

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 11B (2) read with Section 15HB of the Securities and Exchange Board of India Act, 1992 and Section 12A (2) read with Section 23GA of Securities Contracts (Regulation) Act, 1956

In respect of:

Name of the Noticee	PAN
Indian Clearing Corporation Ltd.	AABCI7140K

In the matter of Indian Clearing Corporation Ltd.

Background

1. Securities and Exchange Board of India (“**SEBI**”) had conducted an inspection of books of accounts and other records of Indian Clearing Corporation Ltd. (herein after referred as “**ICCL**”/ “**Noticee**”) for the period December 1, 2022 to July 31, 2023 to ascertain as to whether ICCL has complied with the provisions of SEBI Rules, Regulations and Circulars issued from time to time. SEBI conducted a multi-theme inspection to understand the practices and systems put in place by the Noticee with regard to clearing operations and related compliance aspects in line with Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”), Securities Contracts (Regulation) Act, 1956 (“**SCRA**”), Securities Contracts (Regulation) (Stock Exchange and Clearing Corporations) Regulations, 2018 (“**SECC**”).
2. The aforesaid inspection had prima facie revealed that the Noticee inter alia non-complied with respect to certain provisions of SECC read with SEBI circular on 'Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories' (CIR/MRD/DP/13/2015) dated July 06, 2015, SEBI Circular on 'Modification in Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories' (SEBI/HO/MRD1/MRD1_DTCS/P/CIR/12022/68) dated May 20, 2022, SEBI circular on 'System and Network Audit of Market Infrastructure Institutions (MII's)' (SEBI/HO/MRD1/MRD1_DTCS/P/CIR/2022/58) dated May 02, 2022

and SEBI circular on '*Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs)*' (SEBI/HO/MRD1/DTCS/CIR/PI/2021/33) dated Mar 22, 2021.

3. On completion of the inspection, the findings were communicated to the Noticee vide letter dated March 26, 2024 for its comments. Subsequent to the reply of the Noticee on the said findings, the instant proceedings were initiated w.r.t. observations No. 8.2.2, 8.3.1, 8.5.2 & 11.5.1 of the Inspection Report ("**IR**"). Details of the said observations are as under:

3.1 Alleged failure of ICCL to comply with clause 11 of SEBI circular on '*Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories*' (CIR/MRD/DP/13/2015) dated July 06, 2015, which inter-alia, prescribes the following –*MII should identify critical assets based on their sensitivity and criticality for business operations, services and data management. To this end, MII should maintain up-to-date inventory of its hardware and systems, software and information assets (internal and external), details of its network resources, connections to its network and data flows.*

3.1.1 In this regard, from the data submitted by the Noticee during the inspection w.r.t the centralized inventory of IT assets, it was observed that the inventory did not have software assets information and also it was not correct and updated one. Further, no criticality was defined in the asset list provided.

3.2 Alleged failure of the Noticee to comply with clause 3 of SEBI Circular '*Modification in Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories*' (SEBI/HO/MRD1/MRD1_DTCS/P/ CIR/2022/68) dated May 20, 2022 which stipulates that the MIIs are mandated to conduct comprehensive cyber audit at least 2 times in a financial year (FY).

3.2.1 In this regard, from the Cyber Audit Report submitted during the inspection, it was observed that the cyber audit is being conducted bi-annually as per the SEBI circular, however, the observations

made in the said audit report were not closed in a time-bound manner. Therefore, it was alleged that ICCL has not closed the observations even after 6 months.

3.3 Alleged failure of the Noticee to comply with clause 1 (j) of SEBI circular on '*System and Network Audit of Market Infrastructure Institutions (MII's)*' (SEBI/HO/MRD1/MRD1_DTCS/P/CIR/2022/58) dated May 02, 2022 (as part of the '*System and Network Audit Framework*') which prescribes that the Audit report along with the comments of the management shall be placed before the Governing Board of the MIIs and the same along with comments of the Governing Board shall be submitted to SEBI within 1 month of completion of the audit.

3.3.1 In respect of the above, it was observed that the Network Audit report was submitted by the auditor of the Noticee to ICCL on Aug 03, 2023. However, the said report was submitted by ICCL to SEBI on Aug 04, 2023 without any management or Board comments.

3.3.2 Further, as per the Minutes of the 111th Board Meeting held on Oct 27, 2023, Agenda No.16, the ICCL Board was apprised that "all observations reported in the previous audit period has now been addressed and reported as closed". But, during the inspection, it was observed that the observation w.r.t the asset inventory is still showing as open i.e., ICCL doesn't have an up-to-date inventory as per SEBI circulars. Hence, it was alleged that the auditor did not verify the inventory requirements as per the SEBI circulars, and ICCL submitted the report to SEBI without management comments.

3.4 Alleged failure of the Noticee to comply with clause 4 (a) of SEBI circular no. SEBI/ HO/ MRD1/ DTCS/ CIR/ P/ 2021/33 dated Mar 22, 2021 on *Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs)* which states that hardware, system software, application environment, network and security devices and associated application environments of disaster recovery site (DRS)

/Near Site (NS) and Primary Data Centre (PDC) shall have one to one correspondence between them.

3.4.1 From the information provided by the Noticee, i.e. the list of asset inventory containing configuration of primary servers (PDC) and disaster recovery servers (DRS), the asset list in PDC at S.No. 45 i.e. 'VM server' mentioned the configuration as 16 core 48 GB, whereas in the corresponding DRS the configuration mentioned as 16 core 32 GB. Hence, it was observed that there was no one to one correspondence between assets at DRS/NS and PDC due to different configuration.

4. In view of the aforesaid facts, it was alleged that the Noticee failed to comply with the Regulation 7(4) (I) of SECC read with Clause 11 of SEBI circular 'Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories' (CIR/MRD/DP/13/2015) dated July 06, 2015, Clause 3 of SEBI Circular 'Modification in Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories' (SEBI/HO/MRD1/MRD1_DTCS/P/CIR/2022/68) dated May 20, 2022, Clause 1 (j) of SEBI circular 'System and Network Audit of Market Infrastructure Institutions (MII's)' (SEBI/HO/MRD1/MRD1_DTCS/P/CIR/2022/58) dated May 02, 2022 and Clause 4 (a) of SEBI circular no. SEBI/ HO/ MRD1/ DTCS/ CIR/ P/ 2021/33 dated Mar 22, 2021.

Show Cause Notice, Reply and Personal Hearing

5. Having regards to the aforesaid alleged violations, Show Cause Notice dated October 03, 2024 (hereinafter referred to as **“the SCN”**), was issued to the Noticee under Section 11B(2) of SEBI Act read with Section 15HB of SEBI Act and Section 12A(2) of SCRA read with Section 23GA of SCRA. Vide the said SCN the Noticee was called upon to show cause as to why an inquiry should not be held against it in the manner prescribed in SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules,

2005 and penalty should not be imposed under section 23GA read with 12A(2) of SCRA and 15HB read with 11B(2) of SEBI Act for the aforesaid violations.

6. The SCN was delivered to the Noticee vide email. Thereafter, vide letter dated October 24, 2024, the Noticee sought inspection of documents. Accordingly, on November 12, 2024, the Authorised Representatives ('AR') of the Noticee visited SEBI Mumbai office and inspected the documents. Further, vide email dated November 12, 2024, the AR of the Noticee also sought additional documents, which, were duly provided, vide email dated November 13, 2024.
7. Even subsequent to the completion of the inspection of documents, the Noticee failed to submit reply to the SCN in time. Further, vide letter dated November 28, 2024 the AR of the Noticee, sought 4 weeks' time to submit reply of the SCN. Accordingly, additional time was granted till December 22, 2024 to submit reply to the SCN as well as to appear for the personal hearing on the scheduled date of December 23, 2024 in furtherance of the principles of natural justice.
8. Thereafter, once again, vide email dated December 20, 2024 the AR sought four weeks' time to submit reply of the SCN and also requested adjournment of the personal hearing scheduled on December 23, 2024. Accordingly, once again, upon considering the above request, the AR was granted time till January 03, 2025 to submit reply of the SCN and the hearing was adjourned to January 06, 2025. The AR in response to the above correspondence vide email dated January 01, 2025, for the third time sought additional three weeks' time to reply to the SCN as well as to adjourn the personal hearing. However, the said request of the AR was not considered as the AR was already informed that no further adjournment or additional time be granted.
9. Though the AR failed to submit reply by January 03, 2025, they appeared for the personal hearing before the undersigned on January 06, 2025. During the personal hearing, the AR requested additional 10 days' time to submit reply to

the SCN and to reschedule personal hearing to a future date, post submission of the said reply. The request of the AR was accepted and it was advised to submit reply of the SCN on or before January 16, 2025. The personal hearing was accordingly rescheduled to January 20, 2025.

10. Finally, the AR vide email dated January 18, 2025 submitted the reply to the SCN. The preliminary submissions made therein are as following:

Preliminary Submission

I. Purpose of inspection is remedial and not punitive

- i. *The present SCN has been issued in the matter of inspection observations qua ICCL. While the Noticee has detailed responses to the alleged violations, it was submitted that the purpose of an inspection is remedial and not punitive. It is submitted that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. The purpose of inspection is to advise the entity to cure the lapse and only if any serious lapse is discovered, then penalty action can be taken.*
- ii. *It was submitted that even in the present case the violation alleged are merely technical violations and even the incorrectly alleged violations are not such as would merit or justify any penalties. At the highest, the non-compliances alleged were non-repetitive and mere technical violations that did not lead to any loss to any investors or any gains at all to the ICCL. Further, ICCL has taken all requisite actions also as set out herein below in detail and it is not even alleged that any of the alleged violations were deliberate or contumacious or mala fide, so as to merit any adjudication proceedings or any penalty against ICCL. It is an established position that every irregularity or deficiency noticed during the course of inspection does not call for initiation of penalty proceedings. Hence, in view of the aforesaid, the SCN ought to be disposed of without imposition of any adverse directions or adverse observations against the Noticee.*

II. Section 23GA of SCRA is inapplicable in the present facts and circumstances

- i. *It is submitted that Section 23GA of the SCRA is not applicable in the present facts and circumstances and is wrongfully being pressed against ICCL. Section 23GA of the SCRA is reproduced hereinunder for reference:*

“Penalty for failure to conduct business in accordance with rules, etc.

23GA. Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.”

- ii. *It was submitted that the SCN contains allegations only as regards the Comprehensive Review of Cyber Security and System and Network Review of ICCL, and the same contains no allegation that the ICCL in any manner failed “...to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act...”*
- iii. *It was submitted that Section 23GA has to be interpreted strictly, since it is a penal provision. Hence, in the absence of such jurisdictional facts, Section 23GA cannot be pressed against ICCL. Therefore, while section 15 HB of the SEBI Act may be applicable as alleged in para 5 of the SCN, section 23GA of the SCRA is not at all applicable. In view of the above, it was submitted that the SCN is flawed and ought to be withdrawn.*

Submissions on Allegations

- a. *Regarding the allegation that ICCL’s centralized inventory of IT assets did not have software asset information and that the same is not correct and up-to-date and no criticality is defined in the asset list.*

i. The only object and purpose of the same obviously is to have a list / inventory of all critical hardware and software assets for easy reference and comparison as and when required. Accordingly, ICCL in fact had maintained the requisite inventory of its critical hardware and systems, software and information assets (internal and external), details of its network resources, connections to its network and data flows along with identification of the items which are critical

ii. The allegation that ICCL did not have software asset information is factually incorrect. The said inventory was in fact included in the software asset information. By ICCL's email dated January 20, 2024 and April 23, 2024, ICCL has already forwarded to SEBI a complete inventory of all relevant software assets and information pertaining thereto as extracted from the said system. The misconception appears to have occurred because SEBI vide its email / IT Questionnaire dated August 21, 2023 had sought information of IT assets in a fixed format which had no provision / column for software assets and in fact only identified hardware under "Asset Type".

iii. As regards the allegation that the asset inventory was not correct and up to date, it was reiterated that during the Cyber Audit and the Network Audit, the auditor observed that the IT asset inventory was found not to have been up to date, merely because the same included some decommissioned servers which were not in use and therefore ought to have been removed from the list. After due verification of the deletion, the auditor was satisfied and closed the observation and issued its Findings Closure Reports dated November 06, 2023.

iv. Regarding the criticality of asset inventory it was submitted that by its email dated December 19, 2023, SEBI sought the criticality information and the same was immediately provided based on the inventory vide ICCL's email dated December 22, 2023. However, the identification of criticality was always there in the inventory maintained by ICCL. In fact, the same is also specified in the System and Network Audit Report itself, that the criticality is documented in the IT Asset Management of ICCL.

b. Regarding failure to close audit observations pertaining to the IT asset inventory within the deadline of October 31, 2023.

i. The said allegation that the observations in the Auditor Report were not closed out by October 31, 2023, being the alleged deadline given by the auditor is factually false and belied by both of the auditor's own said Findings Closure Reports dated November 06, 2023, which inter alia record that the said observation on updation of the asset register was found "closed" during their revalidation audit undertaken from October 25, 2023 to October 27, 2023. Therefore, obviously the same was 'closed' prior to October 31, 2023.

ii. The said fact that the updation of the asset inventory had been completed before October 31, 2023 is also established by the fact that the same was reported to SCOT and the Board of ICCL as proved by the Agenda for the SCOT meeting to be held on October 26, 2023 and the Agenda for the Board meeting to be held on October 27, 2023.

c. Regarding failure of ICCL to obtain comments from the management and board of directors before submitting the audit reports to SEBI:

i. The Auditor reports dated August 02, 2023 were communicated to SEBI vide separate emails dated August 04, 2023 which also categorically stated that the said reports would be placed before SCOT and Board and comments, if any, would be communicated to SEBI thereafter.

ii. Thereafter, ICCL placed the Cyber Audit report and Network Audit report before the SCOT and the Board for approval by circular resolutions on August 08, 2023 and August 10, 2023 respectively, and they approved the same without any comments on August 09, 2023 and August 14, 2023 respectively. Since the said reports did not warrant any comments from the Board, there was nothing to report to SEBI.

iii. A progress update on the observations in the Cyber Audit report and Network Audit report was placed before the SCOT and the Board on October 26, 2023 and October 27, 2023 respectively wherein it was correctly informed to them that the inventory had been updated and the auditors were undertaking verification of closure of findings / revalidation. The auditor undertook the verification and closure of its observations between October

25, 2023 and October 27, 2023. After due verification, the auditor was satisfied and “closed” the observations as mentioned in its Findings Closure Reports dated November 06, 2023 on Comprehensive Review of Cyber Security and the System and Network Review, copies whereof are annexed hereto. The auditor’s said Findings Closure Reports dated November 06, 2023 were communicated to SEBI by separate emails dated November 09, 2023, copies whereof are already annexed hereto as aforesaid.

iv. No further query / observation was raised by SEBI after receipt of the said Findings Closure Reports dated November 06, 2023. It is therefore respectfully submitted that the said allegation in the SCN is misconceived. It is further pertinent to note that the Hon’ble Supreme Court of India in *SEBI v. R.T. Agro Private Limited and Ors.* (Civil Appeal No. 2957 of 2022 decision dated April 25, 2022) wherein the court observed as under:

“The view, as taken by the Appellate Tribunal, in the given set of facts and circumstances of the present case, appears to be a plausible view of the matter. In fact, nothing of ill-intent on the part of the respondents has been established in the present case. The hyper-technical stance of the appellant could have only been, and has rightly been, disapproved on the given set of facts and circumstances.”

v. It was submitted that the said allegation is factually incorrect and it is not even disclosed as to why it is alleged that the asset inventory has not been updated. It is reiterated that the updation was carried out prior to said deadline October 31, 2023 and the same was also duly verified by the auditor as already stated hereinabove in detail and as recorded by them in their Findings Closure Reports dated November 06, 2023 and intimated to SEBI on November 09, 2023.

d. Regarding failure of having one to one correspondence between assets at DRS / NS and PDC:

i. The SEBI circular no. SEBI/ HO/ MRD1/ DTCS/ CIR/ P/ 2021/33 dated Mar 22, 2021 on Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIIs) [“BCP Circular”] does not define the term ‘one-to-one correspondence’. It is submitted that

even in Annexure E-1 to the SCN, it is an admitted fact that ICCL has one to one corresponding assets at DR for every asset in the PDC. The said circular does not require that the specifications of each asset must be identical. There is no stipulation that the capacity of each must be identical. Therefore, it cannot be alleged that the ICCL has violated the said BCP circular.

ii. Consequently, even though the said one to one correspondence of IT assets between DR and PDC sites was included in the scope of System and Network Audit, no adverse observations were recorded by the auditor in this regard, which proves that even as per their interpretation, there was no violation as alleged in the SCN.

iii. Pertinently, the said servers were “Non-trading” servers and the said small difference in the GB of one server made no difference at all to the performance and reliability of the system. In fact, ICCL regularly / periodically successfully shifted live market operation to the DR and the same has also been reported to SEBI. In fact, the server system is so configured that while both the said servers already had equivalent installed capacity but only 32 GB of the RAM of the said server at the DRS/ NS was activated, which was remotely increased to 48 GB pursuant to the observations of SEBI. The additional GB of storage for that particular server can be increased remotely almost instantaneously, the same has already been done, and the GB of the said server has been increased to 48 GB even though it was not required. Therefore, it was inadvertently and by oversight the server at the DRS/ NS was enlisted as having “32GB”.

iv. Annexure E-1 also alleges that End of Life (EOL) / End of Service (EOS) dates are mentioned for the DR servers but not mentioned for PDC servers. SEBI vide its email / IT Questionnaire dated August 21, 2023 had sought information of IT assets in a fixed format which had a column for EOS and EOL dates only qua DR servers and not for the PDC servers. SEBI wrongly assumed that there was no record of the End of Life (EOL)/ End of Service (EOS) dates for the PDC servers, which is factually incorrect. In fact, the EOS/ EOL dates for PDC servers was inter alia also provided in the format as required by SEBI under S/n 2.a.8 of the very same said email / IT

Questionnaire dated August 21, 2023 and the same was placed in the shared folder during the inspection by SEBI.

The alleged violations are at best merely technical and venial in nature and facts of the present case do not merit imposition of penalty.

It was submitted that the SCN threatens to penalize the Noticee for technical violations that no longer exist. Reliance was placed on the Hon'ble Securities Appellate Tribunal's order in P.G Electroplast Limited v. SEBI [Appeal No.281 of 2017], whereby it was observed that in cases of venial / technical violations, an authority, exercising its discretion under Section 15J of the SEBI Act would be justified in refusing to impose any penalty:

"Penalty can be imposed for failure to carry out a statutory obligation under the SEBI Act. Factors contemplated under Section 15J are required to be taken into consideration before imposing a penalty. If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act."
(Emphasis Supplied)

In light of the fact that alleged non-compliances were trivial issues / irregularities at best, which have not affected the interests of the investors or the market, the alleged violations at best are technical or venial breach, no gain has been made by ICCL, no loss has been caused to any investors as a consequence of the same, and ICCL had no mala fide intent, the facts of the matter do not merit imposition of any penalty at all.

11. For the personal hearing, the AR of the Noticee appeared before the undersigned on January 20, 2025 and reiterated the above submissions.

Additionally, 10 days' time was requested by the AR, during the personal hearing, to submit supplementary reply which was duly granted. However, the Noticee submitted the additional reply after the delay of 22 days and only on February 20, 2025. The additional submissions made therein are as following:

a. Details of criticality were provided to SEBI in the desired format

i. The complete asset registry had been shared with SEBI on January 20, 2024 and details of software and criticality had been separately shared with SEBI vide email dated December 22, 2023.

ii. Thereafter, a meeting was held on April 22, 2024 between ICCL and SEBI pursuant to which, ICCL on April 23, 2024 shared a consolidated file once again containing the inventory of hardware and software with criticality.

iii. While a copy of the email dated April 23, 2024 along with the asset registry attached thereto was provided as Annexure K and Annexure L in the reply to the SCN, based on the clarification sought, a copy of the email dated April 23, 2024 in .msg format is also being enclosed for the kind consideration of the competent authority.

b. Details of web application firewall (WAF) as part of asset registry

Reference is drawn to the email of the Noticee to SEBI dated December 22, 2023 whereby the details of the WAF deployed by the Noticee were duly provided. During the course of inspection, it was understood that web application firewall details had not been sought as a part of the format for the asset registry; therefore, the same had not been incorporated in the asset register provided to SEBI. The Noticee did not have any intention to knowingly/ deliberately exclude any details during the course of SEBI's inspection. However, a copy of asset register along with WAF details is again submitted.

c. Server capacity in primary and DR site

i. The server system is so configured that while both the said servers already had equivalent installed capacity but only 32 GB of the RAM of the said server at the DRS/ NS was activated. The additional GB of storage for that particular

server can be activated remotely almost instantaneously and the same has already been done.

ii. Further, proof for the same was sought during the course of the personal hearing on January 20, 2025. Accordingly, enclosed herewith is a screenshot of the maximum memory capacity of the non-trading server referred to at S. No. 45 of Annexure E-1 stationed at the primary and DR site which is same i.e 124 GB. Thus, it is respectfully submitted that there was one-to-one correspondences between primary site and DR for S. No. 45. In fact, the activated capacity for both has now been increased to 64 GB.

d. Purpose of inspection is not to penalize

i. The Noticee has proactively taken the necessary corrective actions towards rectifying the observations made by SEBI during the course of its inspection as well as the personal hearing. Consequently, no non-compliance in respect of the captioned inspection survives.

ii. It is reiterated that the purpose of an inspection is merely to advise the entity to cure any lapses identified during the inspection. In the present case ICCL has, during the inspection itself, cured the technical and venial lapses identified by SEBI, especially as (a) the asset registry was updated with details of criticality and web application firewall details were provided to SEBI; and (b) the server capacity of one non-trading server was increased during the inspection to ensure one-to-one correspondence.

e. Section 23GA ought not to be invoked in the present matter

i. It would be unfair and arbitrary to levy penalty against the Noticee under Section 23GA considering that the allegations in the SCN are at the highest technical in nature, not deliberate or intentional and have not caused any harm to investors and the securities market. In the absence of any defined legal standard or demonstrable misconduct, the invocation of Section 23GA is arbitrary and unsustainable.

ii. The SCN fails to demonstrate any prejudice / failure in relation to the business dealings between ICCL and market participants, investors, or shareholders or any person associated with securities market which is the

requirement to invoke section 23GA. Furthermore, it is submitted that penal provisions cannot be invoked in a vacuum without establishing actual harm, financial gains, or wilful non-compliance.

iii. It is a settled principle of legal policy that a person should not be penalized except under clear law. It should therefore strive to avoid adopting a construction which penalizes a person where the legislatures intention to do so is doubtful or penalizes him in a way which was not made clear. The Hon'ble Supreme Court has repeatedly held that the penal provisions must be construed strictly, narrowly and in favour of the entity against whom the penalty is sought to be imposed. The Hon'ble Supreme Court in the case of Tolaram Relumal v. State of Bombay, (1954) 1 SCC 961 held that:

“it is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent for the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. As pointed out by Lord Macmillan in London & North Eastern Railway Co. v. Berriman [London & North Eastern Railway Co. v. Berriman,

1946 AC 278 at p. 295 (HL)] : (AC p. 295)

... Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however, beneficent its intention, beyond the fair and ordinary meaning of its language.”

Furthermore, the Hon'ble Supreme Court in Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd., (2004) 1 SCC 391 emphasized that:

“58. In the case of London and North Eastern Rly. Co. v. Berriman [1946 AC 278 : (1946) 1 All ER 255 (HL)] , Lord Simonds quoted with approval (at All ER p. 270 C-D) the following observations of Lord Esher, M.R. in the case of Tuck & Sons v. Priestner [(1887) 19 QBD 629 : 56 LJ QB 553 (CA)] , QBD at p. 638:

“We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections.”

It is trite that fiscal statute must not only be construed literally, but also strictly. It is further well known that if in terms of the provisions of a penal statute a person becomes liable to follow the provisions thereof it should be clear and unambiguous so as to let him know his legal obligations and liabilities thereunder.”

[Emphasis Supplied]

12. From the above, I note that the SCN was duly served to the Noticees and subsequently more than sufficient time was provided to submit their replies. Thereafter, multiple opportunities of personal hearing were granted to the Noticee, which were duly availed. Hence, the principles of natural justice were complied with respect to the Noticee and I shall now proceed to deal with the key issues involved in the instant matter.

Consideration of Issues, Evidence and Findings

13. I have perused the material available on record and the reply of the Noticee to the SCN as well as the supplementary submission/documents filed. The issues that arise for consideration in the present case are:

Issue No. I. Whether the Noticee has violated the provisions of various SEBI Circulars as mentioned in the Paragraph 4 above?

Issue No. II. If the violations alleged against the Noticee have been established, what directions are required to be issued and what is the

amount of monetary penalty that is required to be imposed on the Noticee?

14. Before proceeding to examine the above issues, it would be appropriate to first deal with the preliminary contention raised by the Noticee regarding the maintainability of the present proceedings.

15. In this regard, while relying on various orders of Hon'ble Securities Appellate Tribunal ('SAT'), the Noticee has contended that the purpose of an inspection is remedial and not punitive. Further, it was submitted that not every irregularity or deficiency noticed during the course of inspection calls for initiation of penalty proceedings. In this regard, reliance was placed on the Hon'ble SAT's order in ***UPSE Securities Limited v. SEBI*** (Appeal No. 109 of 2011 decision dated July 25, 2011) of which the following extract was referred by the Noticee;

"5. Before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity / deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could be better achieved if the inspecting team at the time of the inspection were to advise the erring entity. However, if any serious lapse is discovered, it would always be open to the Board to take penal action in accordance with law. Having said this, we leave the matter at that."

16. Further, the order of the Hon'ble SAT in ***Religare Securities Limited vs. SEBI*** (Appeal no. 23 of 2011 decision dated June 16, 2011) was referred, wherein the following extract of the order was relied by the Noticee:

"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose

sight of the fact that every in or discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant.”

17. In addition to the orders of the Hon'ble SAT, the Noticee also referred to SEBI's internal policies viz. *Enforcement Manual*, and quoted the following extract of the same;

“Minor violations by intermediaries observed during inspection may predominantly be dealt with by administrative actions as per the general guidelines in Para 2.1.1. If violations are continued or repeated even after administrative actions, adjudication proceedings may be considered.”

The Para 2.1.1. states the following-

“2.1.1. As a matter of policy, the violations that can be remedied by corrective measures or first time violations (other than the cases where there is no ill-gotten gain or fraudulent and unfair trade practice affecting the market integrity or causing widespread losses to investors or money mobilisation by unregistered Collective Investment Scheme (CIS) or Deemed Public Issues (DPI) entities), administrative actions (soft actions) such as issuing administrative warning letters, deficiency/caution letters, advice letters and expedited settlement proceedings (as a newly proposed administrative action) for late filings, delayed compliance, etc. in accordance with the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014.”

18. Referring to the above, it was submitted that during the inspection process, ICCL was very co-operative and provided requisite information sought from time to time in a prompt manner. It was also stated that the violations alleged were merely technical violations and even some were incorrectly alleged. Further, it was claimed that these violations were not such as would merit or justify any penalty. In the present inspection, at the highest, the non-compliances alleged were non-repetitive and mere technical violations that did not lead to any loss to any investors or any gains at all to the ICCL. Further, ICCL has taken all requisite actions and it is not even alleged that any of the

alleged violations were deliberate or contumacious or mala fide, so as to merit any adjudication proceedings or any penalty against ICCL. Hence, the present SCN ought to be discharged.

19. Considering the material available on record, the above contention of the Noticee may not be accepted for the reason being that the inspection of ICCL was carried out by SEBI following the above mentioned guidelines of the Enforcement Manual. In other words, in the present matter, after in person inspection of the systems and practices deployed by the Noticee to carry out the business activities, at the first instance, the Noticee was communicated the deficiencies observed during the said inspection and was further provided with an opportunity to offer its comments on the same. Thereafter, only upon examining the response of the Noticee, a *warning letter* was issued against the Noticee for the deficiencies that were considered less serious in nature, and for the other deficiencies, which were considered grave, the instant adjudication proceedings were initiated. More importantly, the said fact of initiation of adjudication proceedings for certain observations was communicated to the Noticee while issuing the *warning letter* itself.

One of important observation of the inspection was that despite providing multiple opportunities to the Noticee to submit the correct data with SEBI, the Noticee was submitting the data which was alleged to be not in compliance with the relevant circulars issued by SEBI. For example, during the inspection, the Noticee was asked to submit up-to-date asset inventory list with criticality defined for each asset as mandated specifically in one of the aforementioned SEBI circular with an objective to strengthen the securities market. However, the Noticee failed to provide the same correctly during the inspections and was found to be submitting different data each time. Such an act is not expected from the Noticee like a Clearing Corporation who plays a critical role in a stock exchange by acting as a central intermediary, ensuring the smooth and secure settlement of trades by guaranteeing that buyers receive their securities and sellers receive payment, effectively mitigating counterparty risk and promoting market stability and confidence by managing potential transaction

failures; essentially, it acts as the buyer to every seller and the seller to every buyer, facilitating the timely exchange of funds and securities between parties involved in a trade.

20. Further, with regard to the orders of Hon'ble SAT relied upon by the Noticee viz. *UPSE Securities Limited (supra)* and *Religare Securities Limited (supra)*, I note that the same does not squarely apply to instant matter as the violations dealt in those matters were different and also those proceedings were against different market intermediary i.e. stock brokers, wherein the instant proceedings is against a clearing corporation which is a key Market Infrastructure Institution (MII), whose actions / inactions have a wider market implications and consequently the degree of skill and care to be exercised by the Noticee is comparatively higher. Moreover, I note that, in *UPSE Securities Limited (supra)*, while setting aside the SEBI order, Hon'ble SAT observed that BSE Ltd. being the first regulator of its member, the appellant, advised the appellant for the irregularities and decided to not impose any penalty prior to the SEBI enquiry proceedings. It was also held by Hon'ble SAT in the said order that for serious lapses, it would always be open to SEBI to take penal action in accordance with law.

21. Further, I refer to Regulation 49 of SECC, which empowers SEBI to take action including initiation of adjudication proceedings to impose monetary penalty against recognised Clearing Corporations for the violation of the provisions of SEBI Act, SECC and SEBI Circulars. The relevant text of the provision is reproduced below:

'49. Power to issue directions and levy penalty.

(1)...

(2) The Board may take action against a recognised stock exchange or recognised clearing corporation, director, committee member, key management personnel, employee or any other person associated with the recognised stock exchange or recognised clearing corporation, for any contravention or abetting the contravention of these

regulations, including the Code of Conduct specified under these regulations, the provisions of the Act, the Securities and Exchange Board of India Act, 1992, any rules or regulations framed thereunder and any circulars or directions issued by the Board, either upon a reference or suo motu, as it deems fit, including but not limited to any or all of the following:—

(a)...

(b) imposing such monetary penalty as may be determined by the Board, on the recognised stock exchange or recognised clearing corporation, directors, committee members, key management personnel, employees or any other person associated with the recognised stock exchange or recognised clearing corporation.

(Emphasis Supplied)

22. Accordingly, as already noted above, I note that the procedure as prescribed in the guidelines were duly followed in the extant matter and the present proceedings were initiated for the violations which were considered as grave in nature having serious implication on the securities market and therefore the present preliminary contention of the Noticee cannot be accepted.

23. Since the preliminary issue regarding the maintainability of the instant proceedings has not been accepted as detailed above, I shall proceed to examine the key issues involved in the present matter.

Issue No. I- Whether the Noticee has violated the provisions of various SEBI Circulars as mentioned in the Paragraph 4 above?

24. The Noticee, ICCL, was incorporated in 2007 as a wholly owned subsidiary of BSE Ltd. ("BSE"). ICCL is registered as a Clearing Corporation with SEBI under SECC. As a clearing corporation, ICCL carries out the functions of clearing, settlement, collateral management and risk management for various segments of BSE. ICCL undertakes to act as the central counterparty to all the

trades it provides clearing and settlement services. Further, the Noticee settles trades reported on the Indian Corporate Debt Segment and the Mutual Fund Segment of BSE and clears and settles trades executed on all the other segments of BSE, including Equity Cash, Equity Derivatives, BSE SME and Offer for Sale, Securities Lending & Borrowing, Debt Segment, Interest Rate Futures and the Currency Derivatives Segment. Hence, plays a crucial role in the securities market.

25. As prescribed by SEBI, ICCL appointed an Auditor to undertake 'Comprehensive Review of Cyber Security' ("**Cyber Audit**") and 'System and Network Review' of ICCL ("**Network Audit**"). The auditor issued reports for both Cyber Audit and Network Audit ("**Audit Reports**") and the same were shared with ICCL on August 03, 2023. The period under review for the said audit was from October 2022 to March 2023 ("**Audit Period**").

26. As per the SCN, four key allegations were raised against the Noticee. I shall examine the same one by one in the upcoming paragraphs.

A. Regarding non-maintenance of correct and up-to-date inventory and absence of software assets information in inventory of the Noticee

27. I note from the SCN that during the inspection, it was observed that the inventory of ICCL did not have software assets information and also the same was not correct and up-to-date as it was observed that the asset list did not include the web application firewall (WAF) details and the details regarding End of Life/End of Service for PDC servers. Further, it was observed that the asset list provided during the inspection did not define the criticality of the assets.

28. Hence, it was alleged that the Noticee has not complied with clause 11 of Annexure A of SEBI circular on '*Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories*' (CIR/MRD/DP/13/2015) dated July 06, 2015 ('**SEBI Circular on Cyber Security for MIs**'), which inter-alia prescribes that –

“11. MII should identify critical assets based on their sensitivity and criticality for business operations, services and data management. To this end, MII should maintain up-to-date inventory of its hardware and systems, software and information assets (internal and external), details of its network resources, connections to its network and data flows.”

The above provision was later modified and the details regarding identification of critical assets by MIIs was incorporated vide SEBI circular No. SEBI/HO/MRD1/MRD1_DTCS/P/CIR/2022/68 dated May 20, 2022. The modified Clause 11 as provided in the above circular is:

“11. MII should identify and classify/designate critical assets based on their sensitivity and criticality for business operations, services and data management. The critical assets should include business critical systems, internet facing applications /systems, systems that contain sensitive data, sensitive personal data, sensitive financial data, Personally Identifiable Information (PII) data, etc. All the ancillary systems used for accessing/communicating with critical systems either for operations or maintenance should also be classified as critical system. The Board of the MII shall approve the list of critical systems.

To this end, MII should maintain up-to-date inventory of its hardware and systems, software and information assets (internal and external), details of its network resources, connections to its network and data flows.”

(Emphasis Supplied)

29. Before proceeding to examine the instant allegation, it is pertinent to understand the objective of *SEBI Circular on Cyber Security for MIIs*. For the same, I shall refer to the introductory paragraph which has stated the following, *‘The MIIs are systemically important market infrastructure institutions. As part of the operational risk management, these MIIs need to have robust cyber security framework to provide essential facilities and perform systemically critical functions relating to trading, clearing and settlement in securities market.’*

Accordingly, it is understood that a clearing corporation, being an MII, carries out the critical function of settlement of securities traded on a stock exchange.

Hence, the Noticee being a clearing corporation who is carrying out its business activities using numerous computers and software has a duty to ensure that effective cyber security framework is in place. The first step in this direction will always be to maintain an up-to-date and complete IT asset inventory as per applicable rules and circulars with all the details correctly mentioned therein. Further, proper identification of critical assets helps ensuring that the most important assets in the organization are protected against the risk of data breaches and operational disruptions.

30. With regard to the allegation of not maintaining correct and up-to-date data of its software assets, I note that the Noticee has submitted that during the Cyber Audit and the Network Audit, the auditor observed and recorded that the IT asset inventory was found to be not up-to-date as it included some decommissioned servers which were not in use and therefore ought to have been removed from the list. Accordingly, the Noticee removed the details of the decommissioned servers from the list by deleting the same and thereafter the auditor closed the said observation and issued its '*Findings Closure Reports*' dated November 06, 2023 ("**Closure Report**"). Hence, the Noticee cured the deficiency regarding the asset inventory as pointed out by the auditor. With regards to the allegation of failure to identify critical assets, the Noticee submitted that the identification of criticality was always there in the inventory maintained by ICCL and the same was also specified in the Network Audit Report of the auditor that the criticality is documented in the IT asset Management of ICCL.

31. In view of the observation above, I note that to defend the instant allegation the Noticee has relied on the Audit Reports / Closure Report and has stated that the auditor had certified and confirmed that the asset inventory of the Noticee is up-to-date and criticality is documented. In this regard, upon perusal of the said Audit reports, I note that under the title Note to the Reader, the auditor, has mentioned the following disclaimers:

'a. No one should act on the information contained in the report without appropriate professional advice after a thorough examination of the situation.'

b. Our views are not binding on any person, entity, authority, or Court and hence, no assurance is given that a position contrary to the opinions expressed herein will not be asserted by any person, entity, authority and /or sustained by an appellate authority or a court of law.

c. Assets provisioned post March 2023 are not considered in scope.'

32. The above remarks not only suggest that the findings of the Audit Reports/ Closure Report are not conclusive, it also states that the assets provisioned post March 2023 were not considered in the scope of the said audit. In this regard, it is pertinent to mention that the SEBI inspection period covers months beyond March 2023. In this regard, I note from the IR that the inspection of Noticee was carried out by SEBI on various dates during October 17, 2023 to February 25, 2024 for the inspection period December 01, 2022 to July 31, 2023 wherein various shortcomings were observed in the software asset inventory that are in contrast to the findings of the said Audit Reports.

33. I also note that, with regards to the allegation of absence of criticality of assets in inventory, it was further claimed that the format prescribed in SEBI's pre-inspection questionnaire dated August 21, 2023 had no column for 'software' and 'criticality' and hence the information regarding the same was not provided at that time. However, I note that it was also admitted by the Noticee in its submission that the criticality for each item in the software list/inventory was only provided on April 23, 2024 after discussing the same with SEBI officials on April 22, 2024.

34. From the material placed on the record, I further note that during the inspection process, the Noticee had submitted the information regarding its *IT asset inventory* with SEBI through various emails. In this regard, I note that the Noticee had shared broadly two sets of information regarding its asset inventory list with SEBI. In the first asset inventory list submitted on December 22, 2023, the criticality of each server was not mentioned, however, in the subsequent email dated April 23, 2024, a modified asset list was forwarded to SEBI by the Noticee containing the information regarding the criticality for each server in the said asset inventory.

35. In this regard, at the outset, I note that the identification of critical assets by MIs is not a novel requirement, and SEBI vide *SEBI Circular on Cyber Security for MIs* dated July 06, 2015 had mandated MIs to identify the criticality of assets based on their sensitivity. Further, it is pertinent to note that the relevant provision i.e. clause 11 was later modified to expand the scope of the said circular w.r.t. criticality of assets and the MIs were mandated to identify as *critical* not just the assets which are business critical but also all the ancillary systems used for assessing/communicating with critical systems.

36. This apart, the modified clause 11 of the said circular also mandates the Board of the Noticee to approve the list of such critical assets. However, in the present matter, the Board approval for the list of critical assets and its components, as recognized by the Noticee in its submission to SEBI vide email dated April 23, 2024, has not been placed on the record.

37. With regards to the Noticee's claim that identification of criticality was always there in the inventory maintained by ICCL, I note that the Noticee, vide email dated December 22, 2023, submitted following to SEBI regarding the criticality details of its assets,

"RTRMS, Class/Collateral application are Mission Critical"

From the above information shared by the Noticee, I note that the Noticee has categorized certain application as Mission Critical. However, the list submitted by the Noticee along with its reply dated January 18, 2025, Noticee has categorized all the components as *Mission Critical*, which is not in line with the earlier submission of the Noticee of December 22, 2023. This implies that the identification of the asset list in terms of *criticality* is not in compliance with the clause 11 of Annexure A of *SEBI Circular on Cyber Security for MIs* at the time of SEBI inspection.

38. Further, from the said two sets of data shared by the Noticee with SEBI, I note that the data submitted subsequently i.e. vide email dated April 23, 2024, the categorization of the assets in DR site were changed for numerous assets from 'Trading' to 'Non-trading' category in the aforesaid submission. In this regard, I

further note that the assets, whose categorisation were abruptly changed by the Noticee, have been categorised as *Mission Critical*.

39. For the said changes in categorisation of assets, the Noticee had submitted that the assets were inadvertently categorised as *Trading* instead of *Non-trading* in the submission made previously on December 22, 2023, however the same was rectified in the later submission of April 2024. Be that it may be, this in itself is an admission on the parts of the Noticee. It establishes the charge that the Noticee had not maintained correct and up-to-date asset inventory.

40. With regards to the allegation of not maintaining details regarding WAF and the End of Life/End of Service for PDC servers correct data by the Noticee, I note that the same is not proved as the same were subsequently submitted by the Noticee with SEBI. However, the data submitted by the Noticee with SEBI during inspection regarding asset inventory suffered irregularity as seen above wherein despite recognising the servers as *Mission critical* the Noticee failed to classify them properly and accordingly the asset inventory of the Noticee was found not to be maintained correctly. Accordingly, from the above, I note that the Noticee has failed to comply with clause 11 of Annexure A of SEBI circular on Cyber Security for MIs.

B. Regarding Noticee's failure to close out the observations in the bi-annual cyber audit in a time bound manner.

41. The SCN alleged that the Noticee failed to comply with clause 3 of SEBI Circular 'Modification in Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories' (SEBI/HO/MRD1/MRD1_DTCS/P/ CIR/2022/68) dated May 20, 2022 which stipulates that the MIs are mandated to conduct comprehensive cyber audit at least 2 times in a financial year (FY). The text of Clause 3 is reproduced below: "3. Further, the MIs are mandated to conduct comprehensive cyber audit at least 2 times in a financial year. Along with the Cyber audit reports, henceforth, all MIs are directed to submit a declaration from the MD/ CEO certifying

compliance by the MII with all SEBI Circulars and advisories related to Cyber security issued from time to time.”

42. From the Cyber Audit Report submitted during inspection, it was observed that the cyber audit is being conducted bi-annually as per the SEBI circular; however, the observations made in the said audit report are not closed in a time-bound manner. For instance, as per cyber audit report for period October 2022 — March 2023, an observation w.r.t having an updated IT asset inventory i.e. *‘The asset register lacks completeness and is not up-to-date’* was not closed within the deadline (October 31, 2023) given by the auditor.

43. In respect of the aforesaid allegation, the Noticee contended that SEBI has failed to appreciate the auditor’s findings on the Closure Reports dated November 06, 2023. Wherein, the auditor had recorded that the observation on updating of the asset register was found *‘closed’* during their revalidation audit undertaken from October 25, 2023 to October 27, 2023. The said Closure Report was also shared with SEBI vide email dated November 09, 2023

44. I note from the SCN that for the instant allegation, reliance was placed upon the Audit Reports (for audit period October 2022-March 2023) wherein the auditor had observed that *‘the centralized asset inventory of Noticee was not up to date’*. The deadline for taking corrective action in this regard was mentioned as October 31, 2023. Though the SCN states that the above observation was not closed by the Noticee within the deadline i.e. October 31, 2023, the Closure Report dated November 06, 2023 however suggests that the Noticee had taken the requisite corrective measure to cure the said observation. Further, I note from the said Closure Report that the revalidation of the findings was performed between October 25, 2023 until October 27, 2023. In this regard, the auditor has mentioned in its Closure Report that, *‘Based on suggestions, ICCL has remediated the “one” open observation which has been verified during Action take review.’* The detailed remarks on the same as tabulated in the Closure Report is reproduced below:

Description of Findings	Department of MII	Risk Rating	Audit TOR clause	Root Cause Analysis	Impact Analysis	Corrective Actions proposed by auditor	Management response in case of acceptance of associated risks	Status	Verified by
KPMG conducted an assessment and observed that the centralized IT asset inventory is not up to date. (Status: Open)	System	Medium	IT Governance	Frequent update of asset details is not optimized.	In this scenario, lack of centralized and updated IT asset inventory, could lead to mismanaged assets, generate security vulnerabilities, and expose the organization to potential intrusions	Establish a centralized, updated IT asset inventory to enhance asset management and reduce security risk	A comprehensive review of asset inventory has been conducted and inventory is updated. Evidence for the same has been shared to the auditors. Further, as an advancement to this, the identification of new End -to-End Asset Management solution is in the process by the IT Team.	Closed	KPMG Team

45. From the above, I note that the Noticee was found to have closed the observation made by the auditor in the Audit Reports of August 2023. I also note that the Closure Report mentions the period of re-valuation as October 25-October 27, 2023. Further, as per the submission of the Noticee, the Closure Report was shared with SEBI vide email dated November 09, 2023. Accordingly, for the limited purpose of the said audit of the Noticee, I note that the Noticee closed the observation regarding incomplete and outdated asset register within the deadline (October 31, 2023). Hence, the allegation that observation w.r.t having an updated IT asset inventory i.e. '*The asset register lacks completeness and is not up-to-date*' was not closed within the deadline (October 31, 2023) given by the auditor is not proved against the Noticee.

C. Failure of ICCL to obtain comments from the management and board of directors before submitting Network Audit report to SEBI

46. The SCN alleged that the Noticee failed to comply with clause 1 (j) of Annexure 1 of SEBI circular on '*System and Network Audit of Market Infrastructure Institutions (MII's)*' (SEBI/HO/MRD1/MRD1_DTCS/P/CIR/2022/58) dated May 02, 2022 (as part of the 'System and Network Audit Framework') ('**SEBI Circular on System Audit of MIIs**') which prescribes that;

'j. The Audit report along with the comments of management shall be placed before the Governing Board of the MII. The Audit report along with comments

of the Governing Board shall be submitted to SEBI, within 1 month of completion of audit.'

47. I note from the SCN that the Network Audit report was submitted by the auditor, to ICCL on August 03, 2023 however ICCL submitted the report to SEBI on August 04, 2023 without any management or Board comments.

48. I note that the Noticee, in its reply, admitted the absence of Board comments in the submission of Network Audit Report to SEBI on August 04, 2023 and contended that since the Board comments were not warranted in the said audit report the same were not obtained and were also not reported to SEBI. Further, while referring to the email dated August 04, 2023, it was submitted that SEBI was informed regarding the upcoming ICCL Board meeting and also the fact that the Audit Reports will be placed before the Board in the said meeting. Thereafter, the comments of the Board committee, if any, shall be communicated to SEBI. The Audit Reports were placed before the Board of the Noticee by circular resolutions on August 10, 2023 and the same were approved by the Board without any comments on August 14, 2023.

49. In this regard, I note that the *SEBI Circular on System Audit of MIIs* mandates the submission of Network Audit Report to SEBI along with comments of the Governing Board. Therefore, the Audit report of the MII needed to be placed before the Governing Board of the said MII for its comments, thereafter, both (audit report and the Board comments) should have been submitted to SEBI. Hence, it is the Board of the Noticee to decide whether the comments on the audit report is warranted or not. Upon deliberation by the Board of the Noticee, if it decides to not make any remark/comment on the Audit Reports that also has to be recorded by the Board of the Noticee prior to submitting the same with SEBI. However, I note that the Noticee upon placing the Audit Reports before its Board failed to intimate to SEBI the observations of the Board on the same. In this regard, I note that the *SEBI Circular on System Audit of MIIs* does not exempt the requirement of compliance in such events. Hence, even if the

Board decides to not comment on the findings of the Audit Reports, the same needs to be communicated to SEBI.

50. Accordingly, the submission of the Noticee that since the report did not warrant any comments from the Board, there was nothing to report, cannot be accepted. Accordingly, by submitting the Audit Reports prior to placing the same before the governing Board of the Noticee amounts to non-compliance of the *SEBI Circular on System Audit of MIs*. It is pertinent to mention that in the Network Audit Report and Cyber Audit Report, the auditor made an observation that the centralized IT asset inventory of the Noticee was not up-to-date and had given the Risk Rating to the said observation as '*medium*'.

51. Hence, I note that the Noticee by submitting the Network Audit Report to SEBI without Governing Board comments has failed to comply with clause 1 (j) of Annexure 1 of *SEBI Circular on System Audit of MIs*.

D. Failure of having one to one correspondence between assets at DRS / NS and PDC

52. The SCN alleged that the Noticee failed to comply with clause 4 (a) of SEBI circular no. SEBI/ HO/ MRD1/ DTCS/ CIR/ P/ 2021/33 dated Mar 22, 2021 on *Guidelines for Business Continuity Plan (BCP) and Disaster Recovery (DR) of Market Infrastructure Institutions (MIs)* ('**BCP Circular**') which states that 'Hardware, system software, application environment, network and security devices and associated application environments of disaster recovery site (DRS) /Near Site (NS) and Primary Data Centre (PDC) shall have one to one correspondence between them.'

53. In this regard, from the information provided by the Noticee during inspection, it was observed that there is no one-to-one correspondence between all the servers at DRS/NS and PDC. The details of the impugned server where one-to-one correspondence was found to be missing is provided below:

Primary Site					DR Site							
S/N	Asset ID	Trading / Non Trading	Asset Type (server/ storage/ switch/ router/ firewall/ load balancer etc.)	Configuration	Asset ID	Trading / Non Trading	Asset Type (server/ storage/ switch/ router/ firewall/ load balancer etc.)	Configuration	EOS/ EOL dates	AMC / Warranty end date	Insurance end date	Criticality
45	SVR1992	Non Trading	VM Server	16 Core 48 GB	SVR1994	Non Trading	Server	16 Core 32 GB	NA	NA	NA	Mission Critical

54. In this regard, I note from table above that the Noticee had classified the server in which the discrepancy regarding one-to-one correspondence was observed as '*Mission Critical*'. Hence, the submission of the Noticee, in this regard, that the said server is '*Non-trading*' and hence small difference in the 'GB' of one server made no difference at all to the performance and reliability of the system appears to be made in a reckless manner and at the same time is an admission of the non-compliance. Further, the above submission of the Noticee also raises question on the criteria employed by the Noticee to classify the *criticality* of its software assets in inventory.

55. With regard to the submission of Noticee on the present allegation, I note that although the phrase '*one-to-one correspondence*' is not defined in the BCP Circular, the phrase itself is self-explanatory. I also note that the Noticee has complied with the above requirement for one-to-one correspondence for all the servers except one. In this regard, it is understood that to maintain a robust DRS is critical for the business of Clearing Corporation as it enables uninterrupted operations by quickly switching to the backup site when a primary location is compromised. I further note that the purpose of having a Disaster Recovery Site (DRS) will not be fulfilled unless the configuration of the systems installed at DRS are the exact replica of that of the Primary Site (PDC) and the same was envisaged in the BCP Circular. Hence, I note that the Noticee, by failing to have one-to-one correspondence of all the servers of PDC with DRS, has failed to comply with clause 4(a) of *BCP Circular*.

56. This observation further proves that the Noticee has failed in maintaining correct and up-to-date asset inventory.

57. In view of the above observations, I note that the Noticee failed to comply with the Regulation 7(4)(I) of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 read with Clause 11 of SEBI circular 'Cyber Security and Cyber Resilience Framework of Stock Exchanges, Clearing Corporations and Depositories' (CIR/MRD/DP/13/2015) dated July 06, 2015, Clause 1 (j) of SEBI circular 'System and Network Audit of Market Infrastructure Institutions (MII's) (SEBI/HO/MRD1/MRD1_DTCS/P/CIR/2022/58) dated May 02, 2022 and Clause 4 (a) of SEBI circular no. SEBI/ HO/ MRD1/ DTCS/ CIR/ P/ 2021/33 dated March 22, 2021.

Issue No. II. If the violations alleged against the Noticee have been established, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the Noticee?

58. Since three allegations out of four have been established against the Noticee, the Noticee is liable for action under the relevant provision/s. In this regard, I note from the SCN that penalties under Section 23GA read with 12A(2) of SCRA and Section 15HB read with Section 11B(2) of SEBI Act were proposed against the Noticee. The said provisions are reproduced below:

SEBI Act

“11B. Power to issue directions and levy penalty.

(1)...

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.”

“15HB. Penalty for contravention where no separate penalty has been provided.

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.”

SCRA

“12A.Power to issue directions.

(1)...

(2) Without prejudice to the provisions of sub-section (1) and section 23-I, the Securities and Exchange Board of India may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner.”

“23GA.Penalty for failure to conduct business in accordance with rules, etc.

Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.”

59. With regard to the penal provision viz. Section 23GA of SCRA invoked in the present proceedings, the Noticee had submitted that since the penal provisions needs to be strictly interpreted, Section 23GA of SCRA cannot be pressed against the Noticee as it is not applicable in the present facts and circumstances. Further, it is contended that the SCN contains allegations only as regards the Comprehensive Review of Cyber Security and System and Network Review of ICCL, and the same contains no allegation that the ICCL in any manner “...failed to conduct its business with its members or any issuer or

its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act...”

It is contended that Section 23GA has to be interpreted strictly, since it is a penal provision and hence, in the absence of such jurisdictional facts, Section 23GA cannot be pressed against ICCL.

60. For the above contention, I note that Hon'ble Supreme Court in various judgments, while rejecting the said approach, emphasised that the principle that a statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application, which must necessarily be observed in every case. It was held that the interpretation should be done in a manner, which not just achieves object of the legislation but also suppresses the mischief, which the legislature had in view **{Lalita Jalan v. Bombay gas Co. Ltd. [(2003) 6 SCC 107]}**. This was followed in **Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr.** (2005) 4 SCC 370 at pages 388 and 389.

61. Further, attention is drawn towards the heading of Section 23GA of SCRA which is '*Penalty for failure to conduct business in accordance with rules, etc.*',. Accordingly, the present contention of the Noticee cannot be accepted as it has been established in the order above that the Noticee has failed to conduct its business in accordance with the SEBI Circulars.

62. Section 15HB of the SEBI Act provides for penalty for contravention where no separate penalty has been provided, which shall not be less than Rs.1 Lakh but which may extend to Rs.1 Crore. Likewise, Section 23GA of SCRA provides for penalty for failure to conduct business in accordance with rules, etc shall not be less than Rs.5 crores but which may extend to Rs.25 Crores or 3 times the amount of profits made out of such failure, whichever is higher. While determining the quantum of penalties under the SEBI Act/SCRA, section 15J of the SEBI Act and the corresponding provision under SCRA i.e. Section 23J prescribes certain factors which are as follows:

- (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.

63. Before pronouncing the directions against the Noticee it is important to touch upon the comments made by, Dr. Bimal Jalan Committee in their report on 'Review of Ownership And Governance Of Market Infrastructure Institutions (MIIs)' dated November 2010, regarding the role and importance of MIIs in securities markets. It was stated that, *"These institutions (i.e., stock exchanges, depositories and clearing corporations) are systemically important for the country's financial development and serve as the infrastructure necessary for the securities market. These institutions are collectively referred to as Market Infrastructure Institutions (MIIs)... They are therefore, 'vital economic infrastructure'. The recent financial crisis has shown the importance of financial institutions to economic stability. Unlike typical financial institutions, the number of stock exchanges / depositories / clearing corporations in an economy is limited due to the nature of its business, although catering to the entire marketplace. Any failure of such an MII could lead to even bigger cataclysmic collapses that may result in an overall economic downfall that could potentially extend beyond the boundaries of the securities market/country. Therefore, such MIIs are considered systemically important institutions... A well functioning clearing corporation is the most important element of risk management in the securities markets."*

Direction

64. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 12A(2) of SCRA and Section 11B(2) read with Section 19 of the SEBI Act, hereby impose following monetary penalties on the Noticee:

Penal Provision	Amount (in Rupees)
Section 15HB of SEBI Act, 1992.	5,00,000 (Five Lakhs)
Section 23GA of the SCRA, 1956.	5,00,00,000 (Five Crores)

65. The Noticee, ICCL, shall remit / pay the amount mentioned in the table above, within 45 days of receipt of this order by using the undermentioned pathway: www.sebi.gov.in/ENFORCEMENT → Orders → Orders of EDs / CGMs → Click on PAY NOW or by using the weblink: <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. The Noticee shall forward the details/confirmation of penalty so paid through e-payment to "The Division Chief, MRD-SEC-3, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra-Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id: tad@sebi.gov.in in the format given in the table below:

Case Name:	
Name of payee:	
Date of payment:	
Amount paid:	
Transaction no:	
Bank details in which payment is made	
Payment is made for:(like penalties / disgorgement / recovery / settlement amount and legal charges along with order details)	

66. This Order shall come into force with immediate effect.

67. A copy of this order shall be served on the Noticee and SEBI for ensuring compliance with the above direction.

Date: February 25, 2025

Place: Mumbai

G RAMAR

QUASI JUDICIAL AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA