

**IN THE SECURITIES APPELLATE TRIBUNAL
AT MUMBAI**

DATED THIS THE 28TH DAY OF NOVEMBER, 2025

**CORAM: Justice P.S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member**

Appeal No.182 of 2024

Catalyst Trusteeship Limited
GDA House, First Floor, Plot No.85,
Bhusari Colony(Right), Kothrud,
Pune, Maharashtra-411038.Appellant

(By Mr. Sharan Jagtiani, Senior Advocate with Mr. Ieshan Sinha,
Ms. Dhruvi Mehta, and Ms. Janhavi Kapgate, Advocates i/b.
Wadia Ghandy & Co. for the Appellant.)

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A, G Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.Respondent

(By Mr. Sumit Rai, Advocate with Mr. Nitin Jain, Ms. Prapti Kedia
and Mr. Pranav Diya, Advocates i/b. Agama Law Associates for
the Respondent.)

THIS APPEAL IS FILED UNDER SECTION 15T OF SEBI ACT, 1992
TO SET ASIDE THE IMPUGNED ORDER DATED FEBRUARY 28,
2024 PASSED BY THE WHOLE TIME MEMBER, SEBI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
ORDERS ON AUGUST 11, 2025 COMING ON FOR
PRONOUNCEMENT OF ORDER THIS DAY, THE TRIBUNAL MADE
THE FOLLOWING:

ORDER

Per: Justice P. S. Dinesh Kumar, Presiding Officer

This appeal is directed against order dated February 28, 2024, passed by the WTM¹, SEBI² directing the appellant not to take up new assignments as trustee of Alternative Investment Fund ('AIF' for short) for a period of one year and restraining it from associating with SEBI registered intermediaries for a period of three months from the date of order for violation of SEBI (AIF) Regulations³ and its Circular⁴.

2. We have heard Shri Sharan Jagtiani, learned Senior Advocate for the appellant and Shri Sumit Rai, learned Advocate for the respondent.

3. Brief facts of the case are, Brick Eagle India Affordable Housing Trust ('Trust' for short) was created under a trust deed dated October 5, 2016. The settlor of the Trust appointed 'Milestone Trusteeship Services Private Limited' ('Milestone' for short) as the trustee. Brick Eagle Capital Advisory LLP ('Investment Manager' for short) was appointed as an Investment manager of Trust. The Trust had launched a scheme 'Brick Eagle India Affordable Housing Fund' ('Scheme' for short) with a target corpus of ₹500 crores. According to the Private Placement Memorandum (PPM), the first closing of scheme was achieved on August 31, 2017, with a capital commitment of ₹100

¹Whole Time Member.

²Securities and Exchange Board of India.

³Securities and Exchange Board of India (Alternate Investment Fund) Regulations, 2012.

⁴ SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015

Crores. According to the PPM, the second closing with a commitment of ₹200 Crores ought to have been made within 6 months (i.e. on or before February 28, 2018) and final closing of the scheme ought to have been within 12 months from the date of second closing (i.e., to be achieved on or before February 28, 2019). However, the Investment Manager informed the trustee that it had decided to extend the timeline of the second closing for a further period of three months due to delay in raising funds. Thus, the second and final closing of the scheme were not achieved.

4. SEBI conducted an inspection into the affairs of the Trust between April 1, 2019 and March 31, 2020 with respect to the scheme and observed that the Trust had violated AIF Regulations and SEBI Circulars. Separate show cause notices dated April 28, 2022, were issued to the Investment Manager and its designated partners, the trustee and the erstwhile directors of Milestone alleging *inter alia* that Milestone had failed to comply with the terms and conditions specified in the PPM by not achieving the second and final closing and thereby violated Regulation 11(1) of AIF Regulations, 2012 read with Clauses 2(C)(b)(i) and (ii) and Clause(C)(c)(ii) of SEBI Circular⁵. Milestone filed its reply⁶. On May 23, 2022, Milestone was amalgamated with the appellant i.e. Catalyst Trusteeship Limited. On August 19, 2022, appellant filed its supplementary reply to the show cause notice. After adjudication, SEBI has passed the impugned order.

⁵ SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015

⁶ Dated May 26, 2022.

5. Shri Sharan Jagtiani, learned Senior Advocate for the appellant submitted that:

- a) SEBI has barred the appellant from taking up any new assignments and also restrained from associating with any SEBI registered intermediaries, which are not the consequences as set out under Regulation 34 of AIF Regulations.
- b) Show cause notice issued to the appellant suffers from fatal errors. It is alleged that the Trust had violated the provisions of Regulation 11(1) read with Clauses 2(C)(b)(i) and (ii) and 2(C)(c)(ii) of SEBI Circular dated October 1, 2015. But, Clauses 2(C)(b)(i) and (ii) are applicable only to investment manager and not to the trustee.
- c) As per the PPM, the term of the scheme was provided as five years from the date of final closing, provided that the term may be extended by two years subject to applicable criteria. The final closing ought to have been achieved on or before February 28, 2019. The scheme has been wound up in July, 2024, which is well within the extendable seven years period. Failure to achieve second and final closing are mere technical breaches which have not caused any prejudice to the investors. Such failure was not deliberate by Milestone before merger and after merger, the appellant has done the needful to secure the interest of the investors.
- d) The impugned order fails the test of proportionality. The appellant has been made to suffer the harsh and

burdensome penalty in the form of impugned directions, which is almost the same penalty imposed on the Investment Manager who was charged with several other and much serious charges.

e) The obligation of operating and managing the Alternative Investment Fund is upon the investment manager. The obligation of raising funds from investors is purely commercial activity and the Investment managers are responsible for meeting the deadlines. Thus, the charge against the appellant is erroneous.

6. In reply, Shri Sumit Rai, learned Advocate for SEBI submitted that:

- a) Trustee's liability does not extinguish on appointment of the manager. Under section 11 and 15 of the Indian Trust Act, 1882, a duty is cast upon the Trustee to manage the trust. Managers are contractual appointees by the Trustees. Trustees remain the primary parties responsible for the Trust. Trust is operated by the Trustees and not the manager. The Circular applies to both managers and also trustees.
- b) Regulations 29(1)(b) of AIF regulations enables the trustees to decide to wind up the fund or scheme in the interest of investors. Regulation 34 of AIF Regulations also prescribes hearing the trustees before passing any direction against the Trust. Clause 5.1.3 and 5.1.10 of the trust deed enumerates that the Trustee shall exercise due

diligence in carrying out their duties of protecting the interests of the contributors in best interest of the contributors and to promote the interests of the trust and things are done for attainment of objects of the trust and schemes are in compliance with applicable laws.

- c) The directions issued in the impugned order are covered by the show cause notice. Appellants' argument is premised on an out of context reading of para 20 of the impugned order. The para Nos.19.7 to 19.15 deal with allegation 'b' as a common allegation of both manager and trustee. Appellant is liable only for one violation as alleged in the show cause notice. The present proceedings have been initiated after an inspection under Chapter V of the AIF regulations. Regulation 34 of AIF Regulations expressly contemplate prohibiting any person concerned from operating in the capital market for a specified period. Prohibiting a trustee registered with SEBI from taking new clients for a specified period is clearly a specie of the larger genus of not operating in the capital market. As a part of Regulation 35 of AIF Regulations, SEBI can initiate action under Intermediaries Regulations, without prejudice to powers under regulations 34 of AIF Regulations and under section 11 of SEBI Act. In support of this submission, he placed reliance on this Tribunal's order in *Trafiksol ITS Technologies Limited v. SEBI*⁷ and order of the Hon'ble Bombay High Court in *Price Waterhouse & Co. v. SEBI*⁸.

⁷ 2025 SCC OnLine SAT 325

⁸ 2010 SCC OnLine Bom 1197

- d) The directions are proportionate to violation committed. Additional directions of debarment and penalty are passed against the Investment Manager which are consistent with the violations of respective parties.
- e) The Appellant has sought to divert the issue suggesting that the fund was wound up eventually and investors were paid. But, no explanation has been provided with regards to the inaction since 2018 when the fund became non-compliant with PPM and AIF Regulations. The appellant got into action only after SEBI initiated action. Such conduct on part of the appellant is neither an exculpating factor nor a mitigating factor and therefore, this appeal is devoid of merits and is liable to be dismissed.

7. We have carefully considered the rival contentions and perused the records.

8. Undisputed facts are, during the inspection period (April 1, 2019 to March 31, 2020), Milestone was the trustee. It was amalgamated with the Catalyst Trusteeship Limited on May 23, 2022.

9. By the impugned order, SEBI has directed the appellant not to take up new assignment as a trustee of alternative investment fund for a period of one year and restrained from associating with SEBI registered intermediaries etc., for a period of three months. The said directions have been stayed by this Tribunal by the interim order dated March 13, 2024.

10. The principal grounds urged on behalf of the appellant are;
 - a) That the impugned order is beyond the show cause notice;
 - b) That the trustee is not liable, once a manager is appointed; and
 - c) That the directions are harsh and disproportionate.

11. **Re: Grounds (a) and (b)**

According to the appellant, SEBI, in its show cause notice has alleged violation of clause 2(C)(b)(i) and (ii) and clause 2(C)(c)(ii) of SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015 and the violation of Clause 2(C)(b)(i) and (ii) are attributable only against the manager and not the trustee. It was argued and pleaded in the written submission that SEBI has sought to justify the impugned order on the premise that appellant has been held liable only for the trust's failure to achieve second and final closing⁹. It was urged that an order passed by a statutory functionary must be judged by the reasons in the order and the reasons cannot be supplemented by an affidavit. Reliance was placed on *Mohinder Singh Gill v. Chief Election Commissioner*¹⁰.

12. The allegation in the show cause notice reads thus:

"7. In view of this, it is alleged that the Fund has failed to comply with the terms and conditions specified in PPM, subject to which funds were raised from investors, thereby violated the provisions of Regulation 11(1) of AIF Regulations read with clauses 2(C)(b)(i) & (ii) as well as clause 2(C)(c)(ii) of SEBI Circular ref. CIR/IMD/DF/7/2015 dated October 01, 2015."

⁹Para 5.1(e) of written submissions.

¹⁰(1978)1 SCC 405

13. Clause 2(C) reads as follows:

"C. Other issues/clarifications:

a. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

b. All managers shall:

i. organise, operate and manage the AIFs and its schemes in the interest of unitholders of the AIF/scheme.

ii. carry out all the activities of the AIF in accordance with the placement memorandum circulated to all unit holders and as amended from time to time in accordance with AIF Regulations and circulars issued by SEBI.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

*c. The AIF, manager, **trustee** and sponsor shall:*

i. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

ii. maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment.

iii. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX."

14. A careful perusal of the above clauses clearly shows that violation of clauses 2(C)(b)(i) and (ii) are attributable to the manager and violation of Clause 2(C)(c)(ii) is attributable to both the manager and trustee which mandates a trust to maintain high standards of integrity and fairness in its dealings. In the show cause notice, SEBI has alleged violation of Clause 2(C)(c)(ii) against the appellant. Upon adjudication, the learned

WTM has held in the impugned order¹¹ that all liabilities of Milestone stand transferred to the appellants and accordingly held the appellant liable for violation of clauses 2(C)(b)(i) and (ii) and 2(C)(c)(iii) (sic ii) of the Circular.

15. It is not in dispute that Milestone could not achieve the second and final closure. Though clause 2 (C)(c)(ii) is applicable, it is relevant to note that Catalyst is the successor Trustee. It was urged on behalf of the appellant that a successor trustee is not liable for acts and omissions of its predecessor. Appellant has pleaded in the memorandum of appeal that in view of Section 25 of the Indian Trusts Act, 1882, a successor trustee is not liable for the acts and omissions of its predecessor. In its affidavit in reply, SEBI has urged that clause 4.2 of the scheme of amalgamation provides that all acts and deeds done by milestone shall be deemed to have been carried out by the appellant and therefore, Section 25 of the Indian Trusts Act, 1882 has no application.

16. The Clause 5 of the amalgamation deed (Exhibit J) annexed with the memorandum of appeal reads thus:

"5. LEGAL PROCEEDINGS

5.1 Upon the coming into effect of this Scheme, all suits, actions, and proceedings, if any, by or against the Transferor Company pending and/or arising on or before the Effective Date shall be continued and be enforced by or against the Transferee Company as effectually and in the same manner and to the same extent as if the same had been pending

¹¹ In para No.19.94

and/or arising by or against the Transferor Company.

5.2 The Transferee Company undertakes to have all legal or other proceedings, if any, initiated by or against the Transferor Company referred to in clause 5.1 above transferred to its name and to have the same continued, prosecuted and enforced by or against the Transferee Company.”

17. It is settled that a trustee is bound to fulfill the purpose of the trust and to obey the directions of the author. In this case, appellant has sought to shift its duty upon the investment manager. It is also fairly well settled that a trustee is saddled with the duty of being extremely prudent and careful. As rightly pointed out by Shri Sumit Rai, Section 15 of the Indian Trusts Act, 1882 mandates that a trustee is bound to deal with the trust property as carefully as a man of ordinary prudence, as if, it were his own. Admitted position is that the second and the final closures have not taken place. If that had taken place, it would have resulted in the fund getting ₹500 Crores, being the object of the trust. Therefore, appellant's stand that the entire responsibility is that of the fund manager, is wholly misconceived. Hence, the grounds (a) and (b) are without any merit.

18. **Re: Ground (c)**

Admitted position is that Catalyst has succeeded to Milestone Trust. After issuance of notice by SEBI, Catalyst has taken necessary action and the fund has been wound up, the assets have been liquidated and their proceeds distributed among the investors. Thus, there is compliance with the direction in

paragraph No.28(A). In view of this factual matrix, in our view, the directions against the Catalyst are excessive in nature and ends of justice would be met by suitably modifying the directions.

19. In the result, the following:

ORDER

- i. Appeal is ***allowed in part.***
- ii. Direction contained in paragraph No.28(D) is modified holding that appellant shall not take up new assignments as a trustee of Alternative Investment Fund of any category for a period of six months.
- iii. Direction in paragraph 29(F) restraining the appellant from associating with SEBI registered intermediaries for a period of three months is set aside.
- iv. Pending interlocutory application(s), if any, stand disposed of
- v. No costs.

Justice P.S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

28.11.2025
RHN