

S.No.5

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
02-05-2024 AT 10:30 AM**

CP(CAA) No. 01/230/HDB/2024
u/s. 230 of Companies Act, 2013

IN THE MATTER OF:

M/s. Shriram Li Holdings Pvt Ltd (Transferor Company) and M/s. Shriram Life Insurance Company Ltd (Transferee Company) and Their Respective Shareholders and Creditors **...Petitioner**

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

Orders pronounced. In the result, CA (CAA) No. 01/230/HDB/2024 is allowed, subject to the directions mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD-1**

CP (CAA) No.1/230/HDB/2024
Connected with
CA (CAA) NO.63/230/HDB/2023
U/s 230 and 232 of the Companies Act, 2013

**IN THE MATTER OF
SHRIRAM LI HOLDINGS PRIVATE LIMITED
(TRANSFEROR COMPANY)
AND
SHRIRAM LIFE INSURANCE COMPANY LIMITED
(TRANSFeree COMPANY)
AND
THEIR RESPECTIVE SHAREHOLDERS**

SHRIRAM LIFE INSURANCE COMPANY LIMITED

Having its registered office at
Ramky Salenium , Plot No. 31 & 32,
Financial District, Gachibowli,
Hyderabad, Telangana- 500032
Represented by its Managing Director & CEO
Mr. Casparus J. H. Kromhout

...Petitioner Company/Transferee Company

DATE OF ORDER: 02.05.2024

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

Counsels / Parties Present

- For the Petitioner : Mr.KG Raghavan, Sr.Counsel for
CS Dr. Ahalada Rao Vummenthala, PCS.
CS Venkatesh Puranik, PCS.
Ms. Preeti Mohan, Advocate.
Ms. Ragha Sudha, Advocate.
Ms. Sagarika Shankar, Advocate.
Ms. Priyanka Ajjanavar, Advocate.
- For the Respondent: Mr.D.Vasantrao Meshram, Assistant O.L
Mr.M.V.Suresh, Standing Counsel for IRDA,India
Mr.Harsha Vardhan, Assistant Regional Director

PER BENCH

1. This Petition is filed by the Petitioner Company under Section 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of the Companies Act, 2013 by inter-alia praying for sanction of the Scheme of Amalgamation (Annexure-6) to be operative with effect from the Appointed date binding from the Effective date on the Companies their respective shareholders, creditors, and all other persons concerned.
2. The averments made in the Petition are briefly described as under:
 - a. The Petitioner Company/ Transferee Company, M/s. **Shriram Life Insurance Company Limited** (“**Transferee Company**”) was incorporated on 15th March, 2005 under the provisions of the Companies Act, 1956 in the erstwhile State of Andhra Pradesh. The CIN of the Transferee

Company is U66010TG2005PLC045616 and registered under the Registrar of Companies, Hyderabad. The Petitioner Company is registered as a Life Insurance Company with Insurance Regulatory and Development Authority of India (IRDAI)(hereinafter referred to as the “Business of the Transferee Company”). A copy of the Certificate of Incorporation, Memorandum and Articles of Association of the Transferee Company are annexed as **Annexure 1 & 2** to this Petition.

- b. The authorized, issued, subscribed and paid-up share capital of the Transferee Company as on 31st March 2023 are as under:

Particulars	Amount in Rupees
Authorized Capital	
Equity Shares of Rs. 10/- each, 25,00,00,000	2,50,00,00,000
Total	2,50,00,00,000
Issued, Subscribed and Paid-up	
Equity Shares of Rs. 10/- each, 17,93,75,000	179,37,50,000
Total	179,37,50,000

is no change in the capital structure of Petitioner Company after 31st March 2023.

3. It is averred that the Transferor Company is situated in the state of Tamil Nadu and thus does not fall under the Jurisdiction of this

Tribunal. It is further stated that the Transferor Company holds 74% of the paid-up equity shares in Transferee Company.

4. The Board of Directors of the Petitioner Company in their respective Board Meeting held on 9th August, 2023 considered and approved the Scheme. A copy of the Board Resolution is annexed herewith as **Annexure 5** to the Petition.

5. **BENEFITS ARISING OUT OF AMALGAMATION:**

The reasons and rationale underlying the Scheme specific to each of the concerned companies, which would make it beneficial for the Transferor and Transferee companies and their respective shareholders are as follows:

- a. The amalgamation will bring together and consolidate the companies in the Shriram Group, with a clear focus on the life insurance business.
- b. The amalgamation will enable the shareholders of the Transferor Company to hold shares directly in the Transferee Company, and thereby eliminate the need for holdings through the Transferor Company, one of whose significant activities has been investments in the life insurance sector, of which its investment in the Transferee Company predominant.
- c. Such holding of shares directly in the operating entity engaged in life insurance will enable the shareholders of the Transferor Company to contribute directly and significantly to the capital infusion needs, and growth objectives of the life

insurance business, thereby creating a much stronger life insurance business within the Group, with greater access to capital and resources for expansion. It will enable the business to achieve much larger scale and coverage, and enable it to harness its true potential.

- d. On implementation of the Scheme, Shriram Capital Private Limited ["SCPL"], which has multiple revenue streams and a substantial net worth and standing, will become a significant shareholder and the promoter of SLIC, thereby placing SLIC in a better position to satisfy the regulatory requirements.
- e. The amalgamation will unlock value for the shareholders, and result in a simplified structure of holdings, which will also be in line with the regulatory intent to move towards leaner holding structures in the life insurance sector, with fewer layers.
- f. The Transferor Company's business focus on attracting investments and formulating strategies for the same, will also benefit the amalgamated entity with the possibility of raising capital for the life insurance business, in addition to the shareholders themselves having the opportunity to contribute directly to such capital needs.
- g. The amalgamation of the Transferor Company and the Transferee Company will create a stronger and more robust life insurance entity within the Group, with better visibility, an enhanced profile, and stronger focus on creating a

business with the highest standards of corporate governance, and efficient and transparent management.

- h. The amalgamation will enable appropriate consolidation of the resources of the Transferor Company and the Transferee Company with pooling and more efficient utilization, reduction in overheads and other expenses, in addition to enabling the carrying on of the business in a more efficient, streamlined, and organized fashion.
- i. The proposed amalgamation will result in administrative rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources. The synergies created by the amalgamation would increase operational efficiency and integrate business functions, and the entities in the Group with a focus on the same sector.
- j. The proposal in the Scheme to amalgamate the Transferor Company with the Transferee Company, will also serve to be highly beneficial to all the stakeholders, including in particular the shareholders of the Transferor Company, who will be able to contribute directly and effectively to the needs of the life insurance business, while also unlocking value for them.

6. COMPLIANCE OF ACCOUNTING STANDARD

Upon effectiveness of the Scheme and with effect from the Appointed Date, the Transferee Company shall account for the amalgamation of the Transferor Company into the Transferee Company as under:

- i. the amalgamation will be accounted in accordance with the "pooling of interest method" prescribed under the Accounting Standard - Accounting for Amalgamations as notified under Section 133 of the Act. 14.
- ii. the assets (excluding investments of the Transferor Company in the Transferee Company), liabilities and all reserves of the Transferor Company shall be recorded by the Transferee Company at their existing carrying amounts.
- iii. the investment in Transferee Company held by Transferor Company and transferred to Transferee Company pursuant to the Scheme would get cancelled with a corresponding adjustment to 'Capital Reserves', after adjusting for fresh shares issued by the Transferee Company.
- iv. the excess/shortfall of consideration paid, after accounting for the expenses of amalgamation, shall be accounted as Goodwill/Capital reserve of the Transferee Company as the case may be.

7. CONSIDERATION

Upon coming into effect of this Scheme and in consideration for the transfer and vesting of the Transferor Company into the Transferee Company in terms of Part III of the Scheme, the Transferee Company shall without any further Petition or deed, issue and allot at par, shares credited as fully paid-up, to the extent indicated below, to the members of the Transferor Company, whose names are reflected in the Register of Members of the Transferor Company as on the Record Dated, in the following manner:

For every 1 (one) fully paid equity share of Rs. 10/- each, held by the Transferor Company in the Transferee Company, the shareholders of the Transferor Company will, as a whole, be entitled to 1(one) fully paid equity share of Rs. 10/- each of the Transferee Company, with the number of shares to be allotted to each of the shareholders of the Transferor Company being in proportion to their respective shareholding(s) in the Transferor Company.

A) In consideration for the amalgamation of the Transferor Company with the Petitioner Company, in terms of the Scheme, the shareholders of the Transferor Company, as a whole, will be entitled to be allotted 1 fully paid equity share of Rs. 10/- each in the Petitioner Company for every 1 fully paid equity share of Rs. 10/- each, held by the Transferor Company in the Petitioner Company, with the number of shares to be allotted to each of the shareholders of the

Transferor Company being in proportion to their respective shareholding(s) in the Transferor Company.

8. DECLARATION BY THE PETITIONER COMPANIES

- The Petitioner Company submits that there are no proceedings pending against them under Sections 210 to 227 of Companies Act, 2013 as on the date of filing of the present Petition.

9. While it is so, on 28.11.2023, this Tribunal upon hearing the Applicant Company in respect of the prayer for dispensing the meetings of shareholders and creditors of the Applicant Company, this Tribunal passed the following order:

“This Tribunal hereby dispensed with convening the meeting of equity Shareholders and Creditors of the Transferee Company. However, Applicant shall place copy of this order before concerned Regulatory Board and shall file compliance”.

10. After complying with the directions of this Tribunal vide order dated 28.11.2023, Petitioner Company had filed the present Company Petition for sanction of the Scheme. Thus, this Tribunal vide order dated 25.01.2024 ordered notices to all the statutory authorities as per Rule 16 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Subsequently notices were issued on all the statutory Authorities. It is further submitted that the Petitioner Companies as per the order of this Tribunal, carried out publication in the Financial Express (English) and Nava Telangana (Telugu)

Newspapers on 06.02.2024 and filed the Compliance Memo with this Tribunal on 26.02.2024.

11. As per the directions of this Tribunal notice was issued to **Competition Commission of India** under Section 6(2) of the Companies Act, 2002, by Shriram LI Holdings Private Limited and Shriram Life Insurance Company Limited on 16th January, 2024. On 8th November, 2023 the Competition Commission of India submitted that “considering the material on record and the details provided in the Notice and the assessment of the proposed Combination based on the factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India. Therefore, the Commission approves the Proposed Combination under Section 31(1) of the Act. Further stated that the order may be revoked at any time, if the information provided by the parties are found incorrect”.
12. Based on the notice issued by the petitioner company to the **Income Tax Department** upon directions given by this Tribunal, Income Tax Department vide its letter dated 05.03.2024 submitted that “upon verification of records, it is observed that there is no demand pending as on date pertaining to Transferee Company. Hence this Office has no objection in the said matter of Scheme of Amalgamation between the Companies”.
13. **REGIONAL DIRECTOR, SOUTHEAST REGION REPORT:**
 - The Regional Director vide his report dated 21.03.2024 has made certain observations. The Petitioner Companies have filed affidavit

dated 27.03.2024, in response to the observations made by the Regional Director, Southeast Region, Ministry of Corporate Affairs, Hyderabad.

Observations made by the Regional Director	Reply to the observations by the Petitioner Company
<p>Para 4(b)</p> <p>It is submitted that since one of the promoters of transferee company is Foreign Body Corporate, the Transferor and Transferee companies may be asked to comply with provisions of Foreign Exchange Management Act, 1999 and other applicable provisions as related thereto.</p>	<p>Petitioner Company has submitted that the Scheme does not require any specific approval or permission under FEMA, or the Regulations made thereunder. The Petitioner Company, further undertakes to comply with any applicable legal or regulatory requirements, if they so arise, from time to time.</p>
<p>Para 4(c-g)</p> <p>Hon'ble Tribunal may please to direct the Petitioner Company to preserve the books, comply with statutory laws, shall pay differential fee and stamp duty, file Inc-28 with the Registrar of Companies.</p>	<p>The Petitioner Companies vide this affidavit undertakes to comply with all the Applicable provisions and rules under the Companies Act, 2013.</p>

<p>Para 5</p> <p>Hon'ble Tribunal may direct the Petitioner Companies to furnish an undertaking that, if any demand arises from the Income Tax Department with respect to Transferor Companies and Transferee Company, Transferee Company is ready to pay the said dues as per rules.</p>	<p>The Petitioner Company states that the Income Tax Department <i>vide</i> its letter dated 05.03.2024 has confirmed that there is no demand pending against the Petitioner Company and has also given its no-objection to the scheme. Consequently, the question of the Petitioner Company providing any undertaking as sought for, may not arise. A copy of the letter submitted by the Income Tax Department to this Hon'ble Tribunal is attached.</p>
<p>Para 6(d)</p> <p>Transferee Company is regulated by Insurance Regulator Development Authority of India, thus, Hon'ble Tribunal may direct the Transferee Company to furnish NOC from the Sectoral Regulators.</p>	<p>The Petitioner Company submits that the IRDAI have, pursuant to the notice served on them, provided copies to the Petitioner Company of an affidavit dated 22.03.2024. The Petitioner Company will be duly dealing with the same.</p>
<p>Para 6(e)</p> <p>Hon'ble Tribunal may direct the Transferee Company to furnish an undertaking with regard to compliance of the provisions of</p>	<p>Petitioner Company confirms that Section 188 of the Act has been duly complied with in respect of the related party transactions referred to, and no part of the</p>

section 188 of the Companies Act, 2013.	Scheme relates to or affects the same.
<p>Para 6(f)</p> <p>Para 11 of the Scheme speaks about following the Pooling of Interest Method of Accounting by the Transferee Company as stipulated under Accounting Standard — 14 which may be modified to IND-AS-103 (instead of AS-14).</p>	<p>The Petitioner Company submits that the accounting standards prescribed under IND-AS are not applicable to insurance companies in India as on date, and are proposed to be implemented in a phased manner commencing from 01.04.2025. As such, insurance companies continue to be governed by the Indian GAAP (IGAAP). The Appointed Date in terms of the Scheme is 01.04.2023, and consequently, the accounting treatment will be only as per AS 14 of IGAAP. The Statutory Auditor has also issued a certificate as required under Section 133 of the Act, confirming that the accounting treatment proposed in the Scheme, is in conformity with the applicable accounting standards, a copy of which certificate has been annexed to the Company Petition (Pg. 159 – 160). Consequently, no modification to the Scheme is required in this regard.</p>

- The Regional Director filed further report dated 02.04.2024 stating that petitioner company has complied with the observations raised by the Deponent and hence matter may be decided on merits.

14. **Assistant Official Liquidator** Mr.D.Vasantrao Meshram, from OL office vide order dated 27.02.2024 stated that since the Transferor Company is in the jurisdiction of the office of the OL, Chennai, no observations by the Office of OL, Hyderabad is filed and the only objection is regarding jurisdiction.

15. **IRDAI (Insurance Regulatory and Development Authority of India)** had made certain objections on 22.03.2024 and prayed this Adjudicating Authority to dismiss the Application.

The petitioner Company filed its reply on 27.03.2024. Petitioner company before replying to the objections made by IRDAI, stated that the objections were filed beyond 30 days' time from the date of receipt of the notice. Based on the Judgment passed by Hon'ble Supreme Court of India in *re Dalmia Power Limited and Another vs Assistant Commissioner of Income Tax(2020) 14 SCC 736*, the present objections cannot be considered and are required to be rejected *in-limine*.

Further, the objections and reply are mentioned as below:

Objections filed by IRDAI	Reply to the objections filed by petitioner Companies
Para 2 It is averred that Section 35 of Insurance Act, 1938 enable the	Petitioner Company avers that such contention rest on a completely

<p>Amalgamation of one Insurance company with another Insurance Company only and there is no other Section in the Act to enable Amalgamation of one Insurance Company with a Non-Insurance Company.</p>	<p>flawed reading of the Section 35. As seen from Section 35 (1) i.e “<i>Notwithstanding anything contained in any other law for the time being in force, no insurance business of an insurer shall be transferred to or amalgamated with the insurance business of any other insurer except in accordance with a scheme prepared under this Section and approved by the Authority.</i>”.</p> <p>As seen from the language contained in Section 35(1) the provision is concerned with and applies only to a transfer of or the amalgamation of the insurance business of an insurer. It is only when the insurance business of an insurer is sought to be transferred or amalgamated, would the provisions applicability even be attracted.</p> <p>In the case of the present Scheme, there is proposal for the transfer or amalgamation of the insurance business of an insurance company. The Transferor Company does not carry on ‘insurance business’ within the meaning of Section 35 of the Act.</p> <p>Consequently, the fundamental condition for the applicability of Section 35, namely that there must be the transfer of or amalgamation of insurance business is not</p>
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attracted/satisfied in the present case. The fact that the Transferor Company does not carry on any insurance business is a position admitted even by the IRDAI, as seen from the contents of Para 3 of the Objections. Further, the insurance company involved in the present Scheme, is the Petitioner Company, who is only a transferee, and whose position, insurance business, and the licence to carry on the same, continue to remain intact and unaffected by the Scheme. Consequently, Section 35 would have no application to the present Scheme.

The Petitioner Company submits that the present Scheme which does not involve the transfer or amalgamation of the business of an insurance company, is one proposed under Sections 230-232 of the Companies Act, 2013. These provisions of the Companies Act apply with equal vigour to an insurance company, even as seen from Section 1(4)(b) of the Companies Act, 2013. The Section stipulates that the provisions of the Companies Act apply to insurance companies, except and in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938, or the

	<p>Insurance Regulatory and Development Authority, Act, 1999.</p>
<p>Para 3 It is averred that the transferor Company is a non-insurance company which does not deal with Insurance Business. Thus, the same has to bring to the notice of this Tribunal that a non-insurance company need not register it with the Authority.</p>	<p>It is averred that the Transferor Company in the present Scheme – i.e. Shriram LI Holdings Private Limited is not engaged in the business of insurance, and is also not required to register with the IRDAI. The Petitioner Company submits that the Transferor is in fact an unregistered Core Investment Company [“CIC”], whose only business is to hold shares in the Petitioner Company.</p>
<p>Para 5 It is averred that the sole purpose of Indian Insurance Companies are registered under Section 3 of the Insurance Act, 1983 and Section 2(7A) C is to carry on Life Insurance Business or General Insurance Business or Reinsurance Business or Health Insurance Business as the case may be. The Act only envisages the merger of an Insurance Company with another Insurance Company under Section 35 of the Act and there is no explicit provision which enable the merger of a Non-Insurance Company with an</p>	<p>It is averred that the present Scheme does not in any way affect the business being carried on by the Petitioner Company. The Petitioner Company will not, as a result of the Scheme, carry on any other business and will continue to carry on the same business of life insurance being carried on, with the same license, and without the same being altered or impacted in any manner. With regard to the contention that Section 35 of the Insurance Act only envisages the merger of an insurance company with another insurance company, as already pointed out, the provision</p>

<p>Insurance Company. Further there is no precedence in Authority of a Non-Insurance Company getting merged with an Insurance Company.</p>	<p>while applying to one specific type of merger or amalgamation, involving the transfer of insurance business, does not in any way exclude or restrict any other type of merger or amalgamation. The further assertion sought to be made that there is no precedent of the merger of a non-insurance company with an insurance company, is of no consequence. The absence of a precedent would not in any way lead to the conclusion that such a merger is impermissible, and what is relevant to determine its permissibility, is the statutory position. For the reasons already set out, it is clear that there is nothing in the statute which excludes such a merger.</p>
<p>Para 6 It is averred that the Act only envisages the merger of an Insurance Company with another Insurance Company only under the same class of business under Section 35 of the Act and hence there is no provision which enables the merger of a non-insurance company with an insurance company.</p>	<p>It is averred that there is no need for a specific provision in the Insurance Act enabling the merger of a non-insurance company with an insurance company, as Sections 230-232 of the Companies Act, 2013 dealing with schemes of arrangement and/or amalgamation, apply equally to insurance companies, and the applicability of these provisions is not excluded by the provisions of the Insurance Act.</p>

<p>Para 7</p> <p>It is averred that Insurance Companies collect, invest and manage the funds of the public in fiduciary capacity. The formats and presentation of financial statements of Insurance Companies are completely different from other commercial entities and considering the nuances of the Insurance business and the Legislative requirement of keeping the policy holder funds and shareholder funds separately. Thus, it is not permissible to merger an insurance business with any other commercial business.</p>	<p>The Petitioner Company in this context reiterates that the proposed Scheme does not alter the carrying on of its insurance business, or its operations in any manner. The Petitioner Company will continue to carry on such business, under the same licence, and the Scheme does not affect the same.</p> <p>It is averred that the requirements in relation to the manner of presentation of financial statements of insurance companies, and the contention that these are different from other commercial entities, cannot be a ground to object to the Scheme.</p>
<p>Para 8</p> <p>It is stated that the valuation of both the assets and liabilities of the Insurance Companies are done in a specific technical manner specified in the IRDAI, Regulations, 2016. Therefore, merging of assets and liabilities of Insurance Company with any other commercial entity with different valuation basis may pose significant challenges.</p>	<p>It is averred that the requirements in relation to the valuation of assets and liabilities of an insurance company, and the provisions of the IRDAI [Assets, Liabilities and Solvency of Life Insurance Business] Regulations, 2016, are in the context of the requirement for an insurance company to maintain the sufficiency of assets over liabilities, as contemplated in Section 64VA of the Insurance Act. The same has no nexus with or impact on how the shares of the Petitioner Company are to be valued for the purpose of</p>

	making allotments pursuant to a merger of the Transferor Company with the Petitioner Company.
<p>Para 9</p> <p>It is averred that the Act recognises transfer to or Amalgamation of the Insurance business with Insurance business only in accordance with the Scheme and with the approval of the Authority. The Act being a specific statute dealing with Insurance business, it will prevail over the General Law which is the Companies Act, 2013. Therefore, a Scheme of Amalgamation under Section 230 is not applicable for Indian Insurance Company.</p>	<p>It is averred that Section 35 envisages and deals with a specific situation of a particular type of merger, cannot be read as restricting all other types of schemes involving mergers, and there is nothing in Section 35 or the Insurance Act, to support such a reading. Further, submitted that the Insurance Act is a special statute, with the Companies Act, 2013 being a general law, will not affect this position in any manner, as the provisions in the Companies Act, 2013 relating to schemes i.e. Sections 230 – 232 are in addition to the provisions of the Insurance Act, and do not conflict with the same in any manner. The principle relating to a special statute prevailing over a general statute, will have no applicability to such a situation.</p>

	<p>Further, and as already adverted to, the provisions of the Companies Act, 2013 apply to insurance companies as well, and there are no provisions in the Insurance Act that Sections 230 – 232 would be in conflict with. Further The Petitioner Company submits that it is also well settled that any act which is not explicitly prohibited by a statute, is permitted, and further that, a statute must while prohibiting an act, must be direct and explicit in this regard. There is no such language or intent in the Insurance Act, prohibiting the undertaking of schemes by insurance companies, other than that envisaged in Section 35 of the Insurance Act.</p>
<p>Para 10 It is averred that the present proposal of Amalgamation is not in compliance with the Act. Further stated that an Indian Insurance Company can only transfer or amalgamate its Insurance business with another Insurance business in accordance</p>	<p>It is denied that the present Scheme is not in compliance with the Insurance Act. It is also denied that an Indian insurance company can only transfer or amalgamate its insurance business</p>

<p>with the Scheme and with the approval of the Authority.</p>	<p>with another insurance company. The presence of a special provision in the statute envisaging such a merger, cannot be read as meaning that only such type of merger is permissible.</p>
<p>Para 11 It is averred that if an application filed under Section 230-232 of the Companies Act, 2013 is approved by the Adjudicating Authority, the law does not empower the Authority to approve fresh issuance of the shares of the Insurance Company under Section 6A of the Act.</p>	<p>It is averred that The provisions contained in Section 6A of the Act, deal only with a ‘transfer’ of shares, whose applicability may not arise in the case of a merger, where fresh shares are issued in consideration of the same, pursuant to the sanction of the Scheme. The Petitioner Company has however, and in clear evidence of their <i>bonafides</i> and transparency, notified the IRDAI of the proposed Scheme, as soon as the same was approved by the Board of the Company. Further, even if the provisions of Section 6A are assumed to be applicable, the same would not in any way affect or restrict the approval of the present Scheme.</p>

It is averred that the present promoter of the petitioner company is the Transferor Company. On approval and implementation of the Scheme, the promoter of the merged entity will be Shriram Capital Private Limited whose substantial financial strength will in fact serve the interests of the petitioner Company and its policy holders.

16. Petitioner Company filed written submissions, and also relied on the following rulings:

- Hon'ble Supreme Court in re Reserve Bank of India vs. Peerless General Finance 1 – (1987) 1 SCC 424, held that “...Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual”.
- Hon'ble Supreme Court in re Miheer H. Mafatlal Vs. Mafatlal Industries Ltd- AIR 1997 SC 506, held that “once the exchange ratio of the shares to be allotted in consideration of a merger has been worked out by experts in the field of mergers, and no mistake is pointed out therein, it is not for the Court to substitute the exchange ratio, especially when the same has been accepted without demur by an overwhelming majority of shareholders”.
- Hon'ble Supreme Court Judgement in re Hindustan Lever Employees Union vs. Hindustan Lever Limited & Ors -AIR1995SC470 , wherein it was held that “the Company Court is not to interfere with the mathematical accuracy of valuing the shares”.
- Hon'ble Madras High Court in re Pentamedia Graphics Ltd. Vs. ITO – (2011)236CTR (MAD)204, and M/s. Ponni Sugars (Erode) Ltd., vs. Assistant Commissioner of Income Tax -2020 SCC Online MAD 28278.

17. Therefore, in the light of the objections raised by the IRDAI, the short and only point that emerges for our consideration is:-

Whether the objections raised by IRDAI for sanction of the Proposed Scheme are tenable and sustainable under law?, if so, the Company Petition is maintainable?.

18. We have heard Mr. K.G. Raghavan, learned Senior Counsel for CS Dr. Ahalada Rao Vummenthala., Company Secretary in Practice for the petitioner; and Shri. M.V. Suresh, learned Standing Counsel for IRDAI. Perused the Written Statements and other documents placed before us.
19. Learned Counsel Mr. M.V.Suresh, for IRDAI contended that:-
 - a. Section 35 of the Insurance Act, 1938 enables amalgamation of one Insurance Company with another Insurance Company. There is no other section in the Act, which enables amalgamation of one Insurance Company with a non-Insurance Company.
 - b. Preparation of financial statements of Insurance Companies is completely different from other commercial activities. Therefore, it is not possible to merge an Insurance Company with any other commercial business.
 - c. Valuation of assets and liabilities of an Insurance Company is done in a specific technical manner specified in IRDAI Regulations, 2016. Therefore, merging assets and liabilities of an Insurance

Company with any other commercial entity which will be valued on different valuation basis may pose significant challenges in arriving at swap ratio of shares.

- d. Insurance Act, 1938 being a specific Statute dealing with insurance business will prevail over general law, viz. Companies Act, 2013. Therefore, the scheme of amalgamation under section 230 of the Companies Act is not applicable to an Insurance Company.
- e. If an application filed under sections 230 and 232 of the Companies Act, 2013 is allowed by the Adjudicating Authority, Adjudicating Authority is precluded by law from approving issuance of fresh shares of the insurance company as per Section 6(a) of the Companies Act, 2013).

20. Refuting the objections raised by the IRDAI, supra, Learned Senior Counsel for the Company Petitioner, submitted that section 35 of the Insurance Act, 1938 comes into play only when there is a proposal for transfer or amalgamation of insurance business of an Insurance Company with other Insurance Company. Which is not so in the present case. Therefore, according to the Learned Senior counsel, since this basic requirement for invoking section 35 of the Insurance Act, 1938 is

not attracted/invoked in this case. The contention of Learned counsel for IRDAI submits that Section 35 of Insurance Act, 1935 applies to the case on hand is unfounded and thoroughly misconceived. According to the Learned Senior Counsel the present Company Petition is governed under Section 230 - 232 of the Companies Act, 2013.

21. Learned Senior Counsel further submits that the proposed Scheme does not alter the business prepositions of the transferee company and the company will be carrying on of its insurance business, or its operations as it is carrying on before merger of the applicant companies. Further, Learned Senior Counsel contends that the Petitioner Company will continue to carry on such business, under the same license, and the Scheme does not affect the same. Therefore, according to the Learned Senior Counsel, as there is no change in business prepositions, the requirements in relation to the manner of presentation of financial statements of insurance companies, and the contention that these are different from other commercial entities, cannot be a ground for rejecting the Scheme.

22. Learned Senior Counsel, further submits that the provisions of IRDAI Regulations, 2016 for valuation of assets and liabilities of an Insurance

Company are in the context of the requirement for Insurance Company to maintain sufficient assets over liabilities and it has no nexus with how the shares of the petitioner/ company are to be valued for the purpose of making allotments pursuant to merger of transferor company with the petitioner. Therefore, this contention of IRDAI is not tenable. Learned Senior Counsel further submits that the provisions of the Companies Act, 2013 apply with equal strength to an Insurance Company as can be seen from sections 1(4) (b) of the Companies Act, 2013. Therefore, the contention of IRDAI that scheme of amalgamation under section 230 of the Companies Act is not applicable to an Insurance Company is not tenable.

23. In so far as the contention that Section 6A of the IRDAI Act, applied to the present scheme of Arrangement. Learned Senior Counsel while strongly refuting the said plea, contended that section 6a of the Act, deal with 'transfer' of shares, only as such the same is not applicable in cases of merger, where fresh shares are issued in consideration of the same, pursuant to the sanction of the Scheme.

Our Analysis and findings:

24. Having comprehensively examined the rival contentions of both the parties, we state that as the proposed scheme being merger of a holding company, viz. Shriram Li Holdings Private Limited, (which is not doing any commercial business and is only an investment company) with its subsidiary company, viz. Shriram Life Insurance Company Limited, which is involved in insurance business, we are of the view that this merger will not have any impact or change the business activity of the merged entity i.e. transferee company. Therefore, the proposed Scheme of merger in our view is not opposed to customers of insurance company or to the interest of public.
25. That a part, on a bare reading of section 1(4)(b) of the Companies Act, 2013, we find that the provisions of the Companies Act, 2013 explicitly state that the provisions of the Companies Act, 2013 are applicable to Insurance Companies also. Thus, Section 1(4)(e) further enlarges the scope of Companies Act-2013 and states that the provisions of companies Act-2013 shall apply to any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special act.

Section 35(1) of Insurance Act, 1938 is neither in consistent or has any application to the case on hand, since Section 35(1) of the Insurance Act, says that no insurance business of an insurer shall be transferred to or amalgamated with the insurance business of any other insurer except in accordance with a scheme prepared under this Section and approved by the Authority, which is not a case here as it is not an amalgamation or transfer of insurance business between two insurance companies.

Section 1(4)(b) of the Companies Act, 2013, reads as under:

“1. Short title, extent, commencement and application. —

(1) to (3)

(4) The provisions of this Act shall apply to—

(b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938) or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);”

26. Therefore, on mere reading of the above provision it clear that there is no ambiguity that the provisions of the Companies Act, 2013 would apply to Insurance Companies as well.

27. As already stated Section 35 of the Insurance Act, 1938 is concerned since it speaks for merger or transfer of insurance business of one Insurance Company with another Insurance Company, hence

application of this section to the present case, cannot be considered as legal.

28. Therefore, in the light of our discussions supra, we find that the objections raised by IRDAI are not tenable, as such we hereby overrule the objections raised by IRDAI against approval of the scheme.

29. In the light of our discussion, supra, we are fully satisfied that the proposed scheme is not opposed to public interest and the proposed Scheme is in the interests of the Transferee Company and their respective shareholders, employees, creditors and all persons concerned. Hence the scheme can be approved with Appointed date as 01.04.2023. Hence, we hereby pass the following order.

ORDER

- (i). The Scheme of Amalgamation is hereby sanctioned with appointed date as 01.04.2023 and shall be binding on all the members, employees, creditors and all other stakeholders of the Petitioner Company
- (ii). While Approving the Scheme, we made it clear that this order should not be construed as an order in anyway granting exemption from payment of Stamp Duty, taxes or any other charges, if any, payable in accordance with law or in respect of any permission/compliance with

any other requirement which may be specially required under any law.

- (iii). The whole of the assets, property, rights and Liabilities of the Transferor Company shall be transferred without the requirement of any further act or deed to the Petitioner/Transferee Company.
- (iv). We direct the Petitioner company to comply with all the observations pointed out by the Regional Director.
- (v). We direct the Petitioner company to comply with all the observations pointed out by the Official Liquidator.
- (vi). We direct the Petitioner Company to preserve the books of accounts and papers and records and the same shall not be disposed of without the prior permission of the Central Government in terms of provisions of Section 239 of the Companies Act, 2013.
- (vii). We direct the Petitioner Company to ensure statutory compliance of all applicable laws and also on sanctioning of the present Scheme the Petitioner Companies shall not be absolved for any of their statutory liability in any manner.
- (viii). All the legal proceedings pending by or against the Transferor Company shall be continued by or against the Transferee Company.

- (ix). We direct the petitioner Company to comply with the observations if any with the Income Tax Authorities as per law.
- (x). We direct the petitioner Company to comply with the observations if any with the Competition Commission of India as per law.
- (xi). The Petitioner Company is directed to strictly comply with the Accounting Treatment Standards prescribed under Section 133 of the Companies Act, 2013.
- (xii). The sanction of the Scheme by this Tribunal shall not forbid the revenue authority from taking appropriate recourse for recovering the existing and previous tax liabilities of the Transferor and Transferee Companies.
- (xiii). We direct the Transferee Company to comply with the provisions of Section 2 (41) of the Companies Act, 2013.
- (xiv). The Petitioner Company shall until the completion of the Scheme of Amalgamation, file a statement in such form and within such time as prescribed with the Registrar every year duly certified by a Chartered Accountant or a Cost Accountant or a Company Secretary to the effect that the Scheme of Amalgamation is being complied with in accordance with the orders of the Tribunal as required under Section 232 (7) of the Companies Act, 2013.

- (xv). We direct the Petitioner Company involved in the Scheme to comply with Rule 17 (2) of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2013. The Petitioner Companies within 30 days after the date of receipt of certified copy of the order, shall cause certified copy to be delivered in Form INC-28 to the Registrar of Companies concerned for registration and on such certified copy being delivered, Registrar of Companies concerned shall take all necessary consequential action in respect of the Petitioner Companies.
- (xvi). The Petitioner Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of merger under the provisions of the Companies Act, 2013 and submit necessary compliance and undertaking relating to the objections raised by the Regional Director (SER), MCA, GoI, Hyderabad.
- (xvii). Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- (xviii). Accordingly, the **CP (CAA) 01/230/HDB/2024** is hereby allowed and disposed of.

SD

Charan Singh
Member Technical

Pavani

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial