

October 9, 2024

BSE Limited  
Listing Department  
Phiroze Jeejeebhoy Towers  
Dalal Street  
Mumbai 400 001

National Stock Exchange of India Limited  
Listing Department  
Exchange Plaza, 5<sup>th</sup> floor  
Plot No. C/1, G Block  
Bandra-Kurla Complex  
Bandra (East)  
Mumbai 400 051

Dear Sir/Madam,

**Sub.: Disclosure under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

The Hon'ble National Company Law Tribunal, Ahmedabad Bench ('NCLT') has vide two orders passed on October 9, 2024 (i) sanctioned the Company Scheme Petition [C.P.(CAA)/20(AHM) 2024 in C.A.(CAA)/71(AHM) 2023] in connection with the Scheme of Arrangement between ICICI Bank Limited, ICICI Securities Limited and their respective shareholders ('the Scheme') and (ii) dismissed and disposed of the applications (IA 55(AHM) 2024 and Inv. P. 1(AHM)/2024 filed by Quantum Mutual Fund and Manu Rishi Guptha respectively) objecting to the Scheme.

The orders, as hosted on the website of NCLT, are attached.

We request you to kindly take the same on record.

Yours sincerely,

**For ICICI Bank Limited**

**Prachiti Lalingkar**  
**Company Secretary**

Encl.: as above.

Copy to-

- (i) New York Stock Exchange (NYSE)
- (ii) Singapore Stock Exchange
- (iii) Japan Securities Dealers Association
- (iv) SIX Swiss Exchange Ltd.

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.302- C.P.(CAA)/20(AHM) 2024

In  
C.A(CAA)/71(AHM) 2023

**Proceedings under Section 230 & 232 of Co. Act, 2013**

**IN THE MATTER OF:**

ICICI BANK LIMITED  
(Holding Co.)

.....Applicant

.....Respondent

**Order delivered on: 09/10/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

**(Hybrid Mode)**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

- Sd -

SAMEER KAKAR  
MEMBER (TECHNICAL)

SHAMMI KHAN  
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, COURT-I, AHMEDABAD**

**CP(CAA)/ 20 (AHM) 2024  
in CA(CAA)/71(AHM)2023**

[Company Petition under Section 230 read with other applicable provisions of the Companies Act, 2013 read with Rule 15(1) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016]

In the matter of **Scheme of Arrangement**

between

**ICICI Bank Limited**

(Petitioner Company/Holding Company)

and

**ICICI Securities Limited**

(Non-Petitioner Company/Subsidiary Company)

and

**Their Respective Shareholders**

**Memo of Parties**

**ICICI BANK LIMITED**

CIN NO: L65190GJ1994PLC021012

Having its office at

ICICI Bank Tower, Near Chakli Circle,

Old Padra Road, Vadodara,

Gujarat – 380009

... Petitioner Company

**Order Pronounced on 09.10.2024**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

## **APPEARANCE:**

For Applicant(s) : Mr. Saurabh Soparkar, Sr. Adv. along  
with Mr. Sandeep Singhi, Adv.  
For the IT Dept. : Ms. Kinjal Vyas, Proxy Adv.  
For the RD : Mr. Shiv Pal Singh, Deputy Director,  
RD(NWR), Ahmedabad

## **ORDER**

1. The present Company Petition has been filed by the Petitioner Company above named for the purpose of the approval of the Scheme of Arrangement between **ICICI Bank Limited** (hereinafter referred to as the "Petitioner Company" or the "**Holding Company**", as the context may admit) and **ICICI Securities Limited** (hereinafter referred to as the "**Subsidiary Company**") & **their Respective Shareholders** under Section 230 of the Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') (hereinafter referred to as the 'Scheme') pursuant to the Scheme proposed by the Petitioner Company and the said Scheme is also annexed at "**Annexure I**" of the Company Petition.

2. The Petitioner Company/ICICI Bank Limited is a scheduled commercial bank and its registered office is situated in the State of Gujarat. Non-Petitioner Company/ICICI Securities Limited is a public limited company and its registered office is situated in the State of Maharashtra.
  
3. The proposed Scheme, *inter alia*, provides for Arrangement between ICICI Bank Limited and ICICI Securities Limited i.e. delisting of the Equity Shares of the Non-Petitioner Company/Subsidiary Company from BSE and NSE in accordance with Regulation 37 of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 involving cancellation of the entire shareholding of the Public Shareholders (as defined in the Scheme) of the Subsidiary Company and issuance of New Shares (as defined in the Scheme) by the Holding Company as per the Swap Ratio (as defined in the Scheme) to the Public Shareholders of the Subsidiary Company, which will

result in the Subsidiary Company becoming a wholly-owned subsidiary of Petitioner Company.

4. Affidavit in support of the above Company Petition was sworn and filed by one Ms. Pooja Ramachandrappaas the Authorized Signatory of the Petitioner Company which is annexed to the Company Petition. The above-named Authorised Signatory of Petitioner Company has been authorized vide Board Resolution dated 29.07.2023 passed by the Petitioner Company.

**5. 1<sup>ST</sup> MOTION APPLICATION – IN BRIEF**

- 5.1 The Petitioner Company had filed the First Motion Company Application vide CA(CAA)No.71/NCLT/AHM/2023 seeking reliefs as follows: -

	<b>EQUITY SHAREHOLDERS MEETING</b>	<b>SECURED CREDITORS MEETING</b>	<b>UNSECURED CREDITORS MEETING</b>
<b>APPLICANT COMPANY</b>	To order meeting	N/A	To dispense with

5.2 Based on such application, moved under Sections 230 of the Companies Act, 2013, directions were issued by this Tribunal, vide order dated **18.01.2024, to hold and convene a meeting of the Equit shareholders** of the Petitioner Company on March 27, 2024 at 3:00 p.m. (1500 hours), through Video Conference/Other Audio Visual Means; other meetings were dispensed with.

5.3 Accordingly, this Tribunal had appointed Shri Kalpesh Jhaveri, former Chief Justice of the Hon'ble High Court of Orissa, as the Chairperson and Ms. Vinita Nair (FCS No.: F10559, C.P. No.: 11902) of Vinod Kothari & Company, Practicing Company Secretaries as the Scrutinizer of the meeting, and gave directions to comply with various stipulations contained in the Order dated 18.01.2024 including filing of the Chairperson's Report.

5.4 This Tribunal also directed issuance of notices to statutory authorities viz. **(i) Central Government through the office of the Regional Director**

**(North-Western Region), Ministry of Corporate Affairs (MCA) (ii) Registrar of Companies, Gujarat, MCA (iii) the Jurisdictional Income Tax office having jurisdiction over the respective companies indicating specifically their Permanent Account Number (PAN) in the communication (iv) Reserve Bank of India (v) BSE Limited (vi) New York Stock Exchange (vii) Six Swiss Exchange Limited (viii) Singapore Stock Exchange and (ix) Japan Securities Dealers Association and other Sectoral Regulators, as well as other Sectoral Regulators** stating that the representations, if any, to be made by them within a period of 30 days from the date of receipt of such notice.

5.5 In compliance of the order dated 18.01.2024 made by this Tribunal in CA (CAA) No. 71 of 2023, the Petitioner Company filed an affidavit dated 13.03.2024 regarding serving of notice of the meeting to all the equity shareholders of the Applicant Company and advertisement of notice of meetings. The Petitioner Company has also sent notice upon



the statutory authorities and filed affidavit regarding service of notice to the aforesaid statutory authorities on 22.02.2023 and 23.02.2024.

5.6 The Chairperson Justice (retd.) Shri Kalpesh Jhaveri has submitted Report dated 01.04.2024 in respect of the meeting of the equity shareholders of Applicant Company. From the Chairperson's report along with Scrutinizer's report dated 27.03.2024, it is observed that the the equity shareholders of the Applicant Company had consented in favour of the proposed Scheme with majority of 99.67%. The Chairperson's report dated 01.04.2024 is annexed at **Annexure-AQ** of the Company Petition. The copy of the scrutinizer's report dated 27.03.2024 is annexed at **Annexure A** to the affidavit.

## 6. RATIONALE OF THE SCHEME

6.1. The Applicant Company is part of a financial services group offering a wide range of banking services, life and general insurance, asset management, securities broking, and private

equity products and services through its specialised subsidiaries and affiliates. The insurance and securities broking subsidiaries and insurance affiliate of the Applicant Company are publicly listed companies on the Stock Exchanges.

6.2. The Applicant Company is a promoter of the Subsidiary Company and holds 74.85% of its equity share holding as on March 31, 2023. The market capitalization of the Applicant Company as on March 31, 2023, is INR 6,12,532,59,59,233 whereas the market capitalization of the Subsidiary Company as on March 31, 2023 is INR 13,804,20,96,251.

6.3. While there are business synergies between the Applicant Company and the Subsidiary Company, a consolidation by way of merger of the Subsidiary Company with the Applicant Company is not permissible on account of regulatory restrictions on the Applicant

Company from undertaking securities broking business departmentally.

6.4. Thus, the Companies have proposed delisting of the Equity Shares of the Non-Petitioner Company/Subsidiary Company from BSE and NSE in accordance with Regulation 37 of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 involving cancellation of the entire shareholding of the Public Shareholders (as defined in the Scheme) of the Subsidiary Company and issuance of New Shares (as defined in the Scheme) by the Holding Company as per the Swap Ratio (as defined in the Scheme) to the Public Shareholders of the Subsidiary Company, which will result in the Subsidiary Company becoming a wholly-owned subsidiary of Petitioner Company.

6.6. The Applicant Company offers a comprehensive suite of banking services and the Subsidiary

Company offers a comprehensive suite of investment and personal finance services. Both the Companies would be able to leverage the strong composite proposition to provide holistic financial services to existing and new customers. With the Subsidiary Company as a 100% subsidiary, it is expected that both entities would be able to better capitalize on the synergies in line with the Customer 360 focus of the Bank.

6.7. Such delisting would provide significant benefits for the Public Shareholders as they will get equity shares in the Applicant Company thereby providing them access to a much larger and more diversified business with greater stability in revenue unlike the securities business which is inherently cyclical as it is significantly dependent on the macro-economic environment and buoyancy in equities market, resulting in volatility in financial performance

and share price. The Public Shareholders would also be part of a more liquid stock of the Applicant Company.

6.8. Given the Applicant Company's strong financial position, the volatility in the Subsidiary Company's share price, market opportunity and business synergies between the two Companies, delisting the Subsidiary Company and the Subsidiary Company becoming a wholly owned subsidiary company would be beneficial to the shareholders.

6.9. In connection with the said delisting, SEBI has granted exemption from the strict enforcement of Regulation 37(1) of the SEBI Delisting Regulations read with SEBI Circular SEBI/HO/CFD/DIL1/CIR/P/2021/0585 dated July 6, 2021 regarding the requirement of listed Applicant company and listed subsidiary being in the same line of business.

6.10. The Companies believe that this Scheme for the delisting of the Subsidiary Company will not be prejudicial to the interests of the shareholders and creditors of the Companies.

7. In the second motion application filed by the Applicant Company, this Tribunal vide order dated 18.04.2024 directed the Petitioner Company to issue notice to the Statutory/Regulatory Authorities viz. **(i) Central Government through the office of the Regional Director (North-Western Region), Ministry of Corporate Affairs (MCA) (ii) Registrar of Companies, Gujarat, MCA (iii) the Jurisdictional Income Tax office having jurisdiction over the respective companies indicating specifically their Permanent Account Number (PAN) in the communication (iv) Reserve Bank of India (v) Competition Commission of India (vi) SEBI (a) NSE (b) BSE Limited (vii) New York Stock Exchange (viii) Six Swiss Exchange Limited (ix) Japan Securities Dealers Association and other Sectoral**

**Regulators**, who may govern the working of the Petitioner Company, as well as for paper publication to be made in **“The Indian Express”** in English language in all the editions and **“Vadodara Samachar”** in Vernacular Language, Vadodara Edition.

8. In compliance to the aforesaid directions issued by this Tribunal, the Petitioner Company has filed an affidavit of service before the Registry of this Tribunal on **29.05.2024** and a perusal of the same discloses that the Petitioner Company has effected paper publications in the **“The Indian Express”** in all editions and **“Vadodara Samachar”** in Vadodara Edition on 15.05.2024. It is also seen that notices have been also served on 06.05.2024 to (i) Central Government through the office of the Regional Director (North-Western Region), Ministry of Corporate Affairs (MCA) (ii) Registrar of Companies, Gujarat, MCA (iii) the Jurisdictional Income Tax office having jurisdiction over the Petitioner Company indicating specifically their Permanent Account Number (PAN) in the communication (iv) Reserve Bank of India (v)

Competition Commission of India (vi) SEBI (vii) NSE (vii) BSE Limited (viii) New York Stock Exchange (ix) Six Swiss Exchange Limited (x) Singapore Stock Exchange and (xi) Japan Securities Dealers Association and other Sectoral Regulators through e-mail. Pursuant to the service of notice of the petition, the following statutory authorities have responded as follows: -

#### **STATUTORY AUTHORITIES**

#### **9. REGIONAL DIRECTOR, NORTH-WESTERN REGION**

- a. The Regional Director (RD), North-Western Region, MCA, and the Registrar of Companies (RoC), Ahmedabad have filed their observations before this Tribunal on 05.06.2024 vide inward Dairy No. R 231 making the following observations: -

#### **Observations of RD and ROC are as under:**

- i. The Registrar of Companies, Ahmedabad, Gujarat has reported that no inspection / investigation is pending against the Petitioner Holding Company. However, an Inquiry was



conducted by the ROC under Section 206 (4) of the Companies Act, 2013 against the Petitioner Holding Company and Inquiry report as well as supplementary inquiry report has already been submitted to the Directorate / Ministry on 10.02.2021 and 18.10.2022, respectively. In compliance to the follow up instructions on Part- B & C of the inquiry report, the ROC has already filed prosecution and with regard to Part - A, the directions from the Ministry are yet to be received. ROC has also reported that 03 prosecutions are pending against the company:

Sr No	Default of Section	Case No.	Court under which the case is pending	Remarks
1.	Section 188 of the Compnies Act, 2013	18101/2023	Metropolitan Magistrate Court, Ahmedabad	Prosecutions have been filed in Compliance to the Directorate's letter No. RD (NWR)/ Section
2.	Section 117 and 179 of the Compnies Act, 2013	18108/2023		

3.	Section 117 and r.w. 179 (3) of the Companies Act, 2013	18109/2023		206/TS/308/2020/4557 dated 12.01.2023
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ii. As per the Financial Statement for the Financial year ended 31.03.2023, the equity shares/ADSs/Bonds of the Applicant Company are listed on Bombay Stock Exchange Limited (BSE), National Stock Exchange of India Limited and New York Stock Exchange (ADSs). BSE and NSE vide their separate letter dated 28.11.2023 and 29.11.2023 respectively have issued Observation letter for the proposed Scheme. Therefore, directions be issued to the Applicant Company to comply with the directive / Circular issued by SEBI from time to time. Further, the listed bonds of the Applicant Company are traded on Singapore Exchange Securities Trading Limited, India International

Exchange (IFSC) Limited, SIX Swiss Exchange Ltd, etc. Therefore, prior approval/NOC is required to be obtained from the respective Stock Exchange, where the Applicant Holding Company is registered for the proposed arrangement.

- iii. The subsidiary company does not fall under the jurisdiction of ROC, Ahmedabad.
- iv. As per the financial statements as at 31.03.2023 of the Holding Applicant company, the following body corporate shareholders holding 10% or more of total shareholding of the Applicant company :-

Sr. No.	Petitioner Compnay	Name of Shareholder	% of Shareheld	Remark
1.	ICICI bank Limited (Holding Company)	Dutsche bank Trust Company Americas (Depository for ADS holders)	19.12%	No eForm BEN-2 filed

In view of the above-mentioned facts, the Registrar of Companies submitted that Holding Applicant Company is under statutory obligation to file the e-form BEN-2 for

declaring name of the significant beneficial owner with concerned ROC under the mandate contained in Section 90 of Companies Act, 2013 read with Rule 4 of the Companies (Significant Beneficial Owners) Amendment Rules, 2019 within 30 days from the date of receipt of such declaration along with the fees as prescribed in Companies (Registration Offices and Fees) Rules, 2014. The Hon'ble NCLT may kindly issue suitable directions to the Applicant Company to place the fact on the record regarding compliance of aforesaid provisions of the Companies Act, 2013 and Rules made thereunder.

- v. It is observed from the para 24(ii) of the order dated 18.01/2024 passed in CA(CAA)/71(AHM) 2023 by the Hon'ble NCLT in respect of Applicant Holding Company that "There are no secured creditors of the Applicant Company as on the date of filing of the present Company Application. In such circumstances, the

question of holding any meeting of the secured creditors of the Applicant Company does not arise".Whereas, as per the Index of Charge available under the MCA's website, there are 01 open secured Charge ID amounting of Rs. 12,35,40,00,000/-created against the favour of 01 Secured charge holder namely "Morgan Stanley & Co. International PLC, United Kingdom" created vide dated 14.03.2023 on "Pledged Securities account and pledged cash account". The Registrar of Companies submitted that the Hon'ble NCLT may kindly issue suitable directions to the Applicant Company to place on record all the relevant facts regarding due compliance of the provisions of the Section 82 of the Companies Act, 2013 read with Rule 8 of the Companies (register of Charges) Rules, 2014.

- vi. The Directorate vide an e-mail dated 22.02.2024 has forwarded Ministry's Office Memorandum dated 24.01.2024 regarding

reporting to the Central Government under sub-section (12) of Section 143 of the Companies Act, 2013 on suspected offence involving fraud being committed or having been committed against the company by its Officers or employees. On perusal of allegation reported in ADT-4 by the Chartered Accountant Firm M S K A & Associates, Chartered Accountants, it appears that fraud committed at ICICI branches of Telangana, Tamilnadu, Madhya Pradesh and Rajasthan by the branch managers of ICICI bank. The Auditor has also reported in his report that "the ICICI bank has been taken necessary action in the matter and registered FIR against the Accused individual involved in the fraud. The Applicant Company ie. ICICI Bank Ltd is regulated by the Reserve Bank of India". As per the finding of Auditors, the frauds done by the accused persons were related to misappropriation of bank funds which falls

under the purview of RBI may be pursued by the Directorate.

- vii. As per the provisions of the Companies Act, 2013 wherein it is mandated certain statutory responsibilities on the part of the public company and its KMP/BoD. A public company so long as remain as public companies shall ensure that such statutory requirements of law are duly complied with at relevant time in prescribed manner. Therefore, onus of the due compliance of the applicable provisions of the Companies Act, 2013 is vested with all the Petitioner Companies and its KMP/BoD.
- viii. The Registrar of Companies, Ahmedabad submits that the Hon'ble Bench of National Company Law Tribunal may be please to direct the petitioner company to preserve its books of accounts, papers and records and shall not be disposed of without prior permission of Central Government as per the Provision Section 239 of the CompaniesAct, 2013.

- ix. The Registrar of Companies, Ahmedabad further submits that the Hon'ble Bench of National Company Law Tribunal may be pleased to direct the Petitioner Company to ensure Statutory compliance of all applicable Laws and also on sanctioning of the present Scheme, the Holding Company shall not be absolved from any of its Statutory liabilities, in any manner.
- x. Necessary Stamp Duty on transfer of property/Assets, if any is to be paid to the respective Authorities before implementation of the Scheme.
- xi. The Registrar of Companies, Ahmedabad further submits that the Hon'ble Tribunal may direct the petitioner company involved in the scheme to comply with the provisions of Section 232(5) of the Companies Act, 2013 with respect to file certified copy of order sanctioning the scheme with Registrar of



Companies within 30 days from date of passing order.

- xii. That, the aforementioned scheme is arrangement amongst ICICI Bank Limited, ICICI Securities Limited and their respective shareholders wherein the holding company is a promoter of the subsidiary company and holds 74.85 % of its equity shareholding. A consolidation by way of merger of the Subsidiary Company with the Holding Company is not permissible on account of regulatory restrictions on the Holding Company from undertaking Securities broking business departmentally. Thus, the companies have proposed a delisting of the equity shares of the Subsidiary Company from BSE and NSE pursuant to this scheme in accordance with Regulation 37 of the SEBI Delisting Regulations, which will result in the Subsidiary company becoming a wholly owned subsidiary of the Holding Company.

xiii. That, the Equity shares of the Petitioner Holding Company are listed in BSE and NSE and both the stock exchanges have given their observations vide letter dated 29.11.2023 and 28.11.2023, respectively in the matter. The Hon'ble NCLT may be pleased to direct the Petitioner Holding Company to comply with the observations made by the BSE and NSE.

xiv. That, it is observed from the financial statements of the company filed for the financial year ended on 31.03.2023 that Deutsche Bank Trust Company Americas (DBTCA) (Depositary for ADS holders) holding 19.12 % shares of petitioner holding company, but no BEN-2 Form has been filed by the company.

However, the company has clarified vide letter dated 29.05.2024 that "ICICI Bank has issued Notice under sub-section (5) of section 90 of the Companies Act, 2013 to DBTCA inter-alia seeking details of the Beneficial Owner. DBTCA

inter-alia confirmed that noreporting has been filed with the Securities Exchange Commission (SEC) to report the ownership in ADR of 10% or more of the shares of the Bank."

Therefore, the Hon'ble NCLT may be pleased to rely on the submissions made and documents submitted by the Petitioner Company to consider the merits/ demerits of the case.

- xv. That, it is observed from the Order dated 18.01.2024 passed by the Hon'ble NCLT in CA (CAA)/71 (AH)/ 2023 that there are no secured creditors in the Petitioner Holding Company, but as per the Index of Charges of the company available on MCA e-registry a Charge amounting to Rs. 12,35,40,00,000/- is created against the company and the said charge is open as on date. However, the company has clarified vide letter dated 29.05.2024 that "With respect to the charge mentioned, the same is on account of a regulatory guideline applicable to Singapore Branch of the Bank.

The Bank, through its Singapore Branch entered into an arrangement with Morgan Stanley to enable the Bank to undertake certain foreign exchange and derivative transactions. Since the transactions were undertaken through the Singapore Branch of the Bank, it was required to comply with the guidelines issued by the Monetary Authority of Singapore ("MAS"). As per the Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts dated 6 December 2016, as amended from time to time ("Guidelines") issued by MAS pursuant to the Securities and Futures Act (CAP.289), in the event that the notional amount involved in a transaction exceeds the stipulated threshold, the Bank and Morgan Stanley are obligated to maintain certain initial margin as collateral with a designated custodian, in favor of each other. Accordingly, an initial margin was maintained by the Bank, in the form of

securities held by the Bank in its demat account, lien marked in favour of Morgan Stanley, to comply with the regulatory guideline. Similar initial margin was also provided by Morgan Stanley, in favour of the Bank."The Hon'ble NCLT may put reliance on the submissions and documents furnished by the petitioner company to consider the merits/ demerits of the case.

- xvi. That, the petitioner company has submitted letter dated 13.05.2024 pursuant to this Directorate's letter dated 01.03.2024 stating that there are Foreign National / NRI / Foreign Bodies Corporate is holding shares in the subsidiary company. Thus, the Petitioner Holding Company is required to comply with FEMA and RBI Guidelines at the time of issue of shares to the foreign shareholders of the subsidiary company. The Hon'ble NCLT may therefore be pleased to direct the Petitioner

Company to ensure the compliances of FEMA and RBI guidelines, in the matter.

xvii. That, the Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made.

xviii. That, the petitioner Holding company fall under the jurisdiction of this Hon'ble Bench and the Subsidiary Company (ICICI Securities Limited) falls under the jurisdiction of the Hon'ble NCLT, Mumbai Bench. The Hon'ble NCLT may, therefore, be pleased to direct the Petitioner Holding Company to submit the present status of Application/ petition filed before the NCLT, Mumbai Bench in respect of the Subsidiary Company.

b. The Petitioner Company has filed an Additional Affidavit dated 05.06.2024 before this Tribunal on

05.06.2024 vide inward Dairy No. D 4418 in response to observation of **Regional Director** and the **Registrar of Companies** with the following response:

- i. With reference to the contents of paragraph 5 of the Representation, it is stated that in respect of the prosecutions filed by the Registrar of Companies(hereinafter referred to as the "RoC"), the Petitioner Company is not in breach of the alleged provisions of the Companies Act, 2013 (hereinafter referred to as the "Act") and that the Petitioner Company shall defend such prosecutions in accordance with law. In such circumstances, the question of filing any compounding application does not arise.
- ii. With reference to the three complaints claimed to be pending against the Petitioner Company, Petitioner Company shall obtain the specific details of the complaints from RoC and shall

ensure its closure in compliance with the provisions of law.

- iii. With reference to the contents of paragraph 14.1 of the RoC Report dated 21.5.2024, it's stated that the Petitioner Company has already obtained no-objection/no adverse observations to the Scheme from BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE"). The no-objection/no adverse observations letters issued by BSE and NSE are already forming part of the Company Application and the Company Petition filed by the Petitioner Company before this Hon'ble Tribunal. In respect of the bonds which are listed on the Singapore Exchange Securities Trading Limited, India International Exchange (IPSC) Limited, Six Swiss Exchange Limited, Act., Counsel for the Applicant stated and submitted that no such approval/NoC is required to be obtained from the said stock exchanges, even otherwise, under the Scheme,



the liability of the Petitioner Company towards the bond holders are neither being reduced nor being extinguished under the Scheme.

- iv. With reference to the contents of paragraph 14.3 of the RoC Report and paragraph 6 (iii) of the Representation, it is stated that on 31.3.2000, the Petitioner Company had issued American Depository Receipts ("ADRs"). These ADRs are listed and traded on the New York Stock Exchange. The equity shares underlying the ADRs are listed on BSE and NSE. Deutsche Bank Trust Company Americas ("DBTCA") is the depository for ADR holders. Ministry of Corporate Affairs has notified the Companies (Significant Beneficial Owners) Amendment Rules, 2019 with effect from 8.2.2019. The Petitioner Company issued notice under Section 90(5) of the Act to DBTCA, inter alia, seeking details of the beneficial owner. DBTCA, inter alia, confirmed that no reporting has been filed with the Securities Exchange Commission to

report the ownership in ADR of 10% or more of the shares of the Petitioner Company. It is pertinent to mention that the Petitioner Company obtains confirmation to this effect from DBTCA on a quarterly basis. Till date, the Petitioner Company has not received any Form BEN-1 from DBTCA. As and when such form is received, the Petitioner Company shall file necessary Form BEN-2 with the RoC.

- v. With reference to paragraph 14.4 of the ROC Report and paragraph 6(iv) of the Representation, it is stated that the Petitioner Company, through its Singapore Branch, entered into an arrangement with Morgan Stanley to enable the Petitioner Company to undertake certain foreign exchange and derivative transactions. Since the transactions were undertaken through the Singapore Branch of the Petitioner Company, it was required to comply with the guidelines issued by the Monetary Authority of Singapore ("MAS"). As per

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the Guidelines on Margin Requirements for Non-Centrally Cleared Derivatives Contracts dated 6.12.2016, as amended from time to time ("Guidelines") issued by MAS pursuant to the Securities and Futures Act (CAP.289), in the event that the notional amount involved in transactions exceeds the stipulated threshold, the Petitioner Company and Morgan Stanley are obligated to maintain certain initial margin as collateral with a designated custodian, in favor of each other.

Accordingly, an initial margin was maintained by the Petitioner Company, in the form of securities held by the Petitioner Company in its demat account, lien marked in favour of Morgan Stanley, to comply with the regulatory Guidelines. As per Section 230 of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, (Amalgamation Rules) for an entity to be recognized as a 'creditor' of the company, its

debt must be shown in the financial statements of the company. It is stated that no debt has been incurred by the Petitioner Company under the aforesaid arrangement and the lien has been marked only to comply with the aforesaid regulatory requirement. Since no debt is incurred pursuant to the aforesaid transactions, Morgan Stanley is not a 'creditor' in the balance sheet/financial statements of the Petitioner Company. The Petitioner Company registered charge with the Registrar of Companies only considering definition of charge under the Act and to comply with requirement of Section 77 of the Act. The aforesaid charge continues to subsist on an ongoing basis since the same is mandatorily required under the Guidelines in order to carry out continuous trades in the foreign exchange and derivatives segment. Therefore, no occasion arises for satisfaction of charge, as per Section 82 of the Act. In light of the above, considering that no

debt has been availed under the aforesaid arrangement, Morgan Stanley is not treated as a creditor for the purposes of the Scheme.

- vi. With reference to paragraph 14.5. of the RoC Report, it is stated that in respect of the frauds mentioned in the paragraph under reply, these frauds were identified and investigated by the Petitioner Company through its Financial Crime Prevention Group and were also reported to the Fraud Monitoring Committee of the Petitioner Company. Further, the Petitioner Company operates under the regulatory framework of Reserve Bank of India ("RBI") and the detected frauds are to be communicated to RBI in the manner and within the timeline stipulated therein. These frauds were also reported to RBI through FMR 1 within the prescribed timelines. All the fraud instances reported to the Fraud Monitoring Committee of the Petitioner Company are continuously tracked and monitored. Also, these frauds were first

reported by the Management of the Petitioner Company to the Statutory Auditors during their audit.

- vii. With reference to paragraph 14.7. of the RoC Report and paragraph 7.i. of the Representation, it is submitted that the present Scheme is under Section 230 of the Act. The present Scheme is neither for amalgamation nor in respect of the acquisition of the Petitioner Company's shares. Further, the Petitioner Company is not a 'Transferor company' to the Scheme. Hence, Section 239 of the Act is not applicable in the facts of the present case. However, the Petitioner Company shall preserve its books of accounts, papers and records in accordance with law.
- viii. With reference to the contents of paragraph 14.8. of the RoC Report and paragraph 7.iii. of the Representation, it is stated that the contents of the paragraph under reply are vague and general. Further, the present Scheme does

not seek to absolve the Petitioner Company from any of its liabilities.

- ix. With reference to the contents of paragraph 14.9. of the RoC Report and paragraph 7.iv. of the Representation, it is stated that under the Scheme no properties or assets are transferred. The present Scheme is not under Section 232 of the Act. In the circumstances, no stamp duty is required to be paid. However, if the Petitioner Company is required to pay any stamp duty in accordance with law, the Petitioner Company shall make necessary application, within the prescribed time, to the concerned stamp authority for payment of stamp duty, if any, once the Scheme is sanctioned by this Hon'ble Tribunal and the same is made effective.
- x. With reference to the contents of paragraph 14.10. of the RoC Report and paragraph 7.v. of the Representation, it is stated that the Petitioner Company shall comply with the provisions of Section 232(5) of the Act and shall

file the copy of the order sanctioning the Scheme with the RoC within the prescribed time.

- xi. With reference to the contents of paragraph 14.11. of the RoC Report, no any comments are given.
- xii. With reference to the contents of paragraph 6(ii) of the Representation, it is stated that the Petitioner Company has complied with and shall continue to comply with the observations made by BSE and NSE in their no-objection/no adverse observation letters.
- xiii. With reference to the contents of paragraph 6(v) of the Representation, it is stated that the Petitioner Company undertakes to comply with the guidelines issued by RBI and FEMA in respect of the equity shares to be allotted by the Petitioner Company, under the Scheme, to the foreign equity shareholders of ICICI Securities Limited.



- xiv. With reference to the contents of paragraph 6(vi) of the Representation, it is stated that the Scheme enclosed with the company application and that with the company petition are one and the same and that there is no discrepancy or any change which has been made to the Scheme.
- xv. With reference to the contents of paragraph 6(vii) of the Representation, it is stated that ICICI Securities Limited has filed C.P. (CAA)/71 (MB) 2024 before the Hon'ble National Company Law Tribunal, Mumbai Bench, seeking sanction of the Scheme. By order dated 19.4.2024, the Hon'ble National Company Law Tribunal, Mumbai Bench has fixed the hearing of C.P. (CAA) 71 (MB) 2024 on 12.06.2024.
- xvi. Later as approved on 21.08.2024 the copy of the said order was provided to this Tribunal on 22.08.2024.

10. **INCOME TAX DEPARTMENT:**

Despite service of notice and various opportunities, no report is received from the Income Tax Department in respect of the Petitioner Company. Hence, it is presumed that Income Tax Department has no objection to the proposed Scheme.

11. **COMPETITION COMMISSION OF INDIA**

The Competition Commission of India has filed its representation on 13.05.2024 vide inward Dairy No. 1004 wherein it is stated as under:-

- a. In this regard, it is informed that under the provisions of the Competition Act, 2002 ("Act", a notice for combination is to be mandatorily given to Commission subject to meeting of thresholds, in terms of combined assets or combined turnover. Further, there are certain exemptions available for which notice may not normally be given to the Commission.

b. It is informed that as of date, the said matter has not been filed with the Commission under the provisions of the Act.

c. It is requested that before passing an appropriate order, **the NCLT may seek an undertaking from the companies involved that approval of the Commission is not required for the said matters.**

12. Petitioner Copmany had filed and additional affidavit dated 18.06.2024 vide inward Dairy No. D 4750 on 18.06.2024 to place on record An letter form the Securities and Exchange Board of India (SEBI) dated 06.06.2024 where in the SEBI has issued a warning to ICICI Bank for its aggressive outreach program related to the delisting of ICICI Securities. The bank was accused of pressuring shareholders to vote in favor of the delisting, including repeated calls, requests for screenshots of voting, and providing biased advice. SEBI found that ICICI Bank's actions were inappropriate, went beyond the scope of the outreach

program, and created a conflict of interest. The bank has been advised to cease such practices, investigate complaints, report to the board and SEBI, and disclose the matter to stock exchanges.

13. **NATIONAL STOCK EXCHANGE AND BOMBAY STOCK EXCHANGE**

NSE and BSE have given their observation letter stating that there is no objection in respect of the Approval of the Scheme. The same is annexed as ***Annexure-Y colly*** of the Petition

14. Further, despite service of notice upon NSE, SEBI, New York Stock Exchange, Six Swiss Exchange Limited, Singapore Stock Exchange and Japan Securities Dealers Association, this Tribunal did not receive any report/representation/objection from them. Hence, it is presumed that they have no objection to the proposed Scheme.

15. This Tribunal, vide order dated 19.09.2024, sought clarifications from the applicant company. In

compliance with the order dated 19.09.2024, the applicant company filed an Additional Affidavit dated 30.09.2024, filed on the same day, vide Inward Diary No.D7447. The applicant company has clarified the queries raised by this Tribunal vide order dated 19.09.2024. In para-3, 4,5 and 6 of the additional affidavit, it is mentioned as follows:-

*“3. With regard to the clarification sought by this Hon'ble Tribunal, vide its order dated 19.9.2024, in respect of the relaxation granted by the Securities and Exchange Board of India (SEBI) by its letter dated 20.6.2023, it is submitted that the Petitioner Company/Holding Company, as required by the National Stock Exchange of India Limited (NSE) and BSE Limited (BSE), in the explanatory statement sent to its equity shareholders, had disclosed the grounds and justification for the SEBI relaxation including the details of such relaxation. Further, SEBI, by its letter dated 20.6.2023, did not find it appropriate for disclosure of the said letter dated 20.6.2023 in the public domain. Pertinently, SEBI's appellate authority under the RTI, in an appeal filed by one of the shareholders, has also upheld the above position and refused to provide a copy of the relaxation granted by SEBI by its letter dated 20.6.2023. A copy of the order*

dated 16.5.2024 passed by the appellate authority is annexed hereto and marked as **Annexure - A**. However, the Petitioner Company/Holding Company, shall, at the time of hearing to be held on 3.10.2024 for further consideration, place the copy of the aforesaid letter dated 20.6.2023 issued by SEBI, for the perusal of this Hon'ble Tribunal only.

4. In respect of the clarification sought by this Hon'ble Tribunal, vide its order dated 19.9.2024, to the effect that the Scheme approved by SEBI on 28.11.2023 is not placed on the record of this Hon'ble Tribunal, it is submitted that the letter dated 28.11.2023 was addressed by SEBI to NSE and BSE, respectively. The Petitioner Company/Holding Company is not privy to the said letter dated 28.11.2023 addressed by SEBI to NSE and BSE. The comments issued by SEBI, by its letter dated 28.11.2023, has been extracted by NSE and BSE vide their letters dated 28.11.2023 and 29.11.2023, respectively. The said letters of NSE and BSE are forming part of the records of the Company Petition and the same are annexed at Annexure "Y (Colly)", Volume 8, Pages 1248- 1255 of the Company Petition. Further, Clause C of Part-1 of the SEBI Schemes Master Circular provides that upon receipt of no-objection letter from the Stock Exchanges, SEBI shall provide its comments on the draft Scheme to the Stock

Exchanges. Thus, the Petitioner Company/Holding Company as per SEBI Schemes Master Circular is not entitled for a copy of the letter dated 28.11.2023 addressed by SEBI to the Stock Exchanges. The copy of the SEBI Schemes Master Circular is annexed at Annexure - "V" to the Company Petition (Volume 7, Pages 1128-1155 @Page 1141).

5. In respect of the letter dated 9.5.2024 addressed by the Competition Commission of India (CCI) to this Hon'ble Tribunal, I state and submit and thereby undertake that the proposed delisting of securities of ICICI Securities Limited under Section 230 of the Companies Act, 2013, is exempted from filing any notice under Section 6(2) of the Competition Act, 2002, pursuant to Regulation 4 read with item (1) and item (8) of Schedule I to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**CCI Regulations**). Copy of the CCI Regulations is annexed hereto and marked as **Annexure-B**. In this regard, I state and submit that the public shareholders of ICICI Securities Limited will cumulatively acquire less than 1% shareholding in the Petitioner Company/Holding Company without any special rights. Accordingly, such acquisition of shares by the public shareholders of ICICI Securities is exempted as provided under item (1) of Schedule 1 to

*the CCI Regulations. Further, with respect to the increase in shareholding of the Petitioner Company/Holding Company in ICICI Securities Limited from 74.73% (as at 31.3.2024) to 100%, such increase in shareholding is exempted under item (8) of Schedule 1 to the CCI Regulations, as ICICI Securities Limited already belongs to ICICI group and that ICICI Securities Limited is under the sole control of ICICI group. I state and submit that since delisting of securities in itself does not involve any acquisition of shares/assets or voting rights, it does not fall under the purview of Sections 5 and 6 of the Competition Act, 2002.*

*6. I further state and submit that as per the records of the Petitioner Company/Holding Company, the Petitioner Company/Holding Company has not received any comments/observations from New York Stock Exchange; Six Swiss Exchange Limited; Singapore Stock Exchange; and Japan Securities Dealers Association pursuant to the notice issued under Section 230(5) of the Companies Act, 2013.”*

16. The Petitioner Company had filed the letter issued by the SEBI to the NSE and BSE in the sealed cover which was perused by this Tribunal.



## 17. ACCOUNTING TREATMENT

- a. Accounting treatment in the books of the Holding Company Upon this Scheme becoming effective, the Holding Company shall account for the Scheme in its books as under:
  - i. The Holding Company shall issue and allot equity shares to the Public Shareholders of the Subsidiary Company, in accordance with Clause 5 above and credit the aggregate face value of its equity shares to its share capital account. The difference between the fair market value of equity shares as on the Effective Date and aggregate face value of the equity shares to be issued by the Holding Company shall be credited to the securities premium account.
  - ii. The Holding Company shall increase the cost of its existing investment in the Subsidiary Company by the aggregate of the fair market value of the equity shares as on the Effective Date.

b. Accounting treatment in the books of the Subsidiary Company Upon the Scheme becoming effective, the Subsidiary Company shall account for the Scheme in its books as under:

i. The Subsidiary Company shall cancel the equity shares held by the Public Shareholders and credit the "Deemed equity contribution from theParent/Group" account.

18. It is stated that the **Hon'ble NCLT, Mumbai**, vide order dated 21.08.2024 allowed the Company Petition, i.e. C.P.(CAA)/71/MB/2024 in C.A.(CAA)/8/ MB/2024, filed by the Subsidiary Company/Non-Petitioner Company.

19. **OBSERVATIONS OF THIS TRIBUNAL**

A. After analysing the Scheme in detail, this Tribunal is of the considered view that the Scheme as contemplated between the Companies seems to be *prima facie* beneficial to the Company and will not be in any way detrimental to the interest of the shareholders of the Companies. Considering the record placed before this Tribunal and since all the

requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Arrangement appended at "**Annexure I**" to the typed set filed along with the Company Petition as well as the prayer made therein.

- B. The Learned Sr. Counsel for the Petitioner Company submitted that no investigation proceedings are pending against the Petitioner Company under the provisions of the Companies Act, 1956 or the Companies Act, 2013 and no proceedings against the Petitioner Company for Oppression or Mismanagement have been filed before this Tribunal or erstwhile Company Law Board.
- C. No complaint has been received against the Applicant Holding Company in recent past with reference to Scheme.
- D. No Inspection/ Investigation proceedings under section 209A/206(5) of the Companies Act, 1956/2013 is pending against the Applicant Company.

E. It is noted that the petitioner Company have filed an Independent Auditors Certificate Stating that there are no Secured Creditors of the Petitioner Company filed alongwith the First Motion Application at **Annexure AQ.**

F. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

G. Further, it becomes relevant to discuss that in Company Petition CAA-284/ND/2018 vide Order dated 12.11.2018, the NCLT New Delhi has made the following observations with regard to the right of the IT Department in the Scheme of Amalgamation:

*“taking into consideration the clauses contained in the Scheme in relation to liability to tax and also as insisted upon by the Income Tax and in terms of the decision in*

*reVodafone Essar Gujarat Limited v. Department of Income Tax (2013) 353 ITR 222 (Guj) and the same being also affirmed by the Hon'ble Supreme Court and as reported in (2016) 66 taxmann.com374 (SC) from which it is seen that at the time of declining the SLPs filed by the revenue, however stating to the following effect vide its order dated April 15, 2015 that the Department is entitled to take out appropriate proceedings for recovery of any statutory dues from the Petitioner or transferee or any other person who is liable for payment of such tax dues, the said protection be afforded is granted. With the above observations, the petition stands allowed and the scheme of amalgamation is sanctioned."*

20. **THIS TRIBUNAL DO FURTHER ORDER:**

- i. The Scheme of Arrangement as annexed as **Annexure 'I'** to the Company Petition is hereby sanctioned and it is declared that same shall be binding on the Petitioner Company and its Shareholders and Creditors and all concerned under the Scheme;
- ii. The Petitioner Company is directed to comply with the statutory/regulatory filing requirements sought

- by the Regional Director and the Registrar of Companies, in their representation/reports.
- iii. The Petitioner Company is further directed to comply with the observations made by BSE and NSE.
  - iv. The Petitioner Company is directed to comply with the guidelines issued by RBI and FEMA.
  - v. The approval of the Scheme does not affect the authorities' right to proceed with pending cases, if any, against the Petitioner Company.
  - vi. The Petitioner Company is further directed to comply with the observations made The Competition Commission of India.
  - vii. That the Appointed Date for the scheme shall be **shall mean effective date** as mentioned in **Clause 1.3 of Part-1** of the Scheme. "Effective Date" means the date on which certified copies of the orders of the NCLT are filed by the Companies with the Registrar of Companies after the last of the approvals or events specified under Clause 13.1(a) to 13.1(d) of the Scheme are satisfied or obtained or have occurred. References in this Scheme to "upon this Scheme

becoming effective" or "coming into effect of this Scheme" or the "Scheme becoming effective" or "Scheme becomes effective" or "effectiveness of this Scheme" or likewise, means and refers to the Effective Date;

viii. **Consideration/ Issue of Shares:**

a. Upon this Scheme becoming effective, pursuant to the provisions of Section 230 of the Act read with Regulation 37 of the SEBI Delisting Regulations, the equity shares of the Subsidiary Company, held by the shareholders other than the Holding Company as on the Record Date ("Public Shareholders"), shall automatically stand cancelled, and on and from the Record Date the other equity shares of the Subsidiary Company shall be delisted from the Stock Exchanges.

b. The approvals from the shareholders of the Subsidiary Company received pursuant to the provisions of Section 230 of the Act and Regulation 37 of the Delisting Regulations for

this Scheme shall be deemed to be sufficient approval(s) for giving effect to the provisions of Clause 5.1 including under Section 66 and the other related provisions of the Act and SEBI Delisting Regulations. The Subsidiary Company shall not, nor shall be obliged to (i) call for a separate meeting of its shareholders or creditors for obtaining their approval sanctioning the reduction of the share capital of the Subsidiary Company; or (ii) obtain any additional approvals / compliances under section 66 of the Act. The Subsidiary Company shall not be required to add the words "And Reduced" as a suffix to its name consequent upon such reduction.

- c. The **Hon'ble NCLT, Mumbai**, vide order dated 21.08.2024 allowed and approved the scheme filed through the Company Petition, i.e. C.P.(CAA)/71/MB/2024 in C.A.(CAA)/8/MB/2024, filed by the Subsidiary Company/Non-Petitioner Company.



- d. The Holding Company shall, without any further application, act or deed, issue and allot to all the Public Shareholders whose names are recorded in the records of the depositories/register of members of the Subsidiary Company on the Record Date (or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as may be recognized by the Board of the Holding Company), as consideration for the cancellation of equity share capital of the Subsidiary Company held by such Public Shareholders undertaken pursuant to Clause 5.1, 67 (sixty-seven) equity shares of the Holding Company of face value INR 2 each, credited as fully paid-up for every 100 (one hundred) equity shares of the Subsidiary Company of face value of INR 5 each, cancelled pursuant to Clause 5.1 ("Swap Ratio").
- e. The equity shares issued by the Holding Company pursuant to Clause 5.3 above ("New Shares"), shall be issued to the Public

Shareholders in demat form. The Public Shareholders who hold equity shares in physical form should provide the requisite details relating to his/her / its account with a depository participant or other confirmations as may be required, to the Holding Company to enable it to issue the New Shares. In case of Public Shareholders for whom such details are not available with the Subsidiary Company and in case of the Public Shareholders who hold equity shares in physical form, the Holding Company shall deal with the issuance of the relevant New Shares in such manner as may be permissible under the Applicable Law, including by way of issuing the said New Shares in dematerialised form to a demat account held by a trustee nominated by the Board of the Holding Company or into an escrow account opened by the Holding Company or an escrow agent nominated by it, with a depository, as determined by the Board of the Holding Company, where such New Shares of

the Holding Company shall be held for the benefit of such Public Shareholders (or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title). The New Shares so held in such trustee's account or escrow account, as the case may be, shall be transferred to the respective Public Shareholders once such shareholder provides details of his/ her/ its demat account to the Holding Company, along with such documents as may be required by the Holding Company. The respective Public Shareholders shall have all the rights of the shareholders of the Holding Company, including the right to receive dividend, voting rights and other corporate benefits, pending such transfer of the said New Shares from the said trustee's account or the escrow account, as the case may be. All costs and expenses incurred in this respect shall be borne by Holding Company.

- f. On and from the Record Date, the Subsidiary Company shall become a wholly owned subsidiary of the Holding Company and be deemed to have been delisted from the BSE, NSE and other Exchanges if any.
- g. In the event of there being any pending share transfers, whether lodged or outstanding, of any of Public Shareholder, the Board of the Subsidiary Company shall be empowered in appropriate cases, prior to the Record Date, to effectuate such a transfer as if such changes in the registered holder were operative as on the Record Date, in order to remove any difficulties arising to the transferor of the equity shares in the Subsidiary Company and in relation to the shares issued by the Holding Company, after the effectiveness of the Scheme. The Boards of the Companies shall be empowered to remove any such difficulties as may arise in the implementation of this Scheme.

- h. Where New Shares are to be allotted to heirs, executors or administrators, successors or legal representatives of the Public Shareholders, the concerned heirs, executors, administrators, successors or legal representatives shall be obliged to produce evidence of title satisfactory to the Holding Company. The New Shares to be issued to the Public Shareholders in respect of such equity shares of the Subsidiary Company, the allotment or transfer of which is held in abeyance under Applicable Law shall, pending allotment or settlement of dispute by order of the appropriate court or otherwise, also be kept in abeyance in a like manner by the Holding Company.
- i. The New Shares shall be listed and/or admitted to trading on the BSE, NSE and other Exchanges if any. The New Shares shall, however, be listed subject to the Holding Company obtaining requisite approvals from all the relevant Governmental Authorities pertaining to the

listing of the New Shares. The Holding Company shall enter into such arrangements and give such confirmations and/or undertakings as may be necessary in accordance with Applicable Laws for complying with the formalities of BSE and NSE.

- j. The New Shares to be allotted and issued to the Public Shareholders shall be Subject to the provisions of the memorandum and articles of association of the Holding Company and shall rank pari pass in all respects with the then existing equity shares of the Holding Company after the Record Date including in respect of dividend, if any, that may be declared by the Holding Company on or after the Record Date.
- k. The issuance and allotment of New Shares by the Holding Company as provided in this Scheme, is an integral part thereof and shall be deemed to have been carried out without requiring any further act on the part of the Holding Company or its shareholders and as if the procedure laid

down under Section 62 or any other applicable provisions of the Act, as may be applicable, and such other statutes and regulations as may be applicable were duly complied with.

1. In case any Public Shareholder becomes entitled to any fractional shares, entitlements or credit on the issue and allotment of the New Shares by the Holding Company, the Holding Company shall not issue fractional shares to such Public Shareholder and shall consolidate all such fractional entitlements and round up the aggregate of such fractions to the next whole number and shall, without any further application, act, instrument or deed, issue and allot such consolidated equity shares directly to an individual trust or a board of trustees or a corporate trustee nominated by the Holding Company ("Trustee"), who shall hold such New Shares with all additions or accretions thereto in trust for the benefit of the respective Public Shareholders, to whom they belong or their

respective heirs, executors, administrators or successors, for the specific purpose of selling such equity shares in the market at such price or prices at any time within a period of 90 (ninety) days from the date of allotment, as the Trustee may in its sole discretion decide and on such sale, distribute the net sale proceeds (after deduction of the expenses incurred and applicable income tax to the respective Public Shareholders in the same proportion of their fractional entitlements. Any fractional entitlements from such net proceeds may be rounded off to the next Rupee. It is clarified that any such distribution shall take place only on the sale of all the fractional shares of the Holding Company by the Trustee pertaining to the fractional entitlements.

m. In the event, the Holding Company or the Subsidiary Company restructures their equity share capital by way of share split /



consolidation / issue of bonus shares during the pendency of the Scheme, the Swap Ratio shall be adjusted accordingly, to consider the effect of any such corporate actions.

- n. The New Shares allotted pursuant to this Scheme shall remain frozen in the depositories system until listing/trading permission is given by the BSE and theNSE, as the case may be.
- o. The New Shares to be issued in lieu of the cancelled shares of the Public Shareholders held in the unclaimed suspense account of the Subsidiary Company shall be issued to a new unclaimed suspense account created for shareholders of the Holding Company. The New Shares to be issued in lieu of cancelled shares of the Public Shareholders held in the Investor Education and Protection Fund Authority ("IEPF") shall be issued to IEPF in favour of such Public Shareholders.

### **US LAW CONSIDERATION**

p. The New Shares which may be issued pursuant to the Scheme (the "Transaction Securities"), as applicable, have not been, and will not be registered with the U.S. Securities and Exchange Commission (hereinafter referred to as "SEC") under the U.S. Securities Act of 1933, as amended, including the rules and regulations of the SEC promulgated thereunder (the "Securities Act") or the securities law of any state or other jurisdiction of the United States, and are being offered and sold in reliance on certain exemptions from registration under the Securities Act. Neither these securities nor any interest or participation therein may be offered, sold, assigned, transferred, pledged, encumbered or otherwise disposed of in the United States or to the U.S. Persons (within the meaning of Regulation S under the Securities Act) unless an exemption from the registration requirements of the Securities Act is available.

- q. The Transaction Securities are anticipated to be issued in reliance upon the exemption from registration requirement of the Securities Act provided by Section 3(a)(10) thereof (hereinafter referred to as the "Section 3(a) (10) Exemption"). To obtain the Section 3(a)(10) Exemption, the Holding Company will be relying on the NCLT's approval of the Scheme following the hearing by the NCLT on the terms and conditions of the Scheme.
- r. Further, for the purpose of ensuring that the Scheme complies with the requirements of Section 3(a)(10) of the U.S. Securities Act, the Subsidiary Company and the Holding Company shall undertake that;
- i. the holder of securities of the Subsidiary Company, i.e. the Public Shareholders, as against their respective securities, shall receive the Transaction Securities to be issued by the Holding Company, as applicable, and

shall not receive cash or other consideration;  
and

ii. the Scheme shall become effective only after it has been approved by the NCLT following the hearings by the NCLT.

- i. All concerned Authorities to act on the copy of this order along with the Scheme authenticated by the Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately;
- ii. The Petitioner Company is directed to lodge a copy of this Order and the approved Scheme and Schedule of Assets of the Petitioner Company, duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for adjudication of stamp duty, and pay requisite stamp duty payable, if any, within 60 days from the date of this Order.
- iii. The Petitioner Company is further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to

a physical copy within 30 days from the date of issuance of the certified copy of the Order by the Registry as per relevant provisions of the Act.

- iv. The legal fees and expenses for the office of the Regional Director are quantified at Rs. 30,000/- (Rupees Thrity Thousand). The said fees to the Regional Director shall be paid by the Petitioner Company.
- v. The Income Tax Department will be free to examine the aspect of any tax payable as a result of the sanction of the Scheme and if it is found that the Scheme of Arrangement ultimately results in tax avoidance or is not in accordance with the applicable provisions of Income Tax Act, then the Income Tax Department shall be at liberty to initiate appropriate course of action as per law. Any sanction of the Scheme of Arrangement under Sections 230-232 of the Companies Act, 2013 shall not adversely affect the rights of Income Tax Department or any past, present or future proceedings and the sanction of the scheme shall not come in its way for the appropriate

course of action as per law for the tax liabilities, if any.

vi. Any person aggrieved shall be at liberty to apply to this Tribunal for any directions that may be necessary.

21. Two applications i.e. Interlocutory Application No. 55 of 2024 and Intervention Application No. 1 of 2024, were filed by Quantum Mutual Fund & Ors and Manu Rishi Gupta respectively, objecting to the proposed Scheme. These applications have been disposed of, vide separate orders.

22. Accordingly, the Company Petition stands **allowed** on the aforementioned terms.

- Sd -

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**  
SP/RS

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Note: This order of the Bench consisting of Hon'ble Member Judicial & Hon'ble Member Technical is pronounced in open court on behalf of the Bench by Hon'ble Member Judicial under Rule 151 of NCLT, Rules, 2016.

- Sd -

**(HANIF SHAIKH)**  
**COURT MASTER**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.303 & 304- Inv.P(AHM) 2024

in

C.P.(CAA)/20(AHM) 2024

In

C.A.(CAA)/71(AHM) 2023

And

IA(Co.Act)/55(AHM) in

C.P.(CAA)/20(AHM) 2024

In

C.A.(CAA)/71(AHM) 2023

**Proceedings under Section Rule 11 of NCLT**

**IN THE MATTER OF:**

Manu Rishi Guptha

V/s

ICICI Bank Limited

.....Applicant

.....Respondent

**Order delivered on: 09/10/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

**(Hybrid Mode)**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

- Sd -

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT-1, AHMEDABAD**

IA/55(AHM) 2024

In

CP (CAA)/20/AHM/2024

And

Inv. P./1(AHM) 2024

In

CP (CAA)/20/AHM/2024

[An application under Sections 230 and 420 of the Companies Act, 2013 read with Rule 11 of the NCLT Rules, 2016]

*In the matter of **Scheme of Arrangement***

**IA/55(AHM) 2024**

**1. Quantum Mutual Fund**

a SEBI registered Mutual Fund  
having its registered office at:  
1<sup>st</sup> floor, Apeejay House  
3 Dinshaw Vachha Road  
Backbay Reclamaion  
Churchgate, Mumbai-400 020  
Maharashtra

**2. Quantum Trustee Company Pvt. Ltd.**

A company registered under the provisions of the Companies Act, 1956, having its registered office at: 1<sup>st</sup> Floor, Apeejay House, 3 Dinshaw Vachha Road Backbay Reclamation, Churchgate, Mumbai-400 020, Maharashtra

**3. Quantum Asset Management Company Pvt. Ltd.**

A company registered under the provisions of the Companies Act, 1956, having its registered office at : 1<sup>st</sup> Floor, Apeejay House, 3 Dinshaw Vachha Road Backbay Reclamation,



Churchgate, Mumbai-400 020,  
Maharashtra

.... Applicants

**Versus**

**1. ICICI Bank Limited**

A company registered under the provisions of the Companies Act, 1956 having its registered office at: ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara-390 007 Gujarat

**2. ICICI Securities Limited**

A company registered under the provisions of the Companies Act, 1956 having its registered office at: ICICI Venture House, Appasaheb Marathe Marg, Prabhadevi Mumbai-400 025, Maharashtra

.... Respondents

**Invt. P./1(AHM) 2024**

Manu Rishi Gupta  
House No. 1139  
Sector 21b, Chandigarh, 160022

.... Applicant

**Versus**

**ICICI Bank Limited**

ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara-390 007 Gujarat

.... Respondent

**Order Pronounced on 09.10.2024**

**CORAM:**

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

For Applicant(s): Mr. Salil Thakore, Advocate, a.w.  
Mr. Aneesh Sadhwani, Advocate  
Mr. Kaushik Chatrjee, Advocate (Inv.  
P/1(AHM)2024)

Mr. Aneesh Sadhwani, Adv. (Ia. (Co. Act.)/ 55  
(AHM) 2024)

For Respondents: Mr. Saurabh Soparkar, Sr. Adv. a.w.  
Mr. Sandeep Singhi, Adv.

**ORDER**

**Per: Bench**

**IA 55 (AHM)/ 2024**

1. The present application is filed by Quantum Mutual Fund (Applicant Company No.1), Quantum Trustee Company Private Limited (Applicant Company No.2) and Quantum Asset Management Company Private Limited (Applicant Company No.3) under Sections 230 and 420 of the Companies Act, 2013 (Act) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (Rules), seeking following prayers: -
  - (a) *to pass an Order rejecting the Scheme of Arrangement proposed between ICICI Bank Limited and ICICI Securities Limited and their respective shareholders.*
  - (b) *to dismiss Company Scheme Application No. C.P. (CAA)/20/AHM/2024 filed by ICICI Bank Limited for sanction of the Scheme of Arrangement proposed between ICICI Bank Limited and ICICI Securities Limited and their respective shareholders.*
  - (c) *pending the hearing and final disposal of the present Application, this Hon'ble Tribunal may be pleased to stay the hearing of Company Scheme Application No. C.P. (CAA)/20/AHM/2024 filed by ICICI Bank Limited for sanction of the Scheme of Arrangement proposed*

*between ICICI Bank Limited and ICICI Securities Limited and their respective shareholders.*

- (d) pending the hearing and final disposal of the present Application, this Hon'ble Tribunal may be pleased to direct ICICI Bank Limited to disclose the documents, information, and material with respect to the Scheme of Arrangement including but not limited to the factors considered for valuation, a list of which is provided in the Schedule, annexed hereto and marked as **Exhibit N**.*
- (e) pending the hearing and final disposal of the present Application, this Hon'ble Tribunal may be pleased to appoint an independent valuer to carry out an independent an unfair assessment of the Share Swap Ratio that is fair, transparent, and based on updated financials of both ICICI Bank and ICICI Securities.*
- (f) for costs.*
- (g) for such other reliefs as this Hon'ble Court deems fit in the facts of the present matter.*

2. It is stated that Applicant No. 1/Quantum Mutual Fund, is a registered mutual fund. As on 31.03.2024, it has been managing a total asset base of Rs.25,99,88,00,000/- and managing investments of about 1,30,283 investors. Applicant No.2/Quantum Trustee Company Pvt. Ltd. is the Trustee Company of Applicant No.1, in whom all the assets of the Applicant No.1 fund vest. Applicant

No.3/Quantum Asset Management Company Pvt. Ltd. is the SEBI registered Asset Management Company which manages the various funds of Applicant No.1.

3. It is further stated that Respondent No.1/ICICI Bank Limited is engaged in the business of banking. Respondent No.2/ICICI Securities Limited is engaged in the business of securities brokerage and it is a publicly listed company, 25.15% of its shares are held by public shareholders and the remaining 74.85% shares held by Respondent No. 1.
4. The applicants stated that they are the public shareholders of ICICI Bank Limited. They are objecting to the proposed Scheme of Arrangement (Scheme) between Respondent No.1 and Respondent No.2 and their respective shareholders, which is pending before this Tribunal. It is further stated that based on the following grounds, the proposed Scheme, inter alia, relating to lack of merit and flaws in the process followed:-
  - (i) *The said Scheme is impermissible in law and is nothing but an attempt to evade the reverse book-building requirement of deleting a company in India.*
  - (ii) *The commercial rationale provided for the Scheme does not withstand the test of scrutiny. It is merely a façade to acquire shares in a valuable company at throw-away prices. The Scheme is therefore not in the best interests of the Company, or its public*

shareholders. Specifically, the joint Valuation Report dated 29<sup>th</sup> June 2023 (as explained more in detail below) is outdated as it does not consider the market performance of ICICI Securities from March 2023 to March 2024.

- (iii) The fact that (a) the fairness report by the merchant bankers and; (b) the board resolution to approve the merger process are of the same date (29<sup>th</sup> June, 2023) establishes that there has been no application of mind by the Board, and the Board acted merely as a rubber stamp.
- (iv) The board meeting which was purportedly held on 29<sup>th</sup> June, 2023 to approve the Scheme of Merger was attended by eight (8) directors of ICICI Securities, two (2) of who hold around 11,82,000 equity shareholders of ICICI Bank. This is a direct conflict of interest and clearly indicates that the voting was biased as these two (2) directors had a direct interest in the outcome of the Scheme of Merger.
- (v) The valuation methodology and basis adopted by the valuers to arrive at the fair value of the shares of ICICI Securities Limited is opaque and manipulated. The basis of the valuation and underlying figures has not been provided to the shareholders. The valuation report also ignores the comparison of listed peers as set out more in detail in paras (I) and (J) below.

- (vi) *The voting process in the Shareholders' Meeting is vitiated by illegal methods adopted by ICICI Bank and ICICI Securities to influence and mislead voters by reaching out to them and suggesting that they should vote in favour.*
- (vii) *Additionally, the asset management arm of ICICI, i.e., ICICI Prudential Mutual Fund purchased shares of ICICI Securities, i.e., 1.65% of the public shareholding in February 2024 (elaborated in para (P) below), viz., a month before the Shareholder's meeting, apparently to influence the outcome of the voting.*
- (viii) *The Scheme purports to be under Regulation 37 of the SEBI (Delisting of Equity Shares) Regulations, 2021 ("Delisting Regulations"). However, it fails to conform with the essential requirement contained therein i.e. the companies should be in the same line of business. There is no proof provided of any relation of this requirement by virtue of exemption, or otherwise.*
- (ix) *The purported exemption provided by SEBI as claimed by ICICI Securities Limited has not been provided to or disclosed to the shareholders.*
5. It is stated that Respondent No.2 is a subsidiary of Respondent No.1. It is listed on NSE and BSE. Respondent No.2's 25% shares are publicly traded. As on 27.03,2024, various mutual fund schemes, under the umbrella of Applicant No.1, hold 2,86,922 shares in Respondent No.2

and 6,76,527 shares in Respondent No.1. The details of the shares held by various mutual fund schemes is annexed to the application as **Exhibit-A**.

6. It is stated that applicant as on date invested in Respondents through various mutual fund schemes i.e. Quantum Long Term Equity Value Fund & Quantum ELSS Tax Server Fund on behalf of approximately 42,548 investors and, therefore, holds the interest of a large number of unit/shareholders.
  
7. It is further stated that Respondent No.1 published to the stock exchanges on 29.06.2023 that the company had held a Board Meeting on 29.06.2023 wherein it proposed to delist the equity shares of Respondent No.2, under the Scheme of Arrangement, with Respondent No.1. A copy of the notice dated 29.06.2023 is annexed to the Application as **Exhibit B**. It is further stated that in the aforesaid notice, the following key facts are disclosed that are relevant to the present application:-
  - (i) *The Scheme was proposed under Regulation 37 of the Delisting Regulations.*
  - (ii) *Pursuant to the Scheme, ICICI Securities Limited will become a wholly-owned subsidiary of ICICI Bank Limited.*
  - (iii) *Equity Shares held by the public shareholders of ICICI Securities Limited will be cancelled and the equity shares of the Company shall be deemed to be delisted.*

- (iv) *In lieu of and as a consideration for the cancellation of the shares, public shareholders of ICICI Securities, will receive equity shares of ICICI Bank in the below mentioned share exchange ratio.*
- (v) *All the public shareholders of the Company would be allotted 67 equity shares of ICICI Bank of face value 2/- each for every 100 equity shares of the Company of face value of 5/- each ("Share Exchange Ratio").*
- (vi) *While there are business synergies between the Bank and the Company, a consolidation by way of merger is not permissible on account of regulatory restrictions on the Bank from undertaking securities broking business departmentally.*

8. The applicants stated that the share exchange ratio provided in the Scheme was deliberately undervalued, hence, they met with the management of the Respondents but they were not dealt with. Respondent No.1 filed an application i.e. CA(CAA)/8/MB/2024, under Section 230 of the Companies Act, 2013 before NCLT, Mumbai Bench and sought directions for holding and convening meeting of its equity shareholders for the purpose of approval of the proposed Scheme. Vide order dated 14.02.2024, NCLT, Mumbai Bench, directed Respondent No.2 for convening meeting of equity shareholders and the Record Date for shareholders to be eligible to vote was March 20,2024. It is further stated that Respondent No.1 also



filed an application, i.e. CA(CAA)/71/AHM/2023, under Section 230 of the Companies Act, 2013 and sought directions for holding and convening meeting of its equity shareholders for approval of the Scheme. This Tribunal, vide order dated 18.01.2024 directed Respondent No.1 to hold and convene meeting of shareholders.

9. According to the directions, Respondents issued notice dated 20.02.2024, along with Explanatory Statement, in respect of meeting of equity shareholders to be held on 27.03.2024. In para-23(h) of the Explanatory Statement, it is stated that SEBI has granted exemption from the 'same line of business' requirement under Regulation 37 of the Delisting Regulations, the details of such exemption, the conditions under which it has been granted, and copy of the exemption, have not been provided/disclosed. The Explanatory Statement also disclosed that two directors, who hold substantial shares in Respondent No.1 and are therefore interested parties, voted on the Board Resolution to proceed with the Scheme. No Objection Certificates, in respect of the proposed Scheme, dated 28.11.2023 and 29.11.2023 received from NSE and BSE respectively, both the NOC are subject to the condition that the valuation should be on the latest financials and also that details of exemption provided by SEBI should be provided to shareholders. The Valuation Report provides the methodology of valuation, it fails to disclose the underlying numbers used. Further, the valuation is outdated as it

does not consider the market performance of Respondent No.2 from March 2023 to March 2024 during which profits have grown by 104% as per March 2023 records which was the last reported quarter prior to the Valuation Report.

10. It is further stated that pursuant to the notice of meeting, the respondents mislead the public shareholders about the purported benefits of the Scheme. The meeting of the Equity Shareholders of Respondent No.2 was held on 27.03.2024 and there was vehement opposition to the Scheme by a significant portion of the public shareholders. It is stated that 28.11% of the public shareholders voted against the scheme. The meeting of the Equity Shareholders of Respondent No.1 was held on 27.03.2024, there was also opposition by a significant portion of the public shareholders. The applicants were voted against the Scheme. Copies of the voting results and Scrutinizer's Report are annexed to the application as **Exhibit-I & J**. Consequently, the applicants have objected to the Scheme by sending letters dated 04.04.2024 through SEBI Scores Complaint Portal and 10.04.2024 to ICICI Securities Limited.
11. The applicants are opposing the proposed Scheme, *inter alia*, on the following grounds:
  - i. There are synergies that will be achieved pursuant to the delisting of ICICI Securities. This rationale is baseless and does not withstand the test of scrutiny. The synergies that could be achieved with ICICI Bank

having 100% holding in ICICI Securities could also have been with ICICI Bank having 74.85% holding in ICICI Securities.

- ii. The only objective is to acquire public shareholders shareholding in ICICI Securities at a throw-away price, without subjecting the delisting through a proper price-discovery process. Hence, the Scheme deserves to be rejected.
- iii. The valuation report is not transparent and is incapable of verification. The underlying figures must be provided to the public shareholders in the interests of transparency.
- iv. The basis of the valuation is completely unclear, arbitrary and does not withstand scrutiny. The Share Swap ratio has valued ICICI Securities shares at a 30% to 77% discount to its listed peers based on consensus earnings forecast for fiscal year ending March 2024. The valuation reports and the proxy agencies failed to account for publicly available information to make a judgement on a fair swap ratio.

Company	FY 24 Consensus EPS (Rs/share)	PE multiple
ICICI Securities (ISEC)	46.1	15.7x
Angel One	130.7	20.4x

360 One	20.7	34.2x
Anand Rathi Wealth	54.9	70.1x

*Source: Bloomberg, Data as on March 11, 2024, ISEC valued at swap ratio*

- v. Even if ICICI Securities was to be valued at the lowest PR multiple reflected in its peer set, the merger offer would have been at least 30% higher.

ISEC Derived share price based on Swap Ratio	Rs.722/share
ISEC derived share price if valued at 20.4x FY24E Earnings (lowest multiple for peer)	Rs.940/share
Loss at current swap ratio	Rs.218/share
Total No. of minority shares	8.15 crores
Total loss for ISEC Minority shareholders	Rs.1,780 crore

*Note: Data as on March 11,2024*

- vi. The ICICI Bank has proposed to acquire shares of ICICI Securities at a 30% to 77% a discount to peer valuation which has resulted to be more advantageous to the shareholders of ICICI Bank at the cost of ICICI Securities. The percentage gain to ICICI Bank shareholders even at this low 30% discount to peer valuation is equivalent to 0.2% (Rs.2.5 of the current price of ICICI Bank shares).

- vii. By the quarter ended December 2023, the profitability of ICICI Securities had increased by 66% .
- viii. For the period ended March 31,2024 ICICI Securities reported a consolidated net profit of Rs.536.53 crore for the quarter ended March 31, 2024, up 104% from 262.68 crore reported for the quarter ended March 31,2024, the most recent quarter prior to the valuation report of June 29,2023.
- ix. It is unclear as to how the merchant banker has carried out the evaluation exercise on the same date as the valuation report was prepared by the valuers. The entire valuation exercise was pre-planned to achieve the sole objective of arriving at an unfair valuation and snatching the shareholding of public shareholders at a throw-away price.
- x. The IPO price of ICICI Securities was Rs.520/- and it was listed on the stock exchange at Rs.432/-. If the Share Swap Ratio had been calculated simply on valuations prevalent on that day of ICICI Bank and ICICI Securities, it would have been 1.65 ICICI Bank shares for 1 share of ICICI Securities i.e. 146% premium on the current Share Swap Ratio.
- xi. The Scheme suffers from an illegality and conflict of interest at its inception. The meeting was attended by 8 directors of ICICI Securities and voted in favour of the Scheme. Two directors voted in favour of the Scheme hold about 11,82,000 equity shares cumulatively in ICICI Bank. The directors holding

such a large shareholding should have not been allowed to vote in favour of the Scheme.

- xii. ICICI Prudential Mutual fund also purchased shares of ICICI Securities in March 2024 i.e. just before the meeting of Shareholders. Following are the details shareholding in ICICI Securities:-

Shareholding in ICICI Securities			
Shares (nos)	29-02-2024	31-03-2024	Change
ICICI Pru Bluechip	0	11,67,621	11,67,621
ICICI Pru Business Cycle	0	1,64,227	1,64,227

*Source: Monthly portfolio disclosed by ICICI PRU MF*

ICICI Prudential Mutual Fund is not a public shareholder, it is part of the promoter group and, therefore, it is clearly indicates that their vote has been secured fraudulently by ICICI Bank.

- xiii. The shareholders of ICICI Securities were misled to believe that voting in favour of would be gainful to them. To delist a company requires a reverse book-building exercise to be carried out as per Chapter IV of the Delisting Regulations which provides a proper exit opportunity to public shareholders with their participation in the price discovery process. Therefore, Regulation 37 of the Delisting Regulations is not applicable in the facts of the present case.
- xiv. The ICICI Bank and ICICI Securities claimed that they have an exemption from SEBI for Regulation 37 but no

such exemption has been shown to the public shareholders. It does not form a part of the Explanatory Statement. Furthermore, both the Stock Exchanges have given NOC for the Scheme on the condition that the details and conditions of the exemption will be disclosed to the shareholders. This condition has also not been complied with.

12. The Petitioner Companies submitted that they are entitled to object to the present Scheme as they are shareholders of ICICI Securities and ICICI Bank. Further more than 28% of the public shareholders of ICICI Securities have voted against the Scheme. This Tribunal must protect public shareholders and safeguard their interests. Hence, prayed to direct ICICI Bank to disclose all relevant information, documents, material, a list of which is annexed to the application as Exhibit-N and to appoint an independent valuer to transparently value the fair Share Swap Ratio that must be applied to the Scheme.
  
13. Respondent No.1 filed its reply on 06.06.2024, vide Inward Diary No.D4449. Respondent No.1 denied all the statements, allegations and contentions raised by the applicants in the application. It is stated that the meeting of the equity shareholders was convened on 27.03.2024 for the purpose of considering and approving the Scheme. The Scheme was approved by the equity shareholders with the requisite statutory majority in compliance with the

provisions of the Act, Delisting Regulations and Scheme Circular.

14. It is further stated that Respondent No.2 has also convened meeting of its equity shareholders as per the directions of NCLT, Mumbai Bench, vide its order dated 14.02.2024 and the resolutions were approved with the requisite majority.
15. It is stated that on 20.03.2024, i.e. the cut-off date, for determining the equity shareholders entitled to vote, held 7,41,488 equity shares which constitutes 0.010% of the paid-up equity share capital of Respondent No.1, in complete derogation of concept of shareholders' democracy and with a view to derail the process, filed the aforesaid application seeking rejection of the proposed Scheme.
16. It is further stated that according to proviso to Section 230(4) of the Act any objection to a scheme of compromise or arrangement under Section 230 of the Act shall be made only by persons either holding not less than 10% of shareholding or having total outstanding debt amounting to not less than 5% of the total outstanding debt as per the latest audited financial statement.
17. It is stated that the applicant are holding 0.010% of the total shareholding of Respondent No.1, hence, the applicants have no *locus standi* to file the present application or raise any objection to the scheme. The threshold limits stipulated in the proviso to Section 230(4) of the Act was introduced with the specific objective of prohibiting shareholders holding miniscule shareholding



from raising frivolous objections against the scheme with the objective of stalling and deferring the implementation of the scheme. The scheme assures greater significance given the comprehensive array of safeguards and stringent voting threshold imposed by SEBI for the purpose of voting on a scheme of arrangement between two listed entities, under the Scheme Circular as well as the Delisting Regulations, which have been fully satisfied in the present case.

18. It is stated that the Company Petition is filed by Respondent No.1 and not by Respondent No.2. However, each and every contention contained in the present application is in respect of alleged shortcomings/wrongs (albeit without any factual or legal foundation whatsoever) pertaining to the valuation and/or voting in respect of the shares held by the applicant in Respondent No.2 and not the shares held by the Respondent No.1. It is further stated that the application contains no grievance whatsoever in respect of shareholding of the applicants in Respondent No.1.
19. It is stated that the application filed by the applicants is speculative, without any merits, baseless and has been filed with an obstructionist attitude. Hence, the application filed by the applicants is liable to be dismissed *limine* with exemplary costs.
20. Applicants filed their rejoinder in affidavit on 24.06.2024, vide Inward Diary No. D4875. The applicants denied all

the submissions made by the Respondent No.1 in its reply. Applicants reiterated some of the averments made in their application. Applicants submitted that the meetings and results thereof stand vitiated by serious illegalities as explained in the application. No restriction in Section 230(4) of can every apply to an illegal scheme and merely because of the applicants are not holding 10% shareholding does not take away their right to file the present application or seek rejection of the scheme. None of the objections raised by the applicants are frivolous. The applicants denied that the application lacks a legal or factual foundation. Each of the contentions raised by the applicants is capable of being raised in the present application. Applicants submitted that a large number of individual shareholders are investors in the mutual fund schemes of the applicants and the applicants represent the interest of thousands of such investors and there are no misrepresentations in the application. Hence, prayed for allowing the application.

### **Intervention Petition 1 of 2024**

21. The Present intervention Petition is filed by the Manu Rishi Gupta being one of the Shareholders of the ICICI Bank (ICBL) and ICICI Securities Limited (ISEC).
22. This present Intervention Petition is an objection to the proposed delisting scheme by ICICI Securities Limited (ISEC) and its parent company, ICICI Bank Limited (ICBL). The objecting party (Applicant) stated that the delisting

process is unfair to public shareholders of ISEC for several reasons which are summarized as under:

- a) **Regulation 37 Exemption:** The delisting relies on an exemption from SEBI (Securities and Exchange Board of India) regulation 37, which normally requires delisted companies to be in the same line of business as the holding company. The Applicant argues that SEBI shouldn't have granted this exemption and the delisting should not proceed under this regulation.
- b) **Undervaluation:** The Applicant believes the swap ratio offered to public shareholders significantly undervalues their shares in ISEC. They point to a higher valuation during a past public offering and a more recent market valuation to support their claim.
- c) **Fairness Opinion:** The fairness opinion provided by independent firms is questioned due to the timing of the reports coinciding with the board meetings that approved the delisting scheme.
- d) **Compromised Board and Audit Committee:** The Applicant argues that a director with a significant holding in ICBL sat on the independent board and audit committee of ISEC, creating a conflict of interest.
- e) **Rigging Votes:** The Applicant suspects that ICBL pressured public shareholders to vote in favor of the delisting scheme by leveraging its branch network and potentially accessing confidential shareholder information.

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23. The Respondent have filed its reply vide inward on 06.06.2024 dairy no. D4450 and the same was taken on record.
24. The Applicant have filed its response to the reply filed by the respondent bank on 24.06.2024 vide inward dairy no. D 4714 and the same was taken on record.
25. Overall, the Applicant stated that the delisting process is unfair and seeks to have the scheme rejected.
26. Heard the Counsels for the both the parties at length, and have perused the material available on record.
27. Before dealing with the objections raised in these Interlocutory Application and Intervention Petition, it is imperative for us to deal with the question of maintainability of present applications in view of proviso to Section 230(4) of the Companies Act, 2013 raised by ICICI Bank Limited (ICBL) as well as ICICI Securities Limited (ISEC). The said provision reads as under –

*(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice: Provided that any objection to the compromise or arrangement shall be made only by*

persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

- i. In the case of Ankit Mittal vs. Ankita Pratisthan Ltd. and Others 2019 SCC Online NCLAT 847, the Hon'ble NCLAT at para 31 categorically held that "the appellants in the instant case is not a shareholder but a power of attorney of shareholder, whose shareholding is evidently less than 10%, which is the threshold limit to file objections to the Scheme and thus the objector is not entitled to oppose the Scheme and his objections are not required to be considered". Similarly, in case of Jatinder Singh Ahuja and Ors. Vs. Tata Steel Limited and Ors. MANU/NL/0867/2023, the Hon'ble NCLAT at internal page 24 held that "This Appellate Tribunal feels that the requirement of minimum threshold limit for raising any objection being filed by shareholders or creditors has a rational that the shareholder holding miniscule no. of shares or less than prescribed 5% of total outstanding debts cannot be allowed to delay or abuse the process of approving scheme. In commercial sense, every single day's delay has financial impact on the concerned companies. It is the free will of the shareholders to decide what is good for them and to take logical and rational decision during voting on the scheme. The

*minority shareholders, if holding less than 10% of equity share capital or creditors less than 5% of total outstanding debts, do not hold any veto power to stall the process of scheme which is in larger interest of all the stakeholder”.*

- ii. It is undisputed fact that neither applicant in IA 55(AHM)/2024 nor applicant in Inv. P. 1(AHM)/2024 holds the requisite number of equity shares, even they taken together do not hold requisite shares as stipulated in proviso to section 230(4). Accordingly, we have no hesitation to say that their application is not maintainable in terms of proviso to Section 230(4) for want of meeting the threshold limit and deserve to be dismissed.
- iii. Learned Counsel for the Applicant, also submitted that in construing a statutory provision as being mandatory or directory, inter-alia the consequence resulting from such construction of the provision is a relevant fact. It was argued that Section 230(4), though on the face of it, appears mandatory in nature, inasmuch as it uses the word “shall”, it is merely directory. For this purpose, he cited the decision in case of State of U.P. v. Manbodhan Lal Srivastava, 1957 SCC Online SC 4, wherein the Constitution Bench held that (i) the use of the word “shall” does not necessarily mean that in every case

it shall have mandatory effect; and (ii) that the intent of the legislation and consequence resulting from the construction of the provision are relevant factors. It was also submitted that a literal interpretation of the provisions of Section 230(4) of the said Act would result in grave injustice and would not achieve the purpose and object of Section 230(4) of the Act and that in any case, the present application is not a “frivolous objection” and as such, does not attract the mandatory nature, if any, of section 230(4) of the said Act.

- iv. The threshold limit in terms of section 230(4) came to be introduced in the statute book pursuant to report dated 31.5.2005 authored by Dr. J J Irani chaired Expert Committee on Company. The report had observed that *“There have been, however, occasions when shareholders holding miniscule shareholdings, have made frivolous objections against the scheme, just with the objective of stalling or deferring the implementation of the scheme. The courts have, on a number of occasions, overruled their objection.”* It is pertinent to note that there was no threshold limit prescribed under section 391 of Companies Act, 1956, which also dealt with “Arrangement & Compromises”. We note that Section 242 of the Companies Act, 2013 also contains a threshold limit for maintaining a petition u/s 241 of the Companies

Act, 2013 and that section also vests the specific discretion in this Tribunal to relax the threshold limit. However, no such discretion is vested in this Tribunal under Section 230. Accordingly, the legislature had intended that the threshold limit u/s 230(4) must be strictly followed.

- v. In view of the above, this Tribunal cannot look into their objections to the Scheme in so far as the scheme is alleged to be prejudicial to their interest. However, we further note that the Hon'ble NCLAT in case of Ankit Mittal (Supra) at Para 32 held that *"The issue raised by any body even if not eligible or even otherwise the Tribunal will have a duty to look into the issue so as to see whether the scheme as a whole is also found to be just, fair, conscionable and reasonable inter alia from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant. The Tribunal also has to see that the scheme of amalgamation if the same is prejudicial to the interest of a particular class who may not be able to meet the threshold limit to see the scheme but it may be a pointer enough for the Tribunal to see that the scheme may be loaded against the interest of the objectors"*. The Hon'ble NCLAT in case of Jatinder Singh Ahuja (Supra) further held at internal page 28 that *"Of course, the Tribunal is required to ensure that*



*all procedures as stipulated for amalgamation under Companies Act, 2013 and the relevant rules have been duly followed and the scheme is conscionable. It also implies that the Tribunal is also required to look into, before approving the scheme, that the scheme as such is fair and reasonable from different points of view and various perspectives, taking care interests of various stakeholders and the scheme can be upheld as commercially prudent decision.” It further held at Page 29 that “Similarly, if the material facts are not disclosed or adequate facts are not disclosed, the Tribunal is required to look into the legality of the scheme.....”.*

- vi. We are conscious that these principles have already been enunciated by Hon’ble Supreme Court in case of *Miheer H. Mafatlal vs. Mafatlal Industries Ltd.* (1997) 1 SCC 579 and the Courts/Tribunal has examined these aspects before approving any scheme. In view of these legal proposition, we considered it appropriate to allow the Learned Counsel for the Applicants to make their submissions in order to assist this Tribunal to make out whether the contentions raised by the Applicants leads us to conclude whether the Scheme, in question, is prejudicial to public interest (not the applicant’s interest); whether the scheme has been passed after following due procedure as prescribed and contemplated under the applicable law; and

whether is fair, conscionable and not opposed to public policy.

- vii. It is case of the applicants that the public shareholders constitute a separate class of members for the purpose approval of the scheme by such separate class where the scheme is the same scheme which is offered to all the members and such scheme does not affect all members equally; Section 230 of the Companies Act, 2013 prescribes a majority of 75% for approval of scheme, accordingly, the present scheme ought to have been approved by 75% of Public Shareholders, which in fact it has not been. In the present case, while the shares held by Public Shareholders are being cancelled in consideration of shares of ICBL offered to them, the shares held by ICBL in ISEC remains in existence. Hence, the Public Shareholders, in the present case, constitute separate class and the scheme, in question, ought to have received assent of 75% of the shareholders belonging to that class. It is undisputed fact that the scheme was approved by 71.89% in value of the public shareholders, and by 93.82% in value of the equity shareholders of ISEC. Accordingly, the question before us is 'whether the scheme should be approved by 75% of Public Shareholders, even though Regulation 37 of Delisting Regulations requires the Scheme to be approved by 2/3<sup>rd</sup> of

Public Shareholders in value in case delisting of shares are sought’.

- viii. The Ld. Counsel for Applicant relied upon the decision in case of Miheer H. Mafatlal vs. Mafatlal Industries Ltd., (1997 1 SCC 579); Sandvik Asia Ltd., 2003 SCC Online Bom 991 (Single Judge); State Bank of India & Others vs. Alstom Power Boilers Ltd. & Others 2003 SCC Online Bom 321; Re Hellenic & General Trust Ltd. (1975) 3 All ER to contend that Public Shareholders constitute a separate class, accordingly the scheme approved by a vote of less than 75% by such class cannot be approved by this Tribunal as such scheme has failed to muster requisite vote share as contemplated in Section 230 of the Companies Act, 2013.
- ix. In case of Miheer H. Mafatlal (Supra), the Hon’ble Supreme Court held at Para 39 that “.....*It is also to be kept in view that the appellant would have urged with some justification his contention for convening a separate meeting representing for him and his group of dissenting equity shareholders if it was his case that the Scheme of Companies and Arrangement as offered to him and his group was in any way different from the Scheme of Compromise and Arrangement offered to other equity shareholders who also belonged to the same class in the wider sense of the term. On the express language of Section 391(1) it becomes clear that where a compromise or*

arrangement is proposed between a company and its members or any class of them a meeting of such members or class of them has to be convened. This clearly presupposes that if the Scheme of Arrangement or Compromise is offered to the members as a class and no separate Scheme is offered to any sub-class of members which has a separate interest and a separate meeting of such a sub-class would at all survive. Even otherwise it becomes obvious that as minority shareholders if the appellant has to dissent from the Scheme his dissent representing 5% equity share-holding would have been visible both in a separate meeting, if any, of his sub- class or in the composite meeting where also his 5% dissent would get registered by appellant either remaining present in person through proxy. Consequently when one and the same scheme is offered to the entire class of equity shareholders for their consideration and when commercial interest of the appellant so far as the Scheme is concerned is in common with other equity shareholders he would have a common cause with them either to accept or to reject the Scheme from commercial point of view.” In this decision, the Hon’ble Supreme Court referred to what the learned author Palmer in this Treatise Company Law 24th Edition, has to say : “.....If there are different groups within a class the interests of which are different from the rest of the class, or which are to be treated

*differently under the Scheme, such groups must be treated as separate class for the purpose of the scheme.....”.*

- x. Per Contra, the Ld. Counsel for Respondents submitted that Division Bench of Hon'ble Bombay High Court overruled the decision in Sandvik Asia as reported in 2009 SCC Online Bom 541 holding at Para 8 that *“The only objection raised is that the scheme for the reduction of share capital proposed by the special resolution wipes out a class of shareholders namely the non-promoter shareholders and this, according to the objectors, is unfair and inequitable. The question, therefore, is that is to be construed is whether the special resolution which proposes to wipe out a class of shareholders after paying them just compensation can be termed as unfair and unequitable”.* He further submitted that Regulation 37 of SEBI Delisting Regulations prescribes for approval of Scheme by 2/3<sup>rd</sup> votes of Public Shareholders and this Regulation is a complete code in itself dealing with the delisting of securities consequent to the Scheme of arrangement; the Scheme having been approved by more than 71% has received a valid approval of class of shareholders. It was contended that SEBI Act is special enactment to protect the interest of investors and the Delisting Regulations have been notified pursuant to power vested in SEBI in terms of Section 11A(2) and Section

30 of SEBI Act, and Section 30 r.w.s. 21A of Securities Contracts (Regulations) Act, 1956. Learned Counsel cited the decision in case of Sahara India Real Estate Corporation Limited and Others vs. Securities and Exchange Board of India and Another (2013) 1 SCC wherein it was held at Para 309 that *“From a collective perusal of sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand alone enactment, and the SEBI’s powers thereunder are not fettered by any other law including the Companies Act, is fully justified. In fact the aforesaid justification was rendered absolute, by the addition of section 55A in the Companies Act, whereby, administrative authority on the subjects relating to “issue and transfer of securities and non-payment of dividend” which was earlier vested in the Central Government (Tribunal or Registrar of Companies), came to be exclusively transferred to the SEBI.”*

- xi. Ld. Senior Counsel for Quantum drew our attention to Para 66 of the decision in case of Sahara India (Supra), whereat Hon’ble SC observed that *“SEBI Act is a special law, a complete code in itself containing elaborate provisions to protect interests of the investors. Section 32 of the Act says that the provisions of that Act shall be in addition to and not in*

*derogation of the provisions of any other law. SEBI Act is a special Act dealing with specific subject, which has to be read in harmony with the provisions of the Companies Act 1956. In fact, 2002 Amendment of the SEBI Act further re-emphasize the fact that some of the provisions of the Act will continue to operate without prejudice to the provisions of the Companies Act, qua few provisions say that notwithstanding the regulation and order made by SEBI, the provisions of the Companies Act dealing with the same issues will remain unaffected. I only want to highlight the fact that both the Acts will have to work in tandem, in the interest of investors, especially when public money is raised by the issue of securities from the people at large”.*

- xii. We have considered the submissions of the Counsel. Undisputedly, the scheme contemplates that the Promoter shareholder of ISEC shall remain invested therein making ISEC 100% subsidiary of ICICI and the Public Shareholders of ISEC shall receive shares of ICICI in consideration of cancellation of their shares in ISEC. We find that there is dissimilarity in the treatment of Public Shareholders and Promoter Shareholders in the scheme of arrangement of ISEC, however, this dissimilarity in the interest of Public Shareholders and Promoter Shareholders has been specifically dealt in the Regulation 37 of Delisting Regulation resulting into additional requirement of

approval of schemes falling therein by 2/3rd votes of public shareholders. In this context, we shall proceed to examine whether the scheme in question ought to have been approved by 75% of such shareholders, and not by 2/3<sup>rd</sup> of such shareholders as contemplated in Regulation 37 of the Delisting Regulations and canvassed by the ISEC and ICBL.

- xiii. Securities Contract Regulation Act, 1956 ('SCRA') was enacted *"to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith"*. Thereafter, SEBI Act was enacted on 4<sup>th</sup> April, 1992 to promote orderly and healthy growth of securities market and for Investors protection and Delisting Regulations were notified on 10<sup>th</sup> June, 2021.
- xiv. The Preamble of SEBI Act 1992 reads as *"An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith and incidental thereto."* We note that the Hon'ble Supreme Court in Sahara India (Supra) at Para 65 has observed that *"Parliament has also enacted the SEBI Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. SEBI was established in the year 1988 to promote*



*orderly and healthy growth of the securities market and for investors' protection. SEBI Act, Rules and Regulations also oblige the public companies to provide high degree of protection to the investor's rights and interests through adequate, accurate and authentic information and disclosure of information on a continuous basis."*

- xv. The Hon'ble Supreme Court in Sahara India (Supra) held that the provisions of SEBI Act shall be in addition to and not in derogation of the provisions of any other law; SEBI Act is a special Act dealing with specific subject, which has to be read in harmony with the provisions of the Companies Act 1956; both the Acts will have to work in tandem, in the interest of investors, especially when public money is raised by the issue of securities from the people at large; and on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a standalone enactment, and the SEBI's powers thereunder are not fettered by any other law including the Companies Act.
- xvi. Part C of Delisting Regulations, of which Regulation 37 is the only provision, provides "*Special Provisions for a Subsidiary Company Getting Delisted through a scheme of arrangement wherein the listed holding company and the subsidiary company are in the same line of business*". The Delisting Regulations were notified pursuant to power vested in SEBI in terms of

Section 11A(2) and Section 30 of SEBI Act, and Section 30 r.w.s. 21A of Securities Contracts (Regulations) Act, 1956. We note that SCRA was amended by the Securities Laws (Amendment) Act, 2004, S.8 (w.e.f. 12-10-2004) to provide for 'Delisting of Securities' and 'vesting power in Central Government to make rules for the purpose' by insertion of Section 21A and amendment of Section 30 by insertion of clause 'ha'. In other words, the delisting of securities, prior to such amendment, was not regulated by this Act and there was no provision in terms of Regulations to deal with the interest of Public Shareholders in case of arrangement between listed holding and subsidiary company. SEBI Act was enacted to protect the investor's interest and SEBI, clothed with powers to do so, considered it appropriate to mandate a vote by 2/3<sup>rd</sup> for approval of scheme in cases falling under Section C of Delisting Regulations. The facts in the present case are distinguishable and we are considered view that Regulation 37 of Delisting Regulations, 2021 codifies guidelines in relation to approval of scheme of arrangement of a Holding and Subsidiary company where such scheme contemplates delisting of subsidiary company, and provisions of Regulations 37 have to be read in tandem with provisions of Section 230 of Companies Act, 2013 to decide the quantum of votes the present scheme requires to get

through. When SEBI, being custodian of Investor's interest after enactment of SEBI Act, specifically prescribes approval by 2/3<sup>rd</sup> Vote of Public Shareholders in a scheme of arrangement between Holding & Subsidiary Company, we are of considered view that it has to be done in that manner only. In the present case, Regulation 37 contains specific provisions in relation to case in hand.

- xvii. Accordingly, we hold that provisions of Regulation 37 of Delisting Regulations have to be read in tandem and harmoniously with the provisions of Section 230 of the Companies Act, 2013 so as to give effect to both the provisions, and not to make provisions of Regulation 37 otiose. In view of this, we have no hesitation to hold that the proposed scheme is required to be approved by 2/3<sup>rd</sup> of sub-class of class of shareholders, which it has been so approved.
- xviii. The Applicants have also objected to the approval of Scheme on the ground that the Scheme does not disclose the particulars of exemption obtained by the Respondent Companies from SEBI in relation to dissimilarity in the business of both the Companies. It is stated that the NSE and BSE vide their observation letters dated 28.11.2023 and 29.11.2023, respectively, inter-alia directed the Respondents to make disclosure of the relaxations obtained by the Respondents under the De-listing Regulations, including inter-alia the grounds and

justifications for such relaxation. It was also argued that in terms of provisions of Regulation 42 of Delisting Regulations, SEBI ought not to have relaxed the strict enforcement of Delisting Regulations.

xix. Regulation 37 of Delisting Regulations reads as under –

- (1) *Nothing contained in these regulations shall apply to the delisting of equity shares of a subsidiary company, pursuant to a scheme of arrangement by an order of a Court or Tribunal with its listed holding company, whose equity shares are frequently traded, and where the listed holding company and the subsidiary company are in the same line of business.*
- (2) *The delisting of the equity shares of a subsidiary company in terms of sub regulation (1) shall be permitted subject to the following:*
  - a) *the listed holding company shall provide for the issue of its equity shares in lieu of cancellation of any equity shares in the delisting subsidiary company;*
  - b) *upon such delisting becoming effective, the subsidiary company shall become a wholly owned subsidiary of the listed holding company;*
  - c) *compliance with regulations 11, 37 and 94 of the Securities and Exchange Board of India (Listing Obligations and Disclosure*

Requirements) Regulations, 2015 and the Circulars issued thereunder;

- d) e-voting from shareholders of both listed companies wherein votes cast by public shareholders of the listed subsidiary in favour of the proposal are at least two times the number of votes cast against it and the votes cast by the public shareholders of the listed holding company in favour of the proposal are more than the number of votes cast by the public shareholders against it;
- e) the shares of the listed holding company and the subsidiary company are listed for at least 3 years and shall not be suspended at the time of taking this route;
- f) the subsidiary company has been a listed subsidiary of the listed holding company for the past three years;
- g) no adverse orders have been passed by the Board in the past 3 years against the listed holding company and the listed subsidiary company;
- h) no further restructuring shall be undertaken by the listed holding company for a period of 3 years from the date of the Order of the Court or Tribunal approving the scheme of arrangement;
- i) the equity shares of the listed subsidiary so delisted, shall not be allowed to seek relisting

*for a period of three years from the date of delisting and such relisting shall be in terms of sub-regulation (3) and (4) of regulation 40 of these regulations; and,*

*j) the valuation of shares of the listed subsidiary per share shall not be less than sixty days volume weighted average price. Explanation — The reference date for computing the volume weighted average price would be the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal of the subsidiary was considered and approved.*

xx. It is an undisputed fact that the exemption was granted by SEBI in relation of condition of similarity of business and the Companies has complied with other provisions of Regulation 37 in the Scheme of Arrangement. It is the case of the Applicant that such exemption could have been granted only on the ground that *“the requirement is procedural in nature”* and the provisions of Regulations 37 of Delisting Regulations insofar as they provide that *“listed holding company and the subsidiary company are in same line of business”*, is substantive in nature and is not a procedural provision. However, we are of considered view that this Tribunal cannot sit in appeal over the SEBI’s power to dispense with such condition to examine *“whether SEBI was vested with*

powers, in the circumstances of the case, to dispense with the condition of similarity of business so as to allow Applicants to seek delisting of ISEC shares subject to compliance with other condition Regulation 42 of Delisting Regulations”. Accordingly, with an exemption in place, the Companies were entitled to propose a scheme seeking delisting of ISEC in terms of Regulations 37 of SEBI Delisting Regulations.

xxi. The Applicant has also submitted that the consequence of non-disclosure of the aforesaid is that :-

- a) The Public Shareholders have not had the requisite information and material which would have influenced their voting at the meeting;
- b) Such disclosure is in the interest of the public shareholders inasmuch as such disclosure would enable the public shareholders to decide as to whether they would prefer the mechanism of the reverse book building process in arriving at the fair price of their securities, in the manner specified in the Regulation 19 of Delisting Regulation (applicable provision where Regulation 37 is not applicable) or they would prefer the valuation method in accordance with the proposed Scheme of Arrangement;
- c) It is submitted that such determination by the public shareholders is central to the only real

decision which they have to take, viz., the value of their securities, and consequently, on whether they should allow their shares to be cancelled and delisted.

- xxii. Regulation 37 of Delisting Regulations provide that *“the valuation of shares of the listed subsidiary per share shall not be less than sixty days volume weighted average price”* and it is case of none of the applicants that the value determined for the purpose of swap ratio proposed in the Scheme is less than sixty days volume weighted average price. It was contended that Reverse Book Building Process may have yielded value more than sixty days volume weighted average price. This is merely a speculative argument. The stock exchange trading platform is considered to be best price discovery mechanism, particularly for liquid stocks. There is no allegations that the price of the shares of ISEC or ICICI were rigged by the Promoters to have swap ratio much favourable to the shareholders of ICICI Bank. The value of ISEC determined by Registered Valuers is more than the sixty days volume weighted average price. In the present case, all the shares forming part of promoter’s shareholding are held by the ICICI Bank, which in turn is held by Public Shareholders (19.58% held by Deutsche Bank Trust (Depository for ADS holders); 36.01% by Foreign Portfolio Investors and Foreign Institutional Investors; 9.55% by



Insurance Companies; 23.91% by Mutual Funds; 6.51% by Individuals including HUF, Trusts & NRIs; and rest by other public funds as on 31.03.2024 - Source as tendered by Company in hearing). Accordingly, it cannot be said that the Scheme is intended to benefit any particular group of persons in this backdrop. There may be perception differences amongst the Investors while evaluating the real price of the shares and such evaluation is nothing but an opinion of each such investor. Even if it is considered that swap ratio may have turned out to be favourable to ICICI Bank's Shareholders if price of ISEC shares would have been discovered under Reverse Book Building Process, the less favourable swap ratio contemplated in the proposed scheme would benefit the ISEC shareholders also indirectly, as the Scheme contemplates allotment of shares of ICICI Bank in consideration of cancellation of shares held in ISEC. In other words, ISEC shareholders, becoming shareholders of ICICI Bank, would also stand benefited by the increase in intrinsic value of ICICI Bank reflecting in the traded price consequent upon implementation of Scheme. We are unable to comprehend as to how it had an impact on the decision making on part of ISEC public shareholders, while 93.82% have exercised their vote, and 71.89% of total shareholders have voted in favour of the Scheme.

xxiii. It is also submitted by the Applicants that the Explanatory Statement does not annex the Exemption Order granted by SEBI and also does not provide the grounds on which such exemption was granted or the justification for the same. We note that letter dated 28.11.2023 issued by NSE to the ICICI Bank states that *“SEBI vide its letter dated November 28, 2023 has inter alia given the following comment(s) on the draft scheme of arrangement :”* One of such comments, which is bone of contention is that *“The Company shall suitably disclose the following as a part of explanatory statement or notice or proposal accompanying resolution to be passed to be forwarded by the company to the shareholders while seeking approval u/s 230 to 232 of the Companies Act, 2013”*. It requires, amongst others, (i) Details of relaxation obtained under Delisting Regulations w.r.t. the criteria of same line business, for delisting of ICICI Securities Ltd. by ICICI Bank Ltd. through scheme of arrangement, along with the grounds and justifications for seeking such relaxation, and (ii) Valuation method, rationale and assumptions considered for arriving at the share exchange. Letter dated 29.11.2023 also contemplates similarly.

xxiv. Clause 23.h of the Explanatory Statement appended to the Notice of meeting states that *“In connection with the said delisting, SEBI has granted exemption*

from the strict enforcement of Regulation 37(1) of the SEBI Delisting Regulations read with SEBI Circular SEBI/HO/CFD/DIL1CIR/2021/0585 dated July 6, 2021 regarding the requirement of listed holding company and listed subsidiary being in the same line of business". Clause 45 of said statement further states that "Regulation 37 of the SEBI Delisting Regulations provides special provisions for a subsidiary company getting delisted through a scheme of arrangement wherein the listed holding company and the listed subsidiary are in the same line of business. SEBI Circular No. SEBI/HO/CFD/DIL1/CIR/P/2021/0585 dated July 6, 2021 has defined the same line of business. The Holding Company had, inter alia, represented to SEBI that due to regulatory restrictions, it cannot undertake Banking activities and Stock Broking activities in the same entity and therefore sought relaxation from strict compliance of Regulations 37 of SEBI Delisting Regulations read with the aforesaid SEBI Circular dated July 6, 2021. SEBI vide its letter date June 20, 2023 was pleased to grant the relaxation as requested by the Holding Company". This statement clearly provides the ground for seeking relaxation. Nonetheless, SEBI or BSE or NSE has not filed any representation alleging non-compliance with the disclosure conditions stipulated in their communication to the Company, even though the

Company has filed the compliance report of the conditions with these authorities.

- xxv. Clause 25 of the Explanatory Statement appended to the Notice of meeting states that *“The draft Scheme along with the valuation report, dated June 29, 2023, jointly issued by PwC Business Consulting Services LLP, Registered Valuer (Registration No. IBBI/RV-E/02/2022/158) and Ernst & Young Merchant Banking Services LLP, Registered Valuer (Registration No. IBBI/RV-E/05/2021/155) (hereinafter referred to as “Joint Valuation Report”;* and the fairness opinion, dated June 29, 2023 issued by BofA Securities India Limited, a SEBI registered merchant banker. Were placed before the Audit Committee of Directors of the Subsidiary Company along with other particulars at its meeting held on June 29, 2023. Copies of the (i) Joint Valuation Report, dated June 29, 2023; (ii) a summary of Joint Valuation Report showing valuation methods, rationale and assumption considered for arriving at the Swap Ratio (as defined in the Scheme); and (iii) the fairness opinion, issued by BofA Securities India Limited, dated June 29, 2023 are enclosed as Annexure 2, Annexure 3 and Annexure 4, respectively.” The Page No. 100 to 103 of the Notice (summary of Joint Valuation Report) contains the Summary of the valuation methods, rationale and assumptions considered for arriving at the share exchange ratio. The BSE and NSE letters do not

contemplate provisioning of the valuation working. Accordingly, we do not find any force in the contention that the notice does not provide the details relating to valuation in the manner sought in BSE/NSE letter.

xxvi. It is also submitted that there have been deliberate and massive manipulation exercise by ICICI Bank to mislead and coax public shareholders into voting in favour of the Scheme. It is stated that just prior to the shareholders meeting, officers and employees of ICICI bank and ISEC reach out to public shareholders of ISEC under the pretext of an 'outreach exercise' and seek to convince them to vote in favour of the Scheme including by making repeated phone calls, asking for screenshots of voting, and informing public shareholders that the scheme was beneficial to them despite ICICI Bank being an interested party in the Scheme.

xxvii. It is stated the SEBI, vide its letter dated 6.6.2024 after taking notice of the complaints in this regard, had issued Administrative warning to ISEC to be careful in future and improve their compliance standards to avoid recurrence of such instances in futures on the ground that the sharing of shareholders' information (*such as address or registered address (in case of a body corporate); e-mail ID; Unique Identification Number and PAN Number*) by your company with ICICI Bank is not

appropriate and against the spirit of the Companies Act that, inter alia, upholds shareholders' privacy, and your company, thus, failed to maintain the privacy of personal data of minority shareholders.

xxviii. ICICI Bank, vide its letter dated 28.3.2024, had clarified to BSE Limited that *“There is overlap between the categories of shareholders and customers across both entities. The approach in the outreach was to explain the proposed Scheme and facilitate voting, and to not pursue repeated engagement if declined by the shareholder. As may be seen from the voting period dates mentioned above, March 23 (Saturday), March 24 (Sunday) and March 25 (Holi), were holidays in all or substantial parts of the country. Accordingly, the outreach activity was relatively high on March 26 (Tuesday).....Four independent proxy advisory firms recommended voting for the resolution to approve the proposed Scheme to shareholders of both ICICI Bank and ICICI Securities. However, a concerted campaign against the proposal, using social media and involving extensive outreach to retail shareholders, was undertaken by those opposed to the proposed Scheme. Pursuant to the decision and recommendation of our Board of Directors, we are of the considered view that the proposed Scheme is in the best interests of shareholders of both ICICI Securities and ICICI Bank. Consequently, we felt it was important to reach out to retail shareholders to*

*maximise participation in, and to facilitate a considered outcome of, the vote.”*

xxix. We find that the Companies had explained the purpose of outreach program undertaken by it, and BSE didn't find any objectionable ground to order holding of the meeting dated 27.3.2024 again to take the vote on the scheme. The contents of warning letter of SEBI demonstrate that SEBI was concerned with the sharing of information of shareholders to ICICI Bank, which otherwise is not permissible under the Companies Act, 2013, however, it had no observation to the effect that the public shareholders were misled or coaxed to cast vote. There is no evidence on record from any shareholder that he was coaxed to vote in favour of the scheme only. The Regulators BSE, NSE and SEBI have not raised any objection in relation to voting process before us. The Independent Chairman of the meeting appointed by this Tribunal, has also not pointed out any error or deficiency in the voting process. Accordingly, we are of considered view that mere outreach program conducted by ICICI Bank cannot lead to the conclusion that the shareholders have casted their vote under duress or influence, and voting process is vitiated.

xxx. It was also submitted that ICICI Prudential Mutual Fund also purchased shares of ISEC in March, 2024 to influence the outcome of voting under Public

Shareholder category, however, it was clarified by counsel for the respondent that the said purchase took place after cut-off date for the purpose of entitlement to voting by placing on record documentary evidence to that effect. Accordingly, this submission has no merit.

28. After hearing the Counsel, we find that the applicants are aggrieved for less favourable swap ratio offered by the Scheme to shareholders of ISEC and it is their case that 'Reverse Book Building Process' would have yielded better value of their shares than what is being offered under the Scheme in terms of Regulation 37 of Delisting Regulations. At this juncture, we take note of Reasons cited by shareholders under the class of Mutual Funds for voting in particular manner on the scheme, as required under Regulatory filing provisions applicable to them. We note that the Seven Mutual fund shareholders have voted against due to unfavourable swap ratio. One of dissenting shareholder Kotak Mutual fund has stated that the process of delisting of ICICI Securities is legally compliant, but price discovery process could have been better option. As against this, 16 Mutual Fund Shareholders have found the Scheme legally compliant, and 5 of assenting Mutual Fund shareholders have expressed concern for not providing price discover process to the minority shareholders. We note that the Hon'ble Bombay High Court in the case of Alstom Power Boilers Limited 2002



SCC Online Bom 1084 quoted the decision in case of Miheer Mafatlal (Supra) wherein it was said that “.....It was for the equity shareholders who acted bona fide in the interest of their class as a whole to accept even a less favourable ratio considering other benefits that may offset such less favourable ratio once an amalgamation goes through. We wholly concur with this view. In this connection we may also refer to a decision of Maugham, J., in (Hoare and Co. In re), 1993 All. E.R. 105, wherein it was laid down that where statutory majority had accepted the offer the onus must rest on the applicants to satisfy the Court that the price offered is unfair. In this connection the following pertinent observations were made by the learned judge. “The other conclusion I draw is this ..... that the Court ought to regard the scheme as a fair one inasmuch as it seems to me impossible to suppose that the Court, in the absence of any strong grounds, is to be entitled to set up its own view of the fairness of the scheme in opposition to so very large a majority of shareholders who are concerned. Accordingly, without expressing a final opinion on the matter because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before me, unless it is affirmatively established that notwithstanding the views of a very large majority of shareholders, the scheme is unfair.”

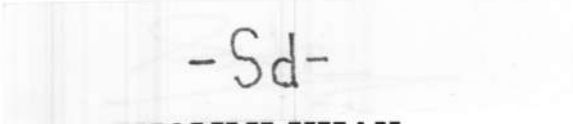
29. It may not be out of place to mention here that the applicant have filed IA Before the Hon’ble NCLT, Mumbai

Pleading identical relief one of the Respondents (ICICI Securities Limited) was being dealt by Mumbai NCLT. The IA of the Applicant was dismissed by the order dated 21.08.2024 and the copy of said order was placed before us by the respondent.

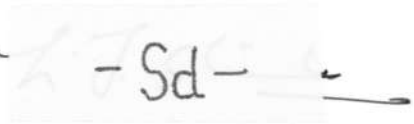
30. In view of the above, we are of considered view that the contention of the Applicants do not lead us to a conclusion that the proposed scheme is unfair or unreasonable from the perspective of various stakeholders of the Company, or is unconscionable or opposed to public.
31. Hence, IA 55(AHM)/2024 and Inv. P. 1(AHM)/2024 are dismissed and disposed of accordingly.

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

SP

  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Note: This order of the Bench consisting of Hon'ble Member Judicial & Hon'ble Member Technical is pronounced in open court on behalf of the Bench by Hon'ble Member Judicial under Rule 151 of NCLT, Rules, 2016.

  
**(HANIF SHAIKH)**  
**COURT MASTER**