STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
U.T., CHANDIGARH

Appeal No.	:	**58 of 2023**
Date of Institution	:	12.04.2023
Date of Decision	:	31.07.2025

JYOTI KHEMKA (also known as JYOTI JAIN), aged 50 years, w/o Dr. Ashok Khemka r/o House No.1370, Sector 19B, Chandigarh-160019.

……Appellant/Complainant.

Versus

1] CATALYST TRUSTEESHIP LIMITED, (formerly known as GDA Trusteeship Ltd.), 'GDA' House, 1st Floor, Plot No.85, S No.94 & 95, Bhusary Colony, Kothrud, Pune, Maharashtra-411038.

2] CREDIT ANALYSIS AND RESEARCH LTD. (CARE), SCO 196-197, 2nd Floor, Sector 34A, Chandigarh-160022; also at 54-55, Phase 11, Sector 65, Sahibzada Ajit Singh Nagar, Punjab-160062.

3] BRICK WORKS RATINGS INDIA PVT. LTD. Bestech Business Tower, Tower A, Unit No.601, 6th Floor, Sahibzada Ajit Singh Nagar, Punjab-160065; also at Business Square, 5th Floor, C Wing, 151, Andheri-Kurla Road, Chakala, Andheri East, Mumbai, Maharashtra-400093.

4] PIRAMAL CAPITAL HOUSING FINANCE LIMITED (earlier Dewan Housing Finance Corporation Limited), SCO 118-119, Madhya Marg, Sector 8C, Chandigarh – 160009; also at Warden House, 2nd Floor, Sir P.M. Road, Fort, Mumbai, Mahrashtra-400001.

5] SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI), SCO 127-128, 1st Floor, Sector 17C, Chandigarh-1600017; also at SEBI Bhawan BKC, Plot No. C4-A, 'G' Block, Bandra-Kurla Complex, Bandra (East), Mumbai, Maharashtra-400051.

…..Respondents/Opposite Parties.

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT
MR. RAJESH K. ARYA, MEMBER

Argued by:-

Sh. Shreenath K. Khemka, Advocate for the appellant.

Sh. Anirudh Gambhir, Advocate for respondent No.1 (on VC).

Sh. N. S. Jagdeva, Advocate proxy for Sh. Lakhbir Singh, Advocate for respondent No.2.

Sh. Rajender S. Rana, Advocate for respondent No.3.

Ms. Shweta, Advocate for respondent No.4

Respondents No.4 & 5 already exparte vide order dated 22.05.2023.

PER RAJESH K. ARYA, MEMBER

Instant appeal has been filed by the complainant, namely, Smt. Jyoti Khemka (appellant herein) seeking setting side order dated 06.03.2023 vide which, her consumer complaint No.932 of 2019 has been dismissed by the District Consumer Disputes Redressal Commission-I, U.T., Chandigarh (in short 'District Commission').

2] The facts as stated in the impugned order passed by the District Commission reads thus:-

> "1. The present consumer complaint has been filed by the complainant against the opposite parties (hereinafter referred to as the OP/OPs). Briefly stated, on 26.7.2016 OP No.4 issued a Public Prospectus approved by SEBI (respondent No.5) for the public issue of secured Redeemable Non-convertible Debentures, each having a face value of INR 1,000/- and a tenures of 3 years. OP No.1 was the Debenture Trustee for the said issue, and the said public issue was given 'AAA' credit rating i.e. the highest degree of safety by OP No.2 and OP No.3 and pursuant to the said public issue the complainant purchased 342 secured Non-convertible Debentures in the retail category on 16.8.2016 the next investment was of INR3,42,000/- . The Debentures in question were to mature on 16.8.2019 and were to yield interest amounting to INR 31,464/- on an annual basis. In the early 2018 there was speculation that DHFL might be heading towards a financial crises. However Ops No.2&3 continued to rate the debentures at 'AAA' rating i.e. the highest degree of safety regarding timely service of financial obligations. It is stated as reported by OP No.1 in its communication dated 5th August 2019, the OPs No.2&3 downgraded the credit rating of the debentures from 'AAA' to 'D' i.e. the lowest possible score overnight in February 2019. Therefore, the debentures that were marked at the highest score were downgraded to the lowest score, all in a night's time after DHFL i.e. No.4 had siphoned thousands of crores of public money in subsequent tranches of its public issue but the OP No.5 remained as a mute bystander. It is alleged that on the date of maturity i.e. 16.8.2019 DHFL defauted to redeem the debenture principal and interest amount to Rs.3,73,464/-. Alleging the aforesaid act of Opposite Parties No. 1 to 3 deficiency in service and unfair trade practice on their part, this complaint has been filed.

2. The Opposite Parties NO.1 in its reply while admitting the factual matrix of the case stated that as per provisions of Companies Act, 2013 and SEBI regulations, it is the duty of the issuer company respondent No.4 to make timely payment of interest/principal amount due to the debenture holders on or before the due date. The answering OP has ensured that the OP No.4 creates security and maintained the securities from time to time. The answering OP has also ensured that the OP No.4 has submitted "end use" certificate as well as ensured that the asset security cover as specified in offer documents are maintained by the OP No.4. It is averred that when the answering OP noticed that OP No.4 has committed non-financial defaults as stipulated in the debenture true deed, OP No.1 has issued legal notice dated 24th June 2019 to OP No.4 calling upon them to rectify the breaches and brought to the notice of OP No.4 that if breaches are not rectified then suitable action will be taken. When OP No.4 failed to pay the installments of interest due on 16th August 2019 immediately after the said defaults OP No.1 took actions immediately against it. It is averred that payment obligation is of OP No.4 and in case default the answering OP no.1 is only under obligation to take steps for recovery and enforcement of security which is already initiated by the answering OP. It is averred that there is no deficiency on the part of the answering OP. All other allegations made in the complaint has been denied being wrong.

3. The OP No.2 in its reply stated that the answering OP is a SEBI registered credit rating agency, and as part of regulatory requirement as well as for the purpose of benefit of public/investor/prospective investors/ issuers, is clearly specified that rating assigned by it is not a recommendation or advised to any person to buy or sell any securities. The OP No.2 on its website(httP://www.careratings.com/ get-rated/get-rated.aspx), has communicated/specified the aforesaid understanding with adequate clarity. It is a matter of fundamental principle of credit rating exercise that such rating is not to be treated by investor as a basis for taking investment decisions as credit rating is merely an opinion of credit rating agency on the quality of credit risk of the issuer of securities or borrowers, and is not recommendation/advise to buy, sell or hold securities or investments or take investment decisions. Therefore, the plea of complainant that she has taken its investment decision into the debentures issued by OP No.4 is erroneous. Hence, there is no deficiency on the part of the

answering OP. Denying all other allegations made in the complaint a prayer for dismissal of the complaint has been made.

4. OP No.3 in its reply while taking similar stands as has been taken by OP No.2 stated that it has discharged all its responsibilities and duties as a credit rating agency with due care, diligence and in accordance with the applicable provision of law. It is averred that there is no deficiency on its part. A prayer for dismissal of the complaint has been made.

5. OP No.4 in its reply while admitting the factual matrix of the case stated that the complainant has invested money for the purpose of making a profit based on her own understanding of the situation and the results of the company as existed at the time when the investment was made, subsequently now fearing that her investment may be not meeting the expectations has filed the present complaint having no basis. It is stated that the operation of the company has come into inherent stress on account of various reasons and on account of credit squeeze in the market, however, the rating of the company was downgraded wrongly. The complainant does not exercise any control in respect of rating that is given by OPs No.1 to 3, which are independent rating agencies working within the financial sector and have their own basis for calculation and providing ratings based on various parameters. Since there was a financial stress in the company and hence, the company could not redeem the debentures. It vehemently denied that there is any deficiency on the part of the answering OP and a prayer for the dismissal of the complaint has been made.

6. OP No.5 did not turn up despite due service, hence vide order dated 18.10.2019 it was proceeded against exparte.

7. Rejoinder was filed and averments made in the consumer complaint were reiterated."

3] The order has been assailed by the appellant/complainant on the ground that the District Commission has failed to appreciate that **Respondent No.1** failed to safeguard the interest of the appellant by completely failing to ensure realization of the debenture amount that became due on 16.08.2019; that the said debentures were 'secured' and respondent No.1 was supposed to hold security to secure the debenture amount, which it failed to do; that Hon'ble Bombay High Court in its order dated 10.10.2019 passed in Commercial Suit

(Lodging) No.1034 of 2019 in Para 26 had already observed that respondent No.1 failed to enforce the security in time and realize the amounts due to the debenture-holders; that respondent No.1 has defaulted in observing the statutory duties u/s 12, 13, 14, 19 & 23 of the Indian Trusts Act 1882 coupled with its breaching Paras 7.1, 18, 26.1 and 29 of the Trust Deed by not maintaining 25% of the value of the outstanding debentures as Debenture Redemption Reserve; that respondent No.1 also violated Rule 18(7)(c) of the Companies (Share Capital and Debentures) Rules 2014 requiring 15% of the debentures maturing in a particular year, in bank deposits or govt. securities, however, it maintained nil Reserve.

4] It has been stated that the District Commission has further failed to appreciate that **Respondents No.2 & 3** induced the appellant to purchase the debentures on the basis of *'AAA'* rating i.e. highest degree of safety and the rating was not done with due diligence by these respondents. This rating of *'AAA'* was given in 2016 and maintained as such but suddenly in 2019, the rating was abruptly downgraded from *'AAA'* to *'D'* i.e. lowest possible rating when the default could not be masked any longer. It has further been stated that it was impossible for the credit rating to fall so sharply overnight, especially for a housing finance company in the business of mortgage finance, where NPAs are very low at ~1-1.5%. It has further been stated that forensic audits carried out by the lender banks and the Administrator appointed by Reserve Bank of India revealed siphoning off money since 2007 and the said Administrator also filed several avoidance applications u/s 66 of IBC 2016 of more than INR 47,000 crores coupled with the fact that the Excise Department and SFIO also registered criminal cases against the fraud. It has further been stated that the *'AAA'* rating was without due diligence and there was a failure to give reasonable accurate ratings as per the SEBI guidelines or Enhanced Disclosure 2018. It has further been stated that the act of respondents No.2 & 3 in not fairly and accurately report the financial risks associated with the debentures, so as to prevent small-retail depositors from informational asymmetry and financial adversity was in breach of Regulation 13 of the SEBI (Credit Rating Agencies) Regulation 1999. It has further been stated that in its affidavit, respondent No.2 failed to specify, what abnormal or unforeseen event occasioned the abrupt downgrading from *'AAA'* to *'D'* overnight. It has further been stated that its *res ipsa loquitur,* the deficiency on the part of respondents No.2 & 3 was writ large. It has further been stated that as per statutory mandate, prior to a Public Issue, credit rating must be sought from a registered Credit Rating Agency, in order to protect small-retail depositors from informational asymmetry and abuse of dominant position by the Issuer. It has further been stated that disclaimer would not absolve respondents No.2 & 3 from liability, particularly against small retail depositors like the appellant, once they stood in breach of their fiduciary duty.

5] On the other hand, the contesting respondents took similar stand as was taken by them before the District Commission below in their respective replies.

6] <u>Respondent No.1 – Catalyst Trusteeship Limited</u>, in its written arguments filed in appeal, stated that it had performed all its duties as contemplated under the Debenture Trust Deed and the impugned order has rightly held that respondent No.1/opposite party No.1 was not deficient in providing services to the appellant/complainant. It has further been stated that respondent No.1 took all required steps in order to protect the interest of the debenture holders including the appellant. It has further been stated that the liability of payment of the claim of the appellant is solely of DHFL being the issuer of the NCDs. It has further been stated that the claim of the appellant has been fully and finally settled in terms of IBC 2016 as the appellant had admittedly been paid an amount of **₹1,68,584/-** as full and final settlement of its claim. Placing reliance on the judgments of Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 658 and S.A. Pharmachem Pvt. Ltd. v. Alok Industries Ltd., 2020 SCC OnLine NCLAT 554, it has been stated that any claim, which the appellant may have with respect to payments concerning the NCDs issued by DHFL, stands satisfied with the implementation of the resolution plan of Piramal. It has further been stated that despite the efforts of respondent No.1, it was DHFL that failed to maintain Debenture Redemption Reserve; that the appellant has frivolously raised contentions regarding the breach of duties under the Indian Trust Act, 1882. It has been prayed that the appeal be dismissed with costs.

7] <u>Respondent No.2 – Credit Analysis and Research Ltd. (CARE)</u>, in its written arguments, stated that a credit rating is not an advice to buy, sell or hold securities or investments and investors are expected to take their investment decisions after considering all relevant factors and their own policies and priorities. It has further been stated that a credit rating is not a guarantee against future losses and it does not take into account many aspects which influence investment decisions. It has further been stated that it is a professional opinion on the ability and willingness of an issuer to meet debt servicing obligations and also based on future debt servicing capabilities given on the basis, inter-alia, of past performance and all available information (from audited financial statements, interaction with company management, banks and financial institutions, statutory auditors, etc) at a particular time. It has further been stated that while rating agencies make all possible efforts to project corporate business prospects, industry trends and management capabilities, many events are unpredictable. It has further been stated that such opinions may prove wrong in the context of subsequent events. It has further been stated that on the occurrence of such an event, a rating agency can only review and make appropriate changes in the rating and such changes are reported widely through the media. It has further been stated that it is the experience of all rating agencies that some instruments initially rated as investment grade fall below investment grade or go into default, over a period of time. It has further been stated that based on above, the District Commission rightly dismissed the complaint of the appellant and as such, the appeal is also liable to be dismissed.

8] It may be stated here that on an application moved on behalf of respondent No.4 i.e. Diwan Housing Finance Corporation Limited (in short 'DHFL'), for impleading Piramal Capital Housing Finance Limited in its place as the said Piramal Capital Housing Finance Limited had acquired respondent No.4 – DHFL vide Certificate of Information , Annexure A-2 and as per order dated 07.06.2021 of National Company Law Tribunal, Mumbai Bench, Court II in IA No.449/MA/C-II/2021 in CP(IB) No.4258/MA/C-II/2019, this Commission vide order dated 16.04.2024 substituted the name of respondent No.4 as Piramal Capital Housing Finance Limited in the memorandum of appeal. However, Counsel already appearing on behalf of DHFL, represented & made submissions on behalf of Piramal Capital Housing Finance Limited on similar lines. It has been stated that since PIRAMAL CAPITAL HOUSING FINANCE LIMITED has taken over DHFL under the provisions of the IBC as a successful resolution applicant, it bears no liability for any action or suit filed for actions or proceedings against the company prior to its takeover, or arising prior thereof. It has further been stated that the appeal was filed against DHFL and as such, the appellant was required to raise its dispute under the provisions of the IBC and raise its claim with the Resolution professional. It has further been stated that having failed to do so all rights, if any, the claim against respondent No.4 stand extinguished. It has further been stated that respondent no.4 is the non-contesting respondent in the array of the parties and the appellant himself did not claim deficiency or any relief towards it. It has further been stated that the appellant has filed the appeal against the deficiency on the part of respondents No.1 to 3 only. It has further been stated that the main grievance is that the appellant invested in the debentures of respondent No.4 based on various ratings of respondent No.1 to 3 and wherein after the investment, respondent No.4 has no answer - ability for further events. It has further been stated that the appellant invested in respondent No.4 Company on her own understanding and the financial result of respondent No.4 at that time, subsequently no deficiency if that investment may not meet on expectations, so that not claimed any relief towards respondent No.4. Lastly, respondent No.4 prayed for dismissal of the appeal.

9] We have heard the Learned Counsel for the parties and have also gone through the impugned order, the entire record and the written arguments of the parties, very carefully.

10] Before proceedings further, we would like to dispose of two ***miscellaneous applications bearing No.1027 of 2024 and 1035 of 2024*** filed by the appellant and respondent No.1 respectively for placing on record documents. MA/1027/2024 is for placing on record documents in terms of order dated 11.11.2024 whereas MA/1035/2024 is for placing on record documents alongwith Annexures 1 to 3 i.e. reply of respondent No.1 in CWP No.29038 of 2019, order passed by Securities Appellate Tribunal, Mumbai and written submissions of the appellant. Both the parties did not oppose the applications filed by other side. As such, both the applications are allowed and the documents aforesaid are taken on record. M*iscellaneous applications bearing No.1027 of 2024 and 1035 of 2024 stand disposed of accordingly.*

11] Now coming on to the merits of the case, it may be stated here that the grievance of the appellant/complainant against the respondents, in nutshell, is that Respondent No.1 failed to protect their interests by not enforcing security or maintaining statutory reserves for secured debentures that defaulted in August 2019, in violation of the Indian Trusts Act and the Trust Deed. Additionally, Respondents No.2 & 3 are accused of misleading the appellant by assigning and maintaining an unjustified 'AAA' credit rating without due diligence, despite ongoing financial frauds within the issuer company, thereby breaching SEBI regulations and their fiduciary duties to retail investors. From bare perusal of Public Issue dated 26.07.2016, Annexure C-1, transpires that in the said Public Issue, under the heading "CREDIT RATING", it was mentioned as under:-

> "The NCDs proposed to be issued under this Issue have been rated 'CARE AAA (Triple A) for an amount of ₹4,00,000 lacs, by Credit Analysis and Research Limited ("CARE") vide their letter dated July 7, 2016 and BWR AAA (pronounced as BWR Triple A) Outlook: Stable for an amount of ₹4,00,000 lacs, by Brickwork Ratings India Private Limited ("Brickwork") vide their letter dated July 7, 2016. The rating of CARE AAA by CARE and BWR AAA, Outlook: Stable by Brickwork indicate that instruments with this rating are considered to have the highest degree of safety regarding timely servicing of financial obligations. Such instruments carry the lowest credit risk. For the rationale for these ratings, see Annexure A and B to the Shelf Prospectus. This rating is not a recommendation to buy, sell or hold securities and investors should take their own decision. This rating is subject to revision or withdrawal of any time by the assigning rating agencies and should be evaluated independently of any other ratings."

12] It further revealed from the record i.e. Annexure C-2 that accordingly, the appellant applied for 500 NCDs with Face Value of ₹1,000/- per NCD and she accordingly paid an amount of ₹5,00,000/-, against which, she was allotted 342 NCDs for which an amount of ₹3,42,000/- was adjusted and remaining amount of ₹1,58,000/- was refunded to her alongwith interest of ₹337.64 plus another interest of ₹974.47 (totalling ₹1,59,312/-).

13] A Debenture Trust Deed was executed on 06.09.2016 by and between DHFL and the Debenture Trustee, Catalyst Trusteeship Limited. Section 71 of Companies Act 2013 and Regulation 16 of the SEBI (Debenture Trustees) Regulations, 1993 mandate that a debenture redemption reserve (DRR) should be created in the manner prescribed by a company which issues debentures. The Debenture Trust Deed provided for a first ranking pari passu charge over the receivables, both present and future, as security for the debenture holders. Undoubtedly, therefore, the Debenture Trustee owed a duty of care to the debenture holders, both under statute and common law. Admittedly, opposite party No.1 – Catalyst Trusteeship Limited was the Debenture Trustee appointed by opposite party No.4 – DHFL (now PIRAMAL CAPITAL HOUSING FINANCE LIMITED) whose role was to act on behalf of opposite party No.4 and protect the interests of the debenture holder(s) i.e. the complainant in the instant case. It is the specific case of the appellant – complainant that opposite party No.1, failed to protect their interests by not enforcing security or maintaining statutory reserves for secured debentures that defaulted in August 2019, in violation of the Indian Trusts Act and the Trust Deed whereas the defence of opposite party No.1 is that it took all required steps in order to protect the interest of the debenture holders including the appellant.

14] Now the question, which arises for determination by this Commission, is ***whether opposite party no.1 performed its duty in securing interests of the complainant (debenture holder) by enforcing security or maintaining statutory reserves for secured debentures***. The relevant Clauses in the Debenture Trust Deed, Annexure R-3, executed between opposite party No.4 and opposite party No.1, whereupon the complainant has relied upon, to allege default on the part of opposite party No.1, are as under:-

(a) Clause 7 - EVENTS OF DEFAULT AND REMEDIES.

(b) Clause 18 – DEBENTURE TRUSTEE'S RIGHT TO MANAGE THE TRUST PROPERTIES.

(c) Clause 26 – DEBENTURE REDEMPTION RESERVE.

(d) Clause 29 – POWERS & RESPONSIBILITIES OF THE TRUSTEE.

15] It is, thus clear from conjoint reading of above clauses of the Deed that opposite party No.1, being the Debenture Trustee of opposite party No.4 - DHFL, that opposite party No.1 was to ensure the protection of debenture holders' interests and in the events of default, such as failure to pay interest or redeem debentures on time, provide the remedies available to the Debenture Trustee including enforcing security, initiating legal proceedings or declaring the debentures immediately payable. Further Clause 18 empowers the trustee to take possession, control or manage the secured assets upon default in order to preserve or realize the security. Further Clause 26 of the Deed mandates the issuer to create and maintain a reserve as per regulatory requirements; ensuring funds are available for timely redemption of debentures. Further Clause 26 provides monitoring the issuer's compliance with the terms of the deed, protecting the interests of debenture holders, taking necessary legal or enforcement actions in case of default and ensuring that all financial and statutory obligations related to the debentures are met. These clauses collectively ensure accountability, safeguard investor interests and provide structured remedies in case of non-compliance.

16] Not only above, the statutory duties of the Trustee – Opposite Party No.1, as envisaged under the relevant provisions of Sections 12, 13, 14, 15, 19 & 23 of the Indian Trusts Act 1882 (in short 'Act of 1882"), read thus:-

> "12. Trustee to inform himself of state of trust-property.—A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.
>
> 13. Trustee to protect title to trust-property.—A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.
>
> 14. Trustee not to set up title adverse to beneficiary.—The trustee must not for himself or another set-up or aid any title to the trust-property adverse to the interest of the beneficiary.
>
> 15. Care required from trustee. — A trustee is bound to deal with the trust property as carefully as a man of ordinary prudence would

deal with such property if it were his own, and, in the absence of a contract, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

19. Accounts and information.—A trustee is bound (a) to keep clear and accurate accounts of the trust- property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

23. Liability for breach of trust.—Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(a) where he has actually received interest;

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary;

(c) where the trustee ought to have received interest, but has not done so;

(d) where he may be fairly presumed to have received interest; He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate;

(f) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment."

The above provisions outline key duties and liabilities of a trustee under trust law. A trustee (herein opposite party No.1) must promptly acquaint themselves with the trust-property, secure its transfer if needed and reinvest funds held on risky securities. They are obligated to protect the trust's title, preserve its assets and not assert any interest adverse to the beneficiary (herein complainant). Trustees must maintain clear accounts and provide accurate information to beneficiaries upon request. In case of breach of trust, the trustee is liable to compensate for losses unless the beneficiary consented or induced the breach under certain conditions and further the liability for interest arises in specified situations including delays, failures to invest or misuse of funds with varying rates and forms of interest depending on the nature of the breach.

17] Further Regulation 15 of Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (last amended on January 17, 2023), envisages "Duties of the debenture trustees." as under:-

> **"Duties of the debenture trustees.**
>
> 15. 58[(1) It shall be the duty of every debenture trustee to—
>
> (a) call for periodical reports from the body corporate;
>
> (b) [***]
>
> (c) take possession of trust property in accordance with the provisions of the trust deed;
>
> (ca) supervise the implementation of the conditions regarding creation of security for the debentures and debenture redemption reserve, wherever applicable;
>
> (d) enforce security in the interest of the debenture holders;
>
> (e) do such acts as are necessary in the event the security becomes enforceable;
>
> (f) carry out such acts as are necessary for the protection of the debenture holders and to do all things necessary in order to resolve the grievances of the debenture holders;
>
> (g) [ascertain and satisfy] itself that the—
>
> (i) in case where the allotment letter has been issued and debenture certificate is to be issued after registration of charge, the debenture certificates have been despatched by the body corporate to the debenture holders within 30 days of the registration of the charge with the Registrar of Companies;]
>
> (ii) debenture certificates have been despatched to the debenture holders in accordance with the provisions of the Companies Act;
>
> (iii) interest warrants for interest due on the debentures have been despatched to the debenture holders on or before the due dates;

(iv) debenture holders have been paid the monies due to them on the date of redemption of the debentures;

(h) ensure on a continuous basis that the property charged to the debentures is available and adequate at all times to discharge the interest and principal amount payable in respect of the debentures and that such property is free from any other encumbrances save and except those which are specifically agreed to by the debenture trustee;]

(i) exercise due diligence to ensure compliance by the body corporate, with the provisions of the Companies Act, the listing agreement of the stock exchange or the trust deed;

(j) to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice;

(k) to ascertain that the debentures have been converted or redeemed in accordance with the provisions and conditions under which they are offered to the debenture holders;

(l) inform the Board immediately of any breach of trust deed or provision of any law;

(m) appoint a nominee director on the Board of the body corporate in the event of:

(i) two consecutive defaults in payment of interest to the debenture holders; or

(ii) default in creation of security for debentures; or

(iii) default in redemption of debentures;

(n) communicate to the debenture holders on half yearly basis the compliance of the terms of the issue by the body corporate, defaults, if any, in payment of interest or redemption of debentures and action taken therefor."

18] In the complaint, the appellant/complainant alleged that following duties, as envisaged in Regulation 15 of Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (before amendment of 2023) have been compromised by opposite party No.1:-

"(d) enforce security in the interest of the debenture holders;

(h) ensure on a continuous basis that the property charged to the debentures is available and adequate at all times to discharge the interest and principal amount payable in respect of the debentures and that such property is free from any other encumbrances save and except those which are specifically agreed to by the debenture trustee.

(j) to take appropriate measures for protecting the interest of the debenture holders as soon as any breach of the trust deed or law comes to his notice;

(k) to ascertain that the debentures have been converted or redeemed in accordance with the provisions and conditions under which they are offered to the debenture holders.”

19] From bare perusal of above duties of debenture trustees, it is clear that debenture trustees have a statutory duty to protect the interests of debenture holders. They must call for regular reports from the issuer, supervise the creation and maintenance of security and the debenture redemption reserve and take possession of trust property as per the trust deed. Trustees are required to enforce security when necessary, act to protect debenture holders’ interests and ensure timely dispatch of debenture certificates, interest payments, and redemption proceeds. They must continuously monitor the adequacy and availability of charged property, exercise due diligence in ensuring compliance with applicable laws and trust deed terms and act promptly upon any breach. In serious cases such as repeated defaults, they must appoint a nominee director to the issuer’s board and inform SEBI of any breaches. Additionally, trustees are required to communicate with debenture holders every six months regarding compliance, defaults and remedial actions.

20] It may be stated here that the matter in Notice of Motion (Lodging) No.2320 of 2019 in Commercial Suit (Lodging) No.1034 of 2019 titled *“Reliance Nippon Life Asset Management Ltd., Mumbai V/s Dewan Housing Finance Corporation Limited & Ors.”* filed by the applicant – Reliance Nippon Life Asset Management Ltd. came up for hearing before the Hon’ble High Court of Judicature at Bombay, seeking a money decree in a sum of Rs.479,21,29,113/-, along with interest @ 18% p.a.; a declaration that the plaintiff cannot be subjected to and is not bound by an Inter-Creditor Agreement (ICA) under the auspices of Reserve Bank of India (RBI) in view of certain payments claimed by the plaintiff under certain Debenture Groups "A" to "D" and pending the hearing of the suit, ad-interim and interim reliefs sought in terms of the notice of motion. In this matter, the Plaintiff was Asset Management Company (AMC) and Defendant No.1 was a Non-Banking Financial Company - DHFL, focusing on housing finance. Defendant No.2 was the company i.e. Opposite Party No.1 herein, offering trusteeship services and had accepted an assignment as a

'Debenture Trustee' for the debentures issued by DHFL. Defendant No.3 was the Managing Director of DHFL - Defendant No.1. The Hon'ble High Court, while exercising its ordinary original civil jurisdiction, vide its order dated 10.10.2019 observed in Para 26, *inter alia*, as under:-

> "26.......Prima facie, I am of the view that the plaintiff has made out a case that the very securities, over which a pari passu charge has been extended in favour of mutual funds and other secured creditors/NCD subscribers, appears to have been utilized by defendant no.1 to garner further loans by availing of these securitization option. Although it is the 1st defendant's case that it is subject to multiple regulators such as Securities and Exchange Board of India. Insurance Regulatory and Development Authority, Provident Fund Regulatory and Development Authority and Reserve Bank of India, it is not known on what basis such securities, on which the pari passu charge had been offered and acted upon, could have been further "sold" over to the banks and the institutions in order to avail of securitization advances. This may not have been contemplated by terms of the public issues or private placement Debenture Trust Deed. If it was not contemplated, the defendant no.1 and the banks participating in the securitization of receivables already subjected to a charge may have some tough questions to answer."

21] Further in Para 27, it was observed, *inter alia*, as under:-

> "27. The exposure of lenders, who have joined the ICA, is about Rs.39,000 crores and the argument that the orders passed in the suit would adversely affect those lenders, is no reason to deny relief in the present suit. It is true that defendant no.2 is empowered to take up claims on behalf of the debenture-holders, including the plaintiff, but merely to contend that it proposes to take action will not be of any assistance to the class of the debenture-holders. No concrete action seems to have been taken by defendant no.2 till date.

> One would have expected a trustee to act in a spirited manner........"

22] Lastly, the Hon'ble High Court, while confirming defaults by defendant No.1 - DHFL), observed that defendant No.2 (opposite party No.1 herein) had been slow in acting in a matter of securing interest of the debenture holders. The said observation in Para 29, *inter alia*, reads thus:-

> "29. In other words, the defaults by defendant no.1 stand confirmed by defendant no.2 as well. Although the defendant no.1 has sought to rely heavily on the rights vesting in defendant no.2, prima facie, it appears that defendant no.2 has been slow to act in a matter of securing interest of the debenture-holders."

23] Undisputed, in the instant case, opposite party No.1, in its capacity as the Debenture Trustee, was legally empowered and obligated to take necessary steps for the protection and enforcement of the rights and claims of the debenture-holders, including the complainant, its mere assertion or proposal to take action does not, in itself, serve the immediate or long-term interests of the complainant. The responsibilities of a debenture trustee, as per SEBI regulations and the trust deed, are not passive or discretionary in nature, they are proactive, fiduciary duties requiring timely intervention, continuous monitoring and swift redressal in the face of any breach, default or delay by the issuer. However, in the present case, though opposite party No.1 had placed on record notices etc. on record to plead its promptness in taking action but there was no decisive action having been taken by opposite party No.1 to protect or enforce the rights of complainant, the debenture-holder. This delayed response, raised serious concerns regarding the trustee's diligence, commitment and compliance with its statutory and contractual duties, as has been observed by Hon'ble High Court of Bombay. Thus, Opposite Party No.1 failed to act with the urgency and seriousness the situation demands, thereby undermining the trust and protection debenture-holders are entitled to expect from their trustee. In such circumstances, judicial scrutiny may become necessary to ensure that the interests of the debenture-holders are not irreparably prejudiced due to the trustee's inertia. In view of the foregoing, it becomes evident that the conduct of opposite party No.1, when measured against the yardstick of its statutory obligations under the SEBI (Debenture Trustees) Regulations, 1993 and the express covenants of the Debenture Trust Deed, reveals a clear dereliction of fiduciary duty.

24] The law mandates the debenture trustee not merely to hold a nominal position but to act as an active protector of the interests of debenture-holders, especially in instances of default. The failure to initiate enforcement measures, secure the charged assets or communicate timely with stakeholders constitutes a serious breach of trust. The inertia displayed by opposite party No.1 amounts to an abdication of its statutory role, which caused grave and irretrievable harm to the complainant-debenture-holders' interest. It may also be stated here that while examining a matter with regard to violation of the provisions of SEBI (Debenture Trustee) Regulations, 1993; SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 and SEBI Circulars by Catalyst Trusteeship Limited (Noticee) for the period from 31.03.2023 to 31.10.2023 by Spandana Sphoorty Financial Limited, the Adjudicating Officer, *SEBI vide its Adjudicating Order No.ORDER/BM/RK/2024-25/30710 dated 26.08.2024 imposed monetary penalty of Rs.1,00,000/- u/s 15HB of the SEBI Act on Catalyst Trusteeship Limited* finding violation of Clause 13 of Schedule III read with Regulation 16 of SEBI (Debenture Trustees) Regulations, 1993 and Clause 3 of SEBI Circular No.CIR/MIRSD/3/2013 dated 15.03.2013 (superseded by Master Circular for Debenture Trustees dated 31.03.2023) by not informing the concerned Credit Rating Agencies (CRAs) about the breach of covenants of trust deed. Per record, it is also clear that the National Company Law Tribunal, Mumbai Bench vide its order dated 03.12.2019 passed in *CP (IB) – 4258/MB/2019 titled "Reserve Bank of India V/s Dewan Housing Finance Corporation Ltd."* directed the Administrator to cause a public announcement intimating the initiation of Corporate Insolvency Resolution Process and call for admission of Claims as prescribed u/s 15 of the Insolvency and Bankruptcy Code, 2016 (in short "The Code") and the complainant received an amount of ₹**1,68,584/-** under the same. *In this view of the matter, due to deficiency on the part of opposite party No.1 in not taking timely action in the matter, who was to ensure the protection of complainant-debenture holders' interest in the events of default on the part of DHFL (now PIRAMAL CAPITAL HOUSING FINANCE LIMITED),* *it (opposite party No.1) is liable to pay to the complainant to remaining amount (under claim) minus the amount already received by the complainant i.e. ₹2,04,880/- [₹3,73,464.00 minus ₹1,68,584.00], alongwith interest w.e.f. 16.08.2019 till actual payment*.

25] ***Now coming on to the role of opposite parties No.2 & 3 i.e. the rating agencies***, it may be stated here that the contention advanced by the appellant/complainant, in respect of the conduct of respondents No.2 and 3, who are admittedly registered credit rating agencies under the SEBI (Credit Rating Agencies) Regulations, 1999, merits serious consideration. It has been alleged that the appellant was induced to subscribe to the debentures in question solely on the basis of the 'AAA' rating assigned by these respondents, which rating signified the highest degree of safety and minimum credit risk, in accordance with prevailing industry and regulatory norms. The rating was initially accorded in the year 2016 and was consistently maintained thereafter. However, in a shocking turn of events, the rating was precipitously downgraded from 'AAA' to 'D' in the year 2019, the lowest possible grade indicative of imminent or actual default. This figure stands corroborated from the data relating to rating assigned alongwith rating outlook on record as Annexure R-2/6 (staring from Pages 1153 to 1260 of District Commission's file). In our considered view, this sudden and drastic fall, without any prior indication of progressive deterioration in creditworthiness, raised grave doubts regarding the robustness, independence and integrity of the rating process employed by respondents No.2 and 3. Such a steep decline in the credit rating could not have occurred overnight unless the prior ratings were issued either negligently or with complete disregard to material financial disclosures and red flags. The letter dated 08.08.2019 issued by Dewan Housing Finance Corporation Ltd. (DHFL) to the Listing Departments of BSE Ltd. and the National Stock Exchange of India Limited is a significant and self-incriminating document that unequivocally demonstrates the extent of financial stress the company was under and more importantly, the concealment and misrepresentation of its true financial position during the relevant period. In this communication, DHFL candidly admitted that it had been grappling with a severe liquidity crisis since as early as September 2018. Despite this sustained period of financial duress, the company somehow managed to meet its repayment obligations primarily through extraordinary and unsustainable measures such as aggressive securitization of its assets and recovery of collections, thereby camouflaging the underlying insolvency. What is alarming, however, is the fact that during this very period, CARE Ratings, one of the leading credit rating agencies and Respondent in the present case, continued to assign a top-tier 'A1+' rating to the Company's Non-Convertible Debentures (Public Issue), a rating that is meant to signify the highest degree of safety with regard to timely payment. This disconnect between the company's internal acknowledgment of liquidity crisis and the external rating of highest financial strength reveals an egregious failure on the part of the credit rating agencies i.e. opposite parties No.2 & 3 to perform its statutory and fiduciary responsibilities with the level of scrutiny and diligence expected under the SEBI (Credit Rating Agencies) Regulations, 1999. The continuance of such a high rating despite concrete and material adverse developments pertaining to the company's financial health amounted to a gross misrepresentation, which served to severely mislead the investing public who rely heavily on such ratings as indicators of creditworthiness. It is unfathomable that a company undergoing sustained financial distress, which was internally acknowledged and externally evidenced by its desperate reliance on securitization and recoveries to remain afloat, could still receive and retain an 'A1+' rating, unless the rating process was either negligently conducted or deliberately manipulated. This episode exposed the structural failure in the credit rating mechanism and reinforced the appellant's contention that the rating was not only inaccurate and misleading but was also issued in reckless disregard of the financial realities and regulatory mandates. It underscores a breach of Regulation 13 of SEBI (Credit Rating Agencies) Regulation 1999 and Enhanced Disclosure Guidelines of 2018, which require rating agencies to adopt a thorough, independent and continuous assessment methodology based on all material information. The failure to revise the rating downward in light of the company's known liquidity crisis points to a systemic deficiency and directly contributed to the financial harm suffered by the investors who acted upon these inflated and misleading ratings. Even from bare perusal of documents i.e. copy of Civil Writ Petition No.29038 of 2019 titled Jyoti Khemka Vs. SEBI (SECURITIES AND EXCHANGE BOARD OF INDIA) & others and CM No.11674 of 2024 moved in the said writ petition, by way of additional evidence, it is clear that vide order dated 02.05.2023, SEBI clarified that the directions against Mr. Rajesh Mokashi, MD &

CEO of CARE were intended to ensure that he would not be associated with a SEBI registered intermediary either as a Director or a Key Management Person, for a period of two years from the date of the said order. Further vide adjudication order dated 26.12.2019 and Review order dated 22.09.2020, penalty of ₹25 lacs was imposed on CARE for failure to exercise proper skill, care and due diligence while discharging its responsibilities as a credit rating agency while assigning its credit rating to the NCDs. The said penalty was enhanced to ₹1.00 Crore by SEBI vide order dated 22.09.2020 stating that the lapses on the part of CARE while rating the securities of II & FS and IFIN had resulted in real and severe financial loss to investors. Order further noted that had the notices downgraded the ratings at the appropriate time and thereby forewarned the investors, the impact of the default on investors, could not have been this severe. Not only above, further vide adjudication order dated 24.07.2020, a penalty of ₹1 Crore was imposed on CARE for failure to review its rating assigned to the company – Reliance Communications Limited, which was subsequently reduced to ₹10 Lacs by Honble Securities Appellate Tribunal vide its order dated 09.06.2021. Finally, the Certificate of Registration granted to these agencies was cancelled by SEBI vide order dated 06.10.2022 subsequent to enquiry proceedings and penalty was also imposed by SEBI for violations of provisions of Code of Conduct for CRAs and relevant circular of SEBI observed during inspection of SEBI. Though the scope of this writ petition was totally different from the case in hand yet, from above events, the deficiency and unfair trade practice on the part of opposite parties No.2 & 3 – Credit Rating Agencies is well established.

26] Additionally, in view of the candid argument on behalf of the appellant-complainant that the Administrator appointed by the Reserve Bank of India, unearthed grave financial irregularities, including diversion and siphoning of funds dating as far back as 2007, involving amounts exceeding INR 47,000 crores and further the Administrator, in discharge of his statutory obligations under the Code, proceeded to file multiple avoidance applications under Section 66 thereof, establishing a sustained pattern of fraudulent transactions, the failure of opposite parties No.2 and 3 to detect, reflect or report the deteriorating financial health of the issuer and their decision to continue assigning the 'AAA' or 'A1+' rating despite glaring inconsistencies, also amounted to a flagrant dereliction of duty. The conduct of opposite parties No.2 and 3, being registered credit rating agencies (CRAs), is in flagrant violation of their statutory and fiduciary responsibilities as enshrined under the SEBI (Credit Rating Agencies) Regulations, 1999, particularly Regulation 13, which mandates that CRAs must carry out their functions with due diligence, transparency, and integrity. The abrupt and drastic downgrade of credit ratings, without any contemporaneous abnormal financial developments or material disclosures by the issuer company to justify such a fall, raises a serious question about the analytical rigour and objectivity of the rating exercise. The absence of any cogent explanation or methodology disclosing the rationale behind the rating actions further supports the conclusion of gross negligence on their part. Regulation 13 specifically provides that "a credit rating agency shall exercise due diligence, ensure proper care and independence in the rating process, and shall abide by the Code of Conduct as specified in the Third Schedule." This provision obligates CRAs to not merely conduct a superficial review but to ensure that ratings reflect a fair and balanced assessment based on sound analytical models, verifiable data and objective standards. Any deviation from this duty, especially when it impacts public and institutional investors, constitutes not only a deficiency in service but also amounts to an unfair trade practice under the Consumer Protection laws. Further, Regulation 24 empowers SEBI to take action against CRAs for failure to comply with these regulatory duties. The Code of Conduct for CRAs, as laid down in Schedule III of the Regulations, further underscores the importance of transparency, independence and avoidance of any conflict of interest in the rating process. In particular, Clause 1 of the Code of Conduct states that CRAs must "make all reasonable efforts to protect the interests of investors" and Clause 2 mandates that CRAs shall "conduct their business with high standards of integrity and fairness in their dealings with the public."

27] Not only above, The Reserve Bank of India (RBI) has issued various guidelines and directives concerning Credit Rating Agencies (CRAs) in India, in addition to the SEBI (Credit Rating Agencies) Regulations, 1999. These RBI guidelines are especially relevant when ratings are used for banking exposures, prudential regulation, and capital adequacy purposes under the Basel framework. Qua monitoring and review of rating, RBI guidelines say that CRAs must review ratings regularly typically once a year or more frequently if necessary and ratings must reflect the current creditworthiness of the borrower or instrument. Further

RBI has powers under the Banking Regulation Act, 1949 and the RBI Act 1934 to impose penalties or restrict reliance on CRAs that do not adhere to regulatory expectations. Opposite parties No.2 and 3 have failed to explain the rationale for a sudden rating downgrade and clearly breached their duty of care and also the RBI guidelines. This becomes even more alarming considering that credit ratings serve as crucial instruments for investor decision-making and are a statutory prerequisite for public issues of debt instruments as per Regulation 4(2)(d) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. In such cases, credit ratings are meant to mitigate information asymmetry and reduce the scope for market manipulation or abuse of dominant financial position. However, as already stated above, the act and conduct of opposite parties No.2 & 3 is in manifest breach of SEBI (Credit Rating Agencies) Regulations, 1999. Their failure to do so and the absence of any cogent explanation as to what abnormal or unforeseen event precipitated such an abrupt downgrading, underscores the inference of gross negligence on the part of opposite parties No.2 & 3, coupled with deficiency in service & unfair trade practice on account of absence of due diligence and breach of statutory and fiduciary duty on their part. It is settled law that credit rating agencies, being intermediaries operating under a regulatory regime, are not merely facilitators but gatekeepers of market integrity and any breach on their part can result in irreversible damage to investor confidence and the sanctity of capital markets. Their accountability, particularly in cases of public issues, is heightened in view of the statutory requirement that ratings must be procured prior to such issues, to prevent the very kind of informational asymmetry and abuse of dominance that stands alleged in the present case. *Therefore, in our considered view, respondents No.2 and 3/opposite parties No.2 and 3 are liable to compensate the appellant-complainant on account of deficiency in service and unfair trade practice and for manifest breach of prescribed rules and regulations*.

28] However, no relief has been sought against remaining respondents/opposite parties No.4 & 5 i.e. PIRAMAL CAPITAL HOUSING FINANCE LIMITED (earlier Dewan Housing Finance Corporation Limited) and SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI), on account of which, the consumer complaint is liable to be dismissed against them. As such, consumer complaint No.932 of 2019 is dismissed against these opposite parties No.4 & 5 with no order as to costs.

29] For the reasons recorded above, the appeal has been accepted and the impugned order dated 06.03.2023 dismissing Consumer Complaint No.932 of 2019 is hereby set aside. Consumer complaint No.932 of 2019 is partly accepted against respondents No.1 to 3/opposite parties No.1 to 3 in the following manner:-

(i) Opposite Party No.1 – Catalyst Trusteeship Limited is directed to pay to the complainant an amount of ₹2,04,880/- i.e. [₹3,73,464.00 minus ₹1,68,584.00], alongwith interest @9% per annum (simple) w.e.f. 16.08.2019 within a period of 30 days from the date of receipt of certified copy of this order, failing which, the entire accumulated amount shall carry penal interest @12% per annum from the date of default i.e. after expiry of stipulated period of 30 days till actual payment;

(ii) Opposite Parties No.2 & 3 are directed to pay an amount of ₹1,00,000/- each i.e. [₹1,00,000/- by opposite party No.2 – Credit Analysis and Research Ltd. & ₹1,00,000/- by opposite party No.3 – Brick Works Ratings India Pvt. Ltd.], as compensation to the complainant, *on account of deficiency in service and unfair trade practice and for manifest breach of prescribed rules and regulations,* within a period of 30 days from the date of receipt of certified copy of this order, failing which the said amount of ₹1,00,000/- each shall carry penal interest @9% per annum from the date of default i.e. after expiry of stipulated period of 30 days till actual payment;

(iii) Opposite Parties No.1, 2 & 3 shall, jointly and severally, pay an amount of ₹33,000/- to the complainant towards costs of litigation, within a period of 30 days from the date of receipt of certified copy of this order, failing which, the said amount of ₹33,000/- shall carry penal interest @9% per annum from the date of default i.e. after expiry of stipulated period of 30 days till actual payment.

30] Pending miscellaneous application(s), if any, stand disposed of accordingly.

31] Certified copies of this order be sent to the parties free of charge.

32] File be consigned to Record Room after completion.

Pronounced.

31.07.2025

[RAJ SHEKHAR ATTRI]
PRESIDENT

[RAJESH K. ARYA]
MEMBER

Ad