THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-I

C.P.(CAA)/71/MB/2024

IN

C.A.(CAA)/8/MB/2024

In the matter of

The Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230

and other applicable provisions of the

Companies Act, 2013 and Rules framed

thereunder as in force from time to time;

AND

In the matter of

Scheme of Arrangement

Between

ICICI Bank Limited

(Holding Company)

and

ICICI Securities Limited

(Petitioner Company/Subsidiary

Company)

And their respective shareholders and

creditors

ICICI Securities Limited
CIN: L67120MH1995PLC086241 …Petitioner Company

Order delivered on 21.08.2024

Coram:

Shri Prabhat Kumar	**Justice V.G. Bisht (Retd.)**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances (through)

For the Applicant (s) : Mr. Janak Dwarkadas and Mr. Chetan Kapadia, Senior Advocate a/w Mr. Siddharth Ranade, Mr. Sandeep Singhi, Mr. Prakshal Jain, Mihir Dalawai, Advocate

For the Regional Director: Ms. Aparna Mudiam, Deputy Director, Office of Regional Director, Western Region, Mumbai

ORDER

1. Heard Learned Senior Counsel for the Petitioner Company as well as representative of the Regional Director.
2. The sanction of this Tribunal is sought under Sections 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 and the applicable rules and regulations thereunder, to the Scheme of Arrangement amongst ICICI Bank Limited (**Holding Company**) and ICICI Securities Limited (**Petitioner Company/ Subsidiary Company**), and their respective shareholders. The Holding Company and the Petitioner Company are collectively referred to as the "Companies".

3. The Petitioner Company is a public limited company incorporated on March 9, 1995, as ICICI Brokerage Services Limited with the Registrar

of Companies, Maharashtra, under the provisions of the Companies Act, 1956. The name of the Petitioner Company was changed to ICICI Securities Limited on March 26, 2007. The Petitioner Company operates across capital market segments including retail and institutional equity, financial product distribution, private wealth management and investment banking.

4. The authorized, issued, subscribed and paid-up share capital of the Petitioner Company as on 31 March 2024 was as under: -

Particulars	Amount in Rs.
Authorised share capital 40,00,00,000 equity shares of INR 5/- each	200,00,00,000
50,00,000 Preference Shares of INR 100/- each	50,00,00,000
Total	**250,00,00,000**
Issued, Subscribed and fully paid-up share capital 32,33,53,085 equity shares of INR 5/- each	161,67,65,425
Total	**161,67,65,425**

5. The Holding Company was incorporated on 5 January 1994, as ICICI Banking Corporation Limited with the Registrar of Companies, Gujarat, as a public limited company, under the provisions of the Companies Act, 1956. Its name was changed to ICICI Bank Limited on 10 September 1999. The Holding Company is a promoter of the Petitioner Company and holds ~ 74.85% of the paid-up share capital of the Petitioner Company as on 31 March 2024. The Holding Company, a scheduled commercial bank, is engaged in the business of providing a wide range of banking and financial services including commercial banking and treasury operations.

6. The authorized, issued, subscribed and paid-up share capital of the Holding Company as on 31 March 2024 was as under: -

Particulars	Amount in Rs.
Authorised share capital 1250,00,00,000 equity shares of INR 2 each	2500,00,00,000
Total	**2500,00,00,000**
Issued, Subscribed and fully paid-up share capital 702,23,35,643 equity shares of INR 2 each	1,404,46,71,286
Total	**1,404,46,71,286**

7. The Scheme, *inter alia,* will result in the following benefits amongst others:

a. The Holding Company is part of a financial services group offering a wide range of banking services, life and general insurance, asset management, securities broking, and private equity products and services through its specialised subsidiaries and affiliates. The insurance and securities broking subsidiaries and insurance affiliate of the Holding Company are publicly listed companies on the Stock Exchanges.

b. The Holding Company is a promoter of the Petitioner Company and holds ~74.74% of its equity shareholding as on 31 March 2024. The market capitalization of the Holding Company as on 31 March 2023, is INR 6,12,532,59,59,233 whereas the market capitalization of the Petitioner Company as on 31 March 2023 is INR 13,804,20,96,251.

c. While there are business synergies between the Holding Company and the Petitioner Company, a consolidation by way of merger of

the Petitioner Company with the Holding Company is not permissible on account of regulatory restrictions on the Holding Company from undertaking securities broking business departmentally.

d. Thus, the Companies have proposed a delisting of the equity shares of the Petitioner Company from BSE and NSE pursuant to this Scheme in accordance with Regulation 37 of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 (**SEBI Delisting Regulations**) which will result in the Petitioner Company becoming a wholly owned subsidiary of the Holding Company.

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

f. Such delisting would provide significant benefits for the public shareholders as they will get equity shares in the Holding Company thereby providing them access to a much larger and more diversified business with greater stability in revenue unlike the securities business which is inherently cyclical as it is significantly dependent on the macro-economic environment and buoyancy in equities market, resulting in volatility in financial performance and share price. The public shareholders would also be part of a more liquid stock of the Holding Company.

g. Given the Holding Company's strong financial position, the volatility in the Petitioner Company's share price, market opportunity and business synergies between the two Companies,

delisting the Petitioner Company and the Petitioner Company becoming a wholly owned subsidiary would be beneficial to the shareholders.

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

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

8. The competitive and regulatory environment for the Petitioner Company has rapidly evolved since the listing of the Petitioner Company, which was undertaken as it was felt that the Petitioner Company's listing would be viewed favorably given its franchise and technology platform. The business of the Petitioner Company on a standalone basis is inherently volatile and significantly dependent on macro environment and buoyancy in the equities market. These factors and the evolving competitive and regulatory environment have an impact on the business of the Petitioner Company, which has been reflected in its share price performance relative to the broader market since listing. It may be noted that the broking subsidiaries of other banks are all unlisted. Considering the competitive landscape, volatility in the Petitioner Company's share price, regulatory environment, and business synergies between the two Companies, delisting the Petitioner Company through a share exchange with shares of the Holding Company would be beneficial from a long-term value creation perspective to the shareholders of the Companies. The

public shareholders of the Petitioner Company would benefit from holding the more liquid shares of the Holding Company.

9. The Board of Directors of the Petitioner Company decided that subject to the directions and sanctions of the appropriate Tribunal as may be required under law and subject to such permission of the Central Government and other Authorities that may be necessary, the Scheme of Arrangement amongst ICICI Bank Limited, the Holding Company and ICICI Securities Limited, the Petitioner Company, and their respective shareholders, be made on the basis referred to in the Scheme of Arrangement.

10. The Board of Directors of the Petitioner Company and the Holding Company in their respective Board Meetings held on 29 June 2023 approved the Scheme. The Petitioner Company has also obtained no objections to the Scheme from 100% of the secured creditors in value.

11. The Petitioner Company filed Company Scheme Application being C.A. (CAA) No. 8 of 2024 seeking directions for convening of meeting of equity shareholders, including public shareholders, which was allowed by this Tribunal *vide* its order dated 14 February 2024. Pursuant to the same, a meeting of the equity shareholders of the Petitioner Company was convened on 27 March 2024 under the chairmanship of Hon'ble Mr. Justice (Retd.) Akil Kureshi, former Chief Justice of the High Courts of Rajasthan & Tripura. In the meeting, the Scheme was approved by 93.82% in value of the equity shareholders of the Petitioner Company, including 71.89% in value of the public shareholders and the requisite majority as prescribed under Companies Act, 2013 and Regulation 37(2)(d) of the SEBI Delisting Regulations was obtained.

12. In pursuance to the directions contained in the order dated 19 April 2024, the Petitioner Companies submits that notices have been served upon the sectoral/regulatory authorities and two compliance affidavits dated 6 June 2024 have been filed on behalf of the Petitioner Company. The Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under, as applicable. The said undertaking given by the Petitioner Company is accepted.

13. The Regional Director has filed his Report dated 11.06.2024 making certain observations and the Petitioner Companies have undertaken/made following submission that: -

a. The open charges on the MCA Portal have been created in favour of the secured creditors of the Petitioner Company. The Petitioner company has obtained consent by way of No Objection Certificates from all its secured creditors and the same are annexed as Exhibit V to the captioned Petition;

b. The Scheme does not affect or deal with the employees of the Petitioner Company in any manner. Hence, there is no clause in respect of employees;

c. the interests of the creditors are not affected by the Scheme;

d. The Petitioner Company undertakes that the Petitioner Company shall pass such accounting entries which are necessary in connection with the Scheme, in compliance with the Accounting Standards, as applicable;

e. The Scheme enclosed with the Company Scheme Application and the Scheme enclosed with the captioned Petition are one and the same and there is no discrepancy or deviation between them;

f. The Petitioner Company shall comply with the directions of the Income Tax Department, if any;

g. The Company shall comply with the regulations of RBI, Banking Regulation as may be applicable in relation to the Scheme;

h. The Holding Company has filed Company Scheme Petition [CP (CAA) No. 20 of 2024] before the National Company Law Tribunal, Ahmedabad Bench for the approval of the Scheme.

i. The payment made to the shareholders shall be subject to payment of income tax or capital gains tax, as the case may be, in the hands of recipient shareholders;

j. The Quantum Mutual Fund has also filed an objection in the petition for approval of the Scheme filed by the Holding Company before NCLT Ahmedabad Bench, being IA (Companies Act) No. 55 of 2024. The said objection is also pending before Hon'ble NCLT Ahmedabad.

14. Ms. Aparna Mudiam, Assistant Director for the Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

15. From the material on record and after perusing through the clarifications and submissions of the Petitioner Company to the RD Report, the Scheme appears to be fair and reasonable and does not violate any provisions of law and is not contrary to public policy.

16. Two applicants namely, Manu Rishi Guptha and Quantum Mutual Fund have filed interim applications seeking to object to the Scheme being *Company Application No. 190 of 2024 and IA (Companies Act) No. 96 of 2024*. These applications have been disposed of as dismissed *vide* separate common order dated 21.8.2024.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 71 of 2024 filed by the Petitioner Company is made absolute in terms of prayer clauses (A) to (E) of

the Petition. Thus, the Scheme annexed at Exhibit I to the Company Scheme Petition is hereby sanctioned.

18. The Petitioner Company is directed to lodge a copy of this order along with the sanctioned Scheme duly certified by Deputy/Assistant/ Joint Registrar of this Tribunal, attached thereto, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified copy of this order along with the sanctioned Scheme attached thereto.

19. The Petitioner Company is directed to file a certified copy of this order along with a copy of the sanctioned Scheme attached thereto with the concerned Registrar of Companies, electronically, along with e-form INC-28 within 30 days of receipt of certified copy of this order along with the sanctioned Scheme from the registry, duly certified by the Deputy/Assistant/Joint Registrar of this Tribunal.

20. All concerned authorities to act on a copy of this order along with the sanctioned Scheme, duly certified by Deputy/Assistant/Joint Registrar of this Tribunal.

21. The Petitioner Company shall be at liberty to apply to this Tribunal for any directions that may be necessary with regard to the implementation of the Scheme.

22. Accordingly, CP No. 71 of 2024 is allowed. File to be consigned to record.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)

THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

I.A. 96 OF 2024

Quantum Mutual Fund & Ors

... **Applicant**

V/s

ICICI Securities Ltd & Anr.

… **Respondents**

CA 190 OF 2024

Manu Rishi Guptha

... **Applicant**

V/s

ICICI Securities Ltd.

… **Respondent**

In the matter of
C.P. (CAA)71/MB/2024

ICICI Securities Ltd

… **Petitioner**

Order delivered on: 21.08.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances:

For the Applicant (IA 96)	:	Mr. Zal Andhyarujina, Senior Advocate
For the Applicant (in CA 190)	:	Mr. Kausik Chatterjee, Advocate
For the Respondent	:	Sr. Counsel Janak Dwarkadas, Sr. Counsel Chetan Kapadia

ORDER

Per: Prabhat Kumar, Member (Technical)

I.A 96/2024

1. This I.A. 96/2024 has been filed by Quantum Mutual Fund under Rule 11 of NCLT Rules, 2016 in Company Scheme Application No. C.P. (CAA)71/MB/2024 seeking rejection of the Scheme of Arrangement proposed between ICICI Bank Limited (ICBL) and ICICI Securities Limited (ISEC) and their respective shareholders. The Applicant has raised the following objections –

    (i) The said Scheme is impermissible in law and is nothing but an attempt to evade the reverse book-building requirement of delisting any company in India.

    (ii) The commercial rationale provided for the Scheme does not withstand the test of scrutiny. It is merely a facade to acquire shares in a valuable company at throw-away prices. The Scheme is not in the best interests of the Company, or its public shareholders.

    (iii) The Scheme purports to be under Regulation 37 of the SEBI (Delisting of Equity Shares) Regulations, 2021 ("Delisting Regulations"). However, it fails to conform with the essential requirement contained therein i.e. the companies should be in the same line of business. There is no proof provided of any relation of this requirement by virtue of exemption, or otherwise.

    (iv) The purported exemption provided by SEBI as claimed by ICICI Securities Limited has not been provided to or disclosed to the shareholders.

    (v) The Valuation methods and basis adopted by the Valuers to arrive at the fair value of the shares of ICICI Securities Limited is baseless and manipulated. The very basis of the valuation and underlying figures has not been provided to the shareholders.

    (vi) The entire voting process in the Shareholders' Meeting has been vitiated on account of illegal methods adopted by ICICI Bank and ICICI Securities to influence and mislead voters.

    1.1. The various mutual fund schemes under the umbrella of Applicant No. 1 hold 2,86,922 shares in ISEC as on March 27, 2024. The table providing the details of the shares held by the various mutual fund schemes under the umbrella of Applicant No. 1 is as under:

Holdings in ICICI Securities Limited by various schemes of Mutual Fund as on March 27, 2024

Sr. No.	Scheme Name	Quantity of ICICI Securities Shares held
1	QUANTUM LONG TERM EQUITY VALUE FUND	247,482
2.	Quantum ELSS Tax Saver Fund	39,440
	TOTAL	2,86,922

Holdings in ICICI Bank Limited by various schemes of Mutual Fund as on March 27, 2024

Sr. No.	Scheme Name	Quantity of ICICI Bank shares held
1.	QUANTUM ESG BEST IN CLASS STRATEGY FUND	19,872
2.	QUANTUM NIFTY 50 ETF	37,037
3.	QUANTUM LONG TERM EQUITY VALUE FUND	5,80,810
4.	Quantum Multi Asset Allocation Fund	4,199
5.	Quantum Small Cap Fund	3,981
6.	Quantum ELSS Tax Saver Fund	95,717
	TOTAL	7,41,616

1.2. The Applicant as on date, invested in ICBL and ISEC through their mutual fund schemes i.e. Quantum Long Term Equity Value Fund & Quantum ELSS Tax Saver Fund on behalf of approximately 42,548 investors and therefore holds the interest of a large number of shareholders.

2. Another Company Application C.A. 190/2024 has been filed by Mr. Manu Rishi Gupta, (Applicant) under Rule 11 of NCLT Rules, 2016 in Company Scheme Application No. C.P. (CAA)71/MB/2024 seeking rejection of the Scheme of Arrangement proposed between ICICI Bank Limited and ICICI Securities Limited and their respective shareholders.

2.1. The Applicant is a public non-institutional shareholder of · ISEC and his shareholding details arc as under:

Manu Rishi Guptha: Sharcholding Details in ISEC

Company	No. of Shares	DP ID	Client ID
ICICI Securities Ltd.	9000	IN302679	31637365

2.2. The institutional public shareholders of ISEC hold 17.41 % of its fully paid-up equity shares being 5,62,99,513 in number: while the balance 2,54,00,880 shares constituting 7.86% or ISEC fully paid-up equity shares are held by non-institutional public shareholders including the Petitioner herein. Notably. except. the promoter ICBL, there is no shareholder of ISEC which holds 10% stake therein. In fact. the aggregate shareholding of the 1.25 Lakh retail shareholders of ISEC holds not more than 7.86% in ISEC. Pursuant to a purported meeting of the Board of Directors of (both) ISEC and ICBL held on 29.06.2023. a purported -Scheme of arrangement· inter alia under Section 230 to 232 of the Companies Act, 2013 and the Rules framed thereunder between ISEC and ICBL and their respective shareholders was approved.

3. ICICI Securities Limited is a subsidiary of ICICI Bank Limited. It is listed on NSE and BSE. Approximately 25.15% shares in ICICI Securities Limited are held by Public and remaining shares are held by ICICI Bank Limited. ICICI Securities Limited was listed pursuant to an IPO in March 2018.

3.1. On 29th June 2023, ICICI Securities Limited published to the stock exchanges that a Board Meeting of the company had been held on 29th June 2023 wherein it was proposed to delist the equity shares of ICICI Securities pursuant to a scheme of arrangement with ICICI Bank Limited.

3.2. The Scheme was proposed under Regulation 37 of the Delisting Regulations. Pursuant to the Scheme, ICICI Securities Limited will become a wholly-owned subsidiary of ICICI Bank Limited. Equity shares held by the public shareholders of ICICI Securities Limited will be cancelled and the equity shares of the Company shall be deemed to be delisted. In lieu of and as a consideration for the cancellation of the shares, public shareholders of ICICI Securities, will receive equity shares of ICICI Bank in the mentioned share exchange ratio prescribed in the proposed Scheme for the Public

Shareholders. All the public shareholders of the ISEC would be allotted 67 equity shares of ICBL of face value- 2/- each for every 100 equity shares of the ISEC of face value ~ 5/- each ("Share Exchange Ratio"). The swap ratio is allegedly based on a purported Joint Valuation Report dated 29.06.2023 obtained by ISEC and ICBL from PwC Business Consulting Services LLP (PWC) and Ernst & Young Merchant Banking Services LLP (FY). Both 'registered valuers' under Chapter XVII of the Companies Act, 2013.

3.3. While there are business synergies between the ICBL and ISEC, a consolidation by way of merger is not permissible on account of regulatory restrictions on the ICBL from undertaking securities broking business departmentally, however, the Scheme is proposed in terms of Regulation 37 of SEBI (Delisting of Equity Shares) Regulations, 2021 in terms of exemption stated to be granted by SEBI vide a letter dated 20.06.2023 from the condition of 'Similarity of business of Companies to the Scheme'. This has resulted into the delisting of ISEC taking place otherwise than by way of 'Reverse Book Building Process". The Applicants were concerned about the Share Exchange Ratio provided in the Scheme and felt that the same was deliberately undervalued. Therefore, the Applicants met with the management of ISEC on 28th December 2023 and with the Management of ICBL on 5th March 2024 to voice their concerns. The same were not dealt with.

3.4. Thereafter, ISEC approached this Tribunal in CA(CAA)/8/MB/2024 under Section 230 of the Companies Act, 2013 seeking directions for holding of shareholders' meetings to vote on the Scheme. By way of its Order dated 14th February 2024, this Tribunal was pleased to direct ISEC to hold a shareholders' meeting to vote on the Scheme. Accordingly, ISEC, issued a Notice dated 20th February 2024 of Shareholders' Meeting to be held on 27th March 2024.

3.5. Pursuant to the Notice of Meeting, both ICBL and ISEC engaged in a massive manipulation exercise, using the money, resources, and manpower of their organization to approach public shareholders and mislead them about the purported benefits of the Scheme. This manipulation has been noted by the exchanges which sought clarification in this regard from ISEC. In response to the notice, ISEC issued a response wherein the reason cited was "*we felt that it was important to reach out to retail shareholders to maximize participation in and to facilitate a considered outcome of the voting exercise*." However, the clarificatory response fails to provide any justifiable reason for ICBL to call upon the shareholders and coax them into voting for the scheme. Further the notice convening the Shareholders meeting provided all the detailed information required for any shareholder to make a decision in regard to voting for the Scheme and therefore, there was no reason to reach out to shareholders separately.

3.6. The meeting was held on 27th March 2024. The transcript of the meeting reveals that several public shareholders have also complained of manipulation under the garb of outreach by ICBL and ISEC. Pertinently, in the meeting, there was vehement opposition to the Scheme by a significant portion of the public shareholders. 28.11% of the public shareholders of ISEC (present and voting), voted against the Scheme. The Applicants were present in the meeting and voted against the Scheme during the e-voting process. Immediately after the meeting, the Applicants addressed a letter dated 4th April 2024 through the SEBI Scores Complaint Portal objecting to the Scheme on inter alia the grounds that the valuation provided and the Share Swap Ratio fixed was patently absurd. Furthermore, by way of letter dated 10th April 2024, the Applicants addressed another letter to ISEC objecting to the Scheme. Despite the

aforesaid, ISEC is proceeding with the Scheme and has filed C.P.(CAA)/71/MB/2024 before this Tribunal for sanction of the Scheme.

4. The Respondents have filed affidavit in reply stating that the Scheme has been approved by 93.82% in value of the equity shareholders of ISEC. Further, 71.89% in value of the public shareholders have approved the Scheme which is well above the requisite threshold under applicable law.

4.1. It is contended that the Applicants have no legal right or entitlement to object to the Scheme. The Applicants in CA 190/2024 and IA 96/2024, as on March 20, 2024, i.e., the cut-off date for determining the equity shareholders entitlement to vote in the Shareholders' Meeting, held merely 2,86,922 equity shares and 9000 equity shares constituting 0.08% and 0.002% of the paid-up equity share capital of ISEC respectively. In view of the miniscule shareholding of the Applicants, it is submitted that the Applicant is not entitled to object to the Scheme in terms of provisions contained in the proviso to Section 230(4) of the Act providing for threshold limit of not less than 10% of shareholding for raising any objection to a scheme of compromise or arrangement under Section 230 of the Act.

4.2. SEBI, approved the Scheme on 28 November 2023 in terms of the Master Circular on Scheme of Arrangement by Listed Entities dated 20 June 2023 (Scheme Circular) and thereafter NSE as well as BSE also gave their 'no objection' to the Scheme vide their letters dated 28 November 2023 and 29 November 2023 respectively.

4.3. At the Shareholders' Meeting, the Scheme was approved by requisite majority of shareholders of ISEC in compliance with the provisions of the Act, Regulation 37(2)(d) of the Delisting Regulations and the Scheme Circular, as explained in the table below :

Provision	Requirement	Voting Results
Section 230(6) of the Act	Majority of persons representing 3/4th in value of the members/class of members	*Majority of Persons of ICICI Securities*: 58.21% *Representing three fourths in value of ICICI Securities*: 93.82%
Regulation 37(2)(d) of the Delisting Regulations	No. of votes cast by public shareholders of ICICI Securities in favour is 2 times the votes cast against the scheme.	*Votes cast by public shareholders of ICICI Securities in favour of the Scheme*: 4,89,17,332 *Votes cast against by public shareholders of ICICI Securities against the Scheme*: 1,91,30,801
Rule 10 of the Scheme Circular	Votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it	*Votes cast by public shareholders of ICICI securities in favour of the Scheme:* 4,89,17,332. *Votes cast against by public shareholders of ICICI Securities in favour of the Scheme*: 1,91,30,801

4.4. Pursuant to directions of Hon'ble NCLT Ahmedabad Bench, ICBL convened the meeting of its equity shareholders, and, at the said meeting, the Scheme was approved by majority of the equity shareholders of ICBL (including public shareholders) as required under the Act, Delisting Regulations and the Scheme Circular.

4.5. The present Application has been filed in complete derogation of the principles of shareholder democracy with a view to derail and sabotage the Scheme and the implementation thereof. It is submitted that these Applications raise frivolous and baseless allegations and deserves to be dismissed in limine. The Scheme has been approved by 93.82% in value of the equity shareholders of ISEC. Further, 71.89% in

value of the public shareholders have approved the Scheme which is well above the requisite threshold under applicable law.

4.6. It is also relevant to note that the Applicant in IA 96/2024 have sought to mischaracterize themselves as ordinary public shareholders of ICICI Securities. However, contrary to such characterization, the Applicant in IA 96/2024 is a sophisticated fund managed by professionals who possess requisite proficiency in such matters as compared to ordinary public shareholders, and Applicant in CA 190/2024 is the founder of a SEBI-registered Portfolio Management Services Provider, MRG Capital with a long-standing experience in investment activities across various sectors since 1993. Therefore, it submitted that the present Applications are replete with misrepresentations and ought to be dismissed at the threshold.

4.7. The Applicant in CA 190/2024 has also resorted to multifarious litigations with a view to delay and obfuscate the proceedings pending before this Tribunal. Apart from filing the present Application, the Applicant along with few other individual shareholders has filed a class action under Section 245 of the Act being Company Petition No. 92 of 2024 before the Hon'ble Principal Bench raising identical allegations as are raised in the present Application. In fact, the Applicant and many of the other shareholders who have filed the said class action have deliberately purchased shares in ISEC after 29 June 2023 i.e., after the Scheme was approved by the Board only to artificially garner the requisite numerical threshold for filing such action.

5. Heard the Learned Senior Advocate Mr. Janak Dwarkadas appearing for ICICI Securities Limited, Senior Advocate Mr. Zal Andhyarujina appearing for Applicant in IA 96/2024, Senior Counsel Mr. Chetan Kapadia appearing for ICICI Bank Limited, and Senior Counsel Mr. Kausik Chatterjee for Applicant in CA 190/2024 at length, and have perused the material available on record.

5.1. Before dealing with the objections raised in these two applications, it is imperative for us to deal with the question of maintainability of present applications in view of proviso to Section 230(4) of the Companies Act, 2013 raised by ICBL as well as ISEC. The said provision reads as under -

> *(4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice:*
>
> *Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.*

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

5.1.2. It is undisputed fact that neither applicant in CA 190/2024 nor applicant in IA 96/2024 holds the requisite number of equity shares, even they taken together do not hold requisite shares as stipulated in proviso to section 230(4). Accordingly, we have no hesitation to say that their application is not maintainable in terms of proviso to Section 230(4) for want of meeting the threshold limit and deserve to be dismissed.

5.1.3. Mr. Zal Andhyarijuna, learned Senior Counsel, also submitted that in construing a statutory provision as being mandatory or directory, inter-alia the consequence resulting from such construction of the provision is a relevant fact. It was argued that Section 230(4), though on the face of it, appears mandatory in nature, inasmuch as it uses the word "shall", it is merely directory. For this purpose, he cited the decision in case of ***State of U.P. v. Manbodhan Lal Srivastava, 1957 SCC Online SC 4***, wherein the Constitution Bench held that (i) the use of the word "shall" does not necessarily mean that in every case it shall have mandatory effect; and (ii) that the intent of the legislation and consequence resulting from the construction of the provision are relevant factors. It was also submitted that a literal interpretation of the provisions of Section 230(4) of the said Act would result in grave injustice and would not achieve the purpose and object of Section 230(4) of the Act and that in any case, the present application is not a "frivolous objection" and as such, does not attract the mandatory nature, if any, of section 230(4) of the said Act.

5.1.4. The threshold limit in terms of section 230(4) came to be introduced in the statute book pursuant to report dated 31.5.2005 authored by Dr. J J Irani chaired Expert Committee on Company. The report had observed that "*There have been, however, occasions when shareholders holding miniscule shareholdings, have*

made frivolous objections against the scheme, just with the objective of stalling or deferring the implementation of the scheme. The courts have, on a number of occasions, overruled their objection." It is pertinent to note that there was no threshold limit prescribed under section 391 of Companies Act, 1956, which also dealt with "Arrangement & Compromises". We note that Section 242 of the Companies Act, 2013 also contains a threshold limit for maintaining a petition u/s 241 of the Companies Act, 2013 and that section also vests the specific discretion in this Tribunal to relax the threshold limit. However, no such discretion is vested in this Tribunal under Section 230. Accordingly, the legislature had intended that the threshold limit u/s 230(4) must be strictly followed.

5.1.5. Accordingly, this Tribunal cannot look into their objections to the Scheme in so far as the scheme is alleged to be prejudicial to their interest. However, we further note that the Hon'ble NCLAT in case of Ankit Mittal (Supra) at Para 32 held that "*The issue raised by any body even if not eligible or even otherwise the Tribunal will have a duty to look into the issue so as to see whether the scheme as a whole is also found to be just, fair, conscionable and reasonable inter alia from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant. The Tribunal also has to see that the scheme of amalgamation if the same is prejudicial to the interest of a particular class who may not be able to meet the threshold limit to see the scheme but it may be a pointer enough for the Tribunal to see that the scheme may be loaded against the interest of the objectors*". The Hon'ble NCLAT in case of Jatinder Singh Ahuja (Supra) further held at internal page 28 that "*Of course, the Tribunal is required to ensure that all procedures as stipulated for amalgamation under Companies Act, 2013 and the relevant rules have been duly followed and*

the scheme is conscionable. It also implies that the Tribunal is also required to look into, before approving the scheme, that the scheme as such is fair and reasonable from different points of view and various perspectives, taking care interests of various stakeholders and the scheme can be upheld as commercially prudent decision." It further held at Page 29 that "*Similarly, if the material facts are not disclosed or adequate facts are not disclosed, the Tribunal is required to look into the legality of the scheme……..*".

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

5.2. It is case of the applicants that the public shareholders constitute a separate class of members for the purpose approval of the scheme by such separate class where the scheme is the same scheme which is offered to all the members and such scheme does not affect all members equally; Section 230 of the Companies Act, 2013 prescribes a majority of 75% for approval of scheme, accordingly, the present scheme ought to have been approved by 75% of Public Shareholders, which in fact it has not been. In the present case, while the shares held by Public Shareholders are being cancelled in consideration of shares of ICBL offered to them, the shares held by ICBL in ISEC

remains in existence. Hence, the Public Shareholders, in the present case, constitute separate class and the scheme, in question, ought to have received assent of 75% of the shareholders belonging to that class. It is undisputed fact that the scheme was approved by 71.89% in value of the public shareholders, and by 93.82% in value of the equity shareholders of ISEC. Accordingly, the question before us is 'whether the scheme should be approved by 75% of Public Shareholders, even though Regulation 37 of Delisting Regulations requires the Scheme to be approved by 2/3rd of Public Shareholders in value in case delisting of shares are sought'.

5.2.1. The Ld. Counsel for Applicant relied upon the decision in case of ***Miheer H. Mafatlal vs. Mafatlal Industries Ltd., (1997 1 SCC 579); Sandvik Asia Lt., 2003 SCC Online Bom 991 (Single Judge); State Bank of India & Others vs. Alstom Power Boilers Ltd. & Others 2003 SCC Online Bom 321; Re Hellenic & General Trust Ltd. (1975) 3 All ER*** to contend that Public Shareholders constitute a separate class, accordingly the scheme approved by a vote of less than 75% by such class cannot be approved by this Tribunal as such scheme has failed to muster requisite vote share as contemplated in Section 230 of the Companies Act, 2013.

5.2.2. In case of ***Miheer H. Mafatlal (Supra)***, the Hon'ble Supreme Court held at Para 39 that "……..*It is also to be kept in view that the appellant would have urged with some justification his contention for convening a separate meeting representing for him and his group of dissenting equity shareholders if it was his case that the Scheme of Companies and Arrangement as offered to him and his group was in any way different from the Scheme of Compromise and Arrangement offered to other equity shareholders who also belonged to the same class in the wider sense of the term. On the express language f Section 391(1) it becomes clear that where a compromise or arrangement is proposed between a company and its*

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

5.2.3. Per Contra, the Ld. Counsel for Respondents submitted that Division Bench of Hon'ble Bombay High Court overruled the decision in Sandvik Asia as reported in 2009 SCC Online Bom 541 holding at Para 8 that "*The only objection raised is that the scheme for the reduction of share capital proposed by the special resolution wipes out a class of shareholders namely the non-promoter shareholders and this, according to the objectors, is unfair and inequitable. The*

question, therefore, is that is to be construed is whether the special resolution which proposes to wipe out a class of shareholders after paying them just compensation can be termed as unfair and unequitable". He further submitted that Regulation 37 of SEBI Delisting Regulations prescribes for approval of Scheme by 2/3rd votes of Public Shareholders and this Regulation is a complete code in itself dealing with the delisting of securities consequent to the Scheme of arrangement; the Scheme having been approved by more than 71% has received a valid approval of class of shareholders. It was contended that SEBI Act is special enactment to protect the interest of investors and the Delisting Regulations have been notified pursuant to power vested in SEBI in terms of Section 11A(2) and Section 30 of SEBI Act, and Section 30 r.w.s. 21A of Securities Contracts (Regulations) Act, 1956. Learned Counsel cited the decision in case of ***Sahara India Real Estate Corporation Limited and Others vs. Securities and Exchange Board of India and Another (2013) 1 SCC*** wherein it was held at Para 309 that "*From a collective perusal of sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand alone enactment, and the SEBI's powers thereunder are not fettered by any other law including the Companies Act, is fully justified. In fact the aforesaid justification was rendered absolute, by the addition of section 55A in the Companies Act, whereby, administrative authority on the subjects relating to "issue and transfer of securities and non payment of dividend" which was earlier vested in the Central Government (Tribunal or Registrar of Companies), came to be exclusively transferred to the SEBI.*"

5.2.4. Mr. Zal Andhyarijuna Ld. Senior Counsel for Quantum drew our attention to Para 66 of the decision in case of *Sahara India* (Supra), whereat Hon'ble SC observed that "*SEBI Act is a special law, a complete code in itself containing elaborate provisions to protect interests of the investors. Section 32 of the Act says that the provisions of that Act shall be in addition to and not in derogation of the provisions of any other law. SEBI Act is a special Act dealing with specific subject, which has to be read in harmony with the provisions of the Companies Act 1956. In fact, 2002 Amendment of the SEBI Act further re-emphasize the fact that some of the provisions of the Act will continue to operate without prejudice to the provisions of the Companies Act, qua few provisions say that notwithstanding the regulation and order made by SEBI, the provisions of the Companies Act dealing with the same issues will remain unaffected. I only want to highlight the fact that both the Acts will have to work in tandem, in the interest of investors, especially when public money is raised by the issue of securities from the people at large*".

5.2.5. We have considered the submissions of the Counsel. Undisputedly, the scheme contemplates that the Promoter shareholder of ISEC shall remain invested therein making ISEC 100% subsidiary of ICICI and the Public Shareholders of ISEC shall receive shares of ICICI in consideration of cancellation of their shares in ISEC. We find that there is dissimilarity in the treatment of Public Shareholders and Promoter Shareholders in the scheme of arrangement of ISEC, however, this dissimilarity in the interest of Public Shareholders and Promoter Shareholders has been specifically dealt in the Regulation 37 of Delisting Regulation resulting into additional requirement of approval of schemes falling therein by 2/3rd votes of public shareholders. In this context, we shall proceed to examine whether the

scheme in question ought to have been approved by 75% of such shareholders, and not by 2/3rd of such shareholders as contemplated in Regulation 37 of the Delisting Regulations and canvassed by the ISEC & ICBL.

5.2.6. Securities Contract Regulation Act, 1956 ('SCRA') was enacted "*to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith*". Thereafter, SEBI Act was enacted on 4th April, 1992 to promote orderly and healthy growth of securities market and for Investors protection and Delisting Regulations were notified on 10th June, 2021.

5.2.7. The Preamble of SEBI Act 1992 reads as "*An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith and incidental thereto.*" We note that the Hon'ble Supreme Court in *Sahara India* (Supra) at Para 65 has observed that "*Parliament has also enacted the SEBI Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. SEBI was established in the year 1988 to promote orderly and healthy growth of the securities market and for investors' protection. SEBI Act, Rules and Regulations also oblige the public companies to provide high degree of protection to the investor's rights and interests through adequate, accurate and authentic information and disclosure of information on a continuous basis.*"

5.2.8. The Hon'ble Supreme Court in *Sahara India (Supra)* held that the provisions of SEBI Act shall be in addition to and not in derogation of the provisions of any other law; SEBI Act is a special Act dealing with specific subject, which has to be

read in harmony with the provisions of the Companies Act 1956; both the Acts will have to work in tandem, in the interest of investors, especially when public money is raised by the issue of securities from the people at large; and on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand alone enactment, and the SEBI's powers thereunder are not fettered by any other law including the Companies Act.

5.2.9. Part C of Delisting Regulations, of which Regulation 37 is the only provision, provides "*Special Provisions for a Subsidiary Company Getting Delisted through a scheme of arrangement wherein the listed holding company and the subsidiary company are in the same line of business*". The Delisting Regulations were notified pursuant to power vested in SEBI in terms of Section 11A(2) and Section 30 of SEBI Act, and Section 30 r.w.s. 21A of Securities Contracts (Regulations) Act, 1956. We note that SCRA was amended by the Securities Laws (Amendment) Act, 2004, S.8 (w.e.f. 12-10-2004) to provide for 'Delisting of Securities' and 'vesting power in Central Government to make rules for the purpose' by insertion of Section 21A and amendment of Section 30 by insertion of clause 'ha'. In other words, the delisting of securities, prior to such amendment, was not regulated by this Act and there was no provision in terms of Regulations to deal with the interest of Public Shareholders in case of arrangement between listed holding and subsidiary company. SEBI Act was enacted to protect the investor's interest and SEBI, clothed with powers to do so, considered it appropriate to mandate a vote by 2/3rd for approval of scheme in cases falling under Section C of Delisting Regulations. The facts in the present case are distinguishable and we are considered view that Regulation 37 of Delisting Regulations, 2021 codifies guidelines in relation to approval of scheme of

arrangement of a Holding and Subsidiary company where such scheme contemplates delisting of subsidiary company, and provisions of Regulations 37 have to be read in tandem with provisions of Section 230 of Companies Act, 2013 to decide the quantum of votes the present scheme requires to get through. When SEBI, being custodian of Investor's interest after enactment of SEBI Act, specifically prescribes approval by 2/3rd Vote of Public Shareholders in a scheme of arrangement between Holding & Subsidiary Company, we are of considered view that it has to be done in that manner only. In the present case, Regulation 37 contains specific provisions in relation to case in hand.

5.2.10. Accordingly, we hold that provisions of Regulation 37 of Delisting Regulations have to be read in tandem and harmoniously with the provisions of Section 230 of the Companies Act, 2013 so as to give effect to both the provisions, and not to make provisions of Regulation 37 otiose. In view of this, we have no hesitation to hold that the proposed scheme is required to be approved by 2/3rd of sub-class of class of shareholders, which it has been so approved.

5.3. The Applicants have also objected to the approval of Scheme on the ground that the Scheme does not disclose the particulars of exemption obtained by the Respondent Companies from SEBI in relation to dis-similarity in the business of both the Companies. It is stated that the NSE and BSE vide their observation letters dated 28.11.2023 and 29.11.2023, respectively, inter-alia directed the Respondents to make disclosure of the relaxations obtained by the Respondents under the De-listing Regulations, including inter-alia the grounds and justifications for such relaxation. It was also argued that in terms of provisions of Regulation 42 of Delisting Regulations, SEBI ought not to have relax the strict enforcement of Delisting Regulations.

5.3.1. Regulation 37 of Delisting Regulations reads as under –

(1) Nothing contained in these regulations shall apply to the delisting of equity shares of a subsidiary company, pursuant to a scheme of arrangement by an order of a Court or Tribunal with its listed holding company, whose equity shares are frequently traded, and where the listed holding company and the subsidiary company are in the same line of business.

(2) The delisting of the equity shares of a subsidiary company in terms of sub-regulation (1) shall be permitted subject to the following:

a) the listed holding company shall provide for the issue of its equity shares in lieu of cancellation of any equity shares in the delisting subsidiary company;

b) upon such delisting becoming effective, the subsidiary company shall become a wholly owned subsidiary of the listed holding company;

c) compliance with regulations 11, 37 and 94 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Circulars issued thereunder;

d) e-voting from shareholders of both listed companies wherein votes cast by public shareholders of the listed subsidiary in favour of the proposal are at least two times the number of votes cast against it and the votes cast by the public shareholders of the listed holding company in favour of the proposal are more than the number of votes cast by the public shareholders against it;

e) the shares of the listed holding company and the subsidiary company are listed for at least 3 years and shall not be suspended at the time of taking this route;

f) the subsidiary company has been a listed subsidiary of the listed holding company for the past three years;

g) no adverse orders have been passed by the Board in the past 3 years against the listed holding company and the listed subsidiary company;

h) no further restructuring shall be undertaken by the listed holding company for a period of 3 years from the date of the Order of the Court or Tribunal approving the scheme of arrangement;

i) the equity shares of the listed subsidiary so delisted, shall not be allowed to seek relisting for a period of three years from the date of delisting and such relisting shall be in terms of sub-regulation (3) and (4) of regulation 40 of these regulations; and,

j) the valuation of shares of the listed subsidiary per share shall not be less than sixty days volume weighted average price.

Explanation — The reference date for computing the volume weighted average price would be the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal of the subsidiary was considered and approved.

5.3.2. It is an undisputed fact that the exemption was granted by SEBI in relation of condition of similarity of business and the Companies has complied with other provisions of Regulation 37 in the Scheme of Arrangement. It is the case of the Applicant that such exemption could have been granted only on the ground that "*the requirement is procedural in nature*" and the provisions of Regulations 37 of Delisting Regulations insofar as they provide that "listed holding company and the subsidiary company are in same line of business", is substantive in nature and is not a procedural provision. However, we are of considered view that this

Tribunal cannot sit in appeal over the SEBI's power to dispense with such condition to examine "whether SEBI was vested with powers, in the circumstances of the case, to dispense with the condition of similarity of business so as to allow Applicants to seek delisting of ISEC shares subject to compliance with other condition Regulation 42 of Delising Regulations". Accordingly, with an exemption in place, the Companies were entitled to propose a scheme seeking delisting of ISEC in terms of Regulations 37 of SEBI Delisting Regulations.

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

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

5.3.4. Regulation 37 of Delisting Regulations provide that "*the valuation of shares of the listed subsidiary per share shall not be less than sixty days volume weighted average price" and it is case of none of the applicants that the value determined for the purpose of swap ratio proposed in the Scheme* is less than sixty days volume weighted average price. It was contended that Reverse Book Building Process may have yielded value more than sixty days volume weighted average price. This is merely a speculative argument. The stock exchange trading platform is considered to be best price discovery mechanism, particularly for liquid stocks. There is no allegations that the price of the shares of ISEC or ICICI were rigged by the Promoters to have swap ratio much favourable to the shareholders of ICICI Bank. The value of ISEC determined by Registered Valuers is more than the sixty days volume weighted average price. In the present case, all the shares forming part of promoter's shareholding are held by the ICICI Bank, which in turn is held by Public Shareholders (19.58% held by Deutsche Bank Trust (Depository for ADS holders); 36.01% by Foreign Portfolio Investors and Foreign Institutional Investors; 9.55% by Insurance Companies; 23.91% by Mutual Funds; 6.51% by Individuals including HUF, Trusts & NRIs; and rest by other public funds as on 31.03.2024 -*Source as tendered by Company in hearing*). Accordingly, it cannot be said that the Scheme is intended to benefit any particular group of persons in this backdrop. There may be perception differences amongst the Investors while evaluating the real price of the shares and such evaluation is nothing but an opinion of each such investor. Even if it is considered that swap ratio may have turned out to be favourable to ICICI Bank's Shareholders if price of ISEC shares would have been discovered under Reverse Book Building Process, the less favourable swap ratio contemplated in the proposed scheme

would benefit the ISEC shareholders also indirectly, as the Scheme contemplates allotment of shares of ICICI Bank in consideration of cancellation of shares held in ISEC. In other words, ISEC shareholders, becoming shareholders of ICICI Bank, would also stand benefited by the increase in intrinsic value of ICICI Bank reflecting in the traded price consequent upon implementation of Scheme. We are unable to comprehend as to how it had an impact on the decision making on part of ISEC public shareholders, while 93.82% have exercised their vote, and 71.89% of total shareholders have voted in favour of the Scheme.

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

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

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

5.4.2. Clause 25 of the Explanatory Statement appended to the Notice of meeting states that "*The draft Scheme along with the valuation report, dated June 29, 2023, jointly issued by PwC Business Consulting Services LLP, Registered Valuer (Registration No. IBBI/RV-E/02/2022/158) and Ernst & Young Merchant Banking Services LLP, Registered Valuer (Registration No. IBBI/RV-E/05/2021/155) (hereinafter referred to as "Joint Valuation Report"; and the fairness opinion,*

dated June 29, 2023 issued by BofA Securities India Limited, a SEBI registered merchant banker. Were placed before the Audit Committee of Directors of the Subsidiary Company along with other particulars at its meeting held on June 29, 2023. Copies of the (i) Joint Valuation Report, dated June 29, 2023; (ii) a summary of Joint Valuation Report showing valuation methods, rationale and assumption considered for arriving at the Swap Ratio (as defined in the Scheme); and (iii) the fairness opinion, issued by BofA Securities India Limited, dated June 29, 2023 are enclosed as Annexure 2, Annexure 3 and Annexure 4, respectively." The Page No. 100 to 103 of the Notice (summary of Joint Valuation Report) contains the Summary of the valuation methods, rationale and assumptions considered for arriving at the share exchange ratio. The BSE and NSE letters do not contemplate provisioning of the valuation working. Accordingly, we do not find any force in the contention that the notice does not provide the details relating to valuation in the manner sought in BSE/NSE letter.

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

5.5.1. It is stated the SEBI, vide its letter dated 6.6.2024 after taking notice of the complaints in this regard, had issued Administrative warning to ISEC to be careful in future and improve their compliance standards to avoid recurrence of such

instances in futures on the ground that the sharing of shareholders' information (*such as address or registered address* (*in case of a body corporate); e-mail ID; Unique Identification Number and PAN Number*) by your company with ICICI Bank is not appropriate and against the spirit of the Companies Act that, inter alia, upholds shareholders' privacy, and your company, thus, failed to maintain the privacy of personal data of minority shareholders.

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

5.5.3. We find that the Companies had explained the purpose of outreach program undertaken by it, and BSE didn't find any objectionable ground to order holding

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

5.6. It was also submitted that ICICI Prudential Mutual Fund also purchased shares of ISEC in March, 2024 to influence the outcome of voting under Public Shareholder category, however, it was clarified by Mr. Janak Dwarkadas that the said purchase took place after cut-off date for the purpose of entitlement to voting by placing on record documentary evidence to that effect. Accordingly, this submission has no merit.

5.7. It was also submitted by Applicant in CA 190/2024 that copy of petition was not provided to them despite request having been made to this effect. However, we are of considered view that the law does not contemplate service or provision of company petition to each shareholder.

6. After hearing the Counsel, we find that the applicants are aggrieved for less favourable swap ratio offered by the Scheme to shareholders of ISEC and it is their case that 'Reverse Book Building Process' would have yielded better value of their shares than what is being

offered under the Scheme in terms of Regulation 37 of Delisting Regulations. At this juncture, we take note of Reasons cited by shareholders under the class of Mutual Funds for voting in particular manner on the scheme, as required under Regulatory filing provisions applicable to them. We note that the Seven Mutual fund shareholders have voted against due to unfavourable swap ratio. One of dissenting shareholder Kotak Mutual fund has stated that the process of delisting of ICICI Securities is legally compliant, but price discovery process could have been better option. As against this, 16 Mutual Fund Shareholders have found the Scheme legally compliant, and 5 of assenting Mutual Fund shareholders have expressed concern for not providing price discover process to the minority shareholders. We note that the Hon'ble Bombay High Court in the case of ***Alstom Power Boilers Limited 2002 SCC Online Bom 1084*** quoted the decision in case of Miheer Mafatlal (Supra) wherein it was said that "…..*It was for the equity shareholders who acted bona fide in the interest of their class as a whole to accept even a less favourable ratio considering other benefits that may offset such less favourable ratio once an amalgamation goes through. We wholly concur with this view. In this connection we may also refer to a decision of Maugham, J., in (Hoare and Co. In re), 1993 All. E.R. 105, wherein it was laid down that where statutory majority had accepted the offer the onus must rest on the applicants to satisfy the Court that the price offered is unfair. In this connection the following pertinent observations were made by the learned judge. "The other conclusion I draw is this …… that the Court ought to regard the scheme as a fair one inasmuch as it seems to me impossible to suppose that the Court, in the absence of any strong grounds, is to be entitled to set up its own view of the fairness of the scheme in opposition to so very large a majority of shareholders who are concerned. Accordingly, without expressing a final opinion on the matter because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before*

me, unless it is affirmatively established that notwithstanding the views of a very large majority of shareholders, the scheme is unfair."

7. In view of the above, we are of considered view that the contention of the Applicants do not lead us to a conclusion that the proposed scheme is unfair or unreasonable from the perspective of various stakeholders of the Company, or is unconscionable or opposed to public.

8. Hence, IA 96/2024 and CA 190/2024 are dismissed and disposed of accordingly.

Sd/- **Sd/-**

Prabhat Kumar **Justice V. G. Bisht**
Member (Technical) **Member (Judicial)**