BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No/Order/SM/AD/2023-24/28376]

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

In respect of:
M/s. Infomerics Valuation and Rating Pvt. Ltd.
PAN: AAACV1928K

In the matter of M/s. Infomerics Valuation and Rating Pvt. Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') and Reserve Bank of India (hereinafter referred to as '**RBI**') conducted a comprehensive joint inspection (hereinafter referred to as '**inspection**') of M/s. Infomerics Valuation and Rating Pvt. Ltd. (hereinafter referred to as '**Infomerics/Noticee'**) during February 15-18, 2021 at its registered office at 104 & 108 (1st Floor), Golf Apt., Sujan Singh Park, Maharishi Ramanna Marg, New Delhi, National Capital Territory of Delhi-110003 w.r.t. its credit rating function. The period covered in the inspection was from January 01, 2020 to December 31, 2020 (hereinafter referred to as '**Inspection Period/IP'**).

2. Noticee is a SEBI-registered Credit Rating Agency ('**CRA**'), having SEBI registration number as IN/CRA/007/2015.

3. Based on the findings of inspection and the reply of Noticee, SEBI observed that Noticee has violated various provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) and SEBI (Credit Rating Agencies) Regulations, 1999 (hereinafter referred to as '**CRA Regulations'**) and various circulars issued therein. Accordingly, SEBI initiated adjudication proceedings against Noticee under Section 15-I of SEBI Act to inquire into and adjudge under Section 15HB of SEBI Act, the alleged violations of the following provisions by Noticee:

- Clauses 2, 3, 4, 6, 12, 19 and 22 of the Code of Conduct prescribed under Regulation 13 of CRA Regulations, Clauses 3.1 & 6.7 of SEBI Circular No. CIR/MIRSD/CRA /6/2010 dated May 3, 2010, Clause B(III)(i) of Annexure A to SEBI circular SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 dated November 1, 2016 and Clause 1(E) of SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2019/121 dated November 4, 2019.
- Clauses 2, 3, 6, 11, and 12 of Code of Conduct prescribed under Regulation 13 of CRA Regulations and Clauses 3 & 4 of SEBI circular SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018
- Regulations 15 & 24 of CRA Regulations, Clauses 2, 3, 4, 5, 6, 8, 11, and 12 of Code of Conduct prescribed under Regulation 13 of CRA Regulations, Clause 2 of SEBI circular CIR/MIRSD/CRA/6/2010 dated May 3, 2010, Clause 1 of SEBI circular SEBI/HO/MIRSD/MIRSD4/CIR/P/2017/71 dated June 30, 2017 and Clause 3 of SEBI circular SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018.
- Clauses 2 and 4 of the Code of Conduct for CRAs prescribed under Regulation 13 of CRA Regulations, Clause 3 of circular no. SEBI/HO/MIRSD/MIRSD4/CIR/P/2016/119 of SEBI dated November 01, 2016 and Clause 2 of circular of SEBI ref. no. SEBI/HO/MIRSD/DOS3/CIR/P/ 2018/130 dated September 19, 2018
- Clauses 2, 3 and 12 of the Code of Conduct prescribed under Regulation 13 of CRA Regulations and SEBI Circular SEBI/HO/MIRSD/DOP2/CIR/P/2018/95 dated June 06, 2018.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide communique dated February 21, 2022, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, the various violations alleged to have been committed by Noticee, as stated in paragraph 3 above.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter being referred to as the **"SCN**") dated December 02, 2022, was issued to Noticee in terms Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticee and why penalty, if any, should not be imposed upon them under Section 15HB of SEBI Act, for the aforesaid violations alleged to have been committed by Noticee.

6. The allegations levelled against Noticee in the SCN are as under:

1) ***Involvement of the CEO in the rating process:***

*a) During inspection it was observed that the CEO of Noticee was involved in processing of review of appeal by issuer companies in following cases, wherein CRO was actively engaging with CEO via emails (copy of email dated August 06, 2020, is placed at **Annexure -3**) for considering the appeal filed by issuer companies:*

S. No	*Issuer*
1)	*Krazybee Services Private Limited*
2)	*Capri Global Capital Limited*

*b) Further, with respect to review of the ratings, the Noticee's policy in its operational manual (relevant abstract is placed as **Annexure- 4**) states the following:*

i) It is proposed that the senior level Rating Analyst(s)/Group Head, who is/are not involved in the initial rating/surveillance exercise, shall go through the papers to evaluate whether the request for review meets the aforesaid criteria. If it is so felt, then the case shall be processed for Review Committee subject to approval of CEO.

ii) Review Criteria

- *If there is any additional information which was not available at the time of initial rating/surveillance; and/or,*
- *if there is any new development post initial rating/surveillance (which appears to be significant.*

If the review criteria is met, then the review request is processed for Review Committee subject to approval of CEO.

*c) In the following cases, it was observed that the CEO of Noticee was marked in the e-mails containing provisional communication of ratings assigned to issuers (copies of emails dated June 15, 2020, October 21, 2020, March 25, 2020 and May 04, 2020 placed as **Annexure-5**):*

S. No.	***Issuer***
1)	*Neepa Real Estates Private Limited*
2)	*Logix Buildtech Private Limited*
3)	*Parsvnath Developers Estate Pvt. Ltd.*
4)	*Krazybee Services Private Limited*

5)	*Waaree Energies Limited*

d) *It was observed that since CEO has knowledge of the fees charged, knowledge of the provisional rating being communicated prior to rating being accepted by the Issuer possesses a conflict of interest issue and goes against the SEBI mandate of having a Chinese wall between analytical and business development side.*

e) *Further, with respect to the system of voting and recording of dissent notes, the Notice in its operational manual has stated the responsibility of Secretary as follows:*

a. If required, to get approved the summary of final Rating (s) assigned by the RC and approved by the Chairman of RC and to circulate the same to the Rating Head Group, CRO and CEO, over email.

f) *Inspection observed from the above instances that the CEO was actively involved in the rating process and this posed a major 'conflict of interest' challenge as the Business Development teams reported to the CEO.*

g) *Further, IOSCO's Code of Conduct for CRAs (copy placed at* ***Annexure-6)****, inter alia, prescribes that:*
"A CRA's employees who participate in or who might otherwise have an effect on a credit rating action should not initiate or participate in discussions with rated entities, obligors, arrangers, or subscribers regarding fees or payments charged to such rated entity, obligor, arranger, or subscriber."

h) *Thus, inspection noted that Noticee had made false disclosure on compliance with IOSCO Code of Conduct on its website. Further, it violates the internal policy mentioned in operations manual of the Noticee, which inter-alia states that:*
"The business development group is separated from analytical group and shall maintain a distinct arm's length distance"

i) *In view of the above, it is alleged that Noticee has violated Clauses 2, 3, 4,6, 12, 19 and 22 of the Code of Conduct prescribed under Regulation 13 of CRA Regulations and Clauses 3.1 and 6.7 of SEBI Circular No. CIR/MIRSD/CRA/6/2010 dated May 3, 2010, Clause B(III) (i) of Annexure A to SEBI circular SEBI/HO/MIRSD/MIRSD4/ CIR/P/2016/119 dated November 01,2016, and Clause 1(E) SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2019/121 dated November 4, 2019*

2) ***Non-compliance of corrective measures w.r.t. SEBI's observations***

a) *During FY 2019-2020, inspection of Noticee was conducted by SEBI, wherein violations pertaining to the CRA Regulations and relevant SEBI circulars issued thereunder were communicated to Noticee (copy of letter dated July 27, 2020 placed at **Annexure-7**) and Noticee was subsequently advised to take appropriate corrective actions. Thereafter, vide its letter dated September 01, 2020 (**Annexure - 8**), Noticee submitted to SEBI its report of corrective measures taken. However, during the instant inspection, it was observed by SEBI that Noticee was yet to comply with the following observations in its previous inspection:*

(i) *Non-updation of rating agreement w.r.t. to the amendments made in the withdrawal norms in terms of Regulation 16(3) of CRA Regulations where it was noted that Noticee has admitted to the lapse on its part in complying with SEBI Circular dated June 06th, 2018 and SEBI's observation with respect to the same during the inspection conducted during FY 2019-2020.*

(ii) *Involvement of CEO in the rating process where it was observed that Noticee's business development employees including CEO was actively involved in rating process in different capacities at different stages of rating processes. CRA was advised during the inspection with respect to its internal process wherein it was directed that it shall keep its business development function at arm length with rating and analytical functions of CRA and employees/staff with business development responsibility shall not be involved in rating process in any manner whatsoever to avoid any potential conflict of interest. However, CRA business development employees including CEO has actively involved in rating process in different capacities at different stages of rating processes.*

b) *It was observed from the aforesaid letter of Noticee that it had admitted to the non-compliance with rating agreement updation. Moreover, the emails marked to CEO which show the CEO's involvement, refer **Annexure -5** above, also show non-compliance of SEBI's laws w.r.t. CEO's involvement in the rating process.*

c) *In view of the above, it is alleged that the Noticee is not in compliance with Clauses 2,3 and 12 of the Code of Conduct as prescribed under Regulation 13 of the CRA Regulations and SEBI Circular SEBI/HO/MIRSD/DOP2/CIR/P/2018/95 dated June 06, 2018.*

3) ***Inaccurate calculation of notches of rating downgrades:***

a) *SEBI, vide circular dated November 13, 2018, has, inter-alia, mandated CRAs to disclose transition rates and sharp rating actions. In this regard, it was observed that the Noticee does not consider the rating grades of C- and/ or C+ in calculation of the notches. Therefore, in certain cases, the number of notches of a rating downgrade may be under-reported, giving an impression that the performance of the Noticee is better than it really is.*

b) *During inspection, it was observed that 33 instances of rating, the "C +/-"modifiers have not been considered by the Noticee. The instances of such cases wherein the number of notches of rating downgrades are unreported as observed during the inspection are placed at* ***Annexure-9****. It was observed that in all the 33 instances of rating, the "C +/- "modifiers have not been considered by the Noticee. Therefore, it is alleged that Noticee has violated Clauses 2, 3, 6, 11, and 12 of Code of Conduct prescribed under Regulation 13 of CRA Regulations and Clauses 3 and 4 of SEBI circular SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018.*

4) ***Average Rating Transition Rates for long-term instruments as per SEBI Circular dated November 13,2018***

a) *SEBI, vide circular dated November 13, 2018, has inter alia mandated CRAs to disclose transition rates and sharp rating actions.*

b) *During the course of inspection, it was observed that in 33 instances, rating downgrades of 4 notches or more were done by Noticee within a financial year, across FY2018-19, FY2019-20, and FY2020-21. The details of the aforementioned 33 cases are given as* ***Annexure-10****. In the case of Simplex Infrastructure Ltd, press releases dated December 12, 2018 and December 16, 2018 communicating the downgrade from "A" to "C" is attached as* ***Annexure- 11****.*

c) *It was further observed that in 12 cases, the ratings were downgraded by 10 notches or more within a financial year, indicating the Noticee's inability to continuously track credit profile of issuers. In 11 of these 12 cases, the rating had jumped from investment grade to D within a financial year (sometimes in less than 3 months), and the Noticee had not recognized default on time even though other CRAs rating the same debt instrument had recognized the default and disclosed the same publicly.*

Copy of press release dated December 11, 2020 by CARE Ratings for Simplex Infrastructure Ltd is attached as ***Annexure-12.***

d) *It was observed that the Noticee had downgraded ratings by 4 notches or more within a short span of time, often less than 3 months, as detailed below:*

Span of Rating Downgrades	***Cases of Sudden Rating Downgrades of 4 notches or more***			
	In 2020-21	***In 2019-20***	***In 2018-19***	***Total***
Within 3 months	*2*	*3*	*-*	*5*
Within 3-6 months	*3*	*-*	*1*	*4*
Within 6 months -1 year	*6*	*4*	*5*	*15*

e) *It was observed that in the jump to default matters, the Noticee has not listed out the following additional cases of jump to default (**refer Annexure 10 to 12**)*

i. *Aventura Components Pvt. Ltd.*
ii. *Dakshin Budhakali Improvement Society*
iii. *Earth Water Ltd.*
iv. *GTN Textiles Limited*
v. *India Mega Agro Anaj Limited*
vi. *Indo Global Soft Solutions & Technologies Pvt Ltd*
vii. *Jaycon Infrastructure Limited*
viii. *JPM Export Private Limited*
ix. *Magnifico Minerals Private Limited*
x. *Maple Logistics Private Limited*
xi. *Master (India) Brewing Company*
xii. *Musaddilal Jewellers Private Limited*
xiii. *Olympus Metal Private Ltd.*
xiv. *Sanjvik Terminals Private Limited*
xv. *SDB Developers Private Limited*
xvi. *Seagull Maritime Agencies Private Limited*
xvii. *Shree Jindal Soya Ltd*
xviii. *Simplex Infrastructures Ltd*
xix. *Tamra Dhatu Udyog Private Ltd.*
xx. *Worldwide Metals Private Ltd.*

f) *Further, it was observed that even when there was publicly available information of default, Noticee delayed in taking appropriate rating action. For instance, in the case of Simplex Infrastructure Limited, it was observed that the rating moved from "A" on*

12/12/2018 to "C" on 16/12/2019, with no rating transition in between which shows that the Noticee did not continuously monitor the issuer's credit profile and only took action at the time of a yearly periodic review. Subsequently, after 68 days, the rating moved from "C" to "D" on 22/2/2020.

g) *As per the extant SEBI laws, CRAs are required to periodically monitor credit ratings at specified intervals.However, in the meantime, CRAs are also required to continuously monitor credit profiles of rated issuers. In this regard, it was observed in certain cases that the Noticee assigned an investment grade rating to an issuer and then did not change the credit rating until the next periodic review was due, at which point the ratings were steeply downgraded from investment grade to grade 'D', with no rating transition in between. It was also observed that the Noticee undertook sharp rating downgrades, failed in continuous monitoring of credit profile of issuers and delayed in recognition of default. It is therefore alleged that Noticee has multiple cases of jump from investment grade to default, often directly with no rating transition in between. It may be noted that recognition of default is the most critical activity for a CRA. While SEBI has prescribed a strict timeline of upto 2 days for recognition of default, it was noted that Noticee delayed recognition of default in multiple cases by many days, only doing it at the time when the periodic review of the rating is due, or later.*

h) *Therefore, it is alleged that the Noticee only undertook a monitoring of rating when the periodic review was due rather than undertaking continuous surveillance as required under the regulatory provisions, thereby violating the provisions of Regulations 15, 24 of CRA Regulations, Clauses 2, 3, 4, 5, 6, 8, 11, and 12 of Code of Conduct prescribed under Regulation 13 of CRA Regulations, Clause 2 of SEBI circular CIR/MIRSD/CRA/6/2010 dated May 3, 2010, Clause 1 of SEBI circular SEBI /HO /MIRSD/ MIRSD4/CIR/P/2017/71 dated June 30, 2017, and Clause 3 of SEBI circular SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018.*

5) ***<u>Rating Downgrade and Appeal</u>***

a) *During inspection, it was observed that in the case of an issuer company, viz., Capri Global Capital Limited, the constitution of the Rating Committee (RC) on March 28, 2020 and the appeal RC on June 25, 2020 was exactly the same and was as follows:*

Date of Meeting	*RC Members*	*Date of Meeting*	*RC Members*
March 28, 2020	*Mr. Ramesh Grover,*	*June 25, 2020*	*Mr. Ramesh Grover,*
	Mr. Bhupinder Nayyar,		*Mr. Bhupinder Nayyar,*
	Mr. S.C Sinha,		*Mr. S.C Sinha,*
	Mr. Sudhir Mittal,		*Mr. Sudhir Mittal,*
	Mr.Gauri Shankar,		*Mr.Gauri Shankar,*
	Mr. Anil Girotra,		*Mr. Anil Girotra,*
	Mr.Y LMadan		*Mr. Y L Madan*

b) *Further, the minutes of the Appeal Committee had not provided any reasons for acceptance of appeal of the issuer company and upgrading the ratings from the ones assigned earlier.*

c) *It was observed during inspection that the provisional rating assigned by External Rating Committee (ERC), (Noticee's rating committee for investment grade ratings) was communicated to rated entity, i.e., the issuer company, vide email dated March 31,2020. It was, however, observed that subsequently, the rated entity informed Noticee about its non-acceptance of assigned rating and appealed against the assigned rating and sought for representation vide email dated April 1,2020.*

d) *It was further observed that pursuant to exchange of various email communication between Noticee and the rated entity, based on the appeal of the rated entity, the instant case was taken for review in the Rating Committee Meeting (RCM) on June 04, 2021.*

e) *However, it was observed from the minutes of RCM that instead of reviewing the appeal made by rated client by itself, the review rating committee advised the Noticee to place the instant representation rating note back to ERC for their consideration.*

f) *In this regard, it is noted that SEBI Circular dated September 13, 2018 clearly directs CRAs that in case of a review of the earlier assigned rating, based on the appeal by an issuer, the review the rating assigned shall be carried out by:*

   aa) *A rating committee of CRA that consist of majority of members that are different from Rating committee that assigned earlier rating and*

   bb) *At least 1/3rd of members of the concerned rating committee shall be independent and shall not have any pecuniary relationship with CRA.*

g) *Further, it was noted that as per the operation manual of Noticee (effective during the inspection period), the Noticee has a review committee of CRA that is* *mandated to consider appeal by issuer companies. Since the rating was appealed by the issuer company and the appeal case was also taken by the RC having the same composition, it is alleged that the Noticee did not follow proper rating process as outlined in the SEBI Circular and its internal operation manual and did not observe high standards of integrity, dignity and fairness in the conduct of its business as envisaged in CRA Regulations. The relevant extracts of the December 2019 version of Operation Manual of the Noticee is attached as **Annexure-13.** Further, copies of the minutes of the Rating committee held on March 28, 2020, June 25, 2020 and email received from Capril Global dated April 22, 2020 is placed as **Annexure- 14.***

h) *In view of the above, it is alleged that Noticee has violated the Clauses 2 and 4 of the Code of Conduct for CRA as prescribed under Regulation 13 of CRA Regulations, Clause 3 of SEBI Circular SEBIM /HO /MIRSD/ MIRSD4/ CIR/P/2016/119 dated November 01,2016 and Clause 2 of SEBI Circular SEBI /HO /MIRSD /DOS3/CIR/P/2018/130 dated September 19,2018.*

7. The SCN was sent to Noticee through Speed Post Acknowledgment Due ("**SPAD**") on December 02, 2022 as well as digitally signed email dated December 05, 2022 and was duly served on Noticee.

8. Noticee vide its letter dated December 15, 2022, requested for inspection of documents and also sought certain additional documents. Vide email dated December 22, 2022, an opportunity of inspection was granted to Noticee on January 09, 2023. On January 09, 2023, Mr. Robin M. Shah, Authorised Representative (**AR**) of Noticee, carried out the inspection of documents and Noticee was granted time till January 23, 2023 for submitting its reply to the SCN. In the interest of natural justice, an opportunity of personal hearing was also granted to Noticee on January 24, 2023.

9. As regards Noticee's request for additional documents sought through its email dated December 15, 2022 and also indicated during the inspection, I note while some documents were provided to it, Noticee was informed as follows: -

   1. *This has reference to your letter dated December 15, 2022, seeking inspection/copies of certain documents and subsequent inspection granted to you in the matter on January 09, 2023. Vide our email December 22, 2022, a suitable reply was provided to you in respect of the documents sought in paragraphs 4(ii), 4 (iv), 4(v) and 4(vi) of your aforesaid letter dated December 15, 2002.*

2. *In respect of your request for documents sought vide the aforesaid letter and in the proceedings of inspection, it is stated as under:*

   a) *W.r.t request for independent opinion formed by SEBI [as stated in para 4(ii) of your letter] in terms of Rules 3 and 4 of the AO Rules as well as rulings of Hon'ble Guwahti High Court in the matter of Sunita Agarwal, judgement of Hon'ble Supreme Court of India in the matter of Kavi Arora vs. SEBI (Decided on September 14, 2022) is being relied upon wherein it was ruled that:*

      " At the stage of Rule 3, the Board appoints an Adjudicating Officer if it is of the opinion that there are grounds for adjudication under any of the provisions in Chapter VIA of the SEBI Act. At this stage, the Board only decides whether adjudication proceedings should be initiated or not. The formation of opinion is not a formal inquiry proceeding involving any person or persons against whom inquiry is contemplated. The participation of the person against whom inquiry is contemplated is not necessary. The Board forms its opinion, based on whether there are prima facie materials or grounds for initiation of inquiry. The opinion of the Board under Section 3 has nothing to do with the outcome of the enquiry.

      ……………………………………………………………………………….

      The High Court rightly did not interfere with the proceedings at the stage of the Show Cause Notice. The Petitioner has apparently been permitted to inspect the opinion formed under Rule 3 of the SEBI Adjudication Rules. There is apparently no rule which requires SEBI to furnish the opinion under Rule 3 to the noticee in its entirety. The documents relied upon for formation of opinion under Rule 3, are not required to be disclosed to the notice unless relied upon in the inquiry…"

      Further, as per the judgement of Hon'ble Supreme Court in the matter of T. Takano vs SEBI, only relevant and relied upon documents needs to be provided to the entity. There is no statutory requirement for providing the documents under Rules 3 and 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (AO Rules). Moreover, Rules 3 & 4 of AO Rules do not require SEBI to furnish internal opinions of SEBI to Noticee. As regards the judgement of Hon'ble Guhawati High Court in the matter of Sunita Agarwal, it appears that the opinion to be formed under Rule 3 of SEBI AO Rules, as stated therein, relates to the *disclosure of investigation report. In this regard, a copy of the inspection report as well as post inspection compliance analysis report has already been made available to you.*

Therefore, in view of the foregoing and placing reliance on the said judgements of Hon'ble Supreme Court, I do not find your request for file notings/ independent opinion formed by SEBI in the matter to be tenable.

b) *W.r.t your request for copy of complaint received by SEBI (if any) from any stakeholder as well as communication by/between SEBI/RBI/Stock Exchanges/Depositories/ Bankers [as stated in paras 4(iv) & 4(v) of your said letter], it is stated that no such complaint has been received by SEBI. In this regard, reliance is placed on the Hon'ble Supreme Court's judgement in T. Takano vs. SEBI (Decided on February 18, 2022) wherein it has been as under: -*

"45. We cannot be oblivious to the wide range of sensitive information that the investigation report submitted Under Regulation 9 may cover, ranging from information on financial transactions and on other entities in the securities market, which might affect third-party rights. The report may contain market sensitive information which may impinge upon the interest of investors and the stability of the securities market. The requirement of compliance with the principles of natural justice cannot therefore be read to encompass the right to a roving disclosure on matters unconnected or as regards the dealings of third parties. The investigating authority may acquire information of sensitive nature bearing upon the orderly functioning of the securities market. The right of the noticee to disclosure must be balanced with a need to preserve any other third-party rights that may be affected.

50. However, while directing that there should be a disclosure of the investigation report to the Appellant, it needs to be clarified that this would not permit the Appellant to demand roving inspection of the investigation report which may contain sensitive information as regards unrelated entities and transactions.

52. The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled against the Appellant in the notice to show cause. However, this does not entitle the Appellant to receive sensitive information regarding third parties and unrelated transactions that may form part of the investigation report."

In accordance with the ratio laid down in the above judgement, copies of Inspection Report as well as Post Inspection Compliance analysis have been made available to you during the inspection. I am of the view that your request for correspondence exchanged and documents/ information received by SEBI from RBI/ Stock Exchanges/Depositories/ Bankers etc. is very wide and general in nature and also amounts to third party information and therefore, in view of the aforesaid judgement of the Hon'ble Supreme Court of India, the same cannot be acceded to. Moreover, all documents which have been relied upon and relevant in the present adjudication proceedings to frame charges against Noticee have been duly provided to Noticee at the time of issuance of SCN/during inspection.

c) W.r.t. to your request for documents at para 4(vi) of your aforesaid letter, it is reiterated that no statements of any persons are part of records of inspection of Infomerics Valuation and Rating Pvt Ltd and therefore, do not form part of charges levelled against Noticee in the SCN. Therefore, the said request is not valid….

……………………………………………………………………………………………..."

10. Vide email dated January 19, 2023, Noticee requested for adjournment of personal hearing on account of non-availability of its counsel on the scheduled date which was considered and another opportunity of personal hearing was granted to Noticee on February 08, 2023.

11. Meanwhile, vide email dated February 02, 2023, the relevant department of SEBI informed that Noticee had filed settlement application in terms of Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 and requested to keep the present adjudication proceedings in abeyance till disposal of their settlement application.

12. Vide email dated February 07, 2023, Noticee submitted its reply to the SCN. AR of Noticee appeared on the schedule date of hearing i.e. February 08, 2023 and reiterated the earlier submissions made by Noticee. Further, during the course of personal hearing, the AR was informed about the reasons for not supplying certain documents requested by Noticee, as communicated to Noticee vide emails dated December 22, 2022 and January 18, 2023. AR of Noticee informed that he did not wish to pursue the request for inspection of documents as sought vide Noticee's letter dated December 15, 2022 and during inspection.

13. Vide email dated June 08, 2023, the relevant department of SEBI informed the undersigned of the rejection of the settlement application filed by Noticee, requesting that adjudication proceedings in the matter be resumed.

14. The relevant extracts of the reply submitted by Noticee are given hereunder:

a) *IVRPL has a properly formulated policy on appeals by the issuer companies. In this regard, a Rating Review Committee ("RRC") was constituted, inter-alia, majorly comprising of independent members who had experience in the financial sector at the highest levels.*

b) *An appeal made by an issuer company is required to be reviewed by those who are not involved in the assignment of rating to the client. Accordingly, as first level review, IVRPL proposed a review by a rating head who had not processed the original rating. The rating head was making an independent review of appeal and rejecting or accepting the appeal for placing before the RRC. He was mandated to recommend appeals based on its compliance with the policy on appeals that can be placed before the RRC for final decision.*

c) *This was in line with the SEBI Circulars dated May 30, 2018, and September 19, 2018.*

d) *The view of the rating head was placed before the CEO, only to check that only such appeals that are covered under the IVRPL's policy are placed before the RRC for appeal/ review. Neither the rating head (at first level) nor the CEO (at the second level) were reviewing the appeal on merits. Therefore, the administrative checking of the process can never be conflated into a review of merits by them.*

e) *This allegation of the SCN is ex-facie erroneous. Merely because emails were sent to the CEO, inter-alia, containing provisional communication of rating, it would not ipso facto mean that there arose a conflict of interest. A conflict of interest would arise when there is real or apparent conflict between two competing interests and that can only be with interference by the CEO in the conduct of rating process. In fact, in two of the five cases, no appeal was made by the issuer company after the initial provisional communication. In three cases where the client appealed, RRC did not change the rating assigned by the previous committee. Details of the same are provided in Annexure – "1".*

f) *In any event, the provisional communication of rating (where the CEO was marked on emails in five instances) are addressed to clients after the rating has been* *assigned and the Chairman of the committee has signed/approved the rating sheet.*

g) *Even the allegation that IVRPL violated its own Operation Manual is also absurd. There has been an arm's length distance between the business development group and analytical group. Keeping in view the constitution of the rating committee and assignment of rating already conveyed to the rating team in the meeting, approval of the rating sheet by the chairman of the committee is meant for record only. Further, there has been no occasion of any change in the rating post committee decision.*

h) *Therefore, the allegation that "business development employees including CEO has actively involved in rating process in different capacities at different stages of rating processes", is erroneous and the allegation in this regard ought to be dropped.*

i) *Lastly, it is alleged that IVRPL failed to comply with the IOSCO Code of Conduct for CRAs', which prescribes: "A CRA's employees who participate in or who might otherwise have an effect on a credit rating action should not initiate or participate in discussions with rated entities, obligors, arrangers, or subscribers regarding fees or payments charged to such rated entity, obligor, arranger, or subscriber."*

j) *Without even getting into how IOSCO principles become law amenable to penal consequences, it is respectfully submitted that no member of the rating team initiated or participated in discussions with rated entities regarding fees or payments charged to such rated entity. Thus, there is no basis to allege that IVRPL made a false disclosure of compliance with the IOSCO Code of Conduct. There is no data adduced by the SEBI to demonstrate that IVRPL violated the IOSCO Code of Conduct. As such this is an entirely vague allegation.*

k) *Insofar as the first corrective measure pertaining to the agreement is concerned, while the lapse was admitted at the time of inspection, on further reading the agreement it is abundantly clear that there was no real requirement to amend the agreement as laid down by various SEBI rules and regulations issued up-to that point in time.*

l) *The "withdrawal norms", which the SEBI had advised to amend as per the SEBI Circular of June 2018, is a special circumstance under which withdrawal of rating is allowed by CRA Regulations. Thus, it does not form a part of the normal course of duties and responsibilities of the CRA or the issuer. Moreover, these very clauses do not form part of the consolidated CRA guidelines issued by SEBI in August - 2021.*

m) *Thus, there was no requirement to undertake any amendment in the rating agreement as the same was in conformity with Regulation 14 of the CRA Regulations. In the circumstance, there was no non-compliance of the corrective measures suggested by the SEBI in its previous inspection. In any event, upon insistence from the SEBI, the Noticee has amended the agreement.*

n) it is clarified that out of 33 instances mentioned in the SCN (ref: Annexure 9), in four cases, ratings had not gone below B category as result of which calculation of notch downgrade in C category is not applicable. Of the 29 cases, one is correctly calculated i.e. Draken Metals Trading downgrade from IVR BB to IVR C correctly shown as 6 notch downgrade. The supporting document in this regard is enclosed Annexure – "3".

o) It is respectfully submitted that the rating of 'C' is assigned to instruments with are considered to have very high risk of default. The significance of '+' and '–' modifiers, which indicate the relative position within the band is insignificant. Optically, though the numbers would be understated potentially be two notches, the actual impact of the same is very miniscule and does not pose any risk of misrepresentation.

p) That being said, IVRPL admits that inadvertently it failed to consider the notches in few instances given that the process was based on manual entry. IVRPL has now placed revised data on the IVRPL's website. IVRPL has also engaged a new vendor to develop a software to ensure that the 'C' modifiers are appropriately reported.

q) the jump to default mainly happened in four groups, viz, Altico Capital, Worlds Windows Group, Oyster group, Future Retail group. The first three were on account of black swan events in their respective businesses. Brief note on the cases which underwent sharp downgrade to 'D' is enclosed Annexure – "4". It is because such a change should not be challenged that the CRA Regulations make it abundantly clear that merits of the opinion cannot be questioned, and only the rating process may be subjected to a review in inspection. There can always be a regulatory analysis of the outcomes, but every analysis of outcomes cannot lend itself to the being the basis of imposing regulatory penalty.

r) The downturn in credit profile of the Future group was on account of Covid-19 and the four companies in the cold storage group (viz. Raja Ramsevak Multipurpose Cold Storage Pvt Ltd., Sidhant Vedant Cold Storage Pvt Ltd., Ridhi Sidhi Cold Storage Pvt Ltd., and Sidhi Vinayak Himghar Pvt Ltd) were rated initially in sub-investment category which indicated high risk of default. Therefore, there is no question of there being some unexpected and sharp downgrade in such cases.

s) *Thus, the alleged sharp downgrade in the ratings was due to the fact that the entities mentioned above faced unprecedent circumstances. It was not a case where the business was slowly declining and thus, IVRPL failed to downgrade the ratings on a real-time basis. As such, it is respectfully submitted that IVRPL has a continuous surveillance mechanism including google alerts for any media report on the rated entities.*

t) *IVRPL also regularly follows up for monthly No Default Statement ("NDS") and, in case of delay in submission of NDS, clients are contacted by analysts. IVRPL also has quarterly review mechanism where emails are sent to each client seeking quarterly data. Log of NDS date covering six (6) months from June 2020 to February 2021 is enclosed Annexure – "5A", "5B" and "5C" respectively.*

u) *In the case of Simplex Infrastructure Limited ("Simplex"), the SEBI has observed that the rating moved from 'A' on December 12, 2018 to 'C' on December 16, 2019, with no rating transition in between. Subsequently, after 68 days, the rating moved from 'C' to 'D' on February 22, 2020. In this regard, it is respectfully submitted that the Noticee has been rating the CP program of Simplex since August - 2016. The ratings assigned by the Noticee were IVR A & A1+ (to the LT and ST bank facilities of the issuer respectively) in December 2018 based on the strength of its financial year 2017-18 (Audited) financials and other factors. Thereafter, IVRPL was continuously monitoring the ratings. It had been receiving NDS from Simplex from January 2019 to November 2019 as follows:*

Sl.	***NDS dated***	***Pertaining to period***	***Remarks***
1.	*1-1-19*	*December 2018*	*No delays*
2.	*1-2-19*	*January 2019*	*No delays*
3.	*1-3-19*	*February 2019*	*No delays*
4.	*1-4-19*	*March 2019*	*No delays*
5.	*1-5-19*	*April 2019*	*No delays*
6.	*1-6-19*	*May 2019*	*No delays*
7.	*1-7-19*	*June 2019*	*No delays*
8.	*1-8-19*	*July 2019*	*No delays*
9.	*2-9-19*	*August 2019*	*No delays*
10.	*4-10-19*	*September 2019*	*No delays*
11.	*8-11-19*	*October 2019*	*No delays*

v) *IVRPL also conducted periodic client calls/ visits at Simplex and reviewed the financial results shared by the client. In H1FY20, the results were reviewed in December 2019 in the following manner:*

i) While the operating income in H1FY20 deteriorated by 22% as compared to H1FY19 (on account of slower execution of orders, delay in receipt of payment from the clients and slow construction progress in the second quarter due to monsoon), the operating margin in H1FY20 was higher than H1FY19. In H1FY20, profit before tax was lower on account of lower non - operating income (mainly interest income) and higher interest expenses. The profit before tax and profit after tax margins were higher in H1FY20 compared to H1FY19.

ii) Thus, IVRPL was given to understand by the client that though they have defaulted in the debenture payments, the accounts with Banks were regular. The debentures were not rated by IVRPL. As such, no information was received from the Debenture Trustee as well.

iii) In any event, based on the information available, IVRPL downgraded the rating of bank facilities to IVR C (as per press release dated December 16, 2019). It may be noted that the other CRA to rate the debentures (CARE Ratings) downgraded the ratings to D on December 11, 2019, while the Noticee had brought down the rating to near default status to IVR C on December 16, 2019 (the third working day from the day CARE's press release) in line with default recognition policy.

w) Thus, the downgrading of Simplex's rating, while it appears to be sharp, but it was based on continuous monitoring by the Noticee. No adverse inference can be drawn in this regard.

x) It is alleged in the SCN that in case of an issuer company, Capri Global Capital Limited ("Capri"), the constitution of the rating committee on March 28, 2020 and the RRC (for the purpose of the appeal) was same.

y) t the outset, it is clarified that the committees for meetings on March 28, 2020 and for June 25, 2020 were both rating committees. The committee on June 25, 2020 was not acting as an appeal committee (RRC). As per the operational manual, an appeal committee comprises of members who are different from the rating committee members and majority of the members are independent.

z) In the case of Capri, a rating note was placed before the rating committee on March 28, 2020, which assigned a rating which was a notch lower than the existing rating. Thereafter, Capri, exercising its right to appeal against a rating decision, preferred an appeal against the rating assigned. As per the policy, the case was placed before RRC on June 4, 2020. The RRC consisted of members who were different from the committee, which met on March 28, 2020.

aa) At the meeting of RRC held on June 4, 2020, the Committee was informed that audit of the company is nearing completion and the audited financials are expected soon. Accordingly, the Committee advised to obtain the audited financials along-with auditors' report and place the results before the Rating Committee its review.

bb) Upon RRC's insistence, the case was taken up by the original rating committee (members of the rating committee which had presided on March 28, 2020), since the RRC was of the opinion that the original committee ought to have been given the benefit of review of audited financials. Minutes of RRC held on June 4, 2020 is enclosed Annexure – "6A".

cc) The case of Capri was then placed again before the Rating Committee on June 25, 2020, on the advice of the RRC. The rating committee then freshly looked at the matter and assigned fresh ratings after following due process. Copy of the Minutes is enclosed Annexure – "6B".

dd) In any event, it is respectfully submitted that the alleged violation has not resulted in any harm or loss caused to the securities market. No such allegation sits in the SCN as well. The Hon'ble Supreme Court2 has held that a penalty should not be imposed for the sake of it and should be utilized to achieve a specific purpose, rather than as an end in itself. The relevant extract is as under:

"8. Under the Act penalty may be imposed for failure to register as a dealer – Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi – criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to be act in the manner prescribed by the statute."

ee) Further, in Maharashtra State Board of Secondary Education and Higher Secondary Education v. K.S. Gandhi & Ors., (1991) 2 SCC 716, the Hon'ble Supreme Court has ruled as under:

"38. The question then is whether the rules relating to mode of punishment indicated in the Appendix 'A' to the resolution are invalid. We have given our anxious thought to the contention and to the view of the High Court. In our view the punishments indicated in the last column is only the maximum from which it cannot be inferred that it left no discretion to the disciplinary authority. No axiomatic rule can be laid that the rule making authority intended that under no circumstances, the examination Committee could award lesser penalty. It depends on the nature and gravity of the misconduct to be dealt with by the disciplinary authority. In a given case, depending on the nature and gravity of the misconduct lesser punishment may be meted out."

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

15. I have carefully perused the charges levelled against Noticee in the SCN and the material available on record. I have also perused the submissions made by Noticee in this regard. The issues that arise for consideration in the present case are:

I. Whether Noticee has violated the provisions as mentioned in para 3 of the order?
II. Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?
III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

16. Before proceeding to examine the matter, I find it pertinent to reproduce the aforesaid regulatory provisions of CRA Regulations, and other relevant circulars issued by SEBI which are as under:

I. ***CRA Regulations**:*

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

ii. ***Regulation 15**:*

(1) Every credit rating agency shall, during the life time of securities rated by it continuously monitor the rating of such securities, unless the rating is withdrawn, subject to the provisions of regulation 16(3).]

(2) Every credit rating agency shall disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites,

and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock exchanges where the said securities are listed.

iii. ***Regulation 24**: **Rating process***

1) *Every credit rating agency shall-*
   a) *specify the rating process;*
   b) *file a copy of the same with the Board for record; and file with the Board any modifications or additions made therein from time to time.*
2) *Every credit rating agency shall, in all cases, follow a proper rating process.*
3) *Every credit rating agency shall have professional rating committees, comprising members who are adequately qualified and knowledgeable to assign a rating.*
4) *All rating decisions, including the decisions regarding changes in rating, shall be taken by the rating committee.*
5) *Every credit rating agency shall be staffed by analysts qualified to carry out a rating assignment.*
6) *Every credit rating agency shall inform the Board about new rating instruments or symbols introduced by it.*
7) *Every credit rating agency, shall, while rating a security, exercise due diligence in order to ensure that the rating given by the credit rating agency is fair and appropriate.*
8) *A credit rating agency shall not rate securities issued by it.*
9) *Rating definition, as well as the structure for a particular rating product, shall not be changed by a credit rating agency, without prior information to the Board.*
10) *A credit rating agency shall disclose to the concerned stock exchange through press release and websites for general investors, threating assigned to the securities of a client, after periodic review, including changes in rating, if any*

Third Schedule- Code of Conduct for Credit Rating Agencies

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

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

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

iv. ***Clause 6**: - A credit rating agency shall have in place a rating process that reflects consistent and international rating standards.*

v. ***Clause 8**: - A credit rating agency shall keep track of all important changes relating to the client companies and shall develop efficient and responsive systems to yield timely and accurate ratings. Further a credit rating agency shall also monitor closely all relevant factors that might affect the creditworthiness of the issuers*

vi. ***Clause 11**: - A credit rating agency shall not make any exaggerated statement, whether oral or written, to the client either about its qualification or its capability to render certain services or its achievements with regard to the services rendered to other clients.*

vii. ***Clause 12**: A credit rating agency shall not make any untrue statement, suppress **any** material fact or make any misrepresentation in any documents, reports, papers or information furnished o the board, stock exchange or public at large.*

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

ix. ***Clause 22**: A credit rating agency shall ensure that good corporate policies and corporate governance are in place.*

<u>*CIRCULARS*</u>

x. SEBI Circular No. CIR/MIRSD/CRA/6/2010 dated May 3, 2010

a) *Clause 3.1: A CRA shall formulate the policies and internal codes for dealing with the conflict of interests.*
b) *Clause 6.7: - Compliance Status of IOSCO Code of Conduct -*
A CRA shall disclose the compliance status of each provision of IOSCO code of conduct.

xi. SEBI circular SEBI/HO/MIRSD/MIRSD4/ CIR/P/2016/119 dated November 01,2016

Annexure A

B. Rating Process and Policies

***III** Each CRA shall frame detailed guidelines on the following, include them in its Operations Manual/ Internal governing document and disclose the same on its website:*

(i) Disclosure on managing conflict of interest

xii. SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2019/121 dated November 4, 2019

***Clause 1(E): -** The Chief Ratings Officer (**CRO**) shall directly report to the Ratings Sub-Committee of the board of the CRA.*

xiii. SEBI Circular SEBI/HO/MIRSD/DOP2/CIR/P/2018/95 dated June 06, 2018

1. *Please find enclosed Gazette Notification No. SEBI/LAD-NRO/GN/2018-15dated May 30, 2018 in respect of Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2018.*

2. *In terms of Regulation16(3) of SEBI (Credit Rating Agencies) Regulations, 1999, a CRA may withdraw a rating, subject to the CRA having:*

   i. rated the instrument continuously for 5 years or 50 per cent of the tenure of the instrument, whichever is higher.

   ii. received an undertaking from the Issuer that a rating is available on that instrument.

3. *At the time of withdrawal, the CRA shall assign a rating to such instrument and issue a press release, as per the format prescribed vide Circular dated November 01, 2016. The Press Release shall also mention the reason(s) for withdrawal of rating*

xiv. SEBI circular SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018.

a) ***Clause 3: Disclosure of Average Rating Transition Rates for long-term instruments***

A. *Transition studies are central to evaluating the performance of a CRA and provide an insight on the stability of ratings over a period of time. In order to promote transparency and to enable the market to best judge the performance of the ratings, the CRA should publish information about the historical average rating transition rates across various rating categories, so that investors can understand the historical performance of the ratings assigned by the CRAs.*

B. *Accordingly, CRAs shall publish their average one-year rating transition rate over a 5-year period, on their respective websites, which shall be calculated as the weighted average of transitions for each rating category, across all static pools in the 5-year period. The format of the transition matrix is enclosed as Annexure A.*

   a. *For the said purpose, the following terms shall have the meaning as under:*

      i. *Static Pool: Ratings outstanding for each category at the beginning of any financial year. However, it shall exclude ratings that have been withdrawn or ratings of non-cooperative issuers during the financial year. Ratings downgraded to D shall be treated as default for the rest of the financial year. Ratings which are upgraded from D shall be considered as new rating for the relevant subsequent static pools.*

      ii. *Transition Rate: The number of movements/ transitions from each rating category to another, as at the end of the financial year, as a percentage of the total number of ratings in the static pool.*

      iii. *Averaging: All averaging across static pools for transition rate computations must be based on the weighted average method where the weights are the number of issuers in each static period.*

b) ***Clause 4: Disclosure of performance of CRAs on Stock Exchange and Depository website***

   A. *Each CRA shall furnish data on sharp rating actions in investment grade rating category, as per the format specified in Annexure B, to Stock Exchanges and Depositories for disclosure on website on half-yearly basis, within 15 days from the end of the half-year (31stMarch/ 30thSeptember).*

ISSUE No 15 (I): Whether Noticee has violated the provisions as mentioned in para 3 of the order?

17. It has been alleged that the CEO of Noticee was involved in the process of review of appeal by the issuer companies, i.e., Krazybee Services Pvt Ltd and Capri Global Capital Ltd and that the Chief Rating Officer (CRO) was engaging with the Chief Executive Officer (CEO) via emails. From the perusal of the evidence annexed with the SCN, I observe that in respect of Krazybee Services Pvt Ltd, an email dated August 06, 2020 had been marked to the CEO, Mr B. K. Bajaj by the operating CRO, seeking the CEO's views and for further discussions on the representation made by the issuer company. I note that the CEO replied to the email stating that he did not find any merit in the representation made by Krazybee Services Pvt Ltd. In the case of issuer, Capri Global Capital Ltd, I find that the detailed representation made by the company against the assigned rating was marked to the CEO of Noticee in the email dated April 04, 2020, in addition to its other executives.

18. The Noticee has, in its representation, has denied the allegation and contended that the at the first level review, the Noticee's policy required an independent rating head to process the appeal and then such view was placed before the CEO for a check that appeals, being placed before the appeal Committee (RRC), were covered under the policy. The main contention of Noticee is that the CEO was never reviewing the appeals and such checks were done only for administrative purposes. I note that in terms of the relevant regulatory provisions, a CRA has to frame internal policies on dealing with conflicts of interests and also have guidelines on disclosure on managing conflicts of interests which are to be disclosed on its website. The provisions also state that the CRO shall report directly to the Ratings Sub-Committee of the board of the CRA. As noted from the emails placed on record as evidence, the CEO was opining on the merits of the case and had intimated his decisions regarding the appeal by Krazybee Services Pvt Ltd to the CRO. The fact that a detailed representation made by Capri Global Capital Ltd was marked to the CEO also indicates the CEO's involvement in the appeal process. It is abundantly clear that there was an active engagement in the review of appeal process by the CEO of Noticee, which is in clear violation of the SEBI's regulatory provisions. I observe that even Noticee had subsequently rectified its process and removed the CEO's involvement in the review process altogether, indicating the lacunae in its earlier policy. Thus I find the contention put forth by the Noticee to be devoid of merit.

19. It has also been alleged that the CEO had knowledge of provisional rating being communicated to issuer companies as well as knowledge of fees charged which posed a major conflict of interest challenge as the business development teams reported to the CEO and this breached the Chinese wall between analytical and business development side. The evidence placed on record to support this charge are emails by rating analysts communicating provisional ratings granted to five issuer companies which have been copied to the CEO also. In this regard, Noticee has contended that there could not have been conflict of interest merely because provisional communication of rating was informed to the CEO through emails and that conflict of interest could only arise on CEO's interference in the rating process. Noticee has further stated that provisional communication of rating were addressed to clients after the ratings were assigned and there was nothing on record to suggest that the CEO was involved in the rating prior or that CEO had interfered in the ratings or that the ratings were modified after the communications were sent. I note that Noticee has not disputed the aforesaid emails from the analytical team which were also marked to the CEO. I am of the view that marking of the aforesaid emails of rating analysts to the CEO, who heads the business development team, breached the arms' length distance that the analytical team and business development were required to maintain and is a ground for conflict of interest. Moreover, Noticee's own internal policy mandates keeping an arm's length distance between the analytical group and the business development group, which was not adhered to by Noticee. I am of the view that the above conduct of analysts of Noticee, which were in breach of its own internal policy, was sufficient ground for potential conflict of interest in the two functions of Noticee and is against SEBI's regulatory provisions. It is not important for actual interference by CEO to have taken place to demonstrate conflict of interest, as is being argued by Noticee, mere conduct of Noticee's affairs, as seen from the aforesaid emails, is an indication of the same. Therefore, I am unable to accept the contention put forth by Noticee. I find that by allowing the CEO to actively engage in the review process during the IP and also by involving the CEO in the rating process, Noticee has failed to uphold the relevant sections of the Code of Conduct for Credit Rating Agencies, namely, observing high standards of integrity and professionalism, exercising due diligence and proper care in order to maintain objectivity in the rating process, having a rating process that reflects consistent and international rating standards, and laying down its own internal code of conduct for governing its internal operations which includes maintenance of professional standards, avoidance of conflict of interest etc as well as failed to comply with the provisions of circulars of SEBI in this regard.

20. It has also been alleged that Noticee had made false disclosure on compliance with IOSCO's Code of Conduct for CRAs on its website. The provision states as under: *"A CRA's employees who participate in or who might otherwise have an effect on a credit rating action should not initiate or participate in discussions with rated entities, obligors, arrangers, or subscribers regarding fees or payments charged to such rated entity, obligor, arranger, or subscriber."* Clause 6.7 of SEBI Circular No. CIR/MIRSD/CRA/6/2010 dated May 3, 2010 mandates that *"A CRA shall disclose the compliance status of each provision of IOSCO Code of Conduct".* Noticee has in its reply contented that no member of the rating team initiated or participated in discussions with rated entities regarding fees or payments charged to such rated entity. Thus, there is no basis to allege that IVRPL made a false disclosure of compliance with the IOSCO Code of Conduct and there is no data adduced by the SEBI to demonstrate that IVRPL violated the IOSCO Code of Conduct. From the material placed on record, I do not find any specific evidence or circumstances to show analysts/ employees involved in rating process had participated in discussions with rated entities, subscribers etc regarding fees or payments charged. Therefore, I am inclined to accept the aforesaid contention of Noticee and do not find any evidence of Noticee's default in this aspect.

21. In view of the foregoing, I find that the allegation that Noticee has violated Clauses 2, 3, 4, 6, 12, 19 and 22 of the Code of Conduct prescribed under Regulation 13 of CRA Regulations, Clause 3.1 of SEBI Circular No. CIR/MIRSD/CRA/6/2010 dated May 3, 2010, Clause B(III)(i) of Annexure A to SEBI circular SEBI/HO/MIRSD/MIRSD4/ CIR/P/2016/119 dated November 1, 2016 and Clause 1(E) of SEBI circular SEBI/HO/MIRSD/CRADT/CIR/P/2019/121 dated November 4, 2019.

22. It has been alleged in the SCN that Noticee failed to comply with the correctives measure as advised by SEBI in its communication to Noticee in the inspection carried out during the financial years 2019-2020, i.e., non-updating of rating agreement w.r.t. the amendments made in the withdrawal norms stated in Regulation 16(3) of CRA Regulations and involvement of CEO in the rating process. As regards non-updating of rating agreement, I observe from records that Noticee had admitted to the default at the time of inspection. However, in its reply to the SCN, Noticee has contended that the "withdrawal norms" as stated in the SEBI Circular of July 2018 was a special circumstance under which withdrawal of rating was allowed by CRA regulations and were not part of the normal course of duties and responsibilities of the CRA and thus there was no requirement to undertake any amendment in the rating agreement, as the same was in conformity with

Regulation 14 of CRA Regulations. I note from the SEBI circular reference number SEBI/HO/MIRSD/DOP2/CIR/P/2018/95 dated June 06, 2018 that a provision has been carved out in Regulation 16(3) of CRA Regulations allowing a CRA to withdraw a rating, subject to the fulfilment of certain conditions. However, on reading of Regulation 14 of CRA Regulations in conjunction with the aforesaid circular, I do not find any requirement specified therein to amend the rating agreement. Thus, I find merit in this contention of Noticee.

23. In relation to the active involvement of business development employee including the CEO in the rating process, in inspection carried out during February 24-27, 2020 for the FY 2019-2020, Noticee had been advised to keep its business development function at arm's length with its rating and analytical functions and to ensure that employees/staff with business development responsibility were not involved in rating process in any manner whatsoever to avoid any potential conflict of interest. This was formally communicated to Noticee by SEBI in its warning letter dated July 27, 2020, wherein Noticee was directed to improve compliance standards to avoid recurrence of this practice. It has already been established in the earlier part of the order that the CEO, who was heading the business development team, was actively engaged in the rating process. Evidence placed on record shows even after been cautioned by SEBI officials during the inspection during February 24-27, 2020 as well as after receipt of the aforesaid warning letter from SEBI, business development employees of Noticee, including the CEO, continued to be actively involved in rating process at different stages in different capacities. I am of the view that by continuing with the aforesaid practice and not undertaking the corrective measures in this regard, as advised by SEBI, Noticee has failed to conduct his business with high standards of integrity, fairness, and has failed to fulfil its obligations in an ethical and professional manner. In view of the foregoing, the allegation that Noticee has violated Clauses 2 and 3 of the Code of Conduct prescribed under Regulation 13 of CRA Regulations stands established.

24. In the SCN, it has been alleged that in 33 instances of rating, number of notches of rating downgrades were unreported and "C+/- modifiers" were not considered. In its reply, Noticee has admitted that barring four instances, where calculation of notch downgrade in C category was not applicable and one case, where which is correctly downgraded, it had inadvertently failed to consider the "C+/- modifiers" on account of the process being of manual entry. Thus, the allegation that Noticee has violated Clauses 2, 3, 6, 11, and 12 of Code of Conduct prescribed under Regulation 13 of CRA Regulations and Clauses 3

and 4 of SEBI circular SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018 stands established.

25. The SCN alleges that sharp downgrades of rating, 4 notches or more, were carried by Noticee during the Financial Years (FY) 2018-19, 2019-20 and 2020-21, indicating Noticee's failure to undertake continuous monitoring of credit profile of issuer companies. It is also alleged that Noticee delayed recognition of default in multiple cases. In its submissions, Noticee has stated that the jump to default which happened in mainly four groups was on account of unprecedented circumstances, viz. black swan events/ Covid-19 pandemic and that it was not the case that business was slowly declining and thus it failed to downgrade the ratings on a real time basis. I note that Noticee has attributed the steep downgrading of ratings in four out of the thirty three instances to 'black swan events/ unprecedented circumstances'. However, I find the explanation provided by Noticee to justify the events as 'black swan' events is not satisfactory. In any case, Noticee has not disputed the aforesaid allegation in respect of the other instances highlighted in the SCN. In the case of Simplex Infrastructures Ltd, I note from records that Noticee had sharply downgraded its ratings within a year without any rating transition in between. Further though another CRA, CARE Ratings, had downgraded the rating of Simplex Infrastructures Ltd to default rating and disclosed the same in the public domain, Noticee had failed to recognize the default on time. I note from the reply furnished by Noticee that Noticee has not disputed the allegation and has only tried to explain the monitoring process undertaken by it in respect of this issuer company.

26. In terms of the relevant regulatory provisions, CRAs are mandated to disclose average rating transition rates for long term instruments. SEBI's circulars have also laid down detailed guidelines for conducting default studies as well as specified the mechanism for monitoring and identifying potential defaults. From the evidence placed on record, I find that Noticee assigned an investment grade rating to multiple issuers and then did not change the credit rating until the next periodic review was due, at which point the ratings were steeply downgraded from investment grade to grade 'D', with no rating transition in between. It is also observed that Noticee had multiple cases of jump from investment grade to default, often directly with no rating transition in between. I find that whereas SEBI has prescribed a timeline of upto 2 days for recognition of default, in multiple cases, Noticee delayed recognition of default by many days, only doing it at the time when the periodic review of the rating was due, or later. In view of the foregoing, I find that the allegation that Noticee contravened Regulations 15 & 24 of CRA Regulations, Clauses 2, 3, 4, 6 and 8 of

Code of Conduct prescribed under Regulation 13 of CRA Regulations, Clause 2 of SEBI circular CIR/MIRSD/CRA/6/2010 dated May 3, 2010, Clause 1 of SEBI circular SEBI /HO /MIRSD/ MIRSD4/CIR/P/2017/71 dated June 30, 2017 and Clause 3 of SEBI circular SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 140 dated November 13, 2018 stands established. I also find that no evidence or circumstances have been brought forth in the SCN to support the allegation that Noticee had violated Clauses 5, 11 and 12 of Code of Conduct prescribed under Regulation 13 of CRA Regulations and therefore, the aforesaid allegations do not stand established.

27. It has been alleged in the SCN that in case of the issuer company, Capri Global Capital Ltd, the rating appeal file by the company was taken up by the Rating Committee having the same composition as the earlier Rating Committee, which showed that Noticee did not follow proper rating process. The details are as follows:

Date of Meeting	**RC Members**	**Date of Meeting**	**RC Members**
March 28, 2020	Mr. Ramesh Grover,	June 25, 2020	Mr. Ramesh Grover,
	Mr. Bhupinder Nayyar,		Mr. Bhupinder Nayyar,
	Mr. S.C Sinha,		Mr. S.C Sinha,
	Mr. Sudhir Mittal,		Mr. Sudhir Mittal,
	Mr.Gauri Shankar,		Mr.Gauri Shankar,
	Mr. Anil Girotra,		Mr. Anil Girotra,
	Mr.Y LMadan		Mr. Y L Madan

The Noticee, in its reply has contended that the above two Committee meetings were both for Rating Committee meetings and the meeting of the appeal Committee was held only on June 4, 2020 during which the appeal Committee advised that the case be taken up again in the Rating Committee, after obtaining the audited financials along with the auditor's report, and thus, the matter was once again placed before the same Rating Committee on June 25, 2020, when the Rating Committee assigned a fresh rating to the issuer company. In this regard, it is noted that SEBI Circular dated September 13, 2018 clearly directs CRAs that in case of a review of the earlier assigned rating, based on the appeal by an issuer, the review the rating assigned shall be carried out by:

a) A rating committee of CRA that consist of majority of members that are different from Rating committee that assigned earlier rating and

b) At least 1/3rd of members of the concerned rating committee shall be independent and shall not have any pecuniary relationship with CRA.

28. The foregoing observations clearly establish that the process adopted by Noticee, viz., instead of reviewing the appeal made by rated client by itself, the review rating committee advised that the representation be placed back to rating Committee for fresh consideration, was not in line with the provisions laid down in the SEBI Circulars and that such conduct of Noticee did not demonstrate high standards of integrity, fairness, due diligence, independence and professional judgement in its rating process. Therefore, I find that the allegation that Noticee violated Clauses 2 and 4 of the Code of Conduct for CRA as prescribed under Regulation 13 of CRA Regulations, Clause 3 of SEBI Circular SEBIM /HO /MIRSD/ MIRSD4/ CIR/P/2016/119 dated November 01, 2016 and Clause 2 of SEBI Circular SEBI /HO /MIRSD /DOS3/CIR/P/2018/130 dated September 19, 2018 stands established.

Issue No15 (II): Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?

29. As established in the preceding paragraphs of this order, Noticee has contravened various provisions of CRA Regulations and other circulars issued by SEBI. In context of aforesaid, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not*.''

30. Therefore, in view of the violations as established and placing reliance on the aforesaid judgment, I find that Noticee would be liable for monetary penalty under Section 15 HB of SEBI Act. The text of Section 15HB of SEBI Act is reproduced as under:

Section 15HB of SEBI Act*: - Penalty for contravention where no separate penalty has been provided:*

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

<u>Issue No 15 (III): If the answer to issue no. 18- II is in affirmative, then what should be the quantum of monetary penalty?</u>

31. While determining the quantum of penalty under Section 15HB of the SEBI Act, factors stipulated in Section 15J of the SEBI Act have to be given due regard. The aforesaid provisions are reproduced hereunder:

Factors to be taken into account by the adjudicating officer under SEBI Act

15J. *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -*
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default

Explanation. — For the removal of doubts, it is clarified that the power of an adjudicating officer *to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section*

32. I note that in the present matter, no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default by Noticee. Further, from the material available on record, it is not possible to ascertain the exact monetary loss to the investors /clients on account of default by Noticee. As regards the repetitive nature of the default, I do not find that the Inspection having brought on record any regulatory action taken by SEBI in the past against Noticee for the same violations as those observed in the instant matter. However, I cannot ignore the fact that as a SEBI registered Intermediary, Noticee was under a statutory obligation to abide by the provisions of the SEBI Act, Regulations and Circulars/directions issued thereunder, which it failed to do. Such disregard for SEBI's regulatory framework governing the functioning of its registered intermediaries is a serious infraction on the part of Noticee and calls for an appropriate penalty which should act as a deterrent.

ORDER

33. Having considered all the facts and circumstances of the case, the material available on record as well as the factors mentioned in Section 15J of SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the penalty of Rs 10,00,000/-(Rupees Ten Lakh only) under Section 15 HB of SEBI Act on Noticee i.e. M/s. Infomerics Valuation and Rating Pvt. Ltd.

34. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

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

    ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

    In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in

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

37. In terms of the provisions of Rule 6 Adjudication Rules, copy of this order is being sent to Noticee i.e. M/s. Infomerics Valuation and Rating Pvt. Ltd. and also to SEBI.

Date: July 31, 2023
Place: Mumbai

SOMA MAJUMDER
Adjudicating Officer