

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTION 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Sr. No.	Name of the Entity	PAN
1	Orix Corporation	AAACO7277N

IN THE MATTER OF INVESTMENTS IN THE ASSET MANAGEMENT COMPANIES OF CANARA ROBECO MUTUAL FUND AND IL&FS MUTUAL FUND

BACKGROUND OF THE MATTER

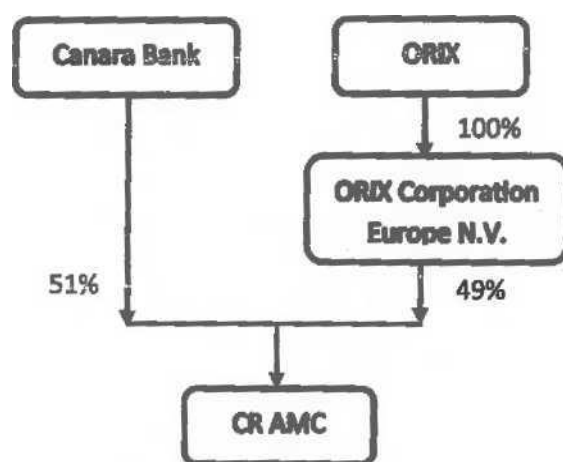
1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has introduced a new amendment in Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 (hereinafter referred to as '**MF Regulations**'), which came into effect from March 13, 2018. By way of the aforementioned amendment, the sponsor of a mutual fund, its associate or group company including the asset management company (in short '**AMC**') of the mutual fund have been prohibited from holding shares or voting rights in AMC or trustee company of another mutual fund, be it individually or collectively, directly or indirectly, beyond a particular threshold. It has been mandated that the shareholding should not cross the threshold of 10% of total shareholding or voting rights of AMC or trustee company of another mutual fund. It also prohibits the sponsor of a mutual fund, its associate or group company from having representation on the Board of Directors of AMC or

trustee company of any other mutual fund. At the same time, it has also been enacted upon that any shareholder holding 10% or more of total shares or voting rights of an AMC or trustee company of one mutual fund was also restricted from holding 10% or more shares or voting rights in AMC or trustee company of another mutual fund or from having representation on the Board of Directors of such another mutual fund.

2. As the said provision was a new introduction in to the MF Regulations, a cooling off period of one year was given to all the entities, which were not in compliant with the aforementioned provision and to ensure them being in due compliance with the aforementioned requirements, as brought out in the MF Regulations.
3. The said period of relaxation of one year ended on March 12, 2019. It has been noticed that just prior to the expiry of the aforementioned cooling off period, vide letter dated February 12, 2019, Orix Corporation (hereinafter referred to as '**ORIX**'/'**Noticee**'), a public company established in 1964 in Japan, informed SEBI that it was holding indirect investments in the AMC of Canara Robeco Mutual Fund. At the same time, it was also indirectly holding investment in the AMC as well as the trustee company of IL&FS Mutual Fund in excess of 10% of the shareholding and/or voting rights of said companies.
4. Against the backdrop of the above facts, SEBI has conducted an examination with respect to the holding of ORIX in Canara Robeco Mutual Fund and IL&FS Mutual Fund in order to ascertain as to whether such holdings of ORIX are in violation of provisions of Regulation 7B of MF Regulations. It was observed that Canara Robeco Asset Management Company Ltd (hereinafter referred to as '**CRAMC**') is the Asset Management Company of Canara Robeco Mutual Fund. The said mutual fund is being sponsored by Canara Bank and Orix Corporation Europe N.V. (formerly known as Robeco Group

N.V.), a wholly owned subsidiary of ORIX. In the said arrangement, Canara Bank holds 51% and Orix Corporation Europe NV holds 49% of total shareholding of CRAMC. Therefore, it has been observed that due to ORIX's holding in its wholly owned subsidiary Orix Corporation Europe N.V., its indirect shareholding in CRAMC translates into 49% of total shareholding of CRAMC. At the same time, being the holding company of Orix Corporation Europe N.V., ORIX falls within the definition of 'associate' of the sponsor of CRAMC.

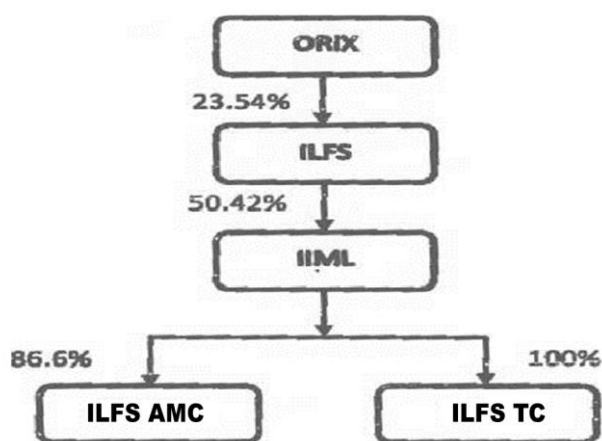
5. The above shareholding pattern of CRAMC can be represented pictorially as following:



6. It was also observed that, as on July 06, 2021, ORIX had representation on the Board of Directors of CRAMC as well as Canara Robeco Board of Trustees through its subsidiary Orix Corporation Europe NV. In CRAMC Board of Directors, there were two associate directors and in Canara Robeco Board of Trustees, there was one associate trustee who was representing Orix Corporation Europe NV.
7. At the same time, it is observed that IL&FS Infra Asset Management Limited (hereinafter referred to as '**ILFS AMC**') is the Asset Management Company

and IL&FS AMC Trustee Limited (hereinafter referred to as '**ILFS TC**') is the Trustee Company of IL&FS Mutual Fund. IL&FS Mutual Fund is sponsored by IL&FS Investment Managers Limited (hereinafter referred to as '**IIML**') which holds 86.60% in ILFS AMC and 100% in ILFS TC. A further examination of shareholding of IIML showed that Infrastructure Leasing and Financial Services Limited (hereinafter referred to as '**IL&FS**') holds 50.42% in IIML, and ORIX, in turn, was holding 23.54% shares of IL&FS at the relevant point of time. Therefore, it is observed that the indirect shareholding and voting interest of ORIX in ILFS AMC and ILFS TC was 10.22% and 11.8% of their respective total shareholding.

8. The above narrated shareholding pattern of ILFS AMC and ILFS TC can be represented pictorially as following:



9. In view of this, it has been observed that ORIX was concurrently holding 10% or more stake in two different Asset Management Companies which is in contravention of Regulation 7B of the MF Regulations. Despite the relaxation period having been provided while notifying the above amendment in the MF Regulations to ensure that the affected entities must undertake steps to become compliant with the newly inserted Regulation 7B of MF Regulations and the said relaxed period having ended on March 12, 2019, it was observed that the

Noticee still continued to hold more than 10% shares in entities related to two different Mutual Funds viz. CRAMC and ILFS AMC as well as ILFS TC.

10. In this regard, it is further observed from the material available on record that vide letter dated April 01, 2019, ORIX had informed that though it has not been successful in bringing its holdings in ILFS AMC and ILFS TC below the 10% threshold, however, it issued an undertaking dated March 19, 2019 to IL&FS wherein it has agreed that it shall not exercise its voting rights on any matters related to or in connection with IIML, in respect of such number of equity shares as held by ORIX that represented in excess of 19.8% of its holding of paid up equity share capital in IL&FS. ORIX also explained that by voluntarily giving up its voting rights on its shareholding in excess of 19.8% in ILFS, its net effective indirect interest in ILFS AMC and ILFS TC by virtue of this undertaking would get reduced to below 10% of the equity share capital and voting rights of ILFS AMC and ILFS TC. However, the above explanation and offer of ‘capping’ of shareholding interest and voting rights of ORIX in ILFS AMC and ILFS TC was not viewed as a step in the right direction of due compliance with the newly inserted provisions under the MF Regulations, as no such stipulation of capping of voting rights by way of undertaking was acknowledged as a method of compliance with the said Regulation 7B of MF Regulations. Further, Regulation 7B of MF Regulations does not provide for restriction on exercise of voting rights, but also restrict the percentage of shareholding itself for being in compliance with the true spirit of the above provision of MF Regulations.

11. At the same time, it was further observed that, even after giving an undertaking not to exercise its voting rights on shares in excess of 19.8% of its holding in the paid up equity share capital of IL&FS, the effective voting rights of ORIX still remained above the threshold (10%) of total voting rights. In this regard, it

was observed that ORIX was indirectly holding 11.87% paid up share capital of ILFS TC which meant that, the remaining 88.13% of the paid up share capital of ILFS TC was being held by its other shareholders. By virtue of the undertaking as noted above, ORIX's voting rights in ILFS TC was effectively capped to 9.99%. This implies that the balance 1.88% (11.87% - 9.99%) of the paid up share capital of ILFS TC will not be subjected to voting rights by anyone. Consequently, it was found that the effective votable paid up capital of ILFS TC got reduced to 98.14% (9.99% of ORIX + 88.13% of Other Shareholders) and consequently, the effective voting rights enjoyed by ORIX in ILFS TC got translated into 10.18% (9.99%/98.14%) on a proportionate basis, which was still above the thresholds specified under Regulation 7B of MF Regulations, being more than 10% of 98.14% of the total voting rights.

12. Based on the aforesaid findings of the examination, a Show Cause Notice (in short 'SCN') dated October 08, 2021 was issued to the *Noticee*. In the said SCN it has been alleged that, in the light of a combined reading of the definition of "associate" in Regulation 2(c) and the definition of "Control" in Regulation 2(g) of MF Regulations, ORIX qualifies to be called as an "associate" of Orix Corporation Europe NV, which is also the sponsor of Canara Robeco Mutual Fund. At the same time as pointed out above, ORIX was indirectly and effectively holding more than 10% of shareholding of ILFS AMC and ILFS TC. Thus, ORIX was also in control of the affairs of IIML. In view of the same, it has been alleged in the SCN that ORIX continues to indirectly hold more than 10% shares and voting rights in more than one AMC and Trustee company viz. ILFS AMC, ILFS TC and CRAMC respectively and is also having representation in the Board of Directors of CRAMC and Canara Robeco Board of Trustees. Thus, it has been alleged in the SCN that ORIX, both as an associate to the sponsor and also as a shareholder, indirectly holding more than

10% voting rights and shares in another AMC and the trustee company, continues to be not in compliance with the requirement of Regulations 7B(1) and 7B(2) of MF Regulations even after the lapse of the period of relaxation granted under the MF Regulations while introducing Regulation 7B in the said Regulations. Vide the above SCN, the *Noticee* has been called upon to show cause as to why suitable directions under the provisions of Sections 11(1), 11(4) and 11B(1), and Regulation 76 of MF Regulations, should not be issued and also why penalty under the provisions of Sections 11(4A) and 11B(2) read with Section 15HB of the SEBI Act should not be imposed upon it for the contravention of aforementioned provisions of MF Regulations.

13. I find that upon service of the aforesaid SCN vide email dated October 28, 2021, a request for inspection of all the relied upon documents and materials was submitted by the *Noticee*. The said request was acceded to and inspection of all the relevant documents in the matter was granted to the *Noticee* on November 16, 2021. Subsequently, vide letter dated December 21, 2021, the *Noticee* submitted a detailed reply in response to the allegations made in the SCN in the matter.

14. It is also noticed that subsequent to the receipt of the SCN, the *Noticee* has filed an application expressing its intent to settle the alleged contravention in terms of provisions of Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. However, the application filed by the *Noticee* seeking settlement of the instant proceedings has failed in achieving the desired result and after a few deliberations, vide an email dated March 09, 2022, the *Noticee* has requested for withdrawal of the application. Accordingly, the request of the *Noticee* was acceded to and it was allowed to withdraw its application seeking for settlement of the present SCN.

15. Subsequently, a personal hearing in the present matter was scheduled on October 13, 2022 which was attended by the Authorized Representatives (AR) of the *Noticee* and during the said hearing the AR primarily reiterated the written submissions made by the *Noticee* vide letter dated December 21, 2021. The *Noticee* also requested two weeks' time to tender its post-hearing submissions, which was duly acceded to. Subsequently, vide letter dated November 07, 2022, the *Noticee* tendered its post hearing submissions.
16. The submissions of the *Noticee*, that are relevant for the purpose of the instant proceedings, are captured in brief hereunder:
- 16.1. The *Noticee* has admitted to be holding 23.54% of the shares and voting rights in IL&FS, which itself holds 50.42% of the shares and voting rights in IIML. IIML holds 86.60% of shares and voting rights in ILFS AMC and 100% of shares and voting rights in ILFS TC. However, the *Noticee* has submitted that it directly holds no shares in ILFS AMC or ILFS TC and its indirectly held voting rights in ILFS AMC and ILFS TC are also nil. Its entitlement to 23.54% of the voting rights in IL&FS is a minority equity stake which does not entitle it to exercise any voting rights in IIML or ILFS AMC or ILFS TC, let alone voting rights in excess of 10%, which has been alleged in the SCN. Therefore, the *Noticee* has no control over the management or its decision making of IIML, ILFS TC or ILFS AMC. Further, vide an order dated October 01, 2018, the Hon'ble National Company Law Tribunal (in short "**NCLT**") has suspended the then Board of Directors of IL&FS, and appointed six Directors to take over IL&FS. Therefore, all Board members of IL&FS that the *Noticee* had elected were replaced and the *Noticee* does not have any control over the day-to-day management of IL&FS.

16.2. The *Noticee* has further contended that SEBI's approach of reckoning voting rights in case of indirect holdings, on a notional pro-rata basis, is wholly inconsistent with explicit provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations**"). In specific, the *Noticee* has drawn attention to Regulation 5(1) of SAST Regulations wherein a person becomes obligated to make open offer in case of indirect acquisition of shares or voting rights or control over an entity only if such acquisition would enable him to exercise or direct the exercise of voting rights in or control over a target company. In such case of indirect acquisition, SEBI itself has explicitly rejected the approach of computing voting rights on the basis of a notional pro-rata holding and the same is also set out in the FAQs issued by SEBI. There is no intelligible reason for SEBI to abandon that approach in the context of the MF Regulations and the expression 'indirectly holding voting rights' under Regulation 7B of MF Regulations should be read in that context only.

16.3. Keeping this in context, the *Noticee* has submitted that the SCN has wrongly alleged the *Noticee's* "indirect interest" as equivalent to "voting right". 'Voting right' is defined as the right of a member of a company to vote in any meeting of the company or by means of postal ballot. Since, the *Noticee* is not a "member" of either ILFS AMC or ILFS TC, it is wrong to hold to have any direct voting rights in either ILFS AMC or ILFS TC as per the Companies Act.

16.4. It has also submitted that it holds only 23.54% of the voting rights in IL&FS which in turn holds 50.26% of the voting rights in IIML that holds 86.60% in ILFS AMC and 100% in ILFS TC. The above 23.54% stake in IL&FS is not a significant voting stake for the *Noticee* to issue directives

even to IL&FS, let alone IIML, directing it to exercise any voting rights held by IIML in ILFS AMC and ILFS TC in a particular manner in respect to any specific issue. Therefore, the *Noticee* is incapable of controlling ILFS AMC or ILFS TC in any manner, and has 'nil' voting rights in either of these two companies associated with IL&FS Mutual Fund.

16.5. Coming to the provisions of Companies Act, 2013, the *Noticee* has attempted to draw attention to the fact that the threshold for assessment of significant influence under the said law is 20% of total shareholding of the company, which is not attracted in the present matter. Therefore, the *Noticee* was not an associate of the sponsor of IL&FS Mutual Fund.

16.6. Further, any mathematical calculation of an indirect shareholding in ILFS AMC or ILFS TC (through two layers of companies) with 'nil voting rights' is irrelevant for the purpose and rationale, in the light of which Regulation 7B(1) was introduced under MF Regulations. Such indirect shareholding interest is a mere economic, beneficial interest and cannot be held to be in violation of provisions of Regulation 7B(1) of MF Regulations.

16.7. The *Noticee* has strongly contended that the SCN has conflated "economic interest" or "beneficial interest" with "voting rights", which are two separate and distinct concepts. Regulation 7B of the MF Regulations makes no stipulation in relation to beneficial interest or economic interest and instead, specifically provides for regulating voting rights. The "equitable or beneficial interest" in an entity, which can be computed on a notional pro-rata basis, is not synonymous with the voting rights, which as a matter of law and cannot to be calculated on a pro-rata basis. Therefore, the *Noticee's* entitlement to vote in ILFS AMC and ILFS TC cannot be calculated in the manner in which it has been calculated in SCN viz.

23.54% of 50.42% of 86.60%. of total voting rights of ILFS AMC. In this regard, the *Noticee* has contended that its' voting rights, whether directly or indirectly, in ILFS AMC and ILFS TC are nothing but 'NIL'.

16.8. Continuing with this submission it has been argued that, as it holds no voting rights in ILFS AMC or ILFS TC, and it does not qualify as an associate of IL&FS Mutual Fund. Therefore, the *Noticee's* representation on the Board of CRAMC and CRTTC does not attract the provisions of Regulation 7B(1)(b) of the MF Regulations. Explaining this submission, the *Noticee* has stated that Regulation 7B(1)(b) of MF Regulations applies *inter-alia* where an associate of a sponsor of a mutual fund has Board representation on the AMC or TC of any other mutual fund. However, the *Noticee*, as an associate of the sponsor of Canara Robeco Mutual Fund, has no representation on the Board of an AMC or TC of IL&FS Mutual Fund i.e. in ILFS AMC or ILFS TC for Regulation 7B(1)(b) of MF Regulations to apply.

16.9. In addition to this, the *Noticee* has submitted that Regulation 7B(2)(b) of MF Regulations has no application insofar as the *Noticee's* representation on the Board of CRAMC and CRTTC is concerned. In this regard, the *Noticee* has sought attention to the opening words of Regulation 7B(2) which starts with "any shareholder" holding 10% or more of the shareholding or voting rights in the AMC or the TC of a mutual fund. The *Noticee* has contended that the words "any shareholder" are not qualified by the words "directly or indirectly" and therefore it ought to mean only to express a shareholder holding directly a minimum of 10% shares or voting rights in the AMC or the TC of a mutual fund. As the *Noticee* is not a shareholder at all in ILFS AMC or ILFS TC, Regulation 7B(2) of MF Regulation doesn't apply in the present matter and due to nil shareholding

in ILFS AMC and ILFS TC, the *Noticee's* representation on the Board of CR AMC and CR TC is irrelevant. Attempting to explain its submission, the *Noticee* has further stated that Regulation 7B(2)(b) of the MF Regulations applies where a shareholder, holding 10% or more than 10% of the voting rights in AMC or TC of a mutual fund, has representation on the Board of another AMC or TC. As the holding of the *Noticee* in ILFS AMC and ILFS TC were 'nil', the said provision has no applicability in the present matter.

16.10. While mentioning the rationale behind introduction of Regulation 7B in MF Regulations, the *Noticee* has contended that the said rationale doesn't apply to the present matter as firstly, it doesn't hold any voting rights either in ILFS AMC and ILFS TC nor does it have board representation in either ILFS AMC or ILFS TC. Secondly, the Hon'ble NCLT has appointed a new Board of Directors for IL&FS in October 2018 and all board members that the *Noticee* had elected were replaced and any hypothesis of influence being wielded by the *Noticee* have also come to an end. Therefore, the *Noticee* doesn't have any control over the day-to-day management of IL&FS, IIML, ILFS AMC or ILFS TC.

16.11. In an attempt to negate its previous correspondences with SEBI wherein it had accepted that it was not in compliance of the provisions of Regulation 7B of MF Regulations, the *Noticee* has submitted that the earlier correspondence and the interpretation of law taken by the parties in the said correspondence cannot have the effect of an estoppel against the right interpretation of law hence, correspondence addressed by the *Noticee* ought not to be construed as an admission of the *Noticee* having more than 10% voting rights in ILFS AMC or ILFS TC.

16.12.Finally, the *Noticee* has contended that it was under bonafide belief that the approach of reducing its voting rights in IL&FS basis the undertaking provided by it to SEBI, was agreeable to SEBI as no objection or negative inference was made by SEBI when such approach was suggested by the *Noticee*.

16.13.In the end, without prejudice to the contentions above, the *Noticee* has contended that the non-compliance was not deliberate and was due to circumstances related to IL&FS related issues. Due to this, neither IL&FS could disinvest its stake in IIML, nor the *Noticee* could reduce its own stake by finding a buyer to its stake.

17.Subsequently, vide a letter dated March 10, 2023, the *Noticee* has intimated that during the pendency of the proceeding, it has concluded sale of 1,50,00,000 shares of IL&FS to one entity namely 24R Advisory Services Pvt. Ltd. by way of a share purchase agreement dated September 22, 2022 and the sale has concluded on December 19, 2022 and the same has been taken on record by IL&FS Board of Directors in its meeting dated December 22, 2022. By virtue of this sale of shares, the *Noticee* has stated that it has become compliant with the provisions of Regulation 7B of MF Regulations.

CONSIDERATION OF ISSUES AND SUBMISSIONS

18.I have carefully considered the allegations made against the *Noticee* in the SCN, its replies and submissions made before me during personal hearing and the materials available on record. Before proceeding to deal with the allegations as recorded above against the *Noticee*, I find it appropriate to mention in brief the background in which MF Regulations were amended and Regulation 7B was inserted in the said Regulations.

19. I find from the agenda papers of meeting of Board of SEBI dated December 28, 2017 that it was felt that the MF Regulations were silent with regard to a sponsor of a mutual fund, also having a stake or representation in the board of AMC/Trustee Companies of other mutual funds operating in India, which could give rise to situation wherein there could arise a conflict of interest in the decision taken by such sponsor with respect to the two mutual funds, in which it is holding interest concurrently.
20. It has been noted that whenever a sponsor files an application for setting up of mutual fund with SEBI, it was generally noticed that the said sponsor was already running a mutual fund or had control over an AMC of any other mutual fund. In such kind of a situation, an inherent conflict of interest may arise in case a sponsor acts as a sponsor for more than one AMC, which may compete with each other in the domestic as well as international markets. Further, another possibility was also envisaged that a mutual fund sponsor may have representation, with or without having any shareholding, on the board of AMC/Trustee Company (or board of Trustees) of other mutual funds and thus may exercise influence over such AMC/Trustee Company which could also lead to another situation of conflict of interest. With a view to avoiding such situations, it was felt that such potential conflict of interest may either lead to economic or business decisions of one or both AMCs or Trustees of such mutual funds which may not be in the best interest of the investors of either the mutual fund, if the AMC is listed, or in the best interest of the investors of schemes launched by such mutual funds having common sponsors (or entities holding large stake) with implied conflict of interest. At the same time, these kind of situations may lead to such sponsor or its associate, coming into possession of confidential business information or development in relation to one mutual fund which it may use for its own competitive advantage or for the

competitive advantage of another mutual fund depending upon the personal interest or strategy of such a sponsor. It was also felt that, as a shareholder, such sponsor entity or its associate, may influence the strategic initiatives in one of the two mutual funds which require shareholder's approval e.g. allotment of ESOP, change in Memorandum of Association and Article of Association etc.

21. Keeping all these kind of scenarios or possible circumstances of misuse of position by a sponsor of a mutual fund or its associate or its group company that may prejudice the interest of another mutual fund which will have the presence of the same sponsor, or its associate or group company as shareholder, it was felt necessary to restrict a sponsor of a mutual fund, its associate and/or its group company, and its AMC through the schemes, collectively or individually, to hold not more than 10% stake in the AMC or trustee company of another mutual fund or to have representation in the board of such AMCs/Trustee Companies of other mutual funds. For the same reason, it was also found not desirable that a shareholder holding 10% more stake in an AMC/Trustee Company of a mutual fund, to directly or indirectly have 10% or more stake, or representation in the board of AMCs/Trustee Companies of other mutual funds. Removal of such conflict of interest was deemed necessary to prevent the possible adverse impact of any conflict of interest on the functioning and performance of not only specific mutual funds wherein such shareholder is holding large stakes, but also on the functioning of mutual fund industry as a whole.

22. Keeping in line with the decision of the Board of SEBI in its meeting dated December 16, 2017, Regulation 7B was introduced in MF Regulations w.e.f. March 13, 2018 to prevent the kind of conflict of interest as illustrated/anticipated above. Further, considering the fact that a new provision was inserted in the MF Regulations whereby the market intermediaries have

been asked to ensure its due compliance with the said provision, it was thought that, in order to avoid any kind of hardship that may be caused to the existing entities holding stakes/voting rights/interest of Board representation in more than one AMCs or TCs, in ensuring the compliance with the newly inserted provision, a one-year moratorium was granted so that the exiting entities, which are not in compliance with or are in breach of the aforesaid newly inserted Regulations can take necessary steps so as to ensure to be in due compliance with the provisions of the said Regulation 7B of MF Regulations, within the period of moratorium that ended on March 12, 2019.

23. Now, before moving ahead, I note down certain undisputed facts in the present matter. First of all, I find it necessary to reiterate the shareholding structures of Canara Robeco Mutual Fund (CRMF) and IL&FS Mutual Fund, which have been numerically and pictorially depicted in the initial paragraphs of the present order and the same have not been disputed by the *Noticee* in any of its submissions.
24. Starting with Canara Robeco Mutual Fund, I find that the said Mutual Fund was registered with SEBI on October 19, 1993 vide registration no MF/004/93/4. The said fund is being sponsored by Canara Bank and Orix Corporation Europe N.V. (formerly known as Robeco Group N.V.), a wholly owned subsidiary of ORIX. In the said arrangement, Canara Bank holds 51% and Orix Corporation Europe NV holds 49% of total shareholding of CRAMC, the AMC of the aforementioned Mutual Fund.
25. It was also observed that, as on July 06, 2021, ORIX had representations on the Board of CRAMC as well as Canara Robeco Board of Trustees through its subsidiary Orix Corporation Europe NV. In CRAMC Board, there were two associate directors and in Canara Robeco Board of Trustees, there was one

associate trustee, who were representing the interests of Orix Corporation Europe NV.

26. Now moving on to IL&FS Mutual Fund, I find that the said Mutual Fund was registered with SEBI on February 01, 2013, vide registration no MF/072/13/02. IL&FS Mutual Fund is sponsored by IL&FS Investment Managers Limited (hereinafter referred to as 'IIML'), which holds 86.60% in ILFS AMC, the Asset Management Company of the aforementioned mutual fund, and holds 100% in ILFS TC, the Trustee Company of IL&FS Mutual Fund. A further examination of shareholding of IIML, the sponsor of IL&FS Mutual Fund showed that IL&FS holds 50.42% in IIML. At the same time, ORIX holds 23.54% shares of IL&FS. In view of the aforesaid shareholding structures, it has been alleged that the indirect shareholding and voting interest of ORIX in ILFS AMC and ILFS TC is effectively at 10.22% and 11.8% of their respective total shareholding.

27. Keeping these facts in view, two-fold allegations have been made against the *Noticee* in the present matter:

27.1. It has been alleged in the SCN that ORIX qualifies as an "associate" of IIML and Orix Corporation Europe NV, who are the sponsors of IL&FS Mutual Fund and Canara Rebeco Mutual Fund, respectively. In view of the same, it is alleged that ORIX, being already an 'associate' of sponsor of a mutual fund (CRMF), also indirectly holds more than 10% voting rights in the asset management company and the trustee company of another mutual fund (ILFS AMC and ILFC TC). By doing so, the *Noticee* has violated the provisions of Regulation 7B(1) of MF Regulations.

27.2. Additionally, it has also been alleged that ORIX, as a shareholder also indirectly holds 10% or more of the voting rights in the asset

management company and the trustee company of more than one mutual fund. By doing so, the *Noticee* has violated the provisions of Regulation 7B(2) of MF Regulations.

28. Now, before proceeding with the issues under consideration in the instant proceedings, it is apposite to reproduce the provision alleged to have been contravened by the *Noticee* and the first provision that has been alleged to have been violated by the *Noticee* is produced herein as below:

7B. (1) *No sponsor of a mutual fund, its associate or group company including the asset management company of the fund, through the schemes of the mutual fund or otherwise, individually or collectively, directly or indirectly, have –*

(a) 10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or

(b) representation on the board of the asset management company or the trustee company of any other mutual fund.

The above provision in normal parlance provides that an entity, which is the sponsor of a mutual fund, ‘associate’ or ‘group company’ of a sponsor of a mutual fund including the asset management company of the fund, is not allowed to hold 10% or more of the shareholding or voting rights in the AMC or the trustee company of any other mutual fund. For the purpose of calculation of the threshold of 10% of total shareholding or voting rights in AMC of another mutual fund, shares held directly or indirectly or even through the schemes of the first mutual fund or otherwise would be taken into consideration.

29. As the provision specifically restricts the holding through the associate company also, it becomes imperative to talk about the term ‘associate’ as has been defined under Regulation 2(1)(c) of MF Regulations:

(c) “associate” includes a person,—

- (i) *who directly or indirectly, by himself, or in combination with relatives, exercises control over the asset management company or the trustee or the sponsor, as the case may be, or*
- (ii) *in respect of whom the asset management company or the trustee or the sponsor, directly or indirectly, by itself, or in combination with other persons exercises a control, or*
- (iii) *whose director except an independent director, officer or employee is a director, officer or employee of the asset management company;*

Thus, for the purpose of the present matter, any entity, which, directly or indirectly, by itself, or in combination with relatives, exercises **control** over an AMC or over the trustee or the sponsor of a mutual fund, has been defined as the associate of such AMC or trustee or sponsor of a mutual fund.

30. The term ‘control’ has been defined under Regulation 2(1)(g) of MF Regulations in following manner:

(g) “control” means,—

- (i) *in the case of a company any person, either individually or together with persons acting in concert, who directly or indirectly own, control or hold shares carrying not less than 10% of the voting rights of such company; or*
- (ii) *as between two companies, if the same person, either individually or together with persons acting in concert, directly or indirectly, own, control or hold shares carrying not less than 10% of the voting rights of each of the two companies; or*
- (iii) *majority of the directors of any company who are in a position to exercise control over the asset management company;*

Thus, the word ‘control’ has been given a wider construction under MF Regulations and it has been stated that any entity, which hold 10% or more shares or voting rights in a company, can be held to be exercising control over the affairs of the said company.

31. In this context, I find that the *Noticee* was holding all the shares of Orix Corporation Europe NV, the sponsor entity of Canara Robeco Mutual Fund. It is not in dispute that Orix Corporation Europe NV holds 49% of total shares of Canara Robeco AMC. Therefore, I find that, by virtue of holding 100% shares of Orix Corporation Europe NV, the *Noticee* was not only having complete control over the affairs of Orix Corporation Europe NV, but in law as well as in practice, the *Noticee* was certainly (indirectly) holding 49% of shares and voting rights of CRAMC. Therefore, in view of the definition of control, as reproduced above, I find that the *Noticee* was fit enough to be fulfilling the condition/s of an entity exercising control over Orix Corporation Europe NV, the sponsor of Canara Robeco Mutual Fund, as well as CRAMC, the AMC of Canara Robeco Mutual Fund. Moving forward, due to its control over Orix Corporation Europe NV as well as over CRAMC, the *Noticee* falls within the definition of associate of both Orix Corporation Europe NV and CRAMC.

32. In the light of all the aforementioned facts and application on the provisions of law on the said facts, I find that the *Noticee*, being a holding company of a sponsor of a mutual fund (Orix Corporation Europe NV), that was holding 49 % stake in the AMC of the said mutual fund i.e. CRAMC, was prohibited from holding shares or voting rights beyond 10% of total shareholding or voting rights in the AMC or trustee company of another mutual fund, be it direct or indirect or even through the schemes of the mutual fund or otherwise.

33. Now moving on to examining the fact that the *Noticee*, being the holding company of a sponsor of a fund, was simultaneously having/holding 10 % or

more the shareholding or voting rights in the AMC or the trustee company of another mutual fund. In this respect, while examining the shareholding of the *Noticee* in respect to entities connected with IL&FS Mutual Fund, it is observed that the *Noticee* was holding 23.52% of total shares of IL&FS which itself holds 50.42% of total shareholding of IIML, the sponsor of IL&FS Mutual Fund. IIML, in turn, was holding 86.60% of total shareholding of ILFS AMC, the AMC of IL&FS Mutual Fund and 100% of total shareholding of ILFS TC, the trustee of IL&FS Mutual Fund.

34. As the SCN states that the *Noticee* was holding 23.54% of total shareholding of IL&FS and IL&FS was holding 50.42% of total shareholding of IIML, a calculation of proportionate holding of the *Noticee* in the total shareholding of IIML was made on the basis of following formula:

Proportionate shareholding of the *Noticee* in IIML = shareholding in IL&FS X shareholding of IL&FS in IIML / 100

Thus, it was determined that the *Noticee*, through IL&FS, was effectively and proportionately holding $23.54 \times 50.42 / 100 = 11.8688\%$ of total shareholding in IIML (11.87% of total shareholding after rounding off the shareholding of the *Noticee* in IIML to last two digit).

35. Coming back to the definition of 'control' under Regulation 2(1)(g) of MF Regulations, as reproduced in previous paragraphs, any entity holding 10% or more shares of another entity, directly or indirectly, is deemed to be in control of such another entity. Following the said definition, it is viewed that the *Noticee* satisfied the ingredient to be categorised as being in control of the affairs of IIML by virtue of its proportionate holding 11.87% shares of IIML, as per the calculation made in the previous paragraph. Further, by virtue of its control

over IIML, the *Noticee* qualified at the relevant point of time to be held as associate of IIML i.e an entity that was the sponsor of IL&FS Mutual Fund.

36. Now moving on to ILFS AMC and ILFS TC, it is observed that IIML was holding 86.60% of total shareholding of ILFS AMC and 100% shareholding of ILFS TC. Therefore, a calculation of proportionate holding of the *Noticee* in the total shareholding of ILFS AMC and ILFS TC was made on the basis of the following formula, while keeping in mind its proportionate shareholding in IIML.

Proportionate shareholding of the *Noticee* in ILFS AMC = proportionate shareholding in IIML x shareholding of IIML in ILFS AMC/100

Thus the *Noticee* was effectively holding, on a proportionate basis, $11.87 \times 86.60/100 = 10.27942$ of total shareholding of ILFS AMC (10.28% of total shareholding of ILFS AMC after rounding off to last two digits).

Similarly, the proportionate shareholding of the *Noticee* in ILFS TC was calculated to be $11.87 \times 100/100 = 11.87\%$ of total shareholding of ILFS TC.

Thus, the *Noticee* was indirectly and effectively holding 10.28% of total shareholding of ILFS AMC and 11.87% of total shareholding of ILFS TC on a proportionate basis, in terms of the aforementioned calculation.

37. Coming back to the definitions of 'control' and 'associate' as defined under Regulations 2(1)(g) and 2(1)(c) of MF Regulations respectively, I find that in terms of the aforesaid definitions, the *Noticee* can be stated to be in control of both ILFS AMC and ILFS TC based on the proportionate shareholding it was having in ILFS AMC and ILFS TC, as per the afore-stated computation of shareholding. Consequently, by virtue of its being in position of exercising control of these two entities of IL&FS Mutual Fund which is tested in terms of the definition of 'control' provided under the provision of the MF Regulations,

it leads to an inevitable fact that the *Noticee* is deemed to be an associate of ILFS AMC and ILFS TC.

38. Under the circumstances, I find that the *Noticee* has qualified to be held as an associate of not only the sponsor of Canara Robeco Mutual Fund and CRAMC but also of IIML (the sponsor of IL&FS Mutual Fund), ILFS AMC (the AMC of IL&FS Mutual Fund) and ILFS TC (the trustee company of IL&FS Mutual Fund). Therefore, considering any one of these two mutual funds as *Noticee's* first mutual fund, the holding of the *Noticee* in the AMCs or trustee companies of other mutual fund can be *suo moto* termed to be in violation of provisions of Regulation 7B(1) of MF Regulations in the following manner:

38.1. The *Noticee*, being the associate of sponsor and AMC of Canara Robeco Mutual Fund, was simultaneously holding 10% or more stake in ILFS AMC and ILFS TC even beyond March 12, 2019 (the end of period of relaxation granted under the MF Regulations), which was in violation of Regulation 7B(1)(a) of MF Regulations.

38.2. Conversely speaking also, the *Noticee*, being the associate of sponsor, AMC and Trustee of IL&FS Mutual Fund, was concurrently holding 10% or more stake in CRAMC even beyond March 12, 2019, which was in violation of Regulation 7B(1)(a) of MF Regulations.

38.3. In addition to the above, the *Noticee*, was also having its representation on the board of the AMC as well as on the trustee entity of Canara Robeco Mutual Fund and the same facts are not disputed by the *Noticee*. Therefore, I have no hesitation in holding that, being the associate of sponsor, of the AMC and of the Trustee of IL&FS Mutual Fund, as held above in terms of its proportionate and effective shareholding in such AMC and Trustee of IL&FS Mutual Fund, the *Noticee* has also violated the provisions of

Regulation 7B(1)(b) of MF Regulations by having representation on the Board of another AMC, viz: CRAMC as well as Canara Robeco Board of Trustees beyond March 12, 2019.

The *Noticee* was required to dilute its shareholding and bring the same below 10% of total shareholding, in entities connected with either Canara Robeco Mutual Fund or with IL&FS Mutual Fund as on March 12, 2019, the date when the moratorium granted for due compliance with Regulation 7B had ended. However, as found out above, the *Noticee* continued to remain non-complaint or failed to ensure reduction of its holding to bring it within the limit prescribed under the provisions of Regulation 7B(1), as enumerated above, and thereby has violated the aforementioned provision of law.

39. In this regard, the *Noticee* has advanced a host of arguments firstly, regarding its control over IIML and secondly, regarding the method of calculation of proportionate shareholding that has been adopted in the SCN to calculate its indirect holding in ILFS AMC and ILFS TC. I will now deal with these two submissions in that order.

40. First of all, the *Noticee* has contended that it directly holds 'nil' shares in ILFS AMC or ILFS TC and its indirectly held voting rights in ILFS AMC and ILFS TC are also nil, as its entitlement to 23.54% of the voting rights in IL&FS is a minority equity stake which does not entitle it to exercise of any voting rights in IIML or ILFS AMC or ILFS TC. Therefore, the *Noticee* has no control over the management or its decision making at IIML, ILFS TC or ILFS AMC. In support of its contention of having no control over the decision making at IIML, ILFS TC or ILFS AMC, the *Noticee* has cited an order dated October 01, 2018 of the Hon'ble NCLT which had suspended the then Board of Directors of IL&FS, and appointed six external Directors to take over IL&FS. Stating

that all the Board members of IL&FS as of now are appointees of NCLT, the *Noticee* does not have any control over the day-to-day management of IL&FS.

41. Having considered the above submission, I have to state that a bare perusal of the language of Regulation 7B shows that it restricts not only the voting rights but also shareholding of an associate of a sponsor of a mutual fund from holding 10% or more shareholding or voting rights in AMC or trustee company of another mutual fund, directly or indirectly. The language of the provision under Regulation 7B(1)(a) in unambiguous terms restricts the holding of shares or voting rights and the above condition is not qualified by any actual or adverse exercise of its. There is no dispute to the fact that holding of the *Noticee* was beyond the prescribed threshold percentage of shareholding as has been determined above by following a very objective formula, through which the indirect but effective percentage of proportionate shareholding by the *Noticee* has been computed. Therefore, the contention of the *Noticee* that the *Noticee* did not directly hold any share of ILFS AMC or ILFS TC is not tenable, as its indirect way of holding of more than 10% of total shareholding the aforementioned two entities was also prohibited under the provisions of Regulation 7B(1) of MF Regulations. Further, the 'conflict of interest', which could arise due to even indirect shareholding of an entity, was well envisaged by SEBI prior to bringing in the amendment leading to insertion of Regulation 7B in MF Regulations. Keeping that in mind, an entity already holding shares of a sponsor or its associate or an AMC or trustee of a mutual fund was strictly prohibited from holding the shares, directly or indirectly, of the sponsor, or its associates or in the AMC or Trustee of another mutual fund beyond the 10% threshold of total shareholding of these entities. Therefore, the submission made by the *Noticee* that its indirect shareholding of more than 10% of total shares of ILFS AMC and ILFS TC is inconsequential as it doesn't hold control

over IIML, holds no ground and doesn't stand the test of law in the light of the fact that Regulation 7B(1), in no ambiguous terms and quite explicitly, prohibits it from holding more than 10% shares in AMC or trustee of another mutual fund, be it directly or indirectly.

42. The *Noticee* has further contended that SEBI's approach of reckoning voting rights in case of indirect holdings, on a notional pro-rata basis, is wholly inconsistent with explicit provisions of SAST Regulations. In specific, the *Noticee* has drawn attention to Regulation 5(1) of SAST Regulations wherein a person becomes obligated to make open offer in case of indirect acquisition of shares or voting rights or control over an entity, only if such acquisition would enable him to exercise or direct the exercise of voting rights in or control over a target company. In such case of indirect acquisition, SEBI itself has explicitly rejected the approach of computing voting rights on the basis of a notional pro-rata holding and the same is also set out in the FAQs regarding SAST Regulations, issued by SEBI.

43. In response to the above submission, I have to make this observation that the *Noticee* is making an attempt of fusing two different regulations into one and then contending that the approach taken under one regulation is wrong. Such an interpretation of MF Regulations, as has been tried by the *Noticee* with respect to voting rights, is also not tenable, as the two Regulations are legislated to regulate two separate aspects of securities market and the term 'control' is differently defined under the aforementioned two Regulations i.e. MF Regulations and SAST Regulations. It is further emphasised here that the concept of purposive interpretation of law is based on the idea that one law should be interpreted in the light of the object it tries to achieve. Therefore, the two different laws can take different approach if they serve different purposes.

44. In this context, I note that the whole objective of SAST Regulations is to identify the person exercising actual control over a company and to provide a choice to the shareholders to stay or exit from the company in case of change of control. On the other hand, the purpose behind MF Regulations is to protect the interest of retail public investors/unit holders who invest their monies in mutual funds. For the same reason, the threshold of 'control' has been kept lower in MF Regulations than SAST Regulations and it has been made compulsory under Regulation 22(e) of MF Regulations for a mutual fund to provide exit option to the investors of its schemes as soon as one entity acquires shares beyond 10% of total shareholding of AMC of such mutual fund. Moving on to Regulation 7B of MF Regulations, the said regulation was incorporated to avoid any conflict of interest arising out of significant stakeholding by an entity in sponsors, AMCs or trustees of two or more mutual funds at the same time. In this context, the provisions under the MF Regulations provide that 10% of total shareholding of an AMC or trustee of two different mutual funds, is significant enough to lead to a strong possibility of conflict of interest, which may affect the decision making process at the two respective as well as competing mutual funds. Therefore, I find the attempt on the part of the *Notices* to insist that only one calculation method should be employed irrespective of the nature, purpose and context of a particular provision of law inserted in a specific Regulations, is a futile attempt to mislead the proceedings as there is no law or provision existing in securities law which puts any restriction on using two different methods of calculations of shareholding of an entity keeping the legislative intent behind a particular regulatory provision. On the contrary, it is settled position that the provisions of law ought to be interpreted depending upon the objective that a specific law is trying to achieve.

45. Moving on to the next submission of the *Noticee*, it has been contended that SEBI has wrongly taken the *Noticee*'s "indirect interest" as equivalent to "voting right". However, 'Voting right' is defined as the right of a member of a company to vote in any meeting of the company or by means of postal ballot. As the *Noticee* is not a "member" of either ILFS AMC or ILFS TC, it does not have any direct voting rights in either ILFS AMC or ILFS TC.
46. Having considered the same, I find this submission of the *Noticee* also falls on a very weak ground in the light of the fact that the regulation 7B invariably uses the term 'shareholding or voting rights' at every place of the MF Regulations. Therefore, it is not necessary for the *Noticee* to hold 'voting rights' as mere direct or indirect shareholding is sufficient enough to invoke the applicability of Regulation 7B in the present matter. As I have already established that the *Noticee* was holding more than 10% shares of two different AMCs and sponsor entities of two different mutual funds as well as the trustee company of IL&FS Mutual Fund, Regulation 7B was *ipso facto* applicable to it and it was required to comply with the said provision of law within one year of its coming into force.
47. In the end, the *Noticee* has submitted that it holds only 23.54% of the voting rights in IL&FS which in turn holds 50.26% of the voting rights in IIML that in turn, holds 86.60% in ILFS AMC and 100% in ILFS TC. The above 23.54% stake in IL&FS is not a significant voting stake for the *Noticee* to issue directives even to IL&FS, let alone IIML and it is also not clear as to how any voting rights held by IIML in ILFS AMC and ILFS TC could be exercised. Therefore, the *Noticee* is incapable of controlling ILFS AMC or ILFS TC in any manner, and has 'nil' voting rights in either of these two companies associated with IL&FS mutual fund.
48. The *Noticee* appears to be confused with the term 'control', as per the definition provided under SAST Regulations, with 'conflict of interest'. I find it important

to observe here that ‘control’ is a uni-directional concept and is a concept between two entities or two group of entities wherein one (group of) entity(ies) is shown to be holding control over another entity. For example, if entity A is in control of entities B and C, then, firstly, it doesn’t mean that entity B or C has control over entity A and, secondly, entity A’s control over entity B will have no impact or connection with entity A’s control over entity C, as far as only the control aspect is concerned, unless entities B and C are internally connected through shareholding or in any other way.

49. As opposed to this, the concept of ‘conflict of interest’ is a multidirectional, multiparty concept wherein one entity may have interest in a number of entities and its interest in any one of these entities may affect its decision making in any other entity. In the present matter, the *Noticee* might not have complete control over decision making process at IL&FS Mutual Fund in a way that SAST Regulations interprets, but using its position in IL&FS Mutual Fund, the *Noticee* may firstly gain access to certain information which may be used for taking a decision in Canara Robeco Mutual Fund, to protect its interest. For gaining access to vital information about the IL&FS Mutual Fund, the *Noticee* is not necessarily required to be in ‘driving seat’ at the decision making entities of IL&FS Mutual fund. It is sufficient that the *Noticee*, by virtue of its indirect stake holding and influence is in such a position to have access to such information, about the IL&FS Mutual Fund. In the present matter, given the fact that any of the entities of IL&FS is not listed on stock exchange, the *Noticee*, being holder of 23.54% shares of IL&FS, was in a position to have access to information related to IIML, ILFS AMC or ILFS TC, by virtue of its holding significant number of shares of IL&FS and being its second largest shareholder. Therefore, the attempt by the *Noticee* to argue that, as it is not in the ‘driving seat’ of IL&FS and it cannot affect the decision making of IL&FS

Mutual Fund, hence it cannot have a 'conflict of interest'. I find such an interpretation and argument made by the *Noticee* is not acceptable since conflict of interest may work in the other way too i.e. the *Noticee* affecting the decision making at Canara Robeco Mutual Fund based on the information it has in its possession about IL&FS Mutual Fund, as shown in the above example.

50. The *Noticee* has also drawn attention to the provisions of Companies Act, 2013 wherein the threshold for assessment of 'significant influence' is prescribed at 20% of total shareholding of the company, which is not attracted in the present matter. Stating this, the *Noticee* has contended that it was not an associate of the sponsor of IL&FS Mutual Fund. I find that a similar contention of the *Noticee* of using provision of a completely unconnected law has already been dealt with above while rejecting the same and therefore the aforesaid contention of the *Noticee* taking shelter under the definition of 'significant influence', as defined under Companies Act 2013, does not find any merit being an argument advanced out of context and unconnected with the issue at hand to be addressed under the MF Regulations. I find it necessary to reiterate that the requirement of a provision of law is based on the objective which that particular law is attempting to achieve. In this context, first of all, the definition of Companies Act, 2013 can only be referred to in case when the definition is not available in a specific act or regulations. Given the fact that certain terms have already been specifically defined under MF Regulations, under the circumstances, it is not permissible for the *Noticee* to seek reference to and reliance upon the definition of those very terms under the Companies Act, 2013 which have been very much dealt with under the specific regulations related to mutual funds. At the same time, I find that the word 'associate' has been defined under Companies Act, 2013 for twin purposes, viz:- for recognition of Related Party Transaction as well as for the purpose of

consolidation of financial statement of the company. On the other hand, the context in which the term 'associate' has been defined under MF Regulations is to prevent conflict of interest. Given the fact that the mutual funds have been designed specifically for the investment needs of retail investors, the provisions of MF Regulations have been made more stringent than other regulations framed by SEBI. Therefore, it was felt necessary to put the mutual funds and their connected entities through stringent requirements of law so as to prevent misuse of public funds, to ensure better discipline and governance in sponsors, AMCs and trustees of mutual funds so as to protect retail public investors.

51. It is further noted that the *Noticee* has also submitted that any mathematical calculation of an indirect shareholding in ILFS AMC or ILFS TC (through two layers of companies) with 'nil voting rights' is irrelevant as such indirect shareholding interest is mere economic, beneficial interest. The above submission looks impressive on its face, however, the same is devoid of any merit when tested upon the touchstone of the regulatory objectives enshrined in the MF Regulations. The above submission of the *Noticee* is missing the precise regulatory intent behind Regulation 7B, which is to prevent 'conflict of interest' in all forms-be it economic or beneficial. The idea behind Regulation 7B is that an entity, directly or indirectly, holding substantial stake in sponsors, or AMCs or Trustees of two mutual funds, at the same time, is susceptible to act to protect its economic or beneficial interest, which may sometimes or even always, lead to taking of decisions which may not be in the best possible interest of retail investors who have invested through the schemes of both the mutual funds, in the sponsors or AMCs or trustees of which the entity is holding stakes or any interest simultaneously.

52. The *Noticee* has strongly contended that the SCN has conflated "economic interest" or "beneficial interest" with "voting rights", which are two separate

and distinct concepts and Regulation 7B of the MF Regulations makes no stipulation in relation to beneficial interest or economic interest. The "equitable or beneficial interest" in an entity, which can be computed on a notional pro-rata basis, is not synonymous with the voting rights, which as a matter of law cannot be calculated on a pro-rata basis. Therefore, the *Noticee's* entitlement to vote in ILFS AMC and ILFS TC cannot be calculated in the manner in which it has been calculated in SCN viz. 23.54% of 50.42% of 86.60%. of total voting rights in ILFS AMC while in reality, its voting rights, whether directly or indirectly, in ILFS AMC and ILFS TC are simply 'nil'. As it holds no actual voting rights in ILFS AMC or ILFS TC, the *Noticee* has contended that it does not qualify as an associate of IL&FS Mutual Fund and its representation on the Board of CRAMC and CRTTC does not attract the provisions of Regulation 7B(l)(b) of the MF Regulations.

53. To respond to the aforesaid contention of the *Noticee*, I think such a submission of the *Noticee* gets negated in light of the fact that SEBI has not only prohibited an entity from having voting rights but also holding shares of an AMC or trustee company, being the associate of sponsor of another mutual fund, either directly or indirectly. In fact, the provision in very clear terms has envisaged a situation wherein such entity already holding stake in the sponsor or trustee of AMC of one mutual fund may try to hold interest in sponsor or trustee or AMC of another mutual fund indirectly or surreptitiously, through a scheme of the first mutual fund in which it is already having stakes. Thus, holding interest in sponsor or trustee or AMC of such other mutual funds even through in such a far-fetched indirect manner also falls within the rigour of the prohibition prescribed under the said 7B Regulation. Further, given the fact that the objective of insertion of Regulation 7B in MF Regulations was to prevent any form of conflict of interest in the management of the affairs of sponsor or

trustee or AMC of the mutual fund, it is not an aberration to interpret 'shareholding or voting rights' as an interest, be it economic, beneficial or any other kind, which when simultaneously held in sponsors or trustees or AMCs of two mutual funds above a critical threshold level, say 10% of the total shareholding in such sponsors or trustees or AMCs of those two mutual funds, as prescribed under Regulation 7B of MF Regulations, may affect the decision making in managing the funds of unitholders of both such mutual funds. Before concluding, it is felt necessary to reiterate that through the newly inserted provision i.e. Regulation 7B in MF Regulations, it has been prohibited that any sponsor of a mutual fund, its associate or group company including the AMC will not directly or indirectly hold 10% or more of the shareholding or voting rights in any other AMC or the trustee company of any other mutual fund. The said Regulation further prohibits having any representation on the board of the AMC or the trustee company of the other mutual fund. The aforesaid prohibitions are not qualified by any pre-condition of any nature. I have already discussed the objectives behind the insertion of new provision and therefore, saddling the said inserted provision with any limitations or exceptions viz; holding indirectly, not exercising actual control, not being in position of exercising control, not having acted adversely to the interest of investors etc. as is being propounded by the *Noticee*, are of no significance. The provision simplicitor strictly provides for certain compliances without providing for any exception and therefore, in the absence of any ambiguity, reading too many exceptions would not only be incorrect, but would also result in defeating the very purpose of incorporation of the provision. Under the circumstances, I find not merit in the above submissions of the *Noticee* as these submissions don't hold water in light of the aforementioned observations about

the true meaning and import and also the rationale behind SEBI's decision to insert such a provision in the MF Regulations.

54. Now moving on to the allegation of violation of Regulation 7B(2) of MF Regulations, I find that the said provision of law reads as below:

(2) Any shareholder holding 10% or more of the share-holding or voting rights in the asset management company or the trustee company of a mutual fund, shall not have, directly or indirectly, -

(a) 10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or

(b) representation on the board of the asset management company or the trustee company of any other mutual fund.

Thus, the aforesaid provision provides that any entity, which is holding 10% or more of shareholding or voting rights in the AMC or the trustee company of a mutual fund is not allowed to have 10% or more of the shareholding or voting rights in the asset management company or the trustee company of another mutual fund, be it directly or indirectly.

55. In the context of the allegation of violation of this provision of MF Regulations as per the SCN, the *Noticee* has contended that the opening words of Regulation 7B(2) of MF Regulations, which are "any shareholder" holding 10% or more of the share-holding or voting rights in the AMC or the TC of a mutual fund, are not qualified by the words "directly or indirectly" and hence it, can only denote to a shareholder who is directly holding a minimum of 10% shares or voting rights in the AMC or the TC of a mutual fund. Holding on to this interpretation, the *Noticee* has stated that since, it is not a shareholder at all in ILFS AMC or ILFS TC, Regulation 7B(2) of MF Regulation doesn't apply in the present matter.

56. The aforementioned submission of the *Noticee*, though appears to be attractive at a first glance, would however, upon its acceptance, defeat the very objective behind incorporation of Regulation 7B(2) of MF Regulations. If such a justification of the *Noticee* is accepted, this would lead to creation of a loophole, wherein an entity, by holding shares or voting rights beyond the threshold provided under Regulation 7B(2) of MF Regulations, would be in a position also to hold indirectly more than 10% shares or voting rights in AMC or trustee of another mutual fund or would be allowed to have representation on the board of AMC or trustee of such other mutual fund while already having shares or voting rights in the AMC or trustee of existing mutual fund. Such a scenario would open a floodgate of conflicting interests between the decision making bodies related to mutual funds, as have been seen in the examples given while dealing with the issue of violations of Regulation 7B(1) of MF Regulations. Allowing such an interpretation would go contrary to the basic purpose behind the incorporation of Regulation 7B(2) of MF Regulations. Therefore, I am of the considered view that a shareholder, holding 10% or more of the shares or voting rights in an AMC or trustee company of a mutual fund, be it directly or indirectly, individually or collectively, cannot be allowed to have similar interest in AMC or trustee of another mutual fund which could otherwise lead to a situation wherein its interests in decision making entities of both these mutual funds would be in conflicting stage, leading to decision making in one or both of these mutual funds in such a manner that may not be conducive to the beneficial interest of the unitholders of the schemes of the said two mutual funds.

57. Before concluding, I find it necessary to mention again that the violation of Regulation 7B(1) of MF Regulations takes place when a sponsor of a mutual fund, its associate or group company including the AMC of the fund, through

the schemes of the mutual fund or otherwise, individually or collectively, directly or indirectly, either acquires 10% or more of the share-holding or voting rights in the AMC or the trustee company of any other mutual fund or if such sponsor, its associate or group company including the AMC of the first mutual fund has representation on the board of the AMC or the trustee company of any other mutual fund. On the other hand, the violation of Regulation 7B(2) of MF Regulations takes place when any shareholder, holding 10% or more of the shareholding or voting rights in the AMC or the trustee company of a mutual fund directly or indirectly acquires, 10% or more of the shareholding or voting rights in the AMC or the trustee company of any other mutual fund or has representation on the board of the AMC or the trustee company of any other mutual fund.

58. Be that as it may, I find it necessary to mention here that at a first glance, there may be instances of having an overlap between the provisions of Regulation 7B(1) and Regulation 7B(2) of MF Regulations. However, the two provisions, in a given set of facts and circumstances, may also act mutually exclusive. For the application of Regulation 7B(1), it is required for an entity to be a sponsor of a mutual fund, its associate or group company including the AMC. In such a circumstances, it is not necessary for such an entity to hold certain specific percentage of shares or voting rights. For example, an entity, even without holding any shares or holding below the 10% in an AMC or trustee company of a mutual fund, may fall within the category of group company or associate of the sponsor of the said mutual fund. In such case, provisions of Regulation 7B(1) would still be applicable on such entity despite having no holding or minimal holdings in the sponsor or AMC or trustee of first mutual fund. On the other hand, an entity may be holding 10% or more of shares or voting rights in the AMC or trustee company of a mutual fund, and it may not be

falling under the eligibility criteria to be called as a sponsor of a mutual fund, its associate or its group company. In such a case, such entities are bound to follow the provisions of Regulation 7B(2) and consequently those entities are warranted to comply with the restrictions imposed in the said provision of law. However, the aforesaid discussion becomes academic in the nature in context of the present matter, since the *Noticee's* case falls within the domain of both Regulations 7B(1) and 7B(2) of MF Regulations. Given the fact that the restrictions imposed under both these provisions of law are same, the violation of one provision would *suo motu* lead to violation of the other provision and the compliance of one would also lead to compliance of another. It is however to be noted that such an eventuality/circumstance, wherein the case of an entity is falling under the domain of both the abovementioned provisions of law intending to achieve same objective, should be interpreted in such a way that harmoniously takes care of objective enshrined under both the provisions and where one remedial action may cure both the contraventions. In such a scenario, the ratio laid down by Hon'ble SAT in its order dated September 04, 2013 in the matter of *Vitro Commodities Private Limited vs. SEBI* will be guiding light for me. In the said Order, Hon'ble SAT laid down that in case if two provisions of law are not substantially different and violation of first automatically triggers violation of second, there cannot be imposition of penalty for second violation without any specific justification, when penalty for first violation has already been imposed.

59. In the peculiar facts of the present matter, the case of the *Noticee* falls within the mischief of both the Regulations 7B(1) and 7B(2) of MF Regulations. I find that the *Noticee* was holding more than 10% stake in AMC of both mutual funds viz.:- Canara Robeco Mutual Fund and IL&FS Mutual Fund. In such a scenario, the *Noticee* was in violation of the provisions of Regulation 7B(2) in

the same manner as it has violated Regulation 7B(1) of MF Regulations and the same has been explained in para 38 of the present order. I find no necessity to reiterate the same here again.

60. Applying the ratio laid down in the matter of *Vitro Commodities Private Limited (supra)* in the present matter, I find that though the breaches committed by the *Noticee* attract the mischief of both the Regulations 7B(1) & (2) of MF Regulations, keeping in view the fact that the violation of one provision of law *suo motu* leads to the violation of another provision of law, where an entity holding more than 10% shares or voting rights in another AMC or TC is also wearing the hat of being an associate of the sponsor of a mutual fund. Under the circumstances, remedial measure for one would automatically be also sufficient to cure the defect of the other contravention.
61. At this stage of the proceedings, I find it necessary to state that the *Noticee*, in its letter dated March 10, 2023, has submitted that it has sold 1,50,00,000 shares of IL&FS to one entity namely, 24R Advisory Services Private Limited by way of share purchase agreement dated September 22, 2022. The sale became effective from December 19, 2022 and the said sale of shares has been taken on record at the meeting of Board of Directors of IL&FS held on December 22, 2022.
62. By virtue of this sale of shares, the shareholding of the *Noticee* in IL&FS has reduced from 23.54% to 11.86% of total shareholding of IL&FS. Due to such reduction in its shareholding in IL&FS, its proportionate shareholding in ILFS AMC has also reduced to 5.18% of total shareholding of ILFS AMC and its shareholding in ILFS TC has also reduced to 5.98% of total shareholding of ILFS TC. Therefore, by virtue of such sale of shares, I find the *Noticee*, with effect from December 19, 2022, was compliant with the provisions of Regulation 7B of MF Regulations.

63. In this regard, I am of the considered opinion that the main purpose of the initiation of proceedings against the *Noticee* under the provisions of Sections 11(1), 11B(1) and 11(4) of SEBI Act was to force/direct the *Noticee* to comply with the provisions of Regulation 7B of MF Regulations in order to prevent any kind of conflict of interest in its dealings with Canara Robeco Mutual Fund as well as IL&FS Mutual Fund. Given the peculiar fact that in the present matter the *Noticee* has already voluntarily complied with the provisions of Regulation 7B of MF Regulations, I don't find any necessity to issue any directions to the *Noticee*, at this point of time.
64. In addition to that, I further note that the SCN calls upon *Noticee* to show cause *inter alia* as to why penalty under Section 15HB read with Sections 11(4A) and 11B(2) of the SEBI Act, 1992 should not be imposed upon it for the alleged violation of the provisions of law.
65. I note that the powers vested upon SEBI under Sections 11(4A) and 11B(2) of SEBI Act, 1956 are without prejudice to the powers to issue directions under Sections 11(1), 11(4A) and 11B(1) of the SEBI Act, 1992. In this regard, I note that Section 15HB of the SEBI Act, 1992 provides as under:

SEBI Act

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

66. In view of the detailed factual analysis and deliberations as well as my observations recorded in the foregoing paragraphs of this Order with regard to failure on the part of the *Noticee* to comply with the provisions of Regulation

7B of MF Regulations, as alleged in the SCN, I find that the *Noticee* is liable for imposition of appropriate penalty under Sections 11(4A) and 11B(2) read with Section 15HB of SEBI Act.

67. In this regard, I find that Section 15J of SEBI Act provides factors to be considered while imposing the penalties. The said factors have been reproduced below:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

At the same time, it is well settled position of law that the aforementioned three factors are not exhaustive in nature and the adjudicating authority, while deciding penalty in a matter, may take into account any other factor beyond the aforementioned factors.

68. I find that there is no mention in the SCN of any unlawful gain made by the *Noticee* or any wrongful loss caused to investors by the *Noticee* due to its violation of provisions of law. I also find that the violation was one time which continued for some time but not a repeated violation. At the same time, I cannot lose sight of the fact that the *Noticee* was ultimately holding shares of IL&FS, a conglomerate which is till today facing numerous financial difficulties and the fact of such financial difficulties is a matter of record even prior to October 01, 2018, on which date the Hon'ble NCLT had suspended the then Board of Directors of IL&FS, and appointed six Directors, recommended by Government of India, to take over the affairs of IL&FS. It is but natural that no one would buy shares of such a suffering entity in such a situation.

Therefore, I find force in the submission of the *Noticee* that it could not offload shares of IL&FS during the said period due to all the difficulties being faced by IL&FS. I am also mindful of the fact that the *Noticee* had also as an alternate remedy, attempted to become compliant with the provisions of law by giving an undertaking that it would not exercise its voting rights which could entitle it to hold shares or voting rights indirectly in IIML, ILFS AMC or ILFS TC beyond 10% of total shareholding of these entities, although the same was not accepted as a mode of compliance with the requirement of Regulation 7B of MF Regulations. However, such an offer by the *Noticee*, notwithstanding its merit, at least shows efforts on the part of the *Noticee* to become compliant with the provisions of law after it discovered its non-compliance with the said regulation 7B of MF Regulations. Therefore, I have to consider all these mitigating factors in deciding penalty in the present matter.

ORDER

69. Having carefully considered the materials available on record and the submissions advanced by the *Noticee* and following the principles of preponderance of probabilities, I hold that the charges relating to violation of the provisions of the MF Regulations, as brought out in detail in this Order, are found to have been substantially established. However, considering the compliance of the provisions of law made by the *Noticee* as on the date of this order, I am of the view that there is no requirement to issue any direction to the *Noticee* to comply with the provisions of the said regulation 7B of MF Regulations. However, considering the fact that the violation of law has continued from March 13, 2019 to December 19, 2022, I find that a penalty of INR 5,00,000 (Five Lakh Rupees Only) is required to be imposed upon the *Noticee* in terms of provisions of 11B(2) and 11(4A) of SEBI Act, 1992 under

the provision of Section 15HB of SEBI Act for its violation of the provisions of Regulation 7B of MF Regulations.

70. The *Noticee* is directed to pay the penalty, as mentioned above, within 45 (forty-five) days from the date of service of this order by way of online payment through following path on the SEBI website: www.sebi.gov.in/ENFORCEMENT → Orders → Orders of Chairman/ Members → Click on PAY NOW or at the link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. The *Noticee* shall forward the details/confirmation of penalty so paid through e-payment to “The Division Chief, Supervision, Enforcement and Complaints Division-4, Investment Management Department, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C -4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400051” in the format given in the Table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

71. The Order shall come into force with the immediate effect.
72. A copy of this order shall be served upon the *Noticee*.

Date: June 19, 2023

Place: Mumbai

Sd/-

S. K. Mohanty

Whole Time Member

Securities and Exchange Board of India