BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AN/PR/2023-24/30203]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 19H OF DEPOSITORIES ACT 1996 READ WITH RULE 5 OF THE DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of:

Inditalia Refcon Limited
PAN: AAACI1128G

In the matter of
Inditalia Refcon Limited

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India ('SEBI', in short) conducted examination in respect of Inditalia Refcon Limited (hereinafter also referred as 'Noticee'/ 'IRL'/ 'company') pursuant to joint inspection report from Depositories inter alia to ascertain whether the Noticee conformed with requirements of Depositories Act, Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 ('D&P Regulations, 2018') [along with erstwhile SEBI (Depositories and Participants) Regulations, 1996], and SEBI Circular CIR/MRD/DP/10/2015 dated June 05, 2015 issued thereunder.

2. Pursuant to the findings of examination, SEBI initiated Adjudication Proceedings under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter also referred to as 'SEBI Act'/ 'SEBI Act, 1992') and under Sections 19H of the Depositories Act, 1996 (hereinafter also referred to as 'Depositories Act') in respect of Inditalia Refcon Limited in the matter of Inditalia Refcon Limited for the alleged violations of the following provisions:

1.1 Regulation 71 of D&P Regulations, 2018, Regulation 7 (2) and Regulation 8 of the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 ('LODR Regulations, 2015').

1.2 Regulation 75 of the D&P Regulations, 2018 and Para 5.3.3 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015;

1.3 Regulation 76 (3) of D&P Regulations, 2018;

1.4 Regulation 77 of D&P Regulations, 2018 and Para 5.3.1 and 5.3.2 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015;

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Whereas, prima facie, it appeared to the Competent Authority of SEBI that the Noticee had violated provisions of laws, as stated above, therefore, in exercise of the powers conferred under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred to as "SEBI Adjudication Rules") and Sub-section (1) of Section 19-H of the Depositories Act, 1996 and Rule 3 of Depositories (Procedure For Holding Inquiry And Imposing Penalties) Rules, 2005, the Competent Authority of SEBI appointed Dr. Anitha Anoop, Chief General Manager, SEBI as the Adjudicating Officer vide Communiqué dated July 15, 2022 to inquire into and adjudicate under Sections 19E and 19G of the Depositories Act, 1996 and under Section 15HB of SEBI Act, 1992 for the aforesaid alleged violations by the Noticee. Pursuant to transfer of Dr. Anitha Anoop, the undersigned was appointed as the Adjudicating Officer vide Communiqué dated March 01, 2023.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing No. SEBI/HO/EAD/EAD5/P/OW/2023/9535/1-2 dated March 03, 2023 (hereinafter also referred to as "SCN") was served upon the Noticee in terms of Rule 4 of Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 to show cause as to why an inquiry should not be held against the Noticee and why penalty be not imposed under Sections 19E and 19G of the Depositories Act and under Section 15HB of the SEBI Act, for the alleged violations.

5. The allegations in respect of the Noticee inter alia brought out in the SCN are as under:

"…

3. BACKGROUND

3.1 Securities and Exchange Board of India ("SEBI") undertook a review to ascertain reconciliation of equity shares of all the listed companies. In this regard, SEBI sought information from Depositories, as to whether there were listed companies whose issued shares were not matching with the total of physical plus Dematerialized shares. Accordingly, the depositories informed SEBI that as on June 30, 2019, share reconciliation issues were noted in respect of the Noticee.

3.2 SEBI directed Depositories to conduct joint inspection of the records of the issuer or agents, for identifying reasons for discrepancy, detecting violation of applicable regulatory norms by Issuers/ its Registrar and Transfer Agent ("RTA"), among others. Incidentally, it had been noticed that Inditalia Refcon Ltd was suspended for trading in BSE since January 07, 2002 due to penal reason. The depositories submitted their joint inspection report inter alia in respect of the Noticee to SEBI (Copy of relevant extract of joint inspection report is placed as Annexure 2).

3.3 In respect of Inditalia Refcon Ltd, Demat shares combined with physical shares of the Noticee were greater than Issued capital by 174000 shares, for the quarter ended March 31, 2019 and June 30, 2019, as detailed below:

ISIN	*Name of the company*	*Exchange where LISTED*	*CDSL Demat balance (No. of shares)*	*NSDL Demat balance (No.of shares)*	*Total Demat balance (No. of shares)*	*Physical balance (No.of shares) as per RSCAR*	*Total Holdings (Demat + Physical) as per RSCAR*	*Issued capital (No. of shares) as per RSCAR*	*No.of Excess Shares*
INE149C01013	*Inditalia Refcon Limited*	*BSE*	*113554*	*60446*	*174000*	*11900700*	*12074700*	*11900700*	*174000*

3.4 SEBI conducted an examination to ascertain whether the Noticee conformed with the requirements of share reconciliation as cast upon them by the Depositories Act, D&P Regulations, 2018 [along with erstwhile SEBI (Depositories and Participants) Regulations, 1996], and SEBI Circular CIR/MRD/DP/10/2015 dated June 05, 2015 issued thereunder. Copy of relevant extract of Examination Report is placed as Annexure 3.

4. FINDINGS OF EXAMINATION OF THE MATTER BY SEBI & ALLEGED VIOLATIONS:

Based on the joint inspection report of the depositories and submission of response of the Noticee to depositories, SEBI noted the following:

4.1 As on June 30, 2019, mismatch in share reconciliation was noted in Inditalia Refcon Ltd., that is, physical shares combined with Dematerialized shares was found to be greater than issued capital. The issuer issued duplicate physical shares against shares which were already Dematerialized without any Rematerialisation request.

In this regard, the following was inter alia observed by SEBI:
The Issuer did not carry out the reconciliation process and its RTA also stopped working due to non-payment of its fees/annual charges by the Noticee. In addition, the Noticee without any Rematerialisation request, had issued duplicate physical shares in the year 2004/2005 to the investors whose shares were already Dematerialized in 2000.
In view thereof, the Noticee is alleged to have violated Regulation 75 of the SEBI (Depositories and Participants) Regulations, 2018 ("D&P Regulations, 2018") and Para 5.3.3 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015.

4.2 *The Issuer did not intimate about the mismatch observed in share reconciliation.*
In this regard, the following was inter alia observed by SEBI:
As per Regulation 76 (3) of the D&P Regulations, 2018, the issuer shall immediately bring to the notice of the depositories and the stock exchanges, any difference observed in its issued share capital, listed share capital, and the capital held by depositories in Dematerialized form. The Issuer did not apprise the Depositories/Stock Exchanges regarding the difference in its issued capital vis-a-vis physical plus Dematerialized shares. It was only during the exercise conducted by Depositories in 2019 as per the direction of SEBI that the mismatch in share reconciliation was noted in respect of the Noticee.
In view thereof, the Noticee is alleged to have violated Regulation 76 (3) of D&P Regulations, 2018.

4.3 *The Issuer did not update the DN database and did not initiate adequate steps towards reconciliation of share capital.*
In this regard, the following was inter alia observed by SEBI:

4.3.1 *As per Regulation 77 of the D&P Regulations, 2018, every issuer or its agent shall establish continuous electronic means of communication with the depository with which it has entered into an agreement. The Noticee had entered into Dematerialization arrangement with CDSL and NSDL in the year 2000. However, as stated by the Noticee, due to non-payment of annual charges since 2002 and the recurring charges thereafter, the depositories stopped all further cooperation with the Noticee/ RTA. Thus, the Issuer was not able to continue its arrangement with the depositories. The Issuer had intimated the RTA on April 14, 2008 to cancel the Demat agreement and to not process any Demat/Remat requests. Following which, the RTA, vide letter dated January 13, 2020, informed that they had terminated the agreement vide letter dated June 28, 2011 and intimated the same to SEBI and Stock Exchanges. In view of the aforesaid, it is alleged that the Noticee has violated Regulation 77 of the D&P Regulations, 2018.*

4.3.2 *Further, Clause 5.3 of the SEBI circular CIR/MRD/DP/10/2015 dated June 05, 2015 casts responsibility on the Issuer to update DN information in respect of all physical share capital and overall DN range for Dematerialized share capital for all listed companies and if there is mismatch in the DN information with the data provided/updated by the Stock Exchanges in the DN database, the Issuer/RTA shall take steps to match the records. The Noticee did not update the DN database and did not initiate adequate action towards matching the records of share capital. In view of the aforesaid, it is alleged that the Noticee has violated circular CIR/MRD/DP/10/2015 dated June 05 2015.*

In view thereof, the Noticee is alleged to have violated Regulation 77 of D&P Regulations, 2018 and Para 5.3.1 and 5.3.2 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015.

4.4 *The Issuer did not comply with the Common Agency Requirement.*

4.4.1 *As per Regulation 71 of the D&P Regulations, 2018 and Regulation 7 (2) of LODR Regulations, 2015, all matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point i.e. either in-house by the issuer or by a Share Transfer Agent registered with the Board. In this regard, during the inspection of Sharex Dynamic (India) Private Ltd. ("Sharex"), conducted by NSDL on March 2 and 3, 2017, it was observed that though electronic connectivity for ISIN INE149C01013 (ISIN of Noticee) was with Sharex, physical share registry work was handled in-house by the Noticee. Accordingly, NSDL, vide letter dated May 30, 2017 advised the Noticee to ensure compliance with the Regulations. Further, as per depositories mail dated December 16, 2021, RTA vide letter dated January 22, 2020, had informed that no beneficiary position was made available by the depositories to the RTA for reconciliation of ISIN balances, no Remat/Demat was done for the said issuer for the last 11 years by its RTA and no physical back- office data was made available to the RTA by the Issuer. In view of the aforesaid, it is alleged that the Issuer has failed to comply with the common agency requirement and therefore, violated Regulation 71 of the D&P Regulations, 2018 and Regulation 7 (2) of the LODR Regulations, 2015.*

4.4.2 *Further, as per Regulation 8 of the LODR Regulations, 2015, the listed entity, wherever applicable, shall co-operate with and submit correct and adequate information to the intermediaries registered with the Board such as credit rating agencies, registrar to an issue and share transfer agents, debenture trustees etc. within timelines and procedures specified under the Act, regulations and circulars issued there under. The RTA, vide letter dated January 22, 2020, had informed that no beneficiary position was made available by the* *depositories to the RTA by the Noticee for reconciliation of ISIN balances. Also, no back office data was made available to the RTA by the Noticee. In view of the aforesaid, it is alleged that the Noticee has violated Regulation 8 of the LODR Regulations, 2015.*

In view thereof, the Noticee is alleged to have violated Regulation 71 of D&P Regulations, 2018, Regulation 7 (2) and Regulation 8 of the LODR Regulations, 2015.

…"

6. Vide email dated April 10, 2023, Noticee inter alia submitted its reply to the SCN. Further, vide its email(s) dated March 16, 2023; March 18, 2023; March 23, 2023, April 10, 2023 and April 19, 2023, Noticee inter alia sought documents/ clarifications pertaining to the shareholding details for March 31, 2021 wherein vide email dated August 25, 2023, the Noticee was inter alia informed that the allegations with respect to the mismatch in share reconciliation was noted as on June 30, 2019 and that relied upon documents had been provided to the Noticee.

7. Having regard to the principles of natural justice, vide Hearing Notice dated August 25, 2023, Noticee was afforded an opportunity of hearing on August 31, 2023. In this regard, on the scheduled date i.e. on August 31, 2023, the Noticee availed the opportunity of hearing through its Authorised Representatives ('ARs') (Authorisation letter dated August 31, 2023) viz., Ms. Sujata R. Mital (Managing Director) and Mr. Jayaraj Krishna Dangre. During the hearing, the ARs inter alia relied upon and reiterated the submissions made vide their letter dated April 10, 2023 and also sought time till September 16, 2023 to make further additional submissions, accordingly the same was allowed. Vide letter dated September 15, 2023, Noticee submitted its additional submissions.

8. The submissions made by the Noticee vide its letter dated April 10, 2023 and vide letter dated September 15, 2023, as reply to the SCN and additional submissions to the SCN respectively, are as under:

Submissions dated April 10, 2023:

"

…

We are in receipt of captioned notice and have already pointed out certain anomalies therein and sought clarifications on the data vide our letter No.IRL/20/2023 dt. 16th March 2023. We regret to note that we have not received any clarification till date.

A. 1. Our immediate and brief response is as follows –

a) The violations pointed out are applicable to companies who have both types i.e. Demat and physical shares outstanding.

b) The Co. has no Demat share outstanding, not even one, and its entire share capital is only in Physical Mode.

c) *The Co. rejects outright the 22 year old Demat data claimed by CDSL and NSDL as co.'s Demat shareholding.*
d) *The Co. has no obligation to reconcile the above old Demat data nursed by Depositories or to report mismatches to authorities for following reasons.*
e) *Co. has converted all folios to physical shares in 2004-05 when there were large no. of complaints regarding non-receipt of Demat shares or lack of response from DPs and RTA.*
f) *The data link with Sharex (then RTA) was cut by CDSL/NSDL who stopped sharing info/benpos.*
g) *Co. opted to close the complaints by issuing physical shares (sometimes as duplicate) since original certificates received for conversion were impounded by RTA or were lying with DPs.*
h) *After issuing Physical Shares there have been no complaints from any investor of non receipt of shares. This is proof that the physical portfolio is complete.*
i) *As entire shareholding is in Physical form, the Company does not need Depository Services and a link with depositories.*
j) *Having converted entire capital to physical mode, the RTA and Depositories were formally issued written termination notice in 2008 and asked to erase/scrap the Demat data from their servers.*
k) *Though Co. had entered into tripartite agreement with Sharex (RTA) and CDSL/NSDL, they could not be paid since beginning and all three, therefore, ceased cooperation with company.*
l) *SEBI, CDSL and NSDL have been duly notified of the cancellation of tripartite agreement and shift to full Physical Shareholding. Please refer Ann I and II (letters of termination) duly acknowledged by CDSL/NSDL.*

2. *Company, therefore, does not recognize the 22 year old data claimed as Demat data by CDSL/NSDL which is scrap. Co.'s data as already said is in Physical form and is 100% authentic which is also used for filing periodic returns with BSE/MCA/ROC etc.*
Further, Company does not find it necessary to explain excess shares reported by CDSL/NSDL from 22 year old data.
3. *Company, respectfully suggests that the defunct data be ignored and CDSL/NSDL be advised to delete the data. Company submits that it has not a single complaint pending for non receipt of share certificate which is proof that its database is intact.*

4. *By reporting 22 year old data as surplus shares detected in reconciliation, CDSL and NSDL are trying to blame the company for the mismatch and have sought action against the company on the basis of defunct records.*

5. *Company, therefore, rejects all findings and stresses that it is under no obligation to accept the defunct data, leave alone the need to explain how the surplus arose. The contents of remarks column in annexure 2 of the SCN clearly state that the Demat figures are also counted as physical shares since company has issued physical shares to all who had claimed non receipt of Demat shares.*

6. *In the circumstances the SCN should be cancelled/set aside.*

B. *Our detailed response is as under -*

1. *There are some glaring mistakes/inconsistencies in the figures reported as under-*
   a) *Duplication in counting Demat shares also as Physical Shares-*
   In Para 7 (G) of Annexure -2 of SCN, Joint Inspection Report data given as under-

Date	*Total issued shares of the company*	*Physical shares of the company*	*Demat shares CDSL*	*Demat Shares NSDL*	*Total Demat shares*	*Extent of share reconciliation issue*	*Brief reason for share reconciliation issue noted theirin*
31-12-2020	*11900700*	*11900700*	*114053*	*59947*	*174000*	*174000*	*As per company's email, company has issued duplicate physical share certificates to the investors who had Dematerialized their folios in early 2000. Hence balances are counted in physical as well as Demat.*
31-03-2021	*329210928*	*2162652*	*46029221*	*281326765*	*327355986*	*307710*	*As per company's email, company has issued duplicate physical share certificates to the investors who had Dematerialized their folios in early 2000. Hence balances are counted in physical as well as Demat.*
Multiple times	*27.66*	*Decreased*	*403.57*	*46.92*	*1881.35*	*1.77*	

b) The figures in all columns for 31-03-2021 are totally wrong and out of tune with reality. We request SEBI to seek from CDSL/NSDL the basis and data source for reporting such high figures.

Even the no. of shares held by themselves (CDSL/NSDL) in Demat form are shown to have increased 403.57 and 46.92 times respectively and in aggregate multiplied 1.77 times.

c) The review committee has not questioned the data but gone ahead and framed various charges based on the highly inflated figures. It is apparent that the figures contain some glaring errors. The remarks in the last column of the above table (Annex. – 2), clearly bring out the fact that there is duplication in counting Demat numbers also as physical shareholders.

d) The notice is, therefore, based on findings reported to SEBI without any verification of the data and checking the factual position as related to IRL. It appears that the committee has not referred to any of the correspondence in SEBI files.

2. *The committee should have enquired into the figures rather than accepting them at face value.*
    i. *How did the shareholding numbers (Physical) increase 27.66 times in three months?*
    ii. *Was any issue of capital approved by SEBI/MCA?*
    iii. *Were any returns filed with BSE/MCA indicating increase in capital?*
    iv. *What are the figures reported in Shareholding pattern filed with BSE for quarter ended 31.03.2021*

    It is therefore requested that the Committee should be asked to review the findings.

3. *Further in Annexure-3 of SCN - Page1 and part of Page -2 are blank and hence we cannot comment on the content. The text starts at para 5 only.*

4. *We have already pointed out the above anomalies and sought clarifications on the data from SEBI vide our letter No.IRL/09/2023 dt. 16th March 2023 and regret to note that we have not received any clarification till date. We reserve our right to give further detailed reply, if needed, based on the clarifications. Copy attached for ready reference Ann. III*

5. *From 2004-05, IRL has converted and kept its shares in Physical mode only and has cancelled the tripartite Demat Agreement with CDSL/NSDL and Sharex RTA. The data referred to by Depositories was created more than 20 years ago and is defunct. Since converting to Physical mode all investors requests have been met by Company in house and since 2018 by new RTA – Purva Sharegistry P. Ltd.*

6. *It will be readily understood that for a Company which has not a single Demat Share, there is no requirement of DP services and the appurtenant infrastructure. Neither does it need to reconcile any shares in Demat form and explain resultant mismatch.*

    The backward conversion from Demat to Physical shares took place way back in 2005 onwards. The returns filed under LODR with BSE, including the "Reconciliation of Share Capital Audit Report" issued under regulation 55A of the SEBI (D and P) Regulations, since 2010 have always declared that the Co. has entire share capital in Physical form only.

7. *The Company, therefore, firmly rejects the 2 decade old defunct data claimed as Demat shares of the Company by CDSL/NSDL and hence is not obliged to answer any queries thereon.*

    Though Co. has officially terminated the tripartite agreement in 2008 and instructed the parties to dump the old data held by them, CDSL and NSDL, it appears are trying to force the defunct data down the Co.'s throat and trying to hold it accountable for not maintaining link, interface, reconciliation, digital database etc. etc.

    For last more than 20 years they are nursing the data despite clear written instructions to scrap it, perhaps in the hope of one day being able to claim arrears of fees, interest etc. with SEBI support.

    The Committee which has reviewed the data and report has not appreciated the fact that a company who is maintaining only physical database for last 20 years has no requirement of Depository Services. In the circumstances the whole review is an exercise in futility.

8. *Some historical Background –*
    a) *As is repeatedly informed to all the participants and SEBI in the past, IRL in the initial euphoria after listing its securities, signed up with CDSL/NSDL for Depository services and with Sharex P. LTD as RTA. Unfortunately the company ran into severe financial difficulties immediately thereafter and has not paid any of these intermediaries.*

    b) *Initially few investors submitted their shares for Dematting (total 174000 including both Depositories). However, the company's condition worsened. The RTA withheld some of the transfer deeds/share certificates in its possession and CDSL/NSDL stopped sharing data with the RTA. The digital link was deactivated.*
    Investors who had submitted certificates to DPs/RTA were clamouring for solution and company had no alternative but to issue them physical shares as duplicate. Since then Co. has handled all investor requests such as change of address, transfers, transmissions and other details in house till 2018 and thereafter through new RTA Purva Sharegistry P. Ltd. After converting the entire shareholding to physical in 2004-05, the company does not need any services from Depositories.

    c) *Going back, in July 2002 the shares were suspended from trading on the BSE. No trading has taken place in the shares since then. The database referred by CDSL/NSDL is their report is 20+ years old and has not been updated. The report of the Review committee has treated the data as valid shareholder info though Company has been crying hoarse since last many years to scrap the same. Huge amount of* *correspondence was exchanged with CDSL/NSDL in this respect. While company requested them to terminate Demat in 2008 both CDSL/NSDL ignored the same and kept pestering the company for payment of arrears. This option was not available for the company in view of hand to mouth funds position. We crave the AO's permission to produce the correspondence at the physical hearing*

d) *Please refer to Annexure-4 and Annexure -6 of SCN, email/letter dt. 16th and 17th December 2021 from CDSL/NSDL which have clearly brought out the entire situation. As per their own admission, all the Co.'s shares are in physical form and the register is managed by Purva Sharegistry (India) P. Ltd. though, there are 174000 shares in Demat form as per depositories record. These were created in year 2000. the connectivity was removed for non payment of charges. Company has intimated RTA (then Sharex) to cancel the Demat agreement in 2008 which the RTA informed SEBI and the SEs in 2011. No beneficiary position was made available by the Depositories to the RTA. No Remat/Demat has been done for the last 11 years. BSE had suspended trading in co.'s shares in 2000. As shareholders had option to retain Physical shares during the period, they were insisting of getting physical certificates.*

The database referred by CDSL/NSDL is therefore 20+ years old and not been updated. It amounts to double counting if the old data is counted to arrive at total number of shareholders as already admitted by the report in remarks column of Para 7G of Annex. 2.

e) *Comments on Sharex letter dated 13.01.2020 and 22.01.2020. Ann 5 (i) and (ii) of SCN*

- *Sharex has clarified that they terminated the RTA facility in 2011.(See Annexure 9 to the SCN)*
- *Sharex has admitted that since no beneficiary position of the said issuer is made available, the reconciliation of ISIN balances cannot be truly ascertained*
- *The Notice is therefore based on incorrect data (not updated since almost 20 years) provided by CDSL/NSDL and hence the findings of the report are incorrect to that extent*
  The financial failure of the company has resulted in all the agencies terminating their contract and non-cooperation since last several years.

9. *The Company has advised both Depositories to terminate the agreement in 2008 and erase the data as it was of no value to the Company. However CDSL and NSDL continue to nurse the data in the hope of extracting fees and arrears from the Company. They should be guided appropriately. The termination notice dt.28-06-2011 forwarded by Sharex to SEBI is acknowledged by SEBI on 29th June 2011. SEBI is, therefore, aware that the Co. does not enjoy DP support since many years and agreement is terminated in 2011. Therefore, realistically, SEBI should not expect Company to answer for the defunct data held by CDSL/NSDL.*

   Company has further informed SEBI vide letter no.IRL/203/2019 dated 01.04.2019 conveying the detailed position of its Demat folios and why the data needs to be scrapped. Please see Ann IV. There is also further extensive correspondence taken place between BSE, CDSL, NSDL, Sharex etc. in all of which company had to plead lack of funds for its inability to restore Demat and restore trading on the BSE, as one without the other is worthless. All three of them in responses demanded Arrears, Penalties, interest etc. which ran into lakhs of rupees. Company had no resources to meet all these demands. We request AO to permit us to produce copies of this correspondence at the physical hearing. Some of this also finds mention in the emails/letters dated 16th and 17th December 2021 from Amit Shinde of NSDL and Mr.Ajit Prabhu of CDSL (vide Ann 8 and Ann 4 of the SCN).

10. *In the circumstances, the Company is not subject to the SEBI (D & P) regulations (to the extent of Demat data) and does not have to explain the 174000 shares claimed excess by CDSL and NSDL. Neither does it accept any default under the regulations. It has not been a position to pay for their services since beginning.*
    The irregularities referred to in the notice are no irregularities at all since these are all related to so called Demat shares data nursed by CDSL/NSDL for last 20 plus years without updating.

11. *Our response to the violations alleged in the notice (seriatim) is as under :*

Sr. No.	***Violations Alleged***	***Requirement***	***Actual Position***
	Paragraph 1 of Notice		
Sub - para 1.1	*Regulation 71 of SEBI (D&P) Regulations, 2018 & 7(2) and 8 of LODR 2015*	*All matters of Securities and electronic connectivity to be at single point either Company or RTA.*	*Entire data of the member's register was handled in house from 2004-05 till 2018 when M/s Purva Sharegistry P. Ltd. (Purva) was appointed as the RTA. Presently it is managed by Purva.* *Under Reg.71 all matters regarding records etc. of shareholders are to be maintained at one point, either Co of RTA. Hence there is no violation of Reg.71* *Since, all the records are in physical form there is no need for Demat services and connectivity. Co. is, therefore, compliant with Reg.71.*
1.2	*Regulation 75 of SEBI (D&P) Regulations, 2018 and 5.3.3 of Cir*	*Reconciliation of Demat and physical*	*There is no Demat share outstanding and company is compliant with Regulation 75. Entire share capital is in physical mode and is 100% reconciled.*

	no. CIR/MRD/DP/10/2015 DATED June 05, 2015	shares on daily basis.	Please see latest Reconciliation of Share Capital Audit Report submitted to BSE for quarter ended Dec. 2022. All the shareholders having been issued physical/ duplicate certificates the data in CDSL/NSDL computers is defunct and scrap.
1.3	Regulation 76(3) of SEBI (D&P) Regulations, 2018	The issuer shall immediately bring to the notice of the depositories and the SE any discrepancy observed in capital figures held by depositories etc.	The Company has maintained its members database since 2004-05 in physical form. Since 2018, M/s. Purva Sharegistry Pvt Ltd are assigned the job of managing shareholder database. Audit report under Reg. 76(1) is regularly obtained and submitted. The data claimed by CDSL/NSDL is irrelevant since all shareholders have received physical shares. Since co. has entire capital (100%) in physical form, there is no discrepancy to be pointed out. Co. is, therefore, compliant with of Reg.76(3).
1.4	Regulation 77 of SEBI (D&P) Regulations, 2018 and para 5.3.1 and 5.3.2 of Circular No. CIR/MRD/DP/10/2015 dated June 5, 2015.	Every issuer to have connectivity with Depository.	The co. does not need any connectivity since it has no Demat share capital outstanding. No Demat Agreement in force, having opted for 100% Physical shareholding since 2004-05. The Demat agreement was formally terminated in 2008 by written notice.
	Paragraph 4 of Notice : Findings by SEBI and Alleged Violations -		
4.1	Regulation 75 of SEBI (D&P) Regulations, 2018 and 5.3.3 of Cir dt. June 05, 2015	Reconciliation of Demat and physical shares	Company who has only 100% physical capital.. No reconciliation is needed for 100% Physical shares. Para 5.3.3 is not applicable to 100% Physical holding.
4.2	Regulation 76 (3) of SEBI (D&P) Regulations, 2018	Issuer to notify depositories about mismatch in reconciliation.	Company, having 100% physical shareholding does not have any mismatch in its data. Figures reported as Demat shares are defunct. There is Nothing to report.
4.3	Regulation 77 of SEBI (D&P) Regulations, 2018, and clause 5.3.3 of Cir no. CIR/MRD/DP/10/2015 DATED June 05, 2015	Connectivity	Para 4.3.1 of the report clearly accepts that the Demat agreement was officially terminated in April 2008. The D & P regulations and circular dt. June 05, 2015 are not applicable to a physical database. Since co has no Demat share in existence it does not require connectivity. Since all are physical shares no reconciliation is required. Company has its database maintained by RTA. For Investor protection, company has all data. The regulations introduced to control Demat cum physical activity and keep issuer and RTAs under control will apply only for companies who have at least one outstanding Demat share. The committee has failed to appreciate the facts of the case.
4.4	Regulation 71 of SEBI (D&P) Regulations, 2018 & 7(2) and 8 of LODR 2015	All records of Securities and electronic connectivity to be at single point either Company or RTA.	Please peruse the contents of the findings. Since the co. went physical in 2004-05, it does not need any Depository services. The decision to issue duplicate physical shares was taken in consultation with SEBI during the period when investors had the option to keep physical shares. Company does not require services of CDSL/NSDL. No connectivity is needed. Co. does not acknowledge any data nursed by CDSL/NSDL for 22 years without updating. In simple language it is "trash". Kindly advise CDSL/NSDL to erase or throw it away. Company could not provide and maintain the Demat services as its project failed. Agreement.
Para 5 of Notice	Violations of D & P Regulations 2018 and circular dt. June 05, 2015 alleged.	The provisiona refer to violations of issuer and intermediary discipline including tripartite (Demat) agreement and failure to maintain a	The whole report and its findings are without basis. The violations will occur only if the Demat data was current and accepted by the company. As repeatedly pointed out, the company has not a single Demat share outstanding. Since the underlying agreement stands terminated before 15 years and the regulations

		Distinctive Number database.	introduced later, how can the Review Committee affix guilt on the Company? No violations can take place of an agreement which was terminated in 2008.
Para 6 of Notice	Penalties etc.	Section 19 E and 19 G of Depositories Act and 15 HB of SEBI Act	19E – Ans. There are no records which co. needs to or is under obligation to reconcile. SEBI should instead enquire from CDSL/NSDL why they did not terminate the agreement or erase the data despite being informed in writing. A Demat agreement is an agreement and cannot be held continuing despite receiving written notices for termination. **If there is no Demat share, there is no requirement of connectivity, reconciliation etc.** **The notice is without basis and needs to be set aside.** **As there is no offence under 19E and 19H, the question of levying penalties under 15HB does not arise.**
Para 7 of Notice	Noticee to show cause why enquiry should not be held against it and penalties imposed under relevant rules and regulations.	Company maintains that it is having entire capital in Physical Mode since 2004-05 when it converted Demat folios into Physical and closed the Demat facility.	The decision to go physical was taken in consultation with SEBI to satisfy the investors who had lost their shares to DP, RTA etc. or were not provided Demat securities by CDSL/NSDL. Company could not pay any of them i.e. CDSL, NSDL and RTA, and had to give written notice of termination. Despite the termination CDSL/NSDL are trying to keep up the fiction of Demat shares and are trying to mislead SEBI to take action against the company probably hoping for some recovery. **We urge SEBI to scrutinise in detail the contents of CDSL email/letter dt. Dec. 17, 2021 attached as Annexure -4 to the notice which is self-explanatory.** **The co. has landed in a big financial mess right after its public issue and has never recovered. It has not done any business for last 25 years and could not afford Demat services. Hence it decided to go physical after consulting SEBI. Since then its capital in physical form only.** **The violations relating to non existing Demat capital are a figment of imagination and the conclusion finding the company guilty are without basis.**

	Ann. 1(i) of Notice – Communication of the Order appointing Adj. Officer		
Ann. 1(ii)	Communication of Order	Various provisions of D & P regulations and SEBI LoDR	The regulations are applicable to companies having Demat shares. Not to Inditalia Refcon Ltd. whose entire capital consists of Physical Shares. D & P regulations do not apply to Physical securities and neither do the reg. 7(b) and 8 of SEBI LODR.

	Ann. 2 of Notice – Company wise Jt. Insp. Report		
Ann. -2	The erroneous data has led to astounding figures of shares in physical and Demat mode	None of the Committee has noticed the huge figures and made any inquiries.	We have pointed out the glaring data error at the beginning (para B. 1) of the reply.
	Further Response to Ann II of Notice		
	We have already pointed out that the Demat data claimed by CDSL/NSDL is defunct, not updated for more than 20 years and should be ignored. Company has given in writing to the Depositories to scratch the data but they continue to hold on to the data and also claim it as genuine though they (CDSL/NSDL) have been informed that duplicate shares were issued to all the investors. **Depositories ceased to have any role for the Company once all investors got Physical Shares.** The reasons mentioned in para 7 (remarks column) is self explanatory. Once it is realised that IRL has no Demat shares at all, the whole exercise of investigation, mismatch, reconciliation etc. is rendered futile. In the circumstances circular dated June 5, 2015 is not applicable. The company does not have any Demat shares outstanding and there can be no violation of D & P regulations.		

	As per para 7 G, of Ann II, the data shows the company's capital has multiplied 27 times in the last single quarter ended 31.03.2021 *Any one reviewing the data should have cross checked the figures from the share holding pattern from BSE or Annual Returns filed with ROC to check the authenticity of these figures before reporting the findings to SEBI and recommending issue of the SCN.* *The inspection team has failed to perform this simple task.*

	Annexure – 3 of Notice	***Examination Report***	
	Para 9 - extant Regulatory Norms	*Page 1 and part of Page -2 are blank and hence we cannot comment on the content. The text starts at para 5 only.*	
Ann. 3	*— Page1 and part of Page -2 are blank and hence we cannot comment on the content. The text starts at para 5 only.*	*Purpose of the exercise and regulations is to ensure that the Demat and physical shares match the total issued share capital*	*The regulations are applicable to companies having Demat shares. Not to Inditalia Refcon Ltd. whose entire capital consists of Physical Shares. D & P regulations do not apply to Physical securities and neither do the reg. 7(b) and 8 of SEBI LODR.* *The review and framing of charges is an exercise in vaccum as there are no Demat shares.*
Para 9 g and h	*Sec. 19 E and 19 G of Depositories Act.*	*Failure to reconcile and failure to comply*	*Co. does not require Depository services since 2005 and Demat agreement was officially terminated in 2008.* *Co. does not have to reconcile any data with any Depository. The depositories have also terminated the connectivity sometime around 2004-05 (not sure of the date) for non-payment of dues.* *As there is no Depository service agreement the whole exercise of ascertaining of mismatches in data is infructuous.* *Company is not bound under any agreement and does not accept any responsibility to reconcile the data.*
	Annexure – 3 of Notice	***Examination Report – Para 18***	
Annex-3	*Para – 18- Conclusions and recommendations*	*Reconciliation of records is important to preserve market integrity and safeguard interest of investors*	*The Company has no Demat share and no agreement for Depository services in existence. CDSL/NSDL continue to show 22 year old data without updating. They should be questioned about the integrity of their data which is defunct. They, CDSL/NSDL stopped connectivity somewhere around 2004-05 and are nursing old data in the hope of extracting money from company as arrears of fees. The data became irrelevant once the Co. issued Physical Shares to investors and terminated the tripartite agreement officially in 2008.* *By claiming violation on part of the co. to reconcile CDSL/NSDL are trying to legitimise their action in the hope of extracting money for defunct folio data.* *All violations mentioned under sub paras (a) to (e) are, therefore, imaginary.* *Company does not owe any obligation to reconcile CDSL/NSDL figures whose data can best be described as old junk.*

12. To Summarise, the company does not accept any of the alleged violations since -

a) It does not have any Demat shares outstanding, not even one.
b) It does not have to do reconciliation of physical and Demat shares.
c) Consequently no mismatches are required to be reported.
d) No complaints of non-receipt of shares,
e) It maintains one point contact i.e. RTA for investor grievances,
f) Its database (of Physical Shares) is maintained digitally by RTA.

The company does not need any Depository services and the old data (22 years) should have been erased by the CDSL/NSDL.

All violations are applicable to companies who have outstanding both types i.e. Demat and physical shares.

…

"

Submissions dated September 15, 2023:

"

…

In continuation to our reply sent on 10th April vide letter no. IRL/10/2023, we submit herewith further additional submissions:

A) Notice Violations Alleged: SEBI Notice has been issued to the company calling explanation for alleged acts of violations of D & p Regulations, non-maintenance of DN database etc. all of which apply to Demat Share Capital. In addition, violation of 7(2) and 8 of LODR is alleged.

1. *Our Response :*
    a) *IRL is a 100% Physical shares company and both D & P Regulations and the SEBI (SDD) Cir. dated 5th June 2015 do not apply to the company.*
    b) *7(2) and 8 of LODR- As regards 7(2), Company has option to maintain share transfer facility in home. Reg.8 is not applicable for physical shareholding as no other intermediary is involved. Everything about physical shares database is handled in house.*
2. *Reasons for switching to physical :- After entering into tripartite agreement with CDSL/NSDL/Sharex in 2000 for Dematting its equity portfolio and after they stopped connectivity, benpos and every cooperation with the company; it withdrew from the agreement in around 2003-2007 and terminated the agreement by written notice dated 18th April 2008 (copy at Ann 1(a) and (b), duly acknowledged by CDSL/NSDL)*

B) Missing Demat shares:
As per the notice the DEMAT shareholder data continues to appear in the database of CDSL/NSDL and is reflected in the joint inspection report dated December 13, 2019.

Response : -

1. *Company's equity portfolio is 100% physical and company is not required to reconcile or explain the data created in 2000 and **not updated for last 22 years** in the archives of CDSL/NSDL.*
2. *While IRL signed Tripartite Agreement with CDSL/NSDL and Sharex in November 2000 to Demat its shares. During the same time, SBI and BOB, the bankers of the Company issued recall notice (please refer Notice dated November 11, 2000, (Annexure-2) and filed suit in the DRT, recalling the facilities given to the company and hence all crisis precipitated. The promoters had to fight the case to save the assets of the Company from attachment and all efforts and energy were diverted to the same.*
3. *In the initial enthusiasm, the depositories have dematerialised 174000 shares out of total 11900700 shares i.e. 1.46% of the share capital. However, company could not pay any of the agencies and hence all of them ceased co-operation, cut the connectivity and the stopped facility of benpos. BSE suspended the shares from trading on 7.01.2002.*
4. *After BSE suspension there was clamour from investors to get their shares back particularly investors whose shares were surrendered for Dematting, and were defaced in the process (while held up in DP or RTA hands). Some request were received from Dematted investors who could not transfer/sell their shares since they had no access to Demat folio as RTA, CDSL, NSDL, none were cooperating with the company.*

There were 2 types of investors.

a) *Those whose folios were already Dematted*
b) *Those whose certificates were in transit i.e. surrendered for Demat, lying with DPs or Sharex (RTA) and lying with CDSL/NSDL pending Dematerialisation but already defaced.*

All of these investors were chasing the company for duplicate/physical certificates. The company could not pay the CDSL/NSDL or Sharex to get their cooperation for Rematerializing the shares. CDSL/NSDL/RTA were using the same as bargaining tool to extract payment. Company had no option but to treat the agreement with DPs/RTA as void and opt to issue duplicate share certificate to all shareholders after verifying their claims, taking indemnities and following all due procedures. This went on till 2008. We may point out that in those years (2000-2008) it was perfectly legal to retain shares in physical mode.

5. *Company does not blame the CDSL/NSDL/Sharex etc. as after all they could not be paid and they are not a charitable organisation.*

For company, saving its project was first priority. As already said the investors as well as the company both had the option to retain share capital in physical form and hence IRL had to accept the investors request for physical shares.

After Dematting about 73 folios, the agencies stopped doing further work for the company. The promoters were trying to save a sinking ship by fighting several cases in the High Court, DRT etc. during that period 2000 onwards………………Please see copies of Bank litigations at Ann 3.

6. Meanwhile SEBI was closely monitoring the investors complaints and IRL used to submit quarterly ATRs (Action Taken Reports) to SEBI. Please see copies of some ATR's submitted to SEBI during the period 2005-2011. Copies enclosed at Ann (4,5,6) (3 ATRS's) The ATRs were duly acknowledged. As late as July 2011, Co. has issued duplicate physical shares to some investor who had complained about the Demat account being inactive. Co. submitted ATR to SEBI who acknowledged the same vide email dt. 25.08.2011 signed by Ms Molly George, Manager. (Copy attached Ann 7). Such reports have been submitted right since 2004-05. Copies can be submitted if required.

Further from 2011 till date, i.e. last 12-13 years there are no investor grievances pending. In case any of the shareholders whose folios were Dematted had not received their shares in physical form, would they have kept quiet? Total absence of grievance or complaints itself shows 100% compliances done in physical form.

This clearly shows that the folios data being held by NSDL and CDSL archives are scrap and should be discarded. Co.'s entire share capital 100% is in physical form only. Company has always reported 100% physical capital in all returns filed. The old data held by CDSL/NSDL appears as excess capital in the inspection report and should be disregarded.

7. Going back, the company had no funds as its project could not be implemented and the banks started recovery proceedings as explained above. The Company's promoters had to borrow funds to run the affairs of the company. In 2008, the company wrote to NSDL, CDSL and Sharex and terminated the Demat arrangement completely. Please see letters addressed to NSDL, CDSL and Sharex duly acknowledged. (Ann 1-a & b).

We are quite surprised why NSDL and CDSL did not close the Demat accounts, though admission they have admitted that since their fees has not been paid, there was no benpos and downloading of data. Please see the correspondence a Ann 9,10,11,12 and 13.

8. In the year 2019 we once again wrote to NSDL/CDSL as well as SEBI to discard the Folios being held with them as they are redundant. We also met senior officers at SEBI in a personal meeting and explained to them that the data being held by NSDL and CDSL should be scrapped. Investors in the Demat list were issued shares in 2004-2006. Today after 18-20 years, many have got transferred, sold, changed address or died. Neither depository has recorded these changes. In the absence of updation after 23 years the old data held by NSDL/CDSL (in a frozen account) is irrelevant and of no value. Please see our letter written to SEBI in 2019. (Ann -14).

In short, it can be stated that the onus of proving the relevance of the CDSL/NSDL data is on CDSL/NSDL. Every time company approached them for waiver of arrears charges, not only they have refused to waive old dues but insisted on payment of interest too. Please see letter dated 25-03-2019 from Mr. Nitin Ambure, CDSL attached at Ann-15, 16

9. Every quarter the company has been filing - (a) Reconciliation of Share Capital (100% in physical form), and (b) Share holding pattern (100% in physical form). These uploaded documents are also available on website of BSE.

The enquiry committee may note that 20-22 year old (not updated) Demat details cannot be a valid members data for any company. The data of 174000 shares cannot remain static as there will always be transfer/transmission, changes of address etc.

We have to just remove from calculation the Folios being wrongly shown by NSDL/CDSL which is 23 years old junk. After removing the figure of 174000 shares quoted by CDSL/NSDL. There is clearly no error in the calculation of shares or any duplication in the shareholding pattern. As all shares are physical there is NO reconciliation required.

10. The answer for the mismatch is given by CDSL/NSDL in their letter/email to SEBI. Please refer Ann 4 of the SCN and the situation becomes crystal clear.

11. The alleged violations of D & P regulations are not applicable as there is no need of depository services or Digital Data base, links between Depository and RTA/company for the company whose entire member's register is physical. The returns are filed with ROC on annual basis. IRL has addressed every complaint till date and After 2019 physical shares can no longer be traded/transferred.

Though it is unfortunate that the company's project had to be scrapped midway through implementation but the circumstances were beyond the control of the company as India signing the Montreal Protocol has caused its project to be scrapped.

12. As already stated Company scrapped the Demat agreement and chose to go physical. Formal notice of termination was served in April 2008. Depositories ceased to have any role for the Company once all investors got Physical Shares. The depositories had terminated the connectivity sometime around 2004-05 (not sure of the date) for non-payment of dues and they stopped providing Benpos to the then RTA, Sharex Dynamic. The RTA did not inform the company about the termination of the online link.

13. The Depositories are required vide para 5.1 of SEBI Circular 10 of 2015-

"5.1.4. The depositories shall ensure that the database maintained by them is continuously updated and synchronised. ………in online mode."

It is not our intention to blame the CDSL/NSDL since we, as Company, could not pay them their charges. However, the fact remains and the enquiry committee should realise that the Company cannot update the data on its own if the CDSL/NSDL have terminated the link.

There can be no violation of instructions if the Demat data and required connectivity does not exist. How can the Company violate a non-existent arrangement?

C) 1. The inspection committee has failed to appreciate that

*a) IRL does not have any Demat shares outstanding, **not even one**.*
b) It does not have to do reconciliation of physical and Demat shares.
c) Consequently no mismatches are required to be reported.
d) No complaints of non-receipt of shares,
e) It maintains one point contact i.e. Company itself,

2. The committee has not appreciated the contents of para "B Action Taken by Depositories" of letter/mail of Mr. Ajit Prabhu dated 17.12.2021(Ann 4 of the SCN)

Contents	Response
Para B.1 – It is admitted on behalf of both CDSL/NSDL that RTA has suspended services and there is no connectivity since 2011.	It is admission that the data is not updated
B.2 - Balance are counted in physical as well as Demat, both.	Company treats the list of Demat holders as scrap for reasons stated above
B.3 - Reconcilition is not available with RTA	There is no Depository or RTA since 2008. Reconciliation is not needed for scrap data. RTA has no role sicne then.
B.4 - Non compliance with D & P Reg. and Bye laws of depositories	IRL need not comply with these after 2008 when relationship was terminated. The depositories had themselves cut the link much earlier, in 2004-05.
B.5 - RTA has admitted that agreement was cancelled in 2008 and no Benpos was provided by depository and the RTA to the company	Since company has terminated the Agr. way back in 2008, today the data with depositories is irrelevant

3. All violations are applicable to companies who have outstanding shares of both types i.e. Demat and physical shares with online connectivity. IRL does not need any Depository services and the old data (22 years) should be erased by the CDSL/NSDL.

4. Committee should enquire from CDSL/NSDL and ask for confirmation that their data of 174000 shares in Demat Form is valid and updated. Is the same of relevance today before asking the company to show cause for mismatch and non-reconciliation. Company has complete data in physical mode and can service any requirement.

D) 1. Please refer once again the letter dated 25/03/2019 from Mr. Nitin Ambure asking for payment of arrears with interest and the situation becomes clear as daylight. It shows conclusively that the depositories were not ready to waive or compromise on charges and had already severed the connectivity.

2. During the hearing dated 31st August 2023 there was discussion about the company having Rematerialized the Dematted shares without following proper procedure.
It must be pointed out that Rematerialization process cannot be used if company's RTA (1st point in the link) as well as Depositories have cut company's online link and stopped cooperatingdue to non payment. The only option was to scrap the agreement of Demat and revert to physical shareholding as was done by the company.

…"

D. CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether Noticee had violated the provisions of D&P Regulations, 2018; LODR Regulations, 2015; and SEBI Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015, as alleged?

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 19E and 19G of the

Depositories Act, 1996 and under Section 15HB of SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

10. Before proceeding on merits, it would be pertinent to firstly deal with the preliminary contentions raised by the Noticee. The Noticee, vide its submissions dated April 10, 2023 had inter alia contended that *'…the figures in all columns for 31-03-2021 are totally wrong and out of tune with reality. We request SEBI to seek from CDSL/NSDL the basis and data source for reporting such high figures. …'*

In this regard, I note that the period of examination with respect to the alleged violations in the instant proceedings had been taken as Reconciliation issue noted as on June 30, 2019. I note that the Noticee has neither denied nor disputed the figures mentioned upto June 30, 2019. Therefore, the contention of the Noticee in this regard is out of context.

11. I now proceed to deal with the matter on merit inter alia as regards alleged violation in respect of the Noticee as per the SCN.

Issue No. I: Whether Noticee had violated the provisions of D&P Regulations, 2018; LODR Regulations, 2015; and SEBI Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015, as alleged?

11.1. It was inter alia alleged that as on June 30, 2019, mismatch in share reconciliation was noted in Inditalia Refcon Ltd., that is, physical shares combined with Dematerialized shares was found to be greater than issued capital. The issuer issued duplicate physical shares against shares which were already Dematerialized without any

Rematerialisation request. In view thereof, the Noticee was alleged to have violated Regulation 75 of the SEBI (Depositories and Participants) Regulations, 2018 ("D&P Regulations, 2018") and Para 5.3.3 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015.

11.1.1. In this regard, it is relevant to refer to the text of the provisions alleged to have been violated, which inter alia reads as under:

D&P Regulations, 2018

"…

Reconciliation

*75**.** The issuer or its agent shall reconcile the records of dematerialised securities with all the securities issued by the issuer, on a daily basis.*

…"

Para 5.3.3 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015

"…

5.3. Instructions to the Issuer/RTAs

…

5.3.3.Failure by the Issuers/RTAs to ensure reconciliation of the records as required in terms of para above shall attract appropriate actions under the extant laws.

…"

From the above, I note that the provisions of Regulation 75 of the D&P Regulations, 2018 inter alia cast an obligation on the issuer to reconcile the records of dematerialised securities with all the securities issued by the issuer, on a daily basis and the SEBI Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015 (hereinafter also referred to as "SEBI Circular") inter alia provides instructions to the Issuer/RTAs in this regard, wherein failure by the Issuer/RTAs to ensure reconciliation of the records as required therein should attract appropriate actions under the extant laws.

11.1.2. In this regard, following was inter alia observed by SEBI in respect of the Noticee, as noted from material available on record:

11.1.2.1. Demat shares combined with physical shares were greater than the Issued capital by 174000 shares for the quarter ended March 31, 2019 and June 30, 2019, as given below:

ISIN	Name of the company	Exchange where LISTED	CDSL Demat balance (No. of shares)	NSDL Demat balance (No.of shares)	Total Demat balance (No. of shares)	Physical balance (No. of shares) as per RSCAR	Total Holdings (Demat + Physical) as per RSCAR	Issued capital (No. of shares) as per RSCAR	No.of Excess Shares
INE149C01013	Inditalia Refcon Limited	BSE	113554	60446	174000	11900700	12074700	11900700	174000

11.1.2.2. The Noticee did not carry out the reconciliation process and its RTA also stopped working due to non-payment of its fees/annual charges by the Noticee. In addition, the Noticee without any Rematerialisation request, had issued duplicate physical shares in the year 2004/2005 to the investors whose shares were already Dematerialized in 2000.

11.1.3. In this regard, I note that the submissions of the Noticee dated 10.04.2023 and 15.09.2023, as replies to the SCN, broadly speaking, save for differently worded, were similar in nature and are being dealt together accordingly. I note that the key submissions of the Noticee in its replies to the SCN in this regard were as follows:

'...The Co. has no Demat share outstanding, not even one, and its entire share capital is only in Physical Mode…Co. has converted all folios to physical shares in 2004-05 when there were large no. of complaints regarding non-receipt of Demat shares or lack of response from DPs and RTA…Co. opted to close the complaints by issuing physical shares (sometimes as duplicate) since original certificates received for conversion were impounded by RTA or were lying with DPs…'

'…Company, therefore, does not recognize the 22 year old data claimed as Demat data by CDSL/NSDL which is scrap…Further, Company does not find it necessary to explain excess shares reported by CDSL/NSDL from 22 year old data…'

'…As entire shareholding is in Physical form, the Company does not need Depository Services and a link with depositories…'

In this regard, firstly I note from the material available on record that a total of 174000 shares of the Noticee were held in Demat mode viz., 113554 shares as CDSL Demat balance and 60446 shares as NSDL Demat balance. I note that the Noticee has neither denied nor disputed that 174000 shares of the Noticee were dematerialised and instead had inter alia submitted that *'…Initially few investors submitted their shares for Dematting (total 174000 including both Depositories)…'* and that *'…though, there are 174000 shares in Demat form as per depositories record. These were created in year 2000…'* and that *'…In the initial enthusiasm, the depositories have dematerialised 174000 shares out of total 11900700 shares i.e. 1.46% of the share capital…'*

As regards submission of Noticee that *'…entire share capital is in physical mode…' and that '…Co. has converted all folios to physical shares …'* I note that in this regard, due procedure with respect to process of rematerialisation ought to have been followed as has been provided in extant applicable laws. Here it would be relevant to draw reference to provisions of Section 14 of the Depositories Act 1996 which inter alia reads as under:

'…

Option to opt out in respect of any security.

14. (1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

(2)The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfillment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

…'

From the above, I note that provision of Section 14 of the Depositories Act 1996, I note that if a beneficial owner (who is holding shares in Demat form) seeks to opt out of a depository in respect of any security then he shall inform the same to the depository accordingly and thereafter the depository shall inter alia inform the issuer about the same. Pursuant to this, the Issuer could issue the certificate of securities to the beneficial owner (who is holding shares in Demat form) inter alia only after fulfilling such conditions and on payment of such fees as may be specified by the regulations.

Further in this regard, reference is also drawn to the bye-laws of NSDL and CSDL wherein it is inter alia respectively mentioned that-

> *'…8.5.4. Every Issuer or its Registrar and Transfer Agent shall issue the certificate of securities against receipt of the Rematerialisation Request Form from the Client through the Participant and on receipt of confirmed instructions from the Depository….' (emphasis supplied)*

and that-

> *'…CDSL will intimate electronically all such accepted Rematerialisation requests to the Issuer or its RTA on a daily basis. The Issuer or its RTA after validating the RRF will confirm electronically to CDSL and the participant that the RRF has been accepted. Thereafter the Issuer or its RTA shall dispatch the security certificates arising out of the Rematerialisation request within a period of thirty days from receipt of such RRF to the Beneficial Owner named in the RRF at the address set out therein taking such precautions as may be necessary against loss in transit….' (emphasis supplied)*

I note from the above, that as regards NSDL, the Noticee could have issued physical shares in lieu of the shares held in the Demat inter alia only against receipt of the Rematerialisation Request and on receipt of confirmed instructions from the Depository. Further, I note that as regards CDSL, the Noticee could have issued the physical shares in lieu of the shares held in the Demat inter alia only when the acceptance of Rematerialisation Request Form was intimated by CSDL to the Noticee or its RTA and thereafter the Noticee had validated the RRF and confirmed the same to CDSL.

In this regard, I note from the submissions of the Noticee that apart from merely stating that it had converted the shareholding in physical mode, the Noticee has failed to demonstrate that it has followed the procedure with respect to conversion of dematerialised shares into physical shares viz., Rematerialisation. In this regard, I note that the submission of the Noticee are in the nature of admission in so far as Noticee has submitted that *'…The company could not pay the CDSL/NSDL or Sharex to get their cooperation for Rematerializing the shares…'* and that *'….It must be pointed out that Rematerialization process cannot be used if company's RTA (1st point in the link) as well as Depositories have cut company's online link and stopped* *cooperatingdue to non payment….'* and that *' …It is not our intention to blame the CDSL/NSDL since we, as Company, could not pay them their charges…'.*

I note that the Noticee has not demonstrated that the shares which were held by the shareholders in Demat were duly Rematerialized in compliance with applicable laws and therefore I am of the view that the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

11.1.4. I note that the Noticee had inter alia also contended that *"…After issuing Physical Shares there have been no complaints from any investor of non receipt of shares. This is proof that the physical portfolio is complete….Company submits that it has not a single complaint pending for non receipt of share certificate which is proof that its database is intact.*

In this regard, I note that the contention of the Noticee are out of context as the instant allegation is with respect to non-reconciliation of the records of dematerialised securities with all the securities issued by the issuer as the issuer issued duplicate physical shares against shares which were already dematerialized without any rematerialisation request, and not about investor grievances or completion of portfolio. Therefore, the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

11.1.5. I note that the Noticee has inter alia also contended that *'…The decision to go physical was taken in consultation with SEBI to satisfy the investors who had lost their shares to DP, RTA etc. or were not provided Demat securities by CDSL/NSDL…'*.

In this regard, I note from material available on record that in 2004, a Show Cause was issued in respect of IRL for non-compliance of Investor grievance and Adjudication Order dated March 29, 2005 was passed in respect of IRL thereby imposing a penalty of Rupees One Lakh.

I note that although claimed so, however, Noticee has not demonstrated with relevant details/ documents that any such consultation had taken place between Noticee and SEBI prior to Noticee having issued duplicate physical shares without complying with extant applicable laws. In view of thereof, the contention of the Noticee in this regard are devoid of merit and hence cannot be accepted.

11.1.6. I note that the Noticee has inter alia also contended that '…*Company could not pay any of them i.e. CDSL, NSDL and RTA, and had to give written notice of termination…Despite the termination CDSL/NSDL are trying to keep up the fiction of Demat shares and are trying to mislead SEBI to take action against the company probably hoping for some recovery…The violations relating to non-existing Demat capital are a figment of imagination and the conclusion finding the company guilty are without basis…Co. does not require Depository services since 2005 and Demat agreement was officially terminated in 2008…'*

In this regard, I note from the submissions of Noticee that Demat was done in 2000, the folios were converted in 2004, however, so called termination letter is of 2008 that is after converting the folios in physical because of which the excess share capital happened.

Further in this regard, I note that the submissions of the Noticee are inconsistent in nature in so far as at one instance the Noticee is contending about termination of agreement with Depositories in 2008, and on the other instance the Noticee had submitted that letter dated July 08, 2019 to NSDL with regard to updating database for Distinctive Number of shares wherein the Noticee had inter alia stated that "…once connectivity is given to the new RTA, we shall execute Auto Corporate action, to erase data lying in the depository account….Only after this done, can we upload the correct DRN data….Remat of those 70 odd folios is not required, because those shareholders have already been given physical shares in 2006..All transfers, transmissions whatever in small numbers since then have been done in house by the Company in physical form only…'

Moreover, I note that the letters by Noticee to the depositories in 2008, as claimed to be termination letter by the Noticee were in the nature of mere request by the Noticee to depositories in so far as it stated inter alia stated that '…we accordingly request you to remove our company from the list of Dematted companies..' and may not be treated as termination in so far as the Noticee has not demonstrated with relevant details/ documents that the agreement was required to be terminated in this manner, as per the terms of the agreement or relevant laws in this regard and that the Noticee has not brought out the subsequent development regarding such request as to whether the same was acceded to or not. In view thereof, the contentions of the Noticee are devoid of merit and hence out of context.

11.1.7. In view thereof, the allegation that as on June 30, 2019, mismatch in share reconciliation was noted in Inditalia Refcon Ltd., that is, physical shares combined with Dematerialized shares was found to be greater than issued capital and that the issuer issued duplicate physical shares against shares which were already Dematerialized without any Rematerialisation request, stands established. Therefore, I hold that the Noticee violated Regulation 75 of the D&P Regulations, 2018 and Para 5.3.3 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015.

11.2. It was inter alia alleged that the Issuer did not intimate about the mismatch observed in share reconciliation. In view thereof, the

Noticee was alleged to have violated Regulation 76 (3) of D&P Regulations, 2018.

11.2.1. In this regard, it is relevant to refer to the text of the provisions alleged to have been violated, which inter alia reads as under:

D&P Regulations, 2018

'…
Audit
76. (1)
...
(3) The issuer shall immediately bring to the notice of the depositories and the stock exchanges, any difference observed in its issued, listed, and the capital held by depositories in dematerialised form.
...'

From the above, I note that the provisions of Regulation 76 of the D&P Regulations, 2018 inter alia casts an obligation on the issuer to immediately bring to the notice of the depositories and the stock exchanges, any difference observed in its issued, listed, and the capital held by depositories in dematerialised form.

11.2.2. In this regard, it was inter alia observed by SEBI that the Noticee being Issuer, did not apprise the Depositories/Stock Exchanges regarding the difference in its issued capital vis-a-vis physical plus dematerialized shares.

11.2.3. In this regard, I note that the submissions of the Noticee dated 10.04.2023 and 15.09.2023, as replies to the SCN, broadly speaking, save for differently worded, were similar in nature and are being dealt together accordingly. I note that the key submissions of the Noticee in its replies to the SCN, in this regard, were as follows:

'…*The data claimed by CDSL/NSDL is irrelevant since all shareholders have received physical shares. Since co. has entire capital (100%) in physical form, there is no discrepancy to be pointed out. Co. is, therefore, compliant with of Reg.76(3)….'*

In this regard, I note from material available on record that the Noticee did not convert the Demat shares into physical shares in compliance with the extant applicable laws viz., through Rematerialisation process, as already brought out in the foregoing. Therefore, as observed from material available on record, the Demat shares combined with physical shares of the Noticee were greater than the Issued capital by 174000 shares for the quarter ended March 31, 2019 and June 30, 2019 resulting in excess share capital of 174000 shares.

I note from the replies to the SCN submitted by the Noticee that it had neither denied nor disputed about not having immediately brought to the notice of the depositories and the stock exchanges the difference observed in its issued, listed, and the capital held by depositories in dematerialised form. Instead the submissions of the Noticee are in the nature of admission that it did not intimate about the mismatch observed in the share reconciliation in so far Noticee has submitted that '…*there is no discrepancy to be pointed out*….'.

11.2.4. In view thereof, the allegation that the Issuer did not intimate about the mismatch observed in share reconciliation, stands established. Therefore, I hold that the Noticee violated Regulation 76 (3) of D&P Regulations, 2018.

11.3. It was inter alia alleged that the Issuer did not update the DN database and did not initiate adequate steps towards reconciliation of share capital. In view thereof, the Noticee was alleged to have violated Regulation 77 of D&P Regulations, 2018 and Para 5.3.1 and 5.3.2 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015.

11.3.1. In this regard, it would first be relevant to refer to the text of the provisions alleged to have been violated, which inter alia reads as under:

<u>D&P Regulations, 2018</u>

"…

Connectivity

77. Every issuer or its agent shall establish continuous electronic means of communication with the depository with which it has entered into an agreement.

…"

<u>Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015- Sub: Database for Distinctive Number (DN) of Shares</u>

"…

5.3. <u>Instructions to the Issuers/RTAs</u>

5.3.1. Issuers/RTAs shall use the interface provided by the Depositories for the following –

i. To update DN information in respect of all physical share capital and overall DN range for dematerialised share capital for all listed companies.

ii. Updating the fields (i)-(iv), (viii) and (ix)given in para 5.1.3, on a continuous basis for subsequent changes including changes in case of further issue, fresh issuance/ new listing and other change/ alteration in capital (such as buy-back of shares, forfeiture of shares, capital reduction, etc.).

iii. Capturing / updating the DN information on a continuous basis while processing, Dematerialisation / Rematerialisation requests confirmation, executing corporate action, etc.

5.3.2. Issuers/RTAs shall take all necessary steps to update the DN database. If there is mismatch in the DN information with the data provided/ updated by the Stock Exchanges in the DN database, the Issuer/RTA shall take steps to match the records and update the same latest by December 31, 2015.

…"

From the above, I note that the provisions of Regulation 77 of the D&P Regulations, 2018 inter alia casts obligation on the issuer to establish continuous electronic means of communication with the depository with which it has entered into an agreement.

I also note that in terms of Para 5.3.1 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015, the Issuer was inter alia required to, update DN information in respect of all physical share capital and overall DN range for dematerialised share capital. There was an obligation on the Issuer to capture / update the DN information on a continuous basis while processing, Dematerialisation / Rematerialisation requests confirmation, executing corporate action, etc.

Further, I note that in terms of Para 5.3.2 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015, if there was mismatch in the DN information with the data provided/ updated by the Stock Exchanges in the DN database, the Issuer/RTA was required take steps to match the records and update the same latest by December 31, 2015.

11.3.2. In this regard it was inter alia observed by SEBI that the Noticee had entered into Dematerialization arrangement with CDSL and NSDL in the year 2000. However, as stated by the Noticee, due to non-payment of annual charges since 2002 and the recurring charges thereafter, the depositories stopped all further cooperation with the Noticee/ RTA. Thus, the Issuer was not able to continue its arrangement with the depositories. Further, it was observed by SEBI that the Noticee did not update the DN database and did not initiate adequate action towards matching the records of share capital

11.3.3. In this regard, I note that the submissions of the Noticee dated 10.04.2023 and 15.09.2023, as replies to the SCN, broadly speaking, save for differently worded, were similar in nature and are being dealt together accordingly. I note that the key submissions of the Noticee in its replies to the SCN were as follows:

> *"…The co. does not need any connectivity since it has no Demat share capital outstanding. No Demat Agreement in force, having opted for 100% Physical shareholding since 2004-05…'*
>
> *'…Para 4.3.1 of the report clearly accepts that the Demat agreement was officially terminated in April 2008. The D & P regulations and circular dt. June 05, 2015 are not applicable to a physical database….'*
>
> *No violations can take place of an agreement which was terminated in 2008.*
>
> *It is not our intention to blame the CDSL/NSDL since we, as Company, could not pay them their charges. However, the fact remains and the enquiry committee should realise that the Company cannot update the data on its own if the CDSL/NSDL have terminated the link.*

In this regard, I note from material available on record that the Noticee did not convert the Demat shares into physical shares in compliance with the extant applicable laws viz., through Rematerialisation process, as already brought out in the foregoing. Therefore, as observed from material available on record, the Demat shares combined with physical shares of the Noticee were greater than the Issued capital by 174000 shares for the quarter ended March 31, 2019 and June 30, 2019 resulting in excess share capital of 174000 shares. Accordingly, the Noticee was required to establish continuous electronic means of communication with the depositories. Further, being a listed company and having shares in Physical mode, the Noticee was inter alia required to update DN information in respect of all physical share capital and overall DN range for dematerialised share capital in terms of the SEBI Circular dated June 05, 2015.

In this regard, I note that the submissions of the Noticee as replies to the SCN are in the nature of admission in so far as the Noticee has submitted that *'…the connectivity was removed for non-payment of charges…'.* and that *'…the Company cannot update the data on its own if the CDSL/NSDL have terminated the link….'.*

11.3.4. In view thereof, the allegation inter alia that the Issuer did not update the DN database and did not initiate adequate steps towards reconciliation of share capital, stands established. Therefore, I hold that the Noticee violated Regulation 77 of D&P Regulations, 2018 and Para 5.3.1 and 5.3.2 of Circular no. CIR/MRD/DP/10/2015 dated June 05, 2015.

11.4. It was inter alia alleged that the Issuer did not comply with the Common Agency Requirement. In view thereof, the Noticee was

alleged to have violated Regulation 71 of D&P Regulations, 2018, Regulation 7 (2) and Regulation 8 of the LODR Regulations, 2015.

11.4.1. In this regard, it is relevant to refer to the text of the provisions alleged to have been violated, which inter alia reads as under:

D&P Regulations, 2018

"…

Manner of handling share registry work

71. All matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point i.e. either in-house by the issuer or by a Share Transfer Agent registered with the Board

…"

LODR Regulations, 2015

"…

Share Transfer Agent

7. (1) ….

(2)The listed entity shall ensure that all activities in relation to share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board.

…

Co-operation with intermediaries registered with the Board

8. The listed entity, wherever applicable, shall co-operate with and submit correct and adequate information to the intermediaries registered with the Board such as credit rating agencies, registrar to an issue and share transfer agents, debenture trustees etc, within timelines and procedures specified under the Act, regulations and circulars issued there under.

…'

From the above, I note that the provisions of Regulation 71 of D&P Regulations, 2018 inter alia require that all matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories shall be handled and maintained at a single point i.e. either in-house by the issuer or by a Share Transfer Agent registered with the Board.

Further, I note that the provisions of Regulation 7 (2) of the LODR Regulations, 2015 inter alia require that the listed entity shall ensure that all activities in relation to share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board; and Regulation 8 of the LODR Regulations, 2015 inter alia requires the listed entity to co-operate with and submit correct and adequate information to the intermediaries registered with the Board such as to share transfer agents etc, within timelines and procedures specified under the Act, regulations and circulars issued there under.

11.4.2. In this regard it was inter alia observed by SEBI that during the inspection of Sharex Dynamic (India) Private Ltd. ("Sharex"), conducted by NSDL on March 2 and 3, 2017, it was observed that though electronic connectivity for ISIN INE149C01013 (ISIN of Noticee) was with Sharex, physical share registry work was handled in-house by the Noticee. Accordingly, NSDL, vide letter dated May 30, 2017 advised the Noticee to ensure compliance with the Regulations. Further, as per depositories mail dated December 16, 2021, RTA vide letter dated January 22, 2020, had informed that no beneficiary position was made available by the depositories to the RTA for reconciliation of ISIN balances, no Remat/Demat was done for the said issuer for the last 11 years by its RTA and no physical back- office data was made available to the RTA by the Issuer.

11.4.3. In this regard, I note that the submissions of the Noticee dated 10.04.2023 and 15.09.2023, as replies to the SCN, broadly speaking, save for differently worded, were similar in nature and are being dealt together accordingly. I note that the key submissions of the Noticee in its replies to the SCN were as follows:

> "…
> *Investors who had submitted certificates to DPs/RTA were clamouring for solution and company had no alternative but to issue them physical shares as duplicate. Since then Co. has handled all investor requests such as change of address, transfers, transmissions and other details in house till 2018 and thereafter through new RTA Purva Sharegistry P. Ltd*
> *…'*
> *'…*
> *Entire data of the member's register was handled in house from 2004-05 till 2018 when M/s Purva Sharegistry P. Ltd. (Purva) was appointed as the RTA. Presently it is managed by Purva.*
> *Under Reg.71 all matters regarding records etc. of shareholders are to be maintained at one point, either Co of RTA. Hence there is no violation of Reg.71*
> *Since, all the records are in physical form there is no need for Demat services and connectivity. Co. is, therefore, compliant with Reg.71.*

…'

In this regard, I note that as claimed by the Noticee, data of the member's register was handled in house by the Company in so far as the Noticee has submitted that '…*Entire data of the member's register was handled in house from 2004-05 till 2018…'* However, I note from Sharex letters dated February 13, 2019 addressed to CDSL and NSDL inter alia stated *that '…We have executed an agreement with NSDL to act as an R&T Agent for INDITALIA REFCON LIMITED. We wish to inform you that we give our consent to shift the database and electronic connectivity to PURVA SHAREREGISTRY (INDIA) PVT. LTD….till such time the database and electronic connectivity is shifted to the new R&T Agent by …., We shall continue to provide share registry services to the Issuer….'*. I note that the Noticee has neither denied nor disputed the contents of the aforesaid letter which was also provided to the Noticee as annexures to the SCN.

Further, I note that although the Noticee has claimed that *'…all the Co.'s shares are in physical form and the register is managed by Purva Sharegistry (India) P. Ltd…'* , however the Noticee did not produce any material/ document in this regard and accordingly failed to demonstrate that as on June 30, 2019 all matters relating to transfer of securities, maintenance of records of holders of securities, handling of physical securities and establishing connectivity with the depositories were being handled and maintained at a single point i.e. either in-house by the issuer or by a Share Transfer Agent registered with the Board and that that all activities in relation to share transfer facility were maintained either in house or by Registrar to an issue and share transfer agent registered with the Board.

In view thereof, the contention of the Noticee in this regard are devoid of merit and hence cannot be accepted.

11.4.4. I note that the Noticee has inter alia also contended that *'…The termination notice dt.28-06-2011 forwarded by* Sharex *to SEBI is acknowledged by SEBI on 29th June 2011. SEBI is, therefore, aware that the Co. does not enjoy DP support since many years and agreement is terminated in 2011. Therefore, realistically, SEBI should not expect Company to answer for the defunct data held by CDSL/NSDL….'*

In this regard, I note that the contention of the Noticee are out of context in so far as the alleged violation in this regard inter alia pertains to establishing connectivity with the depositories at a single point i.e. either in-house by the issuer or by a Share Transfer Agent registered with the Board. I note that Noticee has not brought out along with relevant details/ documents that connectivity was established with the depositories at a single point i.e. with the Issuer in the instant case. In this regard, I note from material available on record that vide letter dated February 13, 2019 addressed to CDSL and NSDL it was inter alia stated by Sharex that *'…We have executed an agreement with NSDL to act as an R&T Agent for INDITALIA REFCON LIMITED. We wish to inform you that we give our consent to shift the database and electronic connectivity to PURVA SHAREREGISTRY (INDIA) PVT. LTD….'*. I note from material available on record that electronic connectivity remained with Sharex during relevant period. In view thereof, the contentions of the Noticee in this regard are devoid of merit and hence cannot be accepted.

11.4.5. Further, as regards the allegation with respect to violation of Regulation 8 of the LODR Regulations, 2015, viz., Noticee not having provided beneficiary position to the RTA for reconciliation of ISIN balances and no physical back- office data was made available to the RTA by the Issuer., I note that Noticee has neither denied nor disputed that aforesaid details were made available to the RTA by the Noticee. Further, I note that in this regard the Noticee has inter alia submitted that *'…Company could not pay any of them i.e. … and RTA…'*. and that *'…company's RTA (1st* *point in the link) .. have cut company's online link and stopped cooperating due to non-payment….'* and that *'… Company does not blame the CDSL/NSDL/Sharex etc. as after all they could not be paid and they are not a charitable organisation..'.* It is evident from the aforesaid that the Noticee was not co-operating with the RTA and instead was not even clearing the dues of the RTA.

11.4.6. In view thereof, the allegation that the Issuer did not comply with the Common Agency Requirement, stands established. Therefore, I hold that the Noticee violated Regulation 71 of D&P Regulations, 2018, Regulation 7 (2) and Regulation 8 of the LODR Regulations, 2015.

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Sections 19E and 19G of the Depositories Act, 1996 and under Section 15HB of SEBI Act, 1992

12. It has been established in the preceding paragraphs that Noticee has violated the provisions of D&P Regulations, 2018, LODR Regulations, 2015 and SEBI Circular dated June 05, 2015.

13. It is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that:

> *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......"*

14. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Sections 19E and 19G of the

Depositories Act 1996 and under Section 15HB of the SEBI Act which inter alia provides as following: -

<u>Depositories Act, 1996</u>

> *"…*
> ***Penalty for failure to reconcile records.***
> ***19E.*** *If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), fails to reconcile the records of Dematerialized securities with all the securities issued by the issuer as specified in the regulations such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*
>
> *…*
>
> ***Penalty for contravention where no separate penalty has been provided.***
> ***19G.*** *Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*
> *…"*

<u>SEBI Act, 1992</u>

> *"…*
> ***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.*
> *…."*

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

15. While determining the quantum of penalty under Sections 19E and 19G of the Depositories Act 1996 and under section 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 19H of the Depositories Act, 1996 and in Section 15J of the SEBI Act, which reads as under: -

<u>Depositories Act, 1996</u>

"…

Factors to be taken into account while adjudging quantum of penalty

__19-I.__ While adjudging the quantum of penalty under 23[section 19 or section 19H, the Board or the adjudicating officer] shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

24[Explanation.—For the removal of doubts, it is clarified that the power 25[***] to adjudge the quantum of penalty under sections 19A to 19F shall be and shall always be deemed to have been exercised under the provisions of this section.".]

SEBI Act.

…"

SEBI Act, 1992

"….

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—

a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b. the amount of loss caused to an investor or group of investors as a result of the default;

c. the repetitive nature of the default.

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

…"

In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticee as a result of the violations committed by the Noticee. Further, as regards repetitive nature of default, I note from material available on record that vide Adjudication Order dated March 29, 2005, penalty of Rs. 1,00,000/- had been imposed upon the Noticee inter alia under Section 15C of the SEBI Act, 1992. I note that the Noticee as part of its reply to the SCN had inter alia indicated about financial distress since year 2000 and onwards. However, I cannot ignore that the Noticee had issued duplicate physical shares against shares which were already dematerialized without any Rematerialisation request, as already established in the foregoing.

In view thereof, I am of the view that such violations on part of the Noticee needs to be dealt with accordingly.

E. ORDER

16. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under Section 19H of the Depositories Act 1996 r/w Rule 5 of the Depositories (Procedure For Holding Inquiry And Imposing Penalties) Rules, 2005 and under Section 15-I of the SEBI Act, 1992 read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticee, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticee in this case:

Name of the Noticee	Penalty Under Section	Penalty Amount (Rs.)
Inditalia Refcon Limited	Section 19E of the Depositories Act, 1996	Rs. 1,00,000/- (Rupees One Lakh Only)
	Section 19G of the Depositories Act, 1996	Rs. 1,00,000/- (Rupees One Lakh Only)
	15HB of SEBI Act, 1992	Rs. 1,00,000/- (Rupees One Lakh Only)

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

18. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said

amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

19. In terms of the provisions of Rule 6 of the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Rule 6 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: MARCH 28, 2024	**AMAR NAVLANI**
PLACE: MUMBAI	**ADJUDICATING OFFICER**