

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

Under Section 11(1), 11(4) and 11B Of the Securities and Exchange Board of India Act, 1992, in the matter of CARE Ratings Ltd.

IN RESPECT OF

	NOTICEE	PAN
1	S. B. MAINAK	ACOPM4530H
2	RAJESH MOKASHI	AAGPM0568B

BACKGROUND:

1. CARE Ratings Ltd. (“**CARE**”) is a Securities and Exchange Board of India (“**SEBI**”) registered and Reserve Bank of India (“**RBI**”) accredited credit rating agency. CARE is listed on BSE Ltd. and the National Stock Exchange of India Ltd. (“**NSE**”) and is a professionally run company without any identified Promoters. Noticee 1 (S. B. Mainak) was the Non-Executive Chairman of CARE from August 17, 2015 to February 11, 2020, and Noticee 2 (Rajesh Mokashi) was the Managing Director (“**MD**”) and Chief Executive Officer (“**CEO**”) of CARE from August 21, 2016, to July 17, 2019.
2. SEBI started receiving whistle-blower complaints¹ from December 2018 onwards, *inter alia* alleging that the Noticees were interfering in the rating process at CARE and granting AAA ratings to clients paying higher fee. Considering the seriousness of the allegations, SEBI, vide letter dated January 31, 2019, forwarded a copy of the initial whistle-blower complaint to the Board of CARE and advised that an independent auditor be appointed to enquire into the allegations. CARE subsequently, vide letter dated February 25, 2019, informed SEBI that they had appointed Pravin Chandak and Associates, Chartered Accountants, to conduct the enquiry. SEBI, vide e-mail dated

¹ Eight whistle-blower letters were received by SEBI during the period from December 2018 to July 2019.

February 28, 2019, advised that as the said CA firm was also the internal auditors of CARE, and might not satisfy the independence criteria and suggested that an audit firm which did not have any pecuniary relationship with CARE be entrusted with the enquiry.

3. Pursuant to the same, CARE appointed Borkar and Muzumdar, Chartered Accountants, vide letter dated March 12, 2019, to conduct the enquiry. After the completion of the said enquiry, CARE vide a letter dated May 21, 2019, informed SEBI that Borkar and Muzumdar had submitted its Report ("**B&M Report**") dated May 7, 2019, and the Board of CARE at its meeting held on May 21, 2019, had reviewed the findings contained in the Report. The highlights of the said letter are reproduced below:
 - The auditors have not found any evidence that the Chairman or the MD was influencing the rating process.
 - The Board was reassured by the Rating Team that the rating of Yes Bank was not upgraded due to influence of either the MD or the Chairman.
 - The Auditor made suggestions to consider more factors while doing the ratings, and the same was being expeditiously implemented.
4. SEBI, in response to CARE letter dated May 21, 2019, vide letter dated July 12, 2019, advised the Audit Committee of CARE to appoint an independent law /audit firm, in consultation with SEBI, to examine the allegations made in the whistle-blower complaints. SEBI advised that a fresh enquiry needed to be conducted as it was of the view that, prima facie, the B&M Report was not satisfactory for the following reasons:
 - Phone records and e-mails of the relevant persons were not examined by the auditor.
 - There were issues in sample selection and sample period.
 - The Auditor did not examine employees across different verticals and hierarchies.

- Some of the employees/ officials of CARE whose statements were included in the B&R Report independently confirmed to SEBI that they had not been interviewed by the Auditor.
5. Consequently, in August 2019, Ernst & Young LLP were appointed as the forensic auditor (“**FA**”) to independently examine the allegations made in the whistle-blower complaints.
 6. SEBI also advised CARE to place Noticee 2 on leave till the completion of the Forensic Audit to avoid any potential conflict of interest/ interference with the enquiry process and to create an environment which would be conducive for the employees of CARE to freely interact with the auditors without fear of reprisal. Noticee 2 subsequently proceeded on leave with effect from July 17, 2019.

Scope of the Forensic Audit Report

7. Based on the allegations in the whistle-blower letters and discussions with SEBI, the FA identified ratings assigned to eleven Issuers (“**Identified Issuers**”) for review. The review period was fixed as April 1, 2016 to May 31, 2019. The FA identified 47 officials of CARE (“**Identified Persons**”), which included the Noticees, who were involved in rating the instruments issued by the *Identified Issuers*. The statements of the *Identified Persons* were recorded by the Auditor. The FA also examined e-mails as available on the Server, itemized mobile bills of relevant officials and archived WhatsApp chat conversations of the *Identified Persons*. The WhatsApp conversations of the Noticees could not be examined as Noticee 1 had deleted all prior records, and Noticee 2 had changed his phone before such messages could be obtained by the FA.

Forensic Audit Report (“FAR”)

8. The FAR of E&Y was received by SEBI on February 11, 2020. Considering the nature of the finding in the FAR, SEBI vide letter dated February 12, 2020, directed the Board of Directors of CARE to institute a full-fledged inquiry in the matter of interference of officials of CARE, including the Noticees, in the rating process for the three years preceding the date of the letter. The letter also directed that the Board constitute a committee of independent directors to oversee the proceedings.

Justice B.N. Srikrishna Report

9. CARE submitted its response to the aforementioned SEBI letter dated February 12, 2020, vide letter dated February 18, 2020, wherein it was *inter alia* stated that:
- FAR was discussed with the legal counsels of the company, who suggested that there were no conclusive findings against Noticee 1. However, considering the findings in the FAR, the Board advised Noticee 1 to consider the option of resigning, pursuant to which S. B. Mainak tendered his resignation on February 11, 2020.
 - The Board had resolved to institute a full-fledged inquiry and constituted a committee of independent directors to oversee the proceedings. Hon'ble Justice B.N. Srikrishna, former judge of the Supreme Court of India, was subsequently appointed to conduct the enquiry.
 - The Board was advised by the legal counsels of the company that even though the FAR highlighted a few instances where the MD had interfered with the rating process, however, there was no evidence in the FAR to conclude that the rating outcome was affected on account of such interference.
10. CARE forwarded the report dated March 23, 2022, submitted by Justice Srikrishna to SEBI, vide an e-mail dated March 24, 2022. The Justice Srikrishna

report concluded that charges against the Noticees do not stand established based on the material placed before him.

Show Cause Notice

11. SEBI simultaneously issued a Show Cause Notice dated February 14, 2020 (“**SCN**”), to the Noticees based on the *prima facie* violations of securities laws that were brought out in the FAR. The allegations against Noticee 1 pertained to interference in the ratings related to instruments issued by Dewan Housing Finance Ltd., Yes Bank Ltd. and certain other companies, whereas in the case of Noticee 2, it pertained to interference in the process of the ratings assigned to instruments issued by Dewan Housing Finance Ltd., Yes Bank Ltd. and Infrastructure & Financial Services Ltd.

Inspection

12. In response to the SCN, Noticee 1, vide letter dated February 24, 2020, and Noticee 2, vide letter dated February 18, 2020, sought an opportunity to inspect certain documents. In response to the said request, I note that SEBI could provide the opportunity for inspection only on July 2 and 3, 2020, as during the intervening period, its office was closed due to the lockdown imposed during the first wave of the COVID-19 pandemic.
13. The inspection, I note from records, was undertaken only on November 23 and 24, 2020, as the Noticees sought adjournments on the ground that the inspection could be carried out only after the lockdown imposed in response to COVID-19 was completely lifted. Thereafter, Noticee 1, vide letter dated December 2, 2020, submitted that during the inspection, only limited documents were shared for viewing purposes and sought copies of a set of documents listed under 29 heads in the letter. Noticee 2 also made a similar request vide e-mail dated November 24, 2020. SEBI, thereafter, vide letter dated December 10, 2020, provided copies of the documents sought by the Noticees.

Supplementary SCN

14. Subsequently, Noticee 1 vide letter dated December 29, 2020, and Noticee 2 vide letter dated January 8, 2021, sought cross-examination of the persons whose statements had been recorded and formed part of the FAR.
15. I note from the records that at this point, SEBI identified the list of persons whose statement would be considered relevant, and therefore, an opportunity to cross-examine the *Identified Persons* could be provided to the Noticees. It was also noticed that certain other alleged irregularities that were identified in the FAR did not form part of the SCN. In view of the same, it was decided to issue a supplementary SCN ("**SSCN**"). However, at this point, the lockdowns to tackle the second wave of COVID-19 started taking effect. In view of the same, the issuance of the SSCN got delayed, which was issued on September 6, 2021.
16. Noticee 1, vide letter dated September 24, 2021, and Noticee 2, vide letter dated September 21, 2021, submitted their replies to the SSCN. While Noticee 1 replied to the SSCN on merits, Noticee 2 took up procedural objections, which are detailed below:
 - The opportunity of inspection of documents related to the additional charges levelled in the SSCN should be provided.
 - Any other document on the basis of/pursuant to which the SSCN was issued should be provided.
 - Inspection of the internal file notings or any such document which provides the rationale for issuance of the SSCN should be furnished.
17. Noticee 2 stated that he would be in a position to reply to the allegations made in the SSCN only after the inspection was complete and copies of all the documents were provided to him.
18. In response to the said letter from Noticee 2, SEBI vide letter dated October 8, 2021, informed that the inspection of relevant documents and evidence relied

upon by SEBI has already been provided to the Noticee during the inspection granted on November 24, 2020. Noticee 2 was, therefore, advised to submit his reply on merits. In response, Noticee 2 vide letter dated October 14, 2021, reiterated his earlier demand for inspection. He further added that in case his demand for inspection is denied, then an additional period of 21 days be provided for filing his reply. Considering that Noticee 2 was reiterating his demand for inspection, in the interest of compliance with principles of natural justice, SEBI granted another opportunity of inspection to both the Noticees on January 4, 2022.

19. Subsequently, Noticee 1 vide e-mail dated January 4, 2022, expressed his inability to undertake an inspection on the said date due to the then prevailing third wave of COVID-19. He sought that the documents may be mailed to him instead of SEBI providing an opportunity for inspection. Noticee 2 also requested for postponement of the inspection on similar grounds. Thereafter, after the lockdown imposed to contain the third wave of the COVID-19 pandemic was lifted, the Noticees were informed vide e-mail dated March 17, 2022, that another opportunity of inspection was being granted on April 1, 2022. Noticee 2 took inspection on the said date and thereafter requested that copies of all the documents that have been inspected be furnished.
20. Noticee 1, on the other hand, vide letter dated March 28, 2022, stated that undertaking the inspection would not serve any purpose unless SEBI furnished the documents which had already been sought by him. SEBI, on receipt of this letter, once again informed the Noticee that another opportunity of inspection was being granted on April 11, 2022, and requested Noticee 1 to point out the specific documents whose copies would be required so that the same could be mailed to him.
21. I note from records that without making any specific requests for documents, the Noticees continued to make generic requests seeking copies of all documents. It is also noted that as the Noticees were only making generic

requests for copies of documents and considering that all the documents that have been relied upon for framing the SCN and SSCN were already granted to the Noticees, SEBI, in the interest of proceeding ahead with the matter, considered inspection in the matter as concluded.

Cross Examination

22. Thereafter, SEBI proceeded to provide an opportunity for cross-examination to the Noticees. A list of employees of CARE whose statements were relevant was drawn up, and the Noticees were provided with an opportunity to cross-examine the witnesses. Noticee 1, after considering the statements of the witness who were made available for cross-examination, stated that he did not wish to avail the opportunity. Noticee 2 expressed his willingness to avail the opportunity. Thereafter, after confirming the availability to the Noticees, an opportunity of cross-examination was provided to Noticee 2 as per the following schedule:

Name	Cross Examination Date
Ranjan Sharma	November 28, 2022
Ravi Dasari	December 01, 2022
T.N. Arun Kumar	December 02, 2022
Aditya R Acharekar	December 06, 2022
Mitul Budhbhatti	December 07, 2022
Ramesh Perinkulam Seshadri	December 23, 2022

23. After completing the cross-examination, the Noticees were granted an opportunity of personal hearing on January 31, 2023. Noticee 1 was represented by Mr. Sumit Agarwal, Advocate, and Noticee 2 was represented by Mr. Pesi Modi, Senior Advocate. Thereafter, the Noticees submitted written submissions vide letters dated February 12, 2023 (Noticee 1) and February 14, 2023 (Noticee 2).

24. The summary of the oral and written submissions made on behalf of the Noticees is given below:

Noticee 1 – S.B. Mainak

- i. Noticee 1, in addition to submissions made during the oral hearing, also submitted written submissions dated December 29, 2020 (“**Reply to the SCN**”), September 24, 2021 (“**Reply to the SSCN**”) and February 12, 2023 (“**Post Hearing Submissions**”).

Preliminary Objections

- ii. The allegations contained in the SCN and SSCN have already been examined on four separate occasions, and the Noticee has been cleared of all charges in every such instance.
- iii. The SCN and the SSCN are based on anonymous complaints, and it is settled law and practice in India that investigations cannot be commenced based on such anonymous complaints.
- iv. The SSCN is illegal and *non-est* in law as there is no provision under securities laws which empowers SEBI to issue supplementary SCNs. It was also submitted that even if it is presumed that SEBI has the authority to issue supplementary SCNs, the same has to be on the basis of new material which was not available at the time the SCN was issued.
- v. SEBI has rejected Noticee’s request for inspection and copies of documents relied upon for framing the SCN and SSCN, and this amounts to a violation of the principles of natural justice. In support of this contention, the Noticee relied upon the judgment of the Hon’ble Supreme Court in the matter of **T. Takano v. SEBI**² and the order of the Hon’ble Securities Appellate Tribunal in the matter of **Chanda Kochhar v. SEBI**³.
- vi. SEBI did not permit the Noticee to cross-examine the authors of the FAR.
- vii. The allegations in the SCN and the SCNN pertain to violations of the provisions

² Civil Appeal Nos. 487-488 of 2022

³ Appeal no. 751 of 2022|Date of Order January 05, 2023

of the SEBI (Credit Rating) Regulations, 1999 (“**CRA Regulations**”). However, the rating agency itself has not been charged for the violations, and, therefore, it is not permissible for SEBI to move against the Noticee.

Reply on merits

A. Non-Independence of Composition of Rating Committees

- viii. The FAR, which forms the basis of the SCN and SSCN, makes no such finding. Further, the obligation under the CRA Regulations to ensure the independence of the Rating Committees falls on the rating agency. As SEBI has not initiated any action against CARE for the aforesaid alleged violation, it would not be open for SEBI to initiate action on this ground against the Noticee.
- ix. The power to decide the composition of the Rating Committee was vested with the Board of Directors, and in the absence of any evidence pointing to any undue influence exercised by the Noticee, it would not be open for SEBI to hold the Noticee liable for any potential lapses by the Board.
- x. Without prejudice to the above, in respect of the allegation, the Noticee also submitted as under: -
 - a. There is no stipulation under SEBI Guidelines that Rating Committees cannot have members who were falling under one another in the reporting structure.
 - b. CARE’s Operational Manual was submitted to SEBI on a regular basis. Therefore, SEBI was always aware of CARE’s policy for the constitution of Ratings Committees.

B. Interference in the Rating Process

- xi. The SCN and SSCN failed to provide any evidence or basis for the allegation that the Noticee had interfered in the rating process.
- xii. Statement of the employees of CARE, recorded by the FA, would clearly demonstrate that the Noticee did not interfere in the rating process. In support of this contention, the Noticee relied on the statement recorded by Noticee 2, Arun Kumar, Naveen Jain, Sanjay Kumar Agarwal, Jyotsna Gadgil and Mitul

Budhbhatti.

- xiii. The Noticee was the non-executive Chairman of CARE and was not involved in the day-to-day activities of the company or the rating process. The Noticee was not even aware of the schedule of meetings of the Rating Committee, and as such, the allegations regarding interference in the SCN and SSCN are without merit.
- xiv. SEBI was paying undue importance to stray calls between the Noticee and individuals from companies whose instruments were being rated by CARE. Noticee submitted that these calls were not related to CARE and have been seen out of context by SEBI.
- xv. The Noticee had worked with LIC for over three decades and the Noticee knew many people working across the financial sector in his personal capacity. It was also submitted that just because some of the persons who the Noticee interacted with also happen to be employed by Issuers rated by CARE, SEBI cannot call into question such conversations.
- xvi. It would be natural for Noticee 1 and 2 to have a conversation over the phone as they happened to be the Chairman and MD, respectively, of CARE. However, such calls were not related to the rating process followed at CARE and were instead about routine board matters like scheduling of meetings, agenda items, policy decisions etc.

Noticee 2 – Rajesh Mokashi

- i. Noticee 2, in addition to submissions made during the oral hearing, also submitted written submissions dated January 08, 2021 (“**Reply to the SCN**”), November 12, 2021 (“**Reply to the SSCN**”) and February 14, 2023 (“**Post Hearing Submissions**”).
- ii. The Noticee was associated with CARE for over 25 years and was eventually appointed as the MD of CARE on August 21, 2016, and served as MD till July 17, 2019.
- iii. Vide letter dated July 12, 2019, SEBI directed the Audit Committee of CARE to appoint an independent law/ audit firm to conduct a forensic review of the

irregularities highlighted in whistle-blower complaints. Upon receipt of SEBI's letter, the Board of Directors of CARE decided to place the Noticee on leave. Thereafter, upon receipt of SEBI's letter dated February 12, 2020, which directed CARE to conduct an inquiry vis-à-vis findings recorded by EY Report, on February 14, 2020, the Noticee's employment with CARE was terminated with effect from the date he was sent on leave, i.e., July 17, 2019. It was therefore submitted that the present proceedings have been gravely prejudicial to the Noticee.

- iv. The Noticee was well recognized in the rating community and has been a part of various expert committees and associations over his professional career.
- v. The crux of the charges against him related to interference in the ratings. If one looks at the rating process followed at CARE during this period, then it will show that all events that have been recorded in the SCN and the SSCN have taken place as per the standard procedure, and there was no case of any unlawful interference by the Noticee.
- vi. The Noticee elaborated on the rating process followed by CARE, which is captured below
 - Once a mandate is received from a client, a Rating Team is formed to conduct the rating exercise. The Rating Team usually comprises of a Group Head (having experience of at least about 3 years or more) who is assisted by a team of 2-3 analysts (having experience of about 0-3 years). Based on the inputs received from the client, interaction with the client's management and visits (if required), a rating note is prepared after completing the analysis. Research and other data/inputs may also be obtained to facilitate the exercise. The rating note is prepared based on specific rating criteria, on the basis of information received from the client as well as on the basis of information received from other reliable sources and management evaluation (*i.e., experience, skills, qualifications, expertise to run business of the management of the client.*). In the event an investment grade rating is proposed, the Quality Control Team ("**QCT**") also gives its inputs on the rating note.
 - The rating note prepared by the Rating Team is then presented before

the Rating Committee. The Rating Committee members collectively assign the final rating on the basis of the information presented before the Committee in the rating note. The QCT recommendation or the Rating Team opinion is one of the inputs provided to the Rating Committee and is not binding on the Rating Committee, which independently comes to a rating decision. The rating assigned by the Rating Committee is conveyed to the client. Once the client accepts the rating, the rating letter is issued. In the event the client does not accept the rating assigned, the client can appeal to review the rating and provide additional information, if required. Representations made by the client are placed before the Rating Committee, which, on an independent assessment of the information provided, may review the rating assigned.

- The Rating Team is also responsible for the review of the outstanding rating during the life of the instrument, which includes an annual surveillance exercise. This is over and above the continuous monitoring in the form of quarterly reviews. The Rating Team is also responsible for initiating a rating review if they become aware of any business, financial or operational information which may warrant a rating action. From time to time, clients may also request for a revalidation of the ratings assigned. While a new rating mandate may take months, a revalidation exercise is a limited exercise which can generally be completed in a few days, as the Rating Team is expected to look at incremental data from the last rating action.
- vii. Prior to issuing the SCN, no independent enquiry/ investigation was conducted by SEBI and the SCN was issued by only relying on the findings/ observations recorded in the Report. The FA had categorically set out in its Report that the findings/ observations recorded therein are a culmination of a fact-finding exercise and that an independent assessment of the purported facts/ findings as recorded in the Report would be necessary.
- viii. Pursuant to receipt of the Report, vide its letter dated February 12, 2020, SEBI directed CARE to institute an inquiry in the matter. Despite having directed CARE to initiate an enquiry in the matter, the SCN was issued by SEBI on

February 14, 2020, merely two days from receipt of the Report.

- ix. The SCN/ SSCN ought to have been issued based on the appreciation of the evidence, whereas the SCN merely reiterates certain findings of the Report. The SCN and the SSCN had been issued prior to the final determination of the enquiry proceedings initiated by CARE in the matter.
- x. On the basis of SEBI's directions, CARE appointed Justice B. N. Srikrishna, Former Judge, Supreme Court of India, to look into the findings of the Report. J. Srikrishna, vide his report dated March 23, 2022 ("**J. Srikrishna Report**"), has categorically concluded that the charges as levelled against the Noticee, inter alia, of interference with the rating process and influencing the ratings, are without merits.

A. Inspection

- xi. The Noticee, upon receipt of the SSCN, vide various e-mails/ letters (September 21, 2021; October 14, 2021, January 3, 2022; January 18, 2022; April 19, 2022; June 2, 2022), requested SEBI to provide complete inspection and copies of documents. While an opportunity of inspection of certain documents was provided on April 12, 2022, copies of documents made available for inspection were not provided. Accordingly, the Noticee was constrained to enter into protracted correspondence with SEBI in respect of inspection proceedings which remained incomplete.
- xii. Submissions in respect of inspection proceedings were made during the course of the hearing, and the Noticee was advised to once again request SEBI to provide copies of documents. Pursuant to the hearing on January 31, 2023, and as advised by SEBI, vide letter dated February 3, 2023, a request for copies of documents made available during the course of inspection proceedings on April 12, 2022, was once again made on behalf of the Noticee. No response was received from SEBI till the date of filing the post-hearing submissions.

B. Cross-examination

- xiii. After more than a year after issuance of the SSCN dated September 06, 2021, and filing of the Reply to the SSCN dated November 12, 2021, and more than two years after the issuance of the SCN dated February 14, 2020, and filing of the Reply to the SCN dated January 8, 2021, and after issuance of the J. Srikrishna Report on March 23, 2022, an opportunity of cross-examination of persons whose statements have been relied upon in the captioned proceedings, viz. Mr. Ranjan Sharma, Mr. Aditya R. Acharekar, Mr. Ramesh Perinkulam Seshadri, Mr. Mitul K. Budhbhatti, Mr. Ravi Kumar Dasari and Mr. Arun Kumar T.N, was provided vide e-mail dated November 17, 2022.
- xiv. The statements recorded during the cross-examination further buttress the submissions made vide the Reply to the SCN and the Reply to the SSCN that: (i) there was no interference by MD in the rating process; (ii) the MD /CEO of CARE was present in meetings with senior officials of large companies for protocol purposes, i.e. for the limited purpose of facilitating the meetings; (iii) all rating decisions were independently taken by the members of the Rating Committee on an independent assessment of facts; and, (v) rating exercise is not a mathematical exercise and seeking expert opinion, both internal and external, is in the normal course.

C. Submissions on merits

- xv. The observations/ findings in the Report (and consequently the charges framed in the SCN/ SSCN) pertain to Dewan Housing Finance Ltd., Yes Bank Ltd. and M/s. Infrastructure & Financial Services Ltd. The allegations have been made in respect of companies which have had a turbulent past in terms of allegations over their own affairs, mismanagement, fraud and corporate governance.
- xvi. The meetings and discussions with the management of such companies are now being viewed in hindsight and tainted with ulterior motives in the backdrop of the general perception of fraud and mismanagement of these entities without any evidence as to how these meetings and discussions impacted the rating

process/ rating of these entities, as alleged or at all. The rating exercise is not a fraud investigation/ forensic exercise and relies on information provided by the client and in the public domain to arrive at a conclusion.

- xvii. The ratings assigned by CARE to these companies at the relevant point in time were contemporaneous with the ratings given by other credit rating agencies.

D. Replies to the *Specific allegations in the SCN and SSCN*

➤ *MD acting as a de-facto Rating Committee member*

- xviii. The Noticee participated in the Rating Supervision Committee (One-member Committee) meeting headed by Mr. Y. H. Malegam on the basis of Mr. Malegam's invitation.
- xix. A Rating Supervision Committee meeting is a meeting to seek analytical insights on specific cases and ratings that have already been concluded.
- xx. The allegation was made on the basis of a statement made by Mr. Ranjan Sharma. However, Mr. Sanjay Agarwal, who was the other participant in the meeting, in his statements, has not alluded to any such pressure/ influence and has stated that the Noticee did not have any influence/ pressure on the ratings.

Allegations in respect of Dewan Housing Finance Ltd. ("DHFL")

➤ *MD had examined and given his comments on the rating note dated June 06, 2017*

- xxi. The only comment the Noticee had given in this context was for the Rating Team to correspond directly with the company, and in this regard, the Noticee facilitated the Rating Team in getting access to someone from the company itself.
- xxii. There were three other credit rating agencies rating various instruments of DHFL, and none of them revised the rating as a result of this event.

➤ *Interference in the issuance of the rating revalidation note (DHFL) on November 01, 2018*

- xxiii. After the sale of DHFL's debt instrument at a higher spread by DSP Mutual Fund (around September 2018), there was heightened adverse media

attention on DHFL, which may have affected investor confidence. Against this backdrop, on October 26, 2018, CARE received a revalidation request from DHFL. A Rating Committee meeting was held on October 29, 2018, but a final decision could not be arrived at due to inadequate information. There was already a considerable delay in the matter, and the mandate had to be completed in a time-bound manner.

xxiv. The Noticee's instruction to the Rating Team was to complete the rating process while keeping in mind the urgency involved. The Rating Committee gave their concurrence for the rating seven days after receipt of the request on November 1, 2018.

xxv. In support of this contention, the Noticee also relied on certain statements of Ravi Dasari, Revati Kasture, Arun Kumar, Milind Gadkari and Mitul Budhbhatti recorded by EY in support of this contention.

➤ ***DHFL case was deferred in the Rating Committee dated December 31, 2018, and the Noticee had directed that DHFL be given time till March 2019 before taking any rating action.***

xxvi. The Rating Committee meeting scheduled on December 31, 2018, was deferred to the next meeting, which was held on January 18, 2019, since the Rating Committee was not able to ascertain all facts. In addition, committee members wanted to have discussions with Chief Rating Officer ("CRO"), Arun Kumar.

xxvii. The Noticee also relied on certain statements of Ravi Dasari, Revati Kasture, and Arun Kumar, recorded by EY, in support of this contention

xxviii. By December 2018, no credit rating agency had changed the rating on DHFL.

➤ ***The Rating Committee, dated 18 January 2019, decided to put the ratings of DHFL on credit watch. However, after DHFL's representation to CARE (which was the same as given on 1 November 2018) and the meeting of Rajesh Mokashi and DHFL MD, the credit watch was removed, and ratings were re-affirmed on 25 January 2019***

xxix. By January 18, 2019, based on their evaluations, it was decided by the Rating Committee to put DHFL's rating on credit watch. However, this rating decision was never published as the same was not accepted by the client, and a

representation was submitted for consideration by the Rating Committee. Thereafter, based on the representation received from DHFL on the progress of the earlier plans, the credit watch was removed by the Rating Committee on January 25, 2019. Though the credit watch was removed by the Rating Committee on January 25, 2019, CARE took action by issuing a press release of credit update on DHFL on the same day wherein it was categorically recorded that *“CARE ratings will continue to monitor the developments with regards to the progress of these strategic initiatives and will periodically review ratings”*.

- xxx. On or around January 29, 2019, www.cobrapost.com made some startling allegations against DHFL post which DHFL's rating was downgraded from AAA to AA+ on February 1, 2019. CARE was the first rating agency that downgraded DHFL's rating.
- xxxi. The Noticee also relied on certain statements of Mitul Budhbhatti and Arun Kumar, recorded by EY, in support of this contention
- xxxii. The earliest rating action by any rating agency in respect of DHFL was by CARE on February 1, 2019, followed by CRISIL on February 2, 2019, and ICRA and Brickworks on February 3, 2019.

➤ ***Noticee 2 would exert pressure on members of the Rating Committee and would not allow them to take positions which were contrary to his views***

- xxxiii. An opinion of a single individual cannot and ought not to be relied upon to establish a serious charge of *‘interference in the rating process’*, as alleged in the SCN/ SSCN. The unreliability of the individual's statement is further buttressed by the fact that other individuals, even those specifically mentioned by Mitul Budhbhatti, have not corroborated his statements and have, in fact, contradicted the same. Even the rating Group Head for DHFL, Mr. Ravi Dasari, has stated that *“I was not pressurized for favorable rating either by client or CARE management”*.
- xxxiv. The Noticee also relied on certain statements of Ravi Dasari, Revati Kasture, and Arun Kumar, recorded by EY, in support of this contention
- xxxv. Even as per Mitul Budhbhatti's own admission, the ratings, in this case, were

assigned on the basis of the merits of the matter.

➤ ***MD was involved in the rating discussions with DHFL Rating Team members.***

- xxxvi. In a crisis/ emergency, the Rating Teams and/ or other employees of CARE approached the Noticee and sought inputs on how to handle difficult situations/ clients. Likewise, upon being faced with complex/ tricky situations, various clients also reached out to the Noticee in his capacity as MD of CARE, explaining the urgency involved in their cases.
- xxxvii. It would be evident from the statements made by various employees that the Rating Team approached the Noticee due to his experience and expertise and not because of any alleged interference in the rating process. Also, the SEBI regulations of May 3, 2010, para1.2 required a “*summary of discussions to be kept only of those discussions which had a bearing on the rating*”, which the Rating Team maintained as per the requirement. In converse, discussions which had no bearing on the rating were not required to be minuted.
- xxxviii. The Noticee also relied on certain statements of Aditya Acharekar, Amod Khanorkar, Milind Gadkari and Arun Kumar, recorded by EY, in support of this contention

Allegations in respect of Yes Bank Ltd. (“YBL”),

➤ ***The Noticee exerted pressure to upgrade the rating of YBL***

- xxxix. YBL had been seeking an upgrade of its rating from AA+ since 2014. YBL’s rating upgrade was a result of objective indicators of improvements in its performance.
- xl. The Noticee was present in the meeting held on June 28, 2018, with Mr. Rana Kapoor only for the purpose of facilitation, as also stated by various employees in their statements.
- xli. Merely attending a meeting for the purpose of facilitation cannot amount to interference. YBL’s rating upgrade was a decision taken by the Rating Committee on an independent assessment of facts and on the merits of the

case.

- xlii. An adverse reference is also sought to be drawn from the statements of Mr. Mitul Budhbhatti that his views were allegedly moderated post discussions with the Noticee. In this regard, it is pertinent to note that Mr. Mitul Budhbhatti has, in his own statements, admitted that it was the decision of the Rating Committee members that led to the rating upgrade of YBL. Furthermore, he has stated that post discussions with the YBL team, he himself was okay to upgrade the ratings and had presented his views to the Rating Committee.
- xliii. The Noticee also relied on certain statements of Mitul Budhbhatti and Arun Kumar, recorded by EY, in support of this contention.

➤ ***Noticee 2 had given a ‘go-ahead’ for the downgrade of YBL after the Rating Team convinced him.***

- xliv. Noticee submitted on September 19, 2018, it was reported in the news that Mr. Rana Kapoor’s term had not been renewed by RBI.
- xliv. The Noticee had only brought this news to the notice of Arun Kumar. It was further submitted that the allegation that the Rating Team had to convince the Noticee for recommending rating action for YBL, was unfounded. The Noticee was not part of the Rating Committee, which was the final authority for taking rating action.
- xlvi. YBL was placed under credit watch immediately after news that Rana Kapoor’s term would not be renewed was announced, and CARE was amongst the first two rating agencies to take rating action once Mr. Rana Kapoor’s renewal of term was rejected by RBI. This was followed by Brickworks and India Ratings.
- xlvii. The Noticee also relied on certain statements of Aditya Acharekar, recorded by EY, in support of this contention

Allegations in respect of M/s. Infrastructure Leasing & Financial Services Ltd. (“ILFS”)

- ***Noticee directed the downgrade of ILFS to the same level as another credit rating agency.***

- xlvi. The allegation raised in the SSCN appears to be that the ratings of ILFS were downgraded on the Noticee’s instructions. In this regard, the Noticee’s discussions with Amod Khanorkar were limited to the news about ICRA’s downgrade, and the Noticee had not given any direction/ instruction to downgrade the ratings of ILFS to the same level as ICRA. The advice to the Rating Team was to examine the case and take appropriate action, if warranted.
- xlv. The Noticee also relied on certain statements of Arun Kumar and Mitul Budhbhatti recorded by EY in support of this contention
 - I. CARE was the first CRA to downgrade ITNL (Subsidiary of ILFS) on July 17, 2018, to speculative grade BB negative outlook. This was followed by ICRA on July 23, 2018, and India Ratings on July 25, 2018. The Rating Committee of CARE downgraded ILFS AA+ CW Negative from AAA on August 08, 2018, and on the same day, ICRA issued a press release for the downgrade from AAA to AA+ CW Developing; India ratings followed much later on August 24, 2018. In doing subsequent rating actions also, the Noticee submitted that CARE, more often, was ahead of other CRAs.

The other allegations raised in the SSCN

Noticee 2 was involved in the ratings issued to Patanjali

- li. Patanjali was not part of the list of 11 identified entities and thus, beyond the scope of the Report.
- lii. During the course of interviews by EY, no questions had been posed in respect of Patanjali to Ms. Swati Agarwal.
- liii. The allegation is completely borne out of conjecture and thus cannot be sustained.

➤ ***Non-documented meetings and calls after/before meeting with the client/ Issuer:***

- liv. The meeting of the Noticee in his capacity as MD of CARE with top management and officials of clients was in the normal course of business. The Noticee was present in such meetings for protocol purposes and to facilitate such meetings, i.e. allowing the Rating Team access to the topmost management of clients
- lv. The Noticee also relied on certain statements of Arun Kumar and Mitul Budhbhatti to support this contention.
- lvi. It was also stated that recording the minutes of any meeting was not the MD's responsibility. Further, the SEBI Circular dated May 3, 2010, only required a summary of discussions to be kept of only those discussions which had a bearing on the rating, which the Rating Team maintained as per the requirement. In converse, discussions which had no bearing on the rating were not required to be minuted.

➤ ***QCT of YBL was not of the opinion to upgrade the ratings of YBL***

- lvii. The Noticee submitted that the allegation was vague and unclear. YBL's rating upgrade was on the basis of merits and an independent assessment of facts by the Rating Committee members. Further, reference is drawn to the statements made by Mitul Budhbhatti wherein he has categorically stated that he had expressed an opinion that YBL should be upgraded.

➤ ***Difference in the rating assigned/ potential delay in rating action in the case of DHFL***

- lviii. In his capacity as MD of CARE, the Noticee was not responsible for preparing rating notes, and the same was the responsibility of the Rating Team.
- lix. From a review of the statement made by Puneet Maheshwari, it was evident that no reference is being made in this regard to the Noticee. Reference was also drawn to statements made by Arun Kumar, Mitul Budhbhatti and Ravi Dasari, on the basis of which it was submitted that Puneet Maheshwari's

comments were, in fact, shared with the Rating Committee, and his comments were removed as the Rating Team did not have sufficient data.

➤ ***Allegation/ finding – Difference in the rating assigned/ potential delay in rating action in the case of RCOM***

- ix. The Noticee was not a part of the Rating Committee and thus, had no role to play in the ratings assigned by the Rating Committee members. The charge itself is incorrect and cannot be brought against the Noticee as had the Noticee instructed/ directed the Rating Committee/ Rating Team members to take any action in February 2017, that itself would have been tantamount to interference.

➤ ***Non-documented meetings and calls after/before meeting with the client/ Issuer***

- ixi. In respect of this allegation, the statements recorded in the case of ratings issued to instruments of Cox and Kings do not pertain to the Noticee and thus fail to establish any charge/ violation by the Noticee.
- ixii. Further, in the event any client is not agreeable with the rating recommendation of the Rating Committee, the client may provide a representation that the Rating Committee is duty-bound to consider and thereafter form an independent view/ opinion on the rating recommendation. Since Patanjali had provided revised projections in its representation, the Rating Committee would have considered the same and downgraded the ratings by one notch.

CONSIDERATION

25. The main issue that arises for consideration in the present matter is whether the Noticees had interfered in the rating process followed at CARE. Before considering this allegation on merits, it would be appropriate to look at the prior enforcement actions taken by SEBI against CARE as it would help place in context the actions initiated in the present matter.

Order in the matter of ratings assigned to IL&FS.

26. SEBI vide Order dated December 26, 2019, imposed a penalty of Rs. Ten Lakh on CARE for the non-compliances observed in the ratings assigned to the instruments issued by IL&FS. The non-compliances that were identified in the Order included placing excessive reliance on the submissions made by the management, failure to change the rating outlook or placing the rating under credit watch in a timely manner. The penalty imposed by the Adjudication Officer was enhanced, on a review preferred by SEBI under Section 15-I(3) of the SEBI Act, to Rs. One Crore vide Order dated September 22, 2020.

Order in the matter of ratings assigned to Reliance Communications Ltd. (“RCL”).

27. An Adjudication Order dated July 24, 2020, was passed by SEBI against CARE, imposing a monetary penalty of Rs. One Crore for the violations observed in the rating of the instruments issued by RCL. It was *inter alia* held in the Order that CARE had failed to monitor the ratings and factors affecting the creditworthiness of the Company in a timely manner resulting in a significant delay in conducting the rating process and downgrading the ratings. It was also held in the order that CARE was placing excessive reliance on the commitments made by the Issuer and not independently assessing the events. On appeal, the Securities Appellate Tribunal vide Order dated April 20, 2021, upheld the SEBI order on merits and reduced the penalty to Rs. Ten Lakh. The Hon’ble

Securities Appellate Tribunal, in its Order, categorically held that “ratings cannot be a subjective opinion and cannot be based solely on the information provided by the client but has to be based on a scientific analysis based on independent professional judgment considering the financials and other performances of the Company, etc.”

28. Given the above, before moving on to consider the allegations raised in the SCN and replies of the Noticees, it would be appropriate to look at the role played by CRAs and the regulatory framework applicable to rating agencies in India.
29. Credit Rating Agencies in India are regulated under the SEBI (Credit Rating Agencies) Regulations, 1999 (CRA Regulations), framed by SEBI. However, in the event CRAs rate instruments which come under the regulatory purview of other financial sector regulators, then such activities are regulated by the concerned financial sector. The CRA Regulations defines the term “rating” as *“an opinion regarding securities, expressed in the form of standard symbols or in any other standardised manner, assigned by a credit rating agency and used by the Issuer of such securities.”* It can therefore be noted that credit ratings, in essence, is the process of evaluating the relative degree of risk associated with the timely servicing of debt and presenting the information in a standardised format. The rating information is further distilled into a rating symbol – which ranges from AAA to D; AAA being the top rating and coveted by corporates indicating low risk of default.
30. Credit Rating Agencies play the role of information intermediaries bridging the information asymmetry that exists between Issuers/ borrowers and investors/ lenders. They rate the securities not just at the time of issuance but also continuously monitor the Issuer during the tenure of the instrument. They play the role of watchdog in respect of such rated instruments. For example, under the SEBI (Issue of Non-convertible Securities) Regulations, 2021, Issuers are mandatorily required to get securities rated by a credit rating agency registered

with SEBI prior to an issue. Further, the said regulations also provide that shelf prospectus route can be availed only if the instrument is rated at least AA by a SEBI registered CRA. CRAs thus play a critical role in the securities market, and rating issued can be considered a public good, and therefore it becomes important to ensure that rating activities are carried with all diligence in the interest of investors in the market.

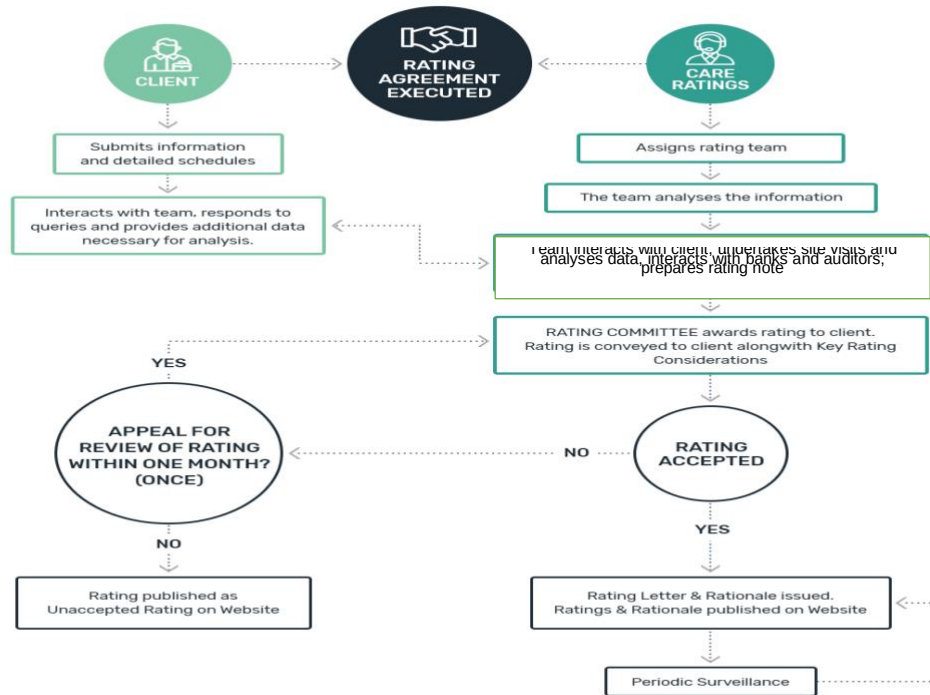
31. The critical regulatory challenge faced by the rating model that has been adopted the world over – the 'Issuer pays' model – involves addressing the inherent conflict of interest that arises when the Issuers of the security, rather than the consumers of the rating, pay for the rating. Under this model, the Issuers can potentially engage in rating shopping and pressurise the CRAs to assign inflated ratings to the former (issuer) to retain their business. This issue came to a head post the Global Financial Crisis in 2008-09 when the role played by credit rating agencies in the lead-up to the crisis was widely called into question. Significant steps were taken in the aftermath of the crisis to strengthen the regulatory oversight over credit rating agencies and address the issues of conflict of interest. SEBI subsequently issued a Circular dated May 3, 2010, specifying additional *“Guidelines for Credit Rating Agencies”* which included:
- a. Directing the CRAs to formulate policies and internal codes for dealing with conflict of interest.
 - b. Mandating CRAs to ensure that analysts involved in credit rating do not participate in any kind of marketing or business development, including negotiation of fees.
 - c. Directing CRAs to disclose compliance status with the provisions of the IOSCO Code of Conduct Fundamentals for Credit Rating Agencies.
32. Thereafter, in 2016, SEBI prescribed *“Enhanced Standards for Credit Rating Agencies”* vide Circular dated November 1, 2016, which *inter alia* provided that:- *“Persons who have business responsibility shall not be part of the Rating Committee. However, the MD/ CEO may be a member of the Rating Committee if the majority of the Rating Committee members are independent.”*

33. It can, therefore, be noted that central to the measures mandated by SEBI to address the issue of conflict of interest inherent in the 'Issuer pays' model of credit ratings is the separation of the rating and business development vertical of the CRA – individuals who are involved in business development activities, including fee negotiations with the Issuers, are not permitted to undertake rating functions. Such restrictions seek to insulate the Rating Committee members and analysts from the pressures of business development to mitigate the possibility of the ratings issued being linked to the fees charged. The only exception to this rule was the MD being permitted to be part of the Rating Committee on the condition that majority of the members of such Committee were independent. This relaxation was also done away vide Circular dated November 4, 2019. However, this was subsequent to the period under examination in this Order.

Interference in the rating process.

34. Noticee 1, who was the Non-Executive Chairman of CARE, was not supposed to have any role in the individual rating actions taken by the CRA. Similarly, in the case of Noticee 2, who was the CEO and MD and responsible for the business development functions, was in terms of the regulations, not permitted to interfere with the rating decisions.
35. It is noted that CARE earlier had an External Rating Committee headed by Mr. Y.H. Malegam. This was, however, discontinued in 2017 and was replaced with Internal Committees (committee members were employees of CARE). Consequently, in terms of the mandate under the November 1, 2016 Circular, Noticee 2 could not continue to be on any of the Rating Committees of CARE. This was also confirmed by Noticee 2 in his statement recorded on November 12, 2019, wherein it was stated that w.e.f from March 31, 2017, Noticee was not part of any Rating Committee. It was also repeatedly emphasized by Noticee 2 in his statements and also replies before me that the rating decisions

were taken by the Rating Committee members and the Noticee had no role to play in this. In view of the same, it would be helpful to understand the rating process followed at CARE during the relevant time:



(source:carerating.com)

36. The Rating Team, depicted in the pictorial representation of the rating process presented above, consists of analysts and the Group Head is responsible for preparing the rating note. The rating note, which contains the rating recommendation of the Rating Team, is presented to the Rating Committee. The final rating decision is taken by the Rating Committee, which may or may not agree with the recommendation made in the rating note. In the 'Issuer pays' model, it is essential to ensure that the Rating Team and Rating Committee members are insulated from business development responsibilities for ensuring the integrity of the rating process and avoiding, both real and perceived instances of bias towards the Issuer who actually pays for the rating.

37. As stated above, the main charge against the Noticees is that they had interfered in the rating process. The charge against Noticee 1 is that he is alleged to have either directly or through Noticee 2 interfered in the ratings process. The charge against Noticee 2 is that he interfered in the rating on his own behalf and also on behalf of Noticee 1. Therefore, these proceedings will proceed to examine, on the basis of the material available on record, whether there is sufficient evidence to prove the said charges.
38. Proving interference by an MD of a Credit Rating Agency (“**CRA**”) who has business development functions in the rating process of the CRA can be challenging for several reasons, one of which is the lack of documentation. The interference in such cases is likely to be through verbal communication, such as a phone call or a conversation in person, and it would be unlikely that there would be any documentary evidence of such interference. I note from the SCN and SSCN that reliance has primarily been placed on the statements made by members of the Rating Team and Rating Committee (“**RC**”) (only those statements where the Noticees have been provided with an opportunity of cross-examination is being relied upon in these proceedings) and the WhatsApp conversations between the employees involved in the rating process, around the time the ratings in question were assigned. I note that these conversations could act as a contemporaneous record of the events that transpired, and efforts have been made to weed out conversations which are in the nature of hearsay.
39. I shall now proceed to examine ratings issued to the Issuers covered in the SCN and SSCN, the rating events, and alleged interference in respect of these events.

DHFL – Background

40. In second half 2018, IL&FS, a major infrastructure development and finance company, failed to service its debt repayment obligations and defaulted on its

payment commitments to its creditors. The default created a contagion effect across the Indian financial sector and led to a crisis of confidence among investors. In the IL&FS matter, the first downgrade by a CRA occurred in June 2018 when ICRA downgraded IL&FS's long-term rating from AAA to AA+. This was followed by similar downgrades by other CRAs such as CARE Ratings, India Ratings, and Brickwork Ratings.

41. The IL&FS crisis had a cascading impact on the financial sector. Its dues to creditors exceeded Rs. 91,000 crore. Banks/Mutual Funds/Pension Funds had exposure to IL&FS and its group companies. In the aftermath of the crisis, the ability of NBFCs to raise funds become severely constrained. In size, DHFL was as big as IL&FS. It had a Balance Sheet of close to Rs. 90,000 crores. The Reserve Bank of India superseded the Board of Directors of DHFL on November 20, 2019, and appointed an Administrator under Section 45-IE(2) of the RBI Act, 1934. The shares of DHFL also witnessed a sharp correction in this period – it was trading at Rs. 610 on June 1, 2018, and fell sharply to Rs. 230 by November 01, 2018, which included a 42% correction on September 19, 2018, when it reacted to news reports that DSP Mutual Fund had sold debt instruments issued by DHFL at a high yield. Despite this sharp correction in the share price of DHFL, CARE vide Press Release (“**PR**”) dated September 21, 2018, revalidated the ratings of DHFL at AAA. The ratings of DHFL were subsequently also reaffirmed at AAA on November 1, 2018, and January 25, 2019.
42. In the interim, the Rating Committee at its meeting held on January 18, 2019, recommended that the ratings of DHFL be put on rating watch. This decision was, however, reversed on January 25, 2019, after considering representations made by DHFL.
43. Soon thereafter, on January 29, 2019, Cobrapost, a media portal, published an article “*Anatomy of India’s Biggest Financial Scam Pulled off by Dewan*

*Housing*⁴. The article alleged that the promoters of DHFL had siphoned off more than Rs. 31,000 crores of public money through grant of loans and advances to shell companies. Consequent to this exposé, CARE downgraded the debt instruments issued by DHFL vide PR dated February 2, 2019, and also put the ratings on credit watch. The ratings of DHFL were thereafter downgraded vide PR dated February 27 and March 31, 2019. The rating actions during the period under examination are captured in the Table below:

Rating committee meeting date	Rating action (Non-Convertible Debentures)
21 September 2018	Ratings re-affirmed at AAA
29 October 2018	Rating decision deferred
01 November 2018	Ratings re-affirmed at AAA
31 December 2018	Rating decision deferred
18 January 2019	Ratings put to credit watch
25 January 2019	Ratings removed from credit watch and re-affirmed at AAA
01 February 2019	Ratings downgraded to AA+ and put on credit watch
27 February 2019	Ratings downgraded to AA- and put on credit watch with developing implications.
06 March 2019	Ratings affirmed
27 March 2019	Ratings downgraded to A-
30 March 2019	Ratings upgraded to A+ after considering the representations made by DHFL

*The ratings of DHFL were downgraded to Default 'D' rating on June 5, 2019.

Rating revalidation issued on November 1, 2018

Sequence of events

44. A request for revalidation of ratings was received on October 26, 2018, from DHFL. Subsequently, a revalidation note was prepared by the Rating Team and placed before the Rating Committee on October 29, 2018. However, a decision was not taken by the committee on the said date, and the case was deferred.

⁴ <https://cobrapost.com/blog/press-realise-dhfl-l/1374>

Subsequently, on November 1, 2018, a team from DHFL comprising of its MD, CFO and two other officials came to CARE's office and met Rajesh Mokashi, Arun Kumar, Mitul Budhbhatti and Ravi Dasari. Subsequent to the meeting, the rating revalidation letter was issued by CARE on the same date.

Reason for deferring the rating decision by the RC on October 29, 2018

45. I note that as per statement of Mr. Mitul Budhbhatti, who was part of the RC, the rating decision was deferred as the Committee's Chairman, Ms. Revati Kasture had highlighted *"too many negative pointers"* in the rating note and therefore, did want to take the decision to revalidate the rating. Ms. Kasture, in her statement, has taken the position that the matter was deferred as the sanction letters from all the banks were not available and because the rating note had a comment that undrawn bank lines were not sanctioned by the banks. Ms. Smita Rajpurkar, member of the RC, has stated that the committee had identified a potential misrepresentation and therefore, sought additional information from the Rating Team. She also stated that there could be additional reasons for deferring the decisions. Mr. Ravi Dasari, GH and part of the DHFL Rating Team, deposed that "The Rating Committee was not comfortable with the reaffirmation of the rating at AAA. Revati Kasture, the chairperson at the Rating Committee deferred the case stating that with the status of the company, it cannot be revalidated." Mr. Arun Kumar, who was the CRO of CARE at this point in time, stated that *"I am not aware why the case was deferred. **Since revalidation is as good as rating and we might not have had enough information to revalidate, that is why the case might have been deferred.**"*
46. It can therefore be noted that the following reasons were given by members of the RC and Rating Team for deferring the rating on October 29, 2018:-
- negative pointers mentioned in the rating note;
 - non-availability of sanction letters from all banks;
 - concerns that certain misrepresentations were made by the Issuer.

Events leading up to the issue of the revalidation letter on November 1, 2018.

47. The information regarding the deferral was conveyed to DHFL. Thereafter, the DHFL team came to CARE's office for a meeting. The DHFL team was led by its Chairman, Kapil Wadhawan and from CARE, the meeting was attended by Rajesh Mokashi, Arun Kumar, Mitul Budhbhatti and Ravi Dasari. Viraj Dhond, the analyst, has stated that the meeting was held between 13:30 and 15:30 whereas Ravi Dasari, in his statement, has stated that the meeting happened between 10:30 and 12:30. It is, however, noted from the WhatsApp conversations between Mitul and Ravi on the same date that contemporaneously in a message sent at 12:36, Ravi is saying that Kapil is coming at 13:00. Extract of the conversation is reproduced below:

Conversation between Mitul Budhbhatti and Ravi Dasari on November 01, 2018

01-Nov-18 12:22 PM Ravi Kumar HO: 12.30 call with kapil
01-Nov-18 12:22 PM Mitul Budhbhatti: Who? Arun sir?
01-Nov-18 12:23 PM Ravi Kumar HO: I think in mokashi sir cabin let me chk
01-Nov-18 12:23 PM Mitul Budhbhatti: You deleted this message
01-Nov-18 12:31 PM Ravi Kumar HO: Call postponed to 12.45 in mokashi sir cabin
01-Nov-18 12:31 PM Mitul Budhbhatti: Who all will attend?
01-Nov-18 12:32 PM Ravi Kumar HO: Arun sir me and will you be joining
01-Nov-18 12:36 PM Ravi Kumar HO: **Kapil himself is coming here at 1**
01-Nov-18 12:36 PM Mitul Budhbhatti: 🙏

48. From the above conversation, it can be concluded that the meeting between the DHFL team and CARE officials would have started only post the said text and probably around 13:00 on November 1, 2018. Subsequently, Kapil Wadhawan sent an e-mail at 15:11 to Viraj Dhond (CARE) CC: Ravi Dasari (CARE), Mitul Budhbhatti (CARE) and other DHFL employees which stated, "The following milestones will be achieved by DHFL by March 2019:

- About Rs.2000 Crore of fresh equity capital infusion by March 2019;
- Overall gearing levels to reduce to 7 to 8 times by March 2019;

- *Builder book to come down to Rs.9000 Crore by March 2019 (proportion of builder book to come to below 10% of AUM);*
- *7% of the total borrowing would be maintained as cash & cash equivalents on an on-going basis;*
- *Threshold of 51% of home loans to total assets by March 2019.”*

49. This proposal did not have DHFL’s Board’s Approval, nor did it address the concerns that were raised by the RC on October 29, 2018, as mentioned in paragraph 46. Despite this, the analyst (Viraj Dhond) put up a note to the RC at 15:41 by e-mail seeking approval from RC, having different members, for issuing the revalidation note. The RC members now are Arun Kumar, Mitul Budhbhatti and Yogesh Shah as opposed to the earlier RC (dated October 29, 2018) members of Mitul Budhbhatti, Anuj Jain and Smita Rajpurkar.
50. The revalidation letter was sent to the client by e-mail at 16:06 which indicates that the RC had taken its decision to approve the note for revalidation of ratings in less than 30 minutes. Further, Yogesh Shah, who was not part of the meeting and even the RC held on October 29, 2018, gave his consent (by telephone) prior to the dispatch of the e-mail at 16:06. These events seriously call into question the independence of the rating decision arrived at by the RC as a member, Yogesh Shah, who was not acquainted with the case gave his go ahead for the revalidation in less than 30 minutes and on the other hand, the other members of the RC were engaging with MD of the Issuer just prior to the RC meeting.
51. Armed with a revalidation of its AAA rating on November 01, 2018, DHFL was able to raise Rs. 2577.50 crores through two debt issues as detailed below:

S. No	ISIN No.	Date of Allotment	Tenure in Yrs.	Value of securities (Rs. in Crores)	Coupon
1	INE202B07JN3	02/11/2018	3.00	1077.50	9.88
2	INE202B07JO1	16/11/2018	10.01	1500.00	9.9245

52. Interestingly, HDFC, another AAA rated NBFC and operating in the housing finance space raised debt amounting to Rs. 14,000 Crores through two issuances around the same time (ISIN Nos. INE001A07RJ2 and INE001A07RK0) having tenor of 5 and 10 years at 9.05% and 9%, respectively. The 10 year debt issue by HDFC was at rate that was 0.9245% below the corresponding issue of DHFL. This would indicate that markets were already pricing in a much lower credit quality for DHFL. Optically, therefore, something was apparently not right with the rating assigned by CARE. Needless to mention, the amount of Rs. 2577.50 Crore that was raised on the strength of CARE's revalidation of DHFL's top rating would have resulted in losses for investors.

Events leading up to the RC meeting held on December 31, 2018.

53. On December 28, 2018, a rating note was put up by Viraj Dhond, Analyst, in the matter of Wadhawan Global Capital ("**WGC**") wherein a downgrade by one notch was proposed by the Rating Team. The instrument under review was a structured obligation which depended on support from DHFL. Thus, the Rating Team had to form a view on DHFL for the said rating. As per the e-mail, the RC meeting was scheduled for December 31, 2018. It is noted that Viraj Dhond in his statement has deposed that:

*"DHFL note was put up to the Rating Committee on 31 December 2018 and... **the Rating Team proposed to downgrade it by one notch.** Ci3 agenda did not mention DHFL review for this meeting because I was instructed by Group Head to not put up the same in Ci3. I was present in the meeting. In the morning, rating note was put up to Rating Committee. Revati Kasture was chairing the meeting. Rating Team proposed one notch downgrade for DHFL to which Revati Kasture replied that **we need to discuss with top management** prior to acting upon it. However, the rating call was not taken in this morning Rating Committee. As per my knowledge, **during the day, meeting was held with the management and in the evening**, around 6:30 pm data was sent to Revati*

Kasture along with the review note. Post the information was sent to Revati Kasture, I was informed by Group Head that they will not downgrade the rating now and they will take it up in the next review.”

54. Ranjan Sharma, who was part of the RC that met on December 31, 2018, in his statement, has stated that there *“was pressure from Rajesh Mokashi for review note shared with Rating Committee”*. Ravi Dasari, in his statement, elaborated that *“Mitul Budhbhatti told me to discuss the DHFL case with Rajesh Mokashi. I was called by Beena to inform me that Rajesh Mokashi had called me for discussion while Revati Kasture and Mehul Pandya were already waiting for me. Upon discussion, **Rajesh Mokashi was well informed of the case and mentioned that we should give DHFL sometime till March 2019** as per the undertaking provided by them in November 2018 or I should sensitize DHFL of the rating action. As per my perception of the conversation I had with Rajesh Mokashi in the meeting at his cabin on December 31, 2018, **it appeared that Rajesh Mokashi was upset with the fact that the rating was downgraded and the client was not informed of the rating action.**”*

55. This statement made by Ravi Dasari is corroborated by the WhatsApp conversation between him and Mitul on the same day.

31/12/18 5:40 pm Mitul ARO CARE: **Ho gayi baat?**

31/12/18 5:42 pm Ravi: **Gaali de rahaan hain**

31/12/18 5:42 pm Ravi: **That he was not informed**

31/12/18 5:43 pm Ravi: **And last moment informing him**

31/12/18 5:43 pm Ravi: **He is again and again saying March 19**

31/12/18 5:43 pm Mitul ARO CARE: Arun sir is in office?

31/12/18 5:43 pm Ravi: No

31/12/18 5:44 pm Mitul ARO CARE: Give feedback to ma'am

31/12/18 5:44 pm Mitul ARO CARE: Did u say why we had to do this?

31/12/18 5:44 pm Ravi: **Madam Bhi saath main thi**

31/12/18 5:44 pm Ravi: **Told wadhwan**

31/12/18 5:44 pm Mitul ARO CARE: 😊

31/12/18 5:44 pm Ravi: **But he said DHFL he was under the impression we were not in hurry**

31/12/18 5:45 pm Ravi: **Could have waited till March 19**

31/12/18 5:45 pm Mitul ARO CARE: 🙄♂

31/12/18 5:46 pm Ravi: **We have not raised right points with mgmt of dhfl**

31/12/18 5:46 pm Mitul ARO CARE: **Kya raise nai Kiya????!!!! I think we should tell them ki hum downgrade Kar rahe Hain**

31/12/18 5:46 pm Mitul ARO CARE: **Aur Kya bolna hai!**
 31/12/18 5:47 pm Ravi: **He is saying you take them into confidence and do**
 31/12/18 5:47 pm Mitul ARO CARE: **They will never agree**
 31/12/18 5:47 pm Mitul ARO CARE: **It's so obvious**
 31/12/18 5:48 pm Mitul ARO CARE: 🙄 🙄 🙄
 31/12/18 5:48 pm Mitul ARO CARE: 😏
 31/12/18 5:49 pm Mitul ARO CARE: **Chhodo ...**
 31/12/18 5:50 pm Mitul ARO CARE: **This will never happen**
 31/12/18 5:53 pm Mitul ARO CARE: **Did he directly abuse u?**
 31/12/18 6:01 pm Ravi: He was saying you are Group Head responsible for case Arun are supervisors
 31/12/18 6:05 pm Mitul ARO CARE: Wah!

56. Mitul Budhbhatti in his statement also corroborated the statement made by Ravi Dasari and stated in respect to the above conversation as under:-

“In this conversation, he refers to Rajesh Mokashi. Rajesh Mokashi was not happy with the proposed downgrade action of DHFL in the Rating Committee meeting because he was of the opinion that if DHFL had mentioned March 2019 milestones, and the Rating Team should wait before taking any rating action prior to this period.”

57. Rajesh Mokashi has, however, in his statement, stated that he “*did not instruct the Rating Team to wait till March 2019 prior to taking any action. Subsequently, empirical evidence clearly points out that rating action was taken before March 2019.*”
58. It can therefore be noted from above that both the Group Head (“**GH**”) and Rating Head (“**RH**”), in the case of DHFL, have deposed that Noticee 2 was of the strong view that the DHFL rating should not be downgraded prior to March 2019. It is further noted that they have deposed that Rajesh Mokashi was not permitting the Rating Team to take a contrary view and was insisting that in case they wished to downgrade, they should take prior approval from the Issuer, which they rightly noted would be a non-starter. In this regard, I would like to state that Noticee 2, throughout his replies, has taken the stand that he would express his views in BFSI related ratings in the event someone from the Rating

Team (“RT”) or Rating Committee (“RC”) approached him. However, the picture that is being painted by the WhatsApp conversations does not seem to support such a contention. On the contrary, it is noted that the RH and GH are expressing their frustration at not being in a position to downgrade the rating. Further, Noticee 2’s statement that the facts bear out that the downgrade eventually happened before March cannot be accepted as it is noted that it was the Cobra Post news article which ultimately forced CARE’s hand to downgrade the rating of DHFL.

Events leading up to the DHFL being placed on Credit Watch on January 18, 2018.

59. It was observed from the FAR that Noticee 2 held a meeting with Kapil Wadhawan on January 9, 2018. The WhatsApp conversations between the GH and RH show that the December 31, 2018 rating note was circulated to Mokashi prior to this meeting with Kapil Wadhawan. However, despite the meeting being held in the office of CARE and seemingly related to the rating of DHFL, it was not attended by any member of the Rating Team. This goes contrary to the contention made on behalf of Noticee 2 that he would be present in meetings with clients only for protocol purposes and to facilitate access for the Rating Team to the top management of Issuers. On the contrary, it is strange that the analyst and GH were not invited to a meeting which was being held at the request of MD of DHFL and which happens in the office of Noticee 2. This surely was unusual.
60. Subsequent to the meeting, it is noted that on January 11, 2019, the analyst shared a draft press release putting a negative outlook on the DHFL rating as opposed to the rating downgrade that was proposed in the note dated December 31, 2018.

Conversation between Ravi Dasari and Mitul Budhbhatti
16/01/19 3:12 pm Mitul ARO CARE: I had spoken to Ma’am [Revati Kasture] in afternoon but she has not got back

16/01/19 3:12 pm Mitul ARO CARE: U can ask her once again... For tomorrow's time slot... For meeting

16/01/19 3:13 pm Ravi: **She is point blank on when are you putting DHFL note today also she was saying you guys are giving them too much time**

16/01/19 3:14 pm Ravi: One entity in the group defaulted so it's also going ilfs way

16/01/19 3:28 pm Mitul ARO CARE: **Tell her to speak to Arun sir n MD immediately**

16/01/19 3:29 pm Mitul ARO CARE: Also check dhfl crisil rating... I'm unable to open crisil site

16/01/19 3:30 pm Ravi: For what

16/01/19 3:30 pm Mitul ARO CARE: About urgency in dhfl

16/01/19 3:30 pm Mitul ARO CARE: **Everyone's is pushing us only...**

16/01/19 3:31 pm Ravi: **Yes she is not directly going only telling me**

....

16/01/19 6:45 pm Mitul ARO CARE: U had any discussion with Santosh Sharma[DHFL] on that?

16/01/19 6:45 pm Ravi: He did not say anything

16/01/19 6:47 pm Mitul ARO CARE: Oh...

16/01/19 6:47 pm Mitul ARO CARE: He again called me n I told him ma'am has not got back to me

16/01/19 6:48 pm Did they say anything about negative outlook?

16/01/19 7:56 pm Ravi: They were saying wait

16/01/19 7:56 pm Arun sir said clearly we cannot wait we will have to take action

16/01/19 7:57 pm Ravi: So they said will go back and inform Kapil

16/01/19 7:57 pm Ravi: Arun sir said do that and revert in one hour we will be doing tomm

16/01/19 7:57 pm Mitul ARO CARE: Hmmm

61. It can be noted that as per the above conversation both Revati Kasture, who chaired the Rating Committee meeting held on October 29, 2018 and December 31, 2018, and Arun Kumar, who was the CRO and also chaired the RC held on November 1, 2018, were in favor of taking some rating action against DHFL. It is, however, noted that both the RH and GH were of the view that such action cannot be taken without discussing the issue with Noticee 2. This clearly gives an indication that RC was not the final arbiter making rating decisions, and they would have required a sign off from Mokashi, at least in the case of DHFL.
62. It is noted that thereafter the analyst circulated a rating note to the RC members on January 18, 2019, which recommended putting the DHFL rating on credit

watch. This is as opposed to the negative outlook proposed in the draft press release shared on January 11, 2019, and the rating downgrade that was proposed in the note dated December 31, 2018. This change in rating recommendation is discussed in chat between Mitul Budhbhatti and Ranjan Sharma, who was a member of the RC which considered the rating on January 18, 2019, which is reproduced below:

- 18-Jan-19 6:25 PM Ranjan Sharma: Sir, what's the hurry of putting up a CW note to RC through circulation? That too when everything is negative about it...the recommendation is only developing implications.....🙏 can't it be discussed in a proper committee through VC?
- 18-Jan-19 6:26 PM Ranjan Sharma: Also, why developing is not coming out in the note?
- 18-Jan-19 6:26 PM Mitul Budhbhatti: Please speak to higher ups
- 18-Jan-19 6:27 PM Mitul Budhbhatti: **It started from downgrade n has finally settled here**
- 18-Jan-19 6:27 PM Mitul Budhbhatti: Badi mushkil se
- 18-Jan-19 6:27 PM Ranjan Sharma: But what about note content?
- 18-Jan-19 6:27 PM Ranjan Sharma: Nothing positive in the note....
- 18-Jan-19 6:27 PM Mitul Budhbhatti: That's a fact
- 18-Jan-19 6:27 PM Mitul Budhbhatti: Factual position
- 18-Jan-19 6:27 PM Ranjan Sharma: Also, why not through VC?
- 18-Jan-19 6:28 PM Ranjan Sharma: What's the hurry?
- 18-Jan-19 6:28 PM Ranjan Sharma: For AAA rating to be placed on CW??
- 18-Jan-19 6:28 PM Mitul Budhbhatti: It was supposed to happen at beginning of the week We are doing it now coz if we wait the company will come back again and stall the process
- 18-Jan-19 6:28 PM Ranjan Sharma: 🙏
- 18-Jan-19 6:29 PM Mitul Budhbhatti: Bohot natak ho chuka hai isme

63. From this conversation, it can be noted that Mitul is alluding to the fact the credit watch recommendation has been made by the Rating Team after a lot of effort and it started with a downgrade and now it has ended here. This clearly reflects that neither the Rating Team nor the RC members were in a position to independently arrive at a decision in the case of DHFL.

Events leading up to the reversal of the decision taken on January 18, 2019.

64. The decision to place the DHFL rating on Credit Watch was reversed after taking into consideration the representations made by the Issuer on January 25, 2019. The RC members who took this decision were, once again, different from the members who had met on January 18, 2019. The members on January 25, 2019 were Arun Kumar (Chairperson), Sudhir Kumar and Yogesh Shah whereas the members who took the decision on January 18, 2019, were Milind Gadkari (Chairperson), Ranjan Sharma and Jyotsna Gadgil.
65. It is noted that Ranjan Sharma, in his statement, has deposed that *“As per my discussion with Mitul Budhbhatti, Rajesh Mokashi had instructed the Rating Team to remove the ratings from credit watch against their will”. He further states that “We had to update Rajesh Mokashi before forming any view on DHFL or for that matter any large BFSI client as he expected that from us. We would argue and deliberate on the case and raise our concerns that we would have. However, many times in case of DHFL, our arguments would be defeated. At times when we (Rating Team) would stick to a certain view, the discussion would turn sour and Mr. Rajesh Mokashi would be agitated on our rigidity and biasness for a downgrade. He would ask us not be rigid and think with an ‘open mind’. Specifically, in my case, he would say that my understanding of BFSI is still “developing” and I need to gain more experience before forming any strong views. Hence, beyond a point there was a limit to which we could argue with him and had to give in to his arguments. At times I felt he had greater belief in what Kapil Wadhawan had to say than his own Rating Team.”*
66. The Group Head, Ravi Dasari, deposed that *“I was not comfortable with the removal of credit watch and hence I left it to the Rating Committee to decide the rating note to be assigned and did not provide my recommendation on the e-mail even though the rating note was put to Rating Committee through*

circulation.” He also stated that: “There was no reason for removal of credit watch for DHFL.”

67. It can therefore, be noted that both the RH and GH have deposed that there was no new material that was presented by DHFL that warranted the removal of credit watch on January 25, 2019. Further, Mitul has stated that it was difficult for the members of the Rating Committee to form their views independently in the case of clients like DHFL. In this regard, I note that a member of RC is deposing that the MD would not let them form independent opinions in case of clients like DHFL and this, I note, is contrary to the submissions made by Noticee 2 that he would provide inputs only when any member of the RT or RC approached him.

Cobra Post Expose and Subsequent Downgrade of DHFL.

68. It is reiterated that on January 29, 2019, Cobrapost published “*Anatomy of India’s Biggest Financial Scam Pulled off by Dewan Housing*”⁵. It was alleged in the article that the promoters of the Company had siphoned off substantial funds from the Company. Subsequent to the news story, CARE downgraded the rating of DHFL by one notch from AAA to AA+ on February 03, 2019. The rating was subsequently downgraded by two notches to AA- on February 27, 2019, and further by one notch to A+ on March 31, 2019. It can, therefore, be noted that DHFL’s rating was finally downgraded only after the exposé published by Cobrapost. Even post this report, it is noted from WhatsApp conversations between CARE officials that Noticee 2 was still reluctant to downgrade the rating to the extent proposed by the Rating Team and Rating Committee members. I note that RT and RC members were constantly expressing the view that the rating needs to be further downgraded. The extent of their frustration on not being able to go ahead with the downgrade can be noted from the following conversation:

⁵ <https://cobrapost.com/blog/press-realise-dhfl-l/1374>

On ESI review of mobile date of Milind Gadkari (CARE), noted following chat conversation with in the WhatsApp group "Analytical discussion"

25/02/19 7:33:11 PM Revati Kasture: Dewan Housing Finance_r_25022019 • 7 pages document omitted

25/02/19 7:34:46 PM Revati Kasture: Effectively it's A

25/02/19 7:51:41 PM Amod Khanorkar: Could map to Bbb+ also

25/02/19 7:51:50 PM Amod Khanorkar: Will our man agree now

25/02/19 8:05:35 PM T. N. Arun Kumar: Nope

25/02/19 8:06:11 PM Revati Kasture: God knows

25/02/19 8:06:49 PM Milind Gadkari: He is more worried about IFCI rating

25/02/19 8:07:20 PM Milind Gadkari: And why is it not sub investment

25/02/19 8:07:22 PM Amod Khanorkar: Too good 😊

25/02/19 8:16:42 PM T. N. Arun Kumar: Tomorrow who is taking RC?

25/02/19 9:11:50 PM Milind Gadkari: I can

25/02/19 9:51:36 PM T. N. Arun Kumar: Ok

25/02/19 9:51:39 PM Revati Kasture: **My personal suggestion is that we should downgrade Dhfl Tomo itself as crisil is bound to follow ... plus if we delay action Sebi will ask us why? .. we r committee members and not mr Mokashi .. let's be aware of this**

69. It can be noted from the above, that Ms. Kasture is reminding other RC members, which included Mr. Arun Kumar, the Chief Rating Officer, that if DHFL ratings are not downgraded then it will ultimately be the RC members, and not Mokashi, who would be held responsible by the regulatory authorities.
70. Given the above, I am of the view that there is sufficient material available on record to prove the charge that Noticee 2 interfered with rating process in the matter of DHFL and thereby contravened the provision of 3.2.1 of the SEBI Circular dated May 03, 2010.

Patanjali.

71. It was alleged in the SCN, based on certain WhatsApp conversations between Noticee 2 and Swati Agarwal, who was part of the business development team, that Mr. Mokashi was asking Swati about upgrading the rating of the Issuer to which she responds that it would be possible.

72. I note from the records that P.S. Ramesh, in response to question put to him by the Auditor had replied as under:

“Are there any other cases involving pressure from Swati Agrawal or Rajesh Mokashi?”

I can recollect the case of Patanjali Ltd., Initial ratings were assigned in March 2018, the ratings were based on March 2017 financials. Subsequently, when the case was taken up for surveillance in March 2019, the Rating Team had access to March 2018 financials which reflected significantly poor financial numbers. The rating at that time was AA- and the Rating Team had recommended a 2-notch's downgrade based on March 2018 financials. Lalit Pophale, director of Credit Risk Solutions Private Ltd. a subsidiary of CARE was also an advisor to Patanjali Ltd.. He was closely involved with Patanjali's acquisition of Ruchi Soya Foods as well as fund raising with banks. The Rating Committee had accepted a 2-notch's downgrade recommendation but there was pressure from Lalit Pophale not to downgrade Patanjali Ltd. by 2 notches. Later, Lalit Pophale met Rajesh Mokashi. Rajesh Mokashi then got involved, Patanjali Ltd. made a representation post which the ratings was only downgraded by 1 notch instead of 2 notches. Initially one set of projections were made available to the analytical team. However, during the representation Patanjali Ltd. came up with new set of projections. Rajesh Mokashi was present during the representation discussion and had asked the analytical team to reconsider the ratings using the new projections. Revised projections provided a better picture of Patanjali Ltd. compared to reality. Even Swati Agarwal was a part of one of the calls. In September / October 2019, when Patanjali Ltd. was being downgraded, Rajesh Mokashi called Swati Agrawal while he was sent on leave (i.e. August 2019) to prevent downgrade of Patanjali Ltd.”

73. I note from the above statement that allegation against Noticee 2 is that he had directed the analytical team to reconsider the ratings based on the revised projections submitted by the issuer. I however note that there is no material

available on record that revised projections were inflated or suffered from any other issues. Further, it is also noted issuers are allowed to seek reconsideration of the rating. Given the same, I am giving the benefit of the doubt to Noticee 2 and not recording any adverse inference against Noticee 2 in respect of the above charges.

YBL – Background

74. The rating of YBL was upgraded to AAA by CARE vide PR dated July 5, 2018. In doing so, CARE became the first rating agency to assign AAA rating to instruments issued by YBL. This was a significant milestone for YBL as till that point in time only instruments issued by HDFC Bank, ICICI Bank and Kotak Mahindra Bank among private sector banks enjoyed the highest credit rating. The ratings, however, had to be downgraded within a short span of time. The rating were placed on credit watch on November 28, 2018, and subsequently in the RC meeting held on December 3, 2018, a decision was taken to downgrade the rating to AA+.

Rating upgrade – June 29, 2018

75. The SCN has alleged that Noticee 2 was part of the team from CARE which interacted with YBL officials, including its then MD, on June 28, 2018 – one day prior to meeting of the RC where the decision to upgrade the rating of YBL to AAA was taken. It was also alleged in the SCN that the QCT of CARE was not in favour of upgrading the rating at that point. I note from the records that Aditya Acharekar, who was part of the QCT, had deposed that there was pressure from Noticee 2, on Abhishek Gupta, the GH for YBL, for upgrading its rating. He also stated that the rating actions in respect of large clients were generally informed to Noticee 2.
76. I note from the reply of Noticee 2 that he has stated that he accompanies the Rating Team for meetings with the management of Issuers only for protocol

purposes. In case of YBL, Noticee submitted that, as the bank was being represented in the meeting by its MD, he also had to be present. Further, the statement of Aditya Acharekar would have to be considered as hearsay as he had deposed about the pressure put on another employee and not pressure put on him by Noticee 2.

Rating Downgrade – November 27, 2018

77. I note from the records that certain WhatsApp conversation were observed between Dharmesh Gandhi and Pankaj Chaplot, both analysts who were part of the Rating Team of YBL, stating that Noticee 2 had given the go ahead to downgrade the rating of Yes Bank. The contents of the said conversation is reproduced below:

25/11/18, 4:13 PM Dharmesh Gandhi: **MD gave go ahead**

25/11/18, 4:13 PM Dharmesh Gandhi: **Unko vaha ka offer nhi aaya** 😊 😊

25/11/18, 4:13 PM Pankaj chaplot: **MD kon hota hai ye sab bolne wala**

25/11/18, 4:14 PM Dharmesh Gandhi: **Vohi jisne upgrade karne bola tum log ko**

25/11/18, 4:14 PM Pankaj chaplot: **wo bole wo krne ka bas**

25/11/18, 4:14 PM Pankaj chaplot: **analyst kis kam k**

25/11/18, 4:14 PM Dharmesh Gandhi: **Tab nahi sunte toh yeh nobat nhi aati**

25/11/18, 4:14 PM Pankaj chaplot: **sirf notes banane k liye!?**

25/11/18, 4:14 PM Dharmesh Gandhi: **We convinced him to downgrwde**

25/11/18, 4:15 PM Dharmesh Gandhi: **Abhishek nd tuje pata** 😊

25/11/18, 4:15 PM Dharmesh Gandhi: **Mai toh downgrade karwa rha hu** 🙄

78. I note that in the above conversation two analysts of CARE are saying that the rating of YBL was upgraded on the instructions Noticee 2 and similarly even for the downgrade his approval was obtained. However, how this information became available to Dharmesh is not clear from the context of the conversation.

In view of the same, the information presented therein will have to be considered as hearsay.

79. Given the above, I note that the charge of interference in rating in the case of YBL cannot be sustained on the basis of a single meeting with the Issuer in the absence of other evidence to corroborate the charge. Even in respect of the comment of Aditya Acharekar that there was pressure on the GH from Noticee 2 to upgrade the rating will have to be considered as hearsay as he was not directly privy to the conversation. Given the above, I note that sufficient material has not been brought to record to sustain the charge of interference in the case of rating assigned to YBL.

IL&FS

Rating Downgrade – August 16, 2018

80. A WhatsApp conversation was observed between Arun Kumar and Arun Saha of IL&FS which pertained to a possible meeting which involved the two of them and Noticee 2. The conversation is reproduced below:

“05/09/18, 12:08:22 Arun Kumar to Arun Saha: Mr. Mokashi and I would like to meet you this afternoon. Are you free?”

81. WhatsApp observed which states that Noticee 2 said to downgrade IL&FS to the same level as another credit rating agency.

Mitul Budhbhatti

“I do not think that there was any pressure from Rajesh Mokashi. He did have views on ILFS, but he asked us to closely monitor ILFS. Rajesh Mokashi was concerned about aggressiveness of ILFS management. Rajesh Mokashi also knew that there is some trouble in the account as normally the management would not come to meet him without much prior background.

82. Given the above, I note that sufficient material has not been brought to record to sustain the charge of interference by Noticee 2 in the case of rating assigned to IL&FS.

Interference by Noticee No. 1

83. I note that it was alleged in the SCN that Noticee 1 was also interfering in the ratings of DHFL based on the following:

- There were WhatsApp Chats between the RH and GH of DHFL in which it was stated that *the MD did not wasn't to say No to the Chairman in respect of the ratings of DHFL;*
- There were calls between Noticee 1 and 2 on January 24, 2019, just prior to the RC meeting.
- Noticee 2 had deposed that he had received calls from Noticee 1 regarding certain complaints that were had received by Mainak from the DHFL Chairman.

84. As stated earlier, the FA did not have the benefit of analyzing the WhatsApp conversations between Noticee 1 and 2 as they had deleted/changed their phone before such conversations could be archived by the auditor. In view of the same, the evidence against Noticee 1 is limited to certain statements made by employees of CARE and certain WhatsApp chat messages wherein his name is appearing. It is further observed from the itemized telephone bill of the Noticees that there were calls exchanged between Noticee 1 and 2 at critical junctures when the ratings of DHFL were under active consideration by CARE. The examples of such calls include:

- **December 27, 2018** - call duration of 4 minutes 41 seconds (17:32).
- **December 31, 2018** - Call 1: 18:26: 4 minutes | Call 2: 18:30: 16 minutes.
- **January 10, 2019** -Call 1: 16:56: 4 minutes |Call 2: 17:00: 6 minutes |Call 3: 17:06: 02 minutes |Call 4: 17:11: 14 minutes.
- **January 17, 2019** - 2 minutes (14:36).

- **January 18, 2019** - 2 minutes (15:17).
- **January 21, 2019** -Call 1: 18:40: 10 minutes |Call 2: 18:50: 6 minutes | Call 3: 19:22: 2 minutes.
- **January 23, 2019** - Call 1: 10:05: 12 minutes |Call 2: 17:59: 24 minutes.
- **January 24, 2019** - 2 minutes (19:01).
- Outward call from S. B. Mainak to Kapil Wadhawan for 2 minutes.
- **February 01, 2019** - Call 1: 14:16: 08 seconds | Call 2: 15:58: 7 minutes and 48 seconds |Call 3: 18:28: 42 seconds.

85. It can therefore be noted that there were multiple telephone calls exchanged between the Noticees right around the time when critical rating decisions in respect of DHFL were being considered by CARE. The repeated nature of the calls at crucial junctures would tend to indicate that such calls would be in relation to the ratings of DHFL. Noticee 1 in his reply has stated that such calls have nothing to do with the ratings assigned by CARE and were instead related to Board Matters. I, however, note that given the repeated nature of the calls just prior to rating events it would be too much of coincidence to term such calls as routine. Having said that, I note that it would these calls alone would not be sufficient to prove the interference of Noticee 1 in the rating process.

86. In respect of the WhatsApp conversations mentioned in the SSCN, I note that it was a conversation between Ravi Kumar and Mitul Budhbhatti. The relevant portions of the conversation are reproduced below:

16/01/19, 3:36 PM Ravi Kumar HO: I don't know what his expectation in terms of approach

*16/01/19, 3:36 PM Mitul Budhbhatti: **No expectations... He has lost it***

*16/01/19, 3:37 PM Mitul Budhbhatti: **He doesn't want to say no to chairman***

*16/01/19, 3:37 PM Mitul Budhbhatti: **Yes bank me bhi aisa hi pressure tha***

*16/01/19, 3:46 PM Ravi Kumar HO: **Yes exactly he doesn't want to say no to chair mam***

87. I note that Mitul Budhbhatti, in his statement, has stated in relation to this conversation as under:

“I had heard that S B Mainak had got a representation from Rana Kapoor and then in turn Rana Kapoor would have spoken to Rajesh Mokashi. Basis this we said that Rajesh Mokashi would not say a no to S B Mainak. However, this was a speculative chat and had no basis or evidence. It was based on hearsay.”

88. In respect of the complaint Noticee 1 received from the Chairman of YBL, it was stated in the reply of Noticee 2 that Mainak had informed him that DHFL officials had met Noticee 1 at a conference and they had complained that CARE employees were not looking at the case properly. Noticee 2 also stated that Mainak had advised him to follow the process / rules / regulations while performing the work. I note that Noticee 2 has corroborated this in his statement before the Auditor. Given the above, even though the material brought, especially the timing of the calls exchanged between the Noticees, points the needle of suspicion towards Noticee 2, It would not be, in my considered view, sufficient to conclude that Noticee 1 interfered in the rating process at CARE.

MD acting as a de-facto RC Member.

89. The SSCN refers to the statement of Ranjan Sharma (who was a member of certain RC of DHFL) wherein he stated that when the rating of DHFL were discussed in the Rating Advisory Committee (“**RAC**”) on March 25, 2019, where Mokashi defended the rating of DHFL and seemed to be an interested party. It was also stated that Mokashi was against sharply downgrading the rating assigned to DHFL. It was also noted in the SSCN that the RAC meeting was held two days prior to the RC meeting of DHFL (held on March 27, 2019) and one of the member of the RC of DHFL (Sanjay Agarwal) also attended the RAC meeting. In view of the same, it was alleged in the SSCN that Noticee 2 expressing strong views about a rated instrument may affect the independence of rating as RC members may not be in a position to form their opinions independently. Accordingly, it was alleged in the SCN that Noticee 2 was acting

as a de facto member of the Rating Committee and therefore, not in compliance with Clause 3B to the annexure of the SEBI Circular dated November 1, 2016, which mandated that MD shall be part of the Rating Committee only if majority of the members of the committee are independent.

90. I note from the above that the charge against the Noticee is essentially that since he was expressing strong views in respect of a rating instrument in front of a RC member, it could have swayed the decision of the said member thereby affecting/ compromising the independence of the RC decisions. It is therefore noted that prior to adjudicating this issue, it would be important to place in context the statement in question made by the Noticee. These views, I note, were expressed in a meeting of the RAC which was headed by Mr. Y. H. Malegam. The remit of the RAC, as per the records before me, was to conduct a post facto assessment in respect of instruments which saw a sharp downgrade. Noticee 2 in his reply has stated that he attended the meeting of the RAC on the invitation of Mr. Y.H. Malegam.
91. I also note that the SSCN does not allege that the presence of Noticee 2 at the meeting was contrary to regulatory provisions. Now on the question of the appropriateness of the remarks made by the Noticee in the presence of a member of the RC of DHFL, I note that as there are no questions being raised in the SSCN on the presence of both Noticee 2 and the member of the RC at the RAC meeting. In view of the same, it would not be feasible in my considered view to hold that expressing a view on the rating of the instrument at a meeting which has been called to discuss the rating actions taken in respect of the instrument till that date be held to be contrary to the mandate under the November 1, 2016 Circular issued by SEBI. For recording such a finding it needs to be shown that such views were mala-fide or made to influence subsequent rating decisions. I note that the SSCN fails to produce any material in this regard.
92. I, however, note that the views expressed by Noticee in RAC clearly point to the fact that even in March 2019 when the ratings of DHFL had been brought down

a few notches after the Cobrapost exposé, Noticee 2 was against downgrading the ratings assigned to DHFL any further.

Composition of the Rating Committee not independent

93. I note that it has been alleged in the SSCN that the composition of the Rating Committees of CARE were not independent as the Committees, in certain cases, had members who were in reporting relationship to other (senior) members in the committee. This, it was alleged could impede upon the independence of the committee as members who were in reporting relationships could not be expected to differ with views of their reporting manager. This, it was alleged in the SSCN, would defeat the purpose of a committee based approach to rating decisions.
94. Regulation 24(3) of the CRA Regulations mandates that every CRA shall have professional Rating Committees, comprising members who are adequately qualified and knowledgeable to assign rating. Further, Clause 22 of Code of Conduct under Schedule III states that CRA shall ensure that good corporate policies and corporate governance are in place. Clause 4 of the Code of Conduct requires the CRA to exercise due diligence, ensure proper care and exercise independent professional judgment in order to achieve and maintain objectivity and independence in the rating process.
95. Clause 3A of the Annexure to the SEBI circular on *“Enhanced standards for CRAs”* dated November 1, 2016, mandates that *“Composition of Rating Committees/sub-committees shall be specifically set out in the Operations Manual/internal governing document of the CRA”*. It was noted in the SSCN that as per the Operational Manual of CARE, the Board of Directors was entrusted with the power to constitute Rating Committees. Therefore, as the board headed by Noticee 1 had approved constitution of committees which allegedly did not meet the independence criteria, it was alleged in the SSCN that Noticee 1 had contravened the provisions of the Circular mentioned above.

96. I note from the records that certain instances were identified during the examination where the independence criteria, as alleged in the SCN, was not met. This included the committee for IFIN in which the members were Arun Kumar, Mitul Budhbhatti and Sudhir Kumar. As per the organizational structure of CARE at that moment, Mitul was reporting to Arun Kumar and, therefore, it was alleged that the committee was not meeting the independence criteria.
97. Having considered that charges in the SSCN and the regulatory provisions alleged to have been violated by Noticee 1 in this regard, I am of the considered view that the allegation in the SSCN is not made out. I note that the onus, as per Regulation 24 and Clause 22 of the Code of Conduct quoted above, was on the CRA which is not a party to the present proceedings. Further, even if it is accepted that the constitution of the committee noted above is not in keeping with the spirit of independence mandated under the Regulations, the onus of responsibility cannot be put on Noticee 1 alone unless it can be shown that Noticee was instrumental in some manner in the Board constituting a committee with such members who were allegedly not independent. I note that no such material has been brought out in the SCN or the SSCN. In view of the same, I am constrained to hold that the charges against Noticee 1 in this regard does not stand established.

Non-documented meetings and calls with Issuers

- a) Meeting with Rana Kapoor**
- b) Meeting of Mokashi**
- c) Meeting with Arun Saha**

98. Regulation 24(2) of the CRA Regulations requires every CRA to follow a proper rating process in all cases. Further, Clause 6 of Code of Conduct for CRAs requires CRAs to have in place a rating process that reflects consistent internal rating standards. The Rating Operations Manual of CARE further required meetings with the management of Issuers be minuted and recorded in the rating

notes. It was alleged in the SSCN that above meetings where Mokashi had also joined the Rating Team for meetings with the management of the Issuer were not recorded in the respective ratings note and therefore, such actions were contrary to the provisions of clause 6 of the Code of Conduct and Regulation 24(2) of the CRA Regulations.

99. I note that Noticee 2 has sought to contend that he would be present during management interactions for protocol purposes. It was submitted that the top management of many Issuers would be reluctant to meet the Rating Team unless he was also present and therefore for the limited purpose of arranging access to the management he would be present in such meetings. However, I note that even if the arguments raised by the Noticee in this regard are accepted it would still not explain why his presence in such meetings were not included in the rating notes despite there being an express requirement under the 2016 Circular to do so. Further, Mitul Budhbhatti has deposed that the meeting in the case of YBL bank was not included in the rating notes as Arun Kumar, the Chief Rating Officer, had expressly directed him not to include it as the Noticee could not be part of management meetings as per the extant regulatory framework. It is, however, noted that Arun Kumar in this statement has denied this claim made by Mitul Budhbhatti and therefore, reliance is not placed in the said statement.
100. Having considered the above, I am of the view that the charges in the SSCN in respect of this allegation does not stand established. Similarly, the responsibility of incorporating the details of the meeting in the rating note is on the Rating Team and not Noticee 2. Therefore, in the absence of any material brought out in the SCN to show that such omissions were directly or indirectly directed by Noticee 2, it would not be possible, in my view, to hold Noticee 2 liable for the lapses. Despite holding that Noticee 2 is not liable for the contraventions alleged in this respect, I would like to add that such repeated omissions from the rating notes of the meetings held by Noticee 2 with Issuers could indicate a pattern where a conscious view is taken within CARE that minutes of such meetings be

not put in the public domain. This could be indicative of at least a perception within employees of CARE that presence of Noticee 2 is not compatible with the applicable legal provisions. However, such omissions by itself are not sufficient to latch on regulatory liabilities on Noticee 2 in the absence of additional evidence, which I am constrained to note, the SSCN fails to provide.

Delay in taking rating action - RCL and Cox and Kings Ltd.

101. I note that it was alleged in the SCN and SSCN that both in the case of RCL and Cox and Kings there was a delay in taking rating action. It was also noted that the downgrades were done on the basis of information which was available with CARE for quite a while and therefore action in both cases, it was alleged in the SCN, could have been taken earlier. I, however, note that no specific material is brought out in the SSCN to show any role played by Noticee 2 in delaying the rating action. In the absence of the same, it would not be possible to hold him liable for the delay, if any, in taking rating action in these cases.

Reply of Noticee 2

102. It can be noted from the available WhatsApp conversations that the Group Head of the Rating Team Ravi Dasari, Rating Committee Members Mitul Budhbhatti, Ranjan Sharma and Revati Kasture are attributing the delay in making a rating decision to the pressure exerted by Noticee 2. It is also noted that Noticee 2, based on the commitments made by the Issuer, was directing the members of the Rating Team and Rating Committee to delay taking any rating action till March 2019. This, I note, is despite the express instructions issued by the Board of CARE, post the IL&FS default, to not base rating actions on the commitments given by Issuers. Further, during this period, SEBI had already initiated action against CARE for relying on Issuer commitments while taking rating decisions, which in one instance, has been upheld by the Hon'ble Securities Appellate Tribunal. The repeated interference by Noticee 2 resulted in delaying the DHFL rating downgrade, which was initially proposed by the RC in its meeting held on

October 29, 2018 till February 03, 2019, when CARE was in effect forced to downgrade the rating of DHFL post the report published by Cobrapost on January 29, 2019.

103. In his reply, Noticee 2 had submitted that the sale by DSP Mutual Fund was not on account of material credit issues faced by DHFL. However, in a reply dated February 27, 2019, to a query raised by SEBI regarding sale in September 2018, of debt securities issued by DHFL, DSP Mutual Fund had inter alia informed SEBI that “the movement in DHFL yields through the 10 days of September was unusual for a bond which was widely held across the markets. Steep rise in yields of DHFL bonds in a short span of time led to revisiting our portfolio holdings...”. In fact, with the benefit of hindsight, the decision taken by DSP Mutual Fund to sell DHFL debt securities should be commended. It is rare for an investor to sell AAA instrument at a deep discount to its issue price. Anyone who would have sold would have done so with deep conviction while keeping the interest of unit holders upper most on their minds. The fact that the share price of DHFL plunged by over 40% after the sale of securities by DSP Mutual Fund on September 21, 2018, was a clear signal that all was not right at DHFL. Equity markets are forward looking and this was a leading indicator that all was not well at DHFL. Despite these red flags and material events, CARE reaffirmed the AAA rating of DHFL on the same day i.e. September 21, 2018.
104. The reply furnished by Noticee 2 that CARE was the first rating agency to downgrade the ratings of DHFL is misleading. It is noted from records that other rating agencies mentioned in the reply of the Noticee were primarily rating short term instruments issued by DHFL whereas CARE was rating both short term and long term instruments. The diligence of rating long term instruments correctly, calls for higher responsibility. Short term instruments and long term instruments are rated on a different rating scale as short term and long term credit risk profiles can be entirely different.

105. A table showing the indicative mapping of different long term ratings to the corresponding short term rating is provided in the table below:

Long-term ratings^	Corresponding Short-term rating^ mapping (indicative)								
	A1+	A1	A2+	A2	A3+	A3	A4+	A4	D
AAA									
AA+									
AA									
AA-									
A+									
A									
A-									
BBB+									
BBB									
BBB-									
BB+									
BB									
BB-									
B+									
B									
B-									
C									
D									

(Source: CARE)

106. It can therefore be noted that even though there is some overlap in the ratings, short term A1+ rating broadly corresponds to long term ratings ranging from AAA to A+. The long term rating of DHFL assigned by CARE was at AAA during January 2019 and the short term rating assigned by other rating agencies during the same period was A1+. In view of same, the argument made on behalf of Noticee 2 cannot be accepted as it can be noted that only after multiple downgrades in the long term rating would an equivalent downgrade of the short term rating be warranted. Noticee 2, with his deep experience of the NBFC sector, should have been more circumspect while dealing with the DHFL matter given what had earlier transpired in the ILFS matter. As discussed earlier, ILFS and DHFL were of similar size at the time of their default; close to Rs. 90,000 crores each.
107. I note that the Noticee has sought to place reliance on the findings in the Justice Srikrishna Report which concluded that *“there is no substance in the charges levelled against Mr. Rajesh Mokashi with regard to the allegation that he had*

interfered with the rating process and influenced the ratings of DHFL, Yes Bank and ILFS.” I concur with the conclusions reached in the said report on all issues barring the allegation against Noticee 2 for interfering in the rating of DHFL, for the following reasons:

- a. The report considers the question of whether the interference by Noticee 2 had an impact on the rating decision whereas I am of the considered view that such interference irrespective of its ultimate impact on the rating decision would fall foul of the regulatory mandate. For example, the Report absolves Noticee 2 of the charge of interference in respect of the decision taken by the RC on December 31, 2018, to defer the ratings. In this regard, even if for the sake of argument it is accepted that the decision taken by the RC may have been for the reasons cited in the report, I am of the view that there is sufficient evidence on record to show that Noticee 2 was interfering in the rating exercise. Ranjan Sharma, Ravi Dasari and Mitul Budhbhatti, have deposed that there was interference by Noticee 2, and the statements are further corroborated by the WhatsApp conversation between Mitul Budhbhatti and Ravi Dasari on the same date. Given the above, I am of the view that such directions by the Noticee even assuming they had no impact on the ultimate rating decision taken by the committee is contrary to the provisions of the SEBI circulars which seek to insulate the rating functions from the pressures of business development.
- b. The Report primarily relies on the statements made by the identified persons and does not, in my considered view, give enough credence to the archived WhatsApp conversations between the said employees around the time the said events were occurring. While relying on the statements made by the identified persons it needs to be borne in mind that the whistle blower letters which were considered by the FA were anonymous. None of the identified persons had come forward and volunteered information prior to initiation of the audit or even approached the Board of CARE with their concerns. In fact, I note from the FAR that

Viraj Dhond, Analyst, in reply to a pointed question by the FA on why he did not raise his concerns before the Board of CARE has stated that he did not adopt such a course considering his future employment prospects.

c. Further, it also needs to be considered that in many instances the regulatory mandate for ensuring independence falls on the members of the RC, and therefore by testifying that Noticee 2 had influenced their decisions, there could be concerns that they are opening themselves up for regulatory scrutiny and potentially future liabilities. This would especially be true in a situation where none of the identified persons had come forward as whistle blowers and therefore would not be expected to make self-incriminating statements without the protections that are afforded to whistle blowers. In fact a pattern can be observed in the statements of the employees who have stated that Mokashi has interfered in the rating process. They have also simultaneously also stated that such interference had no implication on the final rating decision. This distinction that has been drawn is at variance with concerns that were being raised by the members of the RT and RC in WhatsApp conversations where they have been expressing their frustration at not being able to take any rating action due to pressure exerted by Noticee 2.

d. I therefore note that wherever there is a variance in the views expressed by an Identified Person in WhatsApp conversation and in his recorded statement, the WhatsApp conversations, excluding chats which are in the nature of hearsay, would, in the instant matter, serve as a more reliable record of what transcribed during the relevant time as it acts as a contemporaneous record of the events unblemished by any other considerations including potential regulatory scrutiny.

108. I also note that Noticee 2 cannot take comfort in the fact that adverse directions are not being recorded against Noticee 1 as the charges against both the Noticees are substantially different. Further, non-availability on record of adequate and sufficient evidence to conclusively prove the involvement of

Noticee 1 in the rating exercise does not in any manner absolve the contraventions of Noticee 2, which has been recorded in the preceding paragraphs of this Order.

109. A picture that clearly emerges was that Noticee 2 would have pulled rank and asserted his authority. In a crisis situation it would have been prudent for Noticee 2 to err on the side of caution and not continue giving a long rope to DHFL and continue to rely on projections given by DHFL without its Board's approval. His non-interference would have enabled the rating committee to arrive at the correct assessment of risk. The end result, in the DHFL case, could only have been delayed but not avoided. It is surprising that traded yields and yield on issue on bonds related to DHFL escaped attention. The writing was there on the wall. Some read it. Those who mattered did not.

Fee details

110. I note from the FAR that as per the Sales register (Billing Register) DHFL was among the highest billed client of CARE for the all the three financial years covered under the report. The details of fees paid by DHFL is given below:

	Financial Year	Rating Fee (Rs.)
1.	Financial Year 16-17	4,70,00,000
2.	Financial Year 17-18	6,20,00,000
3.	Financial Year 18-19	7,10,00,000

111. The details of the payments made by DHFL for the financial year ending in March 2019 was obtained from CARE and the details are given below:

Name of the Customer	Year	Invoice Date	Base Fee	Invoice Amount	Receipt Date
DHFL	2018-19	24-Dec-18	4,70,00,000	5,54,60,000	05-Mar-19
DHFL	2018-19	24-Dec-18	2,40,00,000	2,83,20,000	02-Mar-19

112. It can therefore be noted that at the time when the conversations around the DHFL downgrade were being discussed at CARE, bills for substantial amounts were pending from their highest paying client. Such instances could have led to actual or perceived instances of bias if rating decisions are not completely insulated from officials with business development responsibilities.

Conclusion

113. The instant proceedings have emanated from allegations raised through several whistle blower complaints received at SEBI, of interference in the ratings process of CARE, *inter alia* by Noticee 2, the erstwhile Managing Director and CEO. In the course of these proceedings, the findings arrived at upon a consideration of the material available on record, have brought to the fore the existence of an skewed hierarchical relationships that allowed Noticee 2 to exert influence on the employees of CARE for ensuring favourable ratings towards certain Issuers. It cannot be without reason that members of Rating Committee had repeatedly exchanged WhatsApp messages lamenting the repeated interferences by Noticee 2 during the duration of the DHFL ratings for the period from September 2018–February 2019, as has been brought out and discussed in detail in the earlier paragraphs.
114. What is also worrying is that unequal relationships within CARE would have allowed Noticee 2 to exert influence on the Rating Committee members to ensure that they toe the line (as noted from the WhatsApp conversations between employees). It is also not a coincidence that an analyst (Viraj Dhond) who was involved in the DHFL ratings had responded to a query regarding not informing CARE’s Board of a lapse in the approval process by stating: *“No, I did not inform the Board because I did not find it appropriate to reach out (to) the Board directly. I perceived that if I raise any points against this, there could be an insecurity related to my job and thus, did not (take) further action on the same.”* It is to be borne in mind that credit rating analysts constitute a small

community of professionals and therefore, any form of insubordination/ disobedience by any employee of such agencies, may perhaps have a resultant detrimental effect on future employment avenues.

115. The dependence that was created through the unequal relationship between Noticee 2 and the employees of CARE affected the sanctity of the rating process adopted. It would appear that Noticee 2 had a veto on decisions of the Rating Committee by asserting his authority, which in turn resulted in inflated ratings assigned for DHFL. In this context, it is also pertinent to note that from the information relating to fees charged during the Financial Year 2018–19, as stated in the FAR, the highest fees received were from DHFL – Rs. 7.1 crore. Juxtapose this amount (Rs. 7.1 Crore) to the exposure of DHFL of over Rs. 90,000 crores to its creditors and we realise how important it is for a CRA to give out a fair picture of the credit worthiness of a client. The fee earned by CARE for the relationship is a minuscule 0.0079% of the total credit exposure of DHFL.
116. It is an accepted fact that there exists an inherent conflict of interest in the '*Issuer pays*' model specifically with the reliance of the rating agency on earnings arising from the fees paid by its clients. In turn, an issuer armed with this leverage, would be in a position to get inflated ratings in his favor. As stated earlier in this Order, SEBI has sought to address the inherent conflict of interest in the '*Issuer pays*' model by seeking to insulate the Rating Committee members and analyst from the pressures of business development to mitigate the possibility of the ratings issued being linked to the fees charged. The separation of the business development and rating functions is an important regulatory safeguard. The regulations not only seek to shield officials with rating responsibilities and but also prohibits persons with business responsibility functions from interfering in rating functions, subject to certain exemption as detailed in the preceding paragraphs.

117. The conflict between business development and rating functions at CARE is writ large in the WhatsApp conversations between key employees. Further, as I have noted in the preceding part of this Order, in the matter of DHFL, the Rating Team and Rating Committees were not allowed act independently and were instead guided by the undeniable pressure exerted by Noticee 2. In the face of such interference by Noticee 2 the measures adopted by CARE to ensure independence of the rating decisions like independent rating committee, separation of rating and business development, etc. amounted to nothing more than a collective exercise in futility. In other words, the insulation did not afford sufficient protection to the members of the Rating Committee while rating DHFL. Noticee 2, I note, was only paying performative obeisance to this regulatory mandate by not being a part of Rating Committees, but, as noted above, was still interfering in rating decisions.
118. As noted in the preceding paragraphs, SEBI had earlier passed Orders against CARE in the matter of ratings assigned to Reliance Communications Ltd. and IL&FS. One of these Orders (Reliance Communications), was subsequently upheld on merits by the Hon'ble Securities Appellate Tribunal and the other (IL&FS) is currently pending before Tribunal. SEBI passed these Orders after the period under consideration in these proceedings i.e. on December 26, 2019 and July 24, 2020. However, the proceedings resulting in the aforesaid Orders were initiated by SEBI during the period when the ratings which are being called into question in these proceedings, were under consideration by CARE i.e. during the period August 21, 2016 to July 17, 2019. I note that despite the fact that the ratings assigned to the above Issuers were called into question and CARE had been put on Notice, the Rating Agency then headed by Noticee 2, failed to take any remedial steps to address the concerns that were raised. In fact, as noted in these proceedings, Noticee 2 was still "*directing*" the RC members to rely on projections given by Issuers and not take rating action – the very practise which was mainly called into question in the proceedings initiated in the matter of Reliance Communications Ltd. and IL&FS.

119. This I find amounted to a violation of the SEBI CRA Regulations. In view of the above, I am of the view that the non - compliance on the part of Noticee 2 warrant directions under Section 11B of the SEBI Act, 1992. However, I am also taking note of the fact that the Noticee 2 was advised to proceed on leave from the post of MD and CEO of CARE from July 17, 2019, onwards, while passing the directions.

DIRECTIONS

120. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4) and 11B(1) hereby direct that Noticee 2 shall not be associated with any SEBI registered intermediary, directly or indirectly, in any manner whatsoever, for a period of **two years**.

121. The proceedings against Noticee 1 stand disposed of without issuance of any directions.

122. This Order comes into force with immediate effect.

Place: Mumbai

Date: April 20, 2023

**ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**