

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 24.02.2020

Date of Decision : 27.02.2020

Misc. Application No. 6 of 2020

And

IRDAI Appeal No. 4 of 2020

1. Nippon India Mutual Fund
2. Nippon Life India Asset Management Ltd.

Reliance Centre,
7th Floor, South Wing,
Off Western Express Highway,
Santacruz (East),
Mumbai - 400055.

..... Appellants

Versus

1. Insurance Regulatory & Development Authority of India
Survey No. 115/1, Financial District,
Nankramguda, Gachibowli,
Hyderabad - 500032.
2. IDBI Trusteeship Services Ltd.
Asian Building, Ground Floor,
17, R Kamani Marg, Ballard Estate,
Mumbai - 400001.
3. Reliance Capital Ltd.
Reliance Centre, Ground Floor,
19, Walchand Hirachand Marg,
Ballard Estate, Mumbai - 400001.

4. Reliance General Insurance Co. Ltd.
 Reliance Centre, Sough Wing, 4th Floor,
 Off. Western Express Highway,
 Santacruz (East), Mumbai - 400055. Respondents

Mr. Pradeep Sancheti, Senior Advocate with Mr. Sumit Agrawal,
 Mr. Mahaveer Rajguru, Mr. Akshit Jain, Advocates i/b Regstreet
 Law Advisors the Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Sushant Yadav,
 Mr. Shehaab Roshan, Advocates i/b K. Ashar & Co. for the
 Respondent Nos. 1.

Mr. Darius Khambata, Senior Advocate i/b Harish Shroff & Co. for
 the Respondent Nos. 2.

Mr. Gaurav Joshi, Senior Advocate with Mr. Zerick Dastur,
 Ms. Sneha Sheth, Mr. Khushil Shah, Ms. Tanvi Gaitonde, Advocates
 i/b Zerick Dastur, Advocates & Solicitors for the Respondent Nos. 3
 and 4.

Mr. Janak Dwarkadas, Senior Advocate with Mr. Jayesh H. Shah,
 Mr. Shubhabrata Chakraborti, Mr. Arikshit Moral, Ms. Anita Irani,
 Advocates i/b Juris Corp. for the Intervener.

CORAM : Justice Tarun Agarwala, Presiding Officer
 Dr. C. K. G. Nair, Member
 Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated December 4, 2019 and December 27, 2019 passed by Insurance Regulatory & Development Authority of India (hereinafter referred to as 'IRDAI') - respondent No. 1 by which IRDAI held that the transfer of shares made by respondent No. 2 was in violation of Section 6A(4)(b)(iii) of the Insurance Act, 1938 (hereinafter referred to as 'Insurance Act') read with Regulation 3 of the Insurance Regulatory & Development Authority of India (Transfer of Equity Shares of Insurance Companies) Regulations, 2015 (hereinafter referred to as 'Transfer of Equity Shares Regulations'), as the same was made without previous approval of the authority and, therefore, such transfer of shares are null and void ab initio. By the impugned order dated December 27, 2019 IRDAI reiterated its directions contained in its earlier order of December 4, 2019 with a further stipulation that such transfer / pledge should not be given effect to and that the appellants should exercise due diligence.

2. An Intervention Application has been filed on behalf of the Credit Suisse AG, Mumbai Branch. In the interest of justice, the Intervention Application is allowed.

3. We have heard Mr. Pradeep Sancheti, the learned senior counsel with Mr. Sumit Agrawal, Mr. Mahaveer Rajguru and Mr. Akshit Jain, the learned counsel for the appellants and Mr. Shyam Mehta, the learned senior counsel with Mr. Sushant Yadav, Mr. Shehaab Roshan, the learned counsel for the respondent No. 1 and Mr. Darius Khambata, the learned senior counsel for the Respondent No. 2 and Mr. Gaurav Joshi, the learned senior counsel with Mr. Zerick Dastur, Ms. Sneha Sheth, Mr. Khushil Shah, Ms. Tanvi Gaitonde, the learned counsel for the Respondent No. 3 and 4 and Mr. Janak Dwarkadas, the learned senior counsel with Mr. Jayesh H. Shah, Mr. Shubhabrata Chakraborti, Mr. Arikshit Moral, Ms. Anita Irani, the learned counsel for the Intervener.

4. The facts leading to the filing of the present appeal is, that Nippon India Mutual Fund (hereinafter referred to as 'NIMF') - Appellant No. 1 is a Trust established under the Indian Trust Act, 1882. Appellant No. 2 Nippon Life India Asset Management Ltd. is a duly registered asset management company of Appellant No. 1 and is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI'). IDBI Trusteeship Services Ltd. (Respondent No. 2) is a duly registered debenture trustee registered

with SEBI and acts as a debenture trustee for the issue of Non-Convertible Debentures (NCDs) issued by Reliance Home Finance Ltd. (hereinafter referred to as 'RHFL'). In this regards, a debenture trust deed dated January 10, 2018 was issued between RHFL and IDBI Trusteeship Services Ltd. - Respondent No. 2.

5. RHFL issued an Information Memorandum dated March 28, 2018 for private placement for issue of 8000 NCDs aggregating Rs. 400 crores. Appellant No. 2 subscribed to 8000 NCDs and currently holds 6369 NCDs. These NCDs were to mature on June 28, 2019. RHFL were unable to redeem the NCDs and consequently, RHFL requested Appellant No. 1, a debenture holder to restructure the terms of the NCDs and extend its maturity date to October 31, 2019. The maturity date was extended to October 31, 2019 upon RHFL providing additional security, namely :-

- a) an irrevocable and unconditional corporate guarantee by Reliance Capital Ltd. - Respondent No. 3 (hereinafter referred to as 'Reliance Capital') who is the promoter of RHFL;

- b) put option right was given to the NCDs holders, namely, that upon exercising the put option Reliance Capital was required to purchase the NCDs;
- c) pledge to be given by Reliance Capital over its entire shareholding in Reliance General Insurance Company Ltd. Respondent No. 4 (hereinafter referred to as 'RGIC') in favour of IDBI Trusteeship Services Ltd. Respondent No. 2. This Respondent No. 4 company is a subsidiary of Reliance Capital and is in the business of General Insurance and undertakes General Insurance business.

6. Based on the aforesaid arrangement, a guarantee deed was executed on July 19, 2019 and a Share Pledge Agreement dated June 26, 2019 was executed by Reliance Capital Respondent No. 3 in favour of IDBI Trusteeship Services Ltd. Respondent No. 2 wherein 25,15,49,920 shares of RGIC held by Reliance Capital was pledged in favour of Respondent No. 2. Under this Share Pledge Agreement, this pledge on equity shares was created for securing payment obligations to secured parties mentioned therein.

7. Prior to the maturity of the NCDs on October 31, 2019, Appellant No. 1 exercised its “put option” to sell 6369 NCDs for approximately Rs. 331 crore and gave notice to Reliance Capital on October 11, 2019 to purchase the NCDs in accordance with the guarantee deed. Upon failure of Reliance Capital to purchase the NCDs of RHFL, Appellant No. 1 wrote to IDBI Trusteeship Services Ltd. Respondent No. 2 to invoke the pledge under the pledge agreement on October 17, 2019. Accordingly, IDBI Trusteeship Services Ltd. Respondent No. 2 issued a notice to Reliance Capital on October 18, 2019 and, on October 24, 2019, invoked the pledge of 25,15,49,920 shares of RGIC. Based on the aforesaid, Appellant No. 1 informed IRDAI Respondent No. 1 vide letter dated November 20, 2019 with regard to the invocation of the shares. Reliance Capital also informed the stock exchange with regard to the invocation of the shares on November 19, 2019. Based on the aforesaid, the impugned order dated December 4, 2019 was passed holding that the transfer of the shares being in violation of Section 6A(4)(b)(iii) of the Insurance Act was null and void ab initio.

8. Upon receipt of the aforesaid impugned order, the appellants made a representation dated December 12, 2019 informing IRDAI that by invoking the pledge agreement created on RGIC shares IDBI

Trusteeship Services Ltd., in compliance of its statutory duty as a debenture trustee had only taken possession of RGIC shares. IRDAI was also informed that the trusteeship would make a formal application before taking any further steps for finding a suitable buyer and transferring the shares of RGIC to the said buyer. The appellants further contended that neither the appellant No. 1 nor IDBI Trusteeship Services Ltd. Respondent No. 2 exercises any control over RGIC nor it intends to exercise any control, make changes or have a say in the management or decision making process of RGIC or exercise any voting rights in respect of RGIC shares. It was further pointed out that the Appellant No. 2 is only an asset management company and is carrying of its business activities as per Regulation 24 of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996. Appellant No. 1 specifically submitted that before effecting any transfer of RGIC shares to an identified confirmed eligible buyer, suitable application for approval would be made to IRDAI in accordance with the applicable Insurance laws.

9. Respondent No. 2 i.e. IDBI Trusteeship Services Ltd. vide letter dated January 14, 2020 also reiterated that the holding of the shares of RGIC by them in their demat account was in the capacity as a trustee and that the said share have not been transferred to them.

10. An affidavit has also been filed by Respondent No. 2 before this Tribunal giving an undertaking that prior to the transfer of shares by way of sale to a transferee, Respondent No. 2 will take approval from IRDAI in accordance with law.

11. Based on the aforesaid letter sent by the appellant, IRDAI vide letter dated February 4, 2020 noted that the shares of RGIC held by IDBI Trusteeship Services Ltd. Respondent No. 2 was in its capacity as a trustee and the said shares have not been transferred to Respondent No. 2. IRDAI in the said letter further advised the appellants that as and when the transfer of the shares is contemplated, it would ensure that the provisions of Section 6A(4)(b)(iii) of the Insurance Act read with Regulation 3 of the Transfer of Equity Shares Regulations are complied with.

12. In the light of the aforesaid communication of IRDAI vide their letter dated February 4, 2020 and their reply filed before this Tribunal, it is apparently clear that damage control measures have been adopted by Respondent No. 1 subsequent to the impugned orders dated December 4, 2019 and December 27, 2019. The communication / order of IRDAI dated February 4, 2020 has largely diluted its own order dated December 4, 2019 and December 27,

2019. The stand of the Respondent No. 1 as depicted in paragraph No. 21 of their reply makes it apparently clear that prior to any transfer of the shares in question, the authority is required to be in a position to carry out due diligence in order to ascertain fulfillment of Fit and Proper criteria and financial soundness of the transferee.

13. In the light of the aforesaid, the stand of the respondent No. 1 that the use of the word “transfer” as depicted as per the provisions of Section 6A(4)(b)(iii) of the Insurance Act would also include any form of transfer of shares including a pledge is not being considered at this stage and is left open.

14. We however dispose of the appeal with the direction that the observation in the impugned orders that the transfer / pledge of the shares in question are null and void ab initio is incorrect and to that extent, the order is set aside. We also record that IDBI Trusteeship Services Ltd. Respondent No. 2 is holding the pledged shares as a custodian and will make every endeavour to find a suitable buyer. As and when a suitable buyer is found suitable application would be made before IRDAI for appropriate approval to enable the IRDAI to carry out due diligence and to ascertain fulfillment of Fit and Proper criteria, financial soundness, etc. We also make it clear that so long

as the IDBI Trusteeship Services Ltd. Respondent No. 2 is holding the shares in the capacity as a trustee / custodian, IDBI Trusteeship Services Ltd. Respondent No. 2 will not exercise any control over RGIC or make changes or have a say in the management or decision making process of RGIC or exercise any voting rights in respect of the said RGIC shares.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

27.02.2020
Prepared & Compared by
PTM