BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AN/PR/2024-25/31018]

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

In respect of:

Acuite Ratings & Research Limited
PAN: AAJCS3161Q
SEBI Registration No. IN/CRA/006/2011

In the matter of inspection of Acuite Ratings & Research Limited.

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India ('SEBI', in short) conducted inspection of Acuite Ratings & Research Limited ('Acuite' / 'Noticee' / 'CRA'/ 'entity') for the period September 01, 2022 to August 31, 2023 (hereinafter also referred to as 'Inspection period'/ 'IP'). Pursuant to the inspection, findings of the inspection were communicated by SEBI to Acuite vide its letter dated January 25, 2024. Acuite submitted their reply to the observations of SEBI vide their email/letter dated February 09, 2024. Thereafter, SEBI conducted Post Inspection Analysis (PIA) with respect to SEBI findings vis-à-vis the reply of Acuite. SEBI inter alia observed and alleged that the Noticee was in violation of provisions of Regulation 27(1) of SEBI (Credit Rating Agencies) Regulations, 1999 ('CRA Regulations', in short) by rating of securities issued by borrower of promoter of CRA.

2. In view thereof, SEBI had initiated Adjudication Proceedings in respect of the Noticee under Section 15 I of the Securities and Exchange Board of India Act, 1992 ('SEBI Act, 1992', in short), for the alleged violation of

Regulation 27(1) of CRA Regulations by Rating of securities issued by borrower of promoter of CRA.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 of the SEBI Act, 1992 read with Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('Adjudication Rules') the Competent Authority appointed the undersigned as Adjudicating Officer ("***AO***") vide order dated March 26, 2024 to inquire into and adjudge under Section 15HB of the SEBI Act, 1992 for the alleged violation by the Noticee. The said proceedings of appointment were communicated to the undersigned vide Communique dated March 27, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing reference No. *SEBI/HO/EAD/EAD5/P/OW/2024/14883/1* dated April 22, 2024 (**'**SCN**'**) was duly served upon the Noticee in terms of Rule 4(1) of SEBI Adjudication Rules vide digitally signed email dated April 22, 2024 and also through Speed Post Acknowledgment Due (SPAD) inter alia to show cause as to why inquiry should not be held and penalty, if any, be not imposed under Section 15HB of the SEBI Act, 1992 for the alleged violations by the Noticee, as stated.

5. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

'…

*4. **Findings and Observations by SEBI and Alleged Violation thereto in respect of the Noticee:***

*4.1. **Rating of securities issued by borrower of promoter of CRA:***

*In **this** regard, following is inter alia observed and/or alleged by SEBI:*

*4.1.1. Regulation **27**(1) of CRA Regulations reads as follows:*

"…
27. (1) No credit rating agency shall, rate a security issued by an entity, which is;-
(a) a borrower of its promoter; or
(b) a subsidiary of its promoter; or
(c) an associate of its promoter, if
(i) there are common Chairman, Directors between credit rating agency and these entities.
(ii) there are common employees.
(iii) there are common Chairman, Directors, Employees on the rating committee.
…"

4.1.2. SEBI observed that for the purpose of Regulation 27, the definition of promoter has been provided in Regulation 25 of CRA Regulations, which states that a promoter is any person who holds 10% or more of the shares of the Credit Rating Agency. In the instant case, SIDBI holds more than 10% of shareholding in Acuite and hence will be termed as promoter of Acuite.

4.1.3. SEBI vide email dated January 15, 2024 inter alia sought confirmation regarding whether Acuite had rated a security issued by an entity which is inter alia a borrower of its promoter. In this regard, Acuite vide its email dated January 17, 2024 (copy placed as Annexure 2) submitted to SEBI that it assigned ratings to securities of 8 entities which were then borrowers of its promoter (SIDBI). The said 8 entities were as follows:

i. Ambit Finvest Private Limited
ii. Capital India Finance Limited
iii. Finova Capital Private Limited
iv. Inditrade Microfinance Limited
v. Laxmi India Finance Private Limited
vi. Mufin Green Finance Limited
vii. Namra Finance Limited
viii. Protium Finance Limited

4.1.4. Vide letter dated January 25, 2024, SEBI communicated its findings of inspection to Acuite inter alia with respect to Rating of securities issued by borrower of promoter of CRA viz., Actuite had rated the securities of said 8 entities which were borrowers of its promoter (SIDBI) and was in violation of Regulation 27(1) of CRA Regulations.

4.1.5. In its response to the findings of inspection, Acuite vide its email dated February 09, 2024 (copy placed as Annexure 3) inter alia submitted that it had interpreted that the three conditions,
"….if
(i) there are common Chairman, Directors between credit rating agency and these entities.
(ii) there are common employees.
(iii) there are common Chairman, Directors, Employees on the rating committee."
apply to any of the three potential relationships of the rated entity with the promoter-
"…..entity, which is;-
(a) a borrower of its promoter; or
(b) a subsidiary of its promoter; or
(c) an associate of its promoter"

4.1.6. In this regard, SEBI observed that all clauses of sub-regulations (1) of Regulation 27 of CRA Regulations i.e., (a), (b) and (c) are separated by "or". Therefore, CRAs are prohibited from rating securities issued by such entity which fall in any of the three criteria as in the different clauses of sub-regulation (1) of Regulation 27. Further, Clause (c) of Regulation 27(1) further clarifies that restrictions as in Regulation 27(1) is applicable to associates of CRAs promoters, only if either of the three conditions as specified in its sub-clauses are fulfilled. There appears to be no confusion that conditions as in sub-clauses of clause (c) is applicable to only clause (c) and not to clause (a) and (b) of Regulation 27(1) of CRA Regulations. In view of the same, SEBI observed that the interpretation of Regulation 27(1) of CRA Regulations submitted by Acuite may not be accepted.
In view** thereof**, it is alleged that Noticee had violated provisions of Regulation 27(1) of CRA Regulations.

…'

6. Vide email dated April 23, 2024, Noticee acknowledged the receipt of the SCN. Vide email dated May 04, 2024, Noticee sought additional time to file reply to the SCN. Vide email dated May 07, 2024, the Noticee was advised to file reply by May 14, 2024. Vide email and letter dated May 14, 2024, Noticee submitted its reply to the SCN.

7. In the interest of principles of natural justice, vide Hearing Notice dated May 21, 2024, an opportunity of hearing was afforded to the Noticee on May 28, 2024. On the scheduled date of hearing i.e. May 28, 2024, the Noticee availed the opportunity of hearing through its Authorised Representatives (ARs) viz., Mr. Antony Jose; Ms. Chitra Mohan and Mr. Anubhav Agarwal (Authorisation letter dated May 24, 2024). During the hearing, the ARs relied upon and reiterated the submissions made vide Noticee's reply dated May

14, 2024. The ARs sought time till May 29, 2024 to make further submissions, accordingly the same was allowed. Vide email and letter dated June 03, 2024, Noticee filed additional submissions.

8. The key submissions made by Noticee vide emails and letters dated May 14, 2024 and June 03, 2024 as reply and additional submissions to the SCN, respectively, are as under:

Submissions dated May 14, 2024:

'…

1. *We refer to the SCN (a copy of the SCN annexed hereto as Annexure 1) issued by Mr. Amar Navlani, the Adjudicating Officer (hereinafter referred to as the "Adjudicating Officer") to Acuite Ratings & Research Limited (hereinafter referred to as the "Noticee"), with respect to the adjudication proceedings initiated by Securities and Exchange Board of India ("SEBI") under Section 15-I of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") against the Noticee for alleged violation of the provisions of Regulation 27(1) of Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 ("CRA Regulations"). Pursuant to the SCN, the Noticee has been called upon to show cause as to why an inquiry should not be held against the Noticee under the terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("Adjudication Rules") read with Section 15-I of the SEBI Act and why penalty, if any, be not imposed under Section 15HB of SEBI Act for the alleged violation of Regulation 27(1) of the CRA Regulations.*

2. *We acknowledge the receipt of the SCN and express our gratitude for providing an opportunity to present our case. At the outset, we humbly state and reiterate that it is our sincere belief and considered view that we are in compliance with the provisions of Regulation 27(1) of the CRA Regulations. We therefore sincerely deny any violation of Regulation 27(1) of the CRA Regulations by the Noticee, as alleged in the SCN. In this regard, we have set out below in this response to the SCN, our submissions, including the supporting documents and information wherever required, for your kind consideration.*

3. *Interpretation of Regulation 27(1) of the CRA Regulations*

   3.1. *In order to evaluate any violation of Regulation 27(1) of the CRA Regulations by the Noticee, it is foremost necessary to arrive at the correct and most plausible interpretation of the language of Regulation 27(1). This is discussed below in further detail.*

   3.2. *Regulation 27(1) of the CRA Regulations, states as following:*

   "Securities issued by certain entities, connected with a promoter, or rating agency not to be rated

   27. (1) No credit rating agency shall, rate a security issued by an entity, which is;-
   (a) a borrower of its promoter; or
   (b) a subsidiary of its promoter; or
   (c) an associate of its promoter, if
   (i) there are common Chairman, Directors between credit rating agency and these entities.
   (ii) there are common employees.
   (iii) there are common Chairman, Directors, Employees on the rating committee."

   Paragraph 4.1.6. of the SCN states as following:

   "4.1.6 In this regard, SEBI observed that all clauses of sub-regulations (1) of Regulation 27 of CRA Regulations i.e., (a), (b), and (c) are separated by "or". Therefore, CRAs are prohibited from rating securities issued by such entity which fall in any of the three criteria as in the different clauses of sub-regulation (1) of Regulation 27. Further, Clause (c) of Regulation 27(1) further clarifies that restrictions as in Regulation 27(1) is applicable to associates of CRAs promoters, only if either of the three conditions as specified in its sub-clauses are fulfilled. There appears to be no confusion that conditions as in sub-clauses of clause (c) is applicable to only clause (c) and not to clause (a) and (b) of Regulation 27(1) of CRA Regulations. In view of the same, SEBI observed that the interpretation of Regulation 27(1) of the CRA Regulations submitted by Acuite may not be accepted."

   3.3. *It is humbly submitted that the interpretation arrived at by the Adjudicating Officer and SEBI as per paragraph 4.1.6 of the SCN, is incorrect and not legally sustainable. Paragraph 4.1.6 of the SCN has erroneously stated that clause (c) of Regulation 27(1) 'further clarifies' that the restrictions as in Regulation 27(1) is applicable to associates of CRAs promoters, only if either of the three conditions as specified in its sub-clauses (i), (ii) and (iii) are fulfilled and that there appears to be no confusion that the conditions as in sub-clauses of clause (c) is applicable to only clause (c) and not to clause (a) and (b) of Regulation 27(1) of the CRA Regulations. This, in our considered view, is not the correct interpretation of Regulation 27(1) of the CRA Regulations and consequently, the conclusion derived therefrom inferring that the Noticee is in violation of the aforesaid provision of the CRA Regulations is also not correct and tenable.*

   It is submitted that sub-regulation 27(1)(c) does not contain any 'clarification' as stated in the SCN. Furthermore, presence of "or" between sub-regulations (a), (b) and (c) does not negate the interpretation that (i), (ii) and (iii) are applicable to all three sub-regulations (a), (b) and (c). It is also not correct to say that sub-clauses (i), (ii) and (iii) are sub-clauses of sub-regulation (c) only. On the contrary, sub-regulations (i), (ii) and (iii) are provided in continuation to the sub-regulations (a), (b), and (c) as a whole and there is no language to support that there is any express clarification in sub-clause (c) which states (i), (ii) and (iii) are only applicable to (c) and not to (a) and (b).

   3.4. *To appreciate this further, one has to lay emphasis on the construction of Regulation 27(1) and the most plausible interpretation from the reading of the said provision as a whole. Reading from the text of Regulation 27(1), it is clear that sub-regulation (a) and (b) end with a semi-colon followed by "or" and thereafter in sub-regulation (c) ends with a comma followed by "if" and further followed by sub-regulations (i), (ii) and (iii). Now it is important to understand the rationale for using "or" at the end of sub-regulation (a) and (b) of Regulation 27(1). It is well understood that the term "or" is normally disjunctive and "and" is normally conjunctive[1] but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context.[2] In the current context, the usage of "or" makes it clear that each of the sub-regulations (a), (b), and (c) are mutually exclusive, which means that the subject entity can be either a borrower, subsidiary, or an associate of the 'promoter'. This is also evident from the fact that if one were to read "or" as*

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[1] Hyderabad Asbestos Cement Product v. Union of India, JT 1999 (9) SC 505, p. 510: 2000 (1) SCC 426: AIR 2000 SC 314
[2] Ishwar Singh Bindra v. State of U.P., AIR 1968 SC 1450, p. 1454 : (1969) 1 SCR 219; Municipal Corporation of Delhi v. Tek Chand Bhatia, AIR 1980 SC 360, p. 363 : (1980) 1 SCC 158 R. S. Nayak v. A.R. Antulay, (184) 2 SCC 183, pp. 224, 225 : AIR 1984 SC 684

an "and" then the same would effectively mean that the subject entity has to be the borrower, subsidiary, and an associate of the 'promoter' at the same time, which would be absurd and illogical and cannot be the intention of the Legislature. Therefore, the presence of "or" at the end of the sub-regulations (a) and (b) have nothing to do with the applicability of sub-regulations (i), (ii) and (iii) and the same merely makes it apparent that sub-regulations (a), (b) and (c) are mutually exclusive and have to be applied individually to the subject entities and not as a whole.

In this regard, it may also be seen that the sub-regulations (i), (ii) and (iii) end with a period and there is neither "or" nor an "and" at the end of each of such sub-regulations. Speaking generally, if the text of a sub-regulation is ending with a period, one would interpret it to be read as an "and" and therefore to be read as conjunctively amongst each other. However, as explained above, if sub-regulation (i), (ii) and (iii) are to be read conjunctively, the same would again lead to an illogical and absurd result, as the same would imply that the restrictions would apply only when there is a common Chairman, Director between the credit rating agency, and there are common employees, and there are common Chairman, Directors, Employees on the rating committee and the subject entity at the same time. Therefore, sub-regulations (i), (ii) and (iii) are to be again read as being mutually exclusive and have to be applied individually.

3.5. *Considering, that now there is clarity on the interpretation of sub-regulation (a), (b) and (c) on one hand and the sub-regulations (i), (ii) and (iii) on the other hand, as to their reading amongst each other, the question therefore arises as to whether the sub-regulations (i), (ii) and (iii) apply to all the sub-regulations (a), (b) and (c) or to only sub-regulation (c). To answer this question accurately, one would have to read the text of Regulation 27(1) as a whole and also in conjunction with the spirit of the CRA Regulations outlined from other provisions contained thereunder, as well as taking guidance from the other external aids of construction, to arrive at the correct interpretation of Regulation 27(1). These are further discussed below in greater detail.*

3.6. *First and foremost, it is essential to read Regulation 27(1) as a whole and arrive at the most plausible interpretation for the applicability of conditions specified in sub-regulation (i), (ii) and (iii). It may also be worthwhile to test the interpretation arrived through different permutations and combinations and appreciate which of the interpretations is leading to an illogical result and therefore, have to be excluded.*

As per the well-established rules of interpretation, the first and primary rule is the literal rule of interpretation, which essentially implies that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction only, then it would not be open to the courts to adopt any other hypothetical construction. The words used in the material provisions of the statute must be interpreted in their plain and grammatical meaning, and it is only when such words are capable of two constructions, that the question of giving effect to the policy or object of the act can legitimately arise. Unless the law is logically defective and suffers from conceptual and inherent ambiguity, it should be given its literal meaning.[3]

Therefore, it is important to read the text of Regulation 27(1) as well as the words used therein, with respect to the intended meaning of the same. If we read Regulation 27(1) as a whole, it is apparent that sub-regulation (a), (b) and (c) provides the list of entities to which the restriction applies and sub-regulations (i), (ii) and (iii) provides further conditions which are to be satisfied for the applicability of the restrictions placed in Regulation 27(1). Therefore, the borrower, subsidiary and associate of the 'promoter' are different entities to which the restrictions may become applicable. On a further reading of sub-regulation (i) we find that the term "these entities" has been used in the end. Now, if the condition in sub-regulation (i) was only applicable to sub-regulation (c), then the term "these entities" could not have been used therein and the proper term would have been "the said entity" or 'this entity' in singular, being the 'associate' of the 'promoter' of the credit rating agency. Usage of the term 'these entities' in plural in sub-regulation (i) clearly signifies that the condition specified in said sub-regulation (i) is applicable to multiple entities and not just one entity, which would consequently mean that the said condition is also applicable to entities specified in sub-regulation (a) and (b) in addition to the entity specified in sub-regulation (c). As a well-established first and foremost rule of interpretation, the term 'these entities' have to be given its plain and literal meaning as intended by the Legislature and one cannot doubt the usage and the intent behind using such term and give it an alternate meaning. If one were to read the term 'these entities' in any other way, it would give an illogical result which would also be grammatically incorrect. This is the most important consideration for arriving at the correct interpretation of Regulation 27(1) and in our considered view, usage of the term "these entities" gives a clear basis for application of sub-regulation (i), (ii) and (iii) to the entities specified in (a), (b) and (c).

In the case of Priyavarte Mehta v Amrendu Banerjee[4] *the courts have held that:*

"the intention of the legislature is to be gathered from the language of the statute itself. If the language or words are plain, clear, unambiguous and explicit and the meaning of the statute is clear and sensible and admits of only one meaning then no question of construction arises as the provision speaks of itself. However, when the plain meaning results in absurdity, inconsistency or ambiguity or defeats the purpose or object of the provisions, then the rule of interpretation can be applied to find out the intendment or the object of the relevant provision. If two views are possible, one effectuates the purpose or intendment of the provision and the other frustrates it, the former must be preferred. Every effort should be made to have a purposive construction with a view to effectuate the purpose and object of the statutory provision."

In the case of Omprakash v State[5] *the court held as follows:*

"The question was whether the rule about sanction for prosecution as laid down in Section 6 of the Prevention of Corruption Act 1988, was applicable to prosecution of a public servant under Section 409 of the Indian Penal Code 1860. An offence under s 5 (1)(c) of the Prevention of Corruption Act, was almost identical with an offence under Section 409, IPC, with the difference that for a prosecution under Section 5 (1)(c), sanction was necessary by virtue of the provisions of Section 6. The legislature did not choose to include Section 409, IPC, within the ambit of s 6, and the court was held not competent to extend its meaning so as to include Section 409, IPC, which is not there. It was observed: It is a well-recognized principle that a statute should be interpreted according to the plain meaning of the words and should not be given a wider meaning than what the words would actually denote."

Furthermore, in the case of Bansraj v State[6]*, the court held that:*

"The Legislatures intention is relevant only when the language used by it is ambiguous, capable of two interpretations, and the court is required to adopt that interpretation which is in accordance with the legislatures intention. If the language is simple and plain, capable of only one interpretation, the courts duty is to adopt that interpretation and it would not be justified in embarking upon any inquiry into the Legislatures intention. Moreover, even when a court has to ascertain the Legislatures intention, it has to do so from the words used by itself; it cannot speculate about the Legislatures intention or assume it without any data."

In the case of Sambhav Constructions v State of Karnataka[7]*, the court held as follows:*

"The issue before the Karnataka High Court was whether Rule 22 of the Karnataka Transparency in Public Procurements Rules, 2000, contained any prohibition against extending the validity of a tender beyond one extension. The State Financial Corporation Act,1951, set up State Financial Corporations (SFC) to advance medium and long-term credit to industrial concerns. Section 29 of the Act provides for the recovery of the amount without the intervention of the courts. The question was whether this section which allowed the property of a borrower to be confiscated could also be extended to be applicable to the surety, without express statutory provision. The court cited cases in support of the golden rule of interpretation and the rule that it is impermissible to add or subtract words from a statute in the garb of finding out the intention of the legislation."

[3] *N.S Bindra, Amita Dhanda, Interpretation of Statutes, 13th edition*
[4] *(1997) AIHC 4292 (Pat)*
[5] *AIR 1955 All 275*
[6] *AIR 1956 All 27*
[7] *AIR 2005 Ker 326*

We further note that a situation similar to that in the present case arose in the case of Hotel Asoka v. The Commercial Tax Officer-1 Deptt of Comml. Tax[8], the court had to deal with the interpretation of S.7 of the Kerala General Sales Tax Act, 1963. The question that arose for determination was whether the amended provisions of S.7(a) and (b) of the Kerala General Sales Tax Act, 1963 ("KGST Act") could be applied to those dealers who had opted for payment of the turnover tax for the assessment year 2006-07 before the amendment was brought into the statute and whether the dealers are entitled to pay tax at the rate prescribed in clause (a) of section 7 of the KGST Act before its amendment on the purchase of liquor for the assessment year 2006-07. S.7 of the KGST Act reads as follows:

"7. Payment of tax at compounded rates: Notwithstanding anything contained in Sub-section (2) of Section 5, any bar attached hotel, not being a star hotel of and above three star hotel, heritage hotel or club, may, at its option, instead of paying turnover tax on foreign liquor in accordance with the provisions of the said sub-section pay turnover tax on the turnover of foreign liquor calculated:

(a) at one hundred and forty percent of the purchase value of such liquor in the case of those situated within the area of a municipal corporation or a municipal council or a cantonment, and at one hundred and thirty-five percent of the purchase value of such liquor in the case of those situated in any other place; or

(b) at one hundred and fifteen percent of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years, whichever is higher."

The counsel for the appellants argued that:

"Clause (a) of Section 7 is carefully punctuated towards the end of the words in Clause (a) with a semicolon and the word 'or' is employed after the said semicolon and in between Clause (a) and (b) and therefore the legislature wanted these two sub-clauses to be read as disjunctive and not conjunctive. The words "whichever is higher" used at the end of Clause (b) of Section 7 of the KGST Act therefore can control only the situations in Clause (b) of the Section. Therefore, the learned Counsel would submit that the dealer has the option to pay turnover tax at the compounded rate specified in Clause (a) or Clause (b) of Section 7 of the Act, and the contrary view expressed by the Commissioner of Commercial Taxes requires to be set aside by the Court."

The court observed that:

"29. Re-contention No. (iii): In Statutory interpretation by Francis Bennion, it is said, punctuation forms part of an Act, and may be used as a guide to interpretation. Punctuation is generally of little weight, however, since the sense of an Act should be the same with or without punctuation. It is further said, that punctuation is a device not for making meaning, but for making meaning plain, its purpose, as Bouvier said, is to denote the stops that ought to be made in oral reading, and to point out the sense. Drafters are instructed that they should on no account, allow the meaning to turn, on the presence or absence of a punctuation mark. The good drafter consciously drafts every clause with an eye to what its sense would be if all such marks were removed.

30. Crawford in his book on "Statutory construction" says that when a statute is careful by punctuation, there is no doubt as its meaning, weight should undoubtedly be given to punctuation. Punctuation, therefore, certainly has its uses, but tendency of courts is not to allow it to control the plain meaning of a text, this is because the draftsman very often does use punctuation marks properly.

31. The Supreme Court in the case of Aswinikumar Ghose v. Arbinda Bose, has observed, that it need not be denied that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text.

32. The use and purpose of using a 'semi-colon' in a statute is explained by Vepa P. Sarathi in his book Interpretation of Statutes. It is said 'semi-colon' is an important and interesting mark to use. It is stronger than a comma, which is used more for a pause; but the semi-colon does not imply a complete break like the full stop. It only makes a partial break and is at the same time a link between sentences appearing on the subject. It often implies that what follows at least partially explains and amplifies the sentence that comes before it. It is often used instead of a comma when it is followed by "and "or "or" or "but".

…

34. Keeping in view of the well accepted interpretation of 'Punctuation Marks often used in fiscal statute, let us notice the contention canvassed by learned Counsel for the appellants. It is argued that towards the end of the words in Clause (a) of Section 7, a semi-colon and the word "or" is employed after the said semicolon and in between Clauses (a) and (b) and the Legislature wanted these two sub-clauses to be read as disjunctive and not conjunctive. Secondly, the words "whichever is higher" used at the end of Clause (b) of Section 7 of the KGST Act, therefore can control only the situation in Clause (b) of Section 7. Though the argument looks attractive at the first blush, on a deeper consideration, in our view, it has no substance. The amendment was made to Section 7 of the Act, as proposed by the Finance Minister in his Budget Speech for the financial year 2006-2007 was that, the earlier provisions has led to fall in revenue in some cases and therefore, amendment requires to be made to the compounding scheme by adding the stipulation that they may continue to pay turnover tax at the present compounding rate or at 125 cent of the highest of turnover tax paid or payable for any of the previous three years. This is the legislative policy of the State Government. The draftsman while drafting the legislation has ineptly used the semi colon immediately after Clause (a) of Section 7 and then again the word 'or' in between Clause (a) and (b) of Section 7 of the Act. We are aware of the fact that the statement of a Minister cannot be taken for interpreting the provisions of the enactment, but can be looked at to ascertain the mischief sought to be remedied and the object and purpose for which legislation is enacted.

…

36. Sri. Sudha Vasudevan, learned Counsel submits that the draftsman has used semicolon at the end of Clause (a) of Section 7 of the Act and thereby there is break in the sentence and after that the word 'or' is used, which only denotes, the legislature's intention is to give alternatives to the persons who are eligible to make use of the composition scheme either to choose Clause (a) of Section 7 of the Act or in the alternative Clause (b) of Section 7. This submission of the learned Counsel for the appellant is difficult to accept for more than one reason. Firstly, the punctuation marks used in a fiscal legislation need not be given more weight as explained by Apex Court in Arbinda Bose's case and secondly, even if the draftsman has used the semi-colon in between Clauses (a) and (b) of Section 7 of the Act, it would not imply the complete break of sentence and it makes a partial break and at the same time a link between sentences appearing on the same subject.

..."

It can therefore be seen from the above judicial precedent that even though the counsel had argued that considering there is a semi-colon followed by an "or" in sub-section (a) and that the term "whichever is higher" is placed at the end of sub-section (b) preceded by a comma, therefore the term "whichever is higher" cannot be applied to sub-section (a). The court dismissed this argument of the appellants and held that keeping in mind the background of the legislation and reading the same in entirety, the term "whichever is higher' was applicable to both sub-section (a) and (b) and not just sub-section (b). The said issue is quite similar to the present case where as per the SCN, the sub-regulations (i), (ii) and (iii) are sought to be made applicable only to sub-regulation (c). It is hereby submitted that the ruling of the court in the aforesaid case substantiates the argument and interpretation taken by the Noticee where the sub-regulation (i), (ii), and (iii) are argued to be applicable to sub-regulation (a), (b) and (c).

Furthermore, the Court held in the case of Ravi Kumar Sharma vs. Union of India[9] as following:

"13. It, therefore, follows that while marks of punctuation contained in a statute will not generally be wholly ignored by the Court in interpreting a statutory provision, it may not always be safe to rely or punctuation as a deciding factor. The Court is required to give importance to the language used by legislature and if it is found that the word used in the section when read as a whole, clearly furnish a clue to the legislative intent underlying the section and they admit of an interpretation consistent with the said legislative intent, any punctuation work which is inconsistent with such construction will be disregarded and the punctuation will not be allowed to control the plain meaning of the text."

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8 008(1) KLJ419

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Bearing in mind the aforesaid legal principles in mind it is evident that not much turns on the use of punctuation in the clause in question. Even otherwise the Court finds no ambiguity in the clause relating to essential qualifications which may compel it to confer it an interpretation controlled by either the punctuation or language of the clause relating to Experience.

The Court finds itself unable to hold in favour of the petitioner for another reason. The virgule punctuation symbol need not and under all circumstances be read as 'or'. In many situations it may be liable to be viewed as a mere separator between two distinct subjects or in a given situation a denotation for the word 'and' as distinct from 'or'. Ultimately it would depend in the context in which it is used and upon a holistic overview of the entire provision. However, as noted above, in the facts of the present case, the punctuation mark as used in the clause in question neither impacts nor overshadows the clause prescribing the essential qualification."

It may also be noted that in the case of Aakansha Monga vs The Hon'ble High Court Of Delhi & Ors[10], while referring to the case of Bar Association and Another v. Government of NCT of Delhi & Others[11], the court was of the opinion that:

"wherein Entry 11A of List-III inserted by the Constitution (42nd Amendment) Act, 1976 was interpreted and it was observed that inspite of the semi-colon, the said entry has to be read as one complete and comprehensive sentence."

3.7. It is hereby further submitted that to arrive at the correct interpretation of Regulation 27(1), it is extremely crucial to appreciate the spirit of the CRA Regulations, which has been discussed below in further detail.

(a) In this regard, it may be noted that Chapter IV of the CRA Regulations (Regulations 25, 26, 27, and 28), lays down the provisions with respect to "Restrictions on rating of securities issued by 'promoters' or by certain other persons". The definition of the term 'promoter' has been provided in Regulation 25 of CRA Regulations, which states that a 'promoter' is any person who holds 10% or more of the shares of a credit rating agency. Further, the term 'associate' is defined in Regulation 2(1)(b) of the CRA Regulations, which states as under:

"Regulation 2(1)

…

(b) "associate", in relation to a credit rating agency, includes a person–

(i) who, directly or indirectly, by himself, or in combination with relatives, owns or controls shares carrying not less than ten percent of the voting rights of the credit rating agency, or

(ii) in respect of whom the credit rating agency, directly or indirectly, by itself, or in combination with other persons, owns or controls shares carrying not less than ten percent of the voting rights, or

(iii) majority of the directors of which, own or control shares carrying not less than ten percent of the voting rights of the credit rating agency, or

(iv) whose director, officer or employee is also a director, officer or employee of the credit rating agency;

…."

It is further provided in Regulation 25(a) that the term 'associate' for the purposes of Chapter IV of the CRA Regulations, in relation to a promoter, includes a body corporate in which the promoter holds 10% or more of the share capital. Therefore, it is clear from the foregoing that as far as the 'associate' of credit rating agency is concerned, the said term has a wider meaning and scope as compared to 'associate' of the promoter, as per the definition provided in Regulation 25(a).

Let us also review the other Regulations of Chapter IV to take guidance for interpreting Regulation 27(1). Regulation 26 provides a complete restriction on the credit rating agency to rate any securities issued by its 'promoter'. Furthermore, it is provided that in case the 'promoter' is a lending institution, its Chairman, director, or employee shall not be a Chairman, director or employee of credit rating agency or its rating committee. Thereafter, Regulation 27(1) sets out the restrictions on the credit rating agency to rate the securities issued by entities related to the 'promoter', whereas Regulation 27(2) sets out the restrictions on the credit rating agency to rate the securities issued by the entities which are connected to the credit rating agency itself. To further clarify:

(i) Regulation 27(1), as mentioned above, sets out provisions with respect to the restrictions on the credit rating agency to rate a security issued by the entities which are connected to the 'promoter', i.e. borrower, subsidiary and associate of the 'promoter', subject to further conditions as provided in (i), (ii) and (iii).

(ii) Regulation 27(2) provides that no credit rating agency shall rate the securities issued by 'associate' or 'subsidiary' of the credit rating agency, if such entities and credit rating agency or rating committee have common Chairman, director or employees. Provided however that such restriction with respect to the associates of credit rating agency shall not apply if the common director between these entities is an independent director subject to certain other conditions as specified therein.

Considering the above, it is clear that the credit rating agencies are only restricted to rate the securities issued by their own associates and subsidiaries if there are common directors or employees between such entities and the credit rating agency and in case there is no such overlap the credit rating agency shall be allowed to rate the securities by such entities, whereas assuming if one were to agree with the interpretation of Regulation 27(1) as per the SCN issued to the Noticee, it would mean that the condition of common directors or employees would only apply to the associate of the 'promoter' and not to other entities connected with the 'promoter'. As a consequence, this would result in two anomalies: (i) this would mean that the restrictions with respect to the entities connected with 'promoter' are much more stringent as compared to the entities connected with the credit rating agency itself; and (ii) in the case of the credit rating agency, the conditions of common Chairman/directors/employees is applicable to both its 'associates' and its 'subsidiaries' whereas in the case of entities connected with the 'promoter', the conditions would be different for subsidiaries and for the associates of the 'promoter'. In all likelihood, it cannot be the intent of the Legislature to provide more stringent restrictions as regards to the entities which are connected to the 'promoter' as compared to the restrictions placed for the entities which are connected to the credit rating agency itself. Furthermore, it cannot be the intent that the restrictions are same for associates and subsidiaries of credit rating agency whereas they are different for associates and subsidiaries of the 'promoter'. This therefore would also further substantiate that applying the sub-regulations (i), (ii) and (iii) only to sub-regulation (c) would be against the intent of the draftsmen and the spirit of the CRA Regulations.

(b) It is also submitted that blanket restriction on the credit rating agency to rate the securities issued by the borrower of the 'promoter' would not be in spirit of the CRA Regulations, as the promoter does not even have any equity interest or control over the borrower as compared to a subsidiary or an associate of the promoter and therefore the level of influence of the promoter on the borrower would be far lesser as compared to the associate of the promoter. Further, it may be noted that the credit rating agency itself has no connection whatsoever with the borrower of the 'promoter' as compared to its own 'associate' or subsidiary or that of the 'promoter'. It should also be taken into consideration that the 'borrower' and the 'promoter' are not connected in any manner and they would have entered into the bilateral transaction as an independent third parties and such transactions would also be carried out on an arm's length basis. It is also to be noted that the entities which can hold significant stakes in the credit rating agency as a 'promoter' of the credit rating agency, is heavily regulated by SEBI and considering the stringent eligibility criteria to be followed in respect of the same, the 'promoters' of the credit rating agencies are mostly reputable public financial institutions and scheduled commercial banks which are also regulated by other regulators such as Reserve Bank of India or governed under independent legislations under which such institutions are established. Therefore, the loan facilities granted by them to their borrowers are also regulated and subject to strict regulatory norms. This is clear from the very fact that the 'promoter' of the Noticee is Small Industries Development Bank of India ("SIDBI") which is established under the provisions of The Small Industries Development Bank Of India Act, 1989 ("SIDBI Act") as the principal financial institution for the promotion, financing and development of industry in the small-scale sector and to co-ordinate the functions of the institutions engaged in the promotion,

10 W.P.(C) 1848/2014

11 AIR 2003 DELHI 317

financing or developing industry in the small-scale sector and for matters connected therewith or incidental thereto. SIDBI is a reputable public financial institution governed by the provisions of the SIDBI Act and managed by senior public officials of the Central Government. The loan facilities granted by SIDBI would be independently vetted and approved by its management and regardless of whichever credit rating agency is used to rate the securities issued by its borrowers, the loan facilities granted by SIDBI would need to pass through the stringent regulatory norms and governance structures put in place under the provisions of the SIDBI Act. It can be thus inferred that no matter the ratings issued to the borrowers by any credit rating agency, such 'promoters' would only provide loan facilities in compliance of all regulations and on an arms-length basis consistent with the industry practice.

Therefore, just because any entity has obtained a borrowing from the 'promoter' of the credit rating agency, and that would disentitle the credit rating agency to rate its securities or other borrowings, would be a long stretch and far more punitive than reasonable on the credit rating agencies as well as the borrowers of the 'promoter', who in this case would be small and medium enterprises and industries operating in the small-scale sector.

(c) Another aspect to be borne in mind is that assuming though not admitting that the interpretation taken as per the SCN is correct, it would still mean that as per Regulation 27(1) of the CRA Regulations, the credit rating agencies are restricted to the rate the securities issued by entities which are already the 'borrowers' of the 'promoters' of the CRAs. However, there may also be instances where such entities are already rated by the CRA with respect to certain other securities or loan facilities and thereafter subsequently such entities obtain a borrowing from the 'promoters' and become borrowers of the 'promoters' as there may not be any restriction on the 'promoter' to provide loan facilities to such entity as per the regulations applicable to the 'promoter' and the 'borrower' respectively. This would therefore in essence negate the alleged extraneous interpretation of Regulation 27(1) of the CRA Regulations whereby the credit rating agency is restricted to rate the securities issued by such borrowers in the first place. It is therefore submitted that such interpretation of the Regulation 27(1) would become meaningless if the entities which subsequently obtain borrowing from the 'promoter' are already rated by the credit rating agency prior to obtaining such borrowing facilities. Knowing this it is reasonable to assume that the intent of the Regulations cannot be to restrict the CRAs to rate the securities of the entities, which otherwise could in any case become borrowers of the 'promoter' subsequent to being rated by the CRA.

This is also clear in the current situation where 5 (five) of the 8 (eight) entities pointed out by SEBI in the SCN having been rated by the Noticee who are also the borrowers of the 'promoter' of the Noticee, were actually rated before such entities became the borrowers of the 'promoter' of the Noticee and therefore there was no way in which the Noticee could have foreseen that these entities would go ahead and obtain loan facilities from the 'promoter' of the Noticee at the time of rating such entities. It is therefore submitted that from a practical standpoint also, the interpretation of the Regulation 27(1) taken by SEBI under the SCN cannot be effectively implemented considering the aforesaid discussions.

(d) It is further submitted that in case the intent of the Legislature was to provide a blanket restriction on the credit rating agencies to rate the securities issued by the 'borrowers' and 'subsidiaries' of the 'promoter' then the same would have been included in Regulation 26 (1) itself rather than in Regulation 27(1), as Regulation 26(1) already provides blanket restriction on the credit rating agency to rate the securities issued by the 'promoter' so it would have made logical sense to further include the 'borrowers' and 'subsidiaries' of the 'promoter' rather than placing the same in the Regulation 27(1) and not applying the conditions specified in sub-regulations (i), (ii) and (iii) therein. This is also an important and crucial consideration to understand and appreciate the interpretation of Regulation 27(1). The interpretation taken by SEBI as per the SCN, is in effect negating the entire purpose of allowing the financial institutions to be the promoters of credit rating agencies, especially considering adequate safeguards have already been provided under the CRA Regulations and the Master Circular to ensure that concerns pertaining to conflict of interest do not compromise independence of the credit rating agencies and further to provide an unbiased and fair ratings to the issuers, as outlined in further detail in paragraph 5 below.

(e) Therefore, considering the above, it is submitted that in the spirit of the CRA Regulations, conditions of common employees or directors as set out in (i), (ii) and (iii) have to be applied to all entities connected to the 'promoter' set out in (a), (b) and (c) and not just the 'associate' of the 'promoter'.

4. Evolution of CRA Regulations and legislative intent

4.1. It is humbly stated that whenever there is any interpretation issue in any provision of a legislation, one has to also take guidance from the legislative intent and the evolution of the legislation in question. While interpreting a statute, the true intent of the legislature shall have to be gathered and deciphered in its proper spirit having due regard to the language used therein. External aids are relevant only when the language used in the statute is not clear and two meanings are possible. The Supreme Court in various instances has used the aid of parliamentary history in resolving questions of constructions.

In the case of National Insurance Company Ltd v. Swaran Singh & Ors[12], the Court, while interpreting the Motor Vehicles Act, 1939 went into the intent of the parliament. It looked into the legislative history of the Motor Vehicles Act, 1939 to arrive at the interpretation of an amendment under the Motor Vehicles Act, 1939. Furthermore, in the case of Karnataka Small Scale Industries v. Commissioner of Income Tax Bangalore[13], while giving effect to the intent of a provision, the Supreme Court has gone to the extent of considering a finance minister's budget speech while interpreting a provision under the Income Tax Act, 1961,

"15. This construction of Sub-sections (1) and (2Section 115J is in keeping with the (SIC) purpose for which Chapter XII-B was introduced in the Act by the Finance Act, 1987. This was stated by the Finance Minister in his budget speech Reported in 1987 (165) ITR (St.) 14 in the following manner;"

4.2. It is therefore pertinent to review a brief history of the CRA Regulations and discussions in certain important documents connected to the same. The CRA Regulations were originally first notified on July 7, 1999. Before the notification of the CRA Regulations, SEBI had constituted a Committee to look into the draft regulations for Credit Rating Agencies prepared by SEBI internally before they were notified ("SEBI Committee"). As per the 'Report of the Committee on Draft Regulations for Credit Rating Agencies' ("Committee Report") (a copy of which is enclosed as Annexure 2), the Committee discussed:

"2. Rating of Securities of Associates

The Committee discussed the issue of whether the CRAs should be allowed to rate securities issued by their associates in view of the conflict of interest. Two proposals were discussed –

a. Disallowing rating of securities issued by associates
b. If a company / its securities are rated by an associate, then a rating by another CRA has to be compulsorily obtained and both ratings have to be discussed.

The Committee after detailed discussion decided to recommend acceptance of second proposal. The Committee felt that acceptance of first proposal could lead to a situation wherein if a CRA with best reputation and credibility in the market happens to be an associate of a company, the company would be deprived of an opportunity to be rated by that CRA with a consequent loss to the marketability of its issue. In the ultimate analysis, for being in rating business, credibility is the most important thing and a CRA doing biased rating of an associate would lose credibility in the market place."

SEBI had further issued a Press Release on September 29, 1998 ("1998 Press Release") on the Committee Report. A copy of the 1998 Press Release is enclosed as Annexure 3. In the 1998 Press Release, SEBI had inter alia stated as follows:

12 2004 AIR SCW 663
13 (2003)179CTR(SC)

"SEBI constituted a Committee to look into the draft regulations for Credit Rating Agencies (CRAs) prepared by SEBI internally before they are notified.

….

The following recommendations have been made with regard to the regulations for Credit Rating Agencies:

…

3. If a company's securities are rated by an associate, then another rating by another CRA should be compulsorily obtained and disclosure of both ratings should be prescribed."

We have also come across the 72nd Report of the Parliamentary Standing Committee on Finance (2018-19) on the Strengthening of the Credit Rating Framework in the Country (copy of which report is enclosed as Annexure 4) (referred to as the "72nd Report of Standing Committee"). The said report has been divided into 2 parts where Part I contains the review of the extant regulatory framework governing the credit rating agencies and Part II contains the observations / recommendations of the Parliamentary Standing Committee on Finance ("Standing Committee"). Certain important excerpts of the 72nd Report of the Standing Committee, which relate to the present issue, are set out below for reference:

"18. Restriction on CRAs:

a. CRA to not rate securities issued by it or its promoter.
b. CRA to not rate a security issued by its borrower/ subsidiary/ associate or that of its promoter, if there are common Chairman, Directors or employees between the CRA and such entities.
c. No CRA to directly or indirectly, hold 10% or more of shareholding and/ or voting rights in any other CRA or have representation on the Board of any other CRA
d. CRAs to segregate to a separate entity, the activities, other than the activity of rating of financial instruments carried under the respective guidelines of a financial sector regulator or any authority as may be specified by the Board.

C. Provisions in SEBI Regulations and Circulars for Strengthening the Credit Rating Framework:
i. To address Conflict of interest:

- *Prohibition on rating of security issued by its promoter and borrower/ subsidiary/ associate of its promoter, if there are common Chairman, Directors or employees between the CRA and such entities.*
- *If promoter is a lending institution, its Chairman, director or employee shall not be a Chairman, director or employee of CRA or its rating committee.*
- *Not to hold 10% (directly or indirectly) or more of shareholding and/ or voting rights in any other CRA or have representation on the Board of any other CRA.*
- *CRAs shall segregate the activity other than the rating of financial instruments under the respective guidelines of a financial sector regulator or any authority as may be specified by the Board.*
- *A CRA shall not offer fee-based services to the rated entities, beyond credit ratings and research.*
- *A CRA or any of its employees shall not render any investment advice about any security in the publicly accessible media.*
- *A CRA shall formulate the policies and internal codes for dealing with conflict of interest.*
- *A CRA shall ensure:*

a. that its analysts do not participate in any kind of marketing and business development including negotiations of fees with the issuer whose securities are being rated,
b. that the employees involved in the credit rating process and their dependants do not have ownership of the shares of the issuer.
c. prompt review of the credit ratings of the securities as and when any of its employees joins the respective issuer.

- *CRA/ its subsidiaries shall not provide consultancy or advisory services regarding the design of structured finance instrument.*

…

Regarding the pay model followed by CRAs in the country, the Secretary, DEA stated as under:

"There are some models which are very infrequently used where either the investor pays or the regulator pays. But by and large, globally all over the world, it is the issuer who pays. The earlier discussion on this is also relevant in this context because if the rating agencies compete for fees so much, then that may compromise the quality of rating. However, there is no better model or less worse model than the 'issuer pays model' which is there. The SEBI tries to safeguard as much as possible but this is adopted in the country also. There are several restrictions which have been placed on the CRAs so that they avoid the conflict. I will quote some of them. The CRAs cannot issue securities which are issued by itself or by its promoters so these are rated by the agencies which are not in conflict. CRA cannot also rate securities issued by its borrowers or subsidiaries or associate or that of its promoter. If there are common chairman, directors and employees between the CRA and such entities, then that kind of conflict is also avoided."

4.3. Considering the Committee Report and the 1998 Press Release, it can be seen that originally when the CRA Regulations were being formulated, there were only two proposals before the SEBI Committee with respect to the associate companies related to the CRA i.e., (i) the first proposal being a complete bar on the credit rating agencies to rate the securities issued by the associates; and (ii) second if a company / its securities are rated by an associate then a rating by another rating agency has to be compulsorily obtained and both ratings were to be disclosed. It may be noted that there was no reference of any proposal for the restriction on the credit rating agencies to rate the securities issued by the entities connected to its promoter. The SEBI Committee after detailed discussion decided to recommend acceptance of the second proposal. The rationale given by the SEBI Committee appeared to be that acceptance of the first proposal could lead to a situation wherein if a CRA with the best reputation and credibility in the market happens to be an associate of a company, the company would be deprived of an opportunity to be rated by that CRA with a consequent loss to the marketability of its issue. Thereafter, the CRA Regulations were notified which contained restrictions on the credit rating agency to rate the securities issued by the promoter and the entities connected to the 'promoter' as well as to the credit rating agency, subject to the conditions specified therein.

4.4. It may be noted here that between the two proposals initially before the SEBI Committee, the SEBI Committee had also recommended the less restrictive proposal and dismissed the proposal wherein complete bar was being proposed on the rating agency to rate the securities issued by the associates. It can also be seen from the rationale provided by the SEBI Committee that complete bar on the rating agency to rate the securities issued by the associates would lead to a situation wherein the credit rating agencies of the best reputation and credibility in the market would be unable to rate the securities issued by such entities and therefore such entities would be deprived of the opportunity to be rated by such CRAs and this would consequently result in a loss to the marketability of the issue. It is clear from the aforesaid discussion that the SEBI Committee was also not supportive of the view to put complete bar on ratings by the CRAs of entities connected to them and so long as adequate safeguards were put in place, it would be in best interests of market participants that the entities concerned to be able to be rated by CRAs who would have the best reputation and credibility in the market.

4.5. Subsequent to the notification of the CRA Regulations, in the 72nd Report of Standing Committee, the Standing Committee discussed the regulatory framework applicable to the CRAs and provided suggestions on the amendments required therein. It can be very clearly seen from the excerpts of the said Report (reproduced above and emphasis supplied), that to address Conflict of Interest, the CRA Regulations provided a prohibition on rating of security issued by its promoter and borrower/ subsidiary/ associate of its promoter, if there are common Chairman, Directors or employees between the CRA and such entities. The said Report further records the response of the Secretary of Department of Economic Affairs, that the CRAs cannot also rate securities issued by its borrowers or subsidiaries or associate or that of its promoter. If there are common chairman, directors and employees between the CRA and such entities, then that kind of conflict is also avoided.

Therefore, it is clear from the reading of the aforesaid language of the 72nd Report of the Standing Committee, that even the Standing Committee has also taken the interpretation as being argued by the Noticee hereunder, that the prohibition on rating of security by the credit rating agency is applicable on the borrower of the promoter only when there is a common Chairman, Director or employee between the credit rating agency and the borrower of the 'promoter'.

It may be noted in this regard that the Supreme Court of India ("SC") in the landmark case of Kalpana Mehta and Ors. v. Union of India and Ors.[14] has held that:

"Parliamentary Committees are an intrinsic part of the process by which the elected legislature in a democracy exacts accountability on the part of the government. Department-related Parliamentary Standing Committees undertake the meticulous exercise of scrutinizing the implementation of law, including welfare legislation and the performance of the departments of the State….."

"In view of the aforesaid analysis, we answer the referred questions in the following manner:

(i) Parliamentary Standing Committee report can be taken aid of for the purpose of interpretation of a statutory provision wherever it is so necessary and also it can be taken note of as existence of a historical fact."

Furthermore, in numerous other cases, the courts have relied on the reports of the Parliamentary Standing Committee. In the case of Federation of Railway Officers Association and Ors. Vs. Union of India (UOI)[15], while interpreting the Railways Act, 1989 the court referred to a report on the standing committee, in Catering Cleaners of Southern Railway v. Union of India and Anr[16], the court had taken into consideration the report of standing committee and in the judgement of M.C Mehta v Union of India, 2017[17], the courts have again relied on a report of the standing committee of Parliament on petroleum and natural gas.

Based on the precedent set by the Supreme Court of India and supported by various judgments, it is evident that Parliamentary Standing Committee reports holds significance in the legal landscape of India. The Supreme Court has affirmed that these reports play a crucial role in ensuring government accountability and can be utilized for the interpretation of statutory provisions when necessary. Moreover, lower courts have consistently referred to and relied upon these reports in their judgments, indicating their acceptance and relevance in judicial proceedings. Therefore, it can be concluded that parliamentary standing committee reports are valid and reliable sources of information and should also be used herein as an external aid of construction for arriving at the correct interpretation of Regulation 27(1).

5. Reliance on Other Provisions of the CRA Regulations

5.1. It may also be noted that there are several provisions in the CRA Regulations which already comprehensively address the concerns pertaining to conflict of interest between the credit rating agencies and their rated entities. The CRA Regulations further provide a robust framework for providing adequate disclosures by the credit rating agencies while issuing the ratings.

Regulation 13 of the CRA Regulations provides that the credit rating agencies shall abide by the Code of Conduct contained in the Third Schedule of CRA Regulations. Paragraph 10, 16, 18 and 19 of such Code of Conduct provides as following:

"10. A credit rating agency shall, wherever necessary, disclose to the clients, possible sources of conflict of duties and interests, which could impair its ability to make fair, objective and unbiased ratings. Further, it shall ensure that no conflict of interest exists between any member of its rating committee participating in the rating analysis, and that of its client.

…

16. (a) A credit rating agency or any of his employees shall not render, directly or indirectly any investment advice about any security in the publicly accessible media.

(b) A credit rating agency shall not offer fee-based services to the rated entities, beyond credit ratings and research.

…

18. A credit rating agency shall maintain an arm's length relationship between its credit rating activity and any other activity.

19. A credit rating agency shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in the carrying out of their duties within the credit rating agency and as a part of the industry. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholdings and interests, etc. Such a code shall also provide for procedures and guidelines in relation to the establishment and conduct of rating committees and duties of the officers and employees serving on such committees."

Furthermore, the Master Circular for Credit Rating Agencies dated July 03, 2023 ("Master Circular") also contains detailed provisions on managing the conflicts of interest by the credit rating agencies, both internal and external and prescribes several provisions in respect of the same.

It may be noted that SEBI had vide Circular dated November 4, 2019 ("2019 Circular") had modified its earlier guidelines in order to further enhance governance and accountability of the Credit Rating Agencies. The said 2019 Circular inter alia stated:

"1. In partial modification of para 3B of Annexure A of SEBI circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016 regarding MD/CEO being a member of rating committee, it has been decided that:

A. MD/CEO of a CRA shall not be a member of rating committees of the CRA.
B. Rating committees of a CRA shall report to a Chief Ratings Officer (CRO).
C. One third of the board of a CRA shall comprise of independent directors, if the board is chaired by a non-executive director. In case the board of the CRA is chaired by an executive director, half of the board shall comprise of independent directors.
D. The board of a CRA shall constitute the following committees:
(i) Ratings Sub-Committee
(ii) Nomination and Remuneration Committee
E. The Chief Ratings Officer (CRO) shall directly report to the Ratings Sub-Committee of the board of the CRA.
F. The Nomination and Remuneration Committee shall be chaired by an independent director."

Reading from above, it is clear that SEBI had vide 2019 Circular required that the Managing Director and Chief Executive Officer's ("CEO") of the CRA shall not be a member of the rating committees of the CRA and therefore they cannot impact the rating decisions in any manner. In this context, it is humbly submitted that even though such restriction was instituted by SEBI only in November 2019, the Noticee was already following the said guideline at its own accord prior to its inception by SEBI, considering the high corporate governance standards and cautious approach being followed by the Noticee towards managing the conflicts of interest within the organization. Having said that, it may be noted that CRA Regulations have already placed sufficient safeguards for management of conflict of interest, to ensure that the ratings issued by the CRAs are free from any bias and provide an independent and fair view to the public and investors at large.

5.2. Considering the above, it is clear that a robust framework in the CRA Regulations is already in place, to ensure that there are no conflicts of interest between the credit rating agency and the entity whose securities are being rated by the credit rating agency. Furthermore, the credit rating agency has to disclose all potential conflicts of interest to the clients. The scope of restriction that would become applicable to the credit rating agencies taking the interpretation taken by SEBI under the SCN to be correct, would be so significant that it would wipe out a whole class of issuers which could be rated by the credit rating agency, so much so that a significant portion of the revenues of credit rating agencies would cease to be generated and the whole operations of credit rating agency as a going concern may become unviable. This would not only result in undue hardship to the credit rating agencies and but would also be

14 (2017) 7 SCC 307
15 2003 INSC 178
16 (2003) 4 SCC 289
17 SCC Online 394

significantly detrimental to their business prospects and adversely affect the stakeholders at large, considering that credit rating agencies are held by large public financial institutions and also in some cases are listed on nationalized stock exchanges where public hold significant stakes.

It is also submitted that the inability of a credit rating agency to rate such entities where it does not have any direct or indirect interest or any connection, could lead to several potential negative consequences that could have a ripple effect throughout the market. Investors and market participants rely on credit ratings to make informed decisions about investments. If a rating agency is perceived as unable to provide comprehensive ratings due to regulatory restrictions, it may lose its credibility and trust in the market, thus diminishing its brand value. The imposition of such restrictions could instill fear and uncertainty in the market. Investors rely on credit ratings not only to gauge the creditworthiness of individual companies but also to assess broader market conditions and risk factors. If rating agencies face such unreasonable limitations that hinder their ability to provide comprehensive assessments, it could lead to increased uncertainty and volatility in the market as investors would struggle to make informed decisions.

6. *Market Practice and Industry Standards*

6.1. *It may further be submitted that Noticee is not the only credit rating agency which has taken such interpretation of Regulation 27(1) and there are several other reputed credit rating agencies in the market which have also taken the same interpretation as that of the Noticee and therefore just as the Noticee, these credit rating agencies have in the past rated as well as continue to rate the securities issued by the borrowers of their 'promoter' so long as the conditions specified in sub-regulations (i), (ii) and (iii) of Regulation 27(1) are duly met. Enclosed herewith in Annexure 5 are details of certain of such instances in the knowledge of the Noticee, where other credit rating agencies have rated the securities issued by the borrowers of their respective promoters.*

Therefore, it is humbly submitted that the interpretation of Regulation 27(1) taken by the Noticee is also in line with the accepted market practices and industry standards which further proves that the Noticee is not in the alleged violation of Regulation 27(1).

7. *Past view of SEBI consistent with the interpretation taken by Noticee*

7.1. *It is also humbly submitted that SEBI has regularly conducted its inspections on the Noticee in the past and never ever in such inspections, the alleged violation of Regulation 27(1) by the Noticee was pointed out by SEBI and it is indeed surprising that after so many years the alleged violation of Regulation 27(1) by the Noticee has been pointed only now. In this regard, please find enclosed herewith in the Annexure 6, the details of the earlier inspections carried out by SEBI on the Noticee under the provisions of the CRA Regulations.*

It may be noted in this regard that neither Regulation 27(1) has been amended in the CRA Regulations nor there has been any other change which would necessitate change in view of SEBI on the interpretation of Regulation 27(1) as was earlier taken.

In this regard it may be noted that in instances where SEBI has passed conflicting orders, the appellate body, Securities and Appellate Tribunal ("SAT") has specifically pointed out the same. In the case of M/s Krishna Enterprises v. Securities and Exchange Board of India[18], SAT stated that,

> *"Passing conflicting orders would not promote the development of the securities market and would not be in the interests of the securities market. Therefore, by defending the conflicting orders passed by the AOs, SEBI is neither promoting the development of the securities market nor acting in the interests of the securities market."*

7.2. *It may also be noted that although the power of framing rules and regulations lies with SEBI as per Section 30 of the SEBI Act, 1992 ("SEBI Act") read with Section 11 of the SEBI Act. However, the power of interpretation of such regulations does not entirely lie with SEBI. This is also evident from the fact that even though SEBI provides interpretation on the Regulations through informal guidance, the same is merely persuasive and not binding in nature. The Securities and Exchange Board of India (Informal Guidance) Scheme, 2003, clauses 12 and 13 clarify the same and state that,*

> *"12. A no-action letter or an interpretive letter issued by a Department constitutes the view of the Department but will not be binding on the Board, though the Board may generally act in accordance with such a letter."*
>
> *"13. The letter issued by a Department under this scheme should not be construed as a conclusive decision or determination of any question of law or fact by SEBI. Such a letter cannot be construed as an order of the Board under section 15T of the Act and shall not be appealable."*

Furthermore, in the case of Clariant International Ltd and ors v. Securities and Exchange Board of India[19], was of the view that-

> *"The SEBI Act confers a wide jurisdiction upon the Board. Its duties and functions thereunder, run counter to the doctrine of separation of powers. Integration of power by vesting legislative, executive, and judicial powers in the same body, in future, may raise several public law concerns as the principle of control of one body over the other was the central theme underlying the doctrine of separation of powers."*

8. *Final Submissions*

In light of the abovementioned submissions, we are of the considered view and opinion that the Noticee is not in alleged violation of the Regulation 27(1) of the CRA Regulations and therefore we believe that there are no valid grounds on the basis of which an inquiry should be held against us in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act.

We therefore request you to reconsider and reevaluate whether the Noticee is in the alleged violation of Regulation 27(1) of the CRA Regulations. We also request you to allow a personal hearing in the matter at your earliest convenience. We would be happy to provide any further clarifications or information as may be required by you in this matter.

…'

Additional submissions dated June 03, 2024

'…

1. *We refer to the SCN issued by Mr. Amar Navlani, the Adjudicating Officer (hereinafter referred to as the "Adjudicating Officer") to Acuite Ratings & Research Limited (hereinafter referred to as the "Noticee"), with respect to the adjudicating proceedings initiated by the Securities and Exchange Board of India ("SEBI")*

[18] *Misc Application No. 84 of 2015*
[19] *AIR 2004 Supreme Court 4236*

under Section 15-I of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") against the Noticee for alleged violation of the provision of Regulation 27(1) of Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 ("CRA Regulations"). Following the issuance of the SCN, the Noticee had submitted a response to the Adjudicating Officer ("Noticee Response") outlining the submissions and contentions as to why the Noticee is not in violation of Regulation 27(1) of the CRA Regulations as alleged in the SCN. Thereafter, a personal hearing of the authorised representatives of the Noticee was also held with the Adjudicating Officer, on May 28th, 2024 ("Personal Hearing"), where the Noticee was granted time until May 29th, 2024 to make additional submissions, in addition to the submissions made before the Adjudicating Officer vide the Noticee Response and the Personal Hearing. In this connection, we humbly submit that certain additional submissions are required to be made in furtherance of our earlier submissions in the Noticee Response and at the Personal Hearing, which additional submissions in our view would be important for the Adjudicating Officer to take a considered view on the given issue at hand. We humbly request you to condone the delay of 4 days beyond the stipulated deadline of May 29th, 2024 and request you to please admit the additional submissions made herein and take these on record, in addition to the earlier submissions made in the Noticee Response and the Personal Hearing and in support of the contention that the Noticee is not in breach of with CRA Regulations. Upon review of the additional submissions made herein, we are extremely positive that the Adjudicating Officer would be able to appreciate the interpretation of Regulation 27(1) of the CRA Regulations as contended by the Noticee in the Noticee Response and in the Personal Hearing.

2. *We would humbly like to bring to your attention that in addition to the provisions applicable to the Credit Rating Agencies ("CRAs"), Chapter IVA of the CRA Regulations provides provisions that are specifically applicable to a ESG Rating Provider ("ERP"), in addition to the other provisions of the CRA Regulations which are also applicable to the ERP. The said provisions were incorporated in the CRA Regulations vide an amendment notified by SEBI through the Securities and Exchange Board of India (Credit Rating Agencies) Amendment Regulations, 2023 ("Amendment Regulations") and which amendments were effective from 4th July 2023. In this regard, we would like to bring to your notice certain provisions of the said Chapter IVA, in the context of the interpretation of Regulation 27(1) of CRA Regulations as contended by the Noticee in the Noticee Response.*

3. *Regulation 28V(1) in the Chapter IVA of the CRA Regulations sets out the provisions pertaining to 'Entities connected with a promoter or a rating agency not to be rated', extract of which provision is reproduced below for reference:*

   "28V. (1) No ESG rating provider shall, rate an issuer or securities of any issuer, which is a borrower of its promoter or a subsidiary of its promoter or an associate of its promoter, if

   (a) there are any common Chairpersons, or directors between the ESG rating provider and the borrower or the subsidiary or the associate of the promoter; or

   (b) there are common employees between the ESG rating provider and the borrower or the subsidiary or the associate of the promoter."

   Reading from the above, it is clear that the abovementioned Regulation 28V(1) and Regulation 27(1) of the CRA Regulations are based on a common concept of entities which are connected to the 'promoter' which are not be rated by the CRA or the ERP, as the case may be and therefore both provisions are a mirror of each other. It may however be seen that the wording of Regulation 28V(1) of the CRA Regulations unambiguously states that ERPs shall not rate an issuer or securities of an issuer, who are the borrowers of their promoter, only if there are common Chairpersons, or directors or employees between the ERP and the borrower, as detailed in Regulation 28V(1)(a) and (b). It is therefore clear that the drafting of Regulation 28V(1) has been improved as compared to the text of the Regulation 27(1), to unambiguously state the ERP shall only be restricted to the rate borrowers of its 'promoter' only when the conditions specified in the sub-regulation (a) and (b) are satisfied. This is therefore consistent with the interpretation of Regulation 27(1) as contended by the Noticee in the Noticee Response with respect to the entities connected to the 'promoter' of CRA which cannot be rated by the CRA. It is humbly submitted that regulatory regime pertaining to ERP is an extension of basic regulatory requirements as are applicable to the CRAs and the same were therefore incorporated by way of introduction of a separate chapter in the CRA Regulations itself with the other Chapters I, V, VI and VII of the CRA Regulations being applicable to ERP in the same manner as the same are applicable to the CRAs itself. It is therefore clear that the legislative intent cannot be to have a different benchmark as applicable to CRAs and ERP with respect to entities connected to their promoter which cannot be rated by the CRAs and ERP respectively. However, the SEBI's interpretation as per the SCN suggests a blanket restriction on CRAs to rate the borrowers of its 'promoter', restricting them even when the conditions of common employees, director, Chairperson etc. under Regulation 27(1)(i), (ii), and (iii) are not fulfilled. Therefore, considering that the legislation would not have separate intentions for the regulatory requirement for the CRAs and ERPs for rating the entities connected with the promoter, it is untenable to suggest that the CRA would be subject to the aforesaid blanket restriction. Accordingly, it is humbly submitted that taking guidance from the aforesaid submissions it is further clear that the interpretation of Regulation 27(1) as contended by the Noticee is correct. The aforesaid submissions in our view would remove all doubts and confusion for arriving at the most plausible and accurate interpretation of Regulation 27(1) as argued and contended by the Noticee.

> 4. *Therefore, in light of the abovementioned submissions, it is our considered view that the interpretation of Regulation 27(1) of the CRA Regulations as contended by the Noticee is the correct and most plausible interpretation and hence we humbly reiterate that the Noticee is not in alleged violation of Regulation 27(1) of the CRA Regulations. We respectfully submit to the Adjudicating Authority to condone the delay and admit the additional submissions contained herein. In the interest of justice and to preserve significant stakeholder value and orderly functioning of the markets, it is paramount that we arrive at the correct interpretation of Regulation 27(1) of the CRA Regulations. Hence, we earnestly request you to accept these submissions in addition to the earlier submissions made by the Noticee in the Noticee Response and at the Personal Hearing. Kindly let us know if there is any further information or any clarifications required in respect of the above or with respect to the expedient disposal of the proceedings under the SCN and we shall be highly grateful for the same.*
>
> *…'*

D. CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are:

Issue No. I: **Whether the Noticee had violated the provisions of Regulation 27(1) of SEBI (Credit Rating Agencies) Regulations, 1999, as alleged?**

Issue No. II: **If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 15HB of the SEBI Act, 1992?**

Issue No. III: **If yes, what should be the monetary penalty that can be imposed upon the Noticee?**

10. I now proceed to deal with the matter on merits as regards alleged violations in respect of the Noticee, as per the SCN.

Issue No. I: **Whether the Noticee had violated the provisions of Regulation 27(1) of SEBI (Credit Rating Agencies) Regulations, 1999, as alleged?**

11. It was inter alia observed and alleged that Noticee had rated securities issued by borrower of promoter of CRA. In view thereof, it was alleged that Noticee had violated Regulation 27(1) of CRA Regulations.

11.1. In this regard, I note from material available on record that SIDBI held more than 10% of shareholding in Acuite and hence was promoter of Acuite in terms of provisions of Regulation 25 of CRA Regulations. SEBI vide email dated January 15, 2024 inter alia had sought confirmation regarding whether Acuite had rated a security issued by an entity which was inter alia a borrower of its promoter. In this regard, Acuite vide its email dated January 17, 2024 had submitted to SEBI that it assigned ratings to securities of eight entities which were then borrowers of its promoter (SIDBI). The said eight entities were as follows:

i. Ambit Finvest Private Limited
ii. Capital India Finance Limited
iii. Finova Capital Private Limited
iv. Inditrade Microfinance Limited
v. Laxmi India Finance Private Limited
vi. Mufin Green Finance Limited
vii. Namra Finance Limited
viii. Protium Finance Limited

11.2. In this regard, as noted from material available on record, SEBI had inter alia observed that in Regulation 27 of CRA Regulations i.e., (a), (b) and (c) are separated by "or". Therefore, CRAs are prohibited from rating securities issued by such entity which fall in any of the three criteria as in the different clauses of sub-regulation (1) of Regulation 27. Further, Clause (c) of Regulation 27(1) provides that restrictions as in Regulation 27(1) is applicable to associates of CRAs promoters, only if either of the three conditions as specified in its sub-clauses are fulfilled. The conditions as in sub-clauses of clause (c) are applicable to only clause (c) and not to clause (a) and (b) of Regulation 27(1) of CRA Regulations.

11.3. In this regard, Noticee as part of its submissions, broadly speaking, contended that the SEBI's interpretation of Regulation 27(1) of CRA Regulations in this regard, is not correct and tenable. The Noticee contended that the question therefore arises as to whether the sub-regulations (i), (ii) and (iii) apply to all the sub-regulations (a), (b) and (c) or to only sub-regulation (c). In this regard, the key contentions of the Noticee are as follows:

11.3.1. The Noticee contended that *'…If we read Regulation 27(1) as a whole, it is apparent that sub-regulation (a), (b) and (c) provides the list of entities to which the restriction applies and sub-regulations (i), (ii) and (iii) provides further conditions which are to be satisfied for the applicability of the restrictions placed in Regulation 27(1)…On a further reading of sub-regulation (i) we find that the term "<u>these entities</u>" has been used in the end….Usage of the term 'these entities' in plural in sub-regulation (i) clearly signifies that the condition specified in said sub-regulation (i) is applicable to multiple entities and not just one entity, which would consequently mean that the said condition is also applicable to entities specified in sub-regulation (a) and (b) in addition to the entity specified in sub-regulation (c)…'*
In this regard, the Noticee has placed reliance on the following cases: Priyavarte Mehta v Amrendu Banerjee; Omprakash v State; Bansraj v State; Sambhav Constructions v State of Karnataka;Hotel Asoka v. The Commercial Tax Officer-1 Deptt of Comml. Tax; Ravi Kumar Sharma vs. Union of India; Aakansha Monga vs The Hon'ble High Court Of Delhi & Ors; Bar Association and Another v. Government of NCT of Delhi & Others.

11.3.1.1. In this regard, I note that it has not been disputed by Noticee that it had rated the securities issued by the borrower of its promoter (SIDBI) viz., Ambit Finvest Private Limited, Capital India Finance Limited, Finova Capital Private Limited, Inditrade Microfinance Limited, Laxmi India Finance Private Limited, Mufin Green Finance Limited, Namra Finance Limited and Protium Finance Limited, as already brought out in the foregoing.

11.3.1.2. Here it would be pertinent to draw reference to the text of the relevant provisions of the SEBI (Credit Rating Agencies) Regulations, 1999, alleged to have been violated , which inter alia reads as under:

'…

CHAPTER IV
RESTRICTION ON RATING OF SECURITIES ISSUED BY PROMOTERS OR BY CERTAIN OTHER PERSONS
…

Definitions
25. In this Chapter, unless the context otherwise requires;-
…

(b)"promoter" means a person who holds ten percent or more, of the shares of the credit rating agency.

…

27. (1) No credit rating agency shall, rate a security issued by an entity, which is;-
(a) a borrower of its promoter; or
(b) a subsidiary of its promoter; or
(c) an associate of its promoter, if
(i) there are common Chairman, Directors between credit rating agency and these entities.
(ii) there are common employees.
(iii) there are common Chairman, Directors, Employees on the rating committee.
…'

Note: for detailed/ complete /exact text of the provisions, relevant Acts, Circulars etc., may please be referred.

From the plain reading of the provisions in this regard, as brought out above, I note that in terms of Regulation 27(1) of the SEBI (Credit Rating Agencies) Regulations, 1999, credit rating agency shall not rate a security issued by inter alia an entity which is a borrower of its promoter. In this regard, in terms of Regulation 25(b) of CRA Regulations, promoter is defined as a person who holds ten percent or more of the shares of the credit rating agency.

11.3.1.3. Further in this regard, generally speaking, for anything to be interpreted, the best person to interpret is the creator of the same. In this instant case, I note that in terms of section 11(2)(ba) of the SEBI Act, 1992, SEBI has the power to inter alia register and regulate the working of intermediaries including the credit rating agencies. The CRA Regulations were crafted by SEBI in its capacity as the sectoral regulator and the allegations in the instant matter are also levelled by SEBI itself. Generally speaking, being the sectoral regulator, SEBI, holds the primary authority to interpret and enforce its regulations, consistent with its mandate. In this regard, reliance is placed on the judgement of Hon'ble Supreme Court in the matter of Prakash Gupta Vs. SEBI [AIR

2021 SUPREME COURT 3601] whereby while highlighting the role of SEBI and its expertise, the Supreme Court had inter alia observed the following:

> *'…*
> *The provisions of Section 24A must be read in a manner consistent with the object and purpose underlying the position of <u>SEBI as an expert regulator</u>. SEBI, as the regulator, is entrusted with diverse roles and functions including the power to regulate the securities' market, <u>make regulations and to enforce the provisions of the Act</u>. Its functions have been recognized in a panoply of statutory provisions. Independent of initiating a prosecution, SEBI has been entrusted with wide ranging powers and functions including the power to investigate, to issue directions and levy penalties and make cease and desist orders.*
> *90 While the statute has entrusted the powers of compounding offences to SAT or to the Court, as the case may be, before which the proceedings are pending<u>, the view of SEBI as an expert regulator must necessarily be borne in mind by the SAT and the Court</u>, and would be entitled to a degree of deference.*
> *…*
> *The view of SEBI, an envisaged in the FAQs accompanying SEBI's circular dated 20 April 2007, must undoubtedly be sought by the SAT or the Court, to decide on whether an offence should be compounded<u>. For SEBI can provide an expert view on the nature and gravity of the offence and its implication upon the protection of investors and the stability of the securities' market</u>.*
> *…'*

11.3.1.4. Further in this regard, I note that Regulation 27(1) is structured such that sub-clauses (a), (b) and (c) are aligned and placed directly below each other whereas, conditions (i), (ii) and (iii) are placed such that the same are indented and placed below sub-clause (c). I also note that conditions (i), (ii), and (iii) are followed by the word "if", which is mentioned along with Regulation 27(1)(c). In this regard, I also note the sub-clauses (a), (b) and (c) are separated from each other by a semi-colon ';' however, the word 'if' at the end of sub-clause (c) is followed by a comma ',' and the conditions (i), (ii), and (iii) are placed directly under Regulation 27(1)(c).

11.3.1.5. Further, I note that in the context of Regulation 27, the word "these entities" have to be interpreted as limited to associates because sub-clause (c) explicitly refers to associates, and the conditions (i), (ii), and (iii) follow immediately thereafter. The phrase "these entities" refers back to the last subject in the preceding clause (i.e., associates), not the borrowers or subsidiaries covered in earlier sub-clauses.

11.3.1.6. I am of the view that if Noticee's interpretation were to be considered viz., reading conditions under sub-clauses (i), (ii), and (iii) with clauses (a), (b) and (c), then this may be akin to narrowing the application of the scope of provisions given under Regulation 27(1) of CRA Regulation giving leeway for conflict of interest as generally speaking, it may be rare for the borrower of promoter to have common director, chairperson etc. with the credit rating agency and thus the prohibition under Regulation 27(1) (a) would be rarely attracted. In my view, this could not have been the objective of the Regulation and such interpretation may fail to address the conflict of interest as then credit rating agency would continue to rate the securities issued by borrowers of its promoters, where the promoter would have a direct stake in the rating obtained by the borrower (as an issuer of that security).

11.3.1.7. Further in this regard, generally speaking, in my view, borrowers and subsidiaries may have direct financial relationship or control by the promoter, which may lead to a situation of conflict of interest. Whereas, promoter's financial relationship with associates, generally speaking, may be less direct.

11.3.1.8. In any case, I note that there is a mechanism made available by SEBI whereby eligible entities can seek informal guidance from SEBI by way of Interpretive letters under the Securities And Exchange Board Of India (Informal Guidance) Scheme, 2003. In this regard, the Noticee was at liberty to seek guidance under the scheme.

11.3.1.9. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

11.3.2. The Noticee further contended that, *'…if one were to agree with the interpretation of Regulation 27(1) as per the SCN issued to the Noticee, it would mean that the condition of common directors or employees would only* *apply to the associate of the 'promoter' and not to other entities connected with the 'promoter'. As a consequence, this would result in two anomalies: (i) this would mean that the restrictions with respect to the entities connected with 'promoter' are much more stringent as compared to the entities connected with the credit rating agency itself; and (ii) in the case of the credit rating agency, the conditions of common Chairman/directors/employees is applicable to both its 'associates' and its 'subsidiaries' whereas in the case of entities connected with the 'promoter', the conditions would be different for subsidiaries and for the associates of the 'promoter'.*

In this regard, I note that the contentions of the Noticee are out of context as the instant allegation is about Noticee having rated the securities issued by the borrower of its promoter, and not about subsidiary or associates. Therefore, I am of the view that contention about comparing provisions with regard to rating of subsidiary and associates of CRA versus the promoter is devoid of merit and hence not acceptable.

11.3.3. The Noticee further contended that*, '…in the 72nd Report of Standing Committee, the Standing Committee discussed the regulatory framework applicable to the CRAs and provided suggestions on the amendments required therein. It can be very clearly seen from the excerpts of the said Report (reproduced above and emphasis supplied), that to address Conflict of Interest, the CRA Regulations provided a prohibition on rating of security issued by its promoter and borrower/ subsidiary/ associate of its promoter, if there are common Chairman, Directors or employees between the CRA and such entities. The said Report further records the response of the Secretary of Department of Economic Affairs, that the CRAs cannot also rate securities issued by its borrowers or subsidiaries or associate or that of its promoter. If there are common chairman, directors and employees between the CRA and such entities, then that kind of conflict is also avoided….'*
In this regard, Noticee relied upon Kalpana Mehta and Ors. v. Union of India and Ors; Federation of Railway Officers Association and Ors. Vs. Union of India (UOI; Catering Cleaners of Southern Railway v. Union of India and Anr; M.C Mehta v Union of India, 2017

In this regard, I note that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided.

Further in this regard, from prima facie perusal of the report and the excerpts quoted by the Noticee, particularly the text as given below:

*"18. **Restriction on CRAs**:*

a. CRA to not rate securities issued by it or its promoter.
b. <u>CRA to not rate a security issued by its borrower/ subsidiary/ associate or that of its promoter, if there are common Chairman, Directors or employees between the CRA and such entities…"</u>

I note that the 72nd Report of Standing Committee (cited Report) also mentions about rating of the <u>borrower of a CRA</u>, whereas, on perusal of the CRA Regulations, the same could not be located.

Further in this regard, I also note that ,SEBI being the sectoral regulator, the SEBI (Credit Rating Agencies) Regulations, 1999 was made by SEBI in exercise of the powers conferred by section 30 read with section11 of the SEBI Act, 1992.

In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

11.3.4. The Noticee further contended that*, ' …Noticee is not the only credit rating agency which has taken such interpretation of Regulation 27(1) and there are several other reputed credit rating agencies in the market which have also taken the same interpretation as that of the Noticee …SEBI has regularly conducted its inspections on the Noticee in the past and never ever in such inspections, the alleged violation of Regulation 27(1) by the Noticee was pointed out by SEBI.*

In this regard, I note that the contentions of the Noticee are out of context in so far as the instant proceedings are with respect to the rating of the securities, issued by the borrower of the promoter, by the Noticee and not regarding other entities. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

11.3.5. The Noticee further contended that*, '…Regulation 28V(1) and Regulation 27(1) of the CRA Regulations are based on a common concept of entities which are connected to the 'promoter' which are not be rated by the CRA or the ERP, as the case may be and therefore both provisions are a mirror* *of each other…. It is therefore clear that the drafting of Regulation 28V(1) has been improved as compared to the text of the Regulation 27(1), to unambiguously state the ERP shall only be restricted to the rate borrowers of its 'promoter' only when the conditions specified in the sub-regulation (a) and (b) are satisfied. This is therefore consistent with the interpretation of Regulation 27(1) as contended by the Noticee in the Noticee Response with respect to the entities connected to the 'promoter' of CRA which cannot be rated by the CRA.*

In this regard, it would be relevant to refer to the text of the provisions of Regulation 28V(1) of CRA Regulations, which inter alia reads as under:

> *'…*
> *28V.(1) No ESG rating provider shall, rate an issuer or securities of any issuer, which is a borrower of its promoter or a subsidiary of its promoter or an associate of its promoter, if*
> *(a) there are any common Chairpersons, or directors between the ESG rating provider and the borrower or the subsidiary or the associate of the promoter; or*
> *(b) there are common employees between the ESG rating provider and the borrower or the subsidiary or the associate of the promoter.*
> *…'*

From the above text, I note that Noticee's reference to provisions of ESG rating is misplaced in so far as the structure of Regulation 28V(1) clearly indicates that all the conditions given under Regulation 28V(1) (a) and 28V(1) (b) apply to borrowers, subsidiaries and promoters whereas, as already brought out in the foregoing, the structure of Regulation 27(1) of CRA Regulations evidently brings out that the three conditions mentioned therein only applies to the associates of the promoters and not to the borrowers of promoter.

Further, I note that in the conditions mentioned under Regulation 27(1)(c)(iii), the prohibition was also attracted if there were common Chairman, Directors, Employees on the rating committee, however, no such condition is provided under 28V(1), therefore, the contention that both 27(1) and 28V(1) of CRA Regulations are mirror of each other, is misplaced. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence not acceptable.

11.4. In view thereof, I find that the allegation that the Noticee rated securities issued by borrower of promoter of CRA, stands established. Therefore, I hold that Noticee had violated Regulation 27(1) of SEBI (Credit Rating Agencies) Regulations, 1999.

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 15HB of the SEBI Act, 1992?

12. It has been established in the foregoing paragraphs that Noticee had violated Regulation 27(1) of SEBI (Credit Rating Agencies) Regulations, 1999.

13. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia held that:

> *"…In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established....."*

14. Therefore, for the established violation, as brought out in the foregoing paragraphs, I find that the Noticee is liable for monetary penalty under section 15HB of the SEBI Act, 1992 which reads as under:

> *'…*
>
> ***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.*
>
> *…'*

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

15. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors as stipulated in Section 15J of the SEBI Act,1992, which inter alia reads as under: -

<u>SEBI Act, 1992</u>

'…

Factors to be taken into account while adjudging quantum of penalty.

***15J**. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—*

a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b. the amount of loss caused to an investor or group of investors as a result of the default;

c. the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power 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.

….'

Note: for detailed/ complete /exact text of the provisions, relevant Acts, Circulars etc., may please be referred.

16. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investor or group of investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. However, it is important to note that compliance with the provisions of the CRA Regulations, as applicable in this case, was obligatory upon the Noticee, which the Noticee failed to, as dealt with and brought out in the foregoing and which SEBI is duty bound to enforce compliance of. I am of the view that such non-compliance accordingly needs to be dealt with suitable penalty.

E. ORDER

17. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule

5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose the following penalty, as per the table below, on the Noticee, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Noticee Name	Penalty under Section	Penalty Amount (In Rs.)
Acuite Ratings & Research Limited	15HB of the SEBI Act, 1992	Rs.5 ,00,000/- (Rupees Five Lakhs Only)

18. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT > Orders > Orders of AO > PAY NOW

19. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

20. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: NOVEMBER 29, 2024
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER