outlook or place the rating under Credit Watch</u>**

xxiv. While affirming the rating of IL&FS in March 2018, the Noticee had considered various factors including, but not limited to, the audited financial statements of IL&FS for the year ending March 2017, the financial statements for the quarter ending December 2017 and the liquidity statement for December 2017. The financial statements for December 2017 did not reflect any significant deterioration of the capital buffers with reported leverage ratio being 2.33x, which was within the regulatory leverage permitted to IL&FS.

xxv. Further, the liquidity buffers were reasonable and fairly matched the asset liability tenor for up to one year. As on December 2017, IL&FS had cash and cash equivalent of ₹21.4 billion, compared to debt obligations of ₹31.4 billion for the next six months, i.e. till September 2018. The Noticee performed the combined stress test for IL&FS and its subsidiary, IFIN by factoring in the deterioration in the investment value and its impact on the equity buffers.

xxvi. The Noticee conducted the stress test on the ALM profile of IL&FS as on March 31, 2018, assuming only 80% of inflows to be received in the respective time buckets and the remaining

20% of inflows were assumed to flow in with a delay of 6 months to 1 year. The liquidity analysis, which Noticee conducted for IL&FS, revealed that IL&FS maintained adequate liquidity profile to support debt repayments of up to six months. Therefore, as on March 2018, IL&FS's liquidity appeared to be reasonable even under stress case scenario. On the review of such financial information of IL&FS and the stress test performed by the Noticee, it was noted by the Noticee that IL&FS will be able to timely honor its debt obligations and there was no indication of a likely default in the near future.

xxvii. A summary of the rating committee meeting of the Noticee dated February 27, 2018 discussing the applicability of these parameters over IL&FS is provided below:

> *"The RC discussed IL&FS' unique positioning in infrastructure development space in India, given its presence in entire spectrum of the sector, its established franchise, long & proven operating track record over the past three decades in the infra domain and deep management expertise. RC noted IL&FS' access to funding continues to remain strong with borrowings from large number of banks and capital markets. The company notes that IL&FS maintain a healthy / liquidity profile, with on-balance sheet liquidity in the form of cash and cash equivalents sufficient to cover six months of debt repayments. The RC also noted IL&FS' leverage has been increasing and stands at elevated level as the expected divestments have not materialized. Further it has supported its group companies since these were not able to mobilize funds in their own. CIC leverage calculated for IL&FS for Sep and Dec 2017 included INR 600 crore of contingent provisions. RC discussed IL&FS' management's road map for reduction in leverage based on some divestments and refinancing of debt at various SPVs in the road vertical which will result in up streaming of cash flow at IL&FS level. RC concluded that the progress on deleveraging will be monitored closely and significant deviation from the management's deleveraging plan can trigger a downward rating action."*

xxviii. The Noticee carefully and critically analyzed the relevant information and data related to IL&FS for assigning the 2018 Ratings and that the information available to the Noticee at such time reflected the level of the assigned ratings. It should also be noted that in the press release dated March 01, 2018, the Noticee referred to possible downgrade rating action in case of a "*significant deviation from the management's deleveraging plan*" and credit negative sensitivities including "*continued weakened liquidity buffers*". These statements are further examples of the Noticee exercising its independent professional judgment.

xxix. Regulation15and16of the CRA Regulations mandates a *Credit Rating Agency* to continuously monitor and review the '*credit rating*' provided to an issuer. These provisions read with the SEBI circular on *"Monitoring and Review of Ratings by Credit Rating Agencies"* provides that the *Credit Rating*

*Agencies* should be proactive and try to identify early signals of default. During the course of its review of IL&FS's NCDs, IL&FS had met its interest payments of past three years; it had sufficient liquidity to meet its debt obligations for a period of more than 6 months from March 31, 2018. Further, during its interaction with various bankers, auditors and management of IL&FS, the Noticee had not received an indication or had any other reason to believe that there was an abnormal increase in the borrowing cost of IL&FS, or any fast-paced deterioration of its liquidity conditions.

xxx. It is submitted that as a matter of policy, while providing a credit rating to any debt instrument, a specific column assigning rating sensitivities is added to the press release. The rating sensitivities refer to all such factors which may cause an upward or downward movement in the credit rating, as analyzed by the rating committee. Every rating action is coupled with a rating sensitivity column comprising of both positive and negative rating sensitivity.

xxxi. With regards to the downgrade of the credit rating to AA+ in August 2018, it is submitted that on June 15, 2018 the financial results for the year ending on March 31, 2018 were provided to the Noticee. Thereafter, by the end of June 2018, IL&FS's financial estimates for financial year 2018-19 were received. Similarly, in July 2018 the financial results of IL&FS's subsidiaries were received by the Noticee. As on March 31, 2018, IL&FS had reported cash and liquid assets equivalent of ₹25 billion on its balance sheet. Additionally, IL&FS had listed investments with market value of ₹18 billion and scheduled loan and interest inflow of ₹45 billion over the next six months, compared to debt obligations of ₹41 billion for the next six months, i.e. till September 2018.

xxxii. On an analysis of all the financial figures and upon contacting the bankers of IL&FS for verification of such information and for understanding the true financial position of IL&FS, the Noticee realized that there was some reduction in the value of the investments made by IL&FS. Further, the stress test revealed material impact on equity buffers of IL&FS. Accordingly, as some decrease was reflected in the financial statements of IL&FS, it was important for the Noticee to reflect the impact of this development in its credit opinion. Therefore, it was decided to downgrade the credit rating of IL&FS to AA+. With regard to the short-term instruments of IL&FS, since the short-term instruments do not carry an '*outlook*' therefore, they were placed in Rating Watch - Negative (RWN) category in order to reflect the latest developments regarding funding and capitalization.

xxxiii. The institutional parentage forms an important criterion for '*credit rating*'. However, at no point of time, it was ever considered as a '*primary*' criterion for determining the creditworthiness of the NCDs of IL&FS while assigning the 2018 '*Ratings*'. Moreover, the *SEBI circular dated November 01,* *2016*, itself provides that the CRAs should look into the group / parental support that the issuer has while rating the debt instruments of an issuer. '*Ratings'* provided to IL&FS were in accordance with the financial and operational information of IL&FS available with the Noticee and as verified by the Noticee with various available external sources. Institutional parentage was only one among many factors, which were applied by the Noticee while rating the debt instruments of IL&FS. Therefore, by placing partial reliance on institutional parentage of IL&FS, the Noticee has not violated the Code of Conduct of the CRA Regulations, instead, it has applied its publicly available rating criteria and complied with the circulars and guidelines issued by SEBI.

xxxiv. It is the duty of statutory auditors to verify and certify the financial results of a company based on prescribed accounting standards, while on the other hand, '*credit rating agencies'* rely on such audited financial statements to analyze the creditworthiness of a company. It is neither the scope of work nor is it expected of CRAs to independently verify / detect the genuineness of financial statements provided to it.

xxxv. Neither an enhanced factual investigation nor any third-party verification can ensure that all of the information that the Noticee or any '*credit rating agency'* relies on, in connection with a rating, will be accurate and complete. Ultimately, the issuer and its advisers are responsible for the accuracy of the information they provide to a '*credit rating agency'* and to the market. Further, '*ratings'* embody assumptions and predictions about future events that by their nature cannot be verified as facts. As a result, despite any verification of current facts, ratings can be affected by future events or conditions that were not anticipated at the time a rating was issued or affirmed (including fraud).

xxxvi. In matters such as the present one, wherein the books of accounts and audited financial statements have been allegedly manipulated, it was impossible for the Noticee to detect any wrongdoing in IL&FS or draw any inferences based on the information received from the management of IL&FS, which would affect the 2018 Ratings assigned to the NCDs. In light of the charges of deliberate misstatement in books of accounts filed in relation to IL&FS, the 2018 Ratings assigned by the Noticee to IL&FS which were based on allegedly fabricated financial figures, could appear to be inappropriate when examined in hindsight.

xxxvii. With regards to July 21, 2018 board meeting of IL&FS, the Noticee understand that, the Board of Directors of IL&FS had approved equity infusion up to ₹4500 crore by way of rights issue. IL&FS communicated the said information to the Noticee through an email dated July 24, 2018 by IL&FS. The review of disclosure to BSE was only one of the several sources used by the Noticee to verify the information relating to the rights issue. The news with respect to the proposed rights issue was actively also reported in the financial news media. Several articles/ reports were published in Economic Times, Moneylife, The Business etc. and none of these media reports were declined I denied by management, promoters and other stakeholders of IL&FS.IL&FS had also informed the Noticee that IL&FS had appointed an investment banker for the proposed rights issue.

xxxviii. With regards to August 29,2018 board meeting of IL&FS, the Board of Directors of IL&FS had released a statement on its website stating that it had approved a rights issue of ₹4500 crore and an *asset divestment plan*. Further, the disclosure provided to BSE on August 29, 2018 referred to raising of funds through public issue of debentures not exceeding ₹5000 crore. This news was also reported in media in Livemint, The Business Standard, The Financial Express etc.

xxxix. The information with regards to the proposed rights issue came in from credible sources and was supported by market expectations. It follows that the Noticee had no reason to doubt the disclosure made by IL&FS or pursue additional information with respect to the planned rights issue. In any case, the credible information available with the Noticee did not warrant it to question the disclosures made by IL&FS to the BSE.

xl. Vide an email dated February 13, 2018, the Noticee had received the latest ALM statement/ Maturity profile statement of IL&FS for the quarter ending December 2017. In its February 2018 rating committee meeting, the Noticee considered both ALM statements for the financial year ending March 2017 and the maturity profile for the quarter ending December 2017. The same is evident from the minutes of the rating committee meeting dated February 27, 2018.

xli. The Noticee was cognizant of the fact that as per the fund-raising plan of IL&FS it was expected to receive funds from the rights issue by September 15, 2018 while there were obligations on IL&FS to repay the CPs due on September 14, 2018.By the end of second week of September 2018, approximately ₹95 crore was due to be paid by IL&FS towards their CP obligations. With respect to this repayment obligation, the Noticee analyzed the ALM statements of IL&FS for the financial year ending March 31, 2018 (*Annexure 6*). It was noticed that in the three to six months' bucket (from July to September 2018), there was a positive cumulative mismatch of ₹26.7 billion which implies that the cumulative cash inflows till September 2018 were significantly higher than the expected cumulative cash outflows. Hence, it was clear that IL&FS would have been able to meet its CP repayment obligations, irrespective of the date of receipt of money from rights issue. It is submitted that the audited financial information of IL&FS reported adequate liquidity with IL&FS to be able to repay its immediate debt obligations, and the equity infusion was not considered necessary by the Noticee for IL&FS to meet its immediate repayment obligations. The ALM statement as on March 31, 2018 indicated that the repayment of the CP obligation was not contingent on the receipt of equity money from rights issue. The business cash flows were good enough to take care of the CP redemption.

xlii. The terms *'due diligence'* and *'proper care'* are not defined or explained in the CRA Regulations or other securities laws. The standard of *'due diligence'* in an industry is determined based on what is reasonably expected from a prudent person. While conducting an exercise of *'due diligence'*, it is not expected that a person must look at every single information with a suspicious mind; rather, an effort should be made to identify a fraud / lie if circumstances arise, which should raise the suspicion of a reasonable person. The Noticee was in compliance with applicable regulations and exercised proper *'due diligence'*, commensurate with its role as a '*credit rating agency*'. The Supreme Court of India has interpreted the meaning and scope of *'due diligence'* in the matter of *Chander Kanta Bansal v. Rajinder Singh Anand ((2008) 5 SCC 117)*, as follows:

> *"...according to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent " means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible "Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs..."*

xliii. Further, the Hon'ble SAT while relying upon the abovementioned order of the Supreme Court has held in the matter of *Almondz Global Securities Limited v. SEBI* that the merchant bankers, being SEBI registered intermediaries specialized in managing issuance of securities are only expected to fulfil the *'reasonable person's test'* while performing their duties. The relevant portion of the order is as follows:

> *"52. This takes us once again to the very principle of due diligence. The diligentia that is expected of a Merchant Banker in a given case is such care as would be taken by a reasonable person. It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances. "*

xliv. Similarly, in the matter of *Imperial Corporate Finance and Services Pvt. Ltd. v. SEBI*, the Hon'ble SAT held that –

*"A Lead Manager is required to employ reasonable skill and care but he is not required to begin with suspicion and to proceed in a manner (trying to detect a fraud or lie unless such information excites his suspicion or ought to excite his suspicion as a professional man of reasonable competence."*

xlv. It is a well-established position of law that in case a decision is made by an entity, relying upon the advice provided by an expert, then no liability should come upon the former. In the matter of *Ashok Bhatia v. Registrar of Companies, Delhi & Haryana*, the Hon'ble High Court of Delhi has held that situations where directors have acted with ordinary prudence and taken reasonable care by obtaining an expert's view and there was no intentional violation of law, then such persons should be excused. In the said matter, a company and its directors had sought for a legal opinion from legal experts with regard to application of a certain exemption on the company's loan transactions pursuant to an amendment in certain provisions of the Companies Act, 1956. While holding that the directors were not liable for the said act, it was held,

*"(13) For the purpose of present case, this Court is mainly concerned with the question as to whether the said Directors and the Secretary of the company who have petitioned to this Court have acted honestly and reasonably having regard to all the circumstances of the case and as toghether they in the given circumstances apprehend that any proceedings are likely to be brought against them in respect of the alleged default, breach of duty etc. As already held herein-above that, in the circumstances of the case, the apprehension of the said Directors cannot be staled to be baseless. I have also held above that the Directors acted with ordinary prudence and had taken reasonable care to ensure that there was no conscious violation of the provisions of law. In the circumstances. I am of the considered opinion that petitioners 1 to 8 in C.P.211/90 and Mr. F.R. Vevaina. petitioner No. I in C.P.13/91 have acted honestly and reasonably and that having regard to all the circumstances of the case they ought fairly to be excused and are hereby relieved from their liability in any action that may be brought by the Company Law Board or any other authority under the Companies Act."*

xlvi. In the matter of *Almondz Global (Supra)*, the Hon'ble SAT had made a similar finding while stating that a merchant banker is expected to rely upon the comfort letter issued to it by the statutory auditor. The relevant portion of the order is quoted here:

*"Such an instrument does carry value and cannot be brushed aside lightly. A Comfort Letter is not an ordinary certificate which can be procured by the Issuer Company for general purposes in a routine manner from any auditor. Therefore, it is inapposite to question the materiality of a Comfort Letter obtained from a Statutory Auditor particular in light of the fact that Statutory Auditors are also governed and regulated by*

*SEBI. Although, a Comfort Letter cannot be treated as an excuse for an independent due diligence to be undertaken by a Merchant Banker, yet it is a statutorily recognized step in furtherance of due diligence undertaken by an MB, and, hence, its value cannot be undermined."*

xlvii. In circumstances wherein such expert statements are false, incorrect or fraudulent, then the persons relying upon such information cannot be made liable for the same. In the instant matter, it is important to note that the financial information provided to the Noticee is itself under question, i.e. by way of its order dated January 01, 2019, the NCLT has allowed Union of India plea requesting opening and recasting of IL&FS's books of accounts. It is submitted that in such circumstances, a CRA should not be expected to go beyond the scope of its business activities and be required to detect the manipulation or fraud of the said expert statements.

xlviii. It is further stated that apart from the expert statements of auditors, the Noticee undertook additional independent verification of the information provided to them. This included, contacting the bankers and debenture trustees to enquire about the loans / credit given to IL&FS.

xlix. The process of credit rating followed by the Noticee while assigning the 2018 Ratings to the NCDs of IL&FS was same as followed for all other issuers and securities. The Noticee collected relevant financial information from IL&FS, verified the same, obtained No Default Statements from IL&FS, and did its research from external sources regarding the infrastructural market and economic conditions, in general, in which IL&FS operates. Hence, in the absence of any procedural or other kind of lapses on the part of Noticee, while undertaking grading of IL&FS's NCDs in 2018, the Noticee cannot be said to have acted without proper due diligence or care.

l. *Credit Rating Agencies* are considered as professional experts in the field of rating NCDs. A *Credit Rating Agency* is not a guarantor to the investment; its job is to assess the risk of an investment, and not to eliminate the same. A *Credit Rating Agency* is required to gather information about the issuer and securities, analyse the said information, formulate opinions about those issuers and securities in accordance with its rating procedure and disseminate the same to public. However, in case despite appropriately following the rating procedure and doing '*due diligence*' and care, the rating provided by a *Credit Rating Agency* turns out to be incorrect, then the same cannot be questioned. In fact, Regulation 29 of the CRA Regulations, while discussing SEBI's powers of inspecting / investigating the books of account, records or documents of A *Credit Rating Agency*, states that the inspections ordered by SEBI will not ordinarily go into an examination of the "*appropriateness of the assigned ratings on the merits*".

li. In terms of Regulation 29(4), SEBI can look into the '*appropriateness of a rating*' assigned by CRAs by way of specific order issued by it in cases of complaints which are serious in nature. However, no such order or complaint has been provided to the Noticee during the inspection provided by SEBI, as also clear from SEBI's letter dated September 25, 2019. Therefore, the issue of appropriateness of the ratings assigned by the Noticee cannot be raised by SEBI under the SCN, as the same would be in violation of Regulation 29 of the CRA Regulations.

lii. It is submitted that the statements made by *Credit Rating Agency* are *'forward-looking'* in nature as the *Credit Rating Agencies* are expected to give an opinion on future performance of a security or an issuer on the basis of its past records, data and financial performance. The ratings provided to various debt instruments are *'opinion'* of *Credit Rating Agencies* which are formed based on information gathered from the issuer, experts, and publicly available sources. It is important to understand that the information available with *Credit Rating Agencies* to undertake their rating procedure is not exclusive to them. In fact, their source of information is very limited, most of which is usually available in public domain. It is for this reason that the rating awarded by *Credit Rating Agencies* come with clauses containing disclaimers and limitations on usage of ratings.

liii. At this juncture, it is important to highlight a very recent order passed by the Hon'ble SAT in the matter of *Brickworks Ratings India Private Limited v. SEBI*, wherein the Hon'ble SAT has held that in case proper diligence and professional judgment is taken by the ratings committee, then the said opinion cannot be challenged. In fact, the Hon'ble SAT has categorically stated that there is no law stating that on a default in repayment obligation by an issuer, the CRA is required to mandatorily downgrade the ratings of the issuer's debt instruments to 'D'. In case the rating committee of the CRA takes a conscious decision to not downgrade the rating to 'D' then the CRA cannot be held liable for the same. The relevant portion of the order of the Hon'ble SAT is as follows:

> *"7. We find that the approach adopted by the AO is not correct. From a perusal of the minutes of the Central Rating Committee (CRC) we find that the current outstanding balance of NCD of the Company and the Company being in dialogue with the investors for reschedulement was noticed and considered. <u>A conscious decision was taken to downgrade the rating of the Company from 'BWR A" to "BWR BB-". No Regulation or Circular has been shown to us by the respondent to indicate that whenever a default is made by a Company the CRA is required to automatically downgrade the Company to "default"</u>.*
>
> *9. 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, <u>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</u>*

*<u>Company and with the investors with regard to reschedulement of the default the appellant recommended a revision of rating from "BWR A" to "BWR BB-". In our opinion due diligence was exercised.</u> Thus, the order of the AO to this extent is not correct and cannot be sustained."*

liv. It is thus submitted that the Noticee cannot be made liable for taking a decision in a particular manner, after undertaking proper diligence and care. In fact, the Supreme Court in the matter of *Central Bureau of Investigation, Hyderabad v. K. Narayana Rao* had held that a professional is only expected to possess requisite skills and perform the task entrusted to him. The relevant portion of the order is quoted below:

> *"22. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. <u>The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence</u>. This is what the person approaching the professional can expect."*

lv. Similarly, the United States District Court in the matter of *in re Enron Corporation Securities, Derivative & "ERISA " Litigation v. Enron Corporation and Others* has held,

> *"Regarding H-03-1558, this Court observes that while a credit rating agency's latitude for expressing opinion is not without limits, it must be given "constitutional 'breathing space' appropriate to the genre." Moldea, 22 F.3d at 315, citing New York Times v. Sullivan, 376 U.S. at 272, 84 S.Ct. 710. This Court further finds as significant here that rating creditworthiness is far from an exact science (as the disclaimers explicitly warn), that the rating agencies rely on information provided by the issuer of the debt securities, and that an evaluation necessarily involves interpretive skills that may produce unverifiable statements of the rater's opinion. Moreover, there is as yet no clearly established obligation defining the extent to which that they should investigate or should pressure a debt-issuing entity for further information or verify information."*

lvi. In light of the above stated principles, it is submitted that the Noticee cannot be questioned and held liable for their opinions made in exercise of their independent professional judgment.

lvii. The SCN was issued by SEBI pursuant to an inspection / examination of the books of accounts of the Noticee carried out by the Market Regulatory Department of SEBI during October-November 2018 and not pursuant to an investigation under Section 11C of the SEBI Act, which provides for the process of investigation by SEBI. Procedure for inspection and investigation of

*Credit Rating Agencies* by SEBI is provided under Chapter V of the CRA Regulations and SEBI was bound to follow the CRA Regulations while carrying out the inspection in October-November 2018 and issuing the Notice pursuant to such inspection.

lviii. The SCN initiating adjudication proceedings against the Noticee, could have been issued by SEBI only upon consideration of the inspection report issued by SEBI under the CRA Regulations. Therefore, it is submitted that in absence of an inspection report, the issuance of the SCN against it is violative of Chapter V of the CRA Regulations in general and Regulation 33, specifically.

lix. In light of the above facts, it is submitted that SEBI has not followed the due process, as prescribed under the SEBI Act and the CRA Regulations, required for inspection of books of accounts of the Noticee and consequent issue of the SCN based on such inspection. Therefore, it is submitted that the Notice issued by SEBI is *ultra-vires* the CRA Regulations and SEBI Act and should not be adjudicated upon as SEBI lacks the power to initiate adjudication proceedings through the Notice without following the procedure prescribed under Chapter V of the CRA Regulations.

9. I have considered the allegations levelled in the SCN, the reply/submissions of the Noticee and the relevant and relied upon material as available on record. Before dealing with the reply of the Noticee on merits, I deemed it appropriate to deal with technical objections raised by the Noticee. The first such contention is that the process of inspection under Regulation 30 has not been followed and if the inspection has not been conducted then instant proceedings are vitiated because the procedure for initiating instant proceedings as laid down in the CRA Regulations has not been followed. The SCN in the instant proceedings could have been issued by SEBI only upon consideration of the inspection report under the CRA Regulations. Therefore, in absence of an inspection report, the issuance of the SCN against it is violative of Chapter V of the CRA Regulations in general and Regulation 33, specifically. Therefore, the SCN is *ultra-vires* the CRA Regulations and SEBI Act and should not be adjudicated upon as SEBI lacks the power to initiate adjudication proceedings through the Notice without following the procedure prescribed under Chapter V of the CRA Regulations.

10. I note that, in this case, SEBI has examined whether the Noticee has exercised *due diligence* in the rating of the NCDs of IL&FS. The charge is for inquiry and adjudication as to whether the Noticee has failed to observe the obligations under Regulation 24 (7) and Clause 4 and 8 of Code of Conduct read with Regulation 13 of the CRA Regulations in the facts and circumstances as observed during the examination by SEBI. It is noted that the instant proceedings have been initiated under Chapter VIA of the SEBI Act based upon the examination of information as mentioned hereinabove. The SEBI Act and the CRA Regulations do not preclude SEBI from undertaking inquiry or examination and take appropriate action based thereon. In fact, section 11(2)(i) very specifically empowers SEBI to

conduct inquiries of intermediaries. Such inquiries are wide enough to include examination of information collected, gathered and received. Further, the power to initiate inquiry and adjudication under Chapter VIA is not necessarily to be preceded by an inspection under Regulation 29 and 30 and procedures to be followed under Regulation 30, 32 and 33 of the CRA Regulations will not apply to such inquiries/ examinations. Under the plenary power in the SEBI Act, it is the choice and discretion of the Board to take any appropriate enforcement action at any stage after such inquiries/ examinations, if it is *prima facie* satisfied that the '*credit rating agency*' has contravened any of the provisions of the CRA Regulations. Once it is *prima facie* found that '*credit rating agency*' has failed to comply with the conduct regulations, SEBI need not order inspection and right away initiate appropriate enforcement action. I, therefore, do not find merit in these submissions of the Noticee.

11. Another submission of the Noticee is that in terms of Regulation 29 of the CRA Regulations the judgment of a '*credit rating agency*' must not be called into question on the ground of *appropriateness of the assigned rating*. At the first place, as seen from the SCN, SEBI has not sought to examine the *appropriateness of the assigned rating* on merits. Further, such embargo, if any, is applicable only during inspection of the '*credit rating agency*'. It is noted that, SEBI has not ordered any inspection and Regulation 29 does not apply accordingly in this case. In this case SEBI has, under the facts and circumstances observed during the examination, alleged lack of proper skill, care and due diligence on the part of the Noticee. In so doing, SEBI has not sought to resort to 'double guessing' or going into the '*appropriateness of the rating on merits'*. If such arguments are accepted the whole list of the conduct regulations including those mentioned in Third Schedule would be rendered meaningless. I am, therefore, not inclined to accept the submissions of the Noticee in this regard.

12. It is noted from records that the allegations against the Noticee have been levelled on the basis of –

    a) The Noticee Press Releases dated March 01, 2018, August 24, 2018, September 11, 2018 and September 18, 2018 of Rating Action Commentary on IL&FS.
    b) Rating Committee Notes of the Noticee dated March February 26, 2018, August 14, 2018 and September, 2018 w.r.t. IL&FS.
    c) The Noticee presentation to IL&FS in February, 2017.
    d) Press Statement dated August 29, 2018 made by the IL&FS on website.
    e) Copy of e-mail dated July 24, 2018 by IL&FS forwarded to the Noticee informing about the decision taken by its Board of Directors in meeting dated July 21, 2018.
    f) IL&FS disclosure to BSE dated July 21, 2018 and August 29, 2018.

13. It is also noted that the copies of all the aforesaid documents have been provided to the Noticee during inspection of documents on September 19, 2019. It is pertinent to mention that charge in this

case is based upon examination of information and material available to SEBI, including the documents available in the public domain and the documents within the possession and knowledge of the Noticee itself. Further, 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.

14. Before going further, the CRA Regulations framework as set out in Regulations 13 to 16, 24, 29 and the Code of Conduct contained in the Third Schedule, under which the Noticee has based his arguments are extracted below:

"***Code of Conduct***

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

***Agreement with the Client***

*14. Every Credit rating agency shall enter into a written agreement with each client whose securities it proposes to rate, and every such agreement shall include the following provisions, namely:*

*(d)* ***the client shall agree to co-operate with the credit rating agency in order to enable the latter to arrive at, and maintain, a true and accurate rating of the client's securities and shall in particular provide to the latter, true, adequate and timely information for the purpose.***

***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).*

*(2) Every credit rating agency shall disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock ' exchanges where the said securities are listed.*

***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).*

*(2)* ***If the client does not co-operate*** *with the credit rating agency so as to enable the credit rating agency to comply with its obligations under regulation 15 of these regulations, the credit rating agency shall carry out the review on the basis of the best available information or in the manner as specified by the Board from time to time.*
*Provided that if owing to such lack of co-operation, a rating has been based on the best available information, the credit rating agency shall disclose to the investors the fact that the rating is so based.*

*(3) A credit rating agency shall not withdraw a rating so long as the obligations under the security rated by it are outstanding, except where the company whose security is rated is wound up or merged or amalgamated with another company, or as may be specified by the Board from time to time.*

***<u>Rating process</u>***

*24. (1)* ***Every credit rating agency shall -***

*(a)* ***specify the rating process****;*

*(b) file a copy of the same with the Board for record; and file with the Board any modifications or additions made therein from time to time.*

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

*(3)Every credit rating agency* ***shall have professional rating committees****, comprising members who are adequately qualified and knowledgeable to assign a rating.*

*(4)All rating decisions, including the decisions regarding changes in rating, shall be taken by the rating committee.*

*(5) Every credit rating agency shall be staffed by analysts qualified to carry out a rating assignment.*

*(6)Every credit rating agency shall inform the Board about new rating instruments or symbols introduced by it.*

***(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.***

*(8) A credit rating agency shall not rate securities issued by it.*

*(9) Rating definition, as well as the structure for a particular rating product, shall not be changed by a credit rating agency, without prior information to the Board.*

*(10) A credit rating agency shall disclose to the concerned stock exchange through press release and websites for general investors, the rating assigned to the securities of a client, after periodic review, including changes in rating, if any.*

***<u>Board's right to inspect</u>***

*29. (1) The Board may appoint one or more persons as inspecting officers, to undertake inspection or investigation of the books of account, records and documents of the credit rating agencies, for any of the purposes specified in sub- regulation (2)*

*(2).The purposes referred to in sub-regulation (1) shall be the following, namely:*

*(a) to ascertain whether the books of account, records and documents are being maintained properly;*

*(b)to ascertain whether the provisions of the Act and these regulations are being complied with;*

*(c)to investigate into complaints received from investors, clients or any other person on any matter having a bearing on activities of the credit rating agency;*

*(d)in the interest of the securities market or in the interest of investors.*

*(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 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.***

***THIRD SCHEDULE***

*2. A credit rating agency, in the conduct of its business, shall observe high standards of integrity, dignity and fairness in the conduct of its business.*

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

*4. 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.*

*5. A credit rating agency shall have a **reasonable** and adequate basis for performing rating evaluations, with the support of **appropriate** and in depth rating researches. It shall also **maintain records** to support its decisions.*

………………..

*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."*

15. In order to deal with the argument of the Noticee with regard to true and adequate information from issuer, monitoring, procedure for rating review, rating process, inspection / investigation process, due diligence and code of conduct i.e. overview of the regulatory architecture for '*credit rating agencies*', it is relevant to deal with the whole scheme of the SEBI Act and the measures taken by SEBI with regard to the role of the '*credit rating agencies'* 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.*

16. Further, a beneficial statute has to be construed in its correct perspective so as to fructify the legislative intent andprovision in the statute granting incentives for promoting growth and development should be construed liberally, so that 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 CRA Regulations, which are also aimed at social or economic development apart for investor protection, should not be narrow but should be in the perspective favouring the securities market and investors having regard to '*teleological purpose and protective intendment'* of the legislation.

17. 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 there under need to be seen as a whole and not in fragmented manner. It is also deemed necessary 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'*. The preamble of the SEBI Act describes

the object of SEBI (Board) 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 to 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.

18. 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.

19. 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.

20. In view of growing importance of corporate bond market in national economy, SEBI had taken several steps based upon the *Report of High Level Expert Committee on Corporate Bonds and Securitization* of 2005. In order to facilitate development of a vibrant market for corporate bonds in India, the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations) were notified. 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-emphasized 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*".

21. Commercial Paper (CP) is an unsecured money market instrument issued in the form of a promissory note and regulated by the Reserve Bank of India (RBI). CP as a privately placed instrument was introduced in India in 1990 with a view to enabling highly rated corporate borrowers to diversify their sources of short-term borrowings and to provide an additional instrument to investors. The RBI directives and guidelines issued from time to time under the Reserve Bank of India Act, 1934 also mandate '*credit rating*' for issuance of CP from either the Credit Rating Information Services of India

Ltd. (CRISIL) or the Investment Information and Credit Rating Agency of India Ltd. (ICRA) or the Credit Analysis and Research Ltd. (CARE) or the FITCH Ratings India Pvt. Ltd. or such other credit rating agency (CRA) as may be specified by the RBI from time to time, for the purpose. The Insurance Regulatory and Development Authority, vide its IRDA (Investment) Regulations, 2000 has also mandated all insurers to make investments in specified securities graded by a reputed and independent '*credit rating agency*'.

22. It is also pertinent to mention 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, 1995section 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.

23. 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. Any such examination, inspection or enforcement action cannot be construed as an action in hindsight as sought to be contended by the Noticee.

24. As regards the argument regarding the definition of '*rating',* it is pertinent to say that this word has to be understood in the context of the expressions '*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 purport or role of a '*credit rating agency*', 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;".* It is gainsaying that SEBI has made aforesaid regulations and has taken '*measures'* which were meant to sub-serve the interest of investors as also promote and regulate the securities market. The CRA Regulations which are directly connected and concerned with the debt securities and financial instruments cannot be read in isolation and must be read and interpreted in the context in which they apply and operate i.e. the issuance, '*credit rating*' and listing of debt securities by companies/institutions/corporations. Further, considering the contemporary role and responsibilities of '*credit rating agencies'* in financial markets and the 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 pedantic or lexicographic approach. Any attempt to truncate all-embracing scope and meaning of '*credit rating'*, would be to violate its widest possible amplitude and magnitude as enshrined in the SEBI Act, '*measures'* taken by SEBI for development of corporate debt market and investors protection. The '*credit rating'* is an ongoing and dynamic concept and it encompasses many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits of the definition of '*rating'* with relation to merely an '*expression of opinion by symbols'* with a grammatical approach.

25. It is settled position that while interpreting social –economic welfare legislations, there should be more concern with the colour, the context and the content of the statute rather than its literal import. 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 at paragraph no. 33 has stated as to how statute should be construed after ascertaining legislative intent and in the context and scheme of the Act. Said paragraph no. 33 reads as under:

> *"33. <u>Interpretation must depend on the text and the context</u>. <u>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.</u> 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." (Also see JASBIR SINGH v. VIPIN KUMAR JAGGI & ORS. - (2001) 8 SCC 289).*

26. In Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. &Ors. - (2003) 2 SCC 111 in paragraphs 23, 24 & 25, Hon'ble Supreme Court observed thus:

> "*23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.*
>
> *24. True meaning of a provision of law has to be determined on the basis of what it provides by its clear language, with due regard to the scheme of law.*
>
> *25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute."*

27. It is, thus, clear that the provisions need to be looked at as a whole in setting of the entire 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 sectoral regulators. In order it understand the scope of '*credit rating*' it is necessary to take into account the role of '*credit rating agency*' in '*credit rating*' of a debt securities and any financial instruments. It is also pertinent to note that the relevant Regulations of CRA Regulations contemplate principle–based approach for conduct obligations of registered '*credit rating agencies*' so as to achieve regulatory objectives and for addressing

new challenges and risks that may arise in the process of dynamic growth and development of the debt market. Further, considering the developments taken since the CRA Regulations came into the force before two decades and continuing an ongoing role and accountability of '*credit rating agencies*', the traditional and technical definition of '*credit rating agency*' and '*rating*' should be interpreted adopting the dynamic theory and the meaning should be given 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 as a '*living tree approach*'.

28. 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.

29. The '*credit rating*' is effectively a pre-requisite for bond market access and also the minimum requirement for listing a corporate debt on the stock exchange. It has been well recognized and accepted position that '*credit rating*' quality has become the main criteria for investment in corporate bonds. In the contemporary situations, the '*credit rating agency*' plays a crucial and important catalytic role in fostering the growth of the capital markets. A '*credit rating agency*' goes through thoroughly into all the relevant information before it announces its '*rating*' value. The '*credit rating*' is expected to encapsulate the analysis of the financials of the company, its strengths and weaknesses, its competitive position in the industry, and its future prospects. Thus, the '*credit rating agency*' accesses the financial strength of the borrowers/ issuers, specially their ability to pay the principal and interest on their debt. Therefore, '*terms*' and '*expressions*' used in the CRA Regulations must be interpreted in the context of the functional role in the contemporary situation instead of the mechanical and grammatical approach as sought to be contended by the Noticee. 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. The fundamental freedom of speech and expression of a '*credit rating agency*' while assigning a '*credit rating*' to any financial instrument is not absolute and is always subject to the statutory obligations under the SEBI Act and the CRA Regulations. These '*standard symbols*' are of considerable significance as the investors in the

corporate bond market rely largely on those '*rating symbols*' which are assigned by the professional '*credit rating agencies'* after a qualitative and independent evaluation of the creditworthiness of the instrument and the issuers thereof. Such '*rating symbols*' are considered as indicators of the creditworthiness as well the risk. A good '*credit rating'* can help the issuer to access high value investors both domestic and foreign. These symbols also serve as benchmark of financial market regulations.

30. In context of role and responsibilities of the '*credit rating agencies*' in securities market it is pertinent to refer to the following extracts from the "*Statement of The Technical Committee of The International Organization Of Securities Commissions"* dated 25 September 2003-

> *'"Credit rating agencies (CRAs, or ratings agencies) issue opinions on the future creditworthiness of a particular company, security or obligation as of a given date. These opinions tend to be relied upon by investors, lenders, and others, and, accordingly, CRAs can have an effect on securities markets in a variety of ways. Credit ratings can affect issuers' access to capital, influence the structure of financial transactions, and determine the types of investments fiduciaries and others can make. Some regulators use the ratings issued by CRAs for various regulatory purposes.*
>
> *Given the influence CRA opinions can have on securities markets, the activities of CRAs are of interest to investors, lenders, issuers and securities regulators alike. The core objectives of securities regulation, as described by IOSCO's "Objectives and Principles of Securities Regulation," are protecting investors, ensuring that securities markets are fair, efficient, and transparent, and reducing systemic risk. In offering informed, independent analyses and opinions, CRAs contribute to achieving these objectives.*
>
> *Rating agencies that the market recognizes as credible and reliable can play a valuable role in global securities markets…."*

31. Going further in the scheme of the CRA Regulations it is noted that Chapter III provides for the general obligations of the '*credit rating agencies'*. Regulation 13 obligates the '*credit rating agency*' to abide by the code of conduct contained in the Third Schedule. Regulation 14 provides for an agreement between the '*credit rating agency*' and its clients and contents thereof. Regulation 14(d) obligates the client to cooperate with the '*credit rating agency*' and provide true, adequate and timely information. This regulation also envisages for the '*credit rating agency*' to arrive at, and maintain, "*a true and accurate rating*". Regulation 15 provides for the obligation of a '*credit rating agency*' to continuously monitor the rating of debt securities rated by it. The '*credit rating agency*' is further obligated to disseminate and disclose the information regarding newly assigned '*rating'* and changes in earlier '*ratings'* promptly. Regulation 16 provides for periodic review of all published '*ratings'* during the lifetime of the securities. It further provides that if a client does not cooperate with a '*credit rating agency*' in monitoring of the '*rating'* the '*credit rating agency*' must carry out the review on the basis of best available information <u>or in the manner</u>

as specified by the board and disclose to the investor that '*rating*' is so based. Regulation 17 requires the '*credit rating agency*' to frame appropriate internal systems and procedures for monitoring the '*rating*' of securities by its employees. Regulation 18 obligates the '*credit rating agency*' to make the definition of the concerned '*rating*' public along with the '*symbol*' and also state that the '*rating*' do not constitute a recommendation to buy, hold or sell a security. Regulation 19 obligates to the '*credit rating agency*' to submit information to the Board. Regulation 20 requires it to comply with the circulars, guidelines, directives and instructions issued by the Board from time to time. Regulation 20A provides for appointment of a compliance officer who is responsible for the compliance of the securities law. Regulation 21 deals with maintenance of book, accounts and records *inter alia* with regard to rating assigned to various securities, rating notes of rating committee, record of decisions of rating committee and letter assigning '*rating*', etc., Regulation 22 provides for obligation of '*credit rating agency*' to rectify the deficiency, if any, in the auditor's report and Regulation 23 provides for the confidentiality of the information between '*credit rating agency*' and its client.

32. It is very important to mention that Regulation 13 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*'. Some of the important benchmarks/ Code of Conduct in the said Third Schedule are as under:

a. Clause 1 requires a '*credit rating agency*' to make all efforts to protect the interest of investors.
b. Clause 2 of requires a '*credit rating agency*' to observe **high standards** of '*integrity*', '*dignity*' and '*fairness*' in the conduct of its business.
c. Clause 3 obligates '*credit rating agency*' to fulfill its obligations, '*prompt*', '*ethical*' and '*professional*' manner.
d. Clause 4 mandates that 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.*
e. Clause 5 provides that a '*credit rating agency*' shall have reasonable and adequate basis for performing **rating evaluations**, with support of appropriate and in depth rating researches.
**f.** Clause 6 mandates a '*credit rating agency*' to have in place a rating process that reflects **consistent and international rating standards.**
**g.** Clause 8 provides that 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. 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 <u>fair and appropriate</u>***".

34. The '*credit rating agency*' accesses the probability of default with respect to specific debt securities and the issuer. From the above regulatory scheme, it is noted that while the agreement 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* ***<u>true and accurate rating</u>"*** cannot be diluted by any agreement as Regulation 16(2) clearly enables the '*credit rating agency*' to carry out the review of assigned '*rating*' <u>on the basis of best available information</u> or in the manner specified by the Board from time to time. Regulation 24(7) as it is worded and intended requires the '*credit rating agency*' to give '*fair and accurate credit rating*' after exercising '*due diligence*'. 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 aforesaid 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 supplement to the aforesaid Code of Conduct and the regulatory requirements rather than to supplant them.

35. Thus, the regulatory scheme is clear that first and foremost obligation of a '*credit rating agency*' is to make all efforts to protect the interest of investors. As per the CRA Regulations, the '*credit rating agency*', at all times and in all circumstances, remains under obligation to give '*true*', '*accurate*' ,'*fair*' and '*appropriate*' rating and in order to fulfill such obligation the higher standards of due diligence, integrity, dignity, fairness, care, etc. are expected from it. The words *true*', '*accurate*', '*fair*' and '*appropriate*' with regard to obligation for giving or of much significance and they expect higher degree of skill, care and diligence from the '*credit rating agency*'. Thus, the '*credit rating agency*' is not merely to accept mechanically the information given by its client but is also required 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. The obligations to exercise independent professional judgment in order to achieve the objectivity and independence in the rating process requirements requiring reasonable and adequate basis for performing rating evaluations with the support of appropriate and in depth rating researches coupled with ability to use available information and the obligation of exercising due diligence, proper care and ethics, clearly negate the

argument of the Noticee that discharge of its obligation is substantially dependent on the cooperation of the client and that the issuer is solely responsible for the quality of information.

36. In my view, the '*credit rating agency*' is expected to provide an independent evaluation of the creditworthiness of the debt securities issued by the issuers. The independent, comprehensive and objective analysis and judgment about the debt instrument and subsequent and impartial assessment and judgment of default risk by a professional '*credit rating agency'* offer several benefits to the economy, bond market, the borrower and the investors both domestic and foreign. Any other interpretation as sought to be contended would render the CRA Regulations unintelligible, unreasonable, unworkable and irreconcilable with the object of the SEBI Act and the CRA Regulations.

37. The Noticee has submitted that the terms *'due diligence'* and *'proper care'* are not defined or explained in the CRA Regulations or other securities laws. The standard of *'due diligence'* in an industry is determined based on what is reasonably expected from a prudent person. While conducting an exercise of *'due diligence'*, it is not expected that a person must look at every single information with a suspicious mind; rather, an effort should be made to identify a fraud / lie if circumstances arise, which should raise the suspicion of a reasonable person. In this regard the Noticee has relied upon rulings of Hon'ble SAT – which are in relation to due diligence expected from a merchant banker. It has also relied upon a ruling of Hon'ble Supreme Court of India wherein it has interpreted the meaning and scope of *'due diligence'* in the matter of *Chander Kanta Bansal v. Rajinder Singh Anand ((2008) 5 SCC 117)*. I perused the said rulings and note that they lay down the general principle that *'due diligence'* means careful and persistent application or continual effort to accomplish something, It requires careful and steady in application to one's work and duties, showing care and effort. 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. It means such diligence as a prudent man would exercise in the conduct of his own affairs. With regard to such obligations of '*credit rating agency*', it is relevant to mention that a '*credit rating agency*' plays a crucial and pivotal role not only to further its or its client's interests but also to protect the investors and securities market at large. Often, it has been observed that this duty to exercise due care and diligence has come in conflict with the pecuniary interests of the intermediary. It is seen that it has been a consistent stand of the Hon'ble SAT to seek a balance while dealing with such conflicting interests, with a justifiable tilt in favour of the larger interest of the securities market. In *JM Mutual Fund and JM Capital Management Private Limited Vs. SEBI* [SAT order dated 22.11.2004] Hon'ble SAT 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."*

38. Thus, the obligation of *'due diligence'* varies according to a given situation and the same cannot have hard and fast rule or straightjacket method or absolute standards or any single sacrosanct nature for determination of '*due diligence'*.

39. 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. Such obligations are much more than that as submitted by the Noticee. The '*credit rating'* by a registered '*credit rating agency'* cannot be equated with opinion of a lawyer or any other such professional, particularly in view of several conduct obligations and responsibilities fastened on the '*credit rating agencies'*. The '*credit rating agency*' can also not seek absolute protection relying upon an expert advice. I, therefore, do not find merit in the submission that once the decision is made by an entity, relying upon the advice provided by an expert, then no liability should come upon the former.

40. In the instant matter, it is important to note that the Noticee was under the obligations to exercise proper skill, care and due diligence on receipt of the information provided by IL&FS, considering other available information and applying its independent professional judgement at the relevant times in order to achieve and maintain objectivity and independence in the rating process. Subsequent developments with regard to opening and recasting of IL&FS's books of accounts are of no help at this stage.

41. 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*'. This apart, the specific and important obligation of the '*credit rating agency*' to have in place the rating process that reflects consistent and international rating standards further expects higher and special degree of

'*due diligence*' from a '*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*' and '*promptitude*' 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 with the support of appropriate and in depth rating researches and using rating processes that reflect consistent and international rating standards{*Regulation 13 read with Third Schedule and Regulation 24(7)*}. It is in the context of determining such legitimately expected '*due diligence*' that the expression '*excessive reliance*' has been used in the SCN. It has neither been used as an independent default or in the context of a prohibition. What it actually contemplates and envisages is that - the Noticee failed to exercise independent professional judgement in order to '*achieve and maintain' objectivity and independence in the rating process.* In my view, while applying the CRA Regulations, which have *bona fide* purpose of investors' protection and orderly development of securities market, theobject of the Regulations should not be pushed aside giving way to mere technicalities and any measure in the interest of the investors which would pass the legal tests provided in the Regulation should be welcome. It is obligatory upon the Regulator to apply the law keeping in mind the objective and purpose of the Regulations and it must evince rational interpretation and not be influenced by moral propensity.

42. The *due diligence* expected form a merchant baker has to been seen in the context of the activities of a merchant banker. A merchant banker, while discharging its activities as such in the issue process or other specified activities, is obligated to exercise independent professional judgment and owes a crucial responsibility towards protection of interests of investors and not merely to further its commercial purpose for pecuniary benefits. Thus, its role is also not limited to just receive information from issuers or its management and simply '*trust and verify*' without applying its independent professional judgment. In the case of '*credit rating agencies*', the '*due diligence*' obligations in Third Schedule of the CRA Regulations are much wider than the '*due diligence*' obligations of a merchant banker under the SEBI (Merchant Bankers) Regulations, 1992 as discussed hereinabove. Further, 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 times. The power of SEBI to examine such compliance obligations is not limited to look only prospectively. If it is observed that the '*credit rating agency*' has failed in exercise of its obligations in the past SEBI can look into the same for the appropriate action in the interest of the investors and securities market. Therefore, it is not correct to say that the instant adjudication of alleged violations of the CRA Regulations is in hindsight as sought to be contended by the Noticee. It is well settled in the above mentioned *Ajay Agrawal* judgment that action can be taken by the Board for past defaults if on the date of order the power to pass order exist.

43. It is also pertinent to mention that the events that occurred in the year 2009 in the global financial system had underlined the pivotal role that *credit ratings* play in debt markets. In the wake of the same and in order to impart higher credibility to the processes and procedures associated with the *credit rating,* SEBI, vide Circular Number CIR/MIRSD/CRA/6/2010 dated May 03, 2010 specified several transparency and disclosure norms for *'credit rating agencies'*. Those prescriptions included detail requirements with regard to '*rating process*', *'rating procedures*', '*default studies'* and '*disclosures'*. It emphasised that default studies are central to evaluating the performance of a '*credit rating agency'* and whether its ratings can predict default over a period of time. In order to promote transparency and to enable the market to best judge the performance of the ratings, the '*credit rating agencies'* were directed to publish information about the historical default rates of rating categories and whether the default rates of these categories have changed over time, so that the public can understand the historical performance of each category and if and how rating categories have changed, and be able to draw quality comparisons among ratings given by different *credit rating agencies'*. Thus, it is clear that the standards of compliance obligation of *credit rating agencies'* in Third Schedule read with regulation 13 and Regulation 24(7) are much higher than those for any other intermediary.

44. When seen in the context of CRA Regulations as discussed above, the *credit rating agencies'* are also under obligation to to have in place a rating process that reflects consistent and international rating standards. By aforesaid circular dated May 03, 2010 it was also obligated that the *credit rating agencies* should disclose the compliance status of each provision of IOSCO code of conduct. It is noted that The *'IOSCO CRA Principles' inter alia* address following key objectives to promote informed, independent analyses and opinions by *credit rating agencies':*

- **Quality and integrity of the rating process**: *credit rating agencies* should endeavour to issue opinions that help reduce the asymmetry of information among borrowers, lenders and other market participants.

- **Transparency and timeliness of ratings disclosure**: *credit rating agencies* should make disclosure and transparency an objective in their ratings activities.

45. The international standards adopted by '*credit rating agencies'* include the 'distance to default' and the 'probability of default' as the essential credit risks in the financial markets. Such assessment of credit risks provides an estimate of the likelihood that an issuer will be unable to meet its debt obligations. It is crucial for the '*credit rating agencies'* to know which parameter effects more on 'distance to default' and the 'probability of default' so that investors will prevent future risks.

46. In my view , if the interpretation on the basis of prescriptive approach as forwarded on behalf of the Noticee is adopted it will lead to make application of regulatory scheme too constrictive and will defeat the object and purpose of the SEBI Act and the CRA Regulations. I also hold the view that such an interpretation will create hindrance in achieving regulatory objectives and would enable the '*credit rating agencies*' to be lax in their important statutory obligations.

47. Having dealt with all technical submissions and those on regulatory overview and architecture and now coming to the merit of the case to determine as to whether the Noticee had duly complied with Regulation 24(7) and Clauses 4 and 8 of Code of Conduct for the '*credit rating agencies*' read with Regulation 13 of the CRA Regulations, it is noted that the allegations in this case are levelled in the background of default committed by IL&FS and its subsidiary IFIN on their obligations in respect of the CP, ICD and also default on interest payments on its NCDs and the role of the Noticee in assigning rating to various NCDs of IL&FS. It was observed that IL&FS had defaulted on its obligations in respect of the CP issue and ICDs which was due on September 14, 2018. The said CP was rated by the Noticee also. Subsequently, IL&FS also defaulted on the interest payments on its NCDs on September 17, 21, 26 and 29, 2018. Further, the Noticee had downgraded the ratings of the NCDs issued by IL&FS on various occasions as described in the SCN.

48. With regard to the first basis of the allegation in the SCN the Noticee has claimed that the primary source of information for every '*credit rating agency*' is the information and documents supplied by the issuer entity itself and the CRA Regulations recognizes the importance and significance of timely and accurate information from the issuer entity as a critical part of credit rating process. It also submitted that, as part of its credit rating process, it carried out reasonable additional investigation from credible sources to supplement and determine the veracity of the information provided by the issuer entities in accordance with its regulatory obligations. It had taken updates on financial standing and funding flexibility of IL&FS from the auditors and bankers of IL&FS and also the public information/data from an external source. With regards to right issue of ₹4,500 crore decision by IL&FS board, communicated to it on July 24, 2019 *via* e-mail, it submitted that the news was extensively reported in the financial news media and none of these media reports were declined / denied by management, promoters and other stakeholders of IL&FS. Same was the explanation of the Noticee for press release available on IL&FS website and communicated to it on August 29, 2018. It is established fact that the decision of IL&FS with regard to equity infusion by way of rights issue amounting to ₹4,500 cores taken on July 21, 2018 was informed to the Noticee by IL&FS but the said material information was not disclosed to the stock exchange by it. It is matter of common prudence that whenever a listed entity comes with a right issue it has to promptly disclose the same to the stock exchanges. When the

Noticee was informed by IL&FS about the approval of the said right issue by IL&FS, it has not put any effort to verify the same from the stock exchange. When IL&FS made the claim about its said right issue and *Specific Asset Disinvestment plan* to reduce its overall debt by ₹30,000 crores on August 29, 2018 *via* a disclosure on its web site and informed the Noticee about the same, the Noticee again did not verify the truth and veracity from the disclosures made on stock exchange. As a reliable 'credit *rating agency'* it would be prudent to verify the information received from the publicly disclosed information. I also note that the disclosure of different set of information on different platforms by the issuer in the case had resulted in information asymmetry, and that should have triggered a '*red flag*' to the Noticee, being a '*credit rating agency'* rating the IL&FS and its debt instruments. In my view the Noticee lacked in exercising reasonable prudence of responsible *credit rating agency* and was lagging in exercise of desired due diligence.

49. In terms of allegation regarding the Noticee failure to take appropriate timely action by way of reduction in the ratings assigned to NCDs issued by IL&FS, as due date of payment of the CP maturing on September 14, 2018 was near and the rights issue was being delayed substantially. The Noticee submitted that with respect to this repayment obligation, the Noticee analyzed the ALM statements of IL&FS for the financial year ending March 31, 2018 and noted that in the three to six months' bucket (from July to September 2018), there was a positive cumulative mismatch of ₹26.7 billion which implies that the cumulative cash inflows till September 2018 were significantly higher than the expected cumulative cash outflows. Further, with regard to allegation of considering March 31, 2017 ALM profile of the IL&FS in Rating Committee note dated February 26, 2018, the Noticee submitted that it considered both ALM statements for the financial year ending March 2017 and the maturity profile for the quarter ending December 2017 and same is evident from the minutes of the rating committee meeting dated February 27, 2018. In this regard, I note that, Noticee in its Rating Committee note dated February 26, 2018 considered ALM profile of March 31, 2017 and December 2017 and also considered projected figures of Financial Year 2018. I also note that, though the Noticee claimed that IL&FS was having positive cumulative mismatch for three to six months' bucket (*from July to September 2018*) in ALM profile of IL&FS and thus, it was clear that IL&FS would have been able to meet its CP repayment obligations, irrespective of the date of receipt of money from rights issue. However, it is an admitted fact that not only IL&FS failed to repay the CPs on September 14, 2018, but also defaulted in the interest payments on its NCDs on various dates i.e. September 17, 21, 26 and 29, 2018. It shows that being a reputed '*credit rating agency*' with years of experience in the field of rating, the Noticee failed in assessing the ALM position of IL&FS as a group. The Noticee has submitted that the said right issue of ₹4500 crore would have aided the liquidity of IL&FS in the short term, but the events which fold out tell different story as the rights issue was not subscribed. Thus, I note that the Noticee has lacked '*due diligence*' in assessing the ALM situation as alleged in the SCN.

50. The Noticee further submitted that while rating the IL&FS and its instruments highest possible rating the Noticee had followed its publicly available Financial Institutions Rating Criteria, Non-Banking Finance Companies Criteria, Rating FI Subsidiaries and Holding Companies Criteria, whose primary drivers were industry profile and operating environment, company profile, financial profile, management strategy and corporate governance and ownership support and group factors. It has also conducted stress test for IL&FS and IFIN by factoring in the deterioration in the investment value and its impact on the equity buffers. It was also monitoring IL&FS deleveraging plan and continued weakened liquidity buffers. In this regard, I note that, the progress of IL&FS deleveraging plan, divestment schemes and asset monetization plans was slow and same has been observed by other *credit rating agencies* in their rating. The slow progress in said deleveraging plans of IL&FS had affected its revenue generation and subsequently IL&FS and its group companies failed in meeting their debt obligations and defaulted in payment of NCDs and interest payments. It is undisputed fact that the Noticee had maintained the Rating Outlook on the NCDs of IL&FS as '*Stable'* throughout the rating period despite the slow pace at which the asset monetization and deleveraging steps of IL&FS was taking place. In the press release of the Noticee dated February 27, 2018 it had given the outlook as '*stable'* despite stating that the outlook might turn negative if, *inter alia*, there is significant deviation in the execution of divestment plans which would impact its deleveraging plans. It is also admitted fact that the ratings were placed under "*Rating Watch Negative*" only in August 24, 2018, while downgrading the rating to AA+. Thus, it is clear that the Noticee despite being aware of the aforementioned facts indicating inordinate delays in monetisation of assets by IL&FS/ generating cash flows, maintained the outlook for the debt instruments of IL&FS as '*stable'*. Therefore, I note that the Noticee had failed to adequately caution the investors regarding the high leverage and delay in implementation of asset monetization plans by IL&FS.

51. The submissions of the Noticee on the specific allegations are broadly that it had consistently considered the reliance on the information from the management and the board of the issuer as prudent. It has analysed the information gathered from different sources and prepared the rating report. The Rating Committee determines the appropriateness of the rating based on the rating report and analyst recommendation. It adopts rating methodology for determine the rating alongwith outlook/ watch, if any. Based on its ongoing analysis and monitoring of the available information it has started signalling the potential weakening credit profile of IL&FS and its subsidiaries in its several rating releases from April, 2017. Once it determined that the credit profile of IL&FS had indeed deteriorated it acted immediately to downgrade the ratings on August 24, 2018.

52. It is relevant to mention that important financial parameters, as noted from the standalone and consolidated balance sheet of the IL&FS (*Source: IL&FS website*) during Financial Years ending on March 31, 2015, March 31, 2016, March 31, 2017 and March 31, 2018 show as following:

All figures in ₹Million

| S.No. | Particular | March 31, 2015 | March 31, 2016 | March 31, 2017 | March 31, 2018 |
|---|---|---|---|---|---|
| **Standalone (IL&FS)** | | | | | |
| 1 | Long Term Borrowings | 83723 | 96056 | 93440 | 101790 |
| 2 | Current Maturities of Long Term Debt | 7029 | 12933 | 14709 | 23848 |
| 3 | Short Term Borrowings | 11049 | 19913 | 13072 | 33714 |
| 4 | Proceeds from Sale in Investments in Subsidiaries/ Associates | 27980 | 13958 | 7010 | 2136 |
| 5 | Revenue | 14303 | 19124 | 17872 | 18994 |
| 6 | Operating Profit | 3261 | 3992 | 3596 | 3324 |
| **Consolidated (IL&FS)** | | | | | |
| 1 | Long Term Borrowings | 486486 | 546651 | 597640 | 652935 |
| 2 | Current Maturities of Long Term Debt | 77187 | 64443 | 97449 | 122386 |
| 3 | Short Term Borrowings | 67466 | 92649 | 122386 | 105087 |
| 4 | Proceeds from Sale in Investments in Subsidiaries/ Associates | 2654 | 9855 | 7518 | 1046 |
| 5 | Proceeds from sale of Other Non-current Investments | 2084 | 2843 | 9897 | 1508 |
| 6 | Proceeds from Sale in Investments in Associates | 0 | 0 | 3926 | 379 |
| 7 | Operating Profit | 7043 | 5208 | 6177 | -21092 |
| 8 | Revenue | 116405 | 150977 | 171564 | 187986 |
| 9 | Expenses | 109361 | 145769 | 165388 | 209080 |
| 10 | Borrowing Cost | 45175 | 54979 | 65165 | 79228 |
| 11 | Cost of Raw Materials | 5527 | 6854 | 14641 | 22167 |

53. From the above table it is observed that: -

   a. The expenses of the IL&FS on consolidated basis was increasing continuously i.e. 33% in FY 2015-16, 13% during FY 2016-17 and 26% during FY 2017-18. Two of the main contributing factors in the rise in expenses of IL&FS as a group are – Borrowing Cost and Cost of raw materials, apart from Operating and Administrative Expenses and Sub Contracted Construction Cost and others. The increase in revenue during the same period for IL&FS on consolidated basis was also increasing continuously i.e. 29% in FY 2015-16, 13% during FY 2016-17 and 9% during FY 2017-18. On comparison of both it is seen that increase Revenue and Expenses were in tandem till FY 2016-17, however, the situation in FY 2017-18 was different, wherein rise in expense was almost three times that of revenue, contributed by rise in borrowing cost and cost of raw materials.

b. The operating profitability of IL&FS on standalone as well as consolidated basis was subdued, especially when the same is compared with the increase in its revenue from operation. It is noted that on consolidated basis, during FY ending on March 31, 2016, there was fall in operating profit of approx. 26%. Similarly, on standalone basis, during FY ending on March 31, 2017, there was fall in operating profit of approx. 10%. This shows that IL&FS was facing issues to maintain its business profitability.

c. The cash flow from the proceeds from sale in investments in Subsidiaries or Associates of IL&FS on consolidated basis was declining during FY ending on March 31, 2016 and March 31, 2017, wherein in each of the financial years, there was decline of approx. 50%. Though, in FY ending on March 31, 2017, the cash flow of ₹24,222 million has been observed from the proceeds from sale/ redemption of other Non-current Investments. This shows that IL&FS was facing issues in monetizing its assets in the group companies.

d. The Debt Equity ratio of the IL&FS on consolidated basis was in the higher range during financial years 2015-16 to 2017-18. During, financial year 2015-16 and 2016-17, the increase in Debt Equity ratio was gradual, but same has risen at alarming level during financial year 2017-18. This shows that IL&FS debt burden was quite high and there was visible mismatch between its debt and equity portfolio.

e. The short term borrowing of IL&FS on consolidated basis was rising sharply during FY ending on March 31, 2016 and March 31, 2017. During FY ending on March 31, 2016 it rises by approx. 37% and during FY ending on March 31, 2017 by 32%. This shows that IL&FS reliance on short term borrowings was increasing at a rapid level.

f. Other important factor is rise in '<u>Current Maturities of Long Term Debt</u>' during FY 2016-17 and FY 2017-18 of the IL&FS on consolidated basis, wherein rise of 51% was observed in FY 2016-17 and 25% in FY 2017-18. If same is seen in tandem with rise in Short Term Borrowings for IL&FS on consolidated basis as well as standalone basis for FY 2015-16 and 2016-17, it can be said that, long term maturities of IL&FS were being funded by short term borrowings. This finding also gets support from the slow pace of monetization of assets of the IL&FS and its group companies.

54. In view of the above, I note that financial parameters of the IL&FS and its group companies especially, short term borrowings, debt equity ratio, current maturities of long term debt, operating profit, monetization of assets etc., were not as conducive or healthy as assumed by the Noticee in its rating report or rating rationale.

55. The extracts from press release/ rating committee notes/ presentation of the Noticee regarding 'rating rationales' of IL&FS are as follows:

*Presentation for IL&FS and IFIN – February 27, 2017*

i. The divestment lagged significantly than expected.
ii. Limited room to absorb equity market shocks, especially closer to reporting dates.
iii. Higher concentration exposes to Idiosyncratic risk. Leverage build up has been accompanied by higher concentration and lower funding tenure.
iv. Limited profit strength to absorb shocks as profitability depleting. Reported Return on Equity declined from approx. 4% in Financial Year 2011-12 to 0.7% in Financial Year 2015-16.
v. Group leverage build up creates enhanced support expectations from IL&FS.
vi. IFIN has rising stress in the portfolio.
vii. IL&FS maintains contingency reserves to cushion against delinquencies arising from bulkier exposure. However, there has been consistent decline in the proportion of reserve to the total exposure.

*Rating Report – August 30, 2017*

i. **Negative Rating Sensitivities:** Failure by IL&FS to bring down the leverage and pressure on profitability due to lack of divestment or otherwise will trigger a downward rating action. Possibility of significant impact on equity on account of material write down risk on its investments would be credit negative.

ii. **Concentrated Portfolio:** Being a CIC, IL&FS has concentration risk with high single name exposures. Top 5 exposures (equity and debt) constitute 243% of the equity in Financial Year 2017. Some of these exposures are towards group entities that have modest financials with high leverage.

iii. The pace of disinvestments has been sluggish.

*Rating Committee Presentation Note – September 22, 2017*

i. Rise in leverage due to support to group companies, however, management has articulated that leverage is expected to decline by Financial Year 2018 with divestment in the pipeline.

ii. Profitability is under pressure due to sluggish pace of disinvestments, however, expected to gather some pace in Financial Year 2018 which would help profitability.

56. The Noticee has claimed that it has evaluated all aspects while rating IL&FS i.e. financials, asset quality, liquidity, institutional parentage, past record, ALM Profile etc. and conducted stress test and on the basis of the same it has maintained the rating of IL&FS as '*stable*' up to August 24, 2018. In this regard, I note that, from the abovementioned extracts from press releases of the Noticee with respect to Issuer / its Group companies, it has been observed that IL&FS financial parameters or credit profile was not as greener as shown by the Noticee. From the above stated Rating Committee presentation, Rating Report and Press Releases (during 2017 – 2018), the Noticee has mentioned that the pace of disinvestments was sluggish, profitability was under pressure, rising stress, limited room to absorb equity market shocks, maintaining leverage levels, high concentration in group companies, etc. will remain sensitive /critical elements while rating the NCDs of IL&FS. There has been found considerable delay in monetization of assets by the Noticee itself. Further sluggish disinvestment and high concentration in group companies by IL&FS has always remained a concerned area for the Noticee, while rating IL&FS and its group company's debt instruments. It has also been noted that while rating IL&FS and its group company's debt instruments as '*stable*', the Noticee has taken comfort from the "IL&FS's institutional parentage, experience of management, expertise and financial flexibility" apart from other parameters. I find that though the Noticee has shown its concern regarding aforementioned deteriorating financial factors on continuous basis in its rating rationales, it had not acted upon the same diligently while rating the NCDs of IL&FS. I, therefore, find that the Noticee has failed to exercise its duty to the investors at large and failed to intervene in the matter on time by downgrading the ratings of NCDs of IL&FS despite having knowledge of the deteriorating financials of IL&FS.

57. The Noticee has also contended that during its interaction with various bankers, auditors and management of IL&FS, it had not received an indication or had any other reason to believe that there was an abnormal increase in the borrowing cost of IL&FS, or any fast-paced deterioration of its liquidity conditions. Further, Auditors of IL&FS are under probe by other regulator/ government institutions for their irregularities in auditing the accounts of IL&FS and its subsidiaries, and therefore, it cannot be questioned/ made liable for false, incorrect or fraudulent expert statements about the on

basis of financial parameters of the Noticee. In this regard, I note that, a '*credit rating agency*' responsibility is to evaluate the credit profile of the issuer whose instruments it is '*rating*' and for assessing credit profile, it must exercise due diligence as expected from it and consider all the financial parameters independently and apply independent professional judgment in assessing the '*true*', '*accurate*', '*fair*' and '*appropriate*' credit rating as required under the CRA Regulations. I, therefore agree with observations of examination by SEBI that the Noticee, being a responsible *credit rating agency* registered with SEBI, should have anticipated the mounting credit risks, the stressed balance sheet position of IL&FS and placed the ratings accordingly to alert the market in advance regarding the deteriorating financial profile of the issuer and reject contentions of the Noticee.

58. The Noticee has relied upon the judgment of Hon'ble SAT in the matter of *Brickwork Rating India Limited Vs SEBI in appeal No. 439 of 2018, para 7 and 9* and has contended that the Noticee's conduct cannot be questioned under Regulation 24(7) in view of the said judgement. In this regard I note that, said judgment of Hon'ble SAT is case specific. It is noted that the said judgment has come to be passed in different set of facts and circumstances than present one. In *Brickwork Rating* case, in the facts and circumstance of that case as brought out in para 7 and 9 of the order dated June 03, 2019, it was found that the '*credit rating agency*' in that case exercised *due diligence*. The differentiating factors were that the company in question was continuously in dialogue with the investors of NCDs for reschedulement and same was considered. The facts and circumstances of the instant case are entirely different than those of *Brickwork Rating* case. I further note that in para 8 of the order dated June 03, 2019 the Hon'ble SAT has applied Regulation 24(7) in different context than that of the present one. Hon'ble SAT has not held the interpretation that in all circumstances the regulation should be applied as sought to be contended by the Noticee. In fact, Hon'ble SAT has very clearly held that provisions of Regulation 24(7) *"indicates that CRA is required to exercise due diligence in order <u>to ensure that rating given is fair and appropriate".</u>* The aforesaid findings in this order also find support from this interpretation.

59. 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, while assigning its credit rating to the NCD of IL&FS, failed to exercise proper skill, care and due diligence while discharging its responsibilities as a *credit rating agency* and violated the provisions of Regulation 24(7) and Clauses 4 and 8 of Code of Conduct of the CRAs read with Regulation 13 of CRA Regulations and is liable for penalty under Section 15HB of the SEBI Act.

60. 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 investor/+s 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.*

61. 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 IL&FS is a systematically important Non Deposit Accepting Core Investment Company. It is in the business of raising and holding public funds. The exposure of IL&FS, at the relevant times, was critical to the financial stability as its share in total exposure of banks to NBFC sector was fairly high. There was substantial public interest involved in the affairs of the IL&FS considering its importance for financial stability. Though there is no allegation of any *mala fide* 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. Further, in the peculiar facts and circumstances of this case the default has occurred due to lethargic indifference and needless procrastination and laxity of the Noticee. Considerable reliance of investors and regulators on opinion of *credit rating agencies* as hallmark of creditworthiness of issuer and the rated instruments clearly outweighs any kind of lack of due diligence by the credit rating agencies. The law does not permit any allowance to be made for such lethargic indifference and needless procrastination as found in this case. The brazen failure as found in this case, had clearly defeated the purposes of the Regulations i.e. investor protection and orderly development of the securities markets. 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 default is 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.

62. 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 ₹25,00,000/- (Rupees Twenty-Five Lakh only) on the Noticee *viz.* India Ratings & Research Private 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.

63. 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 .

64. The said confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-IV, 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

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|---|---|---|
| 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) | |

65. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

**Date: December 26, 2019** **Santosh Shukla**

**Place: Mumbai** **Adjudicating Officer**