

Ref.: IRDA/F&A/ORD/FA/215/10/2022

**Order**

**In the matter of M/s Axis Bank Limited**

Pursuant to the issue of Show Cause Notice (SCN) dated 2nd September, 2022 for (i) not complying with the directions of the Authority in the transaction of acquisition of shares of the Max Life Insurance Company Ltd (MLIC) and (ii) making undue profits/gains from purchase and sale of equity shares of Max Life Insurance Company Ltd with its Promoters/Shareholders.

**Factual Matrix:**

1. Axis Bank Limited (Axis Bank) has been granted certificate of registration bearing Corporate Insurance Agent's Certificate of Registration CA00069 to act as a Corporate Agent for Insurance Companies by the Insurance Regulatory and Development Authority of India (hereinafter referred to as the "Authority") under sub-section (1) of Section 42D of the Insurance Act, 1938 read with Regulations 4 and 9 of IRDAI (Registration of Corporate Agents) Regulations, 2015. The Axis Bank is the Corporate Agent for Max Life Insurance Company Ltd (MLIC).

2. As per the provisions of Section 6A(4)(b)(ii) and (iii) of the Insurance Act, 1938, as amended by the Insurance Laws (Amendment) Act, 2015 read with Regulations 3(a), 3(b) and 4 of the IRDAI (Transfer of Equity shares of Insurance Companies) Regulations, 2015, every insurance company is required to seek prior approval of the Authority for the transfer of shares exceeding 1% of shareholding or if aggregate shareholding exceeds 5% of its paid up capital.

3. Max Life Insurance Company Ltd. (hereinafter referred as "the Insurer") had made application for transfer of shares, where Axis Bank Ltd along with its group companies viz., Axis Capital Ltd and Axis Securities Ltd had proposed to acquire 12.002% (transactions referred at Sl.No. 6 to 8 in the table below) of the equity shares of Insurer held by Max Financial Services Ltd. (hereinafter referred as "MFSL").

The Authority, while processing the said application for the transactions between the parties, vide its letter dated 28<sup>th</sup> January, 2021 had directed the following:

*"The basis for determining or calculating the Fair Market Value(FMV) for allotment of shares, transfer of shares among the shareholders needs to be clear and needs to be uniformly followed. A suitable provision to this effect be incorporated in the RSHA and any other related agreement" (emphasis added)*

The insurer vide letter dated 5<sup>th</sup> February, 2021 submitted that the basis of determination of fair market value of the equity shares shall be through a process run by two investment bankers and shall be uniformly followed across the agreement. The Authority vide letter dated

24<sup>th</sup> February, 2021 had granted approval for the proposed acquisition of 12.002% of shares of insurer by Axis Bank and its group companies.

4. The insurer vide its letter dated 14<sup>th</sup> May, 2021 (received by email) filed an application in terms of Section 6A of the Insurance Act, 1938 seeking prior approval of the Authority for the proposed transfer of 5.167% equity shares totalling to 9,91,36,573 equity shares of the Insurer held by Mitsui Sumitomo Insurance Company Ltd. (hereinafter referred as "MSI") to MFSL. Both MFSL and MSI are also existing promoters of the Insurer.

5. While processing the application referred to in para 4 above, for the proposed transfer of equity shares and subsequent correspondence with the insurer, it was observed that the Promoters of the insurer i.e. MFSL and MSI had a series of sale and purchase transactions with Axis Bank as per the details provided in the table below:

**Table showing transactions of share purchase/ sale with Axis Bank and its Group companies:**

	<i>Date of Transfer</i>	<i>Buyer</i>	<i>Seller</i>	<i>Shareholding in Max Life (%)</i>	<i>Number of shares</i>	<i>Price Per Share (Rs.)</i>	<i>Total Consideration (Rs.) (in Cr.)</i>
1	February 29, 2016	Axis Bank	MFSL & MSI	4.99	9,57,48,762	10.79	103
2	March 22, 2018	MFSL & MSI	Axis Bank	0.998	1,91,49,752	108.20	207
3	December 18 and 19, 2018	MSI & MFSL	Axis Bank	0.998	1,91,49,752	115.00	220
4	December 5 and 6, 2019	MSI & MFSL	Axis Bank	0.998	1,91,49,752	134.00	257
5	March 15 and 16, 2021	MFSL & MSI	Axis Bank	0.998	1,91,49,752	166.00	318
6	March 26, 2021	Axis Capital	MFSL	2	3,83,76,257	31.51	121
7	March 26, 2021	Axis Securities	MFSL	1	1,91,88,128	31.51	60
8	April 6, 2021	Axis Bank	MFSL	9.002	17,27,31,531	32.12	555

From the above table it is noticed that promoters of the Insurer have been engaging in transfer of shares of the Insurer to Axis Bank at a price, which is substantially lower than the fair market value (FMV submitted by the insurer vide letter dated 9<sup>th</sup> June 2021 enclosing the Valuation Certificate by a Chartered Accountant) and subsequently buying the same shares from Axis Bank at a substantially higher price.

6. The Axis Bank Ltd, as mentioned in the transactions at sl. 5 in the table above, had sold 0.998% of equity shares at a price of Rs.166 per share, Fair Market Value based on certificate

of Chartered Accountant. Subsequently, Axis Bank Ltd. and its Group of companies bought 12.002% shares within 22 days at price range of Rs 31.51 – Rs 32.12 per share as indicated in the above table, based on valuation as envisaged under Rule 11 UA of Income Tax Rules, 1962. Therefore, there is no uniform basis for determination of price for transfer of shares.

7. Further, it is pertinent to note that the Authority, while granting approval of transfer of 4.99% shares to Axis Bank, had under Para 3 of its letter Ref: IRDAI/3/F&A-Life/Max-Life /2015-16/LR dated February 5, 2016, directed that “*The Insurer and Axis Bank shall ensure that the transfer of Shares under current proposal as well as the Subsequent sale/transfer of shares by Axis Bank does not violate the provisions of the Insurance Act, 1938 and Guidelines applicable to Corporate Agents issued by the Authority, **in any manner. (Emphasis added)***”

8. As noticed in Para 5 above, the transactions in shares of the insurance company has resulted in undue profits/gains to the Corporate Agent, Axis Bank. By participating in these transactions, the corporate agent has not complied with directions of the Authority mentioned in para 3 and 7 above.

9. The Axis Bank Ltd, vide its response dated 8<sup>th</sup> Sept 2022 to the SCN dated 2<sup>nd</sup> Sept 2022 issued by the Authority, had requested for a personal hearing. Accordingly, it was notified about the personal hearing scheduled on the 13<sup>th</sup> Sept 2022 at the office of the Authority at 1:00 PM, vide e-mail/ letter dated 9<sup>th</sup> Sept 2022. On behalf of the Axis Bank following were present.

- a. Mr.Subrat Mohanty - Authorised representative of MD & CEO, Axis Bank Ltd
- b. Mr.Rahul Jain - Sr.Vice President, Axis Bank Ltd.

On behalf of the Authority following were present

- i. Mr. Debasish Panda - Chairman,
- ii. Mr. Rakesh Joshi-Member - F&I,
- iii. Dr. Mamta Suri - ED F&I,
- iv. Mr. Shardul Suresh Admane - GM F&I,
- v. Ms. A.Sageena-AGM-Legal,
- vi. Mr. G.Sivaramakrishna-AGM-F&I.

#### 10. Charge:

a. For violation of directions issued by the Authority vide its letters dated 5<sup>th</sup> February, 2016 and 28<sup>th</sup> January, 2021 *in letter and spirit of law*, as the transfer of shares was not done at fair market value determined on a uniform basis, which has led to Axis Bank, a registered Corporate Agent of the Insurer along with its group companies, receiving undue monetary gain of significant amounts from such buy/sale of equity shares.

b. The transactions of transfer of shares on substantially differential prices by the promoters of the insurer have resulted in passing on undue monetary gain by circumventing the provisions of Section 40(2) of the Insurance Act, 1938, read with Reg. 18(1) of the IRDAI (Registration of Corporate Agents) Regulations 2015 for receiving remuneration in excess of the limits as specified by the Authority; and

c. For violation of Regulation 14(ii) of IRDA (Registration of Corporate Agents) Regulations, 2015.

11. The Axis Bank vide email dated 8<sup>th</sup> September, 2022 has submitted its response to the SCN. It *inter-alia* stated the following:

a. Axis Bank has submitted that *the transactions mentioned under Para 2(c) above, were not subject to the stipulations of the IRDAI, under the IRDAI's January 2021 letter regarding calculation of fair market value on a uniform basis and were governed by two separate commercial transactions agreements entered into between MFSL, MSI and Axis in 2015 and 2020 in relation to the shares of Max Life. The reference to "any other related agreement" in the IRDAI January 2021 letter would also have to be read to be a reference to any other agreement pertaining to the shares or transactions which were subject matters of the Shareholders Agreement dated October 30, 2020 as amended ("Shareholders Agreement"), executed amongst Max Life, MFSL, MSI, Axis, ACL, ASL, Analjit Singh, Max Ventures Investment Holdings Private Limited. ....*

b. Axis Bank has submitted that *the referenced transactions do not involve any payment by the insurer (i.e. Max Life) to Axis (i.e. the Corporate Agent). Further, under the transactions referenced in Serial no. 1 and Serial Nos. 6 to 8 (both inclusive), Axis paid valuable consideration to MFSL and MSI for acquisition of the said shares. It is submitted that transfer of shares of Max Life undertaken between Axis, MFSL and MSI are not linked to any solicitation/procurement of insurance policies of Max Life undertaken by Axis.*

c. *It is therefore, humbly submitted that Max Life, Axis, MFSL and MSI have not violated the directions as contained in the IRDAI February, 2016 letter (including the direction to comply with provisions of the "Insurance Act, 1938 and guidelines applicable to corporate agents issued by the Authority") and have complied with the terms thereof.*

d. Axis Bank, further stated that *".....complied with the provisions of the Insurance Act, the regulations issued there under and the directions issued by IRDAI under the IRDAI January 2021 letter and the IRDAI February 2016 letter, and Axis is not in violation of the remuneration Regulations or the corporate Agents Regulations.*

12. In the personal hearing, the Axis Bank reiterated the submissions made in response to the SCN.

During the meeting, when representatives of Axis Bank stated that the transactions referred in the table are done as per the commercial transaction agreements, they were asked "Whether the commercial transaction agreements between the parties would prevail over the applicable law and directions issued by the Authority"?

To which they replied that the applicable law and directions issued by the Authority shall prevail.

### 13. Consideration of Response and findings

a. The corporate agent has not been able to provide acceptable justification for not adhering to the directions of the Authority dated 28<sup>th</sup> January, 2021 regarding amendments to

be made to the RSHA and other related agreements in relation to the transactions between the parties consisting of shares of the insurer.

b. The insurer had furnished the other agreements, i.e. share purchase agreement of April 2020 and MSI options agreement dt March 2020 upon being sought by the Authority. On perusal of the agreements as well as the earlier agreement with Axis Bank, i.e. October 2015 Option agreement, it was noticed that the basis for determining or calculating the Fair Market Value for the transactions in shares of the insurer (Max Life) was not uniform between the various parties. Therefore, in order to prevent any mischief and/ or abuse or circumvention of the applicable law, the Authority had clearly advised the insurer, vide its letter dt 28<sup>th</sup> January, 2021, to incorporate suitable provisions in the agreements to ensure uniform basis for determining or calculating the Fair Market Value of shares of the insurer and to make the necessary amendments to that effect in other related agreements.

c. All the three agreements between the various parties are concerned with the transactions in the shares of the insurer the subject matter of these agreements are transaction of shares of the insurer. Therefore, they are the related agreements referred to in the letter of the Authority dt 28<sup>th</sup> January, 2021.

d. The Authority had granted approval for the transfer of shares application, wherein Axis Bank and its group companies were to acquire 12.002% shares of the insurer, based on the confirmation of the insurer vide letter dt 5<sup>th</sup> Feb 2021 that they have made amendments to incorporate the directions of the Authority dated 28<sup>th</sup> January, 2021, in order to ensure the uniformity in the basis for determination or calculation of Fair Market Value of the shares of the insurer. The Authority had granted approval in good faith, based on the submissions/ confirmation by the Insurer.

Subsequently, while verifying the compliance with the conditions and directions stipulated by the Authority, from the correspondence exchanged with the Insurer vide letter dated 27<sup>th</sup> October, 2021 it was noticed that the price at which equity shares of insurer were transferred to Axis Bank are not determined by following a uniform basis.

Therefore, Axis Bank has violated applicable law by not complying with the directions issued by the Authority vide letter dated 28<sup>th</sup> January, 2021.

e. The Authority vide letter dated 5th February, 2016 had directed that *the Insurer and Axis Bank shall ensure that the transfer of Shares under current proposal as well as the Subsequent sale/transfer of shares by Axis Bank does not violate the provisions of the Insurance Act, 1938 and Guidelines applicable to Corporate Agents issued by the Authority, in any manner.* (Emphasis added)

Though there is no direct payment by the Insurer to the Corporate Agent, Insurer has facilitated the transfer of additional consideration of substantial amounts by registering the transfer of its equity shares to Axis Bank at substantially differential prices, wherein, when Axis Bank bought shares the equity share price is substantially lower and where Axis Bank sold the shares to same promoters of the insurer at substantially higher price. This has resulted in violation of provisions of above directions, where it specified that the provisions of Insurance Act, 1938

and Guidelines applicable to Corporate Agents issued by the Authority, shall not be violated **in any manner.**

Therefore, the Axis Bank has violated the provisions of Section 40(2) of the Insurance Act, 1938, read with Reg 18(1) of the IRDAI (Registration of Corporate Agents) Regulations 2015 for receiving remuneration in excess of the limits as specified by the Authority and provisions of Regulation 14(ii) of the Corporate Agents Regulations.

#### **14. Decision**

**Charge: Not complying with the directions issued by the Authority.**

**Decision:** The corporate agent Axis Bank Ltd has not complied with the directions issued by the Authority vide letters dated 28<sup>th</sup> January, 2021, and dated 5<sup>th</sup> February, 2016. Therefore, a penalty of Rs 1 crore (Rupees One Crore only) is imposed on the **bank** by invoking section 102(b) of the Insurance Act, 1938.

**Charge: Making undue gains of substantial amounts by way of transactions in shares of insurer (Max Life Insurance Co Ltd) in violation of the directions of the Authority.**

**Decision:** By undertaking the transactions of transfer of shares with the promoters/ shareholders of the insurer (Max Life Insurance Co Ltd) in violation of the directions of the Authority, the Corporate Agent, Axis Bank Ltd has circumvented the maximum limits of commission or remuneration or reward as stipulated in IRDAI (Payment of Commission or Remuneration or Reward to insurance Agents and Insurance Intermediaries) Regulations, 2016 read with Reg 18(1) of IRDAI (Registration of Corporate Agents) Regulations, 2015.

Therefore, a penalty of Rs 1 crore (Rupees One Crore only) is imposed on the **bank** by invoking section 102(b) of the Insurance Act, 1938.

The total penalty amount of Rs 2 crore (Rupees Two Crore only) shall be remitted by Axis Bank Limited within a period of 21 days from the date of issuance of this Order through NEFT/RTGS (details for which will be communicated separately). An intimation of remittance may be sent to Shri Shardul Admane, General Manager (F& I) at the Insurance Regulatory and Development Authority of India, Survey No.115/1, Financial District, Nanakramguda, Hyderabad 500032, email id [finance.life@irda.gov.in](mailto:finance.life@irda.gov.in)

The Corporate Agent, Axis Bank Ltd is hereby directed that this Order shall be placed before its Board at its next immediate meeting, so that the Board can take note of the violations and take necessary preventive steps to avoid such violations in future. The Authority may be provided with copies of the minutes of the said meeting.

If Axis Bank Ltd feels aggrieved by this order, an appeal may be preferred to the Securities Appellate Tribunal as per the provisions of section 110 of the Insurance Act, 1938.

Place: Hyderabad

Date: 13<sup>th</sup> Oct. 2022

  
(Debasish Panda)  
Chairman