BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 14.12.2017
Date of Decision : 11.01.2018

Misc. Application No. 5 of 2017
And
IRDA Appeal No. 4 of 2017

Sahara India Life Insurance Company Ltd.
Registered / Corporate Office at 2,
Kapoorthala Complex, Sahara India Centre,
Aliganj, Lucknow – 226 024. ….. Appellant

Versus

1. Insurance Regulatory and Development Authority of India
Parisharam Bhawan, 3rd Floor, Basheer Bagh, Hyderabad – 500 004.

2. Mr. R. K. Sharma, Administrator
Presently having his address at Sahara India Life Insurance Company Ltd., 2, Kapoorthala Complex, Sahara India Centre, Aliganj, Lucknow – 226 024.

3. ICICI Prudential Life Insurance Company Ltd.
ICICI PruLife Towers, 1089,
Appasaheb Marathe Marg, Prabhadevi,
Mumbai – 400 025. …… Respondents

With
IRDA Appeal No. 5 of 2017

Sahara India Life Insurance Company Ltd.
Registered / Corporate Office at 2,
Kapoorthala Complex, Sahara India Centre,
Aliganj, Lucknow – 226 024. ….. Appellant

Versus

1. Insurance Regulatory and Development Authority of India
Parisharam Bhawan, 3rd Floor, Basheer Bagh, Hyderabad – 500 004.

2. Mr. R. K. Sharma, Administrator
Presently having his address at Sahara India Life Insurance Company Ltd.,

2, Kapoorthala Complex, Sahara India
Centre, Aliganj, Lucknow – 226 024. …… Respondents

With
Misc. Application No. 4 of 2017
And
IRDA Appeal No. 6 of 2017

Sahara India Life Insurance Company Ltd.
Registered / Corporate Office at 2,
Kapoorthala Complex, Sahara India Centre,
Aliganj, Lucknow – 226 024. ….. Appellant

Versus

1. Insurance Regulatory and Development Authority of India
Parisharam Bhawan, 3rd Floor, Basheer Bagh, Hyderabad – 500 004.

2. Mr. R. K. Sharma, Administrator
Presently having his address at Sahara India Life Insurance Company Ltd.,
2, Kapoorthala Complex, Sahara India
Centre, Aliganj, Lucknow – 226 024. …… Respondents

Mr. Gaurav Joshi, Senior Advocate with Mr. Saurabh Pakale, Mr. Sahil Gandhi, Ms. Aditi Bhat, Mr. Feroze Patel, * Mr. Piyush Raheja, Advocates i/b Markand Gandhi & Co. for the Appellants.

* Mr. Somasekhar Sundaresan, Advocate with Mr. Sumit Agrawal, Ms. Vaneesa Agrawal, Ms. Surbhi Purohit, Mr. Dhaval Kothari, Advocates i/b Suvan Law Advisors for the Respondent Nos. 1 and 2.

Ms. Saloni Kapadia, Advocate i/b Cyril Amarchand Mangaldas for the Respondent No. 3 in IRDA Appeal No. 4 of 2017.

CORAM : Jog Singh, Member
Dr. C. K. G. Nair, Member

Per : Jog Singh, Member

1. The appellant, namely – Sahara India Life Insurance Company Limited, has preferred three appeals against various orders passed by the Respondent No. 1, i.e., Insurance Regulatory and Development Authority of India [for short '**IRDAI'/ 'Insurance Authority']** and actions taken by

it pursuant to those orders, particularly order dated July 28, 2017 by which IRDAI directed the insurance business of the Appellant to be altogether transferred to an entirely different and outside company, namely – ICICI Prudential Life Insurance Company Limited. The Appellant has also raised the grievance regarding the appointment of an Administrator by the Respondents vide order dated June 12, 2017 and the consequential order dated June 23, 2017 for not undertaking new business by the Appellate so as to facilitate the Administrator to manage the existing insurance work without causing any prejudice to the policyholders already on record of the Appellant. The case of the Appellant, in nutshell, is that such a unilateral and drastic action of Respondent as contained in the impugned order dated July 28, 2017 is in gross violation of the principles of natural justice and the various provisions of the Insurance Act, 1938 read with that of IRDA Act, 1999.

2. Appeal No. 6/2017 has been preferred against appointment of the Administrator by the impugned order dated June 12, 2017. This order has been passed by the IRDAI invoking powers under Section 52A of the Insurance Act, 1938.

3. Appeal No. 5/2017 has been preferred by the Appellant impugning the consequential order dated June 23, 2017 passed by the IRDAI in terms of the provisions of Section 52B read with Section 52B(3) of the Insurance Act, 1938.

4. Appeal No. 4/2017 has been moved by the Appellant to challenge the order dated July 28, 2017 passed by the IRDAI transferring the business of life insurance of the appellant company with that of an outsider, namely – ICICI Prudential Life Insurance Company Limited, i.e., the Respondent No. 3.

5. Brief and relevant facts, as culled out from the pleadings of the parties, are that the appellant is a company registered under the Companies Act, 1956 with its Headquarters at Lucknow and is involved in business pertaining to life insurance. However, the company is not listed on any Stock Exchanges. It applied to the Respondent No. 1, IRDAI, for registration with the Authority for undertaking the business of insurance in accordance with law in the year 2003. The Respondent duly considered the said application and granted a Certificate of Registration No. 127 on 6th February, 2004, in accordance with the provisions of sub-section (2A) of Section 3 of the Insurance Act, 1938 to run a life insurance business.

6. It is stated before us that the business of the appellant was running in profit and no grievance/complaint had been received from any of the policyholders since the appellant's incorporation. The Chairman of the appellant company, Mr. Subrata Roy, was taken into judicial custody on 4th March, 2014 and remained in custody till 6th May, 2016. He stepped down from the post of the Chairman on 18th August, 2015 and Mr. O. P. Shrivastava, Director, was appointed as the Chairman of the appellant company.

7. While Mr. Subrata Roy was in judicial custody, the respondent issued notices/letters to the appellant company dated 24.07.2015 and 26.11.2015 followed by letter dated 18.05.2016 seeking further clarifications/comments on observations in the annual report for the financial year 2014-2015. Shri Ishwar Chandra Rai, who was the C.F.O. of the appellant company and who had been directed to file reply to the letter dated 18.05.2016, resigned from the company without giving any notice and without having filed any reply or taking appropriate action in response to the letter dated 18.05.2016. IRDAI sought further clarifications through

reminders/letters dated September 26, 2016 and January 04, 2017 from the Appellant. The Appellant then acted upon the clarifications sought and communicated with the IRDAI on the phone and undertook to submit further response to the queries raised by the respondent.

8. However, for another two months the IRDAI did not get the additional reply from the Appellant as undertaken, therefore, it issued a show cause notice (for short **'SCN'**) dated March 09, 2017 calling upon the Appellant to show cause as to why appropriate proceedings should not be initiated against the Appellant under the Insurance Act, 1938 for not responding to the queries raised by it. Further, by letter dated June 09, 2017 the appellant was called upon to appear on June 10, 2017 (Saturday) to make its submissions on the queries raised by the IRDAI. The relevant portion of the said letter is reproduced herein below :

> *"2. In view of the long and continuous silence for more than a year regarding our queries relating to the crucial financial aspects of the insurer as highlighted in the aforementioned letters coupled with the serious nature of the queries, you are advised to show cause*
>
> *(i) Why the Authority should not come to the conclusion that the financial position of the insurer does not reflect a true and fair view and therefore, the Sahara India Life Insurance Co. Ltd., is carrying on life insurance business in a manner likely to be prejudicial to the interest of holders of life insurance policies; and*
>
> *(ii) Why appropriate proceedings should not be initiated against the insurer under the provisions of the IRDA Act, 1999 and the Insurance Act, 1938 including invoking section 52 A of the Insurance Act, 1938."*

9. At the request of the appellant the hearing was rescheduled to June 12, 2017 when one Mr. R. K. Sharma, GM (F&A-NL) presented the charges against the Appellant on behalf of the IRDAI and expanded the scope of the charge far beyond the queries raised by the IRDAI in its SCN dated March 09, 2017 pertaining to the Annual Report Analysis for the

financial year 2014-2015 of the Appellant. Shri Sharma also presented a new charge which was never mentioned in the SCN dated March 09, 2017 regarding the promoters of the Appellant company being not 'fit and proper' because of certain reasons stated by him during the course of proceedings on June 12, 2017. The relevant portion of the 'Record of Discussions of the Personal Hearing given to M/s. Sahara India Life Insurance Co. Ltd. on 12th June, 2017" is set out herein below :

> "3. Promoters of the Insurer are not 'fit and proper' because of the following :
>
> a. SEBI had cancelled the license of Sahara Mutual Fund (SMF). The shareholders of SMF are same as the promoters of the Insurer.
>
> b. RBI had canceled the Registration of the NBFC, Sahara India Financial Corporation Ltd. (SIFCL) which is a promoter of the insurer. The insurer was under obligation to provide the said material information to the IRDAI. However, no information was provided to the IRDAI in the matter."

10. Further, the Member (Life) clarified during the personal hearing that the "appointment of Administrator does not mean that the company is being closed. It is only to secure proper management of the affairs of the insurer, in the interest of the policyholders, in accordance with the statute."

11. Without first dealing with the main issue of the financial statement of the Appellant pertaining to the Financial Year 2014-2015, the IRDAI jumped to the conclusion that the affairs of the appellant were allegedly not in order and then appointed an Administrator to manage the affairs of the Insurer under the control of the IRDAI by invoking powers conferred upon it under provisions of Section 52 (A) of the Insurance Act, 1938. Mr. R. K. Sharma, who presented the articles of charge on behalf of the IRDAI, was appointed as the Administrator by order dated June 12, 2017 itself by the IRDAI.

12. At this stage, it is also noted that the IRDAI had already held a meeting on March 08, 2017 with one Mr. Pravin Kumar Jabade, Partner, T.R. Chadha & Co., LLP, regarding investigation to be carried into the affairs of the appellant company by chartered accountants under Section 33 of the Insurance Act, 1938. In fact, the said chartered accountant company was appointed as "Investigating Authority" by the IRDAI vide order dated March 14, 2017 to conduct investigation into the affairs of the appellant and to submit a report under Section 33 (2) of the Insurance Act, 1938 for the F.Y. 2015-16 and F.Y. 2016-2017. Surprisingly, leaving aside the inspection of the financial statement pertaining to F.Y. 2014-2015, which had, in fact, been the concern of IRDAI hitherto before. The Investigating Authority, headed by an independent professional viz. a chartered accountant company, seems to have submitted his Preliminary Report on/or before May 31, 2017. Final Investigation report is stated to have been submitted by the Investigating Authority on June 09, 2017. A copy of this Investigation Report was not supplied to the Appellant company till the Appellant filed these appeals before the Tribunal. It is a matter of record that the two impugned orders dated June 23, 2017 and July 28, 2017 have been passed without beforehand supplying a copy of the investigation report to the Appellant and without affording an opportunity of being heard to the affected party, i.e., the Appellant, regarding the findings and allegations in the said Investigation Report. Thus, it appears that without supplying a copy of the Investigation Report to the appellant the respondent proceeded to appoint an Administrator on June 12, 2017 on the basis of the very same Investigation Report.

13. The Administrator is also stated to have submitted a report on June 22, 2017 to the IRDAI. Once again, without supplying a copy of the said Administrator's Report to the appellant, the IRDAI forthwith passed

another impugned order dated June 23, 2017 calling upon the appellant not to procure/collect proposal deposits/underwrite new business with immediate effect, i.e., essentially ordering close of business on 23rd June, 2017. For the sake of convenience, the order dated June 23, 2017 is reproduced herein below :

> *"Reference is drawn to the IRDAI Order IRDAI/F&A/ORD/FA/134/06/2017 dated 12th June 2017 appointing an Administrator for managing the affairs of M/s. Sahara India Life Insurance Co. Ltd., under Section 52A(1) of the Insurance Act, 1938.*
>
> *2. Now, in terms of Section 52 B(2) of the Insurance Act, 1938, the IRDAI hereby directs M/s. Sahara India Life Insurance Co. Ltd., not to procure/collect proposal deposits/underwrite new business with immediate effect, i.e., close of business on 23rd June, 2017.*
>
> *3. M/s. Sahara India Life Insurance Co. Ltd., shall inform all concerned agents/intermediaries of the above direction and ensure that they do not procure/collect proposals deposits towards new insurance business immediately on receipt of this order. M/s. Sahara India Life Insurance Co. Ltd., is however, directed to*
>
> *i. Continue to collect and account for the Renewal Premium; and*
>
> *ii. Service the existing business and policy holders, unhindered.*
>
> *4. In terms of Section 52 B(3) of the Insurance Act, 1938, this order is binding on all persons concerned, and shall have effect notwithstanding anything in the memorandum or articles of association of M/s. Sahara India Life Insurance Co. Ltd.*
>
> *5. M/s. Sahara India Life Insurance Co. Ltd., shall arrange to host this Order on their website prominently and also arrange to paste a copy of the operative portion of this order in a conspicuous place at each of its branches and offices and the offices of its corporate agents and any other intermediaries immediately."*

14. Not being satisfied with the appointment of Administrator to manage the affairs of the Appellant company as well as initiating of investigation into the affairs of the Appellant company through Chartered Accountants, the IRDAI resorted to an extreme measure of ordering the merger of the

Appellant Company with an outside company, namely – ICICI Prudential Life Insurance Company Limited by the third impugned order dated July 28, 2017. Thus**,** the show cause notice dated March 09, 2017 culminated into three impugned orders dated June 12, 2017, June 23, 2017 and July 28, 2017. Vide the impugned order dated July 28, 2017 the appellant company was directed not to carry on life insurance business after the appointed date and was directed to surrender its Certificate of Registration No. 127 dated 6th February, 2004 to the Insurance Authority within 15 days of the appointed date failing which the Certificate of Registration would stand cancelled. The appellant was further directed to apply to RoC for 'change of name' and remove the words 'life insurance' from its name within 30 days of the impugned order and inform the Authority of compliance with said directive. By taking the aforesaid actions and passing multiple orders almost on the same set of facts, the insurance business, the name of the appellant and its identity all have been sought to be crippled in toto. These orders, however, have not been allowed to be implemented during the pendency of these appeals and have never achieved finality.

15. One of the contentions raised by the Appellant is that, having invoked the provisions of Section 33 of the Insurance Act, 1938 by appointing an independent and outside investigating agency to look into the affairs of the appellant, the IRDAI should have taken this investigation to its logical end before appointing an Administrator in question to manage the insurance business of the appellant company. We are, however, of the opinion that the twin issues that arises for our consideration in this bunch of three appeals are whether or not the IRDAI is justified in –

firstly; appointing an Administrator to manage the affairs of M/s. Sahara India Life Insurance Co. Ltd. with immediate effect and also directing the said Insurer Company "not to procure/collect proposal

deposits/underwrite new business, with immediate effect, i.e., close of business on 23rd June, 2017 and

secondly; resorting to an extreme measure of seeking to transfer the complete insurance business from the appellant company to a third party thereby merging it with an outside insurer and also calling upon the appellant to "apply to RoC for 'change of name' and remove the words 'life insurance' from its name within 30 days of this order and inform the Authority."

16. The Learned Senior Counsel, Shri. Gaurav Joshi, for the Appellants, submits that the business of the Appellant Company has constantly reported a profit in every financial year since 2010 onwards, based on which the Appellant has been declaring even bonus to its policy holders from time to time. The Appellant submits that on the very date of passing of the impugned order the total amount of directed securities is much more than the requisite liability qua the policy holders, i.e., of about Rs. 1202 Crore controlled fund as against the policy holders' liability of Rs. 922 crores.

17. The Appellant submits that the undue haste with which the Administrator was appointed clearly shows that none of the explanations provided by the appellant at the farcical personal hearing on 12.06.2017 were properly considered and that Respondent No. 1 had already predetermined the issues and made up its mind on the course of action to be followed by the Respondent with respect to the Appellant. The Administrator submitted his report to Respondent No. 1 on June 22, 2017 without supplying a copy of the same to the appellant. The appellant submits that based on the report of the Administrator, the respondent no. 1 has passed two subsequent impugned orders dated June 23, 2017 and July 28, 2017 in gross violation of the principles of natural justice.

18. Respondents No. 1 and 2 have filed their reply. The respondents in their reply submit that as a Regulator, the Respondent No. 1 has to perform two-fold role – one as "market conduct regulator" that would punish misconduct through enforcement action and, another, as a "prudential regulator", whose prime task is to ensure that regulated entities are run and managed in a judicious manner and their policyholders are not exposed to the risk of fraud, misfeasance and misappropriation of funds that could render the regulated entities incapable of meeting their promises when they have to honour the insurance contract. The impugned orders are issued in discharge of Respondent No. 1's role as a prudential regulator. The appointment of an Administrator, i.e., the Respondent No. 2 and the subsequent actions of the Administrator and the Respondent No. 1 all are aimed at ensuring the safety of policyholders' interest.

19. Respondents submit that the appellant was given ample opportunities through various letters, reminders and show cause notices but the appellant chose to reply half-heartedly. The respondents further submit that the appointment of an Administrator under Section 52A of the Insurance Act is justified in the facts and circumstances of the case. It sets into motion a range of consequences under Section 52B of the Insurance Act, 1938 and requires the Respondent No. 1 to act expeditiously to protect the interest of policy holders.

20. The respondents have sought to justify their multiple action by arguing that a grave risk was posed by the acts of Appellant, particularly, when an amount of about Rs. 78 crores approximately were transferred by the appellant to another entity called Sahara India. It was, therefore, necessary for the respondents to employ all the powers available at its disposal under the Insurance Act, 1938. In this connection, it is further

submitted by the respondents that they are entitled to invoke all the powers at the same time against the same insurer who is alleged to have violated certain legal norms simultaneously. Learned Counsel for the Respondents, Shri Somashekhar Sundaresan, took us through the various legal provisions of the law in order to bring home this point.

21. The Appellant, in its rejoinder, however submits that the respondents have failed to point out any instance wherein the funds of the policyholders were ever placed at risk by the Appellant. As regards respondents' contention in respect of security deposit paid by the Appellant to Sahara India, the Appellant submits that the security deposits were paid for premises which were previously taken and additional premises which were to be taken on leave or license basis from the said entity purely for expansion of the appellant's insurance business at an All India level pursuant to the decision of the Board of Directors of the Appellant. On a query raised by the respondent, on the advance of security deposit of about Rs. 78 crores to Sahara India, the appellant replied on March 17, 2015 by email and explained its position which was further reiterated on certain occasions, including a detailed letter submitted by the appellant to the IRDAI on July 11, 2017. The appellant consistently submitted before the Respondent that the said interest free deposit would result in significant savings to the Appellant company and simultaneously enable it to achieve the desired growth at PAN India level. It is also argued by the appellant before us that the decision was not only in the interest of the Insurer company but also in the larger commercial interest of the policyholders as well. Moreover, as per the appellant, this deposit does not qualify as investment in a group company or immoveable property or real estate. Without prejudice, the appellant submits that it did take up the issue with M/s. Sahara India, which initially declined to pay interest on the security deposit but later on agreed to pay the

interest on the said security deposit at a nominal rate. The appellant submits that all these submissions have been ignored by the respondent before passing the harsh impugned orders against the appellant. The Learned Senior Counsel further submits that undoubtedly, IRDAI has been conferred with multiple powers to take action against a defaulter Insurer but every such action must be in accordance with law and the principles of natural justice and must be supported by cogent reasons to be recorded by the Respondent before taking a harsh regulatory measure and also before imposing any punishment, especially when the 'cause of action' remains the same and the person is also sought to be condemned as not "fit and proper" to carry on the business of insurance. In all such actions, the IRDAI must not only be guided by the principles of natural justice but it should also keep in mind the principle of proportionality while taking such regulatory measures or imposing punishment. In fact, duty to act fairly by the IRDAI, is implicit in the scheme of the Insurance Act. It is further submitted by the Ld. Senior Counsel that if we look at the scheme of the Insurance Act, it becomes abundantly clear that IRDAI is required to observe restraint before coming to the conclusion of transferring a running business of an Insurer company to some other insurer. The Ld. Senior Counsel argues that merger of one insurer company with an outside insurer company is an extreme measure and should be resorted to sparingly. To declare the promoters of an Insurer company as not 'fit and proper' is a very serious matter and greater care should be exercised by the IRDAI while resorting to such a mechanism. The Ld. Senior Counsel further submits that IRDAI has not brought before this Tribunal any provision in the Insurance Act which may suggest vesting of automatic power in the IRDAI to declare certain promoters of an Insurance Company as not 'fit and proper'. On the contrary, this Tribunal has consistently taken a view that an order passed by one regulatory authority

would normally bind the entities controlled by that authority alone and no other regulatory authorities. The Ld. Senior Counsel fairly submits that it is open to the Regulatory Authority to frame regulations to apply orders passed by any other Regulator to the extent it deems fit. IRDAI has not applied its mind to the legal basis to make such observations along with many other directions passed in the order dated July 28, 2017.

22. We have heard the Learned Sr. Counsel, Shri Gaurav Joshi for the appellant and Learned Counsel Shri Somasekhar Sundaresan, for the respondents at length and have also perused the pleadings and documents, produced before us at the time of hearing.

23. It is true that various powers have been conferred upon the IRDAI to be adopted suitably for violation of the prescribed rules and norms against an errant Insurer depending upon a fact situation of a given case. The IRDAI derives its authority from the Insurance Act, 1938, as amended from time to time, and, therefore, it is important to briefly analyze the scheme of the said Act along with the IRDA Act, 1999 and the place the IRDAI occupies therein to regulate the Insurers and certain connected entities. Section 4 of the IRDA Act, 1999 provides for its composition as consisting of one Chairperson, not more than five whole-time members and not more than four part-time members to be appointed by the Central Government from amongst persons of ability, integrity and standing, who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority. The Chairperson enjoys exclusive powers in the matter of general superintendence and administrative matters of the IRDAI. However, all the important regulatory matters, which come up before the

IRDAI, are to be decided by majority of votes by the members present and voting. In the event of a tie**,** the vote of the Chairman, and in his absence, the person presiding over the meeting of the IRDAI is treated as a second or a casting vote. The IRDAI is required to function as per the mandate of Chapter IV and Section 14 of the said Act which prescribe various powers and duties of the IRDAI. Section 18 provides that without prejudice to the duties, powers and functions provided in Section 14 of the Act, the Central Government may issue directions on questions of policy, except technical and administrative matters, and the IRDAI shall be bound by such directions. Section 19 of the IRDA Act read with Section 2 B of the Insurance Act, 1938 provides for supersession of the IRDAI and its substitution by a Controller of Insurance as a stop-gap arrangement till the IRDAI is reconstituted as per the provisions of Section 19(3) of the IRDA Act. Such power by the Central Government would be pressed into service only if at any time the Central Government has reason to believe that (1) the IRDAI is unable to discharge its functions or (2) that it has persistently defied the Central Government in relation to any matter or (3) that it is in public interest to supersede the IRDAI. In such a situation IRDAI, as is logical, would have no say in the matter.

24. Having briefly gone through the provisions of the IRDA Act, we now turn to the main legislation, i.e., the Insurance Act, 1938. We note that Section 2(1) defines "actuary" as that defined in clause (a) of sub-section (1) of Section 2 of the Actuaries Act, 2006; Section 2(1-A) defines "Authority" as the Insurance Regulatory and Development Authority of India as constituted under Section 3(1) of the IRDA Act; Section 2(2) defines "policy-holder" as a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all; Section 2(6) defines "Court" as the principal Civil Court of original jurisdiction in a

district and includes the High Court in exercise of its ordinary original civil jurisdiction. The definition of 'court' is slightly relevant inasmuch as the Insurance Act excludes jurisdiction of Civil Court in certain matters and confers it upon this Tribunal, i.e., Securities Appellate Tribunal and/or National Company Law Tribunal or National Company Law Appellate Tribunal, as the case may be. Section 2(7-A) defines "Indian Insurance Company" as one which is limited by shares and is formed and registered under the Companies Act, 2013 or has been converted into such a company within one year of the amended Insurance Act, 2015, which came into existence w.e.f. December 26, 2014. Section 2(9) again defines "Insurer" as an Indian Insurance Company or a Statutory body established by an Act of Parliament to carry on insurance business and includes a foreign company engaged in re-insurance business through a branch established in India. Section 2(11) defines "life insurance business", inter alia, as business of effecting contracts of insurance upon human life, etc.

25. Section 3 is important as it deals with the registration of a person/company to carry on any class of insurance business in India. Connected with Section 3 are Sections 6, 6-A and 6-B. Section 6 read with Sections 6-A and 6-B, *inter-alia*, provides for a minimum requirement as to the capital, i.e., as paid up equity capital. Section 3, in fact, lays down strict requirements for a prospective Insurer to satisfy before it is granted a certificate of registration to start a business pertaining to insurance by the IRDAI. If any person is aggrieved of any decision of IRDAI to refuse registration, it can approach this Tribunal within a period of one month from the date of the order of refusal. There are some other facets of Section 3 which are relevant in order to appreciate the scheme of the Act. Section 3(4) empowers IRDAI to suspend or cancel the registration of an Insurer if

it fails to comply with the prescribed norms relating to the value of its assets and liability as enumerated in Section 64-VA.

26. Similarly, sub-sections 5, (5-A), (5-B), (5-C), (5-D) and (5-E) of Section 3 provide for a methodology to be followed by IRDAI in case it proposes to suspend or cancel any registration under clauses (a), (d), (e), (f), (g) or (j) of sub-section (4) of Section 3. In such an eventuality, IRDAI is mandated to give at least one month's notice of its decision. Sub-section (4)(5-B) of Section 3 clearly mentions that whenever registration of an Insurer is cancelled, the Insurer shall not enter into new contracts of insurance. However, the rights and liabilities of contracts entered into by the Insurer with policyholders prior to the date of cancellation shall remain intact despite cancellation of the registration. The above analysis of various components of Section 3 makes it clear that compliance with principles of natural justice by the IRDAI in dealing with an Insurer is considered to be of utmost importance in the scheme of Insurance Act. Section 3 is exhaustive in nature and not only deals with the pre-requisites of registration with respect to an insurance company but also with the methodologies to be followed by the IRDAI in case it proposes to suspend, cancel or stop an Insurer from carrying on any further business.

27. Section 10 provides for situations in which an Insurer may be engaged in different types of insurance like life, marine or other miscellaneous insurance business. If the Insurer carries on the business of life insurance, it has to maintain a separate fund to be called the "Life Insurance Fund" and its assets are to be kept separate from other assets of the Insurance Company. In fact, the Life Insurance Fund is treated as absolutely the security of the life insurance policyholders even if it belongs to the Insurer Company, which might be simultaneously carrying on

businesses other than the life insurance business. The underlying idea in establishing and maintaining a separate insurance fund seems to be a beneficial measure, exclusively meant to protect the policyholders in case the Insurer company, due to any reason, goes into liquidation, winding up or is faced with any such other distressing eventuality.

28. Sections 11 to 13 deal with maintenance of accounts and balance sheet, audit and actuarial report by the Insurer. Section 14 deals with maintenance of policies and claims by an Insurer, whereas, Section 15 requires submission of returns, i.e., audited accounts and statements referred to in Sections 11 to 13 of the Act. Similarly, Section 18 requires furnishing of every such report to the IRDAI which concerns the affairs of the Insurer and which might have been submitted to the members or policyholders. Section 19 deals with the requirement of submitting an abstract of proceedings of general meetings by the Insurer to the IRDAI and Section 20 requires the IRDAI to keep such reports in its custody and open to inspection by any person. The objective is to ensure availability of the reports to any person so as to bring in more transparency in the Insurer's functioning.

29. Sections 21 and 22 of the Act are important inasmuch as they provide for detailed provisions to empower the IRDAI to submit any return if it is found to be defective or inaccurate. In such an event, IRDAI can ask for further information and examine any officer or any record of the Insurer. It can even decline to accept inaccurate returns unless the error or inaccuracy is rectified by the Insurer. Section 22 lays down that if IRDAI finds that an investigation or valuation to which Section 13 refers does not properly indicate the condition of the affairs of the Insurer, it may cause an investigation and valuation to be made at the expense of the Insurer after

giving notice to the Insurer and also giving him an opportunity to be heard. As per Section 21(d) if it appears to the Authority that any return furnished to it under the provisions of this Act is inaccurate or defective in any respect, it may decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction was delivered to the Insurer.

30. Section 27 is again very exhaustive and deals with different aspects of investment by the Insurer. These provisions also refer to the concept of a controlled fund, which, as per Explanation to Section 27A(7) basically includes all the funds of an entity carrying on the business of life insurance. This fund, however, does not include any fund which might be regulated by the law of any country outside India. An Insurer may invest, as per the provisions of Section 27-C, not more than 5% in aggregate of the controlled fund or assets as provided in Section 27(2) in respect of the companies belonging to the promoters. Thus, the permissible limit of investment by the Insurer in the companies which may belong to the Promoters of the insurance company, is limited to 5% only and subject to conditions as may be imposed by the IRDAI. Section 28 also requires an Insurer to submit to the IRDAI the returns giving details of any investment which might have been made by the Insurer.

31. Section 29 prohibits the Insurer from giving any loan either on hypothecation of property or on personal security, except loan on insurance policy issued by it, that too, within their surrender value, to any Director, Manager, Actuary, etc. This is also a beneficial measure meant to protect the interest of the policyholders and it puts a check on the insurer to transfer

or divert funds in any manner to its close associates, as mentioned in the said section.

32. The next important provision in the Insurance Act relates to investigation and is to be found in Section 33 which provides that IRDAI may, if it considers expedient to do so, by order in writing, direct any person to investigate the affairs of the Insurer and to report to the Authority accordingly. The person so appointed is to be designated as "Investigating Officer". However, it is unclear as to who can be appointed as an Investigating Officer, whether from within the IRDAI or an outsider. Be that as it may, on completion of the said investigation, i.e., after inspecting the records and/or business of the Insurer company, as the Investigating Officer may deem fit, the officer is required to make a report to the IRDAI. Section 33 (6) categorically provides that the IRDAI may adopt any of the courses provided in Clauses (a), (b) and (c) of Section 33(6) only after giving the insurer company in question an opportunity to make a representation in connection with the report. After giving an opportunity of making a representation to the Insurer in compliance with the principles of natural justice, and after considering the same, it may require the Insurer to take certain actions in respect of its affairs which may arise on such investigation and consequent report. Similarly, the IRDAI may cancel the registration of the Insurer and direct any person to apply to the court for winding up of the Insurer. Section 34 of the Act deals with the powers of the IRDAI to issue directions to the Insurer in the public interest or to prevent the affairs of a particular Insurer being conducted in a manner detrimental to the interest of the policyholders or generally to secure the proper management of any Insurer.

33. Once again proviso to Section 34 lays down that IRDAI cannot issue such a direction unless the Insurer concerned has been given a reasonable opportunity of being heard. It has been reiterated and ingrained everywhere in the scheme of the Insurance Act that before the IRDAI takes any action, opportunity in the form of hearing or representation must be invariably provided. It is further noted that sub-section 2 of Section 34 entitles an insurer to make a representation against any order passed in the manner provided in Section 34(1) and on receipt of such a representation, the IRDAI may modify or cancel any of its directions in part or in toto. Sections 34-A, 34-B, 34-C and 34-D vest the IRDAI with vast powers to keep control over the management of the Insurer company in various ways. IRDAI's approval is required for appointment of Managing Directors, etc. It can also remove managerial persons from office. The IRDAI is also vested with the power to appoint Additional Directors on the Board of the Insurance Company, if it deems fit. Certain other powers, such as ones mentioned herein, are also conferred upon the IRDAI by provisions of Section 34.

34. Next, we come to an equally important aspect of amalgamation and transfer of business, which is enshrined in Sections 35 to 37. Section 35 of the Insurance Act, 1938 lays down the process that is required to be followed for transfer of an insurance business from one insurer to another and consequent amalgamation or merger of the former with the latter. It states that an insurance business may only be transferred to or amalgamated with the business of another insurer, if a scheme prepared under this section is approved by IRDAI. It further states that notices of the intention to amalgamate or transfer the said business, along with a statement of the nature of amalgamation or transfer and reasons to do so, must be provided to IRDAI at least 2 months before the application is made. Copies of these

documents, which include, inter alia, a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer; balance sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, will remain open for inspection by members and policyholders at the principal and branch offices and chief agencies of the insurers concerned. These documents should bear the same date on which the amalgamation or transfer is to take effect and cannot be more than 12 months before the date of filing the application with IRDAI.

35. Section 36 states that in the event an application for amalgamation or transfer is filed with the IRDAI, it will provide the policyholders with a notice of the application and publish a statement of the nature and terms of the amalgamation or transfer. Subsequently, on considering the objections of the policyholders, IRDAI may approve the arrangement. Section 37 refers to the documents required to be submitted to the IRDAI by the insurer carrying on the amalgamated business. Within 3 months from the date of completion of the amalgamation or transfer, such an insurer must provide the IRDAI with, inter alia, certain documents such as a certified copy of the scheme under which the amalgamation or transfer has been effected, a declaration stating that to the best of their belief every payment made or to be made to any person on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer. Where, the amalgamation or transfer has not been made in accordance with a scheme approved by the Authority under section 36, balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and

in accordance with the regulations contained in Part I of that Schedule, and (ii) certified copies of any other reports on which the scheme of amalgamation or transfer was founded, should be provided to the IRDAI.

36. Sections 38 to 51 are not relevant for deciding the present appeal except for the sake of completeness in dealing with the scheme of the Act. It is noted that these sections primarily deal with issues like assignment or transfer of insurance policies, nomination by policyholders, prohibition of payment by way of commission or otherwise for procuring business, limitation of expenses of management in life insurance business, general insurance, health insurance and reinsurance; prohibition of rebates; appointment of insurance agents, their qualifications and their regulations as intermediaries by the IRDAI; an Insurance Agent not to be a Director in the Insurance Company and some other similar issues are also dealt with. Section 52, however, puts prohibition on carrying on business on dividing principle by the insurance company.

37. Next, we come to an important provision which is relevant for the purposes of these appeals and it is Section 52-A. It deals with the powers of the IRDAI to appoint an Administrator. The very subject reads as "When Administrator for management of insurance business may be appointed." As per Section 52-A, it is only when the IRDAI has reason to believe that an Insurer's acts are likely to be prejudicial to the policyholders that the IRDAI is empowered to appoint an Administrator for the purposes of managing the affairs of the Insurer under the direction and control of the Authority. The IRDAI, however, can appoint an Administrator as per the provisions of Section 52A only if such an appointment of Administrator is going to be more advantageous to the general interest of policyholders.

38. Section 52B prescribes the powers and duties of an Administrator and lays down that the Administrator shall manage the business of the Insurer with greatest economy compatible with efficiency and shall file a report with the IRDAI suggesting any of the four options, namely – (a) the transfer of the business of the insurer to some other insurer; (b) the carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts); (c) the winding up of the insurer; and (d) such other course as he deems advisable. The Administrator can choose any of these four options for the purpose of making a recommendation to the IRDAI in his report, provided such a course would prove to be most advantageous to the general interest of the policyholders, and without which the policyholders' interest would genuinely be at stake.

39. On receipt of Administrator's report, the IRDAI has the option to take such action as it may deem necessary for promoting the interest of holders of the life insurance policy in general. It is, thus, evident that the Administrator's report is not binding on the IRDAI but is only recommendatory in nature and, therefore, the IRDAI is supposed to apply its mind independently before acting on the Administrator's report, after seeking a representation from the affected Insurer on such report and, if required, by affording a personal hearing before taking a drastic measure which might have been recommended by the Administrator in question. The decision of the IRDAI in this regard is binding on all persons concerned notwithstanding the memorandum or articles of association of the Insurer company. In this regard, we repeatedly summoned the file and connected records of the IRDAI in which the case of the appellant was processed before passing the three impugned orders in question. But we

note with regret that the IRDAI instead of supplying the records, as orally directed three to four times in the open court, chose not to produce the same and, therefore, we are in the dark as to the factors which motivated the IRDAI to appoint an Administrator for the appellant company while an investigation by an independent Investigating Authority was still on-going under Section 33 of the Insurance Act, at the instance of the IRDAI itself. Nevertheless, we shall decide the appeals on the basis of the pleadings and records made available. The IRDAI should be more vigilant in future by deputing more responsible officers in court to observe the court's proceedings and follow the Tribunal's direction, including oral direction as regards the submission of records, etc.

40. Section 52BB simply deals with the "Power of the Administrator respecting property liable to attachment under Section 106; and Section 52-C provides for cancellation of contracts and agreements. Section 52-D specifically mentions that the Administrator can be divested of the management of the insurance business at any time if the IRDAI feels that the purpose of appointing the Administrator has been achieved. The Administrator can be removed by the IRDAI for any other reason also. Section 52-E, however, talks of the finality of the decision in appointing an Administrator by excluding the jurisdiction of any "court". As has been already noted hereinabove, Section 2(6) of the Insurance Act specifically defines the Court as the Principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction. It is, therefore, evident that this Tribunal's jurisdiction to adjudicate the legality or otherwise of the order of appointment of an Administrator by the IRDAI is not excluded. Sections 52-F and 52-G deal with penalty provision which may be imposed on an Insurer for withholding documents or property from Administrator and consequently

the actions taken by an Administrator under Sections 52-A to 52-D in good faith are protected.

41. Other sections which have drawn our attention are Sections 53 to 64 pertaining to the winding up of the business of a defaulter insurance company by the National Company Law Tribunal in accordance with law on being approached by the IRDAI through an authorized representative. Section 64-C interestingly provides for Councils of Life Insurance and General Insurance and Section 64-F lays down the composition of the Executive Committees of the Life Insurance Council and the General Insurance Council. Section 64-J prescribes the functions of the Executive Committee to aid, advise and assist insurers carrying on life insurance business in the matter of setting up standard and rendering efficient service to holders of life insurance policies. Section 64-R deals with general powers of Life Insurance Council and General Insurance Council.

42. Part II-C of the Insurance Act, 1938 is on the subject – "Solvency Margin, Advance Payment of premium and restrictions on the opening of a new place of Business. Section 64-V provides for the manner in which the assets and liabilities are to be valued of an Insurer. However, Section 64-VA deals with sufficiency of assets. Section 64-VA provides that an Insurer shall at all times maintain an excess of value of assets over the amount of liabilities of not less than fifty per cent of the amount of minimum capital as stated in Section 6. Section 64-VC deals with restriction on opening up of new place of business and states that no insurer shall, after the commencement of the Insurance (Amendment) Act, 1968, open a new place of business or close a place in India or outside India or change otherwise than within the same city, town or village the location of

an existing place of business situated in India or outside India, except in the manner specified in the regulations.

43. Part-V of the Insurance Act provides in Section 102 the penalty for default in complying with or act in contravention of this Act. It is pertinently noted that the IRDAI is authorized to deal with a person who has allegedly not furnished a certain document, statement, account, return, report, etc. to the Authority and has not complied with its direction in certain matters. Such a person can be proceeded against in accordance with law and regulations framed in that behalf. A penalty of Rs. One lakh for each day, till such failure continues could be imposed and the outer limit of the penalty is Rs. One Crore. It is, therefore, abundantly clear that IRDAI is duly and particularly empowered to deal with defaulters who do not submit document, statement, return, reports, etc. and fail to comply with its direction. Here once again the object of the penalty is to bring the culprit to justice.

44. Section 110 deals with appeals to the Securities Appellate Tribunal and provides that if any person is aggrieved – (a) by an order of the Authority made on and after the commencement of the Insurance Laws (Amendment) Act, 2015, or under this Act, the rules and regulations made thereunder; or (b) by an order made by an Authority by way of adjudication under this Act, may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter. Section 110(3) empowers the Securities Appellate Tribunal, after giving an opportunity of being heard to the parties to the appeal, to pass such order thereon as it thinks fit, either conforming, modifying or setting aside the order appealed against. Similarly, Sections 110-A and 110-C deal with delegation of powers and duties of Chairperson of the Authority and power to call for information. Section 114 prescribes

the power of the Central Government to make rules and Section 114-A deals with the power of Authority to make regulations. Section 116-A provides for summary of returns to be published.

45. Thus, the above analysis shows that IRDAI has been created under Section 3(1) of the IRDA Act, 1999 and is empowered to protect the interest of policyholders of insurance policy by regulating certain insurer companies as well as insurance agents. We have analysed the scheme of Insurance Act, 1938 as well as certain provisions of IRDA Act, 1999 and we are convinced that the IRDAI has to act within the four corners of these Acts as well as the rules and regulations framed thereunder. What course of action the IRDAI would adopt in a given case would depend on the nature of prima facie violations, their gravity and potential to adversely affect the policyholders under the said Insurer. If IRDAI has reason to believe that a particular Insurer has become incorrigible and is not responding to its letters or notices; and/or is not co-operating by furnishing reports and other documents through its authorized representative, then IRDAI will have to choose one of the options provided in the Act with a view to bring the Insurer to justice by a suitable method. The IRDAI can start investigation beforehand, as provided under Section 33, and after getting the report of the Investigating Officer, it can take appropriate action as provided in the Insurance Act by affording an opportunity of making a representation to the Insurer in question. Thereafter, IRDAI can decide further course of action, including suspension or cancellation of the certificate, as per the procedure provided in regulation 24 of the Insurance Regulatory and Development Authority of India (Registration of Indian Insurance Companies)(Seventh Amendment) Regulations, 2016. These regulations have been framed by IRDAI deriving powers from Sections 3, 3A, 114A of the Insurance Act, 1938 read with Section 26 of the IRDA Act, 1999, in consultation with the

Insurance Advisory Committee. Therefore, before passing such drastic orders, the IRDAI is required to follow its own regulations of 2016 and cannot automatically apply extra legal norms.

46. Before we deal with the legality of the appointment of the Administrator in the present case vide order dated June 12, 2017, read with the consequential order dated June 23, 2017 it would be appropriate to deal with the preliminary objections raised by the Respondent as to the very maintainability of the appeal in this regard. The respondent submits that, on appointment of the Administrator, he enters into the shoes of the Insurer and, as such, the Insurer company cannot challenge the very appointment of the Administrator. It is only after the job of the Administrator is over that the Administrator would be either terminated and the management of the Insurer business would again vest in the Insurer or alternatively the same be given to other Insurers in view of the amended provisions of Section 52 D of the Act.

47. This argument as to the maintainability is untenable inasmuch as the very idea of the appointment of the Administrator, as reflected in Section 52A and connected provisions thereof, carries with it serious consequences for the insurer company, although it is purely a stop-gap arrangement. If the argument of the Insurance Authority as to the maintainability of the appeal is accepted, it would only lead to absurdity inasmuch as no Insurer company would ever be in a position to approach this Tribunal by way of appeal under Section 108 of the Insurance Act to challenge the appointment of an administrator. This could not have been the intention of the law maker. The Tribunal's jurisdiction is never ousted although some immunity to the action of the Administrator qua Civil Courts and High Courts is given in the Act. The jurisdiction of the Tribunal is kept implicitly in tact. It is only with a view to put the affairs of an Insurer in order that the IRDAI is empowered to

appoint an Administrator and on submission of the report by the Administrator the Insurance Authority has to act in accordance with the maintainability of law, including Section 52D of the Act. It is important to remember that the appointment of an Administrator is a very serious matter inasmuch as the administrator is empowered to recommend drastic measures against the insurer company, which, if accepted by IRDAI, may wipe out the very existence of the insurer company from the market altogether. Therefore, to leave such an Insurer company without the right to challenge such an action of the IRDAI does not meet the object and purpose of either the IRDA Act or the Insurance Act, and would, in fact, not meet the ends of justice. It is established law that a person cannot go without a remedy. The appointment of an Administrator is purely temporary in nature and not a substitution for the insurer company itself.

48. Reliance placed by the IRDAI on the latest judgment of the Hon'ble Supreme Court in **Innoventive Industries Limited Vs. ICICI Bank Ltd. [2017 SCC Online SC 1025]** is totally misplaced. In the said case, the Hon'ble Supreme Court was dealing with certain provisions of the Insolvency and Bankruptcy Code, 2016. On appointment of Interim Resolution Professional (for short 'IRP') under Section 17 of the Code, the management of the affairs of the corporate debtor fully vests in the said IRP. The law itself provides in the case of Insolvency and Bankruptcy code that the powers of the Board or the partners of the corporate debtor shall stand suspended and be exercised by the IRP. Such provisions are conspicuously absent in the Insurance/IRDA Act. Therefore, the argument of the respondents in this regard has to be repelled at the outset. In this connection, we may pertinently refer to the judgment of the Hon'ble Chancery Division of the United Kingdom in the case of **Closegate Hotel Development (Durham) Ltd. & Anr. Vs. Mclean & Ors. Reported in 2013 EWHC**

3237 (Ch). Paragraphs 5, 6 and 7 of the said judgment are relevant and are reproduced herein below for the sake of convenience :-

> *"5. The basis for Mr. Trace's first argument was paragraph 64 of Schedule B1 to the 1986 Act which provides that an officer of a company in administration may not exercise a management power without the consent of the administrator. "management power" is defined as a power which could be exercised so as to interfere with the exercise of administrator's powers. Mr. Trace submitted that causing the companies to challenge the appointment of the administrators necessarily interfered with the exercise of the administrators' powers.*
>
> *6. I do not accept the submission. On the basic point of construction of schedule B1, in common with Lord Glennie in the Scottish case of In re Stephen, Petitioner [2012 BCC 537, I think that the concept of a "management power" as defined in paragraph 64 is primarily intended to catch powers which if exercised by the directors, could impede the exercise of similar powers by the administrators. I do not think paragraph 64 is intended to catch a power on the part of the directors to cause the company to make an application challenging the logically prior question of whether the administrator has any powers to exercise at all.*
>
> *7. I also note, as did Lord Glennie, that there is long standing authority to the effect that even after the appointment of a provisional liquidators, the board of directors of a company retains a residuary power to instruct lawyers to challenge the appointment of the provisional liquidator, to oppose the petition and, if winding up order is made, to appeal against the making of that order: see In re Union Accident Insurance Co. Ltd. [1972 (1) WLR 640]. There is also numerous reported cases in which the directors of a company have caused the company to take proceedings to challenge the validity of the appointment of a receiver: see e g R A Cripps & Son Ltd. V Wickenden [1973] 1 WLR 944 and sheppard & Cooper Ltd. Vs. TSB Bank Plc [1996] 2 All ER 654. I see no reason in principle why the position should be any different as regards the appointment of an administrator by a qualifying charge holder under paragraph 14 of Schedule B1.*
>
> *8. It would, moreover, be to my mind an anomalous result if it were within the authority of the directors to cause the company to resist an application by a qualifying charge holder to the court for the appointment of an administrator under paragraph 10 of the Schedule B1 but that it was outside their* ***authority to cause the*** *company to challenge the validity of an appointment under paragraph 14 of Schedule B1."*

49. In the above-mentioned case, the learned judge categorically held that a company's management could exercise its "residuary power" to challenge the appointment of a provisional liquidator once such a liquidator had been appointed. The aforesaid right, the Learned Judge further opined, is in the same vein as the right to oppose a petition or the right to appeal a winding up order once made. The Ld. Judge further stated that it would be nonsensical if a company is allowed to oppose an application for the appointment of an administrator made by a charge holder or other creditor, and yet is not allowed to challenge the validity of such an appointment of administrator. On a minute perusal of the paragraphs of the judgement in Closegate Hotel reproduced hereinabove, it emerges that the fact of a company going into administration per se does not put a complete end to the existence of the management of the company concerned. Certain residuary powers in the hands of the management empower it to undertake such acts as are necessary to ensure the company's survival. It is our considered opinion that an Insurer company whose affairs are being put under the supervision of an administrator cannot be left without a remedy, for to leave it so would be iniquitous.

50. Having rejected the preliminary argument of the Respondent as to the maintainability of the appeal, it would be advisable to analyze the provisions of Sections 52A and 52B in little detail for deciding the question of tenability of the appointment of the administrator and his powers and duties, etc. As noted hereinabove, Section 52A empowers the Authority to appoint an Administrator for the management of the insurance business if it has reason to believe that an Insurer is not acting in a manner which is beneficial to the policy holders. We have also noted that the appointment of an Administrator is just a temporary/stop-gap arrangement to manage the affairs of the insurance business under the overall direction and control of

the IRDAI. Section 52B further provides that the Administrator, while managing the business of the Insurer with the greatest economy and efficiency, may file a report with the IRDAI with certain suggestions, which would be most beneficial to the general interest of the policyholders. These suggestions, *inter-alia*, are – (a) transfer of the business of the Insurer to some other Insurer; (b) carrying on the business by the Insurer; (c) winding up of the Insurer; and (d) such other course of action as the Administrator may deem fit in the facts and circumstances of a particular case. On receipt of such a report, the IRDAI may take appropriate action for promoting the interest of policyholders and it would be binding on all the persons, including the Insurer, notwithstanding anything in the memorandum or articles of association of the Insurer.

51. Vehemently opposing the sudden and abrupt appointment of the Administrator on June 12, 2017 and consequential direction of IRDAI to the appellant not to procure/collect proposal deposits/underwrite new business, with immediate effect, i.e., close of business on 23rd June, 2017 it is argued on behalf of the Appellant that the hurry with which the respondent has proceeded with the matter of the Administrator's appointment reflects anxiety on the part of the Authority to achieve the object of appointment of Administrator irrespective of the defence of the Appellant. It is further argued by the Appellant that the show cause notice was issued on June 09, 2017 and the appellant was called upon to reply to the show cause notice by appearing in person on the very next day, i.e., June 10, 2017, which happened to be a Saturday. At the request of the appellant the matter was not taken up on Saturday and was instead adjourned to June 12, 2017, i.e., granting the Appellant merely two days' time to prepare its reply. After completing the formality of hearing, the respondent hastened to appoint the Administrator on the very same day.

52. It is a matter of record that IRDAI had initially sought certain clarifications/comments on the review/performance of the appellant in respect of the financial year 2014-2015 vide letter dated November 26, 2015. The clarification furnished by the Appellant vide letter dated March 29, 2016 was not fully satisfactory and the IRDAI called for additional reply, as according to it, the reply submitted by the appellant was inadequate. Thereafter, the IRDAI, vide SCN dated March 09, 2017, called upon the appellant to show cause as to why appropriate proceedings should not be initiated against the appellant under the Insurance Act, 1938 for "not responding to the queries raised by the Authority." Surprisingly, there is no mention of any provisions of the Insurance Act, 1938 under which the SCN dated March 09, 2017 has been issued or the precise nature of violation or the nature of the proceedings to be followed in case the reply to the SCN was found to be unsatisfactory by the IRDAI. The cursory SCN seems to have been issued in a casual manner with the subject "Non-receipt of response to subsequent queries on Annual Report Analysis for the financial year 2014-2015 – Notice to show cause." After providing a small background to the matter, the SCN proceeds to add at para 4 that "In view of the above, you are advised to show cause as to why appropriate proceedings should not be initiated against the Insurer under the provisions of Insurance Act, 1938 for not responding to the queries raised by the Authority." The appellant was required to submit its reply within 21 days from the date of receipt of the SCN.

53. It is, thus, evident that up to this point of time the only dispute between both the parties was regarding submission of a more satisfactory response by the Appellant to the Insurance Regulator in respect of the queries raised by the Insurance Regulator in its letter dated May 18, 2016

followed by the appellant's reply and two reminders of the Insurance Regulator. It is clear, therefore, that this is not a case of no response but of inadequate or delayed response.

54. It appears that since the appellant was delaying the sending of a proper reply in respect of the Show Cause Notice dated March 09, 2017, the Insurance Regulator, shifted its focus to Section 52-A of the Insurance Act, 1938 and instead decided to appoint an Administrator and issued another reminder and notice dated June 09, 2017 giving final opportunity to the appellant to make its submission in person through its authorized representatives on June 10, 2017 (Saturday). The reason for such drastic step can be traced to the Board meeting of the IRDAI held on May 31, 2017. On the request of the appellant, the personal hearing was adjourned to June 12, 2017. The authorized representatives of the appellant duly appeared before the respondent on June 12, 2017 and participated in the said personal hearing afforded by the respondent. They did not ask for any further opportunity to file a reply or to adduce documentary evidence and also did not ask for any document on the basis of which the Respondent had proposed to appoint an administrator in the matter. On the contrary, it is a fact that the authorized representatives defended the case of the appellant and even assisted the respondent in finalizing the minutes of the proceedings.

55. In our opinion, therefore, the appellant is not entitled at the appellate stage to contend that it was not given an opportunity of hearing. We, thus, note that the appointment of Administrator was not in violation of the principles of natural justice, as contended by the Appellant. Since the order appointing an Administrator is more in the nature of an administrative order, the opportunity which was given by the IRDAI to the authorized

representatives of the Appellant by the Member (Life), followed by the Chairman endorsing the Member's proposal is technically not incorrect and irregular in the facts and circumstances of the case. Moreover, the appointment of an Administrator is purely a temporary measure by the IRDAI, primarily to bring the affairs of the Insurer back on the right track and thereby protect the interests of the policyholders.

56. There is no gainsaying the fact that right to be heard is one of the most important principles of natural justice as is universally accepted. The Hon'ble Supreme Court in a catena of cases, beginning from **State of Orissa Vs. Dr. (Miss.) Binapani Dei [AIR 1967 SC 1269]** and **A. I. Kraipak Vs. Union of India [AIR 1970 SC 150]** has consistently held that the aim of exercise of administrative or quasi judicial power is to arrive at a just decision by acting fairly. Fair play in action is also treated as an important ingredient of the principles of natural justice. At the same time, it has also been held by the Hon'ble Supreme Court that the standard of natural justice may vary with situations contracting into a brief and minimal natural justice. Sometimes, the barest notice, the littlest opportunity "in the shortest time" may serve the ends of justice. This is a significant dimension of the right to be heard and speaks of the balance which is sought to be achieved between the opportunity of defending oneself on one hand and on the other - stretching the boundaries of natural justice to unnatural and needless lengths which is nothing but a waste of public time and resources. The achievement of this balance is a constant endeavour of quasi-judicial authorities not only in India but also abroad.

57. The International Covenant on Civil and Political Rights treats the right not to be condemned unheard as a human right. India, being a signatory to the said covenant and not being content merely with that,

enacted the Human Rights Act, 1993 and section 16 thereof specifically mentions that the right to be heard is a principle evolved in the protection of the interest of those persons who are likely to be prejudicially affected by the enquiry. It is true that the above said principles have more been evolved in the context of civil and criminal rights and in the case in hand we are dealing with an administrative action of the IRDAI in appointing an Administrator. Therefore, we have to adjudge whether the opportunity granted by the Respondent to the appellant in the present case is sufficient to meet the ends of justice or not.

58. In the peculiarity of the facts and circumstances and in view of the above analysis of the facts and that of law, we are convinced that though the opportunity granted by the IRDAI to the appellant pursuant to reminder and notice dated June 09, 2017 for personal hearing is limited in nature, yet even the limited opportunity granted to the appellant is sufficient in the circumstances of the case. We are not inclined to accept the extreme argument advanced by Mr. Gaurav Joshi, the Ld. Senior Counsel for the appellant, that for want of principles of natural justice the appointment of Administrator itself should be quashed. If we were to quash the very appointment of the Administrator on technical grounds, it would lead to serious consequences inasmuch as the report of the Administrator itself would have to be declared a nullity, which we are reluctant to do. Such a drastic step on our part would create further chaos in the regulatory system, which is itself trying to evolve a workable and mature administrative system to deal with cases pertaining to insurance companies violating the law. As already stated hereinabove, since the appellant was given the opportunity sought for, however limited, and the hearing was adjourned from June 10, 2017 to June 12, 2017, we do not see any reason to upset the appointment of the Administrator, particularly in the case in hand. The

appointment of the Administrator is hereby upheld and Appeal No. 6/2017 is accordingly dismissed.

59. In this context, we may consider another issue raised by the appellant regarding the authority of the Chairman to issue the impugned order dated June 12, 2017 and consequential order dated June 23, 2017 without hearing the Appellant. During the course of hearing it was brought to our notice that the Member (Life), Shri Nilesh Sathe, heard the appellant's representatives on June 12, 2017 and thereafter the minutes were put up before the Chairman on the same day and he agreed with the proposal to appoint an Administrator. Accordingly, the impugned order of appointment of the Administrator on June 12, 2017 itself was issued. As far as this argument of the Appellant goes, it is legally the duty of the Authority to ensure that the interests of the policyholders are protected at all times. In the discharge of this duty, the Authority saw it fit to appoint an Administrator in the present case. The Member (Life) first proposed the plan of action to the Chairperson, which was duly accepted by the latter. In the facts and circumstances of this case, the hurry with which the impugned order has been passed between June 09, 2017 and June 12, 2017 cannot by itself vitiate the action of the respondents in appointing the Administrator.

60. Having upheld the appointment of the Administrator, the very next question posed before us is whether the Administrator's report should be supplied to the affected insurer company beforehand by giving an opportunity to make a representation, including right to be heard in tune with the principles of natural justice. It is true that neither Section 52A nor 52B talks of copy of Administrator's report to be invariably supplied to the Insurer before the Insurance Authority proposes to take any action in the matter. It is equally true that under Section 52B the Administrator can

give drastic recommendations, including the very transfer of business by merging it with an outside Insurer. Similarly, even winding up can be proposed by the Administrator. If winding up is proposed, Section 53 comes into play immediately and the National Company Law Tribunal would naturally grant an opportunity to the Insurer concerned before it comes to the conclusion that winding up of the company is the only solution. It is needless to say that natural justice would be complied with by the National Company Law Tribunal in case winding up is recommended by the Administrator under Section 52-B(c). Similarly, if the Administrator recommends the continuance of the business by the Insurer concerned itself, the IRDAI would undoubtedly terminate the appointment of the Administrator and vest the business again in the Insurer company absolutely as per the mandate of Section 52-D or shall give it to any other person appointed by the Insurer in this behalf. It is pertinent to note that in case the Administrator's advice is to vest the business in the Insurer company itself, the dispute with regard to the compliance of natural justice may not occur. However, it is only when the Administrator recommends amalgamation of the present business of the Insurer company with an alien company and the IRDAI agrees to give it to some other Insurer that the question of compliance with principles of natural justice would arise. In this context, the respondent IRDAI has also relied on Hon'ble Supreme Court's judgement in the matter of Innoventive Industries Limited Vs. ICICI Bank & Anr. (Civil Appeal Nos. 8337-8338 of 2017 decided on August 31, 2017) also reported in 2017 SCC Online SC 1025. We find it difficult to accept this argument. The Hon'ble Apex Court's judgment in Innoventive Industries Limited (supra) interprets the provisions of the Insolvency and Bankruptcy Code, 2016 ('Insolvency Code' for short). The scheme laid down in the Insolvency Code is different from the scheme of

prudential regulation provided under the Insurance Act, 1938, which is evident from the fact that the non-obstante clause is explicitly provided in the Insolvency Code whereas the same is absent in the Insurance Act, 1938. Moreover, sub-section 52(B)(1)(b) specifically provides in the Insurance Act, 1938 that four options are available to the Administrator for recommendation to the IRDAI and one of them is specifically about the "*the carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts).*"

61. This means one of the options which an Administrator can recommend to the IRDAI is to allow the insurer to carry on its business without or with modified value of the insurance policies in the form of bonus or discounts. Thus, while we agree that section 52 have many standalone features which may be needed to address grave and imminent risk to the insurance policyholders, the existence of sub-section 52B(1)(b) nullifies the grounds for automatic transfer of the business of the insurer once an Administrator is appointed. Though the Counsel for the respondent argued that no useful purpose will be served by giving another SCN and chance of reply / hearing to the appellant after having found the appellant prudentially irresponsible and unresponsive, in our view such an approach prejudges the question and is against the normal judicial process as well as the principles of natural justice. Therefore, we are constrained by the explicit existence of the sub-section 52B(1)(b) in the Insurance Act, 1938, which would mean that one of the options available to the Administrator is to recommend handing over the business back to the appellant company. This is not the legislative scheme in the Insolvency Code wherein once the Insolvency Resolution Process (IRP) of a corporate debtor is commenced; an Insolvency Professional would take over the management of the

Company negating any continued role / right for the erstwhile Board of the Company (corporate debtor). Whether giving another opportunity of being heard to the appellant serves any purpose or not is a question to be decided afresh by following the provisions in the legislation in letter and spirit.

62. It may be recapitulated that the Administrator was appointed by the Insurance Authority on June 12, 2017 and the Administrator submitted his report to the Insurance Authority on June 22, 2017. The Authority, i.e., the Chairman of the IRDAI, proceeded to issue the impugned order dated June 23, 2017 directing the appellant "not to procure/collect proposal deposits/underwrite new business with immediate effect, i.e., close of business on 23rd June, 2017" without supplying a copy of the Administrator's report to the Appellant. The Administrator's report, on which the Insurance Authority had acted in passing the impugned order dated June 23, 2017, is surprisingly not even mentioned in the impugned order dated June 23, 2017, whereby the appellant was directed not to procure/collect proposals deposits/underwrite new business, with immediate effect, i.e., close of business on 23rd June, 2017 itself. Although the non supply of Administrator's report to the Appellant before passing impugned order dated June 23, 2017 is a matter of serious concern, it may not be considered highly fatal and irregular so as to vitiate the very appointment of the Administrator and his further actions in the facts and circumstances of the present case. But, we are of the considered opinion that this report of the Administrator, which has now been produced before us, should have at least been supplied to the Appellant before passing the impugned order dated July 28, 2017. As hereinabove noted, the impugned order dated June 23, 2017 is only a consequential order which enables the Administrator to concentrate more on the existing affairs of the Insurer company and to bring them on the right tract by various methods prescribed

in law and not to involve in procurement of fresh work to further complicate the matter.

63. In any event, the report and its outcome have potentially and adversely affected the appellant, therefore, the IRDAI must have supplied a copy of the report to the appellant before passing the impugned order dated July 28, 2017 seeking to transfer the insurance business of the Appellant to an outside insurer, namely – ICICI Prudential Life Insurance Co. Ltd., to enable the appellant to make a representation on the Administrator's report in question. This action of the IRDAI is clearly in breach of the principles of natural justice. The same cannot be countenanced when we look at the larger scheme of the Insurance Act and the place the Respondent occupies in regulating the insurance business in the country. The impugned order dated July 28, 2017, therefore, deserves to be quashed and set aside and we order accordingly. In fact, it is not the case of the IRDAI that whenever an Administrator is appointed to manage the affair of an Insurance Company on account of certain alleged irregularities, transfer and merger of the said Insurer with another outside Insurer is the only consequence which shall invariably flow. As hereinabove noted, the IRDAI must apply the principles of proportionality before resorting to such extreme measures of transfer, merger or winding up of an insurance business altogether. The action must commensurate with the nature of the violation in a given case. IRDAI is obligated to look into as to whether the violation is technical, venial in nature or is a serious violation which would gravely jeopardize the interest of policyholders of the said Insurance Company. In the instant case, the order is passed mechanically rather than by due application of mind on the facts and circumstances of the case, including the overall scheme of the Insurance Act read with that of IRDA Act.

64. In view of the above discussion of law and fact, while upholding the appointment of the Administrator vide order dated June 12, 2017 impugned in Appeal No. 6/2017 and the consequential order dated June 23, 2017 impugned in Appeal 5/2017, we hereby quash the impugned order dated July 28, 2017 impugned in Appeal 4/2017 and restore the whole matter to the file of the IRDAI with a direction to proceed from the stage of seeking a representation/response from the Appellant on the Administrator's report in question as well as providing opportunity of being heard to the Appellant in consonance with the principles of natural justice. During the fresh hearing to be offered by the IRDAI to the appellant under this order, any of the parties, if it wishes to produce some documents or summon it from the other party, the said request shall also be considered as per law by affording an opportunity in this regard. IRDAI shall make an endeavor to complete the above said process as per law preferably within a period of three months from the date of receipt of the appellant's reply/response to the Administrator's report in question as per law and after giving opportunity of hearing to the Appellant.

65. Thus, Appeal No. 4/2017 stands allowed in terms of the above directions while Appeal No. 6/2017 along with Appeal No. 5/2017 stand dismissed with no order as to cost. Accordingly, Miscellaneous Application Nos. 4 and 5 of 2017 also stand disposed of.

Sd/-
Jog Singh
Member

Sd/-
Dr. C. K. G. Nair
Member

11.01.2018
Prepared & Compared by
PTM

* As amended by order dated January 15, 2018.