

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN THE MATTER OF INSPECTION OF –

NOTICEE	SEBI REGISTRATION NO.
BRICKWORK RATINGS INDIA PVT. LTD.	IN-CRA-005-2008

BACKGROUND:

- 1.1 Brickwork Ratings India Pvt. Ltd. (“**Brickwork /BWR /Noticee**”) is a Securities and Exchange Board of India (“**SEBI**”) registered and Reserve Bank of India (“**RBI**”) accredited credit rating agency. Brickwork was granted registration by SEBI in the year 2008.
- 1.2 In exercise of the powers contained under the SEBI Act, 1992 (“**SEBI Act**”) read with the SEBI (Credit Rating Agencies) Regulations, 1999 (“**CRA Regulations**”), SEBI had carried out inspections of Brickwork for the periods April 1, 2014–September 30, 2015 (“**1st Inspection**”) and April 1, 2017–September 30, 2018 (“**2nd Inspection**”). The contraventions /deficiencies observed in the *1st* and *2nd* *Inspections* led to initiation of separate adjudication proceedings against Brickwork, which resulted in the following Orders of SEBI:
 - A. Adjudication Order No. EAD–6/PM–AB/23/2018–19 dated August 31, 2018 (“**1st Adjudication Order**”) for proceedings emanating from the *1st Inspection*: A monetary penalty of ₹3 Lakh was imposed on Brickwork, by the Adjudicating Officer (“**AO**”), for violations involving:
 - i. *Delay in recognition of default of NCDs of Bhushan Steel Ltd. even after disclosure of default by the Debenture Trustee (“**DT**”) for such Issue;*
 - ii. *Failure to downgrade to ‘Default’, the rating for the NCD Issue of Gayatri Projects Ltd. even after receipt of information from the DT for such Issue, and*

- iii. *Incorrect disclosures in respect to compliance with the provisions of the IOSCO Code of Conduct stating “The Credit Rating Agency (“**CRA**”) should not have employees who are directly involved in the rating process initiate, or participate in, discussions regarding fees or payments with any entity they rate.”*
- B. The 1st *Adjudication Order* was challenged by Brickwork in *Appeal No. 439 of 2018*, before the Hon’ble Securities Appellate Tribunal (“**SAT**”). Vide Order dated June 3, 2019 (“**1st SAT Order**”), SAT had upheld the findings of the AO in respect of the violations mentioned at paragraphs 1.3.A.i and iii. The Hon’ble SAT partly allowed the Appeal and reduced the monetary penalty to ₹2 Lakh.
- C. Adjudication Order No. PM/AN/2020–21/9261 dated September 29, 2020 (“**2nd Adjudication Order**”) for proceedings emanating from the 2nd *Inspection*: A monetary penalty of ₹1 Crore was imposed on Brickwork, by the Adjudicating Officer, for violations involving:
- i. *Lack of surveillance mechanism for tracking the interest/ principle repayment schedule of Issuers or other material events that may impact the creditworthiness of the Issuer, to yield timely and accurate ratings;*
 - ii. *Delay in recognition of default of NCDs of Diamond Power Infrastructure Ltd. despite having information concerning delay by such Issuer in making interest and principal payment post its strategic debt restructuring;*
 - iii. *Failure to review the rating of NCDs of Great Eastern Energy Corporation Ltd. after the Noticee had received information on delays in payment of other obligations by such Issuer, which resulted in downgrade of rating of such instrument(s) by other CRAs;*
 - iv. *Delay in recognition of default of NCDs of Essel Corporate Resources Pvt. Ltd. and Zee Entertainment Enterprises Ltd. even after the breach in security cover;*
 - v. *Violations while rating Structured Obligations (“**SO**”) – The Noticee was found to have not independently assessed the enforceability, revocability and other important aspects of the underlying assurance while undertaking rating of SO wherein in respect of twelve SO ratings, the support provider itself had defaulted in their own credit obligations to bank at some point of time or the other.*
- D. The 2nd *Adjudication Order* was also challenged by Brickwork in *Appeal No. 475 of 2020*, before SAT. Vide an Order dated March 21, 2022 (“**2nd SAT Order**”), the Hon’ble

SAT had upheld the findings of the AO in respect of the violations mentioned at paragraphs 1.3.C.ii and iii (partly upheld). The Hon'ble SAT partly allowed the Appeal and reduced the monetary penalty to ₹10 Lakh.

- 1.3 In exercise of its powers, SEBI undertook a joint inspection with RBI, between January 20 and 24, 2020, of the records and documents of Brickwork, for the period from October 1, 2018–November 30, 2019 (“**3rd Inspection**”), *inter alia* for ascertaining whether the provisions of the SEBI Act and CRA Regulations were being complied with by the Noticee. The aforementioned inspection revealed several irregularities which were *prima facie* in violation of the provisions of the CRA Regulations and certain SEBI Circulars (reproduced in subsequent paragraphs of this Order). The findings of the 3rd Inspection were forwarded to the Noticee for its comments vide letter dated May 5, 2020. The Noticee offered its reply vide letter dated June 11, 2020.
- 1.4 Upon consideration of the Noticee’s reply, with respect to certain discrepancies /deficiencies identified in the 3rd Inspection, SEBI issued an Administrative warning /Deficiency letter dated September 7, 2020 (SEBI/HO/MIRSD/CRADT/OW/P/2020/0014519) (“**Administrative Warning**”), advising the Noticee to take appropriate remedial steps to rectify the discrepancies /deficiencies and further, to also examine other cases which were not part of the Inspection sample and take corrective measures, wherever required.
- 1.5 Vide a letter dated September 27, 2020, Brickwork replied to SEBI communicating the remedial actions taken pursuant to the Administrative Warning issued by SEBI.
- 1.6 SEBI also initiated Enquiry Proceedings against Brickwork /the Noticee in terms of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (“**Intermediaries Regulations**”). SEBI vide an Order dated September 21, 2020, under Section 19 of the SEBI Act, 1992 (“**SEBI Act**”) read with Regulation 24(1) of the Intermediaries Regulations appointed a Designated Authority to enquire into the violations alleged against the Noticee and submit its report in accordance with the provisions of the Intermediaries Regulations.

ENQUIRY BY THE DESIGNATED AUTHORITY:

- 1.7 A Show Cause Notice dated November 17, 2020 (“**Enquiry SCN**”), was issued to the Noticee under Regulation 25 of the Intermediaries Regulations enclosing *inter alia* a copy of the Inspection Report. The Noticee was called upon to show cause as to why appropriate recommendations should not be made against it by the Designated Authority (“**DA**”) in terms of the Intermediaries Regulations.
- 1.8 **APPLICATION FOR SETTLEMENT UNDER THE SEBI (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018 (“SETTLEMENT REGULATIONS”)**: Vide an application dated March 12, 2021, the Noticee filed an application before SEBI, for settlement of the violations alleged in the Enquiry SCN, in terms of the Settlement Regulations (“**Settlement Application**”).
- 1.9 An opportunity of hearing was granted to the Noticee on April 7, 2021 and thereafter, the Noticee was also advised to submit its reply along with documentary evidences, if any, within a specified period. Upon completion of the enquiry, an Enquiry Report dated April 30, 2021 (“**Enquiry Report**”) was submitted by the aforesaid DA to the Designated Member. A summary of the DA observations /findings as contained in the Enquiry Report is provided below:
- A. The Noticee failed to follow a proper rating process and failed to exercise due diligence while providing ratings.
 - B. The Noticee failed to ensure proper maintenance of records to support its ratings.
 - C. The Noticee delayed disseminating of information with respect to monitoring of rating and also failed to follow an appropriate rating process.
 - D. The Noticee failed to comply with timelines prescribed in its internal operational manual in over 75% of the cases inspected during the 3rd Inspection.
 - E. The Noticee failed to address the issue of conflict of interest arising due to a Rating Committee Member (other than the Managing Director (“**MD**”) / Chief Executive Officer (“**CEO**”) having business development roles.
 - F. The Noticee failed to make correct disclosures in its Press Releases (“**PR**”) concerning some Issuers.

1.10 In respect of the adverse observations /findings contained in the Enquiry Report, the DA observed that the Noticee had violated the following provisions of securities law:

- A. Regulation 15(2), Regulation 21, Regulation 24(2) and Regulation 24(7) of the CRA Regulations;
- B. Clauses 4, 5, 19 and 22 of the Code of Conduct for CRAs as specified in Schedule III read with Regulation 13 of the CRA Regulations;
- C. Clauses 1.2, 1.3, 6.4.2, 6.7 and 7 of SEBI Circular no. CIR/MIRSD/CRA/6/2010 dated May 3, 2010;
- D. Clauses 1, 2, 2A, 3A, 3B, 3C, C.II of Annexure A of SEBI Circular no. SEBI/HO/MIRSD/ MIRSD4/CIR/P/2016/119 dated November 1, 2016, and
- E. Clauses 2 and 3A of SEBI Circular no. SEBI/HO/MIRSD/MIRSD4 /CIR/P/2017/71 dated June 30, 2017.

1.11 In light of the above and in accordance with Regulation 27 of the Intermediaries Regulations, the DA recommended that the Certificate of Registration granted to the Noticee be cancelled.

POST-ENQUIRY PROCEEDINGS BY THE DESIGNATED MEMBER:

2.1 Thereafter, a post-enquiry Show Cause Notice dated June 7, 2021 (“**SCN**”), was issued to the Noticee enclosing a copy of the Enquiry Report submitted by the DA and calling upon it to show cause in terms of Regulation 27 of the Intermediaries Regulations as to why action as recommended by the DA or any other penalty should not be imposed, as deemed fit by the Designated Member (“**DM**”). The Noticee replied to the SCN vide a letter dated July 5, 2021.

2.2 Subsequently, an opportunity of personal hearing was granted to the Noticee on July 27, 2021 and the Noticee appeared for the hearing through Advocate Somasekhar Sundaresan.

2.3 PROCEEDINGS BEFORE THE KARNATAKA HIGH COURT AND THE SUPREME COURT OF INDIA:

- a. On July 29, 2021, SEBI was served with a Notice from the Hon’ble Karnataka High Court detailing the *Ex Parte* Order dated July 13, 2021, issued in W. P. No. 12482

of 2021. In the aforementioned W. P., the Noticee challenged the recommendation of cancellation of Certificate of Registration as a CRA, made during the pendency of the Settlement Application (see paragraph 1.8 at page 4). Vide the aforementioned Order dated July 13, 2021, the Hon’ble High Court had *inter alia* ordered: “... *the petitioner (Brickwork) has submitted an application in terms of the Settlement Regulations and without considering that application, an enquiry has been proceeded without reference to the pendency of the application, and in that view of the matter, there should be an interim order restraining the respondent from cancelling the registration to apply licence.*”

- b. Thereafter, SEBI received an e-mail dated August 2, 2021, from the Noticee stating that vide an **Order dated July 30, 2021, issued in Interlocutory Application no. 1 of 2021 in W. P. 12482 of 2021**, the Hon’ble Karnataka High Court had ordered: “*The matter is mentioned on the ground that though this Court was pleased to grant an interim relief and directed emergent notice on the previous date i.e. July 13, 2021. But, when the certified copy of the Order was obtained, the portion of the Order dictated by the Court granting interim relief has been erroneously typed. ... In the Order dated 13th July, 2021 and in the second unnumbered paragraph, the word “should” occurring in the third line from the bottom of the paragraph to be corrected as “shall” and shall read as “there shall be an interim order restraining the respondent from cancelling the registration to apply licence.*”
- c. Earlier, on July 30, 2021, SEBI rejected the Settlement Application filed by the Noticee in terms of Regulation 5(2) read with Regulation 5(5) of the Settlement Regulations. Subsequently, the Noticee challenged the rejection of its Settlement Application before the Hon’ble Karnataka High Court in W. P. no. 14590 of 2021. Accordingly, vide an **Order dated August 18, 2021, issued in W. P. no. 14590 of 2021**, the Hon’ble High Court stayed the SEBI letter dated July 30, 2021.
- d. SEBI thereafter moved a Special Leave Petition before the Hon’ble Supreme Court, challenging the above mentioned Orders of the Karnataka High Court. Vide an **Order dated September 16, 2022, issued in SLP No. 10704 of 2022**, the Hon’ble Supreme Court was pleased to stay the operation of the above mentioned Orders of the Karnataka High Court.

e. Pursuant to the Order of the Hon'ble Supreme Court, the Hon'ble Karnataka High Court vide Orders dated September 22, 2022, dismissed as withdrawn **W. P. 12482 of 2021** and **W. P. no. 14590 of 2021**.

2.4 An opportunity of personal hearing was granted to the Noticee on September 27, 2022, wherein the Noticee appeared for the hearing through Advocate Somasekhar Sundaresan. The Noticee made oral submissions on the lines of its written reply dated July 5, 2021. During the said hearing, a query was raised as to whether the alleged defaults in question were repetitive in nature. The Noticee was granted 3 days' time to file additional written submissions, if any, which was submitted vide Noticee's letter dated September 30, 2022.

2.5 The allegations in the SCN and the submissions/contentions raised by the Noticee in its reply/additional submissions dated July 5, 2021 and September 30, 2022, are being considered at length *in seriatim* while examining each issue identified for the purpose of this Order. Before getting into the merits, I would like to deal with certain preliminary objections raised by the Noticee.

PRELIMINARY OBJECTIONS RAISED BY THE NOTICEE:

3.1 To begin with, the Noticee has raised a preliminary objection to the instant proceedings, contending that: *"Regulation 26(1)(vii) of the Intermediary Regulations provides that one of the penalties that can be awarded under Regulation 27 is that of a 'regulatory censure'. It is further submitted that the issuance of the Administrative Warning itself already amounts to a regulatory censure and accordingly, since the punishment was already levied prior to the start of the enquiry, no further punishment is warranted. Therefore, the entire proceedings seek to rake up a concluded matter."*

3.2 It may be mentioned that upon a consideration of the Noticee's reply dated June 11, 2020, to certain discrepancies /deficiencies identified in the 3rd Inspection, SEBI issued an Administrative Warning to Brickwork on September 7, 2020, wherein it advised the Noticee to take appropriate remedial steps to rectify the same and further, to also examine other cases which were not part of the Inspection sample and take corrective measures, wherever required. In this context, I note that the discrepancies /deficiencies for which the Administrative Warning was issued differ from the serious violations under consideration in the instant proceedings, as detailed below:

TABLE I

	BRIEF DESCRIPTION OF VIOLATION / DISCREPANCY /DEFICIENCY IDENTIFIED IN THE 3 RD INSPECTION	ENFORCEMENT ACTION TAKEN THROUGH
1.	NOT SPECIFYING THE FEE CHARGED BY CRA IN THE RATING AGREEMENT ENTERED WITH THE ISSUER	ADMINISTRATIVE WARNING
2.	GIFT POLICY	ADMINISTRATIVE WARNING
3.	INC-NDS POLICY	ADMINISTRATIVE WARNING
4.	OUTDATED FAQs	ADMINISTRATIVE WARNING
5.	PEER ANALYSIS	ENQUIRY PROCEEDINGS
6.	FOR NOT DOING INDEPENDENT ANALYSIS OF PROJECTION PROVIDED BY ISSUER IN CASE OF RATING OF: - WELSPUN - IDFC FIRST - ADANI RAIL	ADMINISTRATIVE WARNING FOR ADANI RAIL ENQUIRY PROCEEDINGS FOR IDFC FIRST AND WELSPUN
7.	NO DOCUMENTATION OF MEETING WITH MANAGEMENT, NO SITE VISITS. FEW CASES: - ENTRY INDIA - IKF FINANCE - IDFC FIRST	ENQUIRY PROCEEDINGS
8.	IN THE CASE OF COFFEE DAY NATURAL RESOURCES PVT. LTD, IT WAS OBSERVED THAT THE RC NOTES DOES NOT INCLUDE FINANCIALS, CASH FLOWS, PROJECTIONS, ETC.	ENQUIRY PROCEEDINGS
9.	NO BANKER FEEDBACK	ENQUIRY PROCEEDINGS
10.	RATING CRITERIA - NO LINK TO PREVIOUS CRITERIA - USE OF GENERIC CRITERIA IN COFFEE DAY ENTERPRISES	ENQUIRY PROCEEDINGS
11.	MINUTES GET SIGNED AFTER PR	ADMINISTRATIVE WARNING
12.	RATING CRITERIA REVIEWED ONCE IN 5 YEARS	ENQUIRY PROCEEDINGS
13.	MINUTES NOT SIGNED BY RC CHAIR IN ICL FINCORP AND RAMPRASTHA	ENQUIRY PROCEEDINGS
14.	FORMAT OF PR OF ERC DATED SEP 24, 2019 IN CASE OF COFFEE DAY NATURAL RESOURCES PVT. LTD	ENQUIRY PROCEEDINGS
15.	MEETING WITH RC MEMBERS	ENQUIRY PROCEEDINGS
16.	ADVISE TO FRAME A POLICY TO REVIEW THE PERFORMANCE OF RATING COMMITTEE MEMBERS	ADMINISTRATIVE WARNING

17.	DISCLOSURE OF THE PERFORMANCE OF ITS RATED POOL	ENQUIRY PROCEEDINGS
18.	NOT ASSIGNING COMPLEXITY LEVEL TO THE INSTRUMENT IN THE PRESS RELEASE.	ADMINISTRATIVE WARNING
19.	SHREEYAM POWER AND STEEL INDUSTRIES – INC STATUS	ENQUIRY PROCEEDINGS
20.	FOR NOT DISCLOSING THE DETAILS OF SUBSIDIARY / GROUP HOLDINGS IN THE PRESS RELEASE IN THE MATTER OF MAGMA FINCORP LTD.	ADMINISTRATIVE WARNING
21.	FOR DELAY IN DISCLOSURE OF NON-ACCEPTED RATING IN THE MATTER OF ASHKIT PROPERTIES LTD	ADMINISTRATIVE WARNING
22.	DELAY IN DEFAULT RECOGNITION	ENQUIRY PROCEEDINGS
23.	APPEAL COMMITTEE COMPOSITION INCORRECT IN: - ESSEL - PRIMATE - CYQUATOR - KONTI - JAY - PTC	ENQUIRY PROCEEDINGS
24.	IT IS OBSERVED CRA HAS NOT MENTIONED THE TIMELINES FOR REVIEW OF RATINGS OF BONDS/NCDs. FURTHER, THERE IS DELAY IN CONDUCTING ANNUAL SURVEILLANCE IN: - IKF - ENTRY - CAPITAL	ENQUIRY PROCEEDINGS
25.	FOR DELAY IN PERIODIC REVIEW IN THE MATTER OF TOTAL ENVIRONMENT CONSTRUCTION PRIVATE LTD.	ADMINISTRATIVE WARNING
26.	FOR DELAY IN DISCLOSURE OF PRESS RELEASE WITH RESPECT TO MATERIAL EVENT IN THE MATTER OF INDIABULLS HOUSING FINANCE LTD.	ADMINISTRATIVE WARNING
27.	MATERIAL EVENT DELAY – PRIMAT INFRAPOWER	ENQUIRY PROCEEDINGS
28.	MATERIAL EVENT DELAY – SREI INFRASTRUCTURE FINANCE LTD.	ENQUIRY PROCEEDINGS
29.	PROVISIONAL RATINGS REMAIN PROVISIONAL FOR TOO LONG	ADMINISTRATIVE WARNING
30.	DELAY IN PRESS RELEASE AFTER RCM MEETING IN: - RAVIRAJ - VENUS INDIA	ENQUIRY PROCEEDINGS
31.	NON-DISCLOSURE OF LIQUIDITY SECTION IN THE PRESS RELEASE IN THE MATTERS OF ADANI RAIL, EDISONS INFRA AND VENUS INDIA.	ADMINISTRATIVE WARNING
32.	RELLANCE HOME FINANCE LTD. – KEY COVENANT NOT MENTIONED; NO COMMENTARY ON COMPLEXITY OF PTC	ENQUIRY PROCEEDINGS
33.	CRA FAILED TO COMPLY WITH ITS OWN TIMELINE MENTIONED IN ITS OPERATION MANUAL IN OVER 75% OF THE CASES	ENQUIRY PROCEEDINGS
34.	CRA'S FAILURE TO CHECK THE CONDUCT OF THE RATING ADVISORS WHO WERE PROMISING RATINGS.	ADMINISTRATIVE WARNING
35.	CONFLICT OF INTEREST / ROLE OF MD AND FD	ENQUIRY PROCEEDINGS
36.	RATING OF INSTRUMENTS OF CANARA BANK	ADMINISTRATIVE WARNING

- 3.3 Having regard to the findings above, I am inclined to reject the objection raised by the Noticee that the instant proceedings seek to rake up a concluded matter wherein no further punishment is warranted.
- 4.1 In its submissions, the Noticee has also contended that: *“the enquiry proceedings are bad in law as the Noticee did not receive full, complete, and adequate inspection of the documents it sought for.”* In this context and as noted from the Enquiry Report, contrary to the Noticee’s submission that SEBI had rejected its request for inspection vide letter dated February 6, 2021, I find that the inspection of relied upon documents (as sought vide Noticee’s letter dated December 10, 2020), was provided by the concerned department of SEBI. Accordingly, I find no merit in the contention raised by the Noticee.
- 5.1 On the quantum of punishment, the Noticee has contended that: *“there is no basis at all to recommend a capital punishment penalty in the form of cancellation of Certificate of Registration. ... (It) had conducted over 9000 credit ratings and the Enquiry Report has made observations on 15 cases. Most of the deficiencies observed were with respect to non-material procedural issues or clerical errors (and) without belittling them, (it) has set about remedying them too. None of these deficiencies raised any integrity issues or malpractice, nor did they result in any favour to any Issuers. Hence, the recommendation for cancellation of licence is harsh and not at all commensurate with the alleged findings of the audit.”* I note that while the adequacy of the recommendation for cancellation of Certificate of Registration is discussed in the subsequent paragraphs of this Order, it is nonetheless pertinent to deal with the basis for the Noticee’s contention. The instant proceedings emanated from the 3rd Inspection conducted by SEBI, which was admittedly carried out on a sample basis and in accordance with the mandate of Regulation 29 of the CRA Regulations, did not involve examining the appropriateness on merits, of the ratings assigned by Brickwork i.e. 66 out of 823 total ratings assigned by the Noticee during the *Inspection period*. Despite the limited sample of matters inspected by SEBI, violations of a serious nature warranting initiation of Enquiry proceedings were observed, which were in addition to the discrepancies /deficiencies covered under the Administrative Warning issued by SEBI.

- 5.2 The sample size of the 3rd *Inspection* for the period October 1, 2018 to November 30, 2019, as contained in the *Inspection Report*, is reproduced below:

TABLE II		
<i>RATINGS CARRIED OUT BY THE CRA</i>	<i>SAMPLE SIZE</i>	<i>TOTAL RATINGS DURING INSPECTION PERIOD (LISTED SECURITIES)</i>
NEW RATING	5	23
PROVISIONAL RATING	5	23
RATING NOT ACCEPTED BY ISSUER INITIALLY BUT ACCEPTED POST REVIEW	0	0
RATING NOT ACCEPTED BY ISSUERS	2	3
RATING CARRIED OUT UPON OCCURRENCE OF MATERIAL EVENTS REQUIRING REVIEW, AS REQUIRED AS PER SEBI CIRCULAR DATED JUNE 30, 2017	10	199
PERIODIC REVIEW OF RATING (UPGRADE, DOWNGRADE, ISSUER NOT COOPERATING)	15	295
DOWNGRADE TO DEFAULT BY ISSUER	7	79
DELAY IN PERIODIC REVIEW	19	198
AGREEMENT EXECUTED, HOWEVER NO RATING WAS ASSIGNED	3	3
TOTAL	66	823

- 5.3 Further, as detailed at paragraph 1.2 of this Order, SEBI earlier initiated Adjudication proceedings against the Noticee on account of violations observed in the 1st and 2nd *Inspections*. Accordingly, certain findings contained in the 1st and 2nd *Adjudication Orders* were upheld by the SAT and which have since attained finality as no review before the SAT nor an appeal before the Supreme Court of India, was filed against the 1st or 2nd *SAT Order*. The conduct of the Noticee pursuant to the 1st and 2nd *Inspections* despite stated remedial measures taken by it, post-issuance of Administrative Warning /Deficiency letters after such *Inspections*, warranted the initiation of enquiry proceedings especially since the violations observed in the 3rd *Inspection* were similar in nature to those detected in the 1st and 2nd *Inspections* (see paragraphs 1.2.A and C) and clearly suggested repeat/recurring nature of the violations. The lapses at Brickwork were brought to their notice in successive *Inspections*. In fact, such lapses have a tendency of recurring and have been repeated successively. The Noticee should certainly have taken its responsibility with more care.

- 5.4 I also note that in response to the query as to whether the alleged defaults covered in these proceedings are repetitive in nature, the Noticee has replied that while there have been two other occasions when SEBI, after inspections, issued show cause notices to the Noticee, not only were they distinct proceedings for distinct allegations but also, the penalties imposed in both the cases were reduced by the Hon'ble SAT. In this regard, the details of

the earlier *Orders* passed by the Hon'ble SAT have already been captured in earlier part of this Order. Further, the reference to earlier defaults, if any, made in this Order has been done to show the repetitive nature of the defaults and has not been taken into consideration while adjudging whether there has been a failure on the part of the Noticee to comply with the applicable regulatory norms in a given case.

- 5.5 Upon a consideration of the above mentioned, I am not inclined to accept the Noticee's contention that the recommendation for cancellation of licence is harsh and not commensurate with the alleged findings of the enquiry.

CONSIDERATION ON MERITS:

I shall now proceed to deal with the violations alleged in the SCN *in seriatim* by detailing the response of the Noticee to the SCN and conclude the issue with my findings on the same.

6. ISSUE 1: FAILURE TO FOLLOW A PROPER RATING PROCESS.

- 6.1 As per the SCN, the Noticee allegedly failed to follow a proper rating process and also failed to exercise due diligence while providing ratings through its (i) failure to take into account information with regard to peer analysis, financial projections, site visits, discussion with the Company's management and interaction with bankers, and (ii) failure to review rating criteria in light of regulatory changes and changes in market dynamics. This was allegedly in violation of (a) Regulations 24(2) and 24(7) of the CRA Regulations, (b) Clauses 4 and 5 of the Code of Conduct as specified in Schedule III read with Regulation 13 of the CRA Regulations and (c) Clauses 1 and 2 of Annexure A to the SEBI Circular SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016 ("**Circular dated November 1, 2016**"). The aforementioned provisions of law read as under:

A. CRA Regulations:

Rating process

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

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

Code of Conduct

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

Third Schedule

Code of Conduct for Credit Rating Agencies

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

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

B. SEBI Circular no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016

Annexure A

1. Operations Manual/ Internal governing document:

A. The Operations Manual/ Internal governing document, formulated by the CRA, shall, inter - alia, cover operating guidelines, criteria, policies and procedures related to the rating process.

B. The contents of the Operations Manual/ Internal governing document, as well as any changes to the same, shall be communicated to employees promptly, and training of employees on the same shall be conducted at regular intervals

2. Rating Criteria, Rating Process and their Disclosure:

A. Rating 'Criteria'

I. Each CRA shall frame detailed rating criteria, include the same in its Operations Manual/ Internal governing document and disclose the same on its website. At the least, the following rating criteria shall be formulated by each CRA:

Criteria on:

- a) Default recognition and post - default curing period (Instrument - wise definition of default to be followed by all CRAs is provided in Annexure - A1 .)*
- b) Financial ratios (Explaining how a CRA analyses various financial ratios including adjustments made to financial statements for the interpretation of financial ratios)*
- c) Consolidation of companies*
- d) Parent support/group/government support*
- e) Manufacturing, trading companies, and services sector*
- f) Banks and financial institutions*
- g) Securitization transactions*

h) Public finance

i) Infrastructure ratings

II. Each criteria shall be reviewed periodically by the CRA and the periodicity for such review shall be disclosed on the CRA's website. While disclosing the revised criteria on their website, CRAs shall also provide a reference/ hyperlink to the original criteria (before revision), so as to enable investors to discern the changes made to the same.

III. The criteria shall be placed on the CRA's website in a user - friendly manner in order to facilitate easy and ready access of the same by investors.

IV. Press Release, related to rating action, shall provide a reference/ hyper link to the specific criteria applied for the rating.

6.2 In its replies, the Noticee *inter alia* submitted as under:

A. **“Peer analysis:** The regulations do not make peer analysis mandatory and therefore, failure to do peer analysis cannot amount to a lack of due diligence. Since the Noticee has established that it does conduct peer analysis where felt required and where the circumstances allow, it cannot be said that the failure to conduct peer analysis on a universal level amounts to a breach of the CRA Regulations. In this regard, the Noticee acknowledges and appreciates that the DA has accepted its submissions with regards to the peer analysis conducted in the case of Venus India Asset Finance Ltd. (**“Venus India”**). However, the Noticee also states that although peer analysis is a standard practice, the same may not be feasible in certain cases such as micro, small and medium enterprises, for which meaningful comparable peer data is not available in the public domain.

B. **Projections:** The projections received by the Noticee are always discussed with the management of the concerned company or issuer. The DA has failed to appreciate in the findings that the statutory definition of term ‘Rating’ as envisaged in the CRA Regulations states that rating is an expression of an opinion in a standardized form. Accordingly, the nature and extent of management interactions are within the professional discretion of the Noticee and the Noticee cannot be held to a strict standard concerning the same.

➤ The Noticee reiterates that Adani Rail Infra Pvt. Ltd. (**“ARIPL”**) is a holding company of the investments of the Adani Group and has no significant cash flows of its own besides the loans provided to the group entities. Further, the transaction involving issuance of NCDs issued by ARIPL is a share pledge based transaction and the risk profile of this facility comes under the category of SO. As a result of the same, ARIPL has ‘SO’ rating assigned. In all such transactions, the rating has to factor different aspects of the structure such as security cover, volatility of the share price, top-up requirement, and availability of free

(additional) shares with the promoters, marketability of shares, etc. Therefore, in such cases, projections are not meaningful and it is the aforementioned factors that matter, which are also discussed in the rating notes in detailed.

- *As regards Welspun Enterprises Pvt. Ltd. (“Welspun”), the rating process involved projections being asked by the analyst through e-mail as part of primary information to process the rating. Post the receipt of the projections, they were discussed by the said analyst with the management of the Welspun over telephone on November 22, 2018. The projections were considered reasonable considering the past trends and current order book position of the Company ... To substantiate further, Welspun is a listed entity and while reviewing the rating in August 2019 based on FY-19 audited numbers, it was observed that the company had met the FY-19 projections.*

C. **Managerial interactions:** *The Noticee, states that analysts and group heads always interact with the management of the Issuer and their interaction may not necessarily be in the form of site visits. There could be instances where the meetings have been held with senior members of the Noticee without the relevant analyst’s presence. In some cases, site visits are not required. In some cases, interactions happen over the phone or via video conferencing. Therefore, SEBI’s collection of information from discussions with analysts may not always reveal the accurate or entire picture. Further, while the data gathered during the meetings have been used by the Noticee to arrive at the recommended rating, but they may not necessarily be included as part of the rating note.*

- **Entry India Projects Pvt. Ltd. (“Entry India”):** *The Noticee started following up with this Company through e-mails dated September 4, 2018 and September 11, 2018, with respect to necessary information required. However, such information was never received. Subsequently, the rating was moved to ‘Rating Not Reviewed’ category on October 4, 2018, following which periodic review was conducted on November 20, 2018, when information was received from the Company. Therefore, the delay in this case too, was caused by the actions of the Issuer Company, and in the interim period investors were warned of non-review of the rating due to absence of information. In any case, the ratings were in non-investment/speculative grade (BB-) and were reaffirmed. The Noticee has already adhered to its duty of informing investors of its speculative nature of instrument.*
- **IKF Finance Ltd. (“IKF”):** *IKF is a Non-Banking Financial Company (“NBFC”) and hence 'site visits' are not really helpful to understand the risks. The Noticee has rated this Company since long, and in fact, on many occasions, the Managing Director of IKF has visited the Noticee’s head office for general discussions on the NBFC sector and*

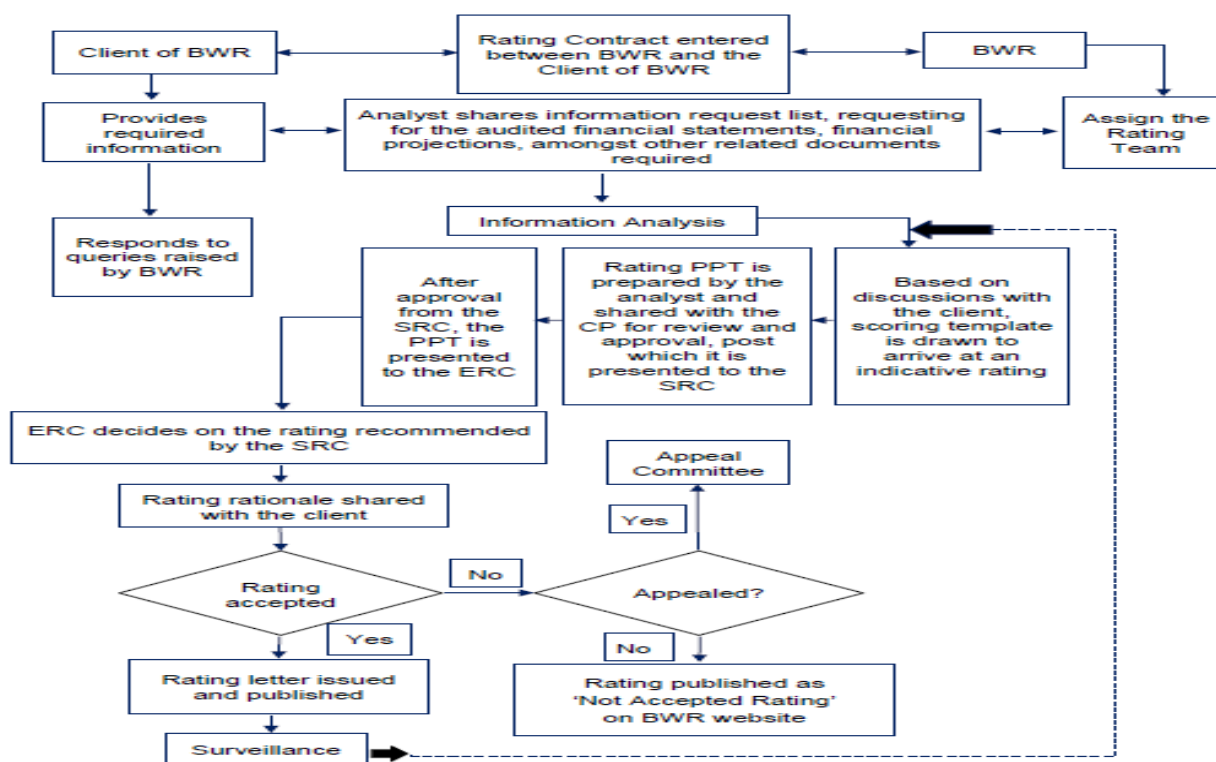
also update us on their business plans. The Hyderabad visit undertaken was focused to meet the management and broadly discuss about their business plans and also explain the Noticee's views on the concerned business sector. SEBI has made it mandatory to record such discussion by way of minutes only vide Circular dated November 4, 2019. Prior to the enactment of the aforementioned Circular, the information captured was used in preparing the rating notes, and not always recorded in detail. Since SEBI has issued dear guidelines on the subject, the Noticee has duly ensured that such minutes are being prepared scrupulously, and included in the rating notes.

- D. **Seeking banker feedbacks:** *The Noticee seeks to point out that there exists a practical difficulty for the Noticee to ensure appropriate feedback from the bankers. The Noticee faces a significant struggle in securing cooperation from the banks who do not use the ratings issued by the Noticee. In the ordinary course, banks interact only with the CRA which has issued ratings for the said banks' facilities. The Noticee had also apprised the Team Head of the SEBI Inspection team with regards to this practical hindrance. Consequently, the Noticee has to resort to the best available alternative of gathering the ratings of the bank loan facilities of the issuer from another CRA and use the same as proxy. The Noticee submits that the proxy (bank loan ratings of other CRAs) used by it is quite meaningful, and hence not getting bankers' feed-back does not vitiate the rating process. If SEBI could take steps to ensure that CRA's have access to banker feedback, this issue could be avoided in the future.*
- E. **Exercise of Due Diligence:** *It has been alleged by the DA that despite there being an advisory by SEBI to review the rating criteria, there has been no action on part of the Noticee to rectify the same. The said allegation is misconceived in its entirety. Post the receipt of the Administrative Warning, the Noticee had duly complied with the aforementioned advice to 'review the rating criteria more frequently'. Subsequent to the Administrative Warning, the period of review of rating criteria of the Noticee has been reduced from once in 5 years to once in 3 years.*
- F. *There is no contact between an investor and a rating agency, and the investor is free to accept or reject the opinion of the agency. While arriving at the findings, the Enquiry Report relies on an Audit Report by KPMG ("**Audit Report**") and various observations therein. As observed earlier, KPMG was appointed at the behest of the SEBI official who was not ready to accept a report by prestigious Auditor, Ramadhyani and Co. The Noticee wishes to clarify that out of the ten sample rated entities analysed in the Audit Report, 5 entities belonged to NBFCs or Banks for which the financial projections were not available and the remainder of the 5 entities were classified in Default*

grade (D Rating). Therefore, the Noticee communicated to KPMG that obtaining a 'No Default' Statement and analysing financial ratios of these entities would be futile.

FINDINGS:

6.3 Before I proceed with my findings on the allegations raised in the SCN, the process adopted by the Noticee for assigning a rating (reproduced from the KPMG Audit Report of August 2020 – Certain portions of the KPMG Audit Report, which covers the period from December 1, 2013 to July 31, 2019, have also been incorporated as part of the findings of the 3rd Inspection specifically for the period which overlaps with the said Inspection i.e. from October 1, 2018 to July 31, 2019), is provided below:



6.4 In addition to the above, the following key points were also highlighted by KPMG in its Audit Report, with respect to responsibilities of various Teams /Committees during any rating process undertaken by the Noticee:

- A. **Business Development Team:** Involved in meeting clients, obtaining mandates from clients and finalizing the fees with clients. The Business Development Team is

independent of the Rating Team and does not have any interactions with the Rating Team, once a mandate is obtained.

- B. Rating Team:** The Rating Team which comprises of analysts and Chairpersons, present the rating of an assigned mandate to (as per defined guidelines at Brickwork):
- i. Internal Rating Committee (“IRC”):* Comprises of identified senior members and identified eligible analysts.
 - ii. Senior Rating Committee (“SRC”):* Comprises of identified senior members of Brickwork.
 - iii. External Rating Committee (“ERC”):* Comprises of identified senior members of Brickwork and independent external members. The ERC requires a quorum of three members, out of which the majority should be independent.
- C. Appeal Committee:** Comprises of a majority of members who are different from those involved in the earlier ratings. This Committee processes request(s) by client(s) for review of ratings provided.

6.5 **Peer analysis:** The 3rd Inspection identified only one instance of the Noticee’s failure in incorporating peer analysis while assigning a rating i.e. Venus India. In the Enquiry Report, the DA considered the material /documents submitted by the Noticee and concluded that no adverse inference could be drawn in respect of this allegation. I have considered the Noticee’s submissions in this regard and I find myself in agreement with the DA as regards the instant allegation. Accordingly, I am of the view that no adverse inference be drawn against the Noticee.

6.6 **Projections:** The 3rd Inspection identified three instances where projections provided by the Issuer were accepted by the Noticee without verification, viz. Welspun, ARIPL and IDFC First. I note from the Enquiry Report that the DA did not accept the reply furnished by the Noticee in respect to the projections pertaining to Welspun that its analyst had discussed the same with the management over a telephonic phone call. Having considered the reply of the Noticee and the findings of the DA, I find no reason to disagree with the views recorded with regard to Welspun as the Noticee had failed to provide any documentary evidence in support of its claim. In the case of ARIPL, the DA accepted the Noticee’s submission that projections were not relevant because it was a share backed transaction rating based on the rating of the entity whose shares are pledged, the cover

provided by the value of the shares and the unencumbered shares of the Promoter. However, with respect to ARIPL, as an Administrative Warning has already been issued by SEBI in respect of the said violation (see Table at pages 8 and 9), I am of the considered view that the same should not have been part of the violations alleged in the instant proceedings.

- 6.7 In the matter of IDFC First, the DA has not recorded any adverse inference and accepted the Noticee's reply that projections are meaningless for financial firms as the same is sensitive to movement in interest rates. After considering the reply of the Noticee, I am not in agreement with the findings of the DA in this regard. I note that in such situations, the Noticee should ideally have stress– tested the projections by doing a proper sensitivity analysis of variables within a likely range of potential interest rate scenarios and tested the resilience of the projections. Further, the Noticee cannot simply shun its responsibility just by stating that projections are subject to certain variables, which cannot be accurately predicted at the time when such rating is assigned.
- 6.8 ***Managerial interactions:*** The 3rd *Inspection* identified three instances where the Noticee failed to undertake site visits and hold discussions with the management, viz. IDFC First, IKF and Entry India. I note from the Enquiry Report that the DA accepted the reply furnished by the Noticee evidencing discussions by its analyst with the management of IDFC First and did not draw any adverse inference against the Noticee. Having considered the reply of the Noticee and the findings of the DA, I find no reason for disagreeing with the views recorded in the Enquiry Report with respect to IDFC First.
- 6.9 As regards IKF, upon a consideration of the Noticee's reply, I find no supporting evidence has been provided to substantiate the fact that Noticee did indeed visit the Issuer's office in Hyderabad /held meetings with the management of the Issuer.
- 6.10 With respect to Entry India, the Noticee submitted that site visits and management discussions could not be conducted as the Issuer was not cooperating. The allegation against the Noticee is with regard to its failure to undertake site visits and hold discussions with the management of Entry India. In these proceedings, the Noticee has merely detailed the actions taken including moving the rating of the instrument to the 'Rating Not Reviewed' category on October 4, 2018 and conducting periodic review on November 20, 2018, when

information was received from the Issuer, without producing any evidence /documents to show that site visits and discussions with the management were indeed held. In view of the same, especially considering that undertaking site visits has been prescribed in its Ratings Operations Policy Manual for Credit Rating (“**BWR Manual**”), I have no hesitation in agreeing with the findings of the DA as regards his observation on the Noticee’s lapse in respect of Entry India.

6.11 Seeking banker feedback: As per the SCN, it is alleged that although the BWR Manual provides that analysts should interact extensively with the Bankers to the Issuers rated by them, there was no evidence for such interactions in respect of most of the ratings examined during the 3rd Inspection. In its submissions, the Noticee contended that it makes all efforts to get banker feedback on all Issues it rates. However, it faced considerable difficulty in securing cooperation from banks that do not use the ratings issued by the CRA. It was also submitted that if the RBI were to issue instructions to banks to provide their feedback to CRAs even when they do not use their ratings, it would be helpful. In the Enquiry Report, the DA has not accepted the contention put forth by the Noticee as no documentary proof was made available to show that any effort had been made to contact bankers for obtaining relevant data. In the instant proceedings, I find that the Noticee has not been able satisfy with documentary evidences, the assertion that it had taken all efforts to obtain banker feedback on all Issues rated by it. I am therefore, of the considered view that the Noticee did indeed fail to interact extensively with the Bankers to the Issuers rated by them in complete disregard of the BWR Manual.

6.12 Exercise of Due Diligence – Failure to review rating criteria in light of regulatory changes and changes in market dynamics: As per the SCN, the Noticee is alleged to have failed to review its rating criteria despite there being an advisory by SEBI for such review. The Noticee is alleged to have reviewed its rating criteria only once in 5 years, which is not in compliance with the CRA Regulations. In its reply, the Noticee contended that the CRA Regulations only specified that the rating criteria be reviewed periodically and does not mention a time frame by when such rating criteria ought to be reviewed. I note that non-compliance in this respect revolves around the interpretation of the term ‘periodic’. I also note that Noticee has been reluctant to adopt a shorter time frame for undertaking review despite an advisory being issued by SEBI. The Noticee while disregarding the advisory has not delved into the merits of undertaking a more frequent

review of its rating criteria and has rather questioned the competence of SEBI in issuing such an advisory. Having considered the reply of the Noticee and the provisions of the CRA Regulations, I am of the view that considering the dynamic nature of the bond markets, and the pace of change being witnessed in the evolution of market structures and indeed of the financials of the issuers, undertaking a review of rating criteria only once in 5 years cannot be said to be in compliance with the periodic review mandated under the CRA Regulations.

6.13 Further, the timeframe adopted by the Noticee must be reasonable in the context of the market in which it operates. I note that while putting in place principle based regulations, due regard must be given to the rationale for putting in place the requirement, which in this case would be ensuring that the rating criteria keeps pace with the dynamics of an evolving market and the financial health of the issuer. I also note that all the other registered CRAs have adopted a shorter time frame for undertaking review than the one adopted by the Noticee. In view of the same, I hold that timeline prescribed by the Noticee for undertaking a review of its rating criteria is not in compliance with the mandate under the CRA Regulations i.e. periodic review of the rating criteria.

6.14 In view of the above, considering the failure of the Noticee to obtain projections from issuers, undertake site visits and failure to interact with the management, and the failure to review the rating criteria periodically, I find that the Noticee has violated the provisions of Regulation 24(2) and 24(7) of CRA Regulations, Regulation 13 read with Clause 4 and 5 of the Code of Conduct specified for Credit Rating Agencies specified under the Third schedule of the CRA Regulations, and Clause 1 and 2 of Annexure A of SEBI Circular No. SEBI/H0/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016.

ISSUE 2: FAILURE TO ENSURE PROPER MAINTENANCE OF RECORDS TO SUPPORT ITS RATINGS.

7.1 As per the SCN, the Noticee is alleged to have failed to ensure proper maintenance of records to support its ratings through (i) incorrect recording of names of Rating Committee Members, (ii) incorrect documentation of minutes with Issuer Companies and (iii) failure to ensure signature of minutes by the Chairperson. This was allegedly in violation of (a) Regulation 21 of the CRA Regulations, (b) Clauses 1.2 and 1.3 of the SEBI Circular no.

CIR/MIRSD/CRA/6/2010 dated May 3, 2010 (“**Circular dated May 3, 2010**”), and (c) Clauses 3A and 3C of Annexure A of the Circular dated November 1, 2016. The aforementioned provisions of law read as under:

A. CRA Regulations:

Maintenance of Books of Accounts records, etc.

21. (1) *Every credit rating agency shall keep and maintain, for a minimum period of five years, the following books of accounts, records and documents, namely:*

- (a) copy of its balance sheet, as on the end of each accounting period;*
- (b) a copy of its profit and loss account for each accounting period;*
- (c) a copy of the auditor’s report on its accounts for each accounting period.*
- (d) a copy of the agreement entered into, with each client;*
- (e) information supplied by each of the clients;*
- (f) correspondence with each client;*
- (g) ratings assigned to various securities including upgradation and down gradation (if any) of the ratings so assigned.*
- (h) rating notes considered by the rating committee;*
- (i) record of decisions of the rating committee;*
- (j) letter assigning rating;*
- (k) particulars of fees charged for rating and such other records as the Board may specify from time to time.*

(2) *Every credit rating agency shall intimate to the Board the place where the books of account, records and documents required to be maintained under the s e regulations are being maintained.*

B. SEBI Circular no. CIR/MIRSD/CRA/6/2010 dated May 3, 2010;

1. Rating Process

A CRA shall keep the following records in support of each credit rating and review / surveillance thereof:

- 1.2 Summary of discussions with the issuer, its management, auditors and bankers which have a bearing on the credit rating,*
- 1.3 Decisions of the rating committee(s), including voting details and notes of dissent, if any, by any member of the rating committee, and*

C. SEBI Circular dated November 1, 2016

3. Functioning and Evaluation of Rating Committees/ Sub - Committees

A. Each CRA shall define the obligations, responsibilities, areas of conflict of interest, etc. of rating committee members in its Operations Manual/ Internal governing document. The following shall be specifically set out in the Operations Manual/ Internal governing document of each CRA and disclosed on its website

I. Eligibility for becoming committee/ sub - committee members

II. Composition of committee/ sub - committee

III. Minimum quorum required

IV. Duties of committee members

V. System of voting and recording of dissent.

VI. Managing conflict of interest in the rating committee/ sub - committee.

C. Minutes of each case discussed at the committee shall be maintained and signed (digitally or manually) by the Chairperson. Standard format for the Minutes of Rating Committee Meeting is placed at Annexure - A3

7.2 In its replies, the Noticee *inter alia* submitted as under:

- A. “Missing signatures: With regard to ICL Fincorp Ltd., as the Chairperson of the External Rating Committee was an external person, there was a delay in obtaining the draft minutes approved and signed due to the tentative nature of the availability of the said Chairperson. Further, the Noticee has rectified the aforesaid error and the signed minutes have been updated and appropriately maintained along with the records of the case. With regard to Ramprastha Sare Realty Pvt. Ltd., The requisite signatures had been obtained by the Noticee. However, the analyst of the Noticee did not upload the signed minutes.*
- B. Appeal Committee: The Noticee states that the inclusion of Vivek Kulkarni’s name in the External Rating Committee Meeting dated May 17, 2019 (in relation to Essel Group of Companies) was done erroneously and inadvertently. Vivek Kulkarni was attending a public finance seminar in Delhi along with Dr. Govind Rao, former Director NIPFP and Chief Economic Advisor of the Noticee. Although the same was pointed out in previous inspection replies, SEBI has chosen to ignore our clarifications, and continue to raise the same accusation.*

- C. **External Rating Committee:** It is alleged that although the name of D. Ravishankar was included in the attendance sheet dated May 17, 2019, his name was not mentioned in the signed rating minutes. The Noticee submits that due to a minor procedural lapse, the name of Vivek Kulkarni had been included instead of Ravishankar and the same is a bonafide clerical error.
- D. **Improper documentation of meetings:** The Noticee had only rated Capital First Ltd., and post-merger of Capital First with IDFC Bank, the Noticee had to keep a track of the rated facilities that had migrated from Capital First to IDFC Bank and the rated facilities were either getting extinguished or modified (from a security perspective). The Noticee was also required to withdraw the outstanding ratings in the name of Capital First, as the said NBFC had ceased to exist. It was in this context that the Head of BFSI Ratings and President – Business Development decided to meet the IDFC Bank's Management. Another agenda of this meeting was also to get mandate in the name of IDFC First Bank. As the Bank was represented by the Managing Director and the Chief Executive Officer, they also invited the Founder Director ("FD") of the Noticee to visit them. While the FD of the Noticee did have a courtesy meeting with the Managing Director of IDFC First Bank, the Head–BFSI Ratings of the Noticee discussed the rating related aspects. Similarly, President –Business Development had visited the office to meet his contacts in the Bank who were negotiating for a reduced fee, as, generally, fee structure for banks was different from that for NBFCs. While President –Business Development took a commercial decision for reducing the fee, the same had no correlation with the Noticee's FD's meeting with the Managing Director of the Bank, which was a courtesy call as stated herein. It is for this reason that the name of the FD was not mentioned in the Rating Note, as he was not discussing rating related issues, which was essentially done by the Head–BFSI Ratings.

FINDINGS:

- 7.3 It has been brought out in the Enquiry Report that the minutes of the Rating Committee had not been signed by the Chairman in the following cases:

TABLE III			
Sr. No.	NAME OF ISSUER	RATING COMMITTEE	DATE OF RC MEETING
A.	ICL FINCORP LTD.	EXTERNAL RATING COMMITTEE	DECEMBER 11, 2019
B.	RAMPRASTHA SARE REALTY PVT. LTD.	SENIOR RATING COMMITTEE	DECEMBER 18, 2018

7.4 The Circular dated November 1, 2016, mandates that “*Minutes of each case discussed at the committee shall be maintained and signed (digitally or manually) by the Chairperson.*” I do note that while there has been rectification of the deficiencies pointed out in the above mentioned Table, however, the same cannot take away the fact that there were clear lapses on the part of the Noticee with respect to the signature of the minutes. I also take exception to the characterization of the need for signature to be a merely administrative requirement and not a substantive one. In this respect, reliance is placed on the observations of the Supreme Court in the matter of ***The Municipal Corporation of Greater Bombay vs. P.S. Malvenkar and Ors. [AIR 1978 SC 1380]***, wherein quoting the Black’s Law Dictionary (1951 Edition), it had stated: “... *generally when a person attaches his signature to a written document he does so in token of knowledge, approval or acceptance.*” The lack of signature of the Chairperson therefore renders the minutes, and as such, the decisions taken during the meeting, without the necessary mark of authenticity and approval. So, this requirement of affixing the signature cannot be considered as merely an “*administrative requirement*” as it has substantial effect on the mandatory nature of the minutes. Further, signed minutes freeze the deliberations made during the meeting and act as a contemporaneous record of all that transpired during the meeting. The fact that in the above mentioned two instances, the minutes of the meeting were unsigned, compromised their character of being a contemporaneous record of the deliberations. Thus, I find that the signature of the Chairperson in the minutes of the meeting is an essential requirement, and the breach of the same cannot be taken lightly. Merely stating that the errors were ‘minor procedural lapse’ and ‘bonafide clerical error’ reflects on the casual approach in adhering to laid down processes.

- 7.5 The Inspection report has brought out that in the following matters, review requests had been filed by the Issuers, which were placed before the Appeals Committee. However, it has been brought out that the composition of Appeals Committee was not in compliance with the SEBI Circular dated September 19, 2018.

TABLE IV			
Sr. No.	NAME OF ISSUER	COMPOSITION OF RATING COMMITTEE	COMPOSITION OF APPEAL COMMITTEE
A.	ESSEL INFRAPROJECT LTD.	K. N. PRITHVIRAJ KRS MURTHY BHARTI RAO V. NAGARAJA VIVEK KULKARNI	S. PADMANABHAN V. NAGARAJA VIVEK KULKARNI
B.	PRIMATE INFRA POWER AND MULTIVENTURES		
C.	CYQUATOR MEDIA SERVICES PVT. LTD		
D.	JAY PROPERTIES PRIVATE LTD.		
E.	KONTI INFRAPOWER AND MULTIVENTURES PVT. LTD.		

- 7.6 I note from the Enquiry Report that with respect to the Zee Group Companies (Sr. No. A to D) of the above-mentioned table Vivek Kulkarni's name was shown as a member of the External Rating Committee meeting held on May 17, 2019 even though he was not part of the same. The Noticee has submitted that the inclusion of the name of Vivek Kulkarni was an inadvertent error. The Noticee has further submitted that while SEBI prescribes that one third of the members of the Committee responsible for reviewing ratings should be independent, the Noticee had three independent members out of the total five, which was even higher than the prescription of SEBI.
- 7.7 I also note from the Enquiry report that the Noticee had provided attendance sheet relating to the External Rating Committee meeting held on May 17, 2019 to show that Vivek Kulkarni was not part of the said meeting. From the said attendance sheet, it has been found by the DA and recorded in the Enquiry Report that D. Ravishankar had attended the said meeting, although his name was not mentioned in the minutes. From the facts brought out above, it is clear that there were two instances of incorrect reporting of the persons present at the External Rating Committee meeting held on May 17, 2019, viz. the inclusion of Vivek Kulkarni's name even though he was not present and the exclusion of the name of D. Ravishankar even though he was present for the said meeting.
- 7.8 It has not been disputed that the above-mentioned violating did in fact occur. I, however, disagree with the characterization of the Noticee that the lapses were merely clerical errors

and were technical non-compliances. It is emphasised that when an appeal is made, the committee considering the appeal should comprise of a majority of members who were not involved in the original rating in respect of which appeal was being made. Thus, the fact that Vivek Kulkarni was mentioned as a member of the Rating Committee even though he was not present at the Rating Committee and the exclusion of the name of D Ravishankar from the minutes of the Rating Committee even though he was present cannot be termed as technical non-compliance for the reasons cited above. It is pertinent to note that the issuer companies mentioned above (Serial A to E) were part of 26 Zee Group Companies that had filed a review request and were placed before the Appeal Committee through a single note.

- 7.9 Lastly, I note from the Enquiry Report that in respect of IDFC First/IDFC Bank, the actual fee received by the Noticee was lower than the fee mentioned in the Contractual Rating Agreement /Covering Letter /Request Letter. It has also been recorded in the Enquiry Report that a deduction in the fee was granted consequent to a meeting between the FD of the Noticee and the Issuer. There is, however, no mention of this meeting in the Ratings Committee Notes or the minutes. In this regard, it has been submitted that IDFC Bank was not a regular client of the Noticee since it had only rated Capital First Ltd which had merged into IDFC Bank. Consequent to the merger of Capital First and IDFC Bank, the Noticee had to keep a track of the rated facilities that had migrated from Capital First to IDFC Bank and the rated facilities were either getting extinguished or modified (from a security perspective). The Noticee has submitted that it was in this context that the Noticee's Head of BFSI Ratings and President–Business Development decided to meet IDFC Bank's Management. Another agenda of this meeting was also to get mandate in the name of IDFC First Bank. As the Bank was represented by the Managing Director and the Chief Executive Officer, the FD of the Noticee was also invited. The FD of the Noticee did have a courtesy meeting with the Managing Director of IDFC First Bank, the Head–BFSI Ratings of the Noticee discussed the rating related aspects. Similarly, President–Business Development had visited the office to meet his contacts in the Bank who were negotiating for a reduced fee, as, generally, fee structure for banks was different from that for NBFCs. While President–Business Development took a commercial decision for reducing the fee, the same had no correlation with the Noticee's FD's meeting with the Managing Director of the Bank, which was a courtesy call. It is a fundamental principle of the CRA Regulations that the dual role of engaging in business development while also

involved in the analytics process for rating of securities goes against the spirit of the CRA Regulations. As may be seen from the above, clarification with respect to the meeting of the FD of the Noticee with the CEO of the IDFC Bank has been provided by the Noticee. It is not in dispute that there was a meeting between the FD of the Noticee and the CEO of IDFC Bank. That being said, the fact that the FD of the Noticee and the CEO of IDFC Bank in the presence of the Head of BFSI Ratings and President–Business Development raises questions about the intent of such meeting. Further, it is clear that the actual fee charged was less than that mentioned in the Contractual Rating Agreement /Covering Letter /Request Letter. In such circumstance, the clarifications provided above could have easily been provided in the Notes placed before the Rating Committee or the minutes of the meeting of the Rating Committee. However, evidently the same has not been done by the Noticee.

- 7.10 In view of these breaches the DA has concluded that the Noticee has violated the provisions of Regulation 21 of the CRA Regulations, Clause 1.2 and 1.3 of the Circular number dated May 3, 2010 and Clause 3A and 3C of Annexure A of the Circular dated November 1, 2016. In this regard, I note that Regulation 21 casts an obligation on a CRA to maintain records including the particulars of fees charged for rating and such other records as the Board may specify from time to time. Similarly, Clause 1.2 and 1.3 of SEBI Circular dated May 3, 2010 requires a CRA to not only record the decisions of the rating committee(s) but also keep the summary of discussions with the issuer, its management, auditors and bankers which have a bearing on the credit rating. Lastly, Clause 3A and 3C of Annexure A of SEBI Circular dated November 1, 2016 requires the Noticee to have the minutes of each case discussed at the Ratings Committee signed by the Chairperson and also to bring out an internal governing document of delineating the functions and details of the Rating Committee. Upon an appreciation and consideration of the facts brought out in the preceding paragraphs, I find that the Noticee had indeed been careless in following the obligations cast upon it in performing the proper processes to maintain its records. Accordingly, I concur with the DA that the Noticee has violated the provisions stated above.

8. ISSUE 3: DELAYED DISSEMINATION OF INFORMATION WITH RESPECT TO MONITORING OF RATING AND FAILURE TO FOLLOW AN APPROPRIATE RATING PROCESS.

- 8.1 As per the SCN, the Noticee allegedly delayed disseminating of information with respect to monitoring of rating and also failed to follow an appropriate rating process including (i) delaying the half-yearly disclosure of performance rated pool and (ii) repetitive delays in issuance of press release pursuant to material event and /or default. This was allegedly in violation of (a) Regulation 15(2) and Regulation 24(2) of the CRA Regulations, (b) Clauses 6.4.2 and 7 of the Circular dated May 3, 2010, and (c) Clause 2 of SEBI Circular no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017 (“**Circular dated June 30, 2017**”). The aforementioned provisions of law read as under:

A. CRA Regulations

Monitoring of ratings

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

Rating process

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

B. Circular dated May 3, 2010

6. Disclosures

6.4 Structured Finance Products

6.4.2 A CRA shall also disclose at least once in every six months, the performance of the rated pool, i.e., collection efficiency, delinquencies. A CRA shall also provide a detailed description of the underlying pools including ageing, Credit enhancements such as liquidity supports, first and second loss guarantee provided shall also be disclosed

7. Implementation Schedule and Reporting

The CRAs shall take necessary steps to implement this Circular immediately and ensure its full compliance at the latest by June 30, 2010. The half-yearly disclosures stipulated above shall be made by the CRAs within 15 days from the end of the half-year (March / September). The yearly disclosures stipulated above

shall be made by the CRAs within 30 days from the end of the financial year. However for the financial year 2009-2010 only, the half yearly and yearly disclosures stipulated above shall be made by the CRAs by June 30, 2010.

C. Circular 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:

I. Initial Rating:

Scenario	Timeline- immediately but not later than
Acceptance of Rating / Appeal for Review of Rating by the Issuer	5 working days of communication of rating by the CRA to the Issuer
Disclosure of rating as non-accepted Rating	In case rating is not accepted by the Issuer within a month of communication of rating by the CRA to the Issuer, the same shall be disclosed as Non-Accepted Rating on the CRA's website
Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ DT	2 working days of acceptance of Rating by the Issuer

II. Periodic Surveillance:

Scenario	Timeline- immediately but not later than
Dissemination of Press Release on CRA's website and intimation of same to Stock Exchange/ DT	5 working days of Rating Committee Meeting

III. Dissemination of PR 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/ DT / 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.

8.2 In its replies, the Noticee *inter alia* submitted as under:

- A. **Delay in disclosure of rated pool performance:** *The Noticee had not rated any pool between September 2016 and March 2019. Therefore, there was no pool to disclose. Only in March 2019 did the Noticee perform its first structured finance rating. In accordance with SEBI Circular dated May 2010, the Noticee was required to publish its first report on pool performance only from September 2019 onwards. However, there was a slight delay. The delay was because the Noticee was preparing the report for the first time, and it took some time to finalize the report templates and for the debenture trustee to share the information in the prescribed formats. The delay is merely a formal deficiency, and the regulatory framework has not been violated in substance or in spirit.*
- B. **Delay in recognition of defaults in relation to Issuers:** *It has been observed by the DA that the Noticee did not adhere to the timeline of 2 working days for the recognition of default particularly in the cases of Sintex BAPL ("**Sintex**") and Reliance Capital Ltd. ("**RCL**"). Additionally, the Enquiry Report also cites the example of another CRA stating that CARE Ratings Ltd. had downgraded their ratings on time with regards to both the entities. The Noticee submits that as per Clause 4 of the Code of Conduct for CRAs, it is stipulated that a CRA shall always exercise due diligence, ensure proper care and exercise independent professional judgment in order to maintain objectivity and independence in the rating process. Therefore, the allegation that the Noticee should also have downgraded the ratings for these entities because of downgrading of the ratings by CARE Ratings Ltd. is against the letter and spirit of the CRA Regulations. This is a glaring example of how the DA has attempted to sit in review of the ratings provided by the Noticee and has gone into the appropriateness of ratings.*
- **Sintex:** *In this case, no notification of default from the debenture trustee regarding any default in Sintex BAPL was received by the Noticee. The said Issuer published the quarterly financials on August 14, 2019. Pursuant to this, the Noticee conducted a review of these quarterly financials and noticed that the Issuer Company had defaulted in its ECB loans and working capital loans. Hence, the case was presented to the rating committee of the Noticee to recognise the default. Thereafter, the Noticee published the rating which was done well within the period of seven working days allowed for review of ratings post the occurrence of any material events (quarterly financials in this case). It is also submitted that the delay was of two days which is a minor delay due to the reasons stated above.*
- **RCL:** *Based on an e-mail dated September 11, 2019, from the debenture trustee highlighting a delay of one day in payment of interest by the Issuer, the Noticee sought confirmation from the Issuer Company on the subject. The issuer responded saying that it*

had activated the interest payment on September 9, 2019, but there was a delay due to a technical glitch in servers and the payment was made on the next working day, i.e. September 11, 2019. The same was also recorded under intimation of payment of interest to exchanges. Upon making further inquiry into the said technical glitch, the Issuer responded stating that the glitch pertained to the bank's system. After making multiple follow-ups, the Noticee received a written response from the Issuer comprising a letter from an NBFC stating that the issuer in question had availed a loan of ₹195 Crores from them but owing to a technical glitch at their banker's server, the disbursement happened on the next working day i.e. September 11, 2019. It was for this reason that the issuer caused the delay in making the payment to the investors. The Noticee sought a letter to be provided from the bank confirming the glitch. The Noticee was however unable to get confirmation from the banker on the technical issue. In the absence of sufficient documentation to establish without doubt that the delay was on account of technical reasons, the Noticee issued a press release downgrading the rating of various instruments of the Issuer on September 25, 2019. The fact that the Noticee did not wait for the bankers and relied on the documentation shows that the Noticee was operating with proper due skill care and diligence. It is also submitted that the instant delay was for a period of nine days which is a minor delay due to the reasons stated above.

- C. **Review of ratings of NCDs:** *The Enquiry Report records that the earlier submissions of the Noticee are accepted in the case of alleged delay in conducting annual surveillance of ratings of Entry India and Capital First Home Finance Ltd., since Brickwork has demonstrated that it had taken requisite action for the review of the rating of the said NCDs. However, the DA finds that there was delay on part of Noticee in conducting the annual surveillance in the case of IKF Finance Ltd. The Noticee submits as early as February 1, 2019, the Noticee had issued an advisory / disclosure to the investors to the effect that the rating was not reviewed due to receipt of only partial information for review. A screenshot of the website evidencing the advisory/ disclosure can be found at Annexure 'H'. The review of ratings was completed after receipt of necessary information from the Issuer and management discussions.*
- D. **Delay in disclosing material event (release of quarterly results) in relation to SREI Infrastructure Finance Ltd. ("SREI"):** *The Designated Authority observed that the Noticee has failed to adhere to the 7 day timeline for disclosure of material event. The Noticee denies the said observation in the Enquiry Report. The Noticee submits that rating revision is a deliberative process based on performance and developments and hence cannot be rushed without hearing the Management. Since it is not a mechanical process, limited information becomes available through quarterly results and if the Noticee's Rating Team feels that any further information is*

required from the client in the interest of fair and objective rating, the same has to be sought. Rating action was based on a normal review process and hence additional information other than quarterly results were sought from the client. Additionally, quarterly results – will have only P&L Accounts and the Noticee requires much more information (asset quality details, CRAR details, ALM profile, etc.) in order to understand the reason behind deterioration in financial performance. The Noticee received information on August 21, 2019, and placed it before the rating committee after discussions with the management on August 28, 2019. Thereafter, the issuer appealed against the rating action and sought a personal representation before the committee which was held on September 6, 2019. The rationale was published on September 10, 2019. The rating dissemination was done within two working days in accordance with the extant guidelines duly taking into account the intervening holidays.

- E. ***Delay in publishing of press release:*** *The Designated Authority has accepted the Noticee's submissions only in the case of Raviraj Viniyog Pvt. Ltd. (erstwhile Emami Enclave Makers Pvt. Ltd.) stating that the Noticee has demonstrated valid justification for the delay in publishing of press release. However, in case of Venus India, Brickwork has admittedly failed to adhere to the timeline of 7 days as prescribed under the Circular June 30, 2017. The Noticee submits that the said delay is attributable to various technical glitches in the system and other issues pertaining to data migration and software. It is pertinent to note here that unlike banks, which have Core Banking Software, the Noticee does not have a standard centralized software and the Noticee's team, while dealing with the technical glitches and development of software, also must deal with the dynamic legal and regulatory changes.*

FINDINGS:

- 8.3 ***Delay in disclosure of rated pool performance:*** I note that the Noticee has admitted to a delay of 15 days in disclosing the performance of the rated pool and the DA has drawn adverse inference for non-compliance with the timelines mandated by SEBI in this regard. In terms of the Circular dated May 03, 2010, which lay down “Guidelines for Rating Agencies”, CRAs have to disclose at least once in every six months, the performance of the rated pool. The Noticee in its reply, stated that it was only in March 2019 that it had performed its first structured finance rating and in terms of the applicable SEBI guidelines, it was required to publish its first report on pool performance only from September 2019 onwards. It further admitted that there was a ‘slight’ delay (15 days), which was attributed to the time to finalize the report templates, as this was the first time such disclosures were

made. It was also stated by the Noticee that the delay is merely a formal deficiency, and the regulatory framework has not been violated in substance or in spirit.

8.4 I take note of the reply of the Noticee terming a delay of 15 days as merely a formal deficiency and claiming that there has been no violation of the substance or spirit of the regulatory framework. Availability of timely information is vital not just for the holders of the instruments rated by the Noticee but also for the health of the financial markets. Terming a delay of 15 days, that too of a regulatory requirement that has been in existence since 2010 and which has to be made only once in 6 months, again speaks volumes about the lack of rigour and discipline on the part of the Noticee to adhere to regulatory timelines.

8.5 ***Delay in recognition of defaults in relation to Issuers:*** I note that two instances of delay in recognizing default were alleged in the SCN – (i) Sintex and (ii) RCL. In the case of Sintex, the Noticee had cited the delay in receiving information from the *DT* as the reason for the delay in recognizing default. I note from the Enquiry Report that the aforesaid reason was not accepted by the DA and adverse inference was drawn. Having considered the material available on record, I have no hesitation in concurring with the findings of the DA in this regard. I note from the material available on record that the Noticee had recognized the default by way of a press release only on August 21, 2022, whereas Sintex Plastic Technology Ltd., the holding company of Sintex, had expressly stated in its quarterly financials published on the website of BSE on August 14, 2019, that it defaulted on its debt obligations. The rationale given by the Noticee for the delay of 7 days is that in terms of the applicable SEBI Guidelines, a 7 days’ period is provided for review of material events. Therefore, as the Noticee has published the revised rating on August 21, 2019, it is within 7 days from the date of publication of quarterly financials (which was considered as the material event as per the reply of the Noticee) on August 14, 2019, and, therefore, the Noticee had complied with the timelines prescribed by SEBI. I find no merit in the arguments advanced by the Noticee in respect of this delay. I note that SEBI had issued the Circular dated June 30, 2017 – “*Monitoring and Review of Ratings by CRAs*”, laying down guidelines for CRAs to ensure prompt recognition of any delay in meeting debt obligation obligations by entities rated by them. The rationale for issuing the Circular as captured in said Circular itself is reproduced below:

*“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.**” (Emphasis supplied)*

- 8.6 The Circular dated June 30, 2017, casts an obligation on the CRA to be proactive and take measures for early detection of potential defaults by tracking the financials of the Issuer Company to understand signs of deterioration of its financial condition. Further, the aforesaid Circular expressly mandates CRAs to monitor the Exchange website for disclosures made in this regard. In the instant case, I note that Sintex Plastic Technology Ltd., the holding company of Sintex, had by way of the disclosures made on the exchange platform on August 14, 2019 (<https://www.bseindia.com/xml-data/corpfiling/AttachHis/aa4083ff-57c8-4aee-bd13-38245741a556.pdf>), stated as under:

*“Sintex has incurred losses during the current quarter and as at period end has a net current liability position on account of reduction in working capital facilities resulting in curtailment of operations. Further, **Sintex has defaulted in repayment of principal payable to lenders aggregating to ₹57.34 Crores in respect of its external commercial borrowings and working capital facilities as on 30 June 2019.** Also, there has been non-compliance of certain financial covenants as specified in loan agreements as at 31 March 2019, which has continued as at 30 June 2019 **and Sintex’s credit ratings have been downgraded during the quarter. The aforesaid conditions indicate liquidity stress and existence of a material uncertainty that may cast significant doubt about BAPL’s ability to continue as a going concern.**” (Emphasis supplied)*

- 8.7 I, therefore, note that contrary to the proactive role expected to be played by CRAs under the Circular, in the instant case despite such stark public disclosures and express admission of default made by the holding company of Sintex on August 14, 2019, the Noticee revised the rating of the Issuer only on August 21, 2022. I can find no justification for the delay in a case where the Holding Company of the Issuer itself has publicly disclosed that there has been a default by the Issuer and even expressed concerns about the Issuer’s ability to continue as a going concern. The said action of the Noticee is in complete disregard of the

role expected to be played by CRAs and shows failure on the part of the Noticee to perform its obligation as a regulated entity discharging a critical public function.

- 8.8 With regard to the matter of RCL, wherein the delay was attributed by the Noticee to the time taken in obtaining confirmation from the banks and Issuer, the DA has held that the same was not in compliance with the timelines prescribed by SEBI. I note that in this case the DT vide email dated September 11, 2019, informed the Noticee that there was a delay in payment of interest by the Issuer. The Noticee, however, issued a press release downgrading the rating of the Issuer only on September 25, 2019. As stated above, the Circular dated June 30, 2017, mandates CRAs to proactively monitor delays in meeting debt obligations by rated entities. In this case, even after the DT had informed the Noticee about the delay, the CRA took close to 14 days for taking the rating action. The Noticee's submission regarding attributing the delay to the time taken in obtaining a confirmation from the Issuer cannot be accepted as the said Circular provides only a two-day period for obtaining confirmation from the Issuer and that too is provided in cases where no information is forthcoming from the DT. I further note that the Noticee has adopted contradictory arguments in respect of the two instances mentioned above. In respect of Sintex, it has been argued that the delay was on account of non-intimation by the DT, whereas in the case of RCL, where the DT had informed the Noticee about the delay, the Noticee has tried to take cover of a 'minor delay' for the time taken for obtaining confirmation from the Issuer/banker.
- 8.9 In view of the same, I note that the Noticee has failed to comply with the timelines prescribed by the Circular dated June 30, 2017, in respect of both the ratings discussed above. I further note that similar violations were noted in the *1st and 2nd Inspections* as stated at pages 2 and 3 of this Order and further, the Hon'ble Tribunal has twice upheld similar findings against the Noticee vide the *1st and 2nd SAT Orders*. I am, therefore, of the view that the aforementioned actions of the Noticee coupled with the fact that the violations were of a repeat nature, point to a casual approach in discharging its role as a CRA.
- 8.10 ***Review of ratings of NCDs:*** The Enquiry Report had identified three instances where there was a delay in conducting the annual review of ratings assigned by the Noticee, viz. IKF, Entry India and Capital First Home Finance Ltd. ("**Capital First**"). I note that in the case of Entry India and Capital First, the DA accepted the reply of the Noticee and

recorded no adverse inferences. In the case of Entry India, the Noticee had contended in its reply that the delay was on account of non-receipt of information from the Issuer and the Noticee had moved the rating to the “*Issuer Not Cooperating*” category; as for the case of Capital First, it was stated that the rating was withdrawn pursuant to the merger of the company with IDFC First Bank. After considering the Noticee’s reply, I find no reason to deviate from the findings of the DA.

8.11 I shall now proceed to address the delay observed in the case of the IKF. In this case, the Noticee submitted that the Rating review was due on January 30, 2019, and it approached the Issuer in the first week of January for undertaking the review. However, there was considerable delay by the Issuer in providing information even after repeated follow-up. A rating advisory was issued by the Noticee on January 30, 2019, stating that the rating was not reviewed on account of receipt of incomplete information. There was further delay in scheduling the management meeting by the Issuer due to non-availability of key management personnel. The management meeting was finally scheduled at the Issuer’s office in Hyderabad on May 3, 2019, and the rating was discussed in the Rating Committee on May 15, 2019. On May 21, 2019, the Issuer appealed against the rating decision and the case was discussed in the Appeal Committee on May 22, 2019, where the appeal was rejected and the rationale was published on May 24, 2019. In this context and from the material available on record, it is however noted that the Noticee failed to provide any documents evidencing the repeated follow-ups with the Issuer for seeking information and scheduling meeting in the matter of IKF. Further, I also note that after the rating advisory was issued in January 2019, the meeting with IKF only happened in May 2019 with a delay of 113 days, which is not acceptable. Such delays on the part of the Noticee have been repetitive even in the earlier *Inspection*.

8.12 ***Delay in disclosing material event (release of quarterly results) in relation to SREI:***
It was alleged in the SCN that in the case of SREI, even though the quarterly results of Issuer were available on the stock exchange platform on August 7, 2019, the Noticee released the PR reviewing the rating only on September 10, 2019. I note that the DA has recorded a finding that the said action of the Noticee was not in compliance with the timelines prescribed under the Circular dated June 30, 2017.

- 8.13 The Noticee on the other hand, in its reply before me, has contended that as only limited information becomes available through quarterly results, in cases where the Noticee's Rating Team feels that further information is required from the Issuer, the same has to be sought. It was submitted that in the instant case, the rating action was based on a normal review process and hence, additional information other than quarterly results was sought from the Issuer. The additional information was received by the Noticee on August 21, 2019 and it was before the Rating Committee after discussions with the management on August 28, 2019. Thereafter, the Issuer appealed against the rating action and sought a personal representation before the Appeal Committee which was held on September 6, 2019. The rationale was published on September 10, 2019. The rating dissemination was done within two working days in accordance with extant guidelines, duly taking into account the intervening holidays.
- 8.14 In this regard, I note that the Circular dated June 30, 2017, mandated that in case of event based review (Material Events requiring review), dissemination of press release on CRA's website and intimation of same to Stock Exchange/ Debenture Trustee should take place within 7 working days of the occurrence of the event. The Noticee's contention that additional information in addition to the quarterly review would be needed for completing the review was not accepted by the DA and it was held that quarterly results was a material event. I note that the submissions made in this regard are contrary even to the Noticee's own submissions in respect of the delay in the case of Sintex which is discussed in the earlier part of this Order, wherein the Noticee had sought to green light its action by claiming that the review was done within 7 days of the quarterly result, considering it as a material event. I, therefore, find no merit in the submissions made by the Noticee and note that the Noticee has been taking convenient stands based on the allegations levelled against it. Such actions are not expected on the part of a regulated entity discharging critical rating functions. In view of the same, I hold that the Noticee failed to comply with the timelines in relation to the publication of the press release regarding rating action following a material event which in this case was the publication of the quarterly results
- 8.15 ***Delay in publishing of press release:*** The Enquiry Report had identified two alleged instances (Raviraj Viniyog Pvt. Ltd. and Venus India) of delay in the dissemination of press release pursuant to the meeting of the rating committee. The DA has drawn adverse inferences only in respect of the delay in the case of Venus India.

- 8.16 As regards Raviraj Viniyog Pvt. Ltd., the DA accepted the reply of the Noticee that the delay was on account of the time taken to obtain NOC from the DT. I have considered the Enquiry Report and the reply of the Noticee and I am in agreement with the findings of the DA in respect of the delay in the case of Raviraj Viniyog Pvt. Ltd.
- 8.17 With regard to the delay in the case of Venus India, I note that the Noticee admitted to the delay in its reply stating that there was a reallocation of the financial sector portfolio (including the Venus India mandate) to a new Group Head, and the press release was submitted to the previous Group Head, which was inadvertently misplaced in the system during the data migration, which led to the delay. I note that compliance with the timelines prescribed for publishing the press release is put in place to ensure that information in respect of the rated instruments gets disclosed to the public in a timely manner. The delay and explanation furnished by the Noticee give an unsatisfactory picture of the internal controls and oversight processes of the Noticee considering the large percentage of lapses identified in the 3rd Inspection, which was based on a small sample survey, that the Noticee attributed to oversight or clerical errors.
- 8.18 In view of the above instances, I note that the Noticee failed to disseminate information in respect of monitoring of ratings in a timely manner. Therefore, I find that the Noticee has violated the provisions of Regulation 15(2) and 24(2) of CRA) Regulations, Clause 6.4.2 and Clause 7 of SEBI circular number CIR/MIRSD/CRA/6/2010 dated May 3,2010 and Clause 2 of SEBI circular number SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017.

9. ISSUE 4: FAILURE TO COMPLY WITH TIMELINES PRESCRIBED IN THE BWR MANUAL.

- 9.1 As per the SCN, the Noticee allegedly failed to comply with the timelines prescribed in BWR Manual in over 75% of the cases inspected during the 3rd Inspection. This was allegedly in violation of the Circular dated November 1, 2016.

9.2 In its replies, the Noticee *inter alia* submitted as under:

- A. *With a view to have ratings done as quickly as possible, certain timelines have been fixed by the management in the operations manual. These also help in setting standards and evaluating Analyst performance. But the Analyst's speed is affected by non-cooperation of clients in providing essential information required for rating appraisal, particularly in respect of Bank Loans. (This is not an issue in respect of securities, as clients are larger companies and are keen to get ratings early so that they can approach the market). A significant volume of the Bank Loan ratings done by the Noticee are for amounts less than ₹25 Crores, and it is these types of clients who need repeated follow-up. Sometimes, the Noticee is required to follow-up with the bank to exert pressure on the client. This is the practical problem in respect of Bank Loan ratings. While the timelines fixed are aspirational, the management of the Noticee is aware that in many cases this will be breached. There is an internal system of knowing delays at Analyst's end and taking corrective action. It is noteworthy that other CRAs are being proceeded against for being too rapid in their review while the Noticee is being accused of not adhering to timelines.*

FINDINGS:

9.3 It is noted from the Enquiry Report that adverse inference has been drawn by the DA on account of the Noticee not concluding the rating exercise within the timelines prescribed as per its own internal manual. I am, however, not drawing any adverse inference in this regard as the circumstances in which the delay has happened is not adequately captured in the Enquiry Report.

10. ISSUE 5: FAILURE TO ADDRESS THE ISSUE OF CONFLICT OF INTEREST.

10.1 As per the SCN, the Noticee allegedly failed to address the issue of conflict of interest arising due to a Rating Committee Member (other than the MD /CEO having business development roles resulting in (i) access to fee details by the Noticee's FD and MD, while also being part of the Noticee's Rating Committee, (ii) Rating Committee (having the FD and MD) discussing non-payment of fees by the Issuer Company, (iii) Ad hoc power of MD to nominate members in certain Rating Committees and (iv) MD being part of a Rating Committee, without majority of its members being independent, as required under law. This was allegedly in violation of (a) Clauses 19 and 22 as specified in Schedule III

read with Regulation 13 of the CRA Regulations, (b) Clause 3B of Annexure A of the Circular dated November 1, 2016, and (c) Clauses 6 and 7 of the Circular dated May 3, 2010.

10.2 In its replies, the Noticee *inter alia* submitted as under:

- A. *The DA has found that there exists a conflict of interest in the Noticee as the MD and FD of the Noticee allegedly exercised great control over the rating process as well as the business development vertical. The DA has made these findings on the basis that the MD and the FD could have a right to reject proposals. It needs to be noted that this provision has been there in the Noticee's operations manual since the year 2008–2009. It is basically an enabling provision to protect the reputation of the Noticee and insulate it from undesirable clients. In the last 13 years, not a single case has been rejected. If it is the view of SEBI now that this job could be delegated to some other executive, the Noticee is happy to accept that suggestion, but it cannot be faulted for having it in the first place.*
- B. *While President–Business Development took a commercial decision for reducing the fee, the same had no correlation with the Noticee's FD's meeting with the Managing Director of the Bank, which was a courtesy call as stated herein. It is for this reason that the name of the FD was not mentioned in the Rating Note, as he was not discussing rating related issues, which was essentially done by the Head–BFSI Ratings.*
- C. *SEBI has made an observation with respect to the composition of the Rating Committee / Appeal Committee. The Noticee submits that Rating Committees have been revamped over time mainly on the basis of growth in business, number of clients, and availability of manpower in different geographic locations. In the initial stages of business, the MD had issued Circulars indicating the powers of different rating committees (IRC, SRC, and ERC). A list of eligible members to participate in IRC or SRC was also attached. The list comprised/ of senior executives or analysts of the Noticee, and this act of the MD was purely an administrative act and did not involve use of any discretion. The MD was not involved in the exact composition of the various Rating Committees either. The MIS department was allocating the mandates based on standard parameters, and the members were identified by the Chairperson who was handling the mandate depending upon availability of members on the day of the meeting. The ERC had in any case definite members, and most of them were independent. The Members present in the Board Meeting of December 18, 2019, have approved and authorised CRO to make such changes as and when necessary to the constitution of various Rating Committees. Therefore, the MD has no role in the actual composition of the Rating Committees.*

- D. *Mere access to the mandates does not automatically imply that the FD and MD were participants in the process of ascertaining the mandates. It is also further submitted that both the MD and the FD act under direct supervision of the Board of Directors of the Noticee, which also includes Independent Directors; therefore, there is continuous oversight to ensure there is no conflict of interest. In the previous inspections starting from 2009, SEBI has never pointed out that the composition of the Noticee's Rating Committees was resulting in a conflict of interest.*
- E. *While a penalty was imposed on Ravishankar dealing with some fee related issues, the matter has been extensively argued at SAT level, and the Noticee has paid the requisite penalty and the matter should be treated as closed.*
- F. *The External Rating Committee, while rating an ILE&FS group entity and consenting to the recommended reaffirmation, advised that the non-payment of surveillance mandate fee be brought to the knowledge of the Business Development team. It needs to be noted that the committee never enquired about the quantum of the fee but merely pointed out that it had not been paid. This is not a follow-up on fees but only a point which any rating committee has to take note of to ensure compliance with SEBI directives on non-cooperating clients as it is an Issuer Non-Cooperation event.*
- G. *As regards reconstitution of ratings committees and deciding the size/composition/powers of rating committees etc., the MD performed an administrative act as a signatory to the Circulars issued to the office. A board approved rating mandate allocation policy was in place according to which mandates were allocated. Further, with effect from December 18, 2019, the Board has authorised the CRO to reconstitute the various committees, as and when necessary. As such, MD has no role in the actual composition of the rating committees. It is also further submitted that both the MD and the FD act under direct supervision of the Board of Directors of the Noticee, which also includes independent direction; therefore, there is continuous oversight to ensure there is no conflict of interest.*

FINDINGS:

- 10.3 I note from the SCN and the Enquiry Report that four instances of alleged conflict of interest, wherein the MD or FD or both were observed to be active on both the rating and the business development side of ratings assigned by the Noticee, were observed. I note that the DA after considering the reply of the Noticee, did not record any adverse inference in respect of two of the alleged instance of conflict of interest, viz. Coffee Day Enterprise Ltd. ("**Coffee Day**") and Andhra Pradesh Capital Region Development Authority ("**APCRDA**"). After considering the Report, I am inclined to accept the recommendation of the DA in this regard.

- 10.4 However, in respect of the allegation of conflict of interest in the rating assigned to two Issuers, i.e. IDFC First and an IL&FS Group Entity, the DA did not accept the reply of the Noticee. I note from the Enquiry Report that adverse inference in the case of IDFC First Bank, as the FD of the Noticee, who was also part of the Rating Committee, was found to have had a meeting with the management of the Issuer along with the Business Development Team. The Noticee in its reply has stated that although IDFC First Bank was earlier not a client of the Noticee but post-merger of Capital First with IDFC Bank, the Noticee had to keep a track of the rated facilities that had migrated from Capital First to IDFC Bank. It was in this context, the Noticee submitted, that the Head of BFSI Ratings and President – Business Development decided to meet the IDFC First Bank's Management. Another agenda of this meeting was also to get mandate in the name of IDFC First Bank. As the Bank was represented by the MD and the CEO, they also invited the Noticee's FD to visit them. At the same time, the Noticee's FD did have a courtesy meeting with the Managing Director of IDFC First Bank, the Head-BFSI Ratings of the Noticee discussed the rating related aspects. It was the President-Business Development who took the commercial decision for reducing the fee and the Noticee's FD had no role to play in that decision. It is for this reason that the name of the Noticee's FD was not mentioned in the Rating Note, as he was not discussing rating related issues, which was essentially done by the Head-BFSI Ratings.
- 10.5 After considering the reply of the Noticee and other material available on record, I am of the view that contentions advanced by the Noticee are without merit. I note from the records that contrary to the submissions of the Noticee, it was in fact the Noticee, vide an e-mail dated February 8, 2019, that requested for a meeting between the FD and the MD of IDFC First Bank. I further note that if the Noticee had intended to be a member of the Rating Committee assigning ratings to the instruments issued by IDFC First Bank then the Noticee should have avoided meeting its management along with the Noticee's Business Development Team.
- 10.6 It is also noted that the KPMG Report also highlights the issue of blurring of analytical and BD role in the CRA. The report observed that while rating of an IL&FS group entity, the ERC (that included both the CRA's MD and the CRA's FD), while consenting to the recommended reaffirmation, advised that the non-payment of surveillance mandate fee be

brought to the knowledge of the Business Development Team. This is in violation of SEBI directives that require strict separation of business development and analytical functions.

10.7 It is noted from the Enquiry Report that an adverse inference has also been drawn as the Noticee's MD and FD retained the power to accept or reject a mandate in certain cases. The Noticee in this regard has submitted that this provision has been there in the Noticee's operations manual since the year 2008–2009 and was only an enabling provision to protect the reputation of the Noticee and insulate it from undesirable or cantankerous clients. It was also submitted by the Noticee that in the last 13 years, there was not even a single instance where this power has been exercised. The Noticee also undertook to delegate this power to certain other individuals if SEBI was of the view that such powers in the hands of MD or FD is not desirable. Having considered the reply of the Noticee, I am inclined to accept the same and not draw any adverse inference in this regard as the material on record does not show any instance where this power was indeed exercised.

10.8 In view of the above, I find that the Noticee has violated the provisions of Clause 19 and 22 of the Code of Conduct specified under Third Schedule read with Regulation 13 of CRA Regulations, 1999, Clause 3B of Annexure A of SEBI Circular No. SEBI/HO/MIRSD/ MIRSD4/CIR/P/2016/119 dated November 1, 2016 and Clause 6.7 of SEBI circular number CIR/MIRSD/CRA/6/2010 dated May 3, 2010.

11. ISSUE 6: FAILURE TO MAKE CORRECT DISCLOSURES IN PRs.

11.1 As per the SCN, the Noticee allegedly failed to make correct disclosures in its PRs concerning some Issuers (i) as there was no reference to appropriate rating criteria in the PR, and (ii) an incorrect disclosure was made regarding key covenants of the SO instrument rated. This was allegedly in violation of (a) Clause 2A of Annexure A of the Circular dated November 1, 2016, and (b) Clause 3A of the Circular dated June 30, 2017.

11.2 In its replies, the Noticee *inter alia* submitted as under:

A. SEBI has observed that while disclosing a revised criterion on the Noticee's website, no reference was being made to the original criteria (before revision). This observation is without merit. The Noticee's rating criteria review policy states that a review is due once in five years, and as and when necessary.

It is submitted that, wherever the criteria have been updated post the SEBI Circular, the same have been published on the website with the link to the previous version. The Noticee has also constituted a committee and initiated the reviewing and refining the existing criteria and rating models. The same is expected to be completed by September 2021.

- B. *The DA observed that the Noticee has admitted to the missing reference to criteria on Securitisation Transactions or Criteria on Credit Enhancement despite rating the instruments of Coffee Day as SO. The Noticee once again submits that this was merely a clerical omission, which occurred due to manual updating of the Noticee's website. It is maintained that despite the said clerical omission, the spirit of SEBI Regulations and Circular were strictly adhered to.*
- C. *The DA had also made an adverse finding against the Noticee with respect to elaboration of covenants in the case of Reliance Home Finance Ltd. ("RHFL"). The Noticee submits that the assumptions made were included in the PR done on February 28, 2019, while assigning the rating. In subsequent rationales, the credit strengths and constraints cover such points, though specific assumptions are not covered in detail, as they have been covered in detail earlier.*

FINDINGS:

- 11.3 I note that SCN had identified two instances (Coffee Day and RHFL) where the Noticee had failed to include correct disclosures in the press release. The DA had recorded an adverse finding in both these cases. It is noted from the reply filed before me that the Noticee accepted the allegation in the SCN and has tried to term it as mere clerical omissions.
- 11.4 SEBI has issued the Circular dated November 1, 2016, laying down Enhanced Standards for CRAs stating that: "CRAs [were] mandated to issue a Press Release after assigning a rating." The Circular further provided that: "[with] a view to harmonizing the format of the Press Release, it has been decided that all CRAs shall follow a standardized template, which is attached as Annexure-A2." The Circular also expressly clarified that the template specifies the minimum information that must necessarily be captured in the press release and CRAs are free to include additional information. I note from the standard template contained in the aforesaid Circular that it has been specifically provided that the press release should contain a "hyperlink/ reference to the applicable 'criteria'". The same is reiterated in Clause 2A of Annexure A of the Circular dated November 1, 2016.

- 11.5 Further, Clause 3A of the Circular dated June 30, 2017 requires that, *“With regards to Structured Finance products, the CRA shall include all the assumptions/ covenants made while carrying out the review of such products in the Press Release.”*
- 11.6 The Noticee’s failure to include such critical information, especially in relation to SO ratings, cannot be viewed as mere clerical omissions but rather indicates the lax approach of the Noticee towards ensuring compliance with regulatory requirements.
- 11.7 In view of the above, I find that the Noticee has admittedly violated the provisions of Clause 2A of Annexure A of SEBI Circular No. SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016 and Clause 3A of SEBI circular number SEBI/H0/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017

CONCLUSION:

- 12.1 In its reply, the Noticee while detailing the measures taken post its first reply in 2021, submitted: *“Should SEBI cancel the registration of the Noticee as a CRA, even though such a cancellation may be prospective in nature, it will irreparably prejudice not only the Noticee but will also have an adverse impact on the securities market. Currently, 8699 number of ratings issued by the Noticee are live and under surveillance. This includes both bank loan ratings and ratings of securities including instruments that are listed on exchanges. A cancellation of the registration of the Noticee will severely impair the credibility of the existing ratings issued by the Noticee and would have an adverse impact on the market. Further, monitoring of such existing ratings will be jeopardized as the Noticee would not be permitted to carry on any monitoring activities. This is likely to have a materially destructive impact on the interests of the Issuers as well as the investors. It is also pertinent to point out that cancellation of the Noticee’s licence will irretrievably prejudice the workforce of the Noticee and cause a loss of livelihood for over 300 employees.”*
- 12.2 CRAs play a critical role as gatekeepers to financial markets and are a source of information for investors. Regulations like the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, mandate issuers to obtain rating from at least one of the registered CRAs prior to public issue of securities. Credit Ratings are also relied upon by investors, including institutional investors like Provident Funds and Mutual Funds which handle public funds, not just while assessing investment opportunities, but also in making investment decisions as many funds are constrained by their charter documents in investing in securities below a

certain rating threshold. Given the important public function played by CRAs, it becomes essential to ensure that only entities conforming to best practices in governance and having robust systems and processes in place, are vested with the right to issue these ratings. Further, as rating decisions, at their core, are essentially subjective opinions of the majority of the members of the committee making that decision, it becomes critical to ensure that members taking that call are not conflicted, and taking decisions based on available information and there are systems and processes in place to capture the process adopted in arriving at the decision. Also, assignment of rating is not a one-time exercise. Surveillance of the issuer over the life of the rated instrument and ensuring that the rating adequately captures the evolving developments is critical for ensuring sanctity of ratings.

- 12.3 Given the vital public functions performed by credit rating agencies, it becomes important to ensure that such agencies conform to the applicable regulatory framework and have high standards of diligence. SEBI regulations and circulars mandate credit rating agencies to give *'true', 'fair', 'appropriate' and 'accurate'* rating and in order to fulfil such obligation the higher standards of due diligence, integrity, dignity, fairness, etc. are expected from CRAs. However, from the above it is evident that the Noticee failed to exercise proper skill, care and diligence while discharging its duties as a credit rating agency, which has defeated the very purpose of Regulations i.e. investor protection and orderly development of the securities markets. The repeated lapses, noticed across multiple inspections conducted by SEBI, shows that governance changes recommended in earlier inspections, and monetary penalties imposed have not proved effective or deterred the Noticee in addressing very basic requirements of running a CRA. Strict regulatory action, in my considered view, is required at this juncture to address the issue and protect the market ecosystem.
- 12.4 Accordingly, in light of the findings contained in the preceding paragraphs and for the reasons detailed above, I find myself in agreement with the findings of the DA that the Noticee had violated the aforementioned provisions of the CRA Regulations and the SEBI Circulars. Having regard to the facts and circumstances of the instant proceedings, I accept the recommendation of the DA that the Certificate of Registration of the Noticee be cancelled.
- 12.5 Incidentally, in its reply dated September 30, 2022, the Noticee highlighted the remedial steps taken to further strengthen its processes post-filing of its reply dated July 5, 2021, such as: (a) Timeline compliance, (b) Automation of receipt and follow-up of no default

statements which are to be provided by its clients, (c) Bankers' feedback schedulers, (d) Automation process of tracking rating mandates that are due for surveillance coupled with frequent alerts to analysts, which in turn help with a speedier process of publishing rating rationales, etc. (e) Maintenance of a centralized repository of database to keep track of the Centre for Monitoring Indian Economy database, (f) Addressing conflict of interest with respect to the roles performed by the MD and FD.

- 12.6 I have noted the above mentioned remedial steps taken by the Noticee. I however, note from the Noticee's website i.e. <https://www.brickworkratings.com/> that the transition in its ratings (calculated as per the SEBI Circular no. SEBI/ HO/ MIRSD/ DOS3/CIR/P/2018/140 dated November 13, 2018 – ***Guidelines for Enhanced Disclosures by CRA: Clause 3.A. of the aforesaid Circular states: Transition studies are central to evaluating the performance of a CRA and provide an insight on the stability of ratings over a period of time. In order to promote transparency and to enable the market to best judge the performance of the ratings, the CRA should publish information about the historical average rating transition rates across various rating categories, so that investors can understand the historical performance of the ratings assigned by the CRA.***) indicates poor stability and does not compare favourably with its peers, as detailed below.

TABLE VI (FIGURES IN % AND ARE 100% MINUS STABILITY RATE)									
CRA	FROM AAA			FROM AA			FROM A		
	2019	2020	2022	2019	2020	2022	2019	2020	2022
ACUITE	NA	0	0	6.5	4.5	6.7	4.4	8.4	8.1
BRICKWORK	<u>7.01</u>	<u>12.18</u>	<u>12.31</u>	<u>5.73</u>	<u>9.65</u>	<u>10.7</u>	<u>4.99</u>	<u>8.69</u>	<u>12.81</u>
CARE	2.93	4.03	2.71	3.98	7.45	7.57	5.11	9.69	8.7
CRISIL	1.31	1.23	1.2	1.91	2.14	2.83	3.97	4.36	6.44
ICRA	1.4	2.8	2.1	2.2	5.6	5.6	3.8	10.8	9.9
INDIA RATINGS	1.65	2.32	2.05	3.22	3.69	4.89	5.69	6.83	11.19
INFOMERICS	-	NA	0	-	33.33	10.53	-	23.08	23.28

TABLE VI (FIGURES IN % AND ARE 100% MINUS STABILITY RATE)									
CRA	FROM BBB			FROM BB			FROM B		
	2019	2020	2022	2019	2020	2022	2019	2020	2022
ACUITE	7	10.9	9.6	5	7.8	13.3	4.3	8.4	13.7
BRICKWORK	<u>5.85</u>	<u>12.7</u>	<u>20.73</u>	<u>5.56</u>	<u>13.75</u>	<u>26.75</u>	<u>4.99</u>	<u>9.38</u>	<u>18.87</u>
CARE	5.5	10.96	9.07	7.4	12.36	11.33	9.66	23.89	21.89
CRISIL	5.05	5.57	8.06	7	7.12	10.12	8.29	9.01	20.37
ICRA	4.8	12.9	12.4	5.8	12.5	12.9	5.1	13.1	16.4
INDIA RATINGS	7	8.1	12.92	8.02	10.37	21.84	8.2	8.89	30.39
INFOMERICS	-	15.94	11.76	-	11.53	19.27	-	20	35.9

12.7 Further, vide SEBI Circular no. SEBI/HO/MIRSD/DOS3/CIR/P/2019/70 dated June 13, 2019 (***Guidelines for Enhanced Disclosures by CRA***), SEBI had *inter alia* introduced *Probability of Default (“PD”) benchmarks for CRAs* to enable investors to discern the performance of a CRA vis-a-vis a standardised PD benchmark scale. Accordingly, in consultation with SEBI, CRAs were mandated to prepare and disclose standardized and uniform PD benchmarks for each rating category on their website, for one-year, two-year and three-year cumulative default rates, both for short-term and long-term. Further, it was specified that the PD benchmark for the rating categories AAA, AA and A, shall be as under, subject to any unexpected legal events /mitigating circumstances impacting the default rates, with certain permitted tolerance levels:

- i. For AAA:
 - Zero for one-year and two-year default rate.
 - Zero for three-year default rate, with a tolerance level of 1%.
- ii. For AA:
 - Zero for one-year default rate.
 - Zero for two-year with a tolerance level of 2%.
- iii. For A:
 - Zero for one-year with a tolerance level of 3%.

12.8 In this context, the standardized and uniform PD benchmarks for each rating category, as obtained from the Noticee’s website i.e. <https://www.brickworkratings.com/>, which is

reproduced below, clearly indicates that the default rates have deteriorated and are above the benchmark specified by SEBI for certain rating categories:

TABLE VII									
RATING CATEGORY	PROBABILITY OF DEFAULT BENCHMARK BY SEBI VS. CRA'S ACTUAL DEFAULT RATES								
PERIOD	MARCH 2022	MARCH 2020	BENCHMARK	MARCH 2022	MARCH 2020	BENCHMARK	MARCH 2022	MARCH 2020	BENCHMARK
	ONE – YEAR			TWO – YEAR			THREE – YEAR		
AAA	0.48%	0.59%	0%	1.42%	1.43%	0%	<u>2.47%</u>	2.41%	1%
AA	0.98%	1.46%	0%	2.33%	2.83%	2%	3.71%	3.93%	2.0%
A	1.65%	1.79%	3%	3.63%	3.67%	3.5%	<u>5.63%</u>	5.49%	5.4%
BBB	<u>2.42%</u>	2.04%	3.3%	<u>5.57%</u>	4.67%	6.0%	<u>8.99%</u>	7.65%	10.5%
BB	<u>2.71%</u>	2.13%	8.7%	<u>5.51%</u>	4.59%	14.4%	<u>8.5%</u>	7.39%	19.6%
B	<u>3.52%</u>	2.89%	17.2%	<u>7.73%</u>	6.14%	33.1%	<u>11.43%</u>	9.54%	45.3%
C	<u>11.52%</u>	11.01%	100.0%	<u>25.22%</u>	20.27%	100.0%	<u>35.52%</u>	30.29%	100.0%

12.9 It may also be noted that SEBI has undertaken a joint inspection with RBI, between April 4 and 11, 2022, of the records and documents of Brickwork, for the period from December 1, 2019–January 31, 2022 (“**4th Inspection**”), which is at present pending. However, the nature of discrepancies /deficiencies /violations contained in the *prima facie* observations emanating from the **4th Inspection**, are also similar in nature to those contained in the **1st and 2nd Inspections** as well as the **3rd Inspection** *inter alia* involving (a) failure to document meetings with management /undertake site visits, (b) failure to undertake independent analysis of projection provided by the Issuer, (c) delay in default recognition, (d) material event delay, (e) Conflict of interest, etc.

12.10 It is nonetheless clarified that the aforementioned paragraphs 12.5–12.9 are merely incidental observations and have not been considered against the Noticee in these proceedings.

ORDER:

13.1 I, in exercise of the powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act read with Regulation 27 of the Intermediaries Regulations, hereby cancel the Certificate of registration granted to the Noticee, i.e. **Brickwork Ratings India Pvt. Ltd., (SEBI Registration No.: IN–CRA–005–2008)**, as a Credit Rating Agency.

- 13.2 The Noticee shall wind down its operations (including intimating its client about closure of its operations) within a period of six months from the date of this Order. The Noticee shall not take any new clients / fresh mandates from the date of this Order.
- 13.3 This Order disposes of the enquiry proceedings initiated against the Noticee following the 3rd *Inspection* conducted by SEBI.
- 13.4 A copy of this Order shall be served on the Noticee immediately. A copy of this Order shall also be served on the recognized Stock Exchanges and Depositories for ensuring compliance of this Order.

Place: Mumbai
Date: October 6, 2022

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA