

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Delivered on: 17.12.2018

+ **W.P.(C) 8842/2018 & CM APPL. 33999/2018, 34000/2018, 41432/2018**

ALL INDIA IDBI OFFICERS ASSOCIATION
THROUGH ITS GENERAL SECRETARY

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Prashant Bhushan, Mr Pranav Sachdeva and Mr Jatin Bhardwaj, Advocates

For the Respondent : Mr Tushar Mehta, Solicitor General and Ms Maninder Acharya, ASG and Mr Kirtiman Singh, CGSC alongwith Mr Waize Ali Noor, Mr Prateek Dhanda, Ms Shruti Dutt, Mr Viprav Acharya, Mr Sahil Sood Mr Sameer Malik, Mr Ravi Prakash and Mr Farman Ali, Mr Kamal Mehta and Mr Harshul Chowdhry, Advocates for UOI/LIC.

Mr Sandeep Sethi, Senior Advocate with Mr Krishnendu Dutta, Mr Sidhartha Barua and Mr A. Gupta, Advocates for R-3.

Mr H.S. Parihar and Mr K.S. Parihar, Advocates for RBI.

Mr Rana Mukherjee, Senior Advocate with Mr Dipak K. Nag, Mr Apurva Upmanyu and Ms Ekta Pradhan, Advocates for R-6.

Mr Neeraj Malhotra, Senior Advocate with
Mr Sahil Khanna, Mr Sanyam Saxena and
Ms Cassandra, Advocates for SEBI.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner – an association of certain employees of Industrial Development Bank of India Limited (hereafter 'IDBI Ltd.') – has filed the present petition, *inter alia*, praying that Government of India (respondent no.1) be restrained from reducing its shareholding in IDBI Ltd. below 51%. The petitioner also seeks directions to respondent no.2 (Life Insurance Corporation of India – hereafter 'the LIC') not to acquire the controlling stake of 51% in IDBI Ltd. The petitioner also impugns the permission granted by respondent no.6 (Insurance Regulatory and Development Authority of India – hereafter 'IRDAI') to the LIC to acquire more than 15% of the equity share capital of IDBI Ltd.

2. The petitioner has challenged the said acquisition of IDBI Ltd. by LIC, essentially, on three grounds. First, that the reduction of the majority stake of the Central Government in IDBI Ltd. is *ultra vires* of the Industrial Development Bank of India Act, 1964 read with Industrial Bank (Transfer of Undertaking and Repeal) Act, 2003. Second, that the privatisation of IDBI Ltd. will have an adverse impact on the employment conditions of the employees of the concerned Bank, especially the SC/ST and the OBC employees. And third, that

the said acquisition is not in consonance with public interest, as it endangers the investments made by the public in IDBI Ltd. and further deteriorate LIC's ability to pay back its policy holders, in view of LIC's huge investment for acquiring the majority stake.

Factual Background

3. Industrial Development Bank of India (hereafter 'the Development Bank') is one of the major public sector bank/nationalised bank in India. The government currently holds around 85% of the stake in the Development Bank (now known as IDBI Ltd.). On the other hand, respondent no.2 (LIC) is an Indian state-owned Insurance Group and investment company, which was found in 1956 to provide for the nationalisation of life insurance business in India by the enactment of the Life Insurance Corporation Act, 1956.

4. The Development Bank was established under the Industrial Development Bank of India Act, 1964 (hereafter 'the IDBI Act, 1964') to provide for credit and other facilities for the development of industry. It functioned as a department of Reserve Bank of India (RBI) till 1976. In the year 1977, the Development Bank was de-linked from the RBI. Its shareholding was transferred to the Central Government and, accordingly, it was transformed into a statutory body and wholly owned by the Government of India.

5. In the year 1994, the IDBI Act, 1964 was amended which, *inter alia*, allowed the Development Bank to enlarge its shareholder's base and access the capital market for resources.
6. Thereafter LIC, by a letter dated 15.10.2001, sought permission of IRDAI for acquisition in a Corporation Bank. IRDAI replied by a letter dated 17.10.2001 and approved the acquisition plan of LIC. The said approval was given by IRDAI subject to LIC not acquiring more than 30% stake in the concerned Corporation Bank.
7. Subsequently, in the year 2002, IDBI (Transfer of Undertaking and Repeal) Bill, 2002 was introduced in the Parliament with the objective of facilitating the Development Bank to discharge its mandated development finance institution role in an effective manner.
8. After thorough debates, the said Bill was passed by both the Houses and on 10.10.2004, the Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 (hereafter 'the IDBI Repeal Act, 2003') was enacted and the Development Bank was renamed as IDBI Ltd. By virtue of the IDBI Repeal Act, 2003, the business and undertaking of the Development Bank stood transferred to and vested in Industrial Development Bank of India Limited (IDBI Ltd.), a company registered and incorporated under the Companies Act, 1956 and a banking company within the meaning of Section 5(c) under the Banking Regulation Act, 1949. As per Clause 4 of the Articles of Association of IDBI Ltd., the Central Government shall

have to maintain not less than 51% of the issued capital of the company.

9. On 15.04.2005, the RBI wrote a letter to the Chairman of IDBI Ltd. regarding the categorization of IDBI Ltd. Accordingly, IDBI Ltd. was categorized under a new sub-group called “Other Public Sector Banks”. Thereafter, the Department of Financial Services, by its letter dated 17.02.2006 (Ref.F.No.7/95/2005-BOA) addressed to all Secretaries of Ministries/Departments of Central Government communicated that the stake of the Central Government in IDBI Ltd. would be maintained at a minimum of 51% and the concerned Bank will be treated on par with Nationalised Banks for all purposes.

10. Meanwhile in the year 2004, the Central Government had also set up a special purpose vehicle and created the Stressed Assets Stabilization Fund (SASF) to acquire and manage the Stressed Assets of IDBI Ltd.

11. Thereafter, in September 2015, the decision to reduce the stake of Central Government in IDBI Ltd. was announced by the Finance Minister (at the material time) for the first time and, thereafter for the second time during the budget speech in 2016. Pursuant to these announcements, the staff of the IDBI Ltd. took the recourse of an employees’ strike to oppose the aforesaid decision.

12. Consequently, a few members of Lok Sabha made a representation to the Chairman, Committee of Petitions, Lok Sabha requesting to advise the Government to not allow the acquisition of

majority stake by LIC in IDBI Ltd. The said petition was presented before the Lok Sabha on 16.03.2017 and thereafter, Thirty First Report of the Committee of Petitions was prepared with reference to the said petition.

13. In its Thirty First Report, the said Committee made observations, *inter alia*, to the effect that the employees of IDBI Ltd. had opted to work in the Bank on the assurance that they would get the opportunity to work in a Public Sector Bank. The Committee further observed that IDBI Ltd. had been following the reservation policy in services (both in direct recruitment as well as in promotions) as applicable to the Public Sector Banks.

14. On 02.05.2018, the Board of the LIC passed a resolution for LIC to take initiatives for acquiring controlling stake in a bank and accordingly, initiate steps in that direction by obtaining necessary regulatory approvals. In view of the same, LIC sent a letter dated 04.05.2018 to Secretary, Department of Financial Services, Ministry of Finance seeking clearance to go ahead with the aforesaid endeavor.

15. Thereafter, LIC sent a letter dated 05.06.2018 to IRDAI expressing its interest in acquiring controlling stake in a bank. On 15.06.2018, LIC sent another letter to IRDAI proposing the acquisition of majority controlling stake in IDBI Ltd. In reply, IRDAI sent a letter dated 19.06.2018 asking LIC to submit specific details in order to examine LIC's aforesaid proposal. LIC sent a letter dated 26.06.2018 providing specific details as sought by IRDAI.

16. On 29.06.2018, IRDAI held a meeting on the subject of acquisition of majority stake in IDBI Ltd., by LIC. Thereafter, IRDAI sent a letter dated 04.07.2018 to LIC whereby, exercising its powers under Regulation 14(2) of IRDAI (Investment) Regulations, 2016 (hereafter 'Investment Regulations'), IRDAI gave its approval to LIC for acquisition of majority stake in IDBI Ltd. This approval was given subject to reduction of shareholdings to less than 15% at a later date and also subject to approvals from other regulators such as SEBI, RBI and the Central Government.

17. In the meanwhile, on 03.07.2017, a Tripartite Memorandum of Understanding (MoU) was signed by the petitioner, the Central Government and IDBI Ltd. to improve the financial condition of IDBI Ltd.

18. Thereafter, the Board of LIC, in its 582nd Meeting dated 16.07.2018, gave the approval for the aforesaid acquisition and accordingly, LIC sent a letter to IDBI Ltd. communicating the same. In the said letter, it was further stated that LIC is willing to acquire majority controlling stake in IDBI Ltd. as a promoter through preferential allotment of shares/open offer.

19. The Board of the IDBI Ltd., in its meeting dated 17.07.2018, considered the aforesaid proposition and on the very same day, sent a letter to the manager of Bombay Stock Exchange Ltd. and the Manager (Listing) of National Stock Exchange of India Ltd. in

reference to the above proceedings. The Board further sought Central Government's (Current Promoter) decision on the instant matter.

20. On 25.07.2018, a circular was issued by the petitioner Association vehemently opposing the acquisition of IDBI Ltd. by LIC on the ground that the said acquisition would result in various hardships for the employees of IDBI Ltd.

21. Thereafter, on 01.08.2018, the Union Cabinet issued a no objection certificate (NOC) approving the aforesaid reduction of the Central Government's stake in IDBI Ltd. to below 50% by dilution. The Cabinet also approved acquisition of controlling stake by LIC as promoter in IDBI Ltd. through preferential allotment /open offer of equity, and also relinquishment of management control by the Central Government in the Bank. Subsequently, an NOC dated 06.08.2018 was also issued by the Central Government.

22. On 06.08.2018, IDBI Ltd. sent a letter to LIC seeking guidance regarding the modalities of acquisition, Alterations in Articles of Association and Pricing of Preferential Issue with control premium. The aforesaid issues were discussed by the Board of LIC in its 583rd Meeting dated 20.08.2018.

23. On 21.08.2018, LIC sent a letter to Ministry of Finance seeking assistance for obtaining necessary regulatory approvals for the aforesaid acquisition. Thereafter, the Board of LIC passed a resolution dated 28.08.2018 approving LIC's subscription to equity capital of

IDBI Ltd. through preferential issue upto 14.90% of post issue subscribed paid up capital.

24. Thereafter, the Investment Committee of LIC, in its 751st meeting dated 04.09.2018, gave its recommendation to the Board of LIC for approval of the acquisition majority stake in IDBI Ltd. Subsequently, on 04.09.2018, the Board of LIC passed the resolution approving the acquisition of majority stake in IDBI Bank by LIC.

Reasoning and Conclusion

25. As it is apparent from the above, there are, essentially, two facets to the challenge laid by the petitioner to the action of the Government divesting its majority stake in IDBI Ltd. and the LIC acquiring the same. The first relates to the decision of the Government of India to reduce its stake in IDBI Ltd. The petitioner contends that the same is contrary to the assurance held out by the Government before the Parliament at the time of considering the Industrial Development Bank (Transfer of Undertaking and Repeal) Bill, 2002. It is also claimed that this transaction is violative of Section 5(1) of the Industrial Bank (Transfer of Undertaking and Repeal) Act, 2003 (the IDBI Repeal Act, 2003). In addition, it is submitted that the Government's disinvestment also violates the provisions of Section 25FF of the Industrial Disputes Act, 1947.

26. The second facet relates to the decision of LIC to acquire the majority stake in IDBI Ltd. It is contended that the LIC's decision is arbitrary, unreasonable and in breach of the fiduciary duty owed by

the Board of LIC to various policy holders. It is the petitioner's case that the Board of Directors of LIC have failed to exercise due diligence and have, in effect, abdicated their powers to the Subcommittee inasmuch as the Board has approved the decision to acquire the majority stake in IDBI Ltd. without fully examining the ramifications of the decision to make such investment. The petitioner claims that IDBI Ltd. is a loss making entity with approximately ₹58,000 crores of financial assets being declared as NPAs (Non-performing Assets). And, any investment to acquire a majority stake in IDBI Ltd. would result in a significant drain of resources of LIC at the cost of policy holders. It is submitted that the said decision is malafide and has been taken at the instance of the Central Government, whose object is to access the resources of LIC for discharging its obligations to support IDBI Ltd. It is contended that the said decision is contrary to the provisions of the Regulation 9 of the Insurance Regulatory and Development Authority of India (Investment) Regulations, 2016 (the Investment Regulations). It is further contended that the decision of IRDAI to relax the rigors of Regulation 9 of the Investment Regulations and to permit LIC to acquire equity stake in excess of 15% of the equity capital of IDBI Ltd., is arbitrary and unreasonable and is liable to be set aside.

Whether the Government of India is estopped from divesting its majority stake in IDBI?

27. As noticed above, the Industrial Development Bank of India Act, 1964 (the IDBI Act, 1964) was repealed by virtue of Section

15(1) of the Industrial Bank (Transfer of Undertaking and Repeal) Act, 2003 (the IDBI Repeal Act, 2003). By virtue of Section 3(1) of the aforesaid Act, the undertaking of Development Bank of India (the Development Bank) stood vested with IDBI Ltd., a company to be incorporated under the Companies Act, 1956. Further, by virtue of Section 3(2) of the IDBI Repeal Act, 2003, IDBI Ltd. was deemed to be a banking company within the meaning of Section 5(c) of the Banking Regulation Act, 1949.

28. Plainly, there is no statutory provision which restricts the right of the Government of India as a shareholder to transfer or deal with the shares of IDBI Ltd. IDBI Ltd. is a company incorporated under the Companies Act, 1956 and there is no provision under the said Act, which prohibits or proscribes any shareholder from selling or in any manner dealing with its interest. The Government of India being a shareholder in IDBI Ltd. is, thus, at liberty to act as any other shareholder (See: *Life Insurance Company v. Escorts Ltd.: (1986) 1 SCC 264*), which would also include the right to sell its shares as is available to any other shareholder. The Government of India had the obligation to ensure that it held 51% shares in the Development Bank which was established under Section 3 of the IDBI Act, 1964. But there was no such obligation insofar as the IDBI Ltd. is concerned. It is also relevant to note that by virtue of Section 15(1) of the IDBI Repeal Act, 2003, the IDBI Act, 1964 stood repealed which also include Section 4C of the said Act. It was contended on behalf of the petitioner that the Government of India has obligation to hold at least

51% shares in the Development Bank and the same would also extend to IDBI Ltd. by virtue of Section 4 & 5 of the IDBI Repeal Act, 2003. It was contended that by virtue of Sub-section (1) of Section 5 of the IDBI Repeal Act, 2003, every officer or other employees of the Development Bank would become an employee of IDBI Ltd. on the same terms and conditions of the employment as applicable to his/her employment with the Development Bank.

29. Mr Bhushan had contended that dilution of the Government's shareholding in IDBI Ltd. would materially alter the conditions of service of employees and officers inasmuch as they would now no longer be employees of a Government company. Thus, they would be deprived of attendant benefits of the policies, which were otherwise available to them as employees of a Government company. He submitted that employees were recruited through a common recruitment process for all public sector enterprises and had joined IDBI Ltd. believing that IDBI Ltd. would continue to be a Government company.

30. Before addressing the aforesaid contention, it would be relevant to refer to Section 5(1) of the Repeal Act, 2003 which reads as under:-

“5(1) Every officer or other employee of the Development Bank (except a director of the Board or the chairman and managing director or any whole-time director) serving in the employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in the Company by virtue of this Act, become, as from

the appointed day, an officer or, as the case may be, other employee of the Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave fare concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the Development Bank if its undertaking had not vested in the Company and shall continue to do so as an officer or, as the case may be, other employee of the Company or until the expiry of a period of six months from the appointed day, if such officer or other employee opts not to continue to be the officer or other employee of the Company within such period.”

31. A plain reading of the aforesaid provision does not support the contentions advanced on behalf of the petitioner. By virtue of Section 5(1) of the IDBI Repeal Act, 2003 all employees and officers of the Development Bank had an option to accept the employment with IDBI Ltd. on the same terms and conditions and with the same rights and obligations as they would have had in respect of the employment with the Development Bank if its undertaking had not vested with IDBI Ltd. Plainly, the assurance held out to them is with regard to the terms and conditions of their service and not as to the nature of the employer – IDBI Ltd. There was no assurance that can be read with Section 5(1) of the IDBI Repeal Act, 2003 to the effect that IDBI Ltd. would continue to be a Government Company.

32. As noticed above, Section 4(1) of the IDBI Act, 1964, which required the Government of India to hold at least 51% of the total share capital in the Development Bank, stood repealed by virtue of Section 15(1) of the IDBI Repeal Act, 2003 and in any event was not applicable to IDBI Ltd., which is a company incorporated under the Companies Act, 1956.

33. The question whether employees have any vested right in their employer continuing to be a Government company, is no longer *res integra*. This was considered by the Supreme Court in ***Balco Employees Union (Regd.) v. Union of India and Ors.: (2002) 2 SCC 333***. In that case, the Supreme Court had in unequivocal terms held that the employees had no such vested right. The relevant observations of the court are reproduced below:

“the employees have no vested right in the employer continuing to be a government company or ‘other authority’ for purposes of Article 12 of the Constitution of India..... So long as the State holds the controlling interest or the whole of the shareholding employees may take a status of employees of a government company or other authority under Article 12 of the Constitution. The status so conferred on the employees does not prevent the Government from divesting; nor does it make the consent of the employees a necessary precondition for disinvestment.”

34. The Supreme Court had also held that disinvestment in the shares of any government company did not result in change of the

employer or the employment. This is clear from paragraph 60 of the said decision, which is set out below:-

“60. As a result of disinvestment of 51% of the shares of the Company, the management and control, no doubt, has gone into private hands. Nevertheless, it cannot, in law, be said that the employer of the workmen has changed. The employees continue to be under the Company and change of management does not in law amount to a change in employment.”

35. In view of the above, this Court is unable to accept that the disinvestment by the Government of India of the shares in IDBI Ltd. would amount to a change in the terms and conditions of services between IDBI Ltd. and its employees so as to fall foul of Section 5(1) of the IDBI Repeal Act, 2003.

36. This Court is also of the view that the provisions of Section 5(1) of the IDBI Repeal Act, 2003 cannot be read in an expansive manner without reference to the object of the enacting the said provisions. Section 5(1) of the Repeal Act, 2003 is a part of the set of provisions enacted for transfer of undertaking of the Development Bank to IDBI Ltd. The business of the Development Bank was transferred lock, stock and barrel to IDBI Ltd. This would also include the employment contracts with the employees serving the Development Bank. The principal object was to ensure that the employees continue to serve with the undertaking on the same terms and conditions as with the previous employer (the Development Bank). There was no assurance that the affairs of the undertaking would continue to be managed in the same manner or that the transferee entity (IDBI Ltd.) was prohibited

or constrained in any manner to implement or evolve its own policies for managing its affairs. The IDBI Repeal Act, 2003 did not restrict IDBI Ltd. from conducting its business in the manner as it thought fit. Plainly, IDBI Ltd. was also not precluded in changing its employment policy or the terms of employment with any of its employees; of course, subject to complying with the provisions of law and its contractual obligations towards such employees.

37. The rights and obligations of employees *viz-a-viz* the employer are determined by the contractual terms of employment. The employees of a company constitute the human resource of an entity which is deployed for achieving the goals and objects of the company. The equity held by the shareholders in a company are assets of the shareholders and they have full right to deal with the same. Their rights to deal with the property are not subject to the employment contract between the companies and its employees.

38. The contention that the Government of India is estopped from selling its stake in IDBI Ltd. as it violates the assurance held out in the Parliament during the discussions relating to the Industrial Development Bank (Transfer of Undertaking and Repeal) Bill, 2002, is also unmerited. The aforesaid Bill was referred to the Standing Committee on Finance. The said Committee recommended certain amendments which were debated in the House.

39. During the course of discussions before the Parliament, it was proposed to include the following proviso:-

“Provided that the Central Government shall always remain the majority shareholder of the Company and at no point of time its shareholding shall fall below 51%”

40. The said amendment was not carried out. During the course of the debate, the then Finance Minister had informed the members of Rajya Sabha that the Government believed that the same could be done through executive action. The Finance Minister also held out an assurance that the Government would maintain IDBI Ltd. as a Development Financial Institution. It appears that the issue of the Government holding was considered in the aforesaid context.

41. This Court is of the view that the statements made before the House almost 15 years earlier, in a debate relating to a legislative activity, would not preclude the Central Government from diluting its stake in IDBI Ltd. Indisputably, the legislation enacted by the Parliament after the debate did not contain the amendment that was sought to be introduced. The statements made before the House cannot substitute or override the statute so enacted by the Parliament. Surely, the Parliament was conscious of the import of not including the proviso as proposed. The principles of promissory estoppel are wholly inapplicable in the aforesaid context. It is not possible to accept that the statements made in Parliament amounted to a representation made to the employees and they had acted to their prejudice based on such representation. The statements made before the House were in the context of enacting a legislation (the IDBI

Repeal Act, 2003), and the said Act has to be interpreted in conformity with the settled principles of statutory interpretation.

42. There is no ambiguity in the language of the IDBI Repeal Act, 2003 and there is no scope to read any provision into the said enactment which proscribes the Government from reducing or divesting its stake in IDBI Ltd.

43. If the Government is in breach of any of its assurance to the Parliament, it would be for the members of the House to take up the matter. It, certainly, does not create any right in favour of the petitioner.

44. In ***Union of India v. Ganesh Rice Mills &Anr.: 1998 (9) SCC 630***, the Supreme Court, while deciding on the authoritative value of speech made by the Finance Minister in the Parliament, held as under:

“2. The only point decided by the High Court is that the Finance Minister's statement on the floor of the House must be held to be binding and the Union was stopped from realising the disputed cess from the appellants. It has been stated that the writ petitioner had acted to his prejudice on the basis of the promise made by the Finance Minister. We are of the view that speech made in Parliament by the Finance Minister cannot be treated as a promise or representation made to the writ petitioner and the principle of promissory estoppel was wrongly applied by the High Court. No case of promissory estoppel has been made out on the facts of this case.”

45. In *State of Karnataka and Anr. v. K.K. Mohandas and Ors.:* (2007) 6 SCC 484, the Supreme Court held as under:

“23. That apart, this Court in *Express Newspapers Pvt. Ltd. and Ors. v. Union of India and Ors.:* AIR1986SC872 has held that the principle of estoppel does not operate at the level of Government policy. In *Union of India and Ors. v. Ganesh Rice Mills and Anr.:* 1998 (99) ELT199(SC) , this Court had categorically held that a speech made in Parliament by a Minister cannot be treated as a promise or representation made to a person attracting the principle of promissory estoppel. In *Pine Chemicals Ltd. and Ors. v. Assessing Authority and Ors.:* 1993 (67) ELT 25 (SC) , this Court held that a Finance Minister's statement referring to a proposal to continue the grant of exemption from payment of sales tax for a period of ten years is merely a budget proposal which could not give rise to any right to the parties and it did not amount to a decision, order or notification extending the period of exemption which was required to found a plea based on promissory estoppel. The manner in which the courts below including the High Court got over the principle enunciated by these decisions leaves much to be desired.

24. Thus, it would seen that the plaintiffs are not entitled to found any case of promissory estoppel merely on the basis of the speech made by the Minister in the Assembly of a proposal to ban sale of toddy in the State.”

46. In view of the above, the question whether the Government of India is estopped from divesting its majority stake in IDBI Ltd. is answered in the negative.

Whether the decision of LIC to invest in IDBI Ltd. is arbitrary or unreasonable?

47. The next question to be examined is whether the decision of LIC to invest in IDBI Ltd. is arbitrary or unreasonable warranting interference under Article 226 of the Constitution of India. Before proceeding to address the controversy with regard to the decision of LIC to acquire majority stake in IDBI Ltd., it is necessary to bear in mind the scope of judicial review of such decisions.

48. The decision of LIC to invest in IDBI Ltd. is a commercial decision and no interference in these proceedings would be warranted unless it is established that the said decision is illegal or fails the *Wednesbury* test, that is, it is so unreasonable and arbitrary that no sensible person could possibly take such decision. The Courts would also interfere in cases where a decision making process itself is otherwise vitiated.

49. In ***Tata Cellular v. Union of India &Ors.: (1994) 6 SCC 651***, the Supreme Court had laid down the scope of judicial review in the following words:

“76. In *R v. Penel on Take overs and Mergers, ex p Guinness plc* [1990] 1 QB 146 Lord Donaldson MR. referred to the Judicial review jurisdiction as

being supervisory or 'longstop' jurisdiction. Unless that restriction on the power of the courts is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. committed an error of law
3. committed a breach of the rules of natural justice
4. reached a decision which no reasonable tribunal would have reached or
5. abused its powers.

50. In ***Census Commissioner & Ors. v. R. Krishnamurthy: (2015) 2 SCC 796***, the Supreme Court held as under:

“33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion.”

51. In the case of ***Villianur Iyarkkai Padukappu Maiyam v. Union of India: (2009) 7 SCC 561***, the Supreme Court observed as under:

“169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.”

52. In ***Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India: (1992) 2 SCC 343***, wherein it was observed as under:

“Courts are not to interfere with economic policy which is the function of experts. It is not the function of the Courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.”

53. In the case of ***Arun Kumar Agrawal v. Union of India: (2013) 7 SCC 1***, the Supreme Court observed as under:

“This Court sitting in the jurisdiction cannot sit in judgment over the commercial or business decision taken by parties to the agreement, after evaluating

and Assessing its monetary and financial implications, unless the decision is in clear violation of any statutory provisions or perverse or for extraneous considerations or improper motives. States and its instrumentalities can enter into various contracts which may involve complex economical factors. State or the State undertaking being a party to a contract, have to make various decisions which they deem just and proper. There is always an element of risk in such decisions, ultimately it may turn out to be a correct decision or a wrong one. But if the decision is taken bona fide and in public interest, the mere fact that decision has ultimately proved to be a wrong, that itself is not a ground to hold that the decision was mala fide or done with ulterior motives.”

54. Mr Bhushan submitted that the financial condition of IDBI bank was dismal; its non-performing assets were to the extent of ₹58,000 crores and the bank required extensive financing to stay afloat. He submitted that the investment decision of LIC would entail LIC to divert approximately ₹30,000 crores of the funds collected from policy holders to fund IDBI Ltd. He submitted that a decision of LIC to make such investment amounts to breach of trust, as the policy holders have invested their hard earned money on the belief that LIC would invest the same in a prudent manner and for maximising their return. He also contended that the decision of the Board of LIC was without application of mind and the decision making process was flawed.

55. Mr Mehta had countered the aforesaid submissions and he submitted that LIC was on the lookout for acquiring a controlling stake in a bank for bancassurance and the LIC’s first attempt to

acquire a controlling stake was made much earlier when LIC acquired 27% shares of the Corporation Bank. He submitted that LIC had also made another attempt in the year 2013 to set up its own bank. However, the said proposal did not materialise as at the material time, the Reserve Bank of India did not grant the necessary permission.

56. He further submitted that the Board of LIC had deliberated on the decision to acquire controlling stake in IDBI Ltd. and had decided to do so in the interest of LIC and its stakeholders.

57. Plainly, this Court cannot reappraise the decision of the LIC Board to invest in IDBI Ltd. on merits. This Court does not have the wherewithal or the competence to examine the merits of a commercial decision made by LIC. Given the limited scope of judicial review, the examination by this Court must be confined to the decision making process. The first time that the Board of LIC was moved to consider the aforesaid proposal was by a circulation of an agenda note dated 02.05.2018. The said note was captioned “*Re: Diversification in the Area of Banking*” and had sought the approval of the Board to take initiatives for taking a controlling stake in or taking over a bank. The said note did not mention IDBI Limited, but merely sought approval of the Board to take controlling stake in ‘a bank’. On 03.05.2018, the LIC’s Board approved the following resolutions:-

“RESOLVED THAT the Board accords in-principle approval for LIC of India to take initiatives for taking controlling stake in/taking over a Bank.

RESOLVED FURTHER THAT the Chairman, LIC of India is authorized to initiate steps in the matter including obtaining necessary Government/Regulatory approvals.”

58. Immediately on the next day – that is, on 04.05.2018 – the Chairman of LIC addressed a letter to the Secretary Department of Financial Services, Government of India seeking clearance to go ahead in the matter. The said letter did not specifically mention acquiring any stake in IDBI Ltd. but alluded to the speech of the Finance Minister for transformation of IDBI Limited. A plain reading of the said letter also indicates that there had been certain informal discussions between the Chairman and Officials of the Government of India. Thereafter, LIC sent communications to IRDAI seeking the approval to acquire 51% shares of IDBI Ltd. and also took the further steps in the said direction. It is in the aforesaid context that Mr Bhushan had submitted that LIC Board had not applied its mind to acquire IDBI Ltd. while granting its approval. The aforesaid contention would have merit if the LIC Board had not examined the matter on subsequent stages as well.

59. On 04.05.2018, the LIC’s Board had only considered a proposal for acquiring majority stake in a bank. It is also clear that the proposal for acquiring majority stake in IDBI Ltd was on the anvil but was not specifically placed before the LIC’s Board. However, this Court finds no infirmity with such procedure, as it is common for the executives of a company to complete the ground work and finalise the details of a transaction before seeking the final approval in the Board of Directors.

It is apparent that the Chairman of LIC had engaged in informal talks with the officials of the Government for acquiring stake in IDBI Ltd. It is also possible that the first overtures for LIC to acquire such stake may have been made by the Central Government (although there is no material to establish the same). However, the LIC's decision to acquire 51% stake in IDBI Ltd. cannot be faulted as the approval of LIC's Board had been obtained on various occasions as the transaction had progressed.

60. It is relevant to note that IRDAI had, by a letter dated 19.06.2018, also enquired whether LIC's Board had approved the proposal to acquire controlling stake in IDBI Ltd. In response to the same, LIC had explained that its Board had already approved initiations of steps for acquiring a controlling stake in a bank and a specific proposal regarding the acquisition of controlling stake in IDBI Ltd. would be placed before LIC's Board after approval from the Government of India.

61. After obtaining the approval of IRDAI, a specific approval was sought by LIC's Board. On 05.07.2018, the LIC's Board granted its approval to undertaking the due diligence based on data available in public domain for acquiring the stake of 51% in IDBI Ltd. It also granted approval to appoint two Merchant bankers, one external audit firm and one rating agency for apprising the acquisition of 51% stake in IDBI Ltd. It is apparent from the above that even at that stage LIC's Board had not granted its final approval for acquiring 51% shares in IDBI Ltd.

62. LIC's Board once again considered the transaction on 16.07.2018. The minutes of the meeting indicate that detailed discussions were held in the Board Meeting held on 16.07.2018. Several issues were discussed including the huge NPAs of IDBI Ltd. and the strategy for LIC to manage the same. After considering the same, the LIC's Board passed the following resolutions:-

“RESOLVED THAT LIC of India may acquire controlling stake upto 51% stake in IDBI Bank.

RESOLVED THAT LIC of India to have proper structured mechanism to ensure that IDBI bank is professionally managed under the supervision of a professional Board and to have an effective oversight of the performance of the investment in the Bank as stipulated by IRDAI and also suggested by consultants.

RESOLVED FURTHER THAT the Chairman, LIC of India is authorised to initiate process of taking approvals from GOI, RBI, SEBI, other related agencies and to initiate further process with IDBI Bank and decide related matter.”

63. Undisputedly, there are serious issues with regard to the affairs of IDBI Ltd. LIC's Board had also raised several questions as to the strategy to turn around IDBI Ltd. Mr Bhushan had contended that in view of the questions raised by LIC, its resolution to grant approval was clearly without application of mind and amounted to abdication to its obligation to safeguard the interests of its stake holders. This contention is not persuasive. Undoubtedly, LIC's Board had raised questions with regard to the affairs of IDBI Ltd. and had directed

preparation of an action plan to turn around IDBI Ltd. With regard to the IRDAI's decision to reduce LIC's stake over the years, LIC's Board had also directed that LIC bring out a strategy paper. However, these issues related to how LIC would proceed further after the acquisition; it does not establish that LIC's Board had any reservation as to the investment in IDBI Ltd. On the contrary, it clearly establishes that LIC's Board was conscious of the state of affairs of the IDBI Ltd. and despite the issues had resolved that LIC acquires a controlling stake in IDBI Ltd. The minutes of the meetings of the Board of LIC held on 16.07.2018 clearly indicates that the LIC's Board decision to grant approval was after deliberation and after the LIC's Board was fully apprised of the affairs of IDBI Ltd.

64. The decision of LIC's Board is a commercial decision and, therefore, it is not open for this Court to examine the merits of the said decision. Mr Bhushan has, undoubtedly, made a compelling case to establish that LIC's decision was erroneous. He had also contended that the said decision had been thrust upon LIC by the Government of India. Mr Bhushan may be correct in his submissions; investment in IDBI Ltd. may or may not be beneficial for LIC and its stakeholders; but that is not a controversy that this Court is required to enter into. Even if Mr Bhushan's contention in this regard is accepted, this Court cannot supplant its opinion over that of the Board of LIC. This Court is also unable to accept that the decision to invest in IDBI Ltd. is so perverse and unreasonable that no sensible person would take the

same. LIC believes that acquiring a bank would be of strategic importance and this Court has no reason to question the same.

65. Once it is established that the Board of LIC was aware of the state of affairs of the IDBI Ltd. and yet had approved the investment in their commercial wisdom, no further examination is necessary. It is also relevant to note that LIC's Board had once again discussed the matter at a meeting held on 20.08.2018 and had taken decisions to take further steps to implement the decision to make investment in IDBI. This also establishes that the LIC's Board has been apprised from time to time as to the progress of the transaction and has consciously approved the same.

66. In view of the above, this Court finds no ground to interfere with the decision of LIC's Board to acquire controlling interest in IDBI Limited.

Whether the decision of IRDAI to relax the provisions of Regulation 9 of the Insurance Regulatory and Development Authority of India (Investment) Regulations, 2016 is arbitrary and unreasonable?

67. The Insurance Act, 1938 (Insurance Act) contains extensive provisions relating to investments to be made by an insurance company. In terms of Section 27 of the said Act, every insurer is required to invest and at all times, keep invested assets equivalent to his liabilities to holders of insurance policies on account of matured claims and the amounts required to meet liability, in specified securities.

68. Section 27(1) of the Insurance Act is relevant and is set out below:-

“27. (1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of-

- (a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and
- (b) the amount required to meet the liability on policies of life insurance maturing for payment in India,

less-

- (i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and
- (ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability,

in the manner following, namely, twenty-five per cent of the said sum in Government securities, a further sum equal to not less than twenty-five per cent of the said sum in Government securities or other approved securities and the balance in any of the approved investments specified in sub-section (1) of section 27A or, subject to the limitations, conditions and restrictions specified in sub-section (2) of that section, in any over investment.”

69. The term “approved securities” is defined under Section 2(3) of the Insurance Act, which is set out below:-

“(3) “approved securities,” means-

(i) Government securities and other securities charged on the revenue of the Central Government or of the Government of a State or guaranteed fully as regards principal and interest by the Central Government or the Government of any State;

(ii) debentures or other securities for money issued under the authority of any Central Act or Act of a State Legislature by or on behalf of a port trust or municipal corporation or city improvement trust in any Presidency-town;

(iii) shares of a corporation established by law and guaranteed fully by the Central Government or the Government of a State as to the repayment of the principal and the payment of the dividend;

(iv) securities issued or guaranteed fully as regards principal and interest by the Government of any Part B State and specified as approved securities for the purposes of this Act by the Central Government by notification in the Official Gazette; and”

70. Section 27A(1) of the Insurance Act further provides that no insurer carrying on life insurance business shall invest, or keep invested, any part of the Controlled Fund otherwise than in approved investments as may be specified by Regulations subject to limitations, conditions and restrictions therein. Further, Section 27A(3) of the said Act prohibits any insurer from investing in shares of any one banking company or in shares and debentures of any one company in excess of the limits as specified in the Regulations. Section 27A of the said Act is set out below:-

“27A. (1) No insurer shall invest or keep invested any part of his controlled fund otherwise than in any of the following approved investments, namely:

(a) approved securities;

(b) securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom;

(c) debentures or other securities for money issued with the permission of the State Government by any municipality in a State;

(d) debentures or other securities for money issued by any authority constituted under any housing or building scheme approved by the Central or a State Government, or by any authority or body constituted by any Central Act or Act of a State Legislature;

(e) first mortgages on immoveable property situated in India under any housing or building scheme of the insurer approved by the Authority or a State Government;

(f) debentures secured by a first charge on any immoveable property plant or equipment of any company which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by it;

(g) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures;

(h) first debentures secured by a floating charge on all its assets of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

- (i) preference shares of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;
- (j) preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the ordinary shares of the company in winding up;
- (k) shares of any company which have been guaranteed by another company, such other company having paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent of the paid up amount of preference and ordinary shares of the guaranteeing company;

- (l) shares of any company on which dividends of not less than four per cent including bonus have been paid for the seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding;
- (m) first mortgages on immovable property situated in India or in any other country where the insurer is carrying on insurance business

Provided that the property mortgaged is not leasehold property with an outstanding term of less than thirty years and the value of the property exceeding by one-third, or if it consists of buildings, exceeds by one-half, the mortgage money;

- (n) immovable property situated in India or in any other country where the insurer is carrying on insurance business:

Provided that the property is free of all encumbrances;

- (o) loans on life interests, or on policies of life insurance within their surrender values issued by him or by an insurer whose business he has acquired and in respect of which business he has assumed liability;
- (p) life interests;
- (q) fixed deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934) or with co-operative societies registered under the Indian Co-operative Societies Act, 1912 (6 of 1912), or under any other law for the time being in force, the primary object of which is to finance other co-operative societies similarly registered;
- (r) debentures of, or shares in co-operative societies registered under the Indian Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force;
- (s) such other investments as the Authority may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Notwithstanding anything contained in sub-section (1), an insurer being a company or a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95, may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund otherwise than in an approved investment, if-

- (i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent of the sum referred to in sub-section (1) of section 27,

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported without delay to the Authority with full details of the investments and the extent of the director's interest in any such investment.

(3) An insurer shall not out of his controlled fund invest or keep invested in the shares of any one banking company or investment company more than—

(a) two and a quarter per cent of the sum referred to in sub-section (1) of section 27, or

(b) two per cent of the subscribed share capital and debentures of the banking company or investment company concerned,

whichever is less.”

71. It is also relevant to refer to Section 27D of the Insurance Act, which enables IRDAI (referred to as “Authority”) to specify by Regulations the manner and conditions of investments of assets to be held by the insurer. Section 27D of the Act is set out below:-

“27D. (1) Without prejudice to anything contained in this section, the Authority may, in the interests of the policyholders, specify by the regulations, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.

(2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policyholders shall be invested in the infrastructure and social sector as may be

specified by the regulations and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or health insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

(3) The Authority may, after taking into account the nature of business and to protect the interests of the policyholders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.”

72. Section 114A(1) of the Insurance Act empowers IRDAI to make Regulations to carry out the purposes of the said Act. Clause (i) of Sub-section 2 of Section 114A of the Insurance Act expressly provides that IRDAI may make Regulations in respect of “*investment of assets and further provisions regarding investments by an insurer and investment by insurers in certain cases under sections 27, 27A, 27B, 27C and time, manner and other conditions of investment of assets under section 27D*”.

73. In exercise of the aforesaid powers, IRDAI has made the Investment Regulations [the Insurance Regulatory and Development Authority of India (Investment) Regulations, 2016]. Regulation 9 of the Investment Regulations provides for the exposure/prudential norms. This includes the amount that can be invested by an insurer in

equities and debt of any company (referred to as “investee company”).

The relevant extract of the said norms are set out below:-

“

Investment Assets	Limit for ‘Investee’ company	
	Equity	Debt
Rs.250000 Crores or more	15% of outstanding equity shares (face value)	15% of paid up share capital, free reserves (excluding revaluation reserve) & debentures/bonds
Rs.50000 Crores but less than Rs.250000 Crores	12% of outstanding equity shares (face value)	12% of paid up share capital, free reserves (excluding revaluation reserve) & debentures/bonds
Less than Rs.50000 Crores	10% of outstanding equity shares (face value)	10% of paid up share capital, free reserves (excluding revaluation reserve) & debentures/bonds

”

74. Admittedly, in terms of the aforesaid norms, LIC was precluded from increasing its equity stake in any company beyond 15% of the outstanding equity shares of the said company. Thus, in terms of Regulation 9 of the Investment Regulations, LIC could not acquire more than 15% of the equity shares of IDBI Ltd. It is in this context, IDBI had applied to IRDAI for relaxing exposure/ prudential norms as stipulated in Regulation 9 of the Investment Regulations. Regulation 14(2) of the Investment Regulations empowers IRDAI to issue any general or special order for modifying or changing the application of certain Regulations to any insurer. Regulation 14(2) of the Investment Regulations reads as under:-

“14(2). The Board of the Authority may, by any general or special order, modify or change the application of regulations (4), (5), (6), (7),(8), (9) and (10) to any insurer either on its own or on an application made to it”

75. At this stage, it would also be relevant to briefly examine the specified Regulations. Regulation 4 of the said Regulations requires that a life insurer will invest specified funds as per Regulation 5,6 and 7. All funds of the Life Insurance Business are required to be invested as per Regulation 5; all funds of pension, annuity and group business are required to be as per Regulation 6; and all funds of Unit Reserve Portion of all categories of Unit Link Funds are required to be invested as per Regulation 7. Regulation 4 is set out below:-

“4. Regulation of Investments – Life Insurer

A life insurer, for the purpose of these Regulations, shall invest and at all times keep invested, the Investment Assets forming part of the Controlled Fund as under:

a. all funds (excluding Shareholders’ funds held beyond solvency margin, held in a separate custody account) of Life insurance business and One Year Renewable pure Group Term Assurance Business (OYRGTA), and non-unit reserves of all categories of Unit linked life insurance business, as per Regulation. 5.

b. all funds of Pension, Annuity and Group Business [as defined under Regulation 2 (1)(e) of RIRDAI (Actuarial Report and Abstract for life insurance business) Regulations] as per Regulation 6; and

c. the unit reserves portion of all categories of Unit linked funds, as per Regulation 7. ”

76. Regulation 5 stipulates that 25% of all funds as mentioned in Regulation 4(a) be invested in Central Government Securities. It further stipulates that not less than 50% of such funds be invested in Central Government Securities, State Government Securities or other approved securities. It is further stipulated that other investments, as specified in Section 27(A)(2) of the Insurance Act, not exceed 15% of the funds as specified in Regulation 4(a) of the Investment Regulations.

77. Regulation 3 proscribes an insurer to invest any part of its ‘Controlled Funds’ otherwise than in approved securities and approved investments.

78. Whereas IRDAI has the power to modify or change the application of Regulations 4 to 10 of the said Regulations, it has no power to relax the rigours of Regulation 3. Thus, an insurer is required to ensure that no part of its investments is made in any asset other than in approved securities as defined under Section 2(3) of the Insurance Act or approved investments as set out in Regulation 3 of the said Regulations.

79. LIC has, undisputedly, complied with investment restrictions and has not invested any part of the controlled funds other than any approved securities/investments. It has also adhered to the limits as specified in Regulations 5,6 and 7 of the Investment Regulations.

Regulation 9 specifies the limits and extent of investment that could be made in any one company.

80. The limited question that requires to be addressed is whether the decision of the IRDAI to relax the rigours of Regulation 9 and permit LIC to acquire shareholding in excess of 15% in IDBI Ltd. is arbitrary, unreasonable or without application of mind.

81. It is clear from plain language of Regulation 14 of the Investment Regulations that the Board of IRDAI is duly empowered to relax the rigours of Regulation 9 of the Investment Regulations either by a general or a special order. The petitioner also does not dispute that IRDAI is vested with such powers. However, the petitioner claims that such exercise is arbitrary, unreasonable and without application of mind. Thus, essentially, the petitioner challenges the manner in which the IRDAI has exercised such powers.

82. It is settled law that every power is coupled with a duty to exercise the same for the purposes for which such power is vested. Thus, undoubtedly, IRDAI is required to modify or relax the applications of the specified provisions of the Investment Regulations, if the same is warranted.

83. The Investment Regulations are silent as to the factors to be considered by IRDAI while exercising its powers under Regulation 14 (2) or the grounds on which such power is required to be exercised. However, it's apparent that where an insurer presents a bona fide reason, which in view of IRDAI warrants departure from the

Investment Regulations, it would be incumbent for IRDAI to grant the same.

84. Plainly, the IRDAI is also required to bear in mind the object for regulating the investment of an insurer while considering whether to relax any restrictions as specified in the Investment Regulations. The principal object in framing the Investment Regulations is to insulate the policyholders from unwarranted risks and to ensure that the insurers do not default in their commitment to the policyholders.

85. In the present case, the proposed investment for acquisition of majority shares in IDBI Ltd. is ₹10,000 cr. which, the LIC states, is 2.5% of yearly incremental investment and 0.4% of total investment assets. Thus, evidently, there is no reason to believe that the said investment would expose the policy holders to any unwarranted risk. As stated earlier, the LIC has not been exempted to invest the specified percentage of its controlled funds in Government Securities (which is perceived as involving minimal risk). The proposed investment is within the limit set for investment in other than approved investment, as specified in Section 27A(2) of the Insurance Act; that is, it is 15% of the funds as specified in Section 27(1) of the Insurance Act.

86. Thus, the safeguards put in the Investment Regulations for ensuring that LIC does not default in its commitments and the investments made are within the parameters stipulated for protecting the interests of the policy holders, are duly complied with.

87. The restrictions stipulated for making investment in any one company are two-fold. The first is the extent of 'controlled funds' that can be invested in one company (the investee company); and the second is the extent of the capital of the investee company that can be acquired. The object of the first type of restriction is to avoid excessive exposure in an investee company to minimise the risk. Admittedly, this restriction has been complied with.

88. The object and rationale of imposing the second restriction – that is, to ensure that an insurer does not acquire more than 15% equity stake in any one investee company – is to ensure that LIC remains a plain investor and not a promoter and the insurer does not use the funds to acquire managerial control of companies. A miniscule and relatively insignificant percentage of the controlled funds of LIC may be sufficient to acquire controlling stakes companies having a low Market Capitalisation. Although, this acquisition may have little risk for the policy holders, it does have the propensity to dilute the role of LIC as a plain investor. Permitting such acquisition could also mean use of public funds for take-over of companies (hostile or otherwise). Such investments may result in LIC to taking up a role where its interest as an investor conflict with its interest to further the business of an investee company.

89. The decision of IRDAI to relax the application of Regulation 9 of the Investment Regulations by a special order must be viewed in the above perspective – it is not a relaxation of the risk profile of

investments but a permission to LIC to take up controlling stake in the investee company.

90. This Court may now proceed to examine the relevant factual context in which IRDAI's permission was sought and granted.

91. LIC had sent a letter dated 05.06.2018 to DGM, IRDAI indicating its intention to acquire a controlling stake in a bank. It had explained that the decision to do so was strategic in nature. Thereafter, LIC sent a letter dated 15.06.2018 setting out its proposal to acquire controlling stake in IDBI Ltd. A perusal of the said proposal indicates that the LIC had set out the reasons for acquiring a controlling stake in a bank and how the same would benefit LIC. LIC had also explained that the policyholders fund would be duly safeguarded. The relevant extract of the said proposal indicating the case canvassed by LIC in regard to safeguarding policyholders' fund is set out below:-

“(iv) Safeguard of the Policyholders' Fund:”

A study of the bank gives an ample indication that there is minimum downside in the investment.

(a) Brand LIC itself will give stability and upside;

(b) LIC's retail transaction to customers on an average is more than one and a half crore to about 50 lac customers. Even if a part of business is shifted to the Bank due to synergy of operations for efficiency and profitability, it can give a huge upside to the Bank;

(c) synergy in investment for LIC's investment in corporate world will be substantial by way of banks' capability of credit appraisal and project finance processes;

(d) subsidiaries of the banks shall be utilised for providing business by LIC which will again improve the efficiency and profitability;

The following measures shall further help in safeguarding the policy holders fund –

(a) the amount of investment is less than Rs.10,000 cr. which in terms of the LIC's investment is 2.5% of yearly incremental investment and 0.4% of total investment assets;

(b) bank has put in place a turnaround strategy which has started yielding results and is reflected in significant improvement in key parameters such as operating profit, provision coverage ratio, recovery performance, cost to income ratio and share of low cost deposits;

(c) the bank's image of modern private retail bank will be further strengthened by showcasing it with strength of brand LIC;

(d) the volume of banking related business of LIC is so high that even 20% shift to this bank shall give them major business and income;

(e) LIC is having about 24 crore policyholders and about 50 lac pension policyholders. It gives a huge opportunity to the bank to improve their CASA and retail customer base.

The systemic dilution of stake as per the glide path prescribed by the RBI & IRDAI shall also safeguard the policyholder's fund. RBI

guidelines for 'on tap' licensing of universal banks provides for such glide path."

92. In response thereto, IRDAI had sent a letter dated 19.06.2018 seeking certain clarifications including LIC's appraisal of acquiring stake in IDBI Ltd. and the total outlay involved. LIC had responded by a letter dated 26.06.2018 indicating that it had already acquired 7.98% of the shareholding of IDBI Ltd. and would further require to invest ₹10500 crores to acquire the balance 43.02% shares to increase its holding to 51%.

93. Thereafter, by a letter dated 04.07.2018, IRDAI communicated its decision to permit LIC to acquire 51% of equity shares in IDBI Ltd. as a special case subject to following restrictions. The said letter is set out below:-

"REF:INV/LIC/LR/002/2018-19 Date: 4th July, 2018

The Chairman
Life Insurance Corporation of India
Central Office, "Yogakshema", Heevab Vuna
Narg
Mumbai – 400021
Sir,

Sub: Acquisition of Stake in IDBI Bank – Reg.

Reference is invited to your letter INVO/Equity/2 dt. 15th June, 2018 and INVO/Equity/ED dt. 26th June, 2018 on the above subject. In this connection, the Authority, in terms of powers vested under Regulation 14(2) of IRDAI (Investment) Regulations 2016 is agreeable to permit LIC to acquire upto 51% of Equity Shares

in IDBI Bank as a special case, subject to the following conditions:

1. The deal should be commercially viable and should be arrived at after due-diligence and approval of LIC Board.
2. LIC shall ensure that provisions of Life Insurance Corporation Act 1956. Insurance Act, 1938. IRDA Act 1999. Rules and Regulations of IRDAI and any other relevant law in force are strictly followed.
3. The permission to acquire upto 51% stake in IDBI Bank is subject to all necessary regulatory approvals from RBI, SEBi and any other relevant Agency.
4. LIC shall ensure that acquiring additional stake in IDBI Bank is done in a prudent manner such that the interests of the policyholders are safeguarded. LIC shall make all efforts to maximise returns from the deal so that the returns are commensurate with the average returns from overall investments of LIC.
5. LIC shall progressively bring down the stake in IDBI Bank within the Regulatory limits as mandated by IRDAI (Investment) Regulations, 2016 over a period of time as may be stipulated by IRDAI.
6. LIC shall ensure that IDBI Bank is professionally managed under the supervision of a professional Board and LIC shall have an effective oversight of the performance of the investment in the Bank through appropriate mechanism including Quarterly Performance review by LIC Board.

Yours faithfully

SN Jayasriman
HoD (Investments)”

94. Mr Bhushan had contended that the said letter clearly indicates that IRDAI had not evaluated the merits of the investments. He submitted that although IRDAI had raised certain queries, it had not received definite answers to the same; in particular, IRDAI was not informed as to the capital required to be infused in IDBI Ltd and, therefore, the IRDAI’s decision is liable to be set aside.

95. This Court is not persuaded to accept the aforesaid contention, essentially, for two reasons: first, it does not appear that IRDAI was required to examine the merits of the decision to invest in IDBI Ltd. The LIC’s decision to invest in IDBI Ltd. was a strategic decision and the said decision rested with the Board of LIC. IRDAI was required to ensure that (i) such decision would not place policyholders’ funds at risk (which is the principal object of placing restrictions on the assets in which insurers can invest the Controlled Funds); and (ii) that there was a reason for LIC to make a strategic investment for acquiring controlling interest in a bank.

96. The LIC had provided sufficient material and justification for making an investment in a bank. It had also specified that amount of investment for acquisition of the controlling interest in IDBI Ltd. would be 25% of LIC’s incremental early investment and 0.4% of the total investment. In view of the above, IRDAI had sufficient material

to take an informed decision whether the proposed investment would subject the policyholders to unwarranted risk.

97. LIC had explained that Bancassurance Channel (use of banking channels to market insurance services) was the reason for acquiring a strategic stake in IDBI Ltd. The relevant extract of LIC's proposal indicating the above is set out below:-

“The main reason for considering controlling stake in a bank is not merely of the seamless flow of the banking services for the Life Insurance Corporation of India, but to use it as a strategic tool for improving efficiency of service delivery reducing cost and having an in house Bancassurance channel. The major factor of significance is reduction in cost of distribution. The cost is sought to be reduced by building synergies among the various lines of analogous business. It is in this light that most of the financial institutions are building such business models which provide for easy flow of customers from one service to another with much lower cost in customer acquisition and retention.”

98. Plainly, once LIC had presented its rationale for seeking controlling interest in IDBI Ltd., IRDAI was required to examine the same (and not the merits of the investment decision). It is doubtful whether, as a regulator, IRDAI could examine the merits of the investment decision.

99. IRDAI had examined the proposal and there was sufficient material for IRDAI to take the decision that it did. This Court is not

called upon to supplant its view over that of IRDAI or examine IRDAI's decision on merits. The scope of judicial review in these proceedings is limited. This Court does not sit in appeal on the merits of the decision taken by IRDAI. It is apparent that there was sufficient material for IRDAI to accept that the policyholders' funds were duly protected and that LIC had a sufficient reason to make a strategic investment in IDBI Ltd. Thus, IRDAI's decision cannot be called into question in these proceedings.

100. It was next contended that since IRDAI had granted the permission subject to certain conditions, including that the commercial viability should be arrived at after due diligence and approval of the LIC Board, IRDAI had abdicated its duty to examine the same. This contention is also unmerited. IRDAI is not required to examine the commercial viability of the LIC's decision. The said decision rested solely on the Board of LIC. IRDAI would merely require to examine whether (a) there were bona fide reasons for LIC to seek relaxation of the exposure norms; (b) whether such exposure would pose an unwarranted risk to the policyholders; (c) whether it would amount to LIC compromising its business as an insurer; and (d) any other factor that may be considered necessary. It is apparent that IRDAI had examined the same and, therefore, granted the approval subject to certain conditions. As stated above, the said decision cannot be questioned on merits. Plainly, the said decision also does not fall foul of the ***Wednesbury Test***; it is not possible for this Court to accept that

the decision is so arbitrary or unreasonable that no sensible person would accept the same.

101. It was also contended that IRDAI has expressly stipulated that LIC would reduce its stake progressively over a period of time and this was contrary to LIC's objective of maintaining a controlling interest in a bank. It was contended that this stipulation also indicated that IRDAI had failed to apply its mind to the proposal submitted by LIC. This contention is also unmerited. LIC's proposal is to acquire a Controlling Interest in IDBI Ltd. for securing Bancassurance Channels (that is, banking channels for selling insurance). Even though, it is stipulated that the LIC would reduce its shareholding stake in IDBI Ltd., it does not necessarily follow that LIC would cede controlling interest in IDBI Ltd. or lose access to Bancassurance Channels. Controlling Interest is not synonymous to holding majority of the outstanding equity capital. The extent of shareholding required to maintain a Controlling Interest is also dependent on how widely the shares of the company are disbursed. There are a large number of companies where promoter holding is less than 15%. LIC's object of holding Controlling Interest in IDBI Ltd. is not necessarily compromised by IRDAI's condition to reduce the stake below 15% progressively. The LICs Board had considered the same at the meeting held on 16.07.2018 and had directed LIC to bring out a strategy paper.

Whether LIC's acquisition of a majority equity stake in IDBI Ltd. fall foul of section 25FF of the Industrial Disputes Act, 1947?

102. Section 25 FF of the Industrial Disputes Act, 1947 reads as under:

“25FF. Compensation to workmen in case of transfer of undertakings

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

PROVIDED that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if-

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favorable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.”

103. In the present case, there is no transfer of undertaking. The integrity of IDBI Ltd. as a company is not disturbed. LIC is not acquiring any undertaking of IDBI Ltd. There is no change in the

employer and the members of the petitioner association continue to be employed by IDBI Ltd. Further, neither the service of employees nor the terms of such service are altered by the impugned transaction. Thus, the contention that the transaction of acquisition of shares falls foul of Section 25FF of the Industrial Disputes Act, 1947 is unmerited.

104. In view of the above, the petition is dismissed. All pending applications stand disposed of. The parties are left to bear their own costs.

DECEMBER 17, 2018
pkv/RK

VIBHU BAKHRU, J



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