BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO.: Order/SV/VC/2023-24/29839)

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

In respect of
India Ratings and Research Private Limited
(PAN: AABCD1228K)
(SEBI Regn. No.: IN/CRA/002/1999)

In the matter of India Ratings and Research Private Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) conducted inspection of India Ratings and Research Private Limited (hereinafter referred to as the **'India Ratings'** or **'Ind-Ra'** or **'Noticee'** or **'CRA'**). The Noticee is registered with SEBI as a Credit Rating Agency (Registration no. IN/CRA/002/1999). SEBI and RBI conducted the joint inspection of the Noticee during August 22, 2022 to August 29, 2022 and the period covered under inspection was from August 01, 2021 to June 30, 2022.

2. The findings / observations made during the course of inspection were recorded as inspection report and findings were communicated to the Noticee vide SEBI letter dated December 23, 2022. The Noticee had submitted its comments / explanations on the aforesaid findings / observations of the inspection vide its email dated January 13, 2023 and letter dated February 28, 2023 and subsequent clarifications were provided vide email dated March 02, 2023.

3. Based on the findings of inspection of India Ratings, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed the undersigned as the Adjudicating Officer, vide order dated May 15, 2023, under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act, 1992'**), and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules, 1995'**) read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/29543/2023 dated July 24, 2023 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the Adjudication Rules, 1995 read with Section 15-I of the SEBI Act, 1992, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15HB the SEBI Act, 1992 for the alleged violations. I note that SCN issued to Noticee was duly served upon the Noticee and it was acknowledged by the Noticee.

6. The allegations levelled against the Noticees in the SCN are as follows:

   A. ***<u>Delay in recognition of default done by 'Altico Capital India':</u>***

   I. *"With respect to delay in recognition of default done by 'Altico Capital India' (hereinafter referred to as **'Altico'**), the following was observed during inspection:*

   (i) Altico had defaulted on other NCDs and BLR and accordingly, the India Ratings had downgraded the rating to 'D' since 2019.

(ii) However, for one of the PP-MLDs, with 0 (zero) coupon rate (viz. INE587008030), the redemption date was April 09, 2021 and therefore, India Ratings had downgraded the rating of the said instrument to ‘C’ as payment was not due yet.

(iii) On April 09, 2021, Altico defaulted on its PP-MLDs and did not redeem the PP-MLD on due date, thereby leading to another default action. Accordingly, the rating of such debt in accordance with SEBI guidelines should have been downgraded to ‘D’.

(iv) However, it was observed that the rating was downgraded to ‘D’ by the India Ratings vide press release dated August 30, 2021. (i.e. with significant delay).

II. In response to the above inspection observations, the Noticee has inter alia submitted that ‘delay in meeting the PP-MLDs were not made aware to Ind-Ra. As a result, the rating could not be downgraded on the date of default. The Debenture Trustee feedback received following the redemption date on 09 April, 2021 did not indicate any delays. The feedback received dated 12 April, 2021 from Vistra ITCL, for the ISIN INE587O08030 stated against Interest and Maturity that ‘All payments as per Settlement Agreement dated 02/03/2021 have been made to the debenture holders’. The debenture trustee did not indicate that the payments were delayed, which as per the format of the Debenture Trustee disclosure should have been specified. Subsequent mails from the Debenture Trustee did not have provide updated on this ISIN. The non-payment on time came into light during rating review, following which the rating was downgraded to IND D’.

III. With regard to the Noticee’s submission that “Delay in meeting the PP-MLDs were not made aware to the CRA and as a result, the rating could not be downgraded on the date of default”, it is observed that Altico had requested for material modification in the structure of the NCDs (including the ISIN - INE587O08030) vide notice dated March 03, 2021, which was posted on exchange website on March 04, 2021. Vide the said material modification, Altico inter-alia disclosed the following on the stock exchange:

a) A resolution plan submitted by Ares SSG Capital Management (Singapore) Pte. Ltd. was approved by the lenders including the Debenture Trustee (i.e. Vistra ITCL (India) Limited) acting with the requisite approval from the NCD holders.

b) The said notice also provided a copy of the resolution passed by the Board of Altico, the copy of resolution passed by shareholders and a copy of execution version of the settlement agreement.

c) *The execution version of the aforesaid settlement agreement envisages certain amounts of money to be paid to the creditors as "First Distribution" and "Second Distribution".*

d) *Vide the said agreement, the NCDs in question (viz. ISIN - INE587O08030) were proposed to be paid ₹6,87,17,798 against the Issued amount ₹9,60,00,000 as part of the First Distribution.*

e) *For the purposes of the NCD First Distribution, Altico had fixed Record date, as 5 March 2021.*

f) *An additional amount to be payable to the NCD holders, contingent upon the agreed payment milestones being met as per the terms of the Settlement agreement, as agreed by the Lenders (including the respective debenture trustees) with unanimous consent (NCDs Second Distribution), upon which the NCDs would stand extinguished. The record date for this would be intimated in due course.*

IV. *India Ratings however, did not downgrade the ratings-*

a) *Subsequent to the disclosure of material modification and approval of resolution plan (i.e. material event).*

b) *Subsequent to passing of final date of redemption (material event, default).*

V. *Further, vide disclosure dated June 09, 2021, Altico had submitted that "Board of Directors of Altico had approved a cash distribution on pro rata basis to all the lenders, including the debenture holders, as per the terms of the settlement agreement executed by Altico on March 02, 2021. In accordance with Regulation 50(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the record date was fixed as Friday, June 4, 2021. Pursuant to the above intimation, we would like to further inform you that Altico has made timely payments to the debenture holders bearing ISIN as mentioned above, on June 8, 2021, as per the beneficiary position of the debenture holders as on June 4, 2021."*

VI. *Considering the aforementioned information disclosed on the website of the stock exchange, the Noticee was required to treat such notice as a material event and take appropriate rating action within specified timelines (viz. 7 working days of occurrence of the event as per SEBI circular dated June 30, 2017), however, the aforesaid event* *was not considered as a material event by the Noticee and no rating action was alleged to have been taken in this regard.*

VII. *Moreover, vide email dated March 2, 2023, the Noticee has allegedly admitted that "The stock exchange announcement from Altico on modification in the structure of the NCDs was not located by the analyst at that time and hence the event was not considered as a material event".*

VIII. *With regard to Noticee's submission that "The Debenture Trustee feedback received following the redemption date on 09 April, 2021 did not indicate any delays. The feedback received dated 12 April, 2021 from Vistra ITCL, for the ISIN INE587O08030 stated against Interest and Maturity that 'All payments as per Settlement Agreement dated 02/03/2021 have been made to the debenture holders'", in respect of the aforementioned ISIN, it is observed that the Debenture Trustee (Viz. Vistra ITCL (India) Limited) vide email dated April 12, 2021 furnished to the Noticee that the last status of payment was 'as per Resolution Process Settlement Agreement signed by all Lenders'. However, the Debenture Trustee did not submit to the Noticee that all payments were made on time. Therefore, the Noticee's submissions that "the Debenture Trustee feedback received following the redemption date on 09 April, 2021 did not indicate any delays" do not appear to be correct and it is alleged that rating was downgraded to 'D' by the India Ratings with significant delay.*

IX. *Further, as stated above, the settlement agreement did not envisage payment of entire amount. It is noted that as per India Rating's rating criteria for Distressed Debt Exchanges (DDEs), if a restructuring imposes a material reduction in terms vis-à-vis the original contractual terms; and is conducted in order to avoid bankruptcy, similar insolvency or intervention proceedings or a traditional payment default, the said restructuring is treated as a DDE. Further, as per the aforesaid criteria of the India Ratings, "Completion of DDE typically results in the IR being downgraded to 'Default' ('IND D')." In the instant case, Altico applied for restructuring of its debt obligations after default, and the same would have led to a downgrade of the ratings to IND 'D' as per the criteria, however, the Noticee did not downgrade the rating of NCDs of Altico between March 04, 2021 and August 30, 2021 (i.e. a delay of 172 calendar days, calculated from March 12, 2021, after allowing 7 days from the date of material event as per the said circular).*

X. *In view of the above, it is alleged that the Noticee has violated the provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017".*

B. ***<u>Delay in recognition of material event in case of 'Hindustan Cleanenergy Limited':</u>***

I. *"Regarding delay in recognition of material event in case of Hindustan Cleanenergy Limited (hereinafter referred to as* ***'HCEL'****), the following was observed during inspection:*

(i) Vide press release dated January 25, 2021, the India Ratings rated the NCDs of HCEL as 'IND BB (INC)'.

(ii) Subsequently, vide letter dated May 05, 2021, HCEL sought prior approval of BSE for modifying structure of NCDs under Regulation 59 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as ***'SEBI (LODR) Regulations****'). The said disclosure was made on the website of HCEL and the Exchange.*

(iii) However, the India Ratings did not consider the material event and did not review the ratings. No emails between the India Ratings and HCEL in this regard have been submitted.

(iv) It is noted that as per the India Ratings policy on recognition of default, an extension of maturity date is considered as Distressed Debt Exchange (DDE) and leads to HCEL's rating of 'IND D'.

(v) However, despite the announcement on May 05, 2021, the rating of NCDs of HCEL was not downgraded / reviewed.

(vi) Vide press release date March 16, 2022, the CRA downgraded the rating of NCDs of HCEL to 'IND D (INC)' with the following disclosure in the press release:

"The downgrade reflects the extension of maturity date of the outstanding NCDs post the original maturity date as informed to the agency by the company on 14 March 2022. Ind-Ra has treated the rescheduling of the maturity date in line with its Default Recognition Policy."

(vii) In view of the same, the delay in recognition of material event was alleged to be for 308 days, in violation of the said SEBI Circular.

II. *In response to the above inspection observations, the Noticee inter alia submitted the following:*

a) HCEL was non-cooperative with the Noticee.

b) The bond appears to be delisted from the exchanges on April 29, 2021 and the details of the bond were not available on the BSE website. Also, there were no details available on the Indiabond info website.

c) Ind-Ra considered the stock exchange disclosure as one of the reliable sources to monitor listed debt securities, apart from any media alerts that are generated through the media news aggregator. The reason for the same is that all entities with listed securities are expected to comply with listing regulations and submit timely details about debt repayment and other developments. Since these sources did not provide any information and HCEL was also not co-operating, this information was not available with the analytical team.

d) The letter referred to in the observation is dated 05 May, 2021 i.e. after the maturity of the instrument (April 29, 2021) and this was not available on the stock exchange, as the bond was delisted.

e) HCEL shared the mail with Noticee on March 14, 2022 that all interest has been paid but principal repayment date has been extended. Only when the email from HCEL came about the details regarding extension, Ind-Ra became aware of the developments and followed its timeline for recognition of default.

f) Being a listed bond, Ind-Ra checked the BSE website and as the bond was not searchable, Ind-Ra could not ascertain of the events that happened after the due date.

III. *In this regard, BSE submitted that the bonds were delisted on June 16, 2021. Further, the screenshot submitted by Noticee in its response is as of March 15, 2022 i.e. at the time of rating review and not around April 29, 2021. Therefore, the Noticee's submissions that "The bond appears to be delisted from the exchanges on 29 April, 2021 and the details of the bond were not available on the BSE website" and "Being a listed bond, Ind-Ra checked the BSE website and as the bond was not searchable, Ind-Ra could not ascertain of the events that happened after the due date. Relevant screen shot has been attached in the note." do not appear to be correct.*

IV. *Further, the aforesaid disclosure document from HCEL dated May 05, 2021 seeking prior approval for modifying structure of NCDs under Regulation 59 of SEBI (LODR) Regulations was also uploaded on the website of HCEL at the following URL wherefrom it was accessed by the inspection team during the inspection: https://www.hindustancleanenergy.com/download.html and https://www.hindustancleanenergy.com/pdfs/Regulation-59-new.zip. Therefore, the Noticee submission that it considers stock exchange disclosure and media alerts as reliable, and that "Since these sources did not provide any information and the issuer was also not co-operating, this information was not available with the analytical team" do not appear to be correct.*

V. *In view of the above, it is alleged that Noticee did not check the relevant sources of data i.e. BSE website and HCEL's website, and did not consider and review the material event as well as default by HCEL within the timelines specified under SEBI Circular dated June 30, 2017. Noticee did not downgrade the rating of NCDs of HCEL between May 05, 2021 and March 16, 2022 (i.e. a delay of 308 calendar days, calculated from May 13, 2021, after allowing 7 days from the date of material event as per the said SEBI circular). Therefore, it is alleged that the Noticee has violated the provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017".*

7. Vide email dated August 08, 2023, Noticee sought inspection of the relevant material relied upon for issuance of the SCN. Therefore, considering request of the Noticee, inspection of documents / records was granted to the Noticee on August 24, 2023.

8. Thereafter, vide e-mail dated August 26, 2023, Noticee requested for 6 weeks' extension to furnish reply to the SCN. Considering the request, extension of 3 weeks from the date of inspection of documents i.e. up to September 14, 2023 was given to Noticee for submission of the reply to the SCN. Further, vide e-mail dated September 06, 2023, Noticee requested for 10 more days' time from September 14, 2023 to submit the response to the SCN on account of the festival of Janamasthmi on 7 September 2023 and G-20 meeting in New Delhi, which was granted to Noticee. Subsequently, Noticee submitted reply to the SCN vide email / letter dated September 24, 2023.

9. In the interest of natural justice, an opportunity of hearing on October 11, 2023 was granted to the Noticee, vide Hearing Notice dated October 05, 2023. However, vide vide e-mail dated October 06, 2023, Noticee requested to reschedule the hearing between 18-20 October, 2023, therefore, the Hearing in the matter was rescheduled on October 18, 2023. Authorized Representatives (ARs) i.e. Mr. Anuj Berry, Ms. Shruti Rajan, Ms. Megha Janakiraman, Mr. Vivek Shah, Mr. Vibhore Yadav and Ms. Arunima Basu from M/s Trilegal attended the hearing on October 18, 2023 at SEBI and reiterated the submissions made by the Noticee vide letter dated September 24, 2023. ARs further stated to made the additional short submissions in the matter. Thereafter, Noticee made the additional submissions in the matter vide e-mail dated October 28, 2023.

10. The key submissions made by Noticee vide letter dated September 24, 2023 and e-mail dated October 28, 2023 are as under:

"RESPONSES TO ALLEGATIONS RE RATING OF ALTICO:

Re alleged delay in recognition of default by Altico:

I. *At the outset, it is humbly submitted that the allegation that the Noticee violated the SEBI 2017 Circular as there was 'delay' in recognition of the 'default' done by Altico is misconceived and the following points may be noted in this regard:*

   a. *On 13 September, 2019, when the long-term issuer rating of Altico was downgraded to a default rating, the Noticee downgraded the PP-MLDs to IND PP-MLD C emr rating from IND PP-MLD A+ emr rating. As there had not been any default on the PP-MLDs yet, the Noticee retained the rating of IND PP-MLD C emr instead of IND PP-MLD D emr (i.e. the default rating) with the explicit observation in the RAC that "…Ind-Ra opines that it may be difficult for Altico to service its debt obligations in a timely manner from hereon…".*

   b. *The PP-MLDs were due for redemption on 09 April, 2021. Considering that the PP-MLDs were zero coupon bonds, there was no interest payment that was due and the PP-MLDs were only required to be repaid on the date of their maturity.*

   c. *Neither Altico nor Vistra indicated to the Noticee that the payments on PP-MLDs were delayed or that the payments were defaulted.*

d. *In fact, on 12 April, 2021, Vistra indicated to the Noticee that 'All payments as per Settlement Agreement dated 02/03/2021 have been made to the debenture holders.'*

e. *The Noticee was not aware of any delay/ default on the payment of the PP-MLDs as on 09 April, 2021 or even immediately post that. It may be pertinent to note that should there have been any delay or default in the redemption of the PP-MLDs, as per the format of the debenture trustee disclosure (which is in line with the format prescribed by the SEBI Master Circular No. SEBI/HO/DDHS-PoD1/P/CIR/2023/109 dated 31 March, 2023 issued to debenture trustees ("**SEBI Master Circular**")), Vistra should have specified/ reported under the column heading "Status of Payment (Default / Delayed / Non-Cooperation, No Information etc." that the payments were delayed/ defaulted. However, the disclosure provided by Vistra did not indicate any such information on delay/ default in payment on due date.*

f. *Even post April 2021 (till the time of the periodic/ surveillance review of credit ratings), the Noticee did not receive any information from the issuer or Vistra that the payments on PP-MLDs were delayed or defaulted.*

g. *In fact, the Noticee also duly sent emails to Altico on 30 April, 2021, 31 May, 2021, 30 June, 2021 and 30 July, 2021 seeking the 'no default statement' from Altico as required under the 2017 SEBI Circular. However, Altico did not provide the no default statements for any of these months to the Noticee and the Noticee duly notified on its website that Altico failed to provide the no default statements.*

h. *It is only during the periodic review during mid-2021 that the Noticee became aware that the maturity date for PP-MLDs lapsed and that the PP-MLDs were not fully repaid as on the date of maturity. Upon becoming aware of this, the Noticee downgraded the rating for PP-MLD from IND PP-MLD C emr to IND PP-MLD D emr.*

i. *It may also be pertinent to note that without the knowledge about the delay or default in payment, the Noticee could not have downgraded the rating of Altico for PP-MLDs and in any event, in the RAC for 13 September, 2019, the Noticee did explicitly indicate that "…Ind-Ra opines that it may be difficult for Altico to service its debt obligations in a timely manner from hereon…".*

j. *Therefore, the allegation that there was 'significant delay' in recognition of default done by Altico and the downgrade of the ratings to a default rating is* *misconceived and the Noticee acted in compliance with the requirements under the 2017 SEBI Circular.*

Re alleged delay in recognition of material event:

II. *In the case of Altico, it is also SEBI's case that the Noticee failed to take prompt rating action upon occurrence of the March 2021 event, April 2021 event and the June 2021 event. It is the allegation of SEBI that these events amounted to 'material events' under the SEBI 2017 Circular and the Noticee was required to review the ratings within seven days from the occurrence of such event.*

III. *The Noticee humbly submits that it had conducted reasonable investigation as required under the applicable CRA Regulations and the Rating Process Manual and the 'material events' as alleged by SEBI were not brought to the notice of the Noticee either by the issuer or by the Debenture Trustee, Vistra. Without access to the relevant information, the Noticee could not have become aware of the occurrence of an event or could not have commenced review of any rating action.*

IV. *It may be pertinent to note that the primary source of information for every CRA is the information and documents supplied by the issuer. It is relevant to state that the CRA Regulations recognize the importance and significance of timely and accurate information from the issuer as a critical part of credit rating process and Regulation 14 of the CRA Regulations obliges issuers to provide CRAs with true, adequate and timely information for the purpose of credit rating and to co-operate with CRAs. Besides the issuer, the Noticee also conducted its own diligence, in addition to the information received from the issuer, by seeking to assess such information through other credible sources available to it such as the Debenture Trustee of Altico.*

V. *The Noticee took all necessary steps to ensure that its ratings were as accurate as possible and also regularly monitored the ratings assigned. However, as no information was forthcoming from Vistra or the issuer, it was not until the time of the periodic/ surveillance review, that Altico's non-payment of the PP-MLDs instrument on time came to light. Only once the Noticee became aware of the default/ delay in redemption could the Noticee take requisite action by downgrading the rating of the said instrument to 'IND PP-MLD D emr' from 'IND PP-MLD C emr'. In fact, the conduct of the Noticee, in proactively downgrading the rating of the PP-MLD instrument, despite not being provided with full/ accurate/ timely information by Altico/ Vistra makes it apparent that the Noticee took all reasonable steps necessary to ensure the ratings were accurate* *and that there wasn't any 'delay' or laxity in the manner in which the Noticee conducted its review/ monitored its ratings.*

VI. *Insofar as allegations of SEBI on alleged delay in recognition of 'material events' is concerned, the following points may be noted:*

(a) ***March 2021 event****: It is the allegation of SEBI that in terms of the letter dated 03 March, 2021, Altico updated the BSE that a debt resolution plan was approved by the lenders of Altico including the Debenture Trustee, Vistra and a settlement agreement was executed by them, in terms of which the NCDs redeemable by Altico shall be redeemed only partially/ proportionately as per the debt resolution plan and the PP-MLDs will also be partially redeemed, i.e. INR 6,87,17,798 as against INR 9,60,00,000. SEBI alleged that this was a 'material event' and the Noticee ought to have downgraded the rating of PP-MLDs to default rating. The following points may be noted in this regard:*

i. *At the outset, the information on the debt resolution plan or the settlement agreement or the partial redemption of the PP-MLDs were not shared with the Noticee either by Altico or by the Debenture Trustee, Vistra. It may be relevant to note that as per the terms of engagement between the Noticee and Altico, Altico is required to share with the Noticee all information on any change in the terms of repayment of debt. Further, as per Regulation 8 of the SEBI LODR Regulations, the listed entity/ issuer has an obligation to submit correct and adequate information to credit rating agencies. Additionally, as per the Code of Conduct forming part of the SEBI (Debenture Trustees) Regulations, 1993 ("****SEBI Debenture Trustees Regulations****"), the obligation is also cast on the debenture trustee (Vistra) to "share information available with it regarding client companies, with registered credit rating agencies." In fact, the SEBI Master Circular specifically provides that in pursuance of their obligations under the SEBI Debenture Trustees Regulations, debenture trustees shall share information regarding inter alia "Any change or restructuring of the terms of the issue" with credit rating agencies.*

ii. *In the present case, Altico has not shared any information in March 2021 with the Noticee on the debt resolution plan or the settlement agreement or the partial redemption of the PP-MLDs. Even Vistra did not share any* *information with the Noticee in March 2021 about the debt resolution plan or the settlement agreement or the partial redemption of the PP-MLDs. In the absence of any information on this, the Noticee is completely unaware of the occurrence of these events and consequently has not separately commenced any review action in March 2021.*

iii. Further, the Noticee has standard protocols for monitoring the ratings assigned by it to an issuer and as a part of this, the analysts of the Noticee also keep a track of the corporate announcements made by an issuer on the website of the exchange. Having said that, it is important to appreciate that at the time the March 2021 event occurred, the maturity date of the PP-MLDs was more than a month away (and given that the PP-MLDs were zero coupon bonds, there was no question of any payment date occurring before the maturity date whatsoever) and the Noticee did not have any reason to check the website of the BSE to look for any corporate announcements nor any information from the issuer/ Vistra warranted it to track or monitor the exchange website on a day to day basis..

iv. Separately, it is clarified that the Noticee's email dated 02 March, 2023 ought not to be considered an admission by the Noticee, as is wrongly indicated in the SCN. The Noticee indicated to your good offices that "stock exchange announcement from Altico on modification in the structure of the NCDs was not located by the analyst at that time" (as stated in the email) and the relevant corporate announcement was not or could not be located by the analysts of the Noticee at the relevant time as Altico (as well as Vistra) had failed to provide any intimation to the analyst/ Noticee at the time of making this announcement.

v. As the Noticee was not made aware of these events, the Noticee could not have undertaken review of the ratings.

*(b) **April 2021 event**: It is the allegation of SEBI that Altico 'defaulted' on its payment on 09 April, 2021 and it failed to redeem the PP-MLDs on the said date. Per SEBI this ought to have been treated as a 'material event' by the Noticee and the rating of PP-MLD ought to have been downgraded. The following points may be noted in this regard:*

(i) At the outset, the information on the purported 'default' or the non-redemption of the PP-MLDs on 09 April, 2021 was not shared with the Noticee either by Altico or by the Debenture Trustee, Vistra. This is despite the fact that the SEBI Master Circular specifically that in pursuance of their obligations under the SEBI Debenture Trustees Regulations, debenture trustees shall share information regarding inter alia "Any default committed including the default in payment of interest or redemption of debt or delay in creation of security" with credit rating agencies.

(ii) On 09 April, 2021 itself, i.e. on the due date for redemption, the Noticee reached out to Vistra vide its email dated 09 April, 2021, seeking information on whether there was any instance of delay in payment on the PP-MLDs instrument.

(iii) On 12 April, 2021, the Noticee also reached out to Altico seeking information on whether there was any instance of delay in payment on the PP-MLDs instrument.

(iv) As indicated at paragraph 19 of the Reply, the feedback received from Vistra on 12 April, 2021 (i.e. following the redemption date) did not indicate any delays/ defaults by Altico and to the contrary, it indicated that "…All payments as per Settlement Agreement dated 02/03/2021 have been made to the debenture holders…".

(v) Altico did not provide any response/ information to the Noticee on the delay/ default in redemption. In the absence of any information from Altico or Vistra on the delay/ default in redemption of PP-MLDs on 09 April, 2021, the Noticee could not have undertaken any review of the ratings.

*(c) **June 2021 event**: It is the allegation of SEBI that on 09 June, 2021, Altico disclosed on BSE that its Board of Directors approved the payment of cash on pro rata basis to all lenders including the PP-MLD instrument holders and also made payments to the lenders/ debenture holders on 08 June, 2021. As per SEBI, this disclosure also should have been treated as material event and the Noticee failed to review the ratings immediately post this disclosure. As indicated above, it is the Noticee's position that neither Altico nor Vistra provided any information on the repayment of the debt or delay in payment/ redemption.*

VII. *As stated above, the Noticee had duly sent emails to Altico on 30 April, 2021, 31 May, 2021, 30 June, 2021 and 30 July, 2021 seeking the 'no default statement' from it for the months of April, May, June and July 2021, respectively. However, Altico did not provide the no default statements for any of these months to the Noticee. It is submitted that had Altico provided such no default statements to the Noticee in a timely and fair manner, it would have been able to identify the default by Altico on 09 April, 2021 and take immediate action.*

VIII. *The above facts and circumstances make it abundantly clear that despite Noticee's sincere and pro-active efforts, it was not provided details of the 'defaults' made by Altico. In light of the same, it would be wholly unjust and unwarranted to even allege that the Noticee had violated the provisions of the 2017 SEBI Circular.*

IX. *In view of the above, it is submitted that the Noticee conducted reasonable investigation and has periodically monitored the ratings of Altico. It is submitted that the allegation that there was delay in recognition of default/ material events by the Noticee and that the Noticee violated the SEBI 2017 Circular is misconceived and based on incomplete/ incorrect appreciation of the facts.*

X. *In any event, the Noticee downgraded the PP-MLDs instrument to IND C rating in September 2019 itself and the investors were adequately informed about the risks involved in the PP-MLDs instrument. The following points may be noted in this regard:*

(a) The Noticee had always been diligent and had kept the investors informed about the high risk of default of the PP-MLDs instrument by way of its periodic ratings. It is relevant to note that Altico's rating and its instrument ratings were continuously monitored and downgraded to IND D from 13 September, 2019 (which was also affirmed on 01 September, 2020). In fact, it has been acknowledged by SEBI in paragraph 6(i) of the Notice that "Altico had defaulted on other NCDs and BLR and accordingly, the India Ratings had downgraded the rating to 'D' since 2019". Even the rating of the PP-MLD instrument was downgraded to IND C on 13 September, 2019 itself and by definition IND C rating meant "Securities with this rating are considered to have very high risk of default regarding timely servicing of financial obligations". The Noticee also expressly indicated in its RAC dated 13 September, 2019 that "…it may be difficult for Altico to service its debt obligations in a timely manner from hereon…". Therefore, India Ratings submits that the investors were already aware of the risks of dealing in the PP-MLDs.

(b) *Further, in the case of the PP-MLDs issued by Altico, the Noticee is given to understand that Nippon India AIF Trust, being a sophisticated institutional investor, held majority of the investments and was aware of the risks in dealing in speculative investments. There was likely minimal participation from retail investors (if any) and as such there was likely minimal risk to retail investors on account of the alleged delay in updating the credit ratings.*

(c) *As is evident from the above facts, India Ratings had consistently been rating both Altico and the PP-MLDs issued by it and had even downgraded its ratings on several occasions basis certain key driving factors which had remained largely similar over the years i.e. poor liquidity indicators, high sectoral concentration and exposures to its asset quality. Therefore, the modification of the structure of the PP-MLDs (that had already been downgraded to IND C) did not constitute a significant change in the outlook and consequently any delay in updating the ratings basis such modification would not in any way have been a surprise or unexpected event for the investors or any other stakeholders (who were already aware that the PP-MLDs were facing "very high risk of default regarding timely servicing of financial obligations").*

(d) *Further, as discovered by the Noticee subsequently, it is also important to note that Altico had executed a settlement agreement in March 2021 itself as part of a settlement process and the settlement was unanimously approved by the lenders of Altico, including the Debenture Trustee, that was acting with the requisite approval of the NCD holders. Moreover, it appears that the settlement was approved by the Board of Directors and shareholders of Altico and the investors were well aware of the lender driven resolution process and the settlement agreement itself was executed prior to the redemption date i.e. 09 April, 2021. Thus, investors were aware of modifications with respect to the payment of the PP-MLDs well before the date of redemption.*

(e) *In any event, India Ratings submits that the credit ratings assigned by CRAs do not constitute recommendations to buy, hold or sell any securities and instead, they are opinions, meant to merely serve as an additional input to the investors or subscribers of instruments being rated. The investors are required to make their own independent and objective analysis before arriving at an investment decision and not base their investment decision solely on ratings issued by CRAs. In this regard, Regulation 18 of the CRA Regulations statutorily prescribes that while* *assigning ratings, all CRAs have to mandatorily state that the ratings do not constitute recommendations to buy, hold or sell any securities. Accordingly, each credit rating report published by the Noticee explicitly states that "ratings are not a recommendation or suggestion, directly or indirectly, to you or any other person, to buy, sell, make or hold any investment, loan or security or to undertake any investment strategy with respect to any investment, loan or security or any issuer". In the circumstances, even assuming for the sake of argument that there was a delay there was minimal risk to investors on account of such alleged delay.*

XI. *In view of the above, it is submitted that the Noticee had taken reasonable steps to ensure that its ratings were accurate and the investors were well informed and made aware of the risks in the PP-MLDs instrument and the Noticee ought not to be penalised for the failure of Altico or the Debenture Trustee to notify the Noticee of the material events in a time sensitive manner.*

RESPONSES TO ALLEGATIONS RE RATING OF HCEL:

I. *Insofar as the allegations qua delay in recognition of material event insofar as the rating of HCEL is concerned, it is humbly submitted that it is entirely SEBI's case that the Noticee failed to account for a material modification of the structure of the NCDs issued by HCEL and review the ratings in a time bound manner. It is humbly submitted that the allegations made by SEBI are completely misconceived owing to the following reasons:*

a. At the outset, it is humbly submitted that the Noticee acted in a reasonable and diligent manner and the ratings of HCEL have been duly monitored/ reviewed periodically. It may be pertinent to note that HCEL was a Non-Cooperating Issuer since 2017, i.e. nearly from five years prior to the alleged conduct of the Noticee. HCEL refused to cooperate fully despite repeated requests and follow-ups by the Noticee during this entire period. Consequently, the Noticee did not have adequate information to review or accurately update its previously issued ratings for HCEL and the Non-Convertible Debentures. In this regard, all of the Noticee's press releases for HCEL from 2017 onwards carried a disclaimer to the investors which expressly stated "The issuer did not participate in the rating exercise despite continuous requests and follow-ups by the agency. Thus, the rating is *based on the best available information. Therefore, investors and other users are advised to take appropriate caution while using the rating."*

b. *There is an express requirement under the Credit Assessment Agreement between India Ratings and HCEL, for HCEL to cooperate with India Ratings. Clause 7(a) of the Credit Assessment Agreement requires HCEL to "furnish all information as required by India Ratings for assigning the credit assessment". Further, Clauses 7(d) and 7(e) of the Credit Assessment Agreement require HCEL to inform India Ratings of any delay/ default in meeting debt obligations (both principal and interest) and also provide the requisite details in writing. However, HCEL stopped cooperating with the Noticee from 28 June, 2017 and refused to comply with requests for information at the time of surveillance/ periodic review of the credit ratings. Consequently, it was not possible for the Noticee to accurately review and update the ratings.*

c. *Even in the case of modification to the structure of NCDs in May 2021, there was no communication from HCEL to the Noticee regarding the same. Consequently, the Noticee was unaware and therefore unable to review/ update its ratings qua HCEL and the NCDs issued by it.*

d. *In light of the non-cooperation by HCEL, the Noticee's rating analysts also attempted to assess information from publicly available sources. At the relevant time, the Noticee's analysts were unable to find any information on the NCDs through publicly available sources despite their best efforts. The NCDs by HCEL were first issued on 29 April, 2016 with maturity date of 29 April, 2021. However, the NCDs were suspended on 27 April, 2021 and the instrument issued by HCEL was not searchable on the 'search' toolbar on the BSE website. Further, the NCDs appeared to also have been delisted from the exchanges. Consequently, the search for details on the repayment status of the NCDs by the Noticee's analysts did not yield any results. The unavailability of the searchability function for suspended bonds on the BSE website made it impossible for the Noticee to detect any information on the NCDs issued by HCEL including details on the date of maturity/ repayment the NCDs. As an additional step, India Ratings analysts also checked for details of the NCD on the Indiabond Info website (https://www.indiabondinfo.nsdl.com/) during April-May 2021. However, no information on the payment status against the NCDs issued by HCEL were available.*

e. *Further, with a view to identify the status of the NCDs, the Notice attempted to contact the debenture trustee and the debenture holders during January 2021 to March 2022. It is submitted that the Noticee reached out to the Debenture Trustee, Vistra, vide emails dated 13 January, 2021, 04 March, 2022 seeking feedback on whether the interest and servicing of NCDs (ISIN: INE047M07015) had been done by HCEL in a timely manner over the past 1 year and requested information on the repayment schedule for repayment of outstanding principal amount of the NCDs. Vistra did not respond to India Ratings' email request. However, on 03 May, 2021, Vistra issued an email indicating that the maturity date (of the HCEL NCDs) had been extended to 29 May, 2021 with the consent of the debenture holders. It is pertinent to note that Vistra did not at any point expressly alert that HCEL had defaulted/ delayed the repayment of the NCDs as on the date of maturity or immediately thereafter. It is further pertinent that if there have been any delay or default in the date of repayment of the NCDs, as per the format of the debenture trustee disclosure (which is in line with the format prescribed by the SEBI Master Circular), Vistra should have specified/ reported under the column heading "Status of Payment (Default / Delayed / Non-Cooperation, No Information etc." that the payments were delayed/ defaulted. However, the disclosure provided by Vistra on 03 May, 2021 did not indicate any such information on delay/ default in payment on due date.*

f. *Further, the Noticee also sought to reach out directly to the debenture holders namely, Merrill Lynch International and Ratefin Investments Limited, but it was unable to do so as it did not have the contact information. The above position is evidenced by the minutes of the Rating Committee Meeting dated 25 January, 2021.*

g. *Despite there being no clear communication/ responses from either the issuer or the Debenture Trustee, the Noticee continued to review the ratings of HCEL and the NCDs issued by it on an annual basis. The Noticee continued to review and consistently update ratings of both HCEL and the NCDs issued by it. In fact, the Noticee had even downgraded its ratings for HCEL and the NCDs issued by it from an investment grade rating to a speculative grade rating on 10 January, 2020.*

h. *In these circumstances, the Noticee submits that it in the absence of any information from the issuer or the Debenture Trustee on the delay/ default, it was impossible for the Noticee to take note of the occurrence or announcement of the material event on 05 May, 2021. The Noticee became aware of the event of default on part of servicing the NCDs by HCEL only on receipt of the email dated 14 March, 2022 from HCEL. Immediately after receiving the abovementioned notification, on 16 March, 2022 (i.e. 2 days after being notified) the Noticee acted by downgrading the rating of HCEL and the NCDs issued by it to 'IND D (INC)' and duly complied with its obligations under the 2017 Circular and within two days reviewed its credit assessment.*

II. *It is humbly submitted that the allegation that there is delay in recognition of modification of the structure of NCDs issued by HCEL and that the Noticee fails to take this into account the conduct of HCEL as a non-cooperating issuer and the expectation to continue to maintain the ratings in the case of a non-cooperating issuer amounts to imposition of an onerous and unreasonable duty on a CRA for the following reasons:*

a. *The Noticee humbly submits that in case of non-cooperating issuers, the CRA cannot and ought not to be burdened with the role of an auditor in addition to its responsibilities as CRA. As per the current applicable SEBI guidelines, a CRA cannot withdraw or discontinue surveillance/ monitoring on the 'INC rating' and has to keep the rating active based on the best available information. INC ratings can be withdrawn only when the entity obtains a No-Objection Certificate (NOC) from relevant bankers / investors / debenture trustees or if the debt is full paid-off.*

b. *The Noticee submits that the continued maintenance of an issuer on an INC rating is contrary to the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies ("**IOSCO CRA Code**"). The IOSCO CRA Code issued by the Board of the International Organization for Securities Commission is intended to offer a set of robust, practical measures as a guide to and a framework for CRAs with respect to protecting the integrity of the rating process, ensuring that investors and issuers are treated fairly, and safeguarding confidential material information provided them by issuers. The IOSCO CRA Code specifically states that "A CRA should establish, maintain, document, and enforce a credit rating methodology for each class of entity or obligation for which the CRA issues credit ratings. Each* *credit rating methodology should be rigorous, capable of being applied consistently, and, where possible, <u>result in credit ratings that can be subjected to some form of objective validation based on historical experience.</u>" (Emphasis supplied). The Noticee humbly submits that an INC rating is in violation of the IOSCO CRA Code as it cannot stand the test of objective validation.*

c. *It is submitted that it is often infructuous for CRAs to maintain credit ratings which signify that the issuer is not cooperating with the CRA (i.e. INC Ratings) on an on-going basis. Credit ratings are a qualitative and quantitative assessment of the probability of default on payment of interest and principal on a debt instrument and provide additional input to an investor while making an investment decision. For a large number of debt instruments, it is not possible for CRAs to provide an accurate assessment of the probability of default on a debt instrument without updated information that is only available with the issuer / debenture trustee. In such cases, merely maintaining an INC rating does not reflect a reliable opinion on the credit quality of the entity or the performance of the entity. Additionally, it also does not incorporate a forward-looking component in the rating. In the circumstances, such a rating does not serve the intended purpose of aiding investors / lenders in making investment decisions.*

d. *Further, maintaining credit ratings on debt instruments issued by non-cooperating issuers imposes a significant financial burden on CRAs. An important aspect of the ratings exercise is the interaction with the management of the company, which is not possible in the case of non-cooperating issuers. In such cases, CRAs are forced to incur significant expenses into order to access data on such issuers (which would otherwise be available with the management) from various paid sources. Additionally, there are also significant administrative challenges posed to the CRAs in maintaining such ratings. Specifically considering the volume of non-cooperating issuers, it becomes almost impossible for the CRAs to track material events for non-cooperating issuers if the information is not made available in a standardized and easily searchable format either by the exchanges or the debenture trustees (as in the case of HCEL). In the absence of such information, it is impractical, onerous and more importantly, not feasible for a CRA to navigate through individual websites to identify material events for the thousands of non-cooperating issuers on a day-to-day basis for which ratings have been issued. The issues in paragraph 50(c) and 50(d) have been previously* *highlighted to SEBI in a representation made by the Association of Indian Rating Agencies ("**AIRA**") dated 07 August, 2023. The Representation titled 'Ease of Doing Business – Points Based on Consensus of all CRAs' was issued based on the consensus of all CRAs who are members of the AIRA which inter alia includes India Ratings, Acuite Ratings & Research Limited, CARE Ratings Limited and INFOMERICS Valuation & Rating Private Limited.*

e. *It is respectfully submitted that SEBI completely fails to acknowledge these challenges and makes a bald allegation that there has been delay in recognition of a material event.*

III. *In any event, even assuming for the sake of argument that there was delay in recognition of the material event by the Noticee, there was minimal risk to the investors of the HCEL NCDs for the following reasons:*

a. *The Noticee had consistently reviewed the ratings of HECL and had on 10 January, 2020 downgraded the rating from an investment grade rating (IND BBB -–(INC)/ Negative) to a speculative grade rating (IND BB (NCO)). This rating was also affirmed on 25 January, 2021. In all its press releases, India Ratings had issued appropriate advisories along with its ratings indicating that "…investors and other users are advised to take appropriate caution while using the rating…." as HCEL remained non-cooperative. Therefore, India Ratings submits that the investors were already aware of the risks of dealing in HCEL's NCDs.*

b. *Further, in the case of the NCDs issued by HCEL, the debenture holders were two sophisticated institutional investors i.e., Merrill Lynch International and Ratefin Investments Limited, who were aware of the risks in dealing in speculative investments. There was likely minimal participation from retail investors, if any and as such there was likely minimal risk to retail investors on account of the alleged delay in updating the credit ratings.*

c. *Finally, India Ratings submits that as on the alleged date of material event (i.e. 05 May, 2021), 90% of the NCDs had already been redeemed by HCEL. Out of 8500 NCDs (initially valued at INR 8.5 billion) that were issued by the issuer, only 997 remained outstanding which amounted to a value of INR 52 million. Further, as is evident from the notification under Regulation 50(1) dated 05 May, 2021 (which appears to be uploaded on the HCEL website only on 06 January, 2022),* *the modification had been done with the knowledge and consent of the two debenture holders. Therefore, the investors were aware of the restructuring and had given their consent to the same. In the circumstances, the debenture holder / investors were already aware of the delay in repayment of the NCDs and there was no additional risk accrued to them by virtue of the alleged delay in recognition of the material event.*

d. *As is evident from the above facts, India Ratings had consistently been rating both HCEL and the NCDs issued by it and had even downgraded its ratings on 10 January, 2020 basis certain key driving factors which had remained largely similar over the years i.e., reduction in the NCD amount despite timely repayment of the interest and that the issuer was not cooperating with India Ratings for the purpose of surveillance. Therefore, the modification of the structure of the NCDs that had already been downgraded to a speculative grade rating did not constitute a significant change in the outlook and consequently did not constitute a material event warranting a ratings review.*

e. *In any event, India Ratings submits that the credit ratings assigned by CRAs do not constitute recommendations to buy, hold or sell any securities and instead, they are opinions, meant to merely serve as an additional input to the investors or subscribers of instruments being rated. The investors are required to make their own independent and objective analysis before arriving at an investment decision and not base their investment decision solely on ratings issued by CRAs. In this regard, Regulation 18 of the CRA Regulations statutorily prescribes that while assigning ratings, all CRAs have to mandatorily state that the ratings do not constitute recommendations to buy, hold or sell any securities. Accordingly, each credit rating report published by the Noticee explicitly states that "ratings are not a recommendation or suggestion, directly or indirectly, to you or any other person, to buy, sell, make or hold any investment, loan or security or to undertake any investment strategy with respect to any investment, loan or security or any issuer". In the circumstances, even assuming for the sake of argument that there was a delay there was minimal risk to investors on account of such alleged delay.*

NO CASE MADE OUT FOR IMPOSITION OF MONETARY PENALTY

I. *Without prejudice to the above submissions, it is respectfully submitted that even if SEBI were to hold that the Noticee contravened the 2017 SEBI Circular, no case for* *imposition of any penalty whatsoever is made out against the Noticee and the imposition of any penalty would be totally unjustified, disproportionate, unreasonable and contrary to settled principles of securities law and jurisprudence.*

II. *The Noticee has not made any unfair advantage or disproportionate gain, nor it has caused any loss to any investor for the reasons set out in the previous sections. Furthermore, the Noticee was not previously penalised for a default of 2017 SEBI Circular. Therefore, no case warranting imposition of any penalty under the SEBI Act is made out against the Noticee.*

III. *Separately, the following points may be noted while adjudication of penalty on the Noticee:*

a. Any imposition of penalty basis an incorrect appreciation of the facts would cause irreparable prejudice to such person/ his reputation. It is submitted that and as has been observed by Hon'ble Securities Appellate Tribunal, when there is an allegation which has the propensity to affect the reputation of a market participant, there must be a "convincing preponderance of evidence" for such party to be found guilty and for imposition of penalty. In the present case, it is submitted that there is overarching material on record to indicate that the Noticee has not been provided timely information/ documents by the issuer and the Debenture Trustee. The imposition of penalty on the Noticee for the alleged breach of regulatory obligations by the issuer/ debenture trustee is unreasonable, unfair and causes grave prejudice against the Noticee.

b. There is no material on record to show that the alleged breach had any real-world effects. From the aforementioned submissions, it becomes abundantly clear that the Noticee has not made any unlawful or disproportionate gains or attained any unfair advantage or avoided loss illegally, nor has there been any loss caused to investors, nor is the default repetitive in nature.

c. Mere technical violations ought not to be subjected to punitive adjudication proceedings. The Hon'ble Securities Appellate Tribunal has held that "24. …SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures…". In the present case, assuming without admitting, that there has been violation of the SEBI 2017 Circular, this can only amount to a technical violation distinct from a substantial breach of CRA Regulations capable of having impact on retail *investors, and as such could have been dealt with administrative/ cautionary advice and does not require imposition of any penalty under the SEBI Act."*

Additional submission related to legality of imposition of penalty:

I. *Section 2(1)(h) of the SEBI Act defines the term "regulations" to mean "the regulations made by the Board under this Act;". While the power to make regulations is derived from Section 30 of the SEBI Act, Section 31 requires every rule and every regulation made under the SEBI Act to be placed before each house of parliament as soon as it is made.*

II. *It is well-settled that circulars are only administrative orders or executive actions which cannot be equated to rules or regulations framed pursuant to an express power granted under the statute and which are laid before the parliament. In this regard, reference can be had to decision of the Supreme Court of India in Secretary of State of Karnataka & Ors. v. Umadevi & Ors* ***AIR 2006 SC 1806****. In the above case, the Supreme Court while dealing with an issue of public appointment in service matters, observed as follows:*

"5…It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous in as much as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.".

III. *In light of the above decision, the Noticee submits that the SEBI cannot by way of such circulars alter the provisions of a statute or impose additional / fresh obligations that are not mentioned in the SEBI Act or rules and regulations framed pursuant to the SEBI Act. Consequently, the Noticee submits that the violations of such additional obligations imposed by way of circulars cannot form the basis for imposition of penalty under the SEBI Act. The above principle has been recognized by the Hon'ble Delhi High Court in the case of M/s Jindal Steel Limited & Anr. v, Union of India & Ors.,* ***2017 [51] S.T.R. 130 (Del.)****.*

IV. *In Jindal Steel the Delhi High Court inter alia relied on the Supreme Court's decision in the case of Godrej Boyce Mfg. Co Ltd. v. State of Maharashtra **(2009) 5 SCC 24** to state as follows:*

"34. It is trite law that a subordinate legislation has to conform to the parent statute and any subordinate legislation inconsistent to the provisions of the parent statute is liable to be set aside. It is equally well settled that circulars being executive/administrative in character cannot supersede or override the Act and the statutory rules. A division Bench of this Court in decision dated 43-2011 in Federation of Indian Airlines v. Union of India - [W.P.(C) No. 8004/2010] has elaborately discussed the above proposition of law. The relevant extract of the judgment reads as under:…

35. In Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra reported at MANU/SC/0135/2009: (2009) 5 SCC 24, the Apex Court held that circulars are administrative in nature and cannot alter the provisions of a statute nor can they impose additional conditions. Para 64 of the judgment reads as under:

"64. Having regard to the nature of the law the submission advanced on behalf of the municipal authority would lead to palpably unjust and inequitable results. The landowner whose land is designated in the development plan as reserved for any of the purposes enumerated in Section 22 of the Act or for any of the amenities as defined under Section 2(2) of the Act or Regulation 2(7) [sic Regulation 3(7)] of the Regulations is not left with many options and he does not have the same bargaining position as the municipal authority. Therefore, surrender of the land in terms of clause (b) of Section 126(1) of the Act cannot be subjected to any further conditions than those already provided for in the statutory provisions. It is of course open to the legislature to add to the conditions provided for in the statute (or for that matter to do away with certain conditions that might be in existence). But it certainly cannot be left in the hands of the executive to impose conditions in addition to those in the statutes for accepting the offer to surrender the designated land."" (Emphasis supplied)

V. *The Noticee submits that SEBI 2017 Circular despite being in the nature of an administrative order or executive action and not having the binding authority of law imposes inter alia the following additional obligations on CRAs which are not mentioned or required either under the SEBI Act or any regulation framed under the SEBI Act:*

a. Clause 2(A)(III) of SEBI 2017 Circular which states:

"Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee in case of event based review:

Scenario	***Timeline - immediately but not later than***
Intimation from Issuer/ Debenture Trustee/ Bankers of the issuer regarding delay in servicing debt obligation	*2 working days of intimation*
Material Events requiring review (as stated in point 1B)	*7 working days of occurrence of the event.*

VI. *The Noticee submits that the above-mentioned obligation can, at best, be considered as recommendations / guidance / best practices, which are clarificatory in nature. They cannot be considered to be binding obligations and any violation of the additional obligations imposed under the SEBI 2017 Circular cannot form the basis for imposition of a penalty on the Noticee under Section 15-I of the SEBI Act.*

VII. *This is further buttressed by the language of the SEBI 2017 Circular while discussing the reason for the issuance of the SEBI 2017 Circular which states as follows:*

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

VIII. *In the circumstances, Noticee submitted that no penalty ought to be imposed on the Noticee in respect of any alleged delay in updating the credit ratings for either Altico or HCEL.*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:

    I. Whether the Noticee has violated the provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017?

    II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

    III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

12. Before proceeding further, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

    Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017:

    2. Timelines of review and Press Releases:

    A. *In order to enable CRAs to disseminate information on ratings promptly through press releases as per requirements of Regulation 15 and 16 of SEBI (CRA) Regulations, following is clarified:*

    ……………..

    III. Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee in case of event based review:

Scenario	***Timeline - immediately but not later than***
Intimation from Issuer/ Debenture Trustee/ Bankers of the issuer regarding delay in servicing debt obligation	*2 working days of intimation*
Material Events requiring review (as stated in point 1B)	*7 working days of occurrence of the event.*

13. Based on perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case, I record my findings hereunder:

Issue I. Whether the Noticee has violated the provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017?

14. At the outset, I find that there are 2 alleged violations to be established for attracting the provisions stated in issue- I, in the instant matter:
    A. Delay in recognition of default done by 'Altico Capital India', and
    B. Delay in recognition of material event in case of 'Hindustan Cleanenergy Limited'.

A. Delay in recognition of default done by 'Altico Capital India':

15. Noticee assigned the issuer ratings to the Principal protected market linked debentures ('PP-MLDs') issued by Altico. In this regard, it was alleged in the SCN that Altico defaulted on its PP-MLDs (NCDs) on April 09, 2021 and did not redeem the PP-MLD on due date. However, the rating of PP-MLDs was not downgraded within the stipulated time and it was downgraded to 'D' by the India Ratings with significant delay, vide press release dated August 30, 2021. SCN alleged that Noticee did not downgrade the ratings of NCDs on occurrence of the following material events:
    (a) Disclosure related to material modification in the structure of the NCDs on exchange website on March 04, 2021 (hereinafter referred to as **'March 2021 event'**).
    (b) Subsequent to passing of final date of redemption of NCDs i.e. default on April 09, 2021 (hereinafter referred to as **'April 2021 event'**).
    (c) Disclosure on June 09, 2021 on the website of the stock exchange related to approval of resolution plan for repayment of amount of the NCDs (hereinafter referred to as **'June 2021 event'**).

16. In response to above allegation, Noticee submitted that Neither Altico nor Vistra indicated to the Noticee that the payments on PP-MLDs were delayed or that the payments were defaulted and till the time of the periodic/ surveillance review of credit ratings, the Noticee was not aware of any delay/ default on the payment of the PP-MLDs. Noticee stated that only during the periodic review during mid-2021 that the Noticee became aware that the maturity date for PP-MLDs lapsed and that the PP-MLDs were not fully repaid as on the date of maturity. Upon becoming aware of this, the Noticee downgraded the rating for PP-MLD from IND PP-MLD C emr to IND PP-MLD D emr. Noticee further furnished event wise reply for March 2021 event, April 2021 event and June 2021 event.

17. Regarding March 2021 event, Noticee submitted that the debt resolution plan or the settlement agreement or partial redemption of the PP-MLDs were not shared with the Noticee either by Altico or by the Debenture Trustee, Vistra. Noticee further stated that when March 2021 event occurred, the maturity date of the PP-MLDs was more than a month away and the Noticee did not have any reason to check the website of the BSE to look for any corporate announcements nor any information from the issuer/ Vistra warranted it to track or monitor the exchange website on a day to day basis. In this regard, I note that Altico had requested for material modification in the structure of the NCDs (including the ISIN - INE587O08030) vide notice dated March 03, 2021, which was published on the exchange of the website on March 04, 2021. Vide the said material modification, Altico inter-alia disclosed on the stock exchange that a resolution plan submitted by Ares SSG Capital Management (Singapore) Pte. Ltd. was approved by the lenders including the Debenture Trustee (i.e. Vistra ITCL (India) Limited) acting with the requisite approval from the NCD holders. The execution version of the settlement agreement envisages certain amounts of money was to be paid to the creditors as “First Distribution” and “Second Distribution”. Vide the said agreement, the NCDs in question (viz. ISIN - INE587O08030) were proposed to be paid ₹6,87,17,798 against the issued amount ₹9,60,00,000 as part of the First Distribution. For the purposes of the NCD First Distribution, Altico had fixed Record date, as 5 March 2021. An additional amount was to be payable to the NCD holders, contingent upon the agreed payment milestones being met as per the

terms of the Settlement agreement, as agreed by the Lenders (including the respective debenture trustees) with unanimous consent (NCDs Second Distribution), upon which the NCDs would stand extinguished. The record date for this was to be intimated in due course.

18. I consider the Noticee's submission that neither Altico nor Vistra has shared any information in March 2021 with the Noticee on the debt resolution plan or the settlement agreement or the partial redemption of the PP-MLDs, however, I am of the view that the above stated disclosure related to material modification in the structure of the PP-MLDs was published on the website of the exchange on March 04, 2021, and considering the disclosure as a material event, Noticee should have downgraded the rating of PP-MLDs issued by Altico.

19. Regarding Noticee's contention that when March 2021 event occurred, the maturity date of the PP-MLDs was more than a month away and the Noticee did not have any reason to check the website of the BSE to look for any corporate announcements nor any information from the issuer/ Vistra warranted it to track or monitor the exchange website on a day to day basis, I note that Noticee not monitored / checked the website of BSE during March 2021 and even post maturity date of PP-MLDs (during and after April 2021), though the Noticee was not receiving any information about the payment of the PP-MLDs instrument from Altico nor Vistra. When Noticee did not receive any information about the payment of the PP-MLDs instrument from Altico nor Vistra, it must have become more careful and must have monitored BSE website for any possible disclosure, however, Noticee failed to do so. Further, any disclosure on the website of the exchange is considered full public disclosure and Noticee being a registered Credit Rating Agency, who rated the PP-MLDs instruments, must have more diligent and careful in monitoring the information and disclosures. Therefore, such explanations from a registered Credit Rating Agency are not acceptable.

20. Regarding April 2021 event, Noticee submitted that the information on the 'default' or the non-redemption of the PP-MLDs on 09 April, 2021 was not shared with the Noticee either by Altico or by the Debenture Trustee, Vistra. Noticee further

submitted that on 09 April, 2021 and on 12 April, 2021, the Noticee reached out to Vistra for seeking information on whether there was any instance of delay in payment on the PP-MLDs instrument. The feedback received from Vistra on 12 April, 2021 (i.e. following the redemption date) did not indicate any delays/ defaults by Altico and to the contrary, it indicated that *"…All payments as per Settlement Agreement dated 02/03/2021 have been made to the debenture holders…".* In this regard, I find that the Debenture Trustee (Viz. Vistra ITCL (India) Limited) vide email dated April 12, 2021 furnished to the Noticee that the last status of payment was *'as per Resolution Process Settlement Agreement signed by all Lenders',* it clearly indicates that the payments were made as per the Resolution Process Settlement Agreement signed by all Lenders and not that all the payments were made on due date. Further, as the Noticee submitted that Vistra indicated to it that *"…All payments as per Settlement Agreement dated 02/03/2021 have been made to the debenture holders…",* I find that Vistra mentioned that payments were made to debenture holders as per Settlement Agreement dated 02/03/2021, however, Vistra did not confirm that all payments were made on time by Altico. Therefore, I note that Noticee was aware of the fact that payment made to debenture holders was as per the Settlement Agreement dated March 02, 2021, however, Noticee did not exercise its professional judgement and not checked the website of the exchange even after receiving the said information from Vistra, for finding any possible disclosure related to it. Nothing has been placed on record by the Noticee that it had taken any efforts to ask for the details of the Settlement Agreement which was mentioned by Vistra. Therefore, the contentions of the Noticee that the information on the default was not shared with it either by Altico or by Vistra are untenable.

21. Regarding June 2021 event, Noticee submitted that neither Altico nor Vistra provided any information on the repayment of the debt or delay in payment/ redemption. I note that vide disclosure dated June 09, 2021, Altico had submitted that *"Board of Directors of Altico had approved a cash distribution on pro rata basis to all the lenders, including the debenture holders, as per the terms of the settlement agreement executed by Altico on March 02, 2021. In accordance with Regulation 50(1) of the SEBI (Listing Obligations and Disclosure Requirements)*

Regulations, 2015, the record date was fixed as Friday, June 4, 2021. Pursuant to the above intimation, we would like to further inform you that Altico has made timely payments to the debenture holders bearing ISIN as mentioned above, on June 8, 2021, as per the beneficiary position of the debenture holders as on June 4, 2021." I am of the view that Noticee being a Credit Rating Agency is required to keep a track of the disclosures on exchange website related to instruments rated by it. Noticee cannot claim ignorance of the public disclosures on the website of the exchange, specially related to the instruments rated by it, and despite knowing the fact that payment was made to the debenture holders as per the Settlement Agreement. Therefore, considering the aforementioned information disclosed on the website of the stock exchange, the Noticee was required to treat such notice as a material event and take appropriate rating action within specified timelines (viz. 7 working days of occurrence of the event as per SEBI circular dated June 30, 2017), however, June 2021 event was not considered as a material event by the Noticee and no rating action was taken by the Noticee.

22. Noticee further submitted that that it had duly sent emails to Altico on 30 April, 2021, 31 May, 2021, 30 June, 2021 and 30 July, 2021 seeking the 'no default statement' from Altico for the months of April, May, June and July 2021, respectively, however, Altico did not provide the no default statements for any of these months to the Noticee. I consider the submission of Noticee that Altico did not provide the no default statements for the months of April, May, June and July 2021 to the Noticee. However, I note that Noticee was well aware of the fact that full payment to debenture holders was not made on due date (i.e. April 09, 2021) and the payment was made to debenture holders as per Settlement Agreement dated March 02, 2021. Nothing has been placed on record by the Noticee that it had taken any efforts to ask for the details of the Settlement Agreement which was mentioned by Vistra. Further, disclosures related to it were also made by Altico on the website of the exchange on March 04, 2021 and June 09, 2021, therefore, the contention of Noticee that it conducted reasonable investigation and periodical monitored the ratings of PP-MLDs, cannot be accepted.

23. Further, Noticee's other submissions such as it downgraded the rating of PP-MLDs instrument to IND C in September 2019 and the investors were adequately informed about the risks involved in the PP-MLDs instrument and credit ratings assigned by CRAs do not constitute recommendations to buy, hold or sell any securities and instead, they are opinions are irrelevant and unacceptable as Noticee cannot give such excuses for failure in performing its duty. At best it can be mitigating factor while determining the quantum of the penalty.

24. I note that the settlement agreement did not envisage payment of entire amount and as per India Rating's rating criteria for Distressed Debt Exchanges (DDEs), if a restructuring imposes a material reduction in terms vis-à-vis the original contractual terms; and is conducted in order to avoid bankruptcy, similar insolvency or intervention proceedings or a traditional payment default, the said restructuring is treated as a DDE. Further, as per the aforesaid criteria of the India Ratings, *"Completion of DDE typically results in the IR being downgraded to 'Default' ('IND D')."* In the instant case, Altico applied for restructuring of its debt obligations to avoid default, the said restructuring should have been treated as a DDE and it would have led to a downgrade of the ratings to IND 'D' as per the criteria, however, the Noticee did not downgrade the rating of NCDs of Altico between March 04, 2021 and August 30, 2021 (i.e. a delay of 172 calendar days, calculated from March 12, 2021, after allowing 7 days from the date of material event as per the said circular).

25. In view of the above, I hold that the Noticee has violated the provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.

B. Delay in recognition of material event in case of 'Hindustan Cleanenergy Limited':

26. Vide press release dated January 25, 2021, the Noticee rated the NCDs of HCEL as 'IND BB (INC)'. In this regard, it was alleged in the SCN that vide letter dated May 05, 2021, HCEL sought prior approval of BSE for modifying structure of NCDs under Regulation 59 of SEBI (LODR) Regulations. The said disclosure was made

on the website of HCEL and the Exchange. As per the India Ratings policy on recognition of default, an extension of maturity date is considered as Distressed Debt Exchange (DDE) and leads to HCEL's rating of 'IND D'. However, despite the announcement on website of the exchange on May 05, 2021, Noticee did not consider the material event and the rating of NCDs of HCEL was not downgraded. Vide press release date March 16, 2022, Noticee downgraded the rating of NCDs of HCEL to 'IND D (INC)', thus, the alleged delay in recognition of material event was for 308 days, in violation of the SEBI Circular dated June 16, 2021.

27. In response to above allegation, Noticee submitted that the Noticee acted in a reasonable and diligent manner and the ratings of HCEL have been duly monitored/ reviewed periodically. HCEL was a Non-Cooperating Issuer since 2017, consequently, Noticee did not have adequate information to review or accurately update its previously issued ratings for HCEL and the Non-Convertible Debentures. Even in case of modification to the structure of NCDs in May 2021, there was no communication from HCEL to the Noticee regarding the same. Consequently, the Noticee was unaware and therefore unable to review/ update its ratings qua HCEL and the NCDs issued by it. Noticee further submitted that NCDs were suspended on 27 April, 2021 and the instrument issued by HCEL was not searchable on the 'search' toolbar on the BSE website. Further, the NCDs appeared to also have been delisted from the exchanges. Consequently, the search for details on the repayment status of the NCDs by the Noticee's analysts did not yield any results. The unavailability of the searchability function for suspended bonds on the BSE website made it impossible for the Noticee to detect any information on the NCDs issued by HCEL including details on the date of maturity/ repayment the NCDs. As an additional step, India Ratings analysts also checked for details of the NCD on the Indiabond Info website (https://www.indiabondinfo.nsdl.com/) during April-May 2021. However, no information on the payment status against the NCDs issued by HCEL were available.

28. In this regard, I note that vide letter dated May 05, 2021, HCEL sought prior approval of BSE for modifying structure of NCDs under Regulation 59 of SEBI (LODR) Regulations. The said disclosure was made on the website of HCEL and

the Exchange. I find that Noticee's submission that there was no communication from HCEL to the Noticee regarding the modification to the structure of NCDs in May 2021 is not correct as Noticee itself furnished in its reply that on 03 May, 2021, Vistra issued an email indicating that the maturity date (of the HCEL NCDs) had been extended to May 29, 2021 with the consent of the debenture holders. Thus, the extension of maturity date of the NCDs was a clear indication of modification of the structure of NCDs. In this context, I note that as per the India Ratings policy on recognition of default, an extension of maturity date is considered as Distressed Debt Exchange (DDE) and it leads to NCDs rating to 'IND D'. However, Noticee failed to consider the material event and to downgrade the rating of NCDs of HCEL. Therefore, the Noticee's contention that it was unaware and therefore unable to review/ update its ratings qua HCEL and the NCDs issued by it, is untenable.

29. Further, the submission of Noticee w.r.t. disclosure on the website of BSE on May 05, 2021, that NCDs were suspended on 27 April, 2021 and the instrument issued by HCEL was not searchable on the 'search' toolbar on the BSE website and unavailability of the searchability function for suspended bonds on the BSE website made it impossible for the Noticee to detect any information on the NCDs issued by HCEL including details on the date of maturity/ repayment the NCDs, cannot be accepted as the Noticee has not furnished any documentary evidence/ proof in support of its claim. In this regard, BSE submitted that the bonds were delisted on June 16, 2021, therefore, the Noticee's submissions is not correct. I am of the view that Noticee being a Credit Rating Agency is required to monitor and consider the disclosures on website of the exchange w.r.t. instruments rated by it and also on the website of the issuer. Noticee cannot claim unawareness and non-searchability of the public disclosures made on the website of the exchanges.

30. I also note that the aforesaid disclosure document from HCEL dated May 05, 2021 seeking prior approval for modifying structure of NCDs under Regulation 59 of SEBI (LODR) Regulations was also uploaded on the website of HCEL at the following URL https://www.hindustancleanenergy.com/download.html and https://www.hindustancleanenergy.com/pdfs/Regulation-59-new.zip. Therefore, the

contention of the Noticee that it acted in a reasonable and diligent manner and the ratings of HCEL were duly monitored/ reviewed periodically cannot be accepted.

31. Further, other submissions of Noticee viz. it downgraded the rating from an investment grade rating (IND BBB -–(INC)/ Negative) to a speculative grade rating (IND BB (NCO)) on 10 January, 2020, it had issued appropriate advisories along with its ratings and there was minimal risk to the investors of the HCEL NCDs, 90% of the NCDs were already redeemed by HCEL on date of material event (i.e. 05 May, 2021), debenture holders were two sophisticated institutional investors who were aware of the risks in dealing in speculative investments, modification in the structure of the NCDs was done with the knowledge and consent of the debenture holders, NCDs were already downgraded to a speculative grade rating thus modification did not constitute a significant change in the outlook, and credit ratings assigned by CRAs do not constitute recommendations to buy, hold or sell any securities and instead, they are opinions etc. are not acceptable and these justifications can only be considered as mitigating factors while deciding the amount of penalty.

32. With regard to Noticee's submission that issuer was not cooperating, I note that disclosures seeking prior approval for modifying structure of NCDs were already made on the websites of BSE and HCEL as detailed above, therefore, at best it can be considered as a mitigating factor while deciding the amount of penalty.

33. In view of the above, I hold that Noticee did not check the relevant sources of data i.e. BSE website and HCEL's website, and even did not consider the Vistra email dated 03 May, 2021 indicating that the maturity date of the NCDs of HCEL was extended to 29 May, 2021 as per its policy for DDE and did not review the material event within the timelines specified under SEBI Circular dated June 30, 2017. Noticee did not downgrade the rating of NCDs of HCEL between May 05, 2021 and March 16, 2022 (i.e. a delay of 308 calendar days, calculated from May 13, 2021, after allowing 7 days from the date of material event as per the said SEBI circular). Therefore, I hold that Noticee has violated the provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.

Issue II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

34. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee has violated provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.

35. The objective of inspection of any intermediary is to monitor and identify any non-compliances with respect process, procedure and systems prescribed through various provisions of the SEBI Act, 1992 and Regulations made thereunder and Circulars issued from time to time and thereafter, take necessary corrective steps for orderly, fair and transparent conduct of market participants. In the present case, I find that the Noticee had failed to comply with the provisions of Clause 2(A)(III) of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017. I find that the Noticee has failed in performing its duties as a registered Credit Rating Agency and also failed to exercise due diligence, ensure proper care and exercise independent professional judgment to maintain objectivity in the rating process. Infraction of regulatory requirements has been established, hence penalty is attracted.

36. Noticee submitted that mere technical violations ought not to be subjected to punitive adjudication proceedings. The Hon'ble Securities Appellate Tribunal has held that *"24. …SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures…".*

37. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC) which inter-alia has 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

and hence the intention of the parties committing such violation becomes wholly irrelevant...".

38. Noticee's contended that it is well-settled that circulars are only administrative orders or executive actions which cannot be equated to rules or regulations framed pursuant to an express power granted under the statute and which are laid before the parliament. In this regard, Noticee relied upon the judgement of the Hon'ble Supreme Court of India in case of Secretary of State of Karnataka & Ors. v. Umadevi & Ors, Hon'ble Delhi High Court in the case of M/s Jindal Steel Limited & Anr. v, Union of India & Ors., and Supreme Court's decision in the case of Godrej Boyce Mfg. Co Ltd. v. State of Maharashtra and stated that SEBI cannot by way of such circulars alter the provisions of a statute or impose additional / fresh obligations that are not mentioned in the SEBI Act or rules and regulations framed pursuant to the SEBI Act. Consequently, the Noticee submits that the violations of such additional obligations imposed by way of circulars cannot form the basis for imposition of penalty under the SEBI Act.

39. In this regard, I find that the allegation of violations that established in the said cases are different from the allegation of violations that have been established in the present case of the Noticee. Hence, I note that the said cases do not stand on the same footing as the given case of the Noticee. Further, I note that SEBI circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017 does not substitute the statutory rules framed under the authority of law and it is not inconsistent to the provisions of the parent statute, it does not supersede or override or alter any Act and statutory Rules or Regulations, as held in the said cases.

40. With regard to Noticee's submission that SEBI 2017 Circular being in the nature of an administrative order or executive action and not having the binding authority of law impose the additional obligations on CRAs which are not mentioned or required either under the SEBI Act or any regulation framed under the SEBI Act and cannot form the basis for imposition of a penalty on the Noticee under Section 15-I of the SEBI Act, I note that SEBI circular dated June 30, 2017 was issued in exercise of

the powers conferred by Section 11 (1) of SEBI Act, 1992 read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999. The provisions of the Section 11 (1) of SEBI Act, 1992 and Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999 are as under:

Section 11 (1) of SEBI Act, 1992 provides that *"Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit."*

Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999 provides that:
"Compliance with circulars etc., issued by the Board
20. *Every credit rating agency shall comply with such guidelines, directives, circulars and instructions as may be issued by the Board from time to time, on the subject of credit rating."*

41. As Section 11 (1) of the SEBI Act, 1992 gives power to Board to regulate the securities market, by such measures as it thinks fit and Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999 provides that every credit rating agency shall comply with such guidelines, directives, circulars and instructions as may be issued by the Board from time to time, on the subject of credit rating, I hold that the SEBI circular dated June 30, 2017 was issued in exercise of the powers conferred by Section 11 (1) of SEBI Act, 1992 read with the provisions of Regulation 20 of SEBI (Credit Rating Agencies) Regulations, 1999 and hence Noticee was under obligation to comply with the provisions of the SEBI circular dated June 30, 2017, therefore, the contentions of the Noticee has no merit.

42. The aforesaid violations, makes the Noticee liable for penalty under Section 15 HB of the SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

<u>SEBI Act, 1992</u>

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 III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

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

SEBI Act, 1992

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.]

44. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance of the provisions of the SEBI Circular is not available. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticee.

With respect to the repetitive nature of the default, I find that vide Adjudicating order dated December 26, 2019, a penalty of ₹25,00,000 was imposed on the Noticee for violation of the provisions of Regulation 24(7) and Clauses 4 and 8 of Code of Conduct of the CRAs read with Regulation 13 of (Credit Rating Agencies) Regulations, 1999 for its failure to exercise proper skill, care and due diligence while discharging its responsibilities as a credit rating agency while assigning credit rating to the NCD of IL&FS. However, the Adjudicating order dated December 26, 2019 was reviewed by SEBI and a monetary penalty of ₹1,00,00,000/- was imposed on the Noticee, vide order of WTM dated September 22, 2020.

45. The inspection findings bring out two instances where the Noticee was not complying with the requirements of the SEBI circular as indicated above. Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Rules and Regulations and Circulars / directions issued thereunder, however, it failed to comply with the provisions of SEBI circular dated June 30, 2017. The said failure to comply with regulatory provisions attracts monetary penalty and imposition of which can also act as a deterrence. However, I also consider the submissions of Noticee that issuers and debenture trustees did not inform the Noticee about delay/ default on the payment of the NCDs, issuer was non-cooperative, investors were institutional investors and were adequately informed about the risks involved in the NCDs, modification in the structure of the NCDs was done with the knowledge and consent of the debenture holders, NCDs were already downgraded to a speculative grade rating thus modification did not constitute a significant change in the outlook and credit ratings assigned by CRAs do not constitute recommendations to buy, hold or sell any securities and instead, they are opinions etc. as the mitigating factors while deciding the amount of penalty.

ORDER

46. Considering all the facts and circumstances of the case including the submissions of the Noticee and exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, I hereby impose a monetary penalty of ₹ 3,00,000/- (Rupees Three Lakhs Only) under Section 15

HB of the SEBI Act, 1992, on the Noticee. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

47. 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

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

49. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai

Date: November 30, 2023

SHASHI KUMAR VALSAKUMAR

ADJUDICATING OFFICER