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# CFBP TIMES

**AUGUST - SEPTEMBER 2025**

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**10th August, 2025**

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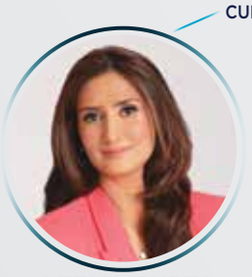

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# HEARTFELT FROM THE PRESIDENT

**SWAPNIL S. KOTHARI**

The month of August has been truly eventful in the sense that we had our Blockbuster CFBP Holistic Summit 3.0 at its best. Conceptualised by Dr. Mickey Mehta, our Advisory Board Member and curated by our Executive Committee Members Leena Gupta and Neha Ranglani, it had many of our health experts participate in various Panels. Our Invitee Members Pracchi Mehta and Devika Bajaj put up a stellar performance in compering the pre-lunch and post-lunch sessions. There are many photos giving you a glimpse of this very successful Event. September was more of a lending a personal hindsight into the past year and luckily, I was happy to see it rise a bit more than it was last year – the year was impactful.

This issue we have an insightful article by our regular contributor Invitee Jalpa Merchant on "Understanding Body Language" from the prism of *Good Salesmanship*. Our another regular contributor Jagdeep Kapoor (Chairman, Marketing Committee) has lessons for us to learn on how to meet the increasing competition by being prepared as opposed to fearing the same. My article on "Intermediary Liability" under the Consumer Protection Act, 2019 has been carried in Business India – hope you enjoy reading it as much as I enjoyed writing it.

It is heartwarming to see the faith reposed in my leadership in the sense that this AGM (held on August 22), it was confirmed to let me lead the organization for the fifth consecutive term (2026-28). It is a sense of continuing responsibility as I have to keep the organization energized with new vistas opening up and more importantly to spot them into steering the CFBP ship to more glorious peaks.

I end with a lovely quote from that great American Businessman,

> *Every right implies a responsibility; Every opportunity, an obligation, Every possession, a duty.*

**John D. Rockefeller**

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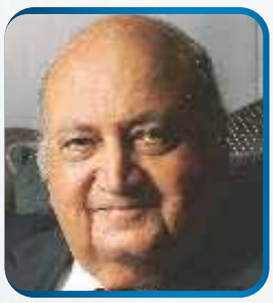
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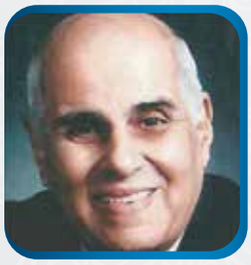
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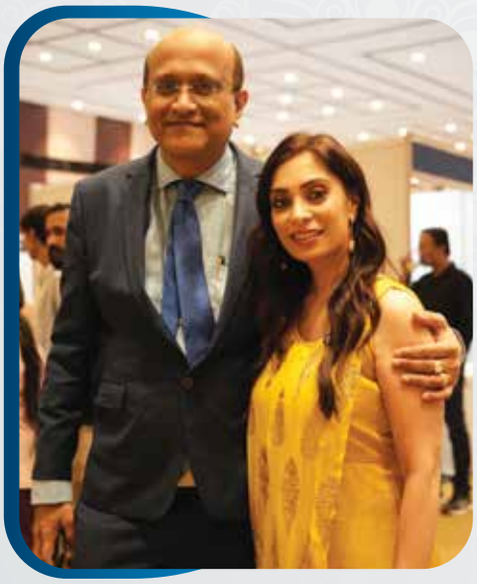

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# Buyers beware...

## ... but intermediaries be scared

In a recent landmark judgment, the State Consumer Disputes Redressal Commission, Chandigarh, ruled that market intermediaries, such as debenture trustees and credit intermediaries, can and will be held accountable for any financial losses faced by investors due to complacency or negligence of the intermediaries. This is a seminal ruling that potentially reshapes the entirety of India's financial ecosystem, clearly safeguarding the interests of the naïve investors like me and you, who could perhaps fall prey to all the varnish that is dished out in the name of product selling. A mere disclaimer that the 'Investments are subject to market risk' does not absolve the credit rating agencies or any intermediaries, who tend to gloss over major developments only to ensure their commission. To extrapolate the *caveat emptor* doctrine, which essentially applies to sale of goods, would be ludicrous and subvert the other sacrosanct aspects of law like 'good faith and factual transparency' that underpin 'commercial market contracts'.

The verdict arose from the case of Chandigarh resident Jyoti Khemka, who haemorrhaged money after investing in Dewan Housing Finance Corporation Limited (DHFL) debentures after the company defaulted in 2019. A market intermediary plays an important role and acts as a lighthouse, directing the flow of investments from an investor who ploughs his/her hard-earned money only to seek a decent return; therefore, it is imperative that the intermediary recognises its own responsibilities and pays for any loss occurred by the investor directly or indirectly attributable. We, as lawyers, could have a field day debating the 'foisting of liability on the intermediary' on the grounds of 'whether the negligence was a proximate cause' or 'whether a reasonable duty of care was employed' but as an ethicist, I would strongly assert that it is an 'unfair practice for an intermediary to keep silent' when the investor should have been sounded out of a possible impending financial debacle.

In 2016, Khemka invested ₹3.42 lakh in DHFL's non-convertible debentures, having faith in its 'AAA' rating as well as the security that was supposed to be provided under the protection of catalyst trusteeship. However, despite early warning signs issued in 2018, CARE Rating as well as Brickwork Ratings continued to retain their top-tier rating of 'AAA', only to eventually plunge to a 'D' grade rating in early 2019, only a few months before default. Due to DHFL's failing to redeem the debentures in August 2019, Khemka was left with only a partial recovery of her investment, which amounted to ₹1.68 lakh. This amount was also recovered through the insolvency process.

SWAPNIL KOTHARI

Upon facing such financial loss, Khemka decided to approach the consumer forum to seek redressal on the grounds of 'deficiency of service'. To her dismay, the district forum dismissed the case in 2023. On her appeal, this decision was overturned by the State Commission on 31 July, 2025. The verdict clearly upheld the principle that intermediaries can be held accountable for investor losses, if they occur as a direct result of negligence of the intermediaries like the trustee and rating agencies accountable.

The commission regarded catalyst trusteeship to be negligent and held that it did not act in the capacity expected from it as a debenture trustee. Debenture trustees are in fact expected to keep an eye on covenants, demand improvement measures when companies showcase a sense of liability and, if necessary, even enforce security to protect the investors. Catalyst trusteeship's callousness amounted to a breach of trust and service as ruled by the commission. Fiduciary duty is owed to the investor just as a lawyer to a client or a doctor to a patient. It is not long before the Supreme Court or any of the High Courts declare such personal investment contracts to be an *uberrimae fidei* contract, meaning 'of utmost good faith'. Importantly, the commission called out the rating agencies as well and held that their role is of equal value within the ecosystem.

Reiterating the importance of ratings, it was clearly conveyed that an AAA rating is not just a label but a signal that beckons thousands of retails investors. The sudden gravitational fall from 'AAA' to 'D' reflects a failure to ensure timely surveillance and a lack of adequate communication regarding possible risks. Regardless of the fact that ratings are essentially opinions – one cannot forget that these ratings are derived through a rigorous evaluation and analysis. This ruling is truly significant because not only does it focus on blaming the defaulter, but it enhances the scope of accountability too, leading to those who are supposed to be the builders of trust between corporations and investors.

I often participate on debates on national TV channels and one such show was in Hindi – *Consumer Awareness*, anchored by Kavita Thapliyal on *ET Swadesh* (a Channel of Times Network). This topic was taken up by her where I, along with

*The author is a corporate lawyer and president, Council for Fair Business Practices*

other experts, was happy to express that this decision would go a long way in expanding the scope of 'corporate liability'. By proving that intermediaries can be held liable, the commission has enforced a cardinal principle: corporate clarity is not a choice, but a mandatory duty owed by every party that is involved.

Market intermediaries like trustees, auditors and even rating agencies are expected to be conscience keepers within the market. Explicit disclosure of details, clear communication and time-to-time reporting must become the new norm. Yet, the most important implication of the judgment is that the retail investors now have a precedent to cite in order to seek redressal through legal pathways, when their financial losses are a direct consequence of intermediary negligence.

It is a broadly known fact that markets run on trust. Whether it be a trustee's name on a debenture certificate or a rating symbol, it comes with a responsibility and it serves as a promise to the investors of vigilance, authority and guarantee. If this promise is broken, it won't be long before the market collapses. The commission's verdict serves as a stark reminder that there is no room for nonfeasance within the market, especially when thousands of investors are putting their trust and, above all, their hard-earned money in companies, relying on these intermediaries. More recently, the Supreme Court has cured a legislative anomaly of a 2002 amendment to the earlier Consumer Protection Act, 1986 by stating that the interim orders passed between 15 March 2003 and 20 July 2020, like final orders, have the force of law just as a decree of a civil court. Applying the principles of statutory interpretation, it held that this was a *casus omissus* (a case omitted or not provided for) and that the court can fill in the legislative hiatus by applying purposive construction to uphold the objectives of the statute. This clearly demonstrates that the Supreme Court is all for the consumer and any beneficial legislation, such as the Consumer Protection Act, 2019, should be given the widest possible interpretation to benefit the consumer

The commission's verdict serves as a stark reminder that there is no room for nonfeasance within the market, especially when thousands of investors are putting their trust and, above all, their hard-earned money in companies, relying on these intermediaries

and rein in the errant parties for 'deficiency of service', as the commission did in the case of the victimised investor.

In an age where short-term profit is quite honestly prioritised over market integrity, this judgment serves as a wake-up call and reasserts that conscientious behaviour is of a paramount value that lays the foundation for a resilient market boom, where the 'investor is king'. As Potter Stewart, the great American Supreme Court judge says, 'ethics is knowing the difference between what you have a right to do and what is right to do'. ♦

# 'Be prepared, not scared'

**This strategy would be useful in these days of intense competition – both existing and new**

In brand marketing strategy, you need to do your homework before you do your work. This alone would help you to get rid of fear. In the last few months, there have been many churns and turns in the marketplace and in the world too, which have caused upheavals. Companies and countries have had to go back to the drawing board, re-strategise and draw up new plans for fear of losing market share, sales, and profit.

Some entities have been able to handle these sudden changes well, as they were well-prepared. But some others have not been able to respond positively to unpleasant changes because, instead of being prepared, they were scared. They did not think about what would have gone wrong and prepare accordingly.

Recently, in certain industries, be they paints, cars, FMCG brands, retail, or any other field, there have been sudden changes – new entrants, new technologies, new strategies, new price offerings, new campaigns and many other changes.

If there were enough preparation and a process of pre-emption of such events or detailed anticipation, the companies would not have been disturbed and could have continued to hold on to the market shares or, perhaps, may even have increased them. But if there was no anticipation, no preparation, no pre-emption of what could have happened, those companies and brands could be hit by a sudden storm, leading to a loss of sales, market share, and profit.

In some cases, even when there was already some thinking within a company about there being new competitors, new challenges, new situations arising, but such a company was too scared to do something about it and just sat, hoping that those challenges would fade away, and was caught with its pants down and now their market shares would be down too.

Going by my Samsika PREPARE module, I would recommend the following seven strategies to be ready before new challenges appear on the horizon. At the same time, while preparing, you should not get paralysed because you find the situation scary and do not do anything about it.

What is the meaning of 'be prepared'? It means 'be willing and able to do something'. And, what is the meaning of 'being scared'. It means 'to be frightened'. So, let us look at the Samsika PREPARE module.

In my opinion, the first letter 'P' of PREPARE is 'pre-empt'. In any industry or category, whether it be paints or cars, or FMCG, there is going to be competition. Existing competition is something that companies know about. New competition is something that could come as a shock or a surprise. If you want to be prepared, then you need to pre-empt, and to do that, you should be able to fill in all the gaps, the way a new competitor or an existing competitor will try to fill. It could be a pricing strategy gap, which was filled by JSW Paints; it could be a distribution gap, which was filled by Birla Opus; or it could be any other kind of gap, including that of product portfolio or sizing. That is what I would call pre-empting.

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In my opinion, the second letter 'R' of PREPARE is to 'recognise' the possible competitors who could come in. Regular search and research, as well as keeping your eyes and ears open, will give you enough signals to let you know and recognise who could be your future rivals. My Brand Mantra is: *'recognise the arrival of your future rival'*. Tata Motors was able to predict and recognise who would be the possible competitors in the EV category of cars – so that it could prepare better.

In my opinion, the third letter 'E' in the PREPARE module is 'execute'. While there can be a lot of thinking and strategizing and planning, if there is no execution at the ground level, all the thinking and planning and strategizing would be futile. Whether you need to have execution internally in terms of product development or execution externally in terms of marketing and sales and distribution, and communication, executing well and in time is an important ingredient in the module.

Many companies in the FMCG sector can execute well, in terms of e-commerce and quick commerce, and prepare for the changing landscape, or shall I say air scape, in the channel distribution scenario in India. Several FMCG companies today have prepared well, were not scared, and had (and still have) a sizeable percentage of their sales coming through e-commerce and quick commerce. In my opinion, it is not online versus offline sales. It is the emphasis on 'in line' sales that makes the difference. All channels need to be used – whether it be general trade or modern trade or quick commerce, e-commerce, or B2C. The preparation has to be done 'in line' with the consumers' expectations.

In my opinion, the letter 'P' (the second one) in the PREPARE module stands for 'positioning'. If you are positioned clearly and have been able to occupy a space in the mind and heart of consumers, then you are prepared for any eventuality or any competitor coming into your category or

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domain. An interesting example is the clear positioning that Dettol occupies. It is well-prepared. Similar is the positioning that Fevicol occupies in the minds of consumers. It is well-prepared to take on any new or existing competitor.

In my opinion, the next letter 'A' in the PREPARE module stands for 'anticipation'. To be fully prepared, you may need to anticipate all moves a potential rival or competitor would make, including pricing. There are many instances where future competition frightens and scares existing players. One element that scares them is that a new competitor would come in with a lower price and take away their market share!

The important thing is that the brand marketing team must be able to prepare for all possible scenarios, so that if they want to take on existing or future competitors and protect their own turf, they must 'anticipate to participate'. Like in cricket, whether it be a bowler or a batsman, or a wicket-keeper, the player succeeds when he or she anticipates and, because of that preparation, can win. So is the case in the marketplace.

In my opinion, the next 'R' in the PREPARE module is 'revolutionise'. You need to be innovative, ahead of the curve, be able to come out with original and new ideas, keeping in mind the changing needs of the consumer. If you are able to do that, you would be way ahead of any possible existing and future competitor. Many a time, by revolutionising your product or service or the way of doing sales and marketing, you could change the face of the industry and create a new category, which would be difficult for a rival to compete with. It could be said that you are well-prepared and not at all scared. To revolutionise, you must be bold and not be frightened to walk a new path.

> If there were enough preparation and a process of pre-emption or detailed anticipation, companies would not have been disturbed and could have continued to hold on to the market shares or, perhaps, may even have increased them

In my opinion, the final letter 'E' in the PREPARE module is 'excel'. While preparing, you may be fast, you may be original, you may be new, but if you do not excel in what you are doing, you may not succeed. It is important that excellence be a part of your preparation, whether in terms of thinking or implementing. If you do not excel, you leave gaps in the marketplace or in your portfolio for a competitor to come and attack you. *So, be prepared, not scared.* This is the strategic thinking I would recommend these days of intense existing, as also new competition. ♦

# UNDERSTANDING BODY LANUGUAGE

For Sales Professionals

JALPA MERCHANT

**Understanding Body Language**
For Sales Professionals

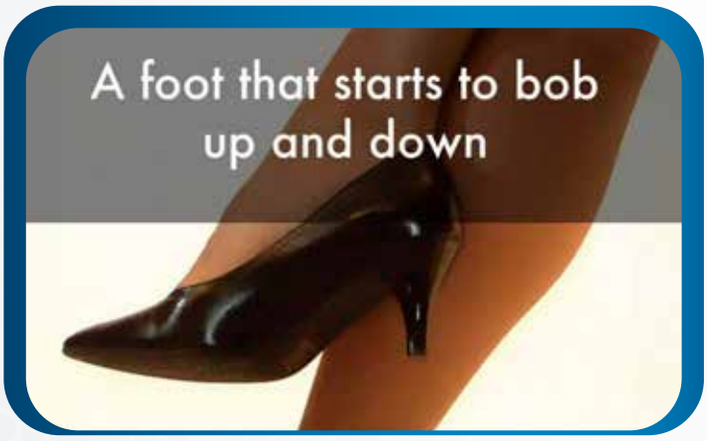
How much would it help if you knew what they were really thinking?

Have you ever walked away from a client thinking you sealed the deal, only to have it fall through?

It's easy. It's all in the body language.

Or worse...to never hear from them again?

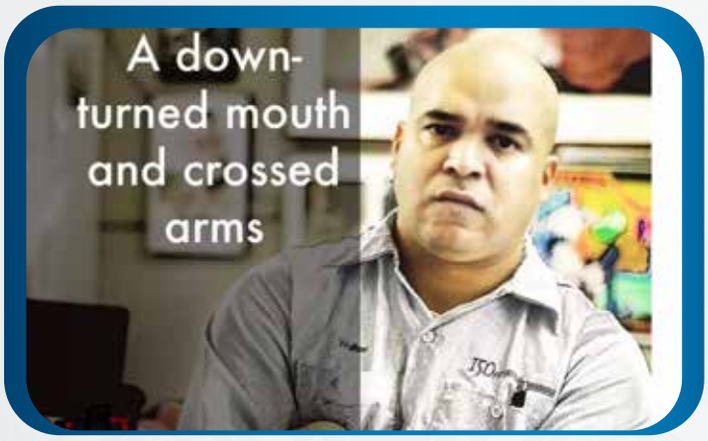
If so, it sounds like you're missing some really valuable clues.

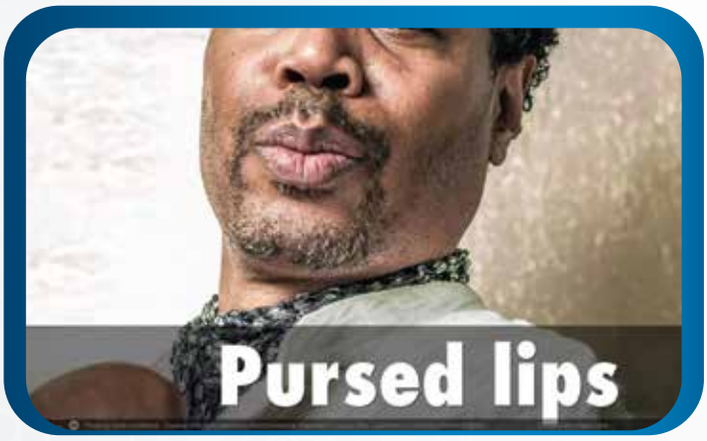


Can tell you that they might not like what you're saying.

They are REALLY not interested.

Subtle shifts, like....

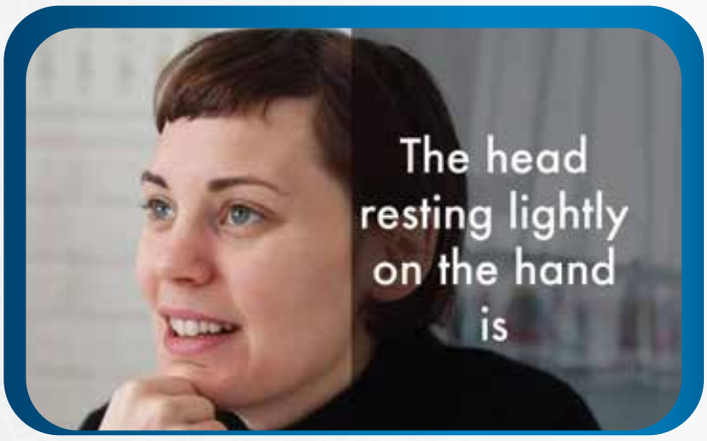



Probably shows they aren't viewing you favourably.

What others signs show they might not like what you're saying?

Are signs someone doesn't like what they are hearing.




Can also indicate discomfort.

A definite sign of interest in what you're saying.

What some signs that show you are on the right track?

Is usually a sign someone is evaluating and making a decision.

Is a sign of engagement.

It's a sign they like you...and what you are saying.

Is always a great sign that you've done a good job with your sales pitch.

पु. ना. गाडगीळ
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सोने । चांदी । रत्ने

३ राज्ये | २४ शहरे | ३३ दालने

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