IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal under and in terms of section 5 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 read with Chapter LVIII of the Civil Procedure Code, against the Judgment/Order of the High Court in the Exercise of its Civil Jurisdiction.

SC/CHC/Appeal/26/2015
HC (Civil) 60/2014/CO

CEYLINCO INSURANCE PLC
"Ceylinco House",
No. 69, Janadhipathi Mawatha,
Colombo 01.

PETITIONER

vs

1. **CEYLINCO LIFE INSURANCE LIMITED**
   106, Havelock Road'
   Colombo 05.

2. **CEYLINCO GENERAL INSURANCE LIMITED**
   "Ceylinco House", 3rd Floor,
   No. 69, Janadhipathi Mawatha,
   Colombo 01.

RESPONDENTS

AND THEN

CEYLINCO INSURANCE PLC

"Ceylinco House",
No. 69, Janadhipathi Mawatha,
Colombo 01.

PETITIONER

vs

1. **CEYLINCO LIFE INSURANCE LIMITED**
   106, Havelock Road,
   Colombo 05.

2. **CEYLINCO GENERAL INSURANCE LIMITED**
   "Ceylinco House", 3rd Floor,
   No. 69, Janadhipathi Mawatha,
   Colombo 01.

RESPONDENTS

AND

GLOBAL RUBBER INDUSTRIES (PVT) LTD

No. 28, Joseph's Lane,

Colombo 04.

SHAREHOLDER-RESPONDENT

AND NOW BETWEEN

GLOBAL RUBBER INDUSTRIES (PVT) LTD

No. 28, Joseph's Lane,

Colombo 04.

SHAREHOLDER-RESPONDENT-APPELLANT

vs

CEYLINCO INSURANCE PLC
"Ceylinco House",
No. 69, Janadhipathi Mawatha,
Colombo 01.

PETITIONER-RESPONDENT

1. **CEYLINCO LIFE INSURANCE LIMITED**
   106, Havelock Road,
   Colombo 05.

   1st RESPONDENT-RESPONDENT

2. **CEYLINCO GENERAL INSURANCE LIMITED**
   "Ceylinco House", 3rd Floor,
   No. 69, Janadhipathi Mawatha,
   Colombo 01.

   2nd RESPONDENT- RESPONDENT

BEFORE : Yasantha Kodagoda, P.C., J.
Kumudini Wickremasinghe, J.
M. Sampath K. B. Wijeratne J.

COUNSEL : Akile Deen with Hasith Samayawardhene
Instructed by Sinnadurai Sundaralingam and
Balendra for the Added-Respondent-Appellant.

Dr. Romesh De Silva, P.C., for the Petitioner-Respondent.

Palitha Kumarasinghe, P.C., with Asanka Ranwala instructed by Abdeen Associates for the 1st Respondent-Respondent.

Chandaka Jayasundera, P.C., with Ruwantha Cooray and Rukmal Cooray instructed by Sanath Wijewardane for the 2nd Respondent-Respondent.

ARGUED ON : 16.09.2025

DECIDED ON : 20.02.2026

M. Sampath K. B. Wijeratne J.

Introduction

The Petitioner-Respondent Company (hereinafter referred to as the 'original Petitioner') is a limited liability company duly incorporated in Sri Lanka carrying on both long term and general insurance business. Section 53 of the Regulation of Insurance Industry (Amendment) Act, No. 03 of 2011 enacted on February 07, 2011 required composite insurance companies like the Petitioner who is carrying on both long term and general insurance business to segregate the two classes of insurance business into two separate companies. Thereafter, the Insurance Board of Sri Lanka as the regulator of the insurance industry issued a guideline for the proposed segregation on August 30, 2013 which was later amended on the 21st August 2014. The said guidelines required every composite insurance company to identify a model to segregate the two classes of business and submit a proposal to the Insurance Board of Sri Lanka (hereinafter 'IBSL').

Accordingly, the original Petitioner company incorporated the 1st and 2nd Respondent-Respondent Companies (hereinafter referred to as the '1st and 2nd Respondents') as wholly owned subsidiaries of the Petitioner company to facilitate the above requirement. The original Petitioner company, thereafter, submitted its proposal for segregation and requested IBSL to provide its observations, which IBSL had no objections to, subject to certain conditions to be fulfilled.

Having satisfied the regulatory requirements of the IBSL, the original Petitioner Company made an application to the District Court in terms of Section 102 of the Regulation of Insurance Industry (Amendment) Act. The District Court of Colombo after considering the application of the original Petitioner company, gave the approval under the aforesaid section, by order dated October 10, 2014.

After final order approving segregation on October 10, 2014, a shareholder of the Petitioner company sought to intervene in the concluded action to which the original Petitioner and 1st and 2nd Respondents took up the preliminary objection that no intervention is possible after the final order. Having recorded the preliminary objection, the District Court fixed for written submissions on the preliminary objection.

However, the learned District Judge, without ruling on the preliminary objection, by order dated November 20, 2014 held that the order dated October 10, 2014 was decided *per incuriam* as section 102 of the Regulation of the Insurance Industry Act (as amended) has no application to the segregation and therefore, provisions in the Companies Act need to be complied with, particularly section 185 of the Companies Act which the original Petitioner has failed to do. Accordingly, the intervenient Petitioner had been allowed to intervene and file objections in respect of the main application.

Thereafter, when the matter came up again in the District Court on November 27, 2014, parties made submissions and *inter alia,* brought it to the notice of the Court that since the Court has not set aside its original order approving the segregation, there is no need to proceed with the application any further before the District Court as section 185 of the Companies Act is not a matter for the District Court. Since the learned Judge has already held that the order was *per incuriam* and allowed the intervention, paving the way to make a fresh order, it could be considered that the original order has been set aside.

Whilst matter remain as such, on or about the December 18, 2014, the original Petitioner company instituted an application before the High Court of the Western Province (Exercising Civil Jurisdiction), Holden in Colombo (commonly known as Commercial High Court) in terms of Section 256 and 257 of the Companies Act No. 7 of 2007 in the case bearing No. HC/Civil/60/2014/CO seeking transfer of long-term insurance policies to 1st Respondent and general insurance policies to 2nd Respondent among others.

Having been made aware of the application, the Appellant filed a motion in the Commercial High Court, and subsequently made submissions in support of such motion against the granting of orders sought by the original Petitioner company.

Consequent to such submissions, the Learned Commercial High Court Judge deferred making any orders in the Application, and allowed the Appellant and other shareholders of the original Petitioner Company to file objections and written submissions to the application. Learned High Court Judge made an order in favour of the original Petitioner company on January 19, 2015, granting relief as prayed for by the original Petitioner company. It is against such impugned order that the Appellant has preferred a notice of appeal dated February 15, 2015 and a petition of appeal dated March 19, 2015.

The District Court made an order on March 26, 2015 dismissing the objection of the intervenient Petitioner and allowing the reliefs prayed by the original Petitioner company.

This appeal arises from the order dated January 19, 2015 of the High Court of the Western Province, which was held in favour of the original Petitioner.

As the arguments in this Court have developed, the principal outstanding questions can, I think, now be conveniently summarized as follows, which I would be dealing separately under different headings.

a. Whether the right to appeal is available for an order issued in terms of sections 256 and 257 of the Companies Act No 07 of 2007?

b. Whether the learned Commercial High Court Judge erred in issuing the impugned order?

c. Whether the Petitioner Company has acted in accordance with the law in effecting the purported segregation?

Whether Segregation was a Major Transaction Which Requires the Approval at a Shareholders' Meeting

Management and control of affairs of the company are entrusted to the Board of Directors under the Companies Act No 07 of 2007. However, shareholders are involved in the decision making process in instances where their proprietary rights are affected. Shareholders can exercise their rights specifically provided under the Act or permitted by the articles. Such powers can be exercised by shareholders at a shareholders meeting or by resolution in lieu of meeting under section 144 of the Act.

Requirement of approval by shareholders in case of a major transaction is one such instance where shareholders can exercise their rights to be involved in decision making process, particularly when the company makes fundamental changes to its structure.

It is the main contention of the Appellant in this case that despite the segregation process involves a drastic change of business and transfer of assets, the original Petitioner company has failed to obtain necessary approval from the shareholders as required by section 185 of the Companies Act.

Section 185 of the Companies Act reads as follows;

Section 185- *(1) A company shall not enter into any major transaction, unless such transaction is-*

(a) approved by special resolution;

(b) contingent on approval by special resolution;

(c) consented to in writing by all the shareholders of the company; or
(d) a transaction which the company is expressly authorised to enter into by a provision in its articles, which was included in it at the time the company was incorporated.

(2) In this section the reference to-

'assets' includes property of any kind, whether corporal or incorporeal;

'major transaction', means-

(a) the acquisition of or an agreement to acquire whether contingent or not, assets of a value which is greater than half the value of the assets of the company before the acquisition;

(b) the disposition of an agreement to dispose of, whether contingent or not, the whole or more than half by value of the assets of the company;

(c) a transaction which has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities of a value which is greater than half the value of the assets before the acquisition; or

(d) a transaction or series of related transactions which have the purpose or effect of substantially altering the nature of the business carried on by the company.

(3) Nothing in this section shall apply to-

(a) a transaction under which a company gives or agrees to give a floating charge over all or any part of the property of the company;

(b) a transaction entered into by a receiver appointed pursuant to an instrument creating a floating charge over all or any part of the property of a company;

(c) a transaction entered into by an administrator or liquidator of a company.

It is the argument of the learned President Counsel for the original Petitioner company that the application made to the Commercial High Court of Colombo under sections 256 and 257 of the Companies Act was done not pursuant to a voluntary act of the original Petitioner but was done in order to comply with a mandatory statutory requirement.

Regulation of Insurance Industry (Amendment) Act, No. 3 of 2011, mandated all the composite insurance companies to segregate two classes of insurance business into two separate companies.

Section 53 of Regulation of Insurance Industry (Amendment) Act, No. 3 of 2011 provided that;

> Section 53 - *Where on the date of the coming into operation of this Act, an insurer is engaged in carrying on both long term insurance business and general insurance business in terms of a valid licence issued by the Insurance Board of Sri Lanka under the principal enactment, such insurer shall be required within four years from the date of the coming into operation of this Act,* ***to segregate the long term insurance business and the general insurance business being carried on by it, into two separate companies.***
>
> [Emphasis added]

The IBSL on August 30, 2013, issued a set of Guidelines pertaining to the proposed segregation. An important item in these Guidelines was that each composite insurance company could identify the most appropriate model for segregation and submit its proposal to IBSL for approval.

Accordingly, the original Petitioner after submitting its proposal for segregation and obtaining observations of the Board of the IBSL, proceeded to incorporate the 1st and 2nd Respondent Companies to transfer long term Insurance and General Insurance business respectively with the undertaking to fulfill certain requirements specified and obtaining the approval of the District Court under section 102 of the Insurance Industry Act No 43 of 2000.

Thereafter, Petitioner company filed an application in the Commercial High Court which is the subject matter in the dispute to transfer of assets, liabilities, employees

and for the novation of the several hundred short-term and long-term insurance policies in favour of the two fully owned subsidiaries.

As dissent of shareholders cannot give effect to an act which is forbidden by law, in the said circumstances, getting approval for the segregation in question at a shareholders' meeting would be futile. Moreover, irrespective of the position of the shareholders, the Petitioner company is legally bound to give effect to the statutory requirement.

In the case of ***Joint Liquidators of Bontex Lanka (private) Limited vs Registrar General of Companies and Another***[1] Wengappuli, J. observed,

> "*The impugned actions, upon which the Petitioners have sought Writs of Certiorari, that the 1st Respondent's causing the publication of the names of the two Companies in the daily newspapers, are* ***clearly functions mandated by law since there was no discretion was left on the 1st Respondent****, when a Company failed to apply for re-registration within the stipulated period of time, not to publish the name of such a Company*."
>
> [Emphasis added]

In the present case, it is undisputed that segregation of companies carrying out both long term insurance business and general insurance business into two companies is mandated by law. Nonetheless, it still leaves the specific method of giving effect to such segregation to the discretion of the Company. In such circumstances, the chosen method of segregation needs to be approved at a shareholders' meeting, as such an arrangement would inevitably affect the rights of the Appellant, who is a major shareholder of the company.

[1] C.A.(Writ)Application No. 358/2010, C.A.M. dated 04.09.2020.

Scope of Sections 256 and 257 of the Companies Act under which the impugned order was issued

Section 256 reads as follows;

> *Section 256.(1) Notwithstanding the provisions of this Act or the provisions contained in the articles of a company, the court may on the application of - (a) a company; (b) an administrator appointed under Part XIII; or (c) with the leave of the court, any shareholder or creditor of a company, order that an arrangement or amalgamation or compromise shall be binding on the company and on such other persons or classes of persons as the court may specify. Any such order may be made on such terms and conditions as the court thinks fit.*

Accordingly, under the said section, the Court may, on the application of a company, an administrator appointed under Part XIII, or, with the leave of court any shareholder or creditor, order that an arrangement or amalgamation or compromise shall be binding on the company or on such other person or classes of persons as the Court may specify, on terms it thinks fit.

Section 257 gives the Court additional powers than those given under section 256.

> 'Section 257 -*(1) Without limiting the powers conferred under section 256, the court may for the purpose of giving effect to any arrangement or amalgamation or compromise approved under that section, either by the order approving the arrangement or amalgamation or compromise or by any subsequent order, provide for and prescribe terms and conditions relating to –*
>
> > *(a) the transfer or vesting of movable or immovable property, assets, rights, powers, interests, liabilities, contracts and engagements;*

(b) the issue of shares, securities or policies of any kind;

(c) the continuation of legal proceedings;

(d) the liquidation or the removal from the Register without liquidation, name and particulars of any company;

(e) the provision to be made for persons who voted against the arrangement or amalgamation or compromise at any meeting called in accordance with an order made under paragraph (b) of subsection (2) of section 256, or who appeared before the court in opposition to the application, to approve the arrangement or amalgamation or compromise;

(f) such other matters as are necessary or desirable to give effect to the arrangement or amalgamation or compromise.

(2) […]'

An order made under section 256 and/ or section 257 does not require the company to discuss the issue with shareholders or creditors before making an application under said section. Nonetheless, the Court should be guided by some fundamental principles in granting such an order in exercising such discretion. An inference to such principles can be drawn from the New Zealand case ***Re CM Banks Ltd***[2] which the leaned Counsel for Appellant also has drawn our attention to. Therein, it was observed that,

> *"The duty of the Court is to see (1) that there has been compliance with the statutory provisions as to meetings, resolutions, the application to the Court, and the like; (2) that the scheme has been*

[2] (1944) NZLR 248.

fairly put before the class or classes concerned; and that if a circular or circulars have been sent out, as is usual, whether before or after the making of the application to the Court, they give all the information reasonably necessary to enable the recipients to judge and vote upon the proposals; (3) that the class is fairly represented by those who attended the meeting and that the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class they purport to represent; and (4) that the scheme is such that an intelligent and honest man of business, a member of the class concerned and acting in respect of his interest, might reasonably approve."

I am of the view that learned Commercial High Court judge has delivered the judgment inadvertence of the fact that, though law mandated '***to segregate the long-term insurance business and the general insurance business being carried on by it, into two separate companies***', the decision of specific method of implementing it is left to the company which requires an approval by a special resolution.

Preliminary Objection: Non- Availability of Right of Appeal

In this application the original Petitioner company raised a preliminary objection that no direct right of appeal has been given to the Appellant by the Companies Act No. 7 of 2007 (Companies Act 2007) to appeal against an order made under sections 256 and 257 of the Companies Act.

Here it is noteworthy that the instant application filed under the Companies Act is quite different from the application filed before the District Court under section 102 of the Insurance Industry Act No 43 of 2000.

The Petitioner submits as follows;

"*When the leave application (SC/HC/LA/06/2015) was taken up on 6th September 2016, to the best of the Appellant's recollection, the*

Respondent Company itself raised a preliminary objection taking up the position that the correct procedure for contesting the impugned order should be through a final appeal; thereafter, as per the information available to the Appellant, this SC leave application was withdrawn on 13th November 2017."[3]

However, during the arguments, it was submitted on behalf of the original Petitioner Company that this appeal of the Petitioner from the order of the Commercial High should have come before this Court not by way of a final appeal made under section 754(1) read with section 754(5) of the Civil Procedure Code and sections 5 and 6 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, but with the leave of this Court having first obtained.

Thus, it is the duty of this Court to determine whether the appropriate procedure is leave to appeal or a final appeal.

The Commercial High Court from which this appeal stems is a Court established under the High Court of the Provinces (Special Provisions) Act No. 10 of 1996. Section 5(2) of the said Act emphasises, that a party may appeal to the Supreme Court with leave to appeal being provided on any order of the High Court against an error of law or fact. Section 5 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996, reads as follows,

Section 5 (1)-*Any person who is dissatisfied with any judgement pronounced by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2, in any action, proceeding or matter to which such person is a party may prefer an appeal to the Supreme Court against such judgement, for any error in fact or in law.*

[3] Post hearing Written submission on behalf of Appellant dated 18.11.2025.

(2) Any person who is dissatisfied with any order made by a High Court established by Article 154P of the Constitution, in the exercise of its jurisdiction under section 2, in the course of any action, proceeding or matter to which such person is, or seeks to be, a party, may prefer an appeal to the Supreme Court against such order for the correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.

(3) In this section, the expressions "judgement" and "order" shall have the same meanings respectively, as in section 754(5) of the Civil Procedure Code (Chapter 101)

[…]

The approach adopted in determining the question whether an order has the effect of a final judgment or not is now settled with the Seven Bench decision in the case of ***Dona Padma Priyanthi Senanayake vs H.G. Chamika Jayantha and two Others.***[4]

In the said case, it was held that the proper approach to decide whether an order given by the court has the effect of a final judgment or not, is the approach adopted by Lord Esher in ***Salaman vs Warner.***[5]

[4] [2017] BLR 74.

[5] [1891] 1 QBD 734.

In ***Salaman vs Warner*** **(**supra**)**, Lord Esher thus held:

> *"The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands finally disposed of the matter in dispute, I think that for the purpose of these rules, it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but if given in the other, will allow the action to go on, then I think it is not final but interlocutory."*

In the instant case, the order of the Commercial High Court is a *prima facie* final judgment, not an interlocutory order as it finally dispose the matters in the application.

Conclusion

Considering the fact that this segregation has taken place over a decade ago, reversing the segregation would give rise to unprecedented consequences. The Appellant has also informed that he does not intend this Court to reverse the segregation or events flowing therefrom. Moreover, it must be noted that the instant appeal only challenges the order made under section 256 and/ or section 257 of the Companies Act, but not the order made by the District Court approving the segregation.

For the foregoing, I would proceed to set aside the order of the learned Commercial High Court dated January 19, 2015, in the case bearing No HC/Civil/60/2014/CO

as it is *ex facie* erroneous. But this decision in no way affects the segregation already approved by the District Court or any consequences flowing therefrom.

Appellant is entitled to taxed costs of both this Court and the Commercial High Court.

Appeal is allowed.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, P.C., J.

I Agree.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J.

I Agree.

JUDGE OF THE SUPREME COURT