

THE BANKING REGULATION ACT, 1949

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**THE BANKING REGULATION
ACT., 1949**

(X of 1949)¹

[10th March, 1949]

**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING
TO BANKING ²[* * *];**

Whereas it is expedient to consolidate and amend the law relating to banking ²[* * *]; It is hereby enacted as follows:

**PART I
PRELIMINARY**

1. Short title, extent and commencement.—(1) This Act may be called the Banking ³[Regulation] Act, 1949.

⁴[(2) It extends to the whole of India ⁵(* * *].

(3) It shall come into force on such date⁶ as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. Application of other laws riot barred.—*The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the ⁷[Companies Act, 1956 (1 of 1956)] and any other law for the time being in force.*

COMMENTS

Scope of Section.—Section 2 states that the provisions of the Act shall be in addition to, and not, except as expressly provided under the Act, in derogation of any other law for the time being in force.⁸

"Shall".—It is well-known principle that in interpretation of statutes where the situation and the context warrants it, the word "shall" used in a section of a statute has to be construed as "may".⁹

¹For Statement of Objects and Reasons, see Gazette of India, 1948, Pt. V, pp. 311 and 312; for Report of Select Committee, see *ibid.*, 1949, Pt. V, pp. 45 to 48. Extended to Dadra and Nagar Haveli by Reg. 6 of 1963, Sec. 2 and Sch. 1 (w.e.f. 1st July, 1965) and to Goa, Daman and Diu by Reg. 11 of 1963, Sec. 3 and Schedule (w.e.f. 1st June 1964); Lakshadweep Islands by Reg. 8 of 1965 (w.e.f. 1st October, 1967). Enforcement in Sikkim w.e.f. 15th December, 1987 vide S.O. 1008 (E), dated 11th December, 1987. Nothing in this Act (except Sec. 34-A) shall apply to the Industrial Development Bank of India, vide Act 18 of 1964, Sec. 34.

²The word 'companies' omitted by Act 23 of 1965, Sec. 10 (w.e.f. 1st March, 1966)

³Subs. By *ibid.*, Sec. 11, for "Companies" (w.e.f. 1st March 1966).

⁴Subs. By Act 20 of 1950, Sec. 2, for sub-section (2).

⁵The words "except the State of Jammu and Kashmir" omitted by Act 62 of 1956, Sec. 2 and Schedule

⁶16th March, 1949; see Notification No. F.4 (46)-F1.49, dated 10th March, 1949, Gazette of India, 1949, Pt. 1, p.326

⁷Subs. By Act 95 of 1956, Sec. 14 and Schedule, for "Indian Companies Act, 1913 (7 of 1913)" (w.e.f. 14th January, 1957).

⁸State of Kerala v. M.T. Devessia, A.I.R. 1977 S.C. 331 at p. 333; Hemangini Finance and Leasing (P.) Ltd. V. Tamilnadu Mercantile Bank Ltd., (1996) 3 Comp. L.J. 238 (C.L. B.).

⁹Amal Chandra Dutt v. Second Additional District Judge, (1989) 1 S.C.C. 1 at p. 7; State of H.P. v. Sudershan Kumar (1990) 1 E.F.R. 15 at p. 18 (H.P.P.; Agya Ram v. State of U.P., 1990 (27) A.C.C. 29 at p.31; Proposed Dharwood Distt. Ex. Servicemen's Co-op. Society Ltd. V. State, A.I.R. 1993 Knt. 117 at p. 119.

Liability in chit frail transaction—Whether saved by the provisions of Sec. 3 (h) (B) of Tamil Nadu Indebted Persons (Temporary Relief) Act, 1976.—The chit fund transaction is, in its essence a transaction of a kind which a banking company can legitimately undertake within the governing provisions of the Banking Regulation Act, 1949. In the instant case, the petitioner, cannot, therefore, seek to take his liability in the chit fund transaction out of the saving provision of Sec. 3 (h) (B) of the Tamil Nadu Indebted Persons (Temporary Relief) Act, 1976.¹

Provisions of other enactment and their application are not, in any way excluded.—In the instant case, the point for consideration is whether the rate of interest claimed by the respondent Bank can be a subject-matter of judicial scrutiny under the provisions of the Usurious Loans Act. This question has to be answered affirmatively, because there is no prohibition in the Banking Regulation Act, 1949, precluding the Court from scrutinising the rate of interest under the provisions of the Usurious Loans Act, since Sec. 2 of the Banking Regulation Act makes it clear that the provisions of any other enactment and their application are not, in any way, excluded by the provisions of the Banking Regulation Act, 1949.²

Employment for the legal heirs of an employee who died in harness.—The provisions in the Banking Regulation Act, 1949, are not exhaustive. Section 2 of the said Act reads that the provisions of the Act shall be in addition to and not, in derogation of the Companies Act, and another law for the time being in force. Thus the provisions of the Banking Regulations Act will be in addition to the provisions of the other laws unless it is expressly provided otherwise in the Act itself.

The petitioner is entitled to claim employment on compassionate grounds irrespective of the question of law raised by the appellant-Bank. Incidentally, it may be mentioned that the appellant-Bank has a scheme of its own for making appointment on compassionate grounds of legal heirs of its employees. but the said scheme is not applicable as such to the writ petitioner as in Clause 10 of the Scheme the employees of the transferor Bank will be governed by the same terms and conditions of service as are applicable to them on 15th August, 1989 for a period of three years. The writ petitioner has studied upto 5th standard and she has two minor daughters and one minor son. She has no other source of income. Hence she is entitled to be appointed on compassionate grounds. Even if her educational qualification is below the minimum required by the appellant-Bank the latter shall grant a relaxation of the conditions in her case having regard to the special facts and circumstances of the case.³

⁴[3.Act to apply to Co-operative Societies in certain cases.—Nothing in this Act shall apply to—

(a) a primary agricultural credit society;

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in Part V.]

¹ *Varmani David, C. v. Bank of Madurai*, AIR, 1983 Mad. 15 at pp. 16,17.

² *Muthai v. Syndicate Bank, Polladti*, 7988 Bank J. 6 at p. 18.

³ *Indian Batik v. K. Usha* 1996 (3) Bank. L.J. 266 at p. 273 (Mad.).

⁴ Subs. by Act 23 of 1965, Sec. 12, for the former section (w.e.f. 1st March, 1966).

COMMENTS

Applicability to Co-operative Societies.—Amongst the provisions in the Banking Regulation Act which have been made applicable to Co-operative Societies under Part V of the said Act there is no section which deals with any of the following matters, namely (a) the classification of such institutions on the basis of their financial position, (b) the staff-pattern by the said institution or (c) conditions of service of the employees in such institutions. Such being the position, the contention that co-operative societies carrying on the business of banking are governed in respect of such matters, only by the provisions contained in the Banking Regulation Act, 1949, is devoid of any substance.¹

Application to societies.—In the first place all provisions of the Banking Regulation Act do not apply to Co-operative Banks. Section 3 (c) of the Banking Regulation Act, 1949 states that nothing in this Act shall apply to (a) a primary agriculture credit society, (b) a Co-operative Land Mortgage Bank, and (c) any other Co-operative society except in the manner and to the extent specified, in Part V. Part V makes substantial departure from the Banking Regulation Act as far as Co-operative Banks are concerned. Some of the sections of the Act on which the learned single Judge has relied, do not apply to Co-operative banks. Thus, for example, Sec. 35-B under which amendments of provision relating to appointments of managing directors, etc. are subject to the previous approval of the Reserve Bank, do not apply to a Co-operative Bank.²

Cheque drawn in favour of fictitious person.—Whenever a cheque is drawn in favour of a fictitious person, a duty is cast on the collecting bank to prove that it had not acted negligently and that it had collected that amount in good faith.³

Post-dated cheque.—Post-dated cheque is one containing a later date than that of the delivery. Therefore, it has an implied notice that there is no present deposit to the credit of the drawer and an implied guarantee that the funds would exist when it becomes due. Though the cheque is payable only on a future date it may be negotiable. There is no prohibition in the Act against post-dating a cheque. If a banker pays the amount before the due date of a cheque, he will lose the statutory protection arising from such payment⁴

Prosecution on dishonour of cheque.—The offender as per Sec. 138, Negotiable Instruments Act, is the drawer of the cheque. One of the conditions to constitute the offence is that the cheque should have been presented to the bank within six months of its issue. Another condition is that the payee should have made a demand for payment by registered notice after the cheque is returned unpaid. Third condition is that the drawer should have failed to pay the amount within 15 days of receipt of notice. Unless the cheque is returned unpaid due to insufficiency of amount of money standing to the credit of the drawer or that it exceeds the

¹ *G. Gopinathan Nair v. State of Kerala*, AIR. 1977 Ker. 36 at p. 38.

² *Sharnirao Vithal Cooperative Commiserative Bank Ltd. v. Padubidri Pattabhira)n Bhat*, 2993 (7) Bank L./ 353 at p. 360.

³ *Syndicate Bank v. United Commercial Bank*, (1991) 70 Comp. Cos. 748 at pp. 754, 755 (Knt.).

⁴ *Manoj K. Seth v. K.J. Fernandez*, 1991 (2) Bank C.L.R. 385 at pp. 389, 390 (Ker.).

amount arranged to be paid from the account by an agreement made with the bank. Section 138 of the Act is not attracted.¹

4. Power to suspend operation of Act. —(1) The Central Government, if on a representation made by the Reserve Bank in this behalf, is satisfied that it is expedient so to do, may by notification in the Official Gazette suspend for such period, not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in relation to any specified banking company.

(2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in this behalf may, by order in writing, exercise the powers of the Central Government under sub-section (1), so however that the period of suspension shall not exceed thirty days, and where the Governor or the Deputy Governor, as the case may be, does so, he shall report the matter to the Central Government forthwith, and the order shall, as soon as may be, be published in the *Gazette of India*.

(3) The Central Government may, by notification in the Official Gazette, extend from time to time the period of any suspension ordered under sub-section (1) or sub-section (2) for such period, not exceeding sixty days at any one time, as it thinks fit, so however that the total period does not exceed one year.

(4) A copy of any notification issued under sub-section (2) shall be laid on the table of ²[Parliament] as soon as may be after it is issued.

5. Interpretation. — ³[In this Act,] unless there is anything repugnant in the subject or context,—

⁴[(a) "approved securities" means—

(i) securities in which a trustee may invest money, under Cl.(a), Cl.(b), Cl.(bb), Cl.(c) or Cl.(d) of Sec. 20 of the Indian Trusts Act, 1882 (2 of 1882);

(ii) such of the securities authorised by the Central Government under Cl.(f) of Sec. 20 of the Indian Trusts Act, 1882 (2 of 1882), as may be prescribed.]

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, or otherwise;

(c) "banking company" means any company which transacts the business of banking ⁵[in India].

Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the

¹ *N.C. Kittaraesan v. Ammeerappa*, 1991 (2) Bank C.L.R. 341 at p. 344 (Ker.); *Abdul Samad v. Satya Narain Mahawar*, 1991 (1) A.L Cr. L. R. 402 at p. 404 (P. & H.), *Rajiv Kumar v. State of U.P.* 1992 All. L.J. 994 at p. 995; *Oswal Ispat Udyog v. Salem Steel Suppliers*, 1991 (1) A.I.Cr.L.R. 983 at p. 987 (Mad.).

² Subs. by the A. O. 1950, for "the Dominion Legislature".

³ Subs. by Act 55 of 2963, Sec. 6 for "(1) In this Act" (w.e.f. 1st February, 1964).

⁴ Subs. by Act No. 1 of 7984, Sec. 13 (w.e.f. 15th February, 1984).

⁵ Subs. by Act 20 of 1950, Sec. 3, for "in any State".

public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

¹(c-a) "banking policy" means any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources;]

²[(cc) "branch" or "branch office", in relation to a banking company, means any branch or branch office, whether called pay office or sub-ay office or by any other name, at which deposits are received, cheques cashed, or moneys lent and for the purposes of Sec. 35 includes any place of business where any other form of business referred to in sub-section (1) of Sec. 6 is transacted;]

³[(d) "company" means any company as defined in Sec. 3 of the Companies Act, 1956 (1 of 1956), and includes a foreign company within the meaning of Sec. 591 of that Act;]

⁴ [(da) "corresponding new bank" means a corresponding new bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (4 of 1980)].

⁵[(e) * * * * *]

(f) "demand liabilities" means liabilities which must be met on demand, and "time liabilities" means liabilities which are not demand liabilities;

⁶[(ff) "Deposit Insurance Corporation" means the Deposit Insurance Corporation established under Sec. 3 of the Deposit Insurance Corporation Act, 1961 (XLVII of 1961);]

³[(ffa) "Development Bank" means the Industrial Development Bank of India established under Sec. 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(ffb) "Exim Bank" means the Export-Import Bank of India established under Sec. 3 of Export-Import Bank of India Act, 1981 (28 of 1981);]

⁷[(ffc) "Reconstruction Bank" means the Industrial Reconstruction Bank of India established under Sec. 3 of the Industrial Reconstruction Bank of India Act, 1984;]

⁸[(ffd) "National Housing Bank" means the National Housing Bank established under Sec. 3 of the National Housing Bank Act, 1987;]

¹ Ins. by Act 58 of 1968, Sec. 2 (w.e.f. 1st February, 1969).

² Ins. By Act 33 of 1959, Sec. 2 (w.e.f. 1st October, 1959).

³ Subs. By *ibid.*, Sec. 2(ii), for Cl. (d), (w.e.f. 1st October, 1959).

⁴ Ins. By Act No. 1 of 1984, Sec. 13 (w.e.f. 15th February, 1984).

⁵ Clause (e), omitted by Act 52 of 1953, Sec. 2.

⁶ Ins. by Act 47 of 1961, Sec. 52 and Sch. II (w.e.f. 1st January, 1962).

⁷ Ins. by Act No. 62 of 1984, Sec. 71 and Sch.. III (w.e.f. 20th March, 1985).

⁸ Ins. by Act 53 of 1987, Sec. 56 and Sch. III (w.e.f. 9th July, 1988).

(g) "gold" includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;

¹[(gg) "Managing agent" includes,—

(i) Secretaries and Treasurers,

(ii) where the managing agent is a company, any director of such company, and any member thereof who holds substantial interest in such company,

(iii) where the managing agent is a firm, any partner of such firm;

²[(h) "Managing Director", in relation to a banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of Directors or, by virtue of its memorandum or articles of association is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called:]

³[Provided that the managing director shall exercise his powers subject to the superintendence, control and direction of the Board of Directors;]

⁴[(h-a) "National Bank" means the National Bank for Agriculture and Rural Development established under Sec. 3 of the National Bank for Agriculture and Rural Development Act, 1981;

⁵ [(i)* * * * *]

(j) "prescribed" means prescribed by rules made under this Act;

⁶ [(j-a) "Regional Rural Bank" means a Regional Rural Bank established under Sec. 3 of the Regional Rural Banks Act, 1976 (21 of 1976);]

⁷ [(k) * * * * *]

⁸ [(l) "Reserve Bank" means the Reserve Bank of India constituted under Sec. 3 of the Reserve Bank of India Act, 1934 (2 of 1934);]

⁹ [(m) * * * * *]

(n) "secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance; and "unsecured loan or advance" means a loan or advance not so secured;

¹⁰ [(n-i) "Small Industries Bank" means the Small Industries Development Bank of India established under Sec. 3 of the Small Industries Development Bank of India Act, 1989;]

¹ Ins. by Act 58 of 1968, Sec. 2 (w.e.f. 1st February, 1969).

² Subs. by Act 33 of 1959, Sec. 2, for C1.(h) (w.e.f. 1st October, 1959).

³ Added by Act 58 of 1968, Sec. 2 (w.e.f. 1st February, 1969).

⁴ Ins. by Act 61 of 1981, Sec. 62 Sch. II, Pt. I (w.e.f. 1st May, 1982).

⁵ Clause (i) omitted by Act 33 of 1959, Sec. 2 (zv.ef. 1st October, 1959).

⁶ Clause (i) omitted by Act 33 of 1959, Sec. 2 (zv.ef. 1st October, 1959).

⁷ Ins. by Act 61 (i) 1987, Sec. 62, Sell. II.

⁸ Ins. by Act T of 1984, Sec. 13 (w.e.f. 15th February, 1984).

⁹ Clause (m) omitted by Act 33 of 1959, Sec. 2 (zv.ef. 1st October, 1959).

¹⁰ Ins. by Act No. 39 of 1989, Sch. II, Pt. III, (w.e.f. 7th March, 1990).

¹[(n-a) "small scale industrial concern" means an industrial concern in which the investment in plant and machinery is not in excess of seven and a half lakhs of rupees or such higher amount, not exceeding twenty lakhs of rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to the trends in industrial development and other relevant factors;]

²[(n-b) "Sponsor Bank" has the meaning assigned to it in the Regional Rural Bank Act, 1976 (21 of 1976);

(n-c) "State Bank of India" means the State Bank of India constituted under Sec. 3 of the State Bank of India Act, 1955 (23 of 1955);]

³[(n-d)] "subsidiary bank" has the meaning assigned to it in the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959),

² [(n-e)] "substantial interest",—

(i) in relation to a company means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together, in the shares thereof, the amount paid-up capital of the company, whichever is less;

(ii) in relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent. of the total capital subscribed by all the partners of the said firm;

⁴[(o) all other words and expressions used herein but not defined and defined in the Companies Act, 1956 (1 of 1956), shall have the meanings respectively assigned to them in the Act.

⁵ [* * * * *]

COMMENTS

"Banking"—Meaning of.—When the Bank acts as an authorised dealer in foreign exchange and a person can receive foreign contributions only through any one of the branches of a bank, specified in the application for registration, it is a transaction of banking business. "Banking" as per the definition in the Banking Regulation Act means the acceptance of deposits of money from the public repayable on demand or otherwise. The contention therefore that the Bank of Cochin was not transacting banking business when it was functioning as an authorised dealer cannot also be accepted.⁶

The essential characteristic of banking, namely, the power to receive deposits from the public which are repayable in the manner indicated in Sec. 5 (1) (b) of the Act is absent and merely the power of granting loans is retained and exercised that

¹ Ins. by Act 58 of 1968, Sec. 2 (w.e.f. 1st February, 1969).

² Ins. by Act 1 of 1984, Sec. 13 (w.e.f. 15th February, 1984).

³ Clauses (n-b) and (n-c) re-lettered as Cls. (n-d) and (n-e) by *ibid.* (w.e.f. 15th February, 19M

² Ins. by Act 1 of 1984, Sec. 13 (w.e.f. 15th February, 1984).

⁴ Ins. by Act 33 of 1959, Sec. 2 (w.e.f. 1st October, 1959).

⁵ Sub-section (2) omitted by the A.O., 1950.

⁶ *Bishop of Kottayam v. Union of India*, A.I.R. 1986 Ker.126 at p. 129; *Janata Sahkari Bank Ltd v. State of Maharashtra*, (1995) 82 Comp. Cas. 707 (Bom.).

does not make the company a banking company. Lending of money may be one phase of a banking business but it is not the main phase or the distinguishing phase.¹

Scope and applicability of.—A definition clause is always subject to the context in which the word is used. If the context so requires; a word or expression may be given a meaning not covered by the definition clause.² In order that a bank may be a banking company it is in the first place necessary that it must be a "company". The State Bank of Travancore is not a "company" properly so called. It is a subsidiary bank which falls within the definition of Sec. 2 (k) of the State Bank of India (Subsidiary Banks) Act, 1959. It was established by the Central Government in accordance with the Act of 1959 and is not a "company" and, therefore, not a banking company. It must follow that the decretal debt which the respondent is liable to pay to the appellant is not owed to a banking company. It was indeed not owed to any banking company at all on 14th July, 1970, being the date on which the Act, came into force.³

Interpretation of Sec. 5 (b)—Section 5 (b) of the Banking Regulations Act, 1949 defines 'banking as accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or 'otherwise and withdrawal by cheques, drafts, order or otherwise. On the proper interpretation of the above clause, therefore, is that exemption which has been contemplated by Sec. 80-P (2) (a) (i) is in respect of the Banking as defined under Sec. 5 (b) of the Banking Regulations Act, 1949.⁴

Merely because the petitioners the co-operative societies in question are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949, inasmuch as these co-operative societies are not established for the purpose of doing "banking" as defined in Sec. 5 (b) of the Banking Regulation Act, 1949.⁵

Branch or branch office.—The different branches or branch offices do not have under the said Act, separate or distinct personality and they cannot be considered as separate entities. All officers of the Banking company transacting business at any particular branch or branch office acting on behalf of the Banking Company and in that regard, accordingly, the Banking Company invests such officers with requisite powers and authorities of which the sole repository is the Banking Company itself.⁶

¹ *Lakhi Ram v. State of Haryana*, T989 (1) All India Cr.L.R. 7787 at p. 1189 (P.&H.); *Jagannath v. Bank of India*, (1.994) 80 Comp. Cas. 498 (M.P.); *New Bank of India v. Bhupinder Singh*, (T 994) 80 Comp. Cas. 501 (P. & H.); *Canara Bank v. Tecom Engineer*, (1994) 80 Comp. Cas. 325 (Ker.); *State Bank of Bikaner & Jaipaar v. N.I.S.R. Corporation*, (2995) 82 Comp. Cas. 548 (Raj.).

² *Bharat Steel Tubes Ltd. v. State of Haryana*, A.I.R. T 977 Punj. 289 at p. 293.

³ *State Bank of Travancore v. Mohammed Mahammed Khan*, (7982) 52 Comp. Cas. 490 at p. 496.

⁴ *Commissioner of Income Tax v. Co. Op. Supply & commission Shop Ltd.*, 1993 (T) Bank. C.L.R.

333 at p. 337; 1993 (204) I.T.R. 773 at p. 728 (Raj.).

⁵ *V.S.S. Niyamitha v. State of Karnataka*, (7997) 72 Com. Cas. 409 at pp. 474 Was.).

⁶ *Jagdambe Nilwad Company v. Punjab National Bank, Gawkier*, 1991 (2) Bank C.L.R. 570 at pp. 578, 519 (M.P.).

Bank—Test for deciding its negligence.—One of the tests of deciding whether the Bank was negligent though not always conclusive, is to see whether the Rules or instructions of the Bank were followed or not.¹

Banking Company.—Merely because the appellant co-operative society advanced loans to its nominee and carried out other financial transactions, it did not become a banking company or cease to be a co-operative society.²

A Co-operative Bank does not fall in the category of a “banking company”.³

⁴[5-A. **Act to override memorandum, articles, etc.**—Save as otherwise expressly provided in this Act,—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1: 59 (33 of 1959); and

(b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.]

COMMENT

Statutory agreements —What amounts to.—The directives issued by the Reserve Bank, no doubt, have statutory force. They lay down the guidelines about the methodology of operations, policy, procedure and rate of interest in financing or advancing loans to various classes of persons. But the loan transactions entered into by the executives of banking institutions in the usual course of their business are not statutory agreements they are just commercial transactions governed by the guidelines laid down by the Reserve Bank. Therefore it could not be urged that since the loan transactions entered into by banks with their customers are governed by statutory directive of the Reserve Bank, the transactions become statutory agreements and Court cannot apply the Usury Acts to scale down the interest charged in view of the overriding effect given to the Banking Regulation Act under Sec. 5-A.⁵

PART II

BUSINESS OF BANKING COMPANIES

6. Forms of business in which banking companies may engage. —(1) In addition to the business of banking, banking company may engage in any one or more of the following forms of business, namely:

¹ *Indian Overseas Bank v. Industrial Chain Concern*, 7992 Bank J. 218 at p. 224 (S.C.) : 1992 Bankers J. 218 (S.C.): (1990) 1 S.C.C. 484

² *Vyavasaya Seva Sahakara Sangha Niyamitha v. State of Karnataka*, (1991) 72 Comp. Cas. 409 at p. 414 (Knt.).

³ *Phoenix Irmpex v. State of Rajasthan*, AIR. 1998 Raj. 100 at p. 203.

⁴ *Ins. by Act 33 of 7959, Sec. 2 (w.e.f. 1st October, 1959).*

⁵ *Gowda, D.S. v. Corporation Bank*, A.I.R. 1983 Kii. 143 at p. 157.

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, *hundis* promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling, of foreign exchange including foreign bank notes; the acquiring holding, issuing on commission, underwriting and dealing in stock, funds, shares debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

(b) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a ¹[managing agent or secretary and treasurer] of a company;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) managing, selling and realizing any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;

(i) undertaking the administration of estates as executor, trustee or otherwise;

(j) establishing and supporting or aiding in the establishment and support of association, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or

¹ Subs. by Act 33 of 1959, Sec. 4, for "managing agent" (w.e.f. 1st October, 1959).

benevolent objects or for any exhibition or for any public, general or useful object;

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(m) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of nature enumerated or described in this sub-section;

(n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

(o) any other forms of business which the Central Government may by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company shall engage in any form of business other than those referred to in sub-section (1).

COMMENTS

Scope of the section.—Section 6 of the Act provides elaborately for a wide variety of business which a banking company may engage itself in. A fair consideration of this section as well as the definition of "banking" in the Banking Regulation Act, 1949, would have no doubt in any one's mind that chit fund transaction indulged in by a banking company at any rate partakes the character of a banking activity.¹

Moratorium on the bank in force-Whether the bank can transact business as an authorised dealer in foreign exchange under Foreign Exchange Regulation Act.—Under Sec. 6 of the Act a banking company may engage in any other business, specified therein in addition to the business of banking. Thus the Bank can buy and sell foreign exchange including foreign bank notes, collect and deal in bills of exchange, receive valuable on deposit or for safe custody and transact several forms of business. The moratorium contemplated under Sec. 45(1) of the Act is "in respect of a banking company" and not confined to banking business only. Moratorium, as the word signifies is a suspension of activity, a temporary ban on the performance of a legal obligation. Section 45 (3) of the Banking Regulation Act therefore enjoins that the Banking Company shall not during the period of moratorium make any payment to any depositor or discharge any liabilities or obligations to any creditor, except as otherwise directed by the Central Government. The activity of the banking company is thus suspended and the Bank cannot transact any banking business or engage in other forms of business. The fact that for certain types of business, a further authorisation or permission is insisted under the foreign (sic) does not affect the content of the power of moratorium sanctioned under Sec. 45 of the Banking Regulation Act and does not authorize any business, banking or otherwise, during the operation of the moratorium. The Bank is in status quo during this period. Thus, when the moratorium on the Bank is in force, the Bank cannot transact business as authorized dealer in foreign exchange

¹ *Varamani David C. v. Bank of Madurai Ltd., A.I.R. 1983 Mad. 15 at p. 16.*

under the Foreign Exchange Regulation Act also.¹

Organisation of Loan Mesa.— Held the scheme neither violates the guidelines of the Reserve Bank of India nor the commercial Banking Laws.²

Injunction restraining payment in terms of the letter of credit—Grant of.—It is well settled that letters of credit could be both revocable and irrevocable. While the irrevocable and confirmed letters of credit stand on a different footing, irrevocable letters of credit within the time can be revoked before negotiations. It is stated that the contract between the issuing bank and the intermediary depended upon the terms in which the former's promise to pay was couched. It would become binding in the case of a confirmed credit, that is an irrevocable credit which has been confirmed by the intermediary or paying banker as soon as it is indicated to the beneficiary. If the credit was revocable, there was no point in having it confirmed, such a credit was deemed to be revocable at any time without notice though it was thought that a banker paying under a revocable credit could demand to be reimbursed in respect of any payment he had made upto the time of revocation. But in order to enforce payment the documents tendered must conform to the exact terms and conditions stipulated in the letter of credit. It would not do to be more or less similar. The Courts usually refrain from granting injunction to restrain the performance of the contractual obligations arising out of the letter of credit or a bank guarantee between one banker and other. If such temporary injunctions were to be granted in transaction between a banker and a banker restraining a bank from recalling the amount due when payment was made under reserve to another bank or in terms of the letter of guarantee or credit, executed by it, the whole banking system in the country would fail. It is only in exceptional cases that the Courts would interfere with the machinery of irrevocable obligations assumed by bankers. Once a letter of credit is established there is a contract between the issuing bank and the seller. The buyer has no right to intervene. If the bank pays in violation of the letter of credit then the buyer can always sue the bank for any damages or breach of his contract. If, on the other hand, there are certain other claims of the buyer against the seller then the buyer can file a suit for recovery of such damages and money from the seller. In view of well-settled principle of balance of convenience in such a case in the absence of clear case of fraud to the knowledge of the bank the Court should not grant injunction restraining payment in terms of the letter of credit as though in this case the letter of credit was irrevocable one, it has not yet been revoked. Thus the order of injunction was vacated.³

Restraint against encashment of bank guarantee.—Where the amount was in fact due which impelled the petitioner to invoke the bank guarantee, the restraint order passed by the Court against encashment of bank guarantee was not justified being based on no evidence.⁴

¹ *Bishop of Kottayam v. Union of India*, A.I.R. 1986 Ker. 126 at p. 129.

² *Sri Jogendra Naina v. Union of India*, A.I.R. 1989 GaAs. 60; *State Bank of India v. Ajit Jain*, (1995) 82 Comp.Cas. 358 (S.C.).

³ *Aujln Company Pvt. Ltd. v. Kaluram Mahadeo Prasad*, A.I.R. 2983 Cal. 106 at pp. 114, 115, 116, 118; *Bank of Baroda v. Sitaram*, (2995) 82 Comp. Cas 435 (M.P.); *Laxmi Marketing Corporation v. Kar. S.E.D. Corporation*, (1995) 82 Comp. Cas. 447 (Knt.).

⁴ *Delhi Lotteries v. Rajesh Aggarwal*, A.I.R. 1998 Delhi 332 at p. 339; *DSS Mobile Communications Limited v. Union of India*, 77 (1999) D.L.T. 97 at p. 105.

Constitutional validity of Art. 26 (d).—The Counsel raises an ingenious argument that the law referred to in Art. 26(d) can be challenged only on the ground that it offends public order, morality and health. The Counsel derives inspiration for this submission from the opening words of the article. The Constitution, in Art. 26, guarantees to every religious denomination or any section thereof certain rights relating to matters of religion and those affecting properties and their administration. These rights are, however, subject to public order, morality and health. These rights cannot therefore be asserted or recognised when they are plainly opposed to public order, morality and health. It is this restricted right that is guaranteed. Article 26(d) regulates that right in accordance with law. The law naturally may cover wider fields and cannot be limited to the three specified subjects, public order, morality and health. Similarly, while this law may be challenged as beyond the legislative competence of the State or as offending Arts. 14 and 19 of the Constitution, it cannot be contended that the challenge should also be restricted to these grounds based on public order, morality and health. A legislation beyond the legislative competence cannot derive support under this Article on the ground that it is a legislation relating to public order, morality and health and affecting the right to administer properties of a religious institution. This point is absolutely baseless and has to be rejected.¹

Default in repayment of bank dues—Bank not justified in denying its services to the debtor.—Leaving all the contentions of the parties open, the respondent Bank may not deny banking facilities to the appellants for operation of a current account to enable them to keep their business going. It would be to nobody's benefit that as a result of a total denial of banking facilities/ services, the business of appellants should come to a grinding halt. Supreme Court, therefore, directed that without prejudice to the respective contentions of the parties, the respondent shall allow the operation of one current account, which shall be free from the incidents of the banker's lien claimed by the respondent so as to enable the appellant to carry on its normal day-to-day business transactions, to obtain letters of credit a full margin and to enable payment of statutory outgoings, taxes, wages, salaries, raw-materials, etc. which are the usual business requirements of a manufacturing unit. There shall be no obligation on the part of the Bank to provide any credit facility in this account. However inputs of money into this account shall not be subjected to or appropriated under the lien claimed by the Bank.²

Bank dues— Banking facilities cannot be stopped.— It appears that leaving all the contentions of the parties open, the respondent-bank may not deny banking facilities to the appellants for operation of a current account to enable them to keep their business going. it would be to nobody's benefit that as a result of a total denial of a banking facilities /services, the business of appellants should come to a grinding halt.³

Inference of fraud.—Inference of fraud is to be drawn not from individual events. Each event by itself may not be sufficient for drawing inference of fraud.

¹ *Bishop of Kottayam v. Union of India*, A.I.R. 1986 Ker. 126 at pp. 129, 730.

² *Puremal & Associates v. Punjab National Bank*, A.I.R. 1993 S.C. 954 at p. 955; *Food Corporation of India v. Arosan Enterprises Ltd.*, 9.L.R. 1996 Delhi 226.

³ *Purewal & Associates v. Punjab National Bank*, 1993 (T) Bank C.L.R. 453 at p. 455. (S.C.).

Totality of the events cumulatively have the effect of fraud. In this case, if the facts and correspondences from the stage of global tender till the suit is filed are considered together, a clear impression of fraud in the transaction of captive power plant by defendant Nos. 1 to 3 is created and defendant No. 4 cannot be fully dissociated from it.¹

In the instant case it is an admitted fact that in the plaint itself, there was no allegation of fraud. It was initially only in the first application for the grant of injunction that in a paragraph it has been mentioned that the appellant had invoked the bank guarantee arbitrarily. This application contains no fact or particulars in support of the allegation of fraud. A similar bald averment alleging fraud is also contained in the second application for injunction relating to bank guarantee No. 40; 47. This is not a case where defendant No. 1 had at any time alleged fraud prior to the filing of injunction application. The main contract, pursuant to which the bank guarantee were issued was not sought to be avoided by alleging fraud, nor was it at any point of time alleged that the bank guarantee was issued because any fraud had been played by the appellant. There is no doubt that the bald assertion of fraud had been made solely with a view to obtain an order of injunction. In the absence of established fraud and not a mere allegation of fraud and that also having been made only in the injunction application, the Court could not, in the present case, have granted an injunction relating to the enactment of the bank guarantees.²

³[7. Use of words "bank", "banker", "banking", or "banking company".—(1) No company other than a banking company shall use as part of its name ⁴[or in connection with its business] any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) No firm, individual or group of individuals shall, for the purpose of carrying on any business use as part of its or his name any of the words "bank", "banking" or "banking company".

(3) Nothing in this section shall apply to—

(a) subsidiary to a banking company formed for one or more of the purposes mentioned in sub-section (1) of Sec. 19, whose name indicates that it is subsidiary of that banking company;

(b) any association of banks formed for protection of Companies Act, 1956 (1 of 1956).

COMMENTS

Safeguards for genuine and honest bank customers.—In order to ensure that genuine and honest bank customers are not harassed or put to inconvenience sufficient safeguards have also been provided in Chapter IV, Negotiable Instruments Act. Such safeguards are:

(a) that no Court shall take cognizance of such offence except on a complaint, in writing, made by the payee or holder in due course of the cheque;

¹ *Indian Charge Chrome Ltd. v. Asea Stal A.B.*, 1993 (7) Bank L.J. 394 at p. 399 (Orissa).

² *Bwarikesh Sugar Industries v. Prem Heavy Engineering*, 1997 (2) S.C. C.R. 196 at p. 205.

³ Subs. by Act 55 of 1963, Sec. 7, for the former Sec. 7 (w.e.f. 1st February, 1964).

⁴ Ins. by Act 1 of 1984, Sec. 14, (w.e.f. 15th February, 1984).

(b) that such complaint is made within one month of the date on which the cause of action arises; and

(c) that no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any such offence.¹

Banker—Meaning of.—There can be no doubt that ordinarily the position of the bank vis-a-vis a person dealing with the bank is that of debtor and creditor. It is, of course, perfectly open to such person to show that in a particular transaction the bank has received money in trust. A common instance is where a bank is paid money for the express purpose of it being remitted to a person at some other place. In any particular case it is for the person alleging trust to establish it. In the present case there is no evidence whatever to show that the transaction was anything more than the ordinary purchase of demand draft on another branch of the bank. The plaintiff has admitted in his evidence that he has previously purchased draft from the defendant bank on several occasions in connection with his business. He stated that he filled in a form before purchase of the draft but this form contained no mention of the purpose for which the draft was being purchased on the facts, therefore, there is no case that the relationship between the plaintiff and the defendant bank was anything other than of creditor and debtor.²

The relationship between a depositor and a bank is the simple relationship of a creditor and a debtor. A depositor who deposits money in bank in his current account is nothing more than a creditor and it cannot be said that there has been any entrustment to the bank for any particular purpose. The bank is, of course, liable to refund the money to the depositor when the depositor calls for it, but the money deposited belongs to the bank and the bank is entitled to deal with it as it likes.³

8. Prohibition of trading.—Notwithstanding anything contained in Sec. 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connexion with the realization of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others otherwise than in connexion with bills of exchange received for collection or negotiation or with such of its business as is referred to in Cl. (i) of sub-section (1) of Sec. 6:

⁴[Provided that this section shall not apply to any such business as is specified in pursuance of Cl. (0) of sub-section (1) of Sec. 6.]

Explanation. —For the purposes of this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in Cl. (a) of sub-section (1) of Sec. 6.

COMMENT

Section 8 of the Act is a pointer to the restriction imposed by Sec. 12 of the Chit Fund Act (40 of 1982).⁵

¹ *M.M. Maqlik v. Preen Kumar Goyal*, 1991 (2) Bank C.L.R. 496 at p. 500 (P. & HJ).

² *Traders Bank Ltd. v. S. Kalyan Singh*, A.L.R.1953 Punj. 794 at p. 195; *Prathana Bank v. Vijai Kumar Goel*, (1990) 67 Com. Cas. 77 at p. 77 (S.C.).

³ *Santosh Kumar v. King*, A.L.R. 1952 Cal. 193 at p. 794; *S.A. Kini v. Union of India*, A.L.R. 7985S.C. 899 at pp. 895, 896; *Vinay Engineering v. Navvele Lignite Corporation Ltd.*, A.L.R. 7985 Mad. 213 at p. 279.

⁴ Subs. by Act 1 of 1984, Sec. 75 (w.e.f. 75th February 1984).

⁵ *Sri Visalam Chit Fund Ltd. v. Union of India*, A.L.R. 2989 Knt. 125 at n. 749.

9. Disposal of non-banking assets.—Notwithstanding anything contained in Sec. 6, no banking company shall hold any immovable property, howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be:

Provided that the banking company may, within the period of seven years as aforesaid, deal or trade in any such property from the purpose of facilitating the disposal thereof

Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

COMMENT

The word "shall"—Meaning of.—It has been laid down consistently by the Supreme Court that the mere use of the word "shall" by itself in the statute does not make the provision mandatory, but it is the duty of the Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. In each case, one has to look to the subject-matter, consider the importance of the provisions and the relation of that provision with the general object intended to be secured by the Act and upon the review of the case in that aspect decide whether the enactment is mandatory or only directory.¹

²(10. Prohibition of employment of managing agents and restrictions on certain forms of employment.—(1) No banking company—

(a) shall employ or be managed by a managing agent; or

(b) shall employ or continue the employment of any person—

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by Criminal Court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company of—

³[Provided that nothing contained in this sub-clause shall apply to the payment by banking company of—

(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

¹ *Mohammed Mahboob Khan v. State Transport Appellate Tribunal, UP.*, 1982 ALI. 300 at p. 301 ; *State of H.P. v. Sudarshan Kumar*, 1990 (10) E.F.R.15 at p. 18 (H.P.); *Asia Ram v. State of UP.*, 1990 (27) A.C.C. 29 at p. 31; *Bharat Hari Singhania v. W.T. Commissioner*, 1994 Tax L.R. 417 (S.C.); *M/s. Onkarmal Nanakram v. Commissioner of Sales-tax*, 1999 (1) Orissa L.R. 1 at p. 5.

² Subs. by Act 95 of 1956, Sec. 2, for Sec. 10 (w.e.f. 14th January, 1957).

³ Subs. by Act 33 of 1959, Sec. 6, for the proviso (w.e.f. 1st October, 1959).

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as regular member of the staff of the company; or]

(iii) whose remuneration is, in the opinion of the Reserve Bank, excessive; or

(c) shall be managed by any person—

¹[(i) who is a director of any other company not being—

(a) a subsidiary of the banking company, or

(b) a company registered under Sec. 25 of the Companies Act, 1956 (1 of 1956):

Provided that the prohibition in this sub-clause shall not apply in respect of any such director for a temporary period not exceeding three months or such further period not exceeding nine months as the Reserve Bank may allow; or]

(ii) who is engaged in any other business or vocation; or

(iii) ²[whose term of office as a person managing the company is] for a period exceeding five years at any one time:

³[Provided that the term of office of any such person may be renewed or extended by further periods not exceeding five years on each occasion subject to the condition that such renewal or extension shall not be sanctioned earlier than two years from the date on which it is to come into force:

Provided also that where the term of office of such person is for an indefinite period, such term, unless it otherwise comes to an end earlier, shall come to an end immediately on the expiry of five years from the date of his appointment or on the expiry of three months from the date of commencement of Sec. 8 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), whichever is later]:

Provided further that nothing in this clause shall apply to a director, other than the managing director, of a banking company by reason only of his being such director.

Explanation.—For the purpose of sub-clause (iii) of *Cl.(b)*, the expression "remuneration", in relation to a person employed or continued in employment, shall include salary, fees and pre-requisites but shall not include any allowances or other amounts paid to him for the purpose of reimbursing him in respect of the expenses actually incurred by him in the performance of his duties.

(2) In forming its opinion under sub-clause (iii) of *Cl.(b)* of sub-section (1), the Reserve Bank may have regard among other matters to the following:

(i) the financial condition and history of the banking company, its size and area of operation, its resources, the volume of its business, and the trend of its earning capacity;

¹ Subs. by Act 33 of 1959, for sub-clause (i) (w.e.f. 1st October, 1959).

² Subs. by Act 55 of 1963, Sec. 8, for certain words (w.e.f. 1st February, 1964).

³ Subs. by *ibid.*... for the first proviso (w.e.f. 1st February, 1964).

- (ii) the number of its branches or offices;
- (iii) the qualifications, age and experience of the person concerned;
- (iv) the remuneration paid to other persons employed by the banking company or to any person occupying a similar position in any other banking company similarly situated; and
- (v) the interests of its depositors.

¹[²* * * *]

(6) Any decision or order of the Reserve Bank made under this section shall be final for all purposes.]

COMMENTS

Jurisdiction of Civil Court.—Civil suit challenging dismissal of an employee of State Bank—Not seeking relief under the Industrial Disputes Act—Jurisdiction of Civil Court not barred.³

Bank's circular No. P. A5/88/6M/125/88, dated 21st November, 1988 —Applicability and scope of.—Only paragraph 1 of the circular is material. The said paragraph, *inter alia*, provides that for filling up the vacancy of part time/full time sweeper for the newly opened branches/ offices, requisition is to be sent to the local employment exchange detailing therein the nature of vacancy, remuneration to be paid to the selected candidates as well as the eligibility criteria of the candidates for the said post. The said policy further provides that other sources may be tapped when employment exchange failed to supply suitable candidates for recruitment in the post of sweeper. It may be mentioned that this circular is applicable in the cases of filling up the posts of such sweepers for the newly opened branches and offices of the bank. In the given case it was open to the bank authorities to have followed the provisions of the circular before giving the appointment on a temporary basis to the petitioner but when once the respondent bank has already appointed a person holding out future hopes and dreams whether the bank should be ordered to shatter such dreams taking shelter under such recruitment policy.⁴

Offence involving moral turpitude.—Offence involving moral turpitude is one which invites shame on the person who became guilty thereof. In fact, in the modern world, there are so many offences for instance, offences relating to traffic rules, with which any person employed may become guilty of at any time. Therefore, a simple conviction by a Criminal Court would not necessarily entail disqualification to employment in public service or in a bank. That is why, the law maker has carefully circumscribed the nature of the offence, the conviction, therefor, would have implication in the matter of employment and the only category of offences are those which invite shame on the person who became guilty, which shame will irradiate on the institution which employs. In this case, the petitioner was not in a position to show the Customs Clearance Certificate in respect of two items of articles. The fact of possessing VCR and video camera without the corresponding customs documents is by no stretch of imagination an offence involving moral turpitude and, and therefore, no automatic termination of service can take place

¹ Subs. by Act 33 of 1959, Sec. 6, for sub-section (3) W (w.e.f. 1st October, 1959).

² Sub-sections (3), (4) and (5) omitted by Act 55 of 1963, Sec. 8 (w.e.f. 1st February, 1964).

³ *Shiam Kumar Modugil v. State Bank of India*, 7990 Lab. LC. 7469 at p. 1473 (P. & H.).

⁴ *Sudarsan Das v. State of West Bengal*, 1991 (2) C.L.R. 291 at p. 292 (Cal.).

on the basis of the conviction recorded against the accused.¹

Moral turpitude—Test.—The test which can be applied for judging whether an offence does or does not involve 'moral turpitude' can be summarised as follows:

- (1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general;
- (2) Whether the motive which led to the act was a base one, and
- (3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society."

It is not possible to lay down any abstract standard which constitutes moral turpitude. There are certain criminal offences like theft, robbery, criminal breach of trust, misappropriation of property, which directly involve moral turpitude. In such cases no elaborate investigation is required to find out the depraved conduct of the delinquent employee. If the offence does not show any element of vileness, depravity and weakness of character of the offender the disciplinary authority is required to consider the fact and circumstances of the case to find out whether the motive which led to the conviction was deprave. It is a settled law that 'moral turpitude' cannot be applied in its widest term. However, the *ratio, decidendi* of the various cases indicate that the question whether a certain offence involves "moral turpitude" or not will necessarily depend on the circumstances in which the offence is committed. It is not every punishable act that can be considered to be an offence involving moral turpitude. Any criminal conviction *per se* does not amount to 'moral turpitude'. So it follows that when the employee is convicted on criminal charge his dismissal cannot be automatic unless, there is a specific rule in that regard.²

Order of dismissal.—Order of dismissal cannot be challenged on ground that it was based on mere conviction and not on conduct which led to conviction or that it was not a speaking order or that the employee was subsequently released on probation.³

Bipartite agreement.—In the instant case in departmental enquiry an employee was punished to increment stoppage and later on convicted of criminal charges on charge-sheet submitted by C.B.I. It was held that the conviction was not violative .of Art. 20 (2) of the Constitution.⁴

Staff working on commission cannot be deemed as regular employee.—A reading of the substantive provisions as well as the exception unmistakably shows the intention of the Parliament that the person to whom a commission is payable as remuneration cannot be a regular staff of the bank but that he may be employed on contract. Employment on the basis of contract is, under the scheme of the section, treated on a different footing than a person who is a regular staff of the bank. A deposit collector, like the respondent, would be one who is squarely covered

¹ *G. Mohan v. Asstt. Collection of Customs, Madras*, 1990 Bank J. 423 at pp. 424, 425(Mad.).

² *Bank of Maharashtra v. Om Prakash Malviya*, 1997 Lab.1.C. 1932 at p. 1935, 2936 (Delhi).

³ *Shiam Kumar Moudgil v. State Bank of India*, 1990 Lab. LC. 1469 at pp. 1475,1476 (P.&H.).

⁴ *Gireesan v. Indian Overseas Bank, Kerala*, 1994 (1) B.L.J. 401 at pp. 407, 402, 405.

by the exception, i.e. the proviso, since his remuneration totally consists of commission for which reason he could not be a regular staff. If he would have been a regular staff from the date of his engagement as a deposit collector, he could not have been paid remuneration by way of commission. Such engagement of him, and of the deposit collectors who were admittedly engaged after the 1949 Act, would have been against the provision of law and would have been null and void.¹

Suspension of payment. *The* filing of an insolvency petition in the present case having the same principle and causing the issue of notice and publication made in the Gazette as well as service of notice on some of the respondents to the petition would, constitute sufficient basis to substantiate the claim of the respondent that the petitioner 'suspended payment' within the meaning of Sec. 10 (1) (b) (i) of the Act. Consequently, *de hors* any other materials on the very admitted conduct and course of action adopted by the petitioner and having regard to the stipulation contained in the Banking Regulation Act, 1949 the termination on account of loss of confidence cannot be said to be one involving any misconduct and consequently, the non-compliance with paragraph 521 of the Bi-partite settlement does not vitiate the order of termination. The plea of violation of Art. 14 of the Constitution of India and challenge to paragraph 522 of the Bi-partite settlement also do not merit acceptance. Consequently, the provisions contained in paras 521 and 522 had different and distinct roles to play and had been held to be binding all along upon the parties and the plea based on Art. 14 of the Constitution of India, is wholly misconceived.²

Probation does not obliterate the stigma of conviction.—*In the* instant case it was submitted by the learned counsel appearing for respondent No. 1 that once a person has been released on probation, such person does not suffer from any disqualification attaching to his conviction of an offence under any law and that the Banking Authority were not justified in proceeding against respondent No. 1 under the disciplinary rules. A deep thought was given to this matter and it was held that release of the offender on probation does not obliterate the stigma of conviction on such person and an employee is not entitled to reinstatement in service automatically by getting the benefit of probation of good conduct.³

Bank worker collecting deposit from door to door workmen.—The second respondent is a workman as defined by the Act on the facts and circumstances of this case, having regard to the terms and conditions set out in the agreement between the Bank and the second respondent. The evidence in this case clearly establishes that the second respondent is a servant of the Bank and not an independent contractor.⁴

Husband compelling his wife to accompany him to his own house—*Action does not involve moral turpitude.*—*the* present case, the conviction was ultimately made by the appellate

¹ *Indian Banks Association v. Workmen of Syndicate Bank*, 1997 (3) L.L.N. 111 at p.118.

² *T.D. Digambar v. Central Bank of India*, 1992 (11) Mad. L. J. 87 at pp. 91, 92 (Mad.).

³ *Union of India, v. Bakshi*, A.I.R. 1990 S.C. 987 : (7990) Lab. LC. 806; *Central Bank of India, Chandigarh v. Balwant Rai Nayyar*, 1996 Lab. LC. 2429 at p. 2432 (P. & H.).

⁴ *Management of Indian Bank v. Presiding Officer, Industrial Tribunal (C) (Mad.)*, T990(1) C.L.R. 189 at p. 197 (Mad.).

Court only under Sec. 365, I.P.C. as one of an abduction. The learned Judge noted that the complainant was the petitioner's wife and there could not be a conviction under Sec. 364, I.P.C. for which he was charged. He upheld the conviction under Sec. 365, I.P.C. only on the ground that she was forced to come from one place to another against her wish. But, the fact that she was his wife, cannot be ignored. If a husband even mistakenly compels his wife to accompany him to his own house, no reasonable person can say that this action involved moral turpitude.¹

Disqualification for continuing in service.—It is relevant to notice that under Sec. 10 (1) (b) of the Banking Regulation Act, any and every conviction by a Criminal Court does not operate as a disqualification for continuing in service, only the conviction by a Criminal Court of an offence involving moral turpitude operates as such disqualification. Once it is found that an employee has been convicted of an offence involving moral turpitude, the employer has no option but to terminate his service. That is the command of Sec. 10 (1) (b). Now, the respondent's contention, which has been accepted by the learned single Judge, is that by virtue of Sec. 12 of the Probation of Offenders Act, 1958, the disqualification contained in Sec. 10 (1) (b) does not attach to him.

According to Sec. 12 of the Probation of offenders Act, 1958, therefore, a person convicted of an offence but dealt with under Sec. 4 "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Section 10 (1) (b) of the Banking Regulation Act does, indeed, provide for a disqualification. Though the word 'disqualification' not used therein, it says expressly that a person convicted by a criminal Court of an offence involving moral turpitude shall not be continued in the employment of a banking Company.²

³ ***[10-A. Board of Directors to include persons with professional or other experience.***—
(1) Notwithstanding anything contained in any other law for the time being in force, every banking company,—

- (a) in existence on the commencement of Sec. 3 of the Banking Laws (Amendment) Act, 1968 (59 of 1968), or
 - (b) which comes into existence thereafter,
- shall comply with the requirements of this section:

Provided that nothing contained in this sub-section shall apply to a banking company referred to in Cl.(a) for a period of three months from such commencement.

(2) Not less than fifty-one per cent of the total number of members of the Board of Directors of a banking company shall consist of persons, who—

- (a) shall have special knowledge or practical experience in respect of one or more of the following matters, namely:
 - (i) accountancy,

¹ *K. Ganapathy Sastry v. Deputy General Manager, (Staff) Andhra Bank, 1996 (2) Bank. L.J. 311 at pp. 314, 315 (A. P.).*

² *Zonal Manager & Disciplinary Authority Indian Bank v. Parupureddy Sayanarayana, 1990 (2) Crimes 75 at pp. 76, 77 (A.P.).*

³ *Sections 10-A to 10-D, ins. by Act 58 of 1968, Sec. 3 (w.e.f. 1st February, 1969)*

(ii) agriculture and rural economy,
 (iii) banking,
 (iv) co-operation,
 (v) economics,
 (vi) finance,
 (vii) law,
 (viii) small-scale industry,
 (ix) any other matter, the special knowledge of, and practical experience in, which would, in the opinion of the Reserve Bank, be useful to the banking company:

Provided that out of the aforesaid number of directors, not less than two shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry; and

(b) shall not—

(1) have substantial interest in, or be connected with, whether as employee, manager or managing agent,—

(i) any company, not being a company registered under Sec. 25 of the Companies Act, 1956 (1 of 1956), or

(ii) any firm, which carries on any trade, commerce or industry and which, in either case, is not a small-scale industrial concern, or

(2) be proprietors of any trading commercial or industrial concern, not being a small-scale industrial concern.

¹[(2-A) Notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force,—

(ii) no director of a banking company, other than its Chairman or whole-time director, by whatever name called, shall hold office continuously for a period exceeding eight years;

(iii) a Chairman or other whole-time director of a banking company who has been removed from office as such Chairman or whole time director, as the case may be, under the provisions of this Act, shall also cease to be a director of the banking company and shall also not be eligible to be appointed as a director of such banking company, whether by election or co-option or otherwise, for a period of four years from the date of his ceasing to be the Chairman or whole-time director, as the case may be.]

(3) If, in respect of any banking company, the requirements, as laid down in sub-section (2) are not fulfilled at any time, the Board of Directors of such banking company shall re-constitute such Board so as to ensure that the said requirements are fulfilled.

(4) If, for the purpose of re-constituting the Board under sub-section (3) it is necessary to retire any director or directors, the Board may, by lots drawn in such manner as may be prescribed, decide which director or directors shall cease to hold office and such decision shall be binding on every director of the Board.

¹ Ins. by Act No.1 of 1984, Sec. 16 (w.e.f. 15th February, 1984).

(5) Where the Reserve Bank is of opinion that the composition of the Board of Directors of a banking company is such that it does not fulfil the requirements of sub-section (2), it may, after giving to such banking company reasonable opportunity of being heard, by an order in writing, direct the banking company to so reconstitute its Board of Directors as to ensure that the said requirements are fulfilled and, if within two months from the date of receipt of that order, the banking company does not comply with the directions made by the Reserve Bank, that bank may, after determining by lots drawn in such manner as may be prescribed, the person who ought to be removed from the membership of the Board of Directors, remove such person from the office of the director of such banking company and with a view to complying with the provisions of sub-section (2), appoint a suitable person as a member of the Board of Directors in the place of the person so removed whereupon the person so appointed shall be deemed to have been duly elected by banking company as its director.

(6) Every appointment, removal or reconstitution duly made and every election duly held, under this section shall be final and shall not be called into question in any Court.

(7) Every director elected or, as the case may be, appointed under this section shall hold office until the date upto which his predecessor would have held office, if the election had not been held, or, as the case may be, the appointment had not been made.

(8) No act or proceeding of the Board of Directors of a banking company shall be invalid by reason only of any defect in the composition thereof or on the ground that it is subsequently discovered that any of its members did not fulfil the requirements of this section.

COMMENTS

Issue of direction to fill up vacancy of workman bad.—In so far as the Scheduled Banks are concerned, there is no such provision enabling the employees to represent in the Board of Directors of the Banking Company. In absence of any provision enabling the Reserve Bank of India to issue directions to the first respondent Bank, to fill up the vacancy caused as a result of the retirement of the writ petitioner from the Board of Directors, there cannot be any direction to the Reserve Bank of India to issue direction as prayed for.¹

Company law is a self-contained Code.—The Company Law is a self-contained Code and the provisions of the Company Law shall be applicable to the first respondent Bank and in so far as the appointment of the Director is concerned, the provisions of the Act shall prevail. Sec. 256 (3) of the Companies Act provides that at the annual general meeting at which a Director retires the Company may fill up the vacancy by appointing the retiring director or some other person thereto. However, in view of the fact that the provisions of the Banking Regulation Act are also applicable, such appointment of directors shall be consistent with the provision contained under Sec. 10-A of the Act. Section 10-A of the Act further provides that where the Reserve Bank of India is of opinion that the composition of the Board of Directors of a banking company is such that it does not fulfil the requirements of sub-section (2) it may, after giving to such banking

¹ T.S. Arumugain v. V. Laxmi Vitas Bank Ltd., 1992 (2) L.L.J. 270 at p. 218 (Mad.); 1993 Bank J. 435 at p. 445 (Mad.).

company a reasonable opportunity of being heard, by an order in writing direct the banking company to so reconstitute the Board of Directors as to ensure that the said requirements are fulfilled and if the Banking Company does not comply with the directions made by the Reserve Bank, the Reserve Bank may remove such person from the office of Director and with a view to complying with the provisions of sub-section (3) appoint a suitable person as a member of the Board of Directors, in the place of the person so removed whereupon the person so appointed shall be deemed to have been duly elected by the banking company as its director. From the above, it is manifest that if the composition of directors by the company does not fulfil the requirements of sub-section (2) of Sec. 10-A of the Act, the Reserve Bank has authority to direct them to reconstitute the Board of Directors so as to ensure that the requirements of sub-section are fulfilled. In case the Bank does not comply with the directions, the Reserve Bank has authority to remove the two Directors and to appoint suitable person so as to ensure that the requirements of sub-section (2) of Sec. 10 -A of the Act are fulfilled. Under Sec. 35-A of the Banking Regulation Act, the Reserve Bank has power to issue directions when it is satisfied that in the public interest or in the interest of banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the banking company or to secure the proper management of any banking company generally and the banking company shall comply with such directions. These are the contingencies at which the Reserve Bank has authority to appoint directors.¹

10-B. Banking company to be managed by whole-time Chairman.—²[(1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company in existence on the commencement of the Banking Regulation (Amendment) Act, 1994, or which comes into existence thereafter shall have one of its directors, who may be appointed on a whole-time or a part-time basis as Chairman of its Board of Directors, and where he is appointed on a whole-time basis, as Chairman of its Board of Directors, he shall be entrusted with the management of the whole of the affairs of the banking company:

Provided that the Chairman shall exercise his powers subject to the superintendence, control and direction of the Board of directors.

Provided further that nothing in this sub-section shall apply to a banking company in existence on the commencement of the said section for a period of three months from such commencement.

(1-A) Where a Chairman is appointed on a part-time basis,—

- (i) such appointment shall be with the the previous approval of the Reserve Bank and be subject to such conditions as the Reserve Bank may specify while giving such approval;
- (ii) the management of the whole of the affairs of such banking company shall be entrusted to a managing director who shall exercise his powers subject to the

¹ *T.S. Arumugham v. Laxmi Vilas Bank Ltd.*, 1993 Bank J. 435 at pp. 444, 445 (Mad.) : 1992 (2) L.L.J. 210 at p. 278 (Mad.).

² Subs. by Act 20 of 1994, Sec. 2 (w.e.f. 31st January, 1994).

Superintendence, control and direction of the Board of directors.]

(2) ¹[Every Chairman of the Board of Directors who is appointed on a whole-time basis and every managing director] of a banking company shall be in the whole-time employment of such company and shall hold office for such period, not exceeding five years, as the Board of Directors may fix, but shall, subject to the provisions of the section, be eligible for re-election or re-appointment:

Provided that nothing in this sub-section shall be construed as prohibiting a Chairman from being a director of a subsidiary of the banking company or a director of a company registered under Sec. 25 of the Companies Act, 1956 (1 of 1956).

(3) Every person holding office on the commencement of Sec. 3 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), as managing director of the banking company shall—

(a) if there is a Chairmen of its Board of Directors, vacate office on such commencement, or

(b) if there is no Chairman of its Board of Directors, vacate office on the date on which the Chairman of its Board of Directors is elected or appointed in accordance with the provisions of this section.

(4) ¹[Every Chairman who is appointed on a whole-time basis and every Managing Director of a banking company appointed under sub-section (1-A) shall be a person who has special knowledge and practical experience of—

(a) the working of a banking company, or of the State Bank of India or any subsidiary bank or financial institution; or

(b) financial, economic or business administration:

Provided that a person shall be disqualified for being '[Chairman who is appointed on a whole-time basis as a Managing Director], if he—

(a) is a director of any company other, than a company referred to in the proviso to sub-section (2); or

(b) is a partner of any firm which carries on any trade, business or industry; or

(c) has substantial interest in any other company or firm; or

(d) is a director, manager, managing agent, partner or proprietor of any trading, commercial or industrial concern; or

(e) is engaged in any other business or vocation.

(5) ²[A Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] of a banking company may, by writing under his hand addressed to the company, resign his office³[***].

⁴((5-A) 1[A Chairman of the Board of Directors appointed on a whole-time basis or Managing Director] whose term of office has come to an end, either by reason of his resignation

¹ Subs. By Act 20 of 1994, Sec. 2 (w.e.f. 31st January, 1994).

² Ibid.

³ The words "but shall continue in office until his successor assumes office" omitted by Act No.1 of 7984, Sec. 77 (m.e.f. 35th February, 1984).

⁴ Ins. by *ibid.*

or by reason of expiry of the period of his office, shall, subject to the approval of the Reserve Bank continue in office until his successor assumes office.]

(6) Without prejudice to the provisions of Sec. 36-AA, where the Reserve Bank is of opinion that any person who is, or has been elected to be, the ¹ [Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] of a banking company is not a fit and proper person to hold such office, it may, after giving to such person and to the banking company a reasonable opportunity of being heard, by order in writing require the banking company to elect or appoint any other person as the [Chairman of the Board of Directors who is appointed on a whole time basis or a Managing Director] and if, within a period of two months from the date of receipt of such order, the banking company fails to elect or appoint a suitable person as the 1[Chairman of the Board of Directors, who is appointed on a whole-time basis or a Managing Director] the Reserve Bank may, by order, remove the first-mentioned person from the office of the 1[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] of the banking company and appoint a suitable person in his place whereupon the person so appointed shall be deemed to have been duly elected or appointed, as the case may be, as the 1[Chairman of the Board of Directors appointed on a whole-time basis or Managing Director] of such banking company and any person elected or '[appointed as chairman on a whole-time basis or managing director] under this sub-section shall hold office for the residue of the period of office of the person in whose place he has been so elected or appointed.

(7) The banking company and any person against whom an order of removal is made under sub-section (6) may, within thirty days from the date of communication to it or to him of the order, prefer an appeal to the Central Government and the decision of the Central Government thereon, and subject thereto, the order made by the Reserve Bank under sub-section (6), shall be final and shall not be called into question in any Court.

(8) Notwithstanding anything contained in this section, the Reserve Bank may, if in its opinion it is necessary in the public interest so to do, permit 1[the Chairman of the Board of Directors who is appointed on a whole-time basis or the Managing Director] to undertake such part-time honorary work as is not likely to interfere with his duties as 1[such Chairman or managing director].

(9) Notwithstanding anything contained in this section, where a person 1[appointed on a whole-time basis, as Chairman of the Board of Directors or Managing Director] dies or resigns or is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the banking company may, with the approval of the Reserve Bank, make suitable arrangements for carrying out the 1 [duties of Chairman or Managing Director] for a total period not exceeding four months.

²(10-BB. Power of Reserve Bank to appoint Chairman of a banking company.-(1)
Where the office of the ³[Chairman of the Board of Directors appointed on a whole-time basis or

¹ Subs. by Act 20 of 1994, Sec. 2 (w.e.f. 31st January, 1994).

² Ins. by Act No. 1 of 1984, Sec. 78 (w.e.f. 25th February, 1984).

³ Subs. by Act 20 of 1994, Sec. 3 (w.e.f. 31st January, 1994).

a Managing Director] of a banking company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interest of the banking company, appoint a person, eligible under sub-section (4) of Sec. 10-B to be so appointed, to be the Chairman of the banking company and where the person so appointed is not a director of such banking company, he shall, so long as he holds the office of the ¹[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director], be deemed to be a director of the banking company.

(2) The ¹[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] so appointed by the Reserve Bank shall be in the whole-time employment of the banking company and shall hold office for such period not exceeding three years, as the Reserve Bank may specify, but shall, subject to other provisions of this Act, be eligible to re-appointment.

(3) The ¹[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] so appointed by the Reserve Bank shall draw from the banking company such pay and allowances as the Reserve Bank may determine and may be removed from office only by the Reserve Bank.

(4) Save as otherwise provided in this section, the provisions of Sec. 10-B shall, as far as may be, apply to the ¹[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] appointed by the Reserve Bank under sub-section (1) as they apply to the ¹[Chairman of the Board of Directors appointed on a whole-time basis or a Managing Director] appointed by the banking company.]

² ***(10-C. Chairman and certain directors not to be required to hold qualification shares.***—³[A Chairman of the Board of Directors who is appointed on a whole-time basis or a Managing Director] of a banking company (by whomsoever appointed) and a director of a banking company (appointed by the Reserve Bank under Sec. 10-A) shall not be required to hold qualification shares in the banking company.]

10-D. Provisions of Secs.10-A and 10-B to override all other laws, contracts, etc.—³Any appointment or removal of a ⁴[director, Chairman of the Board of Directors who is appointed on a whole-time basis or Managing Director] in pursuance of Sec. 10-A or Sec. 10-B ⁵[or Sec. 10-BB] shall have effect and any such person shall not be entitled to claim any compensation for the loss or termination of office, notwithstanding anything contained in any law or in any contract, memorandum of articles of association.]

11. Requirement as to minimum paid-up capital and reserves.—(1) Notwithstanding anything contained in ⁶[Sec. 149 of the Companies Act, 1956 (1 of 1956)J, no banking company in existence on the commencement of this Act, shall after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company may think fit in any particular case to

¹Subs. by Act 20 of 1994, Sec. 3 (w.e.f. 31st January 1994).

²Subs. by Act T of 1984, Sec. 79 (w.e.f. 75th February 1984).

³Subs. by Act 20 of 1994, Sec. 4.

⁴Subs. by *ibid.*, Sec. 5.

⁵Ins. by Act I of 1984, Sec. 20 (w.e.f. 15th February, 1984).

⁶Subs. by Act 95 of 1956, Sec. 74 and Schedule, for "Sec. 703 of the Indian Companies Act, 1973 (7 of 1913)" (w.e.f. 74th January 1957).

allow, to carry on business ¹[in India], and no other banking company shall after the commencement of this Act, commence or carry on business ³[in India] ²[unless it complies with such of the requirements of this section as are applicable to it.]

3[(2) In the case of a banking company incorporated outside India—

(a) the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of business in city of Bombay or Calcutta or both, twenty lakhs of rupees; and

⁴[(b) the banking company shall deposit and keep deposited with the Reserve Bank either in cash or in the form of unencumbered approved securities, or partly in cash and partly in the form of such securities—

(i) an amount which shall not be less than the minimum requirement by Cl.(a); and

(ii) as soon as may be after expiration of each ⁵[* * *) year, an amount calculated at twenty per cent. of its profit for that year in respect of all business transacted through its branches in India, as disclosed in the profit and loss account prepared with reference to that year under Sec. 29:]

Provided that any such banking company may at any time replace—

(i) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, that the total amount deposited is not affected;

(ii) any cash so deposited by unencumbered approved securities of an equal value.)

⁶[(2-A) Notwithstanding anything contained in sub-section (2), the Central Government may, on the recommendation of the Reserve Bank, and having regard to the adequacy of the amounts already deposited and kept deposited by a banking company under sub-section (2), in relation to its deposit liabilities in India, declare by order in writing that the provisions of sub-clause (ii) of Cl.(b) of sub-section (2) shall not apply to such banking company for such period as may be specified in the order.]

(3) In the case of any banking company to which the provisions of sub-section (2) do not apply, the aggregate value of its paid-up capital and reserves shall not be less than—

(i) if it has places of business in more than one State, five lakhs of rupees, and if any such place or places of business is or are situated in the city of Bombay or Calcutta or both, ten lakhs of rupees;

¹ Subs. by Act 20 of 1950 Sec. 3, for "in any state".

² Subs. by Act 33 of 1959, Sec. 7, for certain words (w.e.f. 1st October, 1959).

³ Subs. by Act 33 of 1959, Sec. 7, for certain words (w.e.f. 1st October, 1959).

⁴ Subs. by Act 36 of 1962, Sec. 2, for certain words.

⁵ The word "calendar" omitted by Act 66 of 1988, Sec. 7 (w.e.f. 30th December, 1988).

⁶ Ins. by Act 36 of 1962, Sec. 2(ii).

(ii) if it has all its places of business in one State none of which is situated in the city of Bombay or Calcutta, one lakh of rupees in respect of its principal place of business, plus ten thousand rupees in respect of each of its other places of business situated in the same district in which it has its principal place of business, plus twenty-five thousand rupees in respect of each place of business situated elsewhere in the State otherwise than in the same district:

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees:

Provided further that no banking company to which this clause applies and which has only one place of business, shall be required to have paid-up capital and reserves exceeding an aggregate value of fifty thousand rupees:

¹[Provided further that in the case of every banking company to which this clause applies and which commences banking business for the first time after the commencement of the Banking Companies (Amendment) Act, 1962 (36 of 1962), the value of its paid-up capital shall not be less than five lakhs of rupees;]

(iii) if it has all its places of business in one State, one or more of which is or are situated in the city of Bombay or Calcutta, five lakhs of rupees, plus twenty-five thousand rupees in respect of each place of business situated outside the city of Bombay or Calcutta, as the case may be:

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding in aggregate value of ten lakhs of rupees.

Explanation.—For the purpose of this sub-section, a place of business situated ²[in a State] other than that in which the principal place of business of the banking company is situated shall, if it is not more than twenty-five miles distant from such principal place of business, be deemed to be situated within the same State as such principal place of business.

(4) Any amount deposited and kept deposited with the Reserve Bank under ³[* * *] sub-section (2) by any banking company incorporated ⁴[outside India] shall, in the event of the company ceasing for any reason to carry on banking business ⁵[in India], be an asset of the company on which the claims of all the creditors of the company ³[in India] shall be a first charge.

⁶[(5) For the purposes of this section,—

(a) "place of business" means any office, sub-office, sub-pay office and any place of business at which deposits are received, cheques cashed or moneys lent;

(b) "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.]

¹ Ins. by Sec. 2 Act 36 of 1962.

² Subs. by Act 62 of 1956, Sec. 2 and Schedule, for "in India".

³ The words "the proviso to" omitted by Act 33 of 1959, Sec. 7 (w.e.f. 1st October, 1959).

⁴ Subs. by Act 20 of 1950, Sec. 3, for elsewhere than in a State".

⁵ Subs. by Sec. 3, *ibid.*, for "in the States".

⁶ Subs. by Act 33 of 1959, Sec. 7, for sub-section (S) (w.e.f. 1st October, 1959).

(6) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

¹**(12. Regulation of paid-up capital, subscribed capital and authorized capital and voting rights of shareholders).**—(1) No banking company shall carry on business in India, unless it satisfies the following conditions, namely:

(i) that the subscribed capital if the company is not less than one-half of the authorized capital, and paid-up capital is not less than one-half of the subscribed capital and that, if the capital increased, it complies with the conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow;

(ii) that the capital of the company consists of ordinary shares only or of ordinary shares or equity shares and such preferential shares as may have been issued prior to the 1st day of July, 1944:

Provided that nothing contained in this sub-section shall apply to any banking company incorporated before the 15th day of January, 1937.

(2) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting right ²[on Poll] ³[in excess of ⁴[ten per cent.]] of the total voting rights of all the shareholders of the banking company.

(3) Notwithstanding anything contained in any law for the time being in force or in contract or instrument no suit or other proceeding shall be maintained against any person registered as the holder of a share in a banking company on the ground that title to the said share vests in a person other than the registered holder:

Provided that nothing contained in this sub-section shall bar a suit or other proceeding—

(a) by a transferee of the share on the ground that he has obtained from the registered holder a transfer of the share in accordance with any law relating to such transfer; or

(b) on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.

(4) Every Chairman, Managing Director or Chief Executive Officer by whatever name called of a banking company shall furnish to the Reserve Bank through that banking company returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking company and of any change in the *extent of* such holding or any variation in the rights attaching thereto and such other *information relating* to those shares as the Reserve Bank may, by order, require and in such form and at such time as may be specified in the order.]

COMMENTS

Valuable right available to the petitioner.—The petitioner as per the relevant instructions and regulations had natural aspirations. They must have joined the service of the

¹ Subs. by Act 95 of 1956, Sec. 3, for Sec. 72 (w.e.f. 14th January, 1957).

² Iris. by Act 33 of 1959, Sec. 8 (w.e.f. 1st October, 1959).

³ Subs. by Act 55 of 1963, Sec. 9, for "in excess of five per cent." (w.e.f. 1st February, 1964).

⁴ Subs. Lay Act 20 of 1994, Sec. 6 (w.e.f. 31st January, 1994).

Bank hoping, that they would be promoted in accordance with the relevant instructions and the 40 point roster. Their rights as such could not be defeated by giving promotions to general category candidates ignoring the criteria of normal channel fixed as per paragraph 5.2. The valuable right was available to the petitioners and merely because some other general category candidates suffered, is no ground to defeat the rules and instructions and criteria for promotion fixed by the Bank. To that extent, the petition as such must succeed. For these reasons, the petition is allowed and it is directed that petitioners are entitled to be considered for promotion against the back-log of reserved vacancies created against 48 vacancies as per the normal channel of promotion under paragraph 5.2 of promotion policy framed under Regulation 17 of the Punjab & Sind Bank (Officers) Service Regulations, 1982.¹

Transfers of shares and registration thereof.—It is clear that this Sec. [Sec. 12 (2)] does not in any way affect the transfers of shares and registration of such transfers. It only means that a person holding shares will not get voting right in excess of one per cent. of the total voting rights of the shareholders of the company. This has no relation to any group and even assuming that a group of shareholders may get more than one per cent. of the voting rights, that is not prohibited by Sec. 12 (2) of the Banking Regulation Act. An apprehension that the transfer is an attempt at cornering of shares when on facts there is no scope for it, is no reason to refuse registration. In this case, on the facts there is no personal disqualification to the transfers. They are not alleged to be persons who will not act in the interests of the company. The number of shares in all the petitions put together will be only round about 4 per cent, of the voting right of the total number of shareholders of the company. To understand these transactions as an attempt to corner the shares is, to say the least, an abuse of the power of refusal to register. Section 12(2) of the Banking Regulation Act does not in any way restrict the transfer of shares or their registration. The policy of the Reserve Bank is also not against the transfer of the shares. The circular only required information to be furnished to the Reserve Bank of the transfer of shares, which may amount to an attempt to have a controlling interest in the bank. To say that policy of the Reserve Bank is to discourage transfers which may amount to have controlling interest in the bank is one thing. But to make use of that policy as a cloak to refuse registration in any case where on the facts there is no scope for having any controlling interest is an abuse of the power. The directors have acted on a wrong principle or their motives seem to be oblique. There has not been a just and legal consideration of the application for registration of the shares. No paramount interest of the company or the general interests of the shareholders is seen affected by these proposed transfers. That being so, the refusal to register in all these cases seems to be an improper exercise of the discretion contained in Art. 42 of the Articles of Association of the Company.²

If loan taken by company remains undischarged it does not disqualify an ex-director from being elected as director of the bank.—Much arguments were advanced that, in the counter- affidavit filed by the Bank, there was no statement that the loan given to the said leasing company had already been discharged. Even assuming that the loan remains undischarged, that does not affect the eligibility of Thiagarajan to be a director of the Bank in view of the position

¹ Nasib Singh v. Union of India, 1996 (I) Bank.L.J. 59 at p. 65 (P.& H).

² Joseph Michael v. South Indian Bank Ltd., 1978 Tax.L.R. 1717 at pp. 1721,1723.

position in law which have been stated above.¹

²[**12-A. Election of new directors.**—(1) The Reserve Bank may, by order require any banking company to call a general meeting of the shareholders of the company within such time, not less than two months from the date of the order, as may be specified in the order or within such further time as the Reserve Bank may allow in this behalf, to elect in accordance with the voting rights permissible under this Act fresh directors, and the banking company shall be bound to comply with the order.

(2) Every director elected under sub-section (1) shall hold office until the date up to which his predecessor would have held office, if the election had not been held.

(3) Any election duly held under this section shall not be called in question in any Court.]

13. Restriction on commission, brokerage, discount, etc. on sale of shares.—
Notwithstanding anything to the contrary contained in ³[Secs. 76 and 79 of the Companies Act, 1956 (1 of 1956)], no banking company shall pay out directly or indirectly by way of commission, brokerage, discount of remuneration in any form in respect of any shares, issued by it, any amount exceeding in the aggregate two and one-half per cent. of the paid-up value of the said shares.

14. Prohibition of charge on unpaid capital.—No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

⁴ (**14-A. Prohibition of floating charge on assets.**—Notwithstanding anything contained in Sec. 6 no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof unless the creation of such floating charge is certified in writing by the Reserve Bank as not being detrimental to the interests of the depositors of such company.

(2) Any such charge created without obtaining the certificate of the Reserve Bank shall be invalid.

(3) Any banking company aggrieved by the refusal of a certificate under sub-section (1) may, within ninety days from the date on which such refusal is communicated to it, appeal to the Central Government.

(4) The decision of the Central Government where an appeal has been preferred to it under sub-section (3) or of the Reserve Bank where no such appeal has been preferred shall be final.]

15. Restrictions as to payment of dividend.—⁵(1) No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organization expenses, share-selling commission, brokerage, amounts of losses incurred and any

¹ *T.R. Sreiram v. K.M. Durai Bubu*, 1994 (13) *Comp. Law A.D.J.* 115 at y. 727.

² *Ins by Act 95 of 1956, Sec. 4 (w.e.f. 14th January, 1957).*

³ *Subs. by Act 95 of 1956 Sec. 14 and Schedule, for "Secs.105 and 105-A of the Indian Companies Act, 1913 (7 of 1913)" (w.e.f. 14th January, 1957).*

⁴ *Ins. by Act 33 of 1959, Sec. 9 (w.e.f. 1st October, 1959).*

⁵ *Re-numbered as sub-section (1) of Sec. 15 by Act 33 of 1959, Sec. 10 (w.e.f. 1st October, 1959).*

other item of expenditure not represented by tangible assets) have been completely written off.

¹[(2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Act, 1956 (1 of 1956), a banking company may pay dividends on its shares without writing off—

(i) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalized or otherwise accounted for as a loss;

(ii) the depreciation, if any, in the value of its investments in shares, debenture or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the banking company;

(iii) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company.]

²**(16. Prohibition of common directors).**—³[(1) No banking company incorporated in India shall have as a director in its Board of Directors any person who is a director of any other banking company.

(1-A) No banking company referred to in sub-section (1) shall have in its Board of Directors, more than three directors who are directors of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the shareholders of that banking company.]

(2) If immediately before the commencement of the Banking Companies (Amendment) Act, 1956 (55 of 1956), any person holding office as a director of a banking company is also a director of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the shareholders of the banking company, he shall, within such period from such commencement as the Reserve Bank may specify in this behalf—

(a) either- resign his office as a director of the banking company; or

(b) choose such number of companies as among themselves are not entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the shareholders of the banking company as companies in which he wishes to continue to hold the office of a director and resign his office as director in the other companies.]

⁴[(3) Nothing in sub-section (1) shall apply to, or in relation to, any director appointed by the Reserve Bank.]

⁵**[17. Reserve Fund.**—(1) Every banking company incorporated in India shall create a reserve fund and ⁶[* * *] shall, out of the balance of profit of each year as disclosed in the profit and loss account prepared under Sec. 29 and before any dividend is declared, transfer to the

¹ Ins. by Act 33 of 1959, Sec. 15 (w.e.f. 1st October, 1959).

² Subs. by Act 95 of 1956, Sec. 5, for Sec. 16 (w.e.f. 14th January, 1957).

³ Subs. by Act 20 of 1994, Sec. 7 (w.e.f. 31st January, 1994).

⁴ Ins. by Act 58 of 1968, Sec. 4 (w.e.f. 1st February, 1969).

⁵ Subs. by Act 33 of 1959, Sec. 11, for Secs. 17 and 18 (w.e.f. 1st October, 1959).

⁶ Certain words omitted by Act 36 of 1962, Sec. 3.

reserve fund a sum equivalent to not less than twenty per cent. of such profit.

¹[(1-A) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the Reserve Bank and having regard to the adequacy of the paid-up capital and reserves of a banking company in relation to its deposit liabilities, declared by order in writing that the provisions of sub-section (1) shall not apply to the banking company for such period as may be specified in the order:

Provided that no such order shall be made unless, at the time it is made, the amount in the reserve fund under sub-section (1), together with the amount in the share premium account is not less than the paid-up capital of the banking company.]

(2) Where a banking company appropriates any sum or sums from the reserve fund of the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the Reserve Bank explaining the circumstances relating to such appropriation

Provided that the Reserve Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.

COMMENT

Mandate of Sec. 17.—The mandate of Sec. 17 is that every banking company will have to transfer to a reserve fund every year, a sum equivalent to "not less than twenty per cent. of such profit". In other words, at least 20 per cent. of the profit as shown in the profit and loss account before declaration of any dividend has to be transferred to the reserve fund. This is the statutory requirement. If a banking company transfers any amount in excess of 20 per cent. of its profit of any year to this reserve fund, the exclusion in Cl. (xi) (a) will be limited to 20 per cent. of the profit which is the requirement of Sec. 17 (1) of the Banking Regulations Act.²

³**[18. Cash reserve.**—(1) Every banking company, not being a scheduled bank, shall maintain in India by way of cash reserve with itself or by way of balance in a current account with the Reserve Bank or by way of net balance in current accounts or in one or more of the aforesaid ways, a sum equivalent, to at least three per cent. of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the twentieth day of every month a return showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities in India on such Fridays or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881(26 of 1881), at the close of business on the preceding working day.

Explanation.— In this section, and Sec. 24,—

(a) "liabilities in India" shall not include—

¹ Ins. by Act 33 of 2902, Sec. 3.

² *Andhra Bank Ltd. v. Commissioner of Income-tax*, 7995 (21G) I.T.R. 668 at p. 677 (S.C.): 1995 (2) A.I. Bank L.J. 9.

³ Subs. by Act No. 1 of 1984, Sec. 21 me .f. 29th March, 1985.

(i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;

(ii) any advance taken from the Reserve Bank or from the Development Bank or from the Exim Bank ¹[or from the Reconstruction Bank] ²[or from the National Housing Bank] or from the National Bank ³[or from the Small Industries Bank] by the banking company;

(iii) in the case of a Regional Rural Bank, also any loan taken by such bank from its sponsor Bank;

(b) "fortnight" shall mean the period from Saturday to the second following Friday, both days inclusive;

(c) "net balance in current accounts" shall, in relation to a banking company, mean the excess, if any, of the aggregate of the credit balance in current account maintained by that banking company with the State Bank of India or a subsidiary bank or a corresponding new bank over the aggregate of the credit balance in current account held by the said banks with such banking company;

(d) for the the purposes of computation of liabilities, the aggregate of the liabilities of a banking company of the State Bank of India, a subsidiary bank, a corresponding new bank, a Regional Rural Bank, another banking company, a Co-operative Bank or any other financial institution notified by the Central Government in this behalf, shall be reduced by the aggregate of the liabilities of all such banks and institutions to the banking company;

(e) the expression "Co-operative Bank" shall have the meaning assigned to it in Cl. (cci) of Sec. 56.

(2) The Reserve Bank may, for the purposes of this section and Sec. 24, specify from time to time, with reference to any transaction or class of transactions, that such transaction or transactions shall be regarded as liability in India of a banking company and, if any question arises as to whether any transaction or class of transactions shall be regarded for the purposes of this section and Sec. 24 as liability in India of a banking company, the decision of the Reserve Bank thereon shall be final.]

19. Restriction on nature of subsidiary companies.—⁴[(1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely:

(a) the undertaking of any business which, under Cls. (a) to (o) of subsection (1) of Sec. 6, is permissible for a banking company to undertake, or

(b) with the previous permission in writing of the Reserve Bank, the carrying on of the business of banking exclusively outside India, or

(c) the undertaking of such other business, which the Reserve Bank may, with the prior approval of the Central Government, consider to be conducive to the spread of banking in India or to be otherwise useful or necessary in the public interest.

¹ Ins. by Act 62 of 1984, Sec. 71, Sch. III w.e.f. 20th March, 1985).

² Ins. by Act 53 of 1987, Sec. 56 and Sch. II (w.e.f. 9th July, 1988).

³ Ins. by Act 39 of 1989, Sec. 53 and Sch. II, Pt. III (w.e.f. 7th March, 1990).

⁴ Subs. by Act No.1 of 1984, Sec. 22 (w.e.f. 25th February, 1984).

Explanation.—For the purposes of Sec. 8, a banking company shall not be deemed, by reason of its forming or having a subsidiary company, to be engaged indirectly in the business carried on by such subsidiary company.]

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent. of the paid-up share capital of that company or thirty per cent. of its own paid-up share capital and reserves, whichever is less:

Provided that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow.

(3) Save as provided in sub-section (1), and notwithstanding anything contained in sub-section (2), a banking company shall not, after the expiry of one year from the date of the commencement of this Act, hold shares, whether as pledgee, mortgagee or absolute owner, in any company in the management of which any Managing Director or manager of the banking company is in any manner concerned or interested.

¹[20. **Restrictions on loans and advances.**—(1) Notwithstanding anything to the contrary contained in Sec. 77 of the Companies Act, 1956 (1 of 1956), no banking company shall,—

(a) grant any loans or advances on the security of its own shares, or

(b) enter into any commitment for granting any loan or advance or advance to or on behalf of—

(i) any of its directors,

(ii) any firm in which any of its directors is interested as partner, manager, employee or guarantor, or

(iii) any company (not being a subsidiary of the banking company or a company registered under Sec. 25 of the Companies Act, 1956 (1 of 1956), or a Government company)] of which ²[or the subsidiary or the holding company of which] any of the directors of the banking company is a director, managing agent, manager, employee or guarantor or in which he holds substantial interest, or

(iv) any individual in respect of whom any of its directors is a partner or guarantor.

(2) Where any loan or advance granted by a banking company is such that a commitment for granting it could not have been made if *Cl.(b)* of sub-section (1) had been in force on the date on which the loan or advance was made, or is granted by a banking company after the commencement of Sec. 5 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), but in pursuance of a commencement of Sec. 5 of the Banking Laws (Amendment) Act, 1968

¹ Subs. by Act 58 of 1968, Sec. 5, for Sec. 20 (w.e.f. 1st February, 1969).

² Ins. by Act No. 1 of 1984, Sec. 23 (w.e.f. 75th February, 1984).

(58 of 1968), but in pursuance of a commitment entered into before such commencement, steps shall be taken to recover the amounts due to the banking company on account of the loan or advance together with interest, if any, due thereon within the period stipulated at the time of the grant of the loan or advance, or where no such period has been stipulated, before the expiry of one year from the commencement of the said Sec. 5:

Provided that the Reserve Bank may, in any case on an application in writing made to it by the banking company in this behalf, extend the period for the recovery of the loan or advance until such date, not being a date beyond the period of three years from the commencement of the said Sec. 5, and subject to such terms and conditions, as the Reserve Bank may deem fit:

Provided further that this sub-section shall not apply if and when the director concerned vacates the office of the director of the banking company, whether by death, retirement, resignation or otherwise.

(3) No loan or advance, referred to in sub-section (2), or any part thereof shall be remitted without the previous approval of the Reserve Bank, and any remission without such approval shall be void and of no effect.

(4) Where any loan or advance referred to in sub-section (2), payable by any person, has not been repaid to the banking company within the period specified in that sub-section, then such person shall, if he is a director of such banking company on the date of the expiry of the said period, be deemed to have vacated his office as such on the said date.

Explanation.—In this section,—

(a) "loans or advance" shall not include any transaction which the Reserve Bank may, having regard to the nature of the transaction, the period within which, and the manner and circumstances in which, any amount due on account of the transaction is likely to be realized, the interest of the depositors and other relevant considerations, specify by general or special order as not being a loan or advance for the purpose of this section;

(b) "director" includes a member of any board or committee in India constituted by a banking company for the purpose of managing, or for the purpose of advising it in regard to the management of, all or any of its affairs.

(5) If any question arises whether any transaction is a loan or advance for the purposes of this section, it shall be referred to the Reserve Bank, whose decision thereon shall be final.]

COMMENT

Restriction has been imposed on loans and advances. Sharers, directors and any firm in which directors are interested as a partner shall not get grant and loans are advanced by banking company.

Complaint to banking Ombudsman has to be in writing.—The objection taken by the bank that before a complaint can be entertained the petitioner is to prefer a representation must be sustained. This is mandatory. In this case, no such representation has been filed. The representation filed in the year 1993 cannot be looked into because this was filed more than a year before the application was preferred before the banking Ombudsman. Bar of limitation

indicated in Cl. 16 (3) (b) would be attracted.¹

²[20-A. **Restriction on power to remit debts.**-(1) Notwithstanding anything to the contrary contained in Sec. 293 of the Companies Act, 1956 (1 of 1956), a banking company shall not, except with the prior approval of the Reserve Bank, remit in whole or in part any debt due to it by—

- (a) any of its directors, or
- (b) any firm or company in which any of its directors is interested as director, partner, managing agent or guarantor, or
- (c) any individual if any of its director is his partner or guarantor.

(2) Any remission made in contravention of the provisions of sub-section (1) shall be void and of no effect.]

21. Power of Reserve Bank to control advances by banking companies.—(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest ³[or in the interests of depositors] ⁴[or banking policy] so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, ⁵[as to—

- (a) the purposes for which advance may or may not be made,
- (b) the margins to be maintained in respect of secured advances,
- (c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves any deposits of a banking company and relevant considerations, may be made by that banking company, to any one company, firm, association of persons or individual,
- (d) the maximum amount up to which, having regard to the considerations referred to in Cl.(c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and
- (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.]

⁶[(3) Every banking company shall be bound to comply with any directions given to it under this section.]

¹ *Kamal Chand Jain v. Banking Ombudsman, A.I.R. 1996 M.P. 180 at p. 181 : 1996 (3) Bank J. 383 at p. 384 (M.P.).*

² *Ins. by Act 55 of 1963, Sec. 12 (w.e.f. 1st February, 1964).*

³ *Ins. by ibid., Sec. 73 (w.e.f. 1st February, 1964).*

⁴ *Ins. by Act 58 of 1968, Sec. 6 (w.e.f. 1st February, 1969)*

⁵ *Subs. by Act 55 of 1963, Sec. 13, for certain words (w.e.f. 1st February, 1964).*

⁶ *Ins. by Act 55 of 1963 Sec. 13, for certain words (w.e.f. 1st February, 1964)*

COMMENTS

Banking company bound to comply with any direction issued by R.B.I.—Under Sec. 21 of the Banking Regulation Act, 1949, the Reserve Bank has got the power to control advances to be made by the Banking Companies. When the Reserve Bank is satisfied that it is necessary and expedient in public interest or Banking policy so to do, it can determine the policy in relation to advances to be followed by the banking companies generally or any banking company in particular. The banking companies are bound to follow the policy so determined. Reserve Bank has also the power to give direction as to the rate of interest and other terms and conditions on which advances or other financial accommodations may be made or guarantee given. The circular issued by the Reserve Bank of India regulating rate of interest chargeable on loans and the manner of charging interest are statutory circulars issued with laudable purposes and are binding on the banks.¹

Banking policy and the rate of interest determined by the Reserve Bank of India are binding on the Banking companies.—When the Reserve Bank is satisfied that it is necessary or expedient in public interest, of banking policy so to do, it can determine the policy in relation to advances to be followed by the banking companies generally or any banking companies in particular. The banking companies are bound to follow the policy so determined. Reserve Bank has also the power to give directions as to the rate of interest and other terms and conditions on which advances or other financial accommodations may be made or guarantee given. Every banking company shall be bound to comply with any direction given to it by the Reserve Bank under Sec. 21. The circulars issued by the Reserve Bank of India regulating rate of interest chargeable on loans and the manner of charging interest are statutory circulars issued with laudable purposes and are binding on the banks.²

Total amount adjudged to be the principal amount.—At the time of the passing of the decree, the total amount was adjudged to be the principal amount and, therefore, the plaintiff Bank was rightly given interest thereon at the rate of 13'1 per cent. per annum. Moreover, the amounts sought to be realised by the Bank from the defendants are given from time to time in the notices issued by it and, therefore, the principal amount found due not only means the principal amount as such, but also the amount due on interest which has become part of the principal amount as per the calculations of the Bank.³

Question of law-Maintainability of appeal.—The question whether nationalised banks, obliged to charge interest at specified rate in accordance with the circulars and directives periodically issued by the Reserve Bank of India under the provisions of the Banking Regulation Act, can be taken out of the category of cases where the presumption regarding excessive nature

¹ *Venkiteswara Rice Mill v. Union Bank of India*, (1988) 63 Comp. Cas. 483 : *Thampan v. Dhanzlakshmi Bank Ltd.*, 1989 (2) K.L.T. 840 : *Y. Jameeta Beevi v. State Bank of Travancore*, 1991 (1) Bank C.L.R. 677 pp. 679 (Ker.); *Debasis Pal Choudhari v. Allahabad Bank*, 1991 (1) Cal. L.T. 10 at p. 24.

² *Jameela Beevi v. State Bank of Travancore*, 1991 Bank J. 427 at p. 429 (Ker.).

³ *Jagdamba Rice Mills v. Oriental Bank of Commerce, Karnal*, A.I.R. 1990 P. & H. 60 at p. 62.

of interest under the provision of the Usurious Loans Act can be raised, is a question of law and that only that question was raised and debated before the Lower Appellate Court and, therefore, the appeal did involve a question of law. In the instant case, it is clear from a perusal of the memorandum of appeal filed before the Court below and the judgment therein discloses that the appeal was filed and argued on a question of law, viz., the applicability of the provisions of the Usurious Loans Act, to nationalised banks functioning under the provisions of the Banking Regulation Act and the scope and effect of Sec. 3 and the provisions thereunder. Besides, this very question was argued at great length before the High Court. No objection regarding the incompetency of the appeal on the score that it involved a question of fact, was ever attempted to be raised by the respondents in the Court below. Thus it is too late to urge that no question of law arose in the appeal before the Court below. It could not be said that no question of law arose and, therefore, the appeal was not competent.¹

Reserve Bank directives and their importance.—The discretion was given to banks to charge interest above the minimum, but that does not mean that banks could charge unreasonable, or excessive interest. Banks are public institutions and not just money-lenders. In the absence of Reserve Bank directives, they are, therefore, required to follow the banking practice generally accepted by all banks. It is clear that the ordinary practice or custom of banks was only to charge interest with yearly or half-yearly rests and that too only on overdraft amounts and unsecured loans. The monthly, or quarterly rests, therefore, does not appear to be the recognized banking practice. It may be that some banks as in the present case, might have charged interest with quarterly rests or monthly rests on some transactions, but to state that it was a banking practice generally accepted or universally followed by all banks, is far from true.²

³***[21-A. Rates of interest charged by banking companies not to be subject to scrutiny by Courts.***—Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its debtor shall not be reopened by any Court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.]

COMMENTS

Scope of Sec. 21-A.—In a case the Andhra Pradesh High Court held that Sec. 21-A is intended to prevent reopening the transaction on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive. The relief under the State Act is not on the ground that it is excessive but it is on the ground that the general indebtedness of agriculturists shall be relieved and they should not be required to pay more than the statutory and

¹ *Indian Bank Trivannamalai v. V.A. Balasubramania Gurukul, A.I.R. 1982 Mad. 296 at p. 300: (2982) 2 M.L. J. 238.*

² *Gowda, D.S. v. Corporation Bank, (1982) 2 Knt.L.J. 490 at pp. 499, 507; Reserve Bank of India v. State Bank of India, (7996)85 Contp. Cases 554 at p. 567 (Bom.); Canara Bank v. P.R.N. Upadhyaya, (1998) 6 S.C.C. 526 at pp. 530, 531.*

³ *Ins. by Act 1 of 1984, Sec. 24 (w.e.f. 15th February, 1984).*

they should not be required to pay more than the statutory and also to liquidate certain debts in its scheme.¹

Section may be relevant to the agreed rate of interest but not to the rate of interest unilaterally fixed by the banking company.²

The provisions of Sec. 21-A cannot be held to have intended to override a Central Legislation like the Code of Civil Procedure or Order XXXIV, rule 11, C.P.C.³

Applicability of Sec. 21-A.—(1) Section 21-A of the Banking Regulation Act, 1949 applies to all transactions entered into between the banking company and its debtor whether the transaction was entered into prior to its commencement or after.

(2) Section 21-A of the Banking Regulation Act, 1949, applies to the suits pending on the date of coming into force of the said section.

(3) Section 21-A applies to pending appeals irrespective of the fact whether a decree was passed giving relief to the debtor or not.

(4) Section 21-A makes no distinction between an advance made for agricultural purpose or for commercial purpose and it equally applies to both.⁴

Constitutional validity of Sec. 21-A.—Section 21-A of the Banking Regulation Act expressly overrides the provisions of the Usurious Loans Act including any other law relating to indebtedness in any State. Section 21-A of the Banking Regulation Act is only prospective and it is not retrospective in operation. A Divisional Bench of Andhra Pradesh High Court consisting of Ramarao, J. and Kodandaramaiah J. W A.S. No. 352/78 and batch upheld the constitutional validity of Sec. 21-A of the Banking Regulation Act.⁵

How far restraint on the part of Court.—Though Sec. 21-A of the Act is a restraint on the power of the Court, such restraint will not preclude the Courts from reopening the transaction between the bank and its debtor if it is established that the bank has, in violation of the directives contained in the relevant circulars or any other provisions of law, charged interest at a rate different from that specified in the circulars and have while settling the accounts compounded interest otherwise than yearly in the case of loans to which the circulars apply. That being the position, Sec. 21-A cannot be legally understood as a provision restraining the Courts from

¹ *Medikonda Satyanarayana v. Andhra Batik Ltd., Eluru, A.I.R. 1985 A.P. 77 at p. 79; H.P. Krishna Reddy y v. Canara Bank, Bangalore, A.I.R. 1985 Knt. 228 at y. 231; Bank of Maharashtra v. United Construction Co., A.I.R. 1985 Bonn. 432 rat pp. 433, 434; Bank of Madura v. Bharat Trading Co. Ltd., 1993 Bank J. 8 rat p. 19 (Cal.); Gulab Chand v. Central Bank of India, 1993 (1) Bank C.I.R. 182 (Bonn.); Bank of Baroda v. M/s. Perchem Industries, 1992(2) Batik C.L.R. 355 (Boni.); K. Appa Rao v. State Bank of Hyderabad, 1993 Bank J. 276 (Mad.); Vijaya Bank v. Art Trend Corpn., A.I.R. 1992 Cal. 12 rat y. 21; Rosy George v. State Batik of India, A.I.R. 1993 Ker. 184; Srafe Batik of Hyderabad v. Advoth Sakru, A.L.R. 1994 A.P. 170 at pp. 184-185.*

² *Syndicate Bank, Pollachi Branch v. D. Mathean, 1990 Bank J. 314 at pp. 318, 379 (Mad.).*

³ *N.M. Veerappa v. Canara Batik, A.I.R. 1998 S.C. 1101 at p. T 206; 1998 (2) M.P.L.J. 84 at p. 94.*

⁴ *State Batik of Hyderabad v. Advath Sakru 1993 (1) A.L.T. 608 at p. G38; 1993 (1) An.W.R. 380 rat p. 410 (A.P.); Syndicate Batik v. Kailash Chandra, 1993 (76) Comp. Cas. 392 at pp. 397, 398 (Bonn.); Andhra Bank v. M. Butchayya Choudhary, 1997 (1) Andh.L.D. 134 at pp. 137 138, 139-41.*

⁵ *Central Bank of India v. State Bank of India, 1987 (1) Andh. LT. 316 (D.B.).*

exercising its powers to give relief to a party whenever any banking claims anything in violation of the circulars issued under Sec. 21 of the Act.¹

Non-action on the part of bank.—In the instant case the defendant had definitely informed the plaintiff that she was also making arrangement for sale of the shares and she had already entered into an agreement with a third party therefor. She wanted the bank not to take any drastic action and give her some time. Thus, the defendant was stopping the plaintiff-bank from taking any action. In these circumstances, she cannot plead that the bank failed to take action in time and thereby caused loss to her.²

Section overrides Usurious Loans Act.—Section 21-A of the Banking Regulation Act expressly overrides the provisions of the Usurious Loans Act including any other law relating to indebtedness in any State.³

Section 21-A cannot take away the benefit already granted by Courts before the Usurious Loans Act came into force.⁴

Under Sec. 21-A of the Banking Regulation Act, 1949, as amended, the application of the Usurious Loans Act is made in effect impermissible from 15th February, 1984. It is only a few days before that date that this suit was instituted. It would be impermissible for a Court decreeing a suit to seek to reopen a transaction on the basis of Sec. 3 of the Usurious Loans Act unless at the date of passing of the decree, the Court were free to apply the said Act to the transaction covered by the suit.⁵

Amended section coming into force during pendency of appeal, can be taken notice of by Appellate Court and decree to be modified.—It is well established that an appeal is the continuation of the suit and, therefore, Sec. 21-A of the Banking Regulation Act, 1949 would apply to facts of the case when the learned single judge exercised his appellate power under Sec. 96 of the Code of Civil Procedure. Section 107 (2) of the Code of Civil Procedure gives power to an Appellate Court almost the same powers as that of Trial Court. It has also power to notice the subsequent events. Therefore the learned single Judge should have applied Sec. 21-A of the Banking Regulation Act, 1949 and held that the Act of 1918 was not applicable to a transaction between the appellant and respondents. Otherwise, the result would be startling in case the learned single Judge remanded the case, the Trial Court would be compelled to take notice of Sec. 21-A of the Banking Regulation Act, 1949, and pass decree accordingly. The result would be incongruous and vagarious if it is not held that the Court was bound to take notice of amendment in law at the time of passing decree at appellate stage and vary the decree of the Trial Court according to the law obtaining after the amendment. Therefore, it was held that amended Sec. 21-A of the Banking Regulation Act, 1949 would be applicable at the appellate stage too

¹ *State Bank of India v. Girdhri Lnl*, 7991 (7) Bank C.L.R. 143 at p. 144 (M.P.): 7997 Bank J. 791 at p. 792.

² *N. Savithri v. United Commercial Bank*, (1996) 86 Coin. Cas. 34 at pp. 47-42 (Mad.).

³ *Vide Yogendranath Raj v. State Bank of India*, 1987 (Z) Andh. L.T. 316 (D.B.); *Central Bank of India v. Popuri Sarangaiah*, 1991 (?) Andh. L.T. 455 at p. 458

⁴ *Central Bank of India v. Popuri Sarangaiah*, 7997 (1) Andh. L.T. 455 at p. 459, *Union of India v. Jogi Mohan Ran*, (1991) 72 Comp. Cas. 325 at pp. 328, 329 (A.P.).

⁵ *Indian Bank v. Textile Inland Agencies* (1995) 84 Comp. Case 799 at pp. 803, 804 (Cal.).

and the Court must pass a decree in accordance with the changed law.¹

Section 21-A relates to procedural law and is applicable to transactions prior to the date of insertion of Sec. 21-A—It overrides Sec. 45 of the Madras Law Act.—Section 21-A of the Banking Regulation Act, relates to procedural law and is applicable to the transactions prior to the date of insertion of Sec. 21-A of the Banking Regulation Act. The appellant was, therefore, entitled to interest at the rate of 13 per cent. per annum with six monthly rests, as agreed to between the parties and as mentioned in the initial loan document.²

Retrospective operation of the Act.— Section 21-A of the Banking Regulation Act, which came into force from 15th February, 1984, is prospective and not retrospective.³

Court not empowered to reopen the transaction.—In the present case, there is a written contract between the parties contained in the hypothecation agreement dated 1st October, 1976, that the borrower shall pay interest on the principal amount or the balance outstanding of the loan at any time at the rate of 7.5 per cent. per annum over and above the Reserve Bank of India rate of interest subject, however, to a minimum of 16.5 per cent. per annum and such interest is to be paid every month ending with the last working day of calendar month. Clause (2) (c) further provides that, in default of payment of any one instalment of the principal amount on the due date, the borrower shall pay on all such overdue instalments or such portion thereof as shall then remain outstanding, interest at 3 per cent. per annum over and above the agreed rate mentioned in Cl. (b) above. As laid down by Sec. 21-A, the Court is not empowered now to reopen this transaction between the parties on the ground that the rate of interest charged by the plaintiff bank in respect of the transaction is excessive. It is the case of the plaintiff-bank in para 17 of the plaint that the defendants failed to repay the secured loan in 40 monthly instalments of Rs. 2,000 each. The defendants are also alleged to have failed to pay the cash credit overdraft loan of Rs. 75,000 before October 31, 1977. In these circumstances, the plaintiff bank is fully entitled to claim penal interest on overdue instalments.⁴

Reasonable classification.—The scheduled banks are charging interest in accordance with the guidelines of the Reserve Bank of India and uniformly from all agriculturists in the State without any discrimination so far as agricultural debt is concerned. The rate of interest is uniform and is neither unreasonable nor arbitrary or exorbitant so as to fall withal the vice of discrimination. The classification must be founded on an intelligible differentiation which distinguishes persons or things that are to be put together from others left out of the group and that the differential must have a rational relationship to the object sought to be achieved by the statute in question, have been found in this context of the provisions of Sec. 4 (c) of the Act as

¹ *Punjab National Bank v. Kishanlal Soni*, A.I.R. 1997 M.P. 27 at pp. 32, 32.

² *Punjab National Bank v. Mullu Singly* 1992 Bank J. 79 at pp. 79, 80 : 1991 Bank C.L.R. 528 (M.P.): 1993 M.P.L.J. 292 at p. 793.

³ *Karma Prasad Jaiswal v. Punjab National Bank*, 1991 Bankers J. 577 at p. 518 (M.P.); *Bank of Madura Ltd. v. Maddi Uenkak Subrahmanyam*, 1992 (73) Comp. Cas. 541 of p. 544 (A.P.).

⁴ *Vijaya Bank v. Sansu Industries (Delhi)*, 2993 (76) Comp. Cas. 652 at p. 659 : 1992 C.C.C. 252 at pp. 256, 257.

as permissible classification.¹

Letter written to a creditor whether requires registration.—The position of law appears to be that the test to be applied to conclude whether a letter written to a creditor at the time of the deposit of title deeds or subsequent to the title deeds requires registration or not depends on the matters contained in that letter and if it recites that through this letter the mortgage was created then only it would require registration otherwise not.²

Control of advances.—Under Sec. 21 of the Banking Regulation Act, 1949, the Reserve Bank has got the power to control advances to be made by banking companies. When the Reserve Bank is satisfied that it is necessary or expedient in public interest or banking policy so to do, it can determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular. Banking companies are bound to follow the policy so determined. The Reserve Bank has also the power to give directions as to the rate of interest and other terms and conditions on which advances or other financial accommodations may be made or guarantees given. Every banking company shall be bound to comply with any direction given to it by the Reserve Bank under Sec. 21. The circulars issued by the Reserve Bank of India regulating the rate of interest chargeable on loans and the manner of charging interest are statutory circulars issued with a laudable purpose and are binding on the banks *Venkiteswara Rice Mill v. Union Bank of India*³, and *Thampan v. Dhanalakshmi Bank Ltd.*⁴ Section 21-A of the Banking Regulation Act provides that the rates of interest charged by banking companies, accordingly, shall not be subjected to scrutiny by Courts.⁵

22. Licensing of banking companies.—⁶[(1) Save as hereinafter provided no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.]

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business ⁷[in India], shall apply in writing to the Reserve Bank for a licence under this section:

Provided that in the case of banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted licence in pursuance of ⁸[this section] or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:

¹ *Bhanwarlal v. Bank of Baroda*, 1992 (3) W.L.C. 42 at pp. 46, 47.

² *V. Subba Rao v. Indian Bank*, 1997 (4) Andh. L.T. 112 at p. 116.

³ (1988) 63 Comp. Cas. 483 (A.P.).

⁴ (1989) 2 K.L.T. 840 : (1992) 73 Comp. Cas. 600 (Ker.).

⁵ *Jameela Beevi v. State Bank of Travancore*, 1992 (74) Comp. Cas. 736 at p. 739 : 1992 (2) K.L.T. 868 n t 1r. 870.

⁶ Subs. by Act 33 of 1959, Sec. 13, for sub-section (1) (w.e.f. 1st October, 1959).

⁷ Subs. by Act 20 of 1950, Sec. 3, for "in any State".

⁸ Subs. by Act 33 of 1959, Sec. 13, for "sub-section (2)" (w.e.f. 1st October, 1959).

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of Sec. 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that ¹[* * *] the following conditions are fulfilled, namely:

² [(a) that the company is or will be in position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be conducted in a manner detrimental to the interests of its present or future depositors;]

³ [(c) that the general character of the proposed management of the company will not be prejudicial to the public interest of its present or future depositors;

(d) that the company has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

(g) any other condition, the fulfilment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.]

⁴ [(3-A) Before granting any licence under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the Government or law of the country in which it is incorporated does not discriminate in any way against companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.]

⁵ [(4) The Reserve Bank may cancel a licence granted to a banking company under this section

(i) if the company ceases to carry on banking business in India; or

¹ The words "all or any of" omitted by Act 1 of 1984, Sec. 25 (w.e.f. 15th February, 1984).

² Subs. by Act 33 of 1959, Sec. 73, for Cls. (a) and (b) (w.e.f. 1st October, 1959).

³ Subs. by Act 1 of 1984, Sec. 25 (w.e.f. 15th February, 1984).

⁴ Ins. by *ibid.*, (w.e.f. 15th February, 1984).

⁵ Subs. by Act 33 of 1959, Sec. 73, for sub-sections (4) and (5) (w.e.f. 1st October, 1959).

(ii) if the company at any time fails to comply with any of the condition imposed upon it under sub-section (1); or

(iii) if at any time, any of the conditions referred to in sub-section (3) ¹(and sub-section (3-A) is not fulfilled

Provided that before cancelling a licence under Cl. (ii) or Cl. (iii) of s sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank unless it is of opinion that the delay will be prejudicial to the interests of the company` : depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(5) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

(6) The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.]

COMMENTS

Bank guarantees have to be honoured.—Even assuming for the sake of argument that Sec. 22 of the Sick Industrial Companies Act 1985 as amended in 1993, takes within its ambit even encashment of bank guarantees, inasmuch as the appellant in the instant case was admittedly declared by the B.I.F.R. to have ceased to be a sick industrial company, *vide* order dated 12th January, 1995, the said section is of no avail to the appellant. In this view of the matter, it may not be necessary to go into the question raised regarding the scope of Sec. 22. Even otherwise, the principles regarding the grant of an injunction restraining the enforcement of bank guarantees are no longer in doubt as the same have been reiterated time and again by the Apex Court in a catena of decision.²

The relevant terms of the bank guarantee firstly makes it clear that the bank has unconditionally and irrevocably undertaken to pay to the appellant, on written demand and without demand, the amount demanded by it. *Secondly*, Cl. II of the said guarantee clarifies that the payment shall be made within demand and on the undertaking that the appellant is to be sole judge whether the seller has committed any breach. Consequently the right of the appellant to recover the guaranteed amount is not to be effected or suspended by reason of any dispute which can be raised or pending before the Courts, Tribunals or arbitrator. *Thirdly* the guarantor had no right to know the reasons of or to investigate the merits of the demand or to question or to challenge the demand or to know any facts affecting the demand and lastly it was not open to the bank to require the proof of the liability of respondent No. I to pay the amount before paying the aforesaid guaranteed amount to the appellant. The letter of invocation issued by the appellant demanding the payment of Rs. 26,15,000/- was in accordance with the terms of bank guarantee No. 40J51 and the bank was, therefore, under an obligation to honour its undertaking and to

¹ *Ins. by Act 2 of 1984, Sec. 25 (w.e.f. 25th February, 1984).*

² *Binni Ltd. v. Nizam Sugars Ltd., 1997 (2) C.L.T. 50 at pp. 52, 53 (A.P.).*

make the payment. It, however, chose not to fulfil its obligation. If the bank could not in law avoid the payment, as the demand had been made in terms of the bank guarantee, as has been done in the present case, then the Court ought not to have issued an injunction which had the effect of restraining the bank from fulfilling its contractual obligation in terms of the bank guarantee. An injunction of the Court ought not to be an instrument which is used in nullifying the terms of a contract, agreement or undertaking which is lawfully enforceable.¹

²[23. *Restrictions on opening of new, and transfer of existing places of business.*—(1) Without obtaining the prior permission of the Reserve Bank—

(a) no banking company shall open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and

(b) no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area:

Provided that nothing in this sub-section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the banking company already has a place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or *mela* or any other like occasion.

(2) Before granting any permission under this section, the Reserve Bank may require to be satisfied by an inspection under Sec. 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business.

(3) The Reserve Bank may grant permission under sub-section (1) subject to such conditions as it may think fit to impose either generally or with reference to any particular case.

(4) Where in the opinion of the Reserve Bank, a banking company has, at any time, failed to comply with any of the conditions imposed on it under this section, the Reserve Bank may, by order in writing and after affording reasonable opportunity to the banking company for showing cause against the action proposed to be taken against it, revoke any permission granted under this section.

³[(4-A) Any regional rural bank requiring the permission of the Reserve Bank under this section shall forward its application to the Reserve Bank through the National Bank which shall give its comments on the merits of the application and send it to the Reserve Bank

Provided that the regional rural bank shall also send an advance copy of the application directly to the Reserve Bank.

¹ *Dwarikesh Sugar Industries v. Prem Heavy Engineering Pvt. Ltd.*, 1997 (2) S.C.C.R.196 at pp. 203, 204.

² *Subs. by Act 33 of 1959, Sec. 14, for Sec. 23 (w.e.f. 1st October, 1959).*

³ *Ins. By Act 61 of 1981, the Second Schedule, Pt. II (w.e.f. 1st May, 1982)*

(5) For the purposes of this section "place of business" includes any sub-office, pay office, sub-pay office, and any place of business at which deposits are received, cheques cashed or moneys lent.]

24. Maintenance of a percentage of assets.—(1) After the expiry of two years from the commencement of this Act, every banking company shall maintain ¹[in India] in cash, gold or unencumbered approved securities, value at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than 20 per cent. of the total of its ²[demand and time liabilities] ³[in India].

⁴[*Explanation.*—For the purposes of this section, "unencumbered approved securities" of banking company shall include its approved securities lodged with another institution for an advance or any other credit arrangement to the extent to which such securities have not been drawn against or availed of.]

⁵[(2) In computing the amount for the purposes of sub-section (1) the deposit required under sub-section (2) of Sec. 11 to be made with the Reserve Bank by a banking company incorporated outside India and any balance maintained in India by a banking company in current account with the Reserve Bank or the State Bank of India or with any other bank which may be notified in this behalf by the Central Government, including in the case of a scheduled bank the balance required under Sec. 42 of the Reserve Bank of India Act, 1934 (2 of 1934), to be so maintained, shall be deemed to be cash maintained in India.]

⁶ [(2-A) (a) Notwithstanding anything contained in sub-section (1) or in sub-section (2), after expiry of two years from the commencement of the Banking Companies (Amendment) Act, 1962 (36 of 1962),—

(i) a scheduled bank, in addition to the average daily balance which it is, or may be, required to maintain under Sec. 42 of the Reserve Bank of India Act, 1934 (2 of 1934), and

(ii) every other banking company, in addition to the cash reserve which it is required to maintain under Sec. 18.

²[shall maintain in India,—

(A) in cash, or

(B) in gold valued at a price not exceeding the current market price or in unencumbered approved securities valued at a price determined in accordance with such one or more of, or combination of, the following methods of valuation, namely, valuation with reference to cost price, market price, book value or face value, as may be specified by the Reserve Bank from time to time,

an amount which shall not, at the close of business on any day, be less than twenty-five per cent, or such other percentage not exceeding forty per cent. as the Reserve Bank may, from time to time, by notification in the Official Gazette, specify, of the total of its demand and time liabilities

¹ Ins. by Act 33 of 1959, Sec. 15 (w.e.f. 1st October, 1959).

² Subs. by Act Z of 1934, Sec. 26 (w.e.f. 29th March, 1934).

³ Subs. by Act 20 of 1950, Sec. 3, for "in the States".

⁴ Subs. by Act 33 of 1959, Sec. 75, for the explanation (w.e.f. 1st October, 1959).

⁵ Subs. by Act 33 of 1959, Sec. 75, for the explanation (w.e.f. 1st October, 1959).

⁶ Ins. by Act 36 of 1962, Sec. 6. Ins. by Act 36 of 1962, Sec. 6.

in India, as on the last Friday of the second preceding fortnight.]

¹[(b) in computing the amount for the purpose of Cl. (a)—

(i) the deposit required under sub-section (2) of Sec.11 to be made with the Reserve Bank by a banking company incorporated outside India;

(ii) any cash or balance maintained in India by a banking company other than a scheduled bank with itself or with the Reserve Bank or by way of net balance in current account in excess of the aggregate of the cash or balance or net balance required to be maintained under Sec. 18;

(iii) any balances maintained by a scheduled bank with the Reserve Bank in excess of the balance required to be maintained by it under Sec. 42 of the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) the net balance in current accounts maintained in India by a scheduled bank;

(v) any balances maintained by a Regional Rural Bank in call or fixed deposit with its sponsor bank;

shall be deemed to be cash maintained in India.]

¹[*Explanation.*- For the purpose of Cl. (a) of this sub-section, the market price of an approved security shall be the price as on the date of the issue of the notification or as on any earlier or later date as may be notified from time to time by the Reserve Bank in respect of any class or classes or securities.]

² [(2-B) The Reserve Bank may, by notification in the Official Gazette, vary the percentage referred to in sub-section (2-A) in respect of a Regional Rural Bank ³[* * *].

⁴[(3) For the purpose of ensuring compliance with the provisions of this section, every banking company, shall not later than twenty days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its demand and time and liabilities in India at the close of business on each alternate Friday during the month, or if any such Friday is a public holiday, at the close of business on the preceding working day:

Provided that every regional rural bank shall also furnish a copy of the said return to the National Bank.

(4) (a) If on any alternate Friday or, if such Friday is a public holiday, on the preceding working day, the amount maintained by a banking company at the close of business on that day falls below the minimum prescribed by or under Cl. (a) of sub-section (2-A), such banking company shall be liable to pay to the Reserve Bank in respect of that day's default, penal interest for that day at the rate of three per cent. per annum above the bank rate on the amount by which the amount actually maintained falls short of the prescribed minimum on that day; and

1. Ins. by Act 1 of 1984, Sec. 26 (w.e.f. 29th March, 1985).

2. Ins. by Act 21 of 1976, Sec. 33 (w.e.f. 26th September, 1975).

3. The words "established under Sec. 3 of the Regional Rural Bank Act, 1976 (21 of 1976)" omitted by Act 1 of 1984, Sec. 26 (w.e.f. 29th March, 1985).

4. Subs. by *ibid.*

(b) if the default occurs again on the next succeeding alternate Friday, or if such Friday is a public holiday, on the preceding working day, and continues on succeeding alternate Fridays or preceding working days, as the case may be, the rate of penal interest shall be increased to a rate of five per cent. per annum above, the bank rate on each such shortfall in respect of that alternate Friday and each succeeding alternate Friday or preceding working day, if such Friday is a public holiday, on which the default continues.

(5) (a) Without prejudice to the provisions of sub-section (3) the Reserve Bank may require a banking company to furnish to it return in the form and manner specified by it showing particulars of its assets maintained in accordance with this section and its demand and time liabilities in India, as at the close of business on each day of a month; and

(b) without prejudice to the provisions of sub-section (4) on the failure of a banking company to maintain as on any day, the amount so required to be maintained by or under Cl. (a) of sub-section (2-A) the Reserve Bank may, in respect of such default, require the banking company to pay penal interest for that day as provided in Cl. (a) of sub-section (4) and if the default continues on the next succeeding working day, the penal interest may be increased as provided in Cl. (b) of sub-section (4) for the concerned days.

(6) (a) The penalty payable under sub-sections (4) and (5) shall be paid within a period of fourteen days from the date on which a notice issued by the Reserve Bank demanding payment of the same is served on the banking company and in the event of failure of the banking company to pay the same within such period, the penalty may be levied by a direction of the principal Civil Court having jurisdiction in the area where an office of the defaulting banking company is situated, such direction to be made only upon an application made by the Reserve Bank in this behalf to the Court; and

(b) when the Court makes a direction under Cl. (a), it shall issue a certificate specifying the sum payable by the banking company and every such certificate shall be enforceable in the same manner as if it were a decree made by the Court in a suit.

(7) When under the provisions of Cl. (b) of sub-section (4) penal interest at the increased rate of five per cent. above the bank rate has become payable by the banking company, if thereafter the amount required to be maintained on the next succeeding alternate Friday, or if such Friday is a public holiday the next preceding working day is still below the prescribed minimum, every director, a manager or secretary of the banking company, who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each subsequent alternate Friday or the preceding working day, as the case may be, on which the default continues.

(8) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that the banking company had sufficient cause for its failure to comply with the provisions of Cl. (a) of sub-section (2-A), the Reserve Bank may not demand the payment of the penal interest.

[*Explanation.*—In this section, the expression "public holiday", means a day which is a public holiday under the Negotiable Instruments Act, 1881(26 of 1881).]

COMMENTS

Bank guarantee irrevocable.—It has been held that the plea of fraud in connection with the bank guarantee is to be examined in relation to the time factor during which the underlying contract was executed. In the present case it is an admitted fact that no plea of fraud has been alleged in respect of execution of the bank guarantee relating to the time when the said guarantee was executed. In the absence of pleadings of commission of any fraud at the time of execution of the bank guarantee, it is held that no fraud has been committed by the defendant No. 1 at the time of execution of the bank guarantee and, therefore, the question of the bank guarantee being vitiated on the first count has no foundation at all.¹

Bank guarantee enforceable.—The equities of the case demand that the defendant should have paid at least an amount of Rs. 21.02 lacs which according to them the plaintiff was entitled to compensation and lift their balance stock of rice. The action of the defendant in the circumstances is clearly fraudulent misuse of their position, unjust and inequitable. On 12th December, 1996 when the arguments were heard, categorical statement was made on behalf of the plaintiff that they had never refused to allow the removal of the remaining stocks of the goods to the defendant but there was no offer to pay the admitted amount even on that date. It was but just and proper on the part of the defendant to have removed their goods and in the meantime paid the amount of Rs. 21.02 lacs which according to them is payable to the plaintiff subject to the dispute for the balance claim being determined in proper forum. The defendant (STC) are trying to make capital out of their own acts of omission and commission if not out of misconduct on the part of someone from their side.²

25. Assets in India.—³[(1) The assets in India of every banking company at the close of business on the last Friday of every quarter or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), at the close of the business on the preceding working day, shall not be less than seventy-five per cent. of its demand and time liabilities in India.

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of business on the last Friday of the previous quarter, or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), at the close of business on the preceding working day.]

⁴[Provided that every regional rural bank shall also furnish a copy of the said return to the National Bank.]

(3) For the purposes of this section,—

¹ *Kiri Associates P. Ltd. v. Coparo Maruti Ltd*, 1997 (65) D.L.T. 650 at p. 654 (Delhi).

² *Khushi Ram Bihari Lal v. State Trading Corporation*, 1997 (65) D.L.T. 420 at p. 427 (Delhi).

³ *Subs. by Act 33 of 1959, Sec. 16, for sub-sections (1) and (2) (w.e.f. 1st October, 1959).*

⁴ *Ins. by Act 61 of 1981, Sec. 61, the Second Schedule, Pt. II (w.e.f. 1st May, 1982).*

¹[(a) "assets in India" shall be deemed to include export bills drawn in, and import bills drawn on and payable, in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf, and also such securities as the Reserve Bank may approve in this behalf, notwithstanding that all or any of the said bills or securities are held outside India;]

²[(b) "liabilities in India" shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;]

³[(c)] "quarter" means the period of three months ending on the last day of March, June, September or December.

26. Return of unclaimed deposits.—Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank at the end of such calendar year of all accounts ⁴[in India] which have not been operated upon for ten years ⁵[* * *]:

Provided that in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period.

The accounts which have not been operated for ten years shall be submitted as a return in the prescribed form to the Reserve Bank by every banking company within thirty days after the close of each calendar year but the fixed deposits are exempted

¹[Provided further that every regional rural bank shall also furnish a copy of the said return to the National Bank.]

27. Monthly returns and power to call for other returns and information.—(1) Every banking company shall, before the close of the month succeeding that to which it relates, submit to the Reserve Bank a return in the prescribed form and manner showing its assets liabilities ⁵[in India] as at the close to business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881(26 of 1881), at the close of business on the preceding working day.

⁶[(2) The Reserve Bank may at any time direct a banking company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of the banking company (including any business or affairs with which such banking company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act, and without prejudice to the generality of the foregoing power may call for information every half-year regarding ⁷[the investments of a banking company and the classification of its advances in respect of industry commerce and agriculture.]

¹ Subs. by Act 20 of 1950, Sec. 7, for Cl. (a).

² Ins. by Act 33 of 1959, Sec. 16 (w.e.f. 1st October, 1959).

³ Clause (b) re-lettered as Cl. (c) by *ibid.*, (w.e.f. 1st October, 1959).

⁴ Subs. by Act 20 of 1950, Sec. 3, for "in the States".

⁵ Certain words omitted by Act 55 of 1963, Sec. 14 (w.e.f. 1st February, 1964).

⁶ Subs. by Act 95 of 1956, Sec. 6, for sub-section (2) (w.e.f. 14th January, 1957).

⁷ Subs. by Act 33 of 1959, Sec. 17 (w.e.f. 1st October, 1959).

¹[(3) Every regional rural bank shall submit a copy of the return which it submits to the Reserve Bank under sub-section (1) also to the National Bank and the powers exercisable by the Reserve Bank under sub-section (2) may also be exercised by National Bank in relation to regional rural banks.]

²**(28. Power to publish information.**—The Reserve Bank or the National Bank, or both, if they consider it in the public interest so to do, may publish any information obtained by them under this Act in such consolidated form as they think fit.]

29. Accounts and balance-sheet.—(1) At the expiration of each calendar year ³[or at the expiration of a period of twelve months ending with such date as the Central Government may, by notification in the Official Gazette, specify in this behalf,] every banking company incorporated ⁴[in India], in respect to all business transacted by it, and every banking company incorporated ⁵[outside India], in respect of all business transacted through its branches ⁴[in India], shall prepare with reference to ⁶[that year or period as the case may be,] a balance-sheet and profit and loss account, as on the last working day of ⁷[that year or the period, as the case may be,] in the forms set out in the Third Schedule or as near thereto as circumstances admit:

⁸[Provided that with a view to facilitating the transition from one period of accounting to another period of accounting colder this sub-section, the Central Government may, by order published in the Official Gazette, make. such provisions as it considers necessary or expedient for the preparation of, or for other matters relating to, the balance-sheet or profit and loss account in respect of the concerned year or period, as the case may be.]

(2) The balance-sheet and profit and loss account shall be signed—

(a) in the case of a banking company incorporated ⁹[in India], by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors by all the directors; and

(b) in the case of banking company incorporated ¹⁰[outside India] by the manager or agent of the principal office of the company ⁹[in India].

(3) Notwithstanding that the balance-sheet of a banking company is under sub-section (1) required to be prepared in a form other than the form ¹¹[set out in Part I of Sch. VI to the Companies Act, 1956 (1 of 1956)] the requirements of that Act relating to the balance-sheet and

¹ Ins. by Act 61 of 1981, Sec. 61, Second Schedule, Pt. II (w.e.f. 1st May, 1982).

² Subs. by *ibid.*

³ Ins. by Act 66 of 1988, Sec. 8 (a) (i) (A) (w.e.f. 30th December, 1988).

⁴ Subs. by Act 20 of 1950, Sec. 3, for "in the States".

⁵ Subs. by *ibid.*, for "outside the State".

⁶ Subs. by Act 66 of 1988, Sec. 8 (a) (i), (B), for the words "that year" (w.e.f. 30th December, 1988).

⁷ Subs. by *ibid.*, Sec. 8 (a) (i) (C), for the words "the year" (w.e.f. 30th December, 1988).

⁸ Subs. by *ibid.*, Sec. 8 (a) (ii) (w.e.f. 30th December, 1988), for the proviso as amended by Act 20 of 1950, Sec. 3.

⁹ Subs. by Act 20 of 1950, Sec. 3, for "in the States".

¹⁰ Subs. by *ibid.*, for "outside the State".

¹¹ Subs. by Act 95 of 1956, Sec. 14 and Schedule for "marked F in the Third Schedule to the Indian Companies Act, 1913 (7 of 1913)" (w.e.f. 14th January, 1957).

profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of banking company.

¹[(3-A) Notwithstanding anything to the contrary contained in sub-section (3) of Sec. 210 of the Companies Act, 1956 (1 of 1956) the period to which the profit and loss account relates shall, in the case of a banking company, be the period ending with the last working day of the year immediately preceding the year in which the annual general *meeting is held*.]

²[*Explanation.*—In sub-section (3-A), "year" means the year or, as the case may be, the period preferred to in sub-section (1).]

(4) The Central Government, after giving not less than three months' notice of its intention so to do by a notification in the Official Gazette, may from time to time by a like notification amend the forms set out in the Third Schedule.

30. Audit.—³[(1) The balance-sheet and profit and loss account prepared in accordance with Sec. 29 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies.)

⁴[(1-A) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company shall, before appointing, re-appointing or removing any auditor or auditors, obtain the previous approval of the Reserve Bank.

(1-B) Without prejudice to anything contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force, where the Reserve Bank is of opinion that it is necessary in the public interest or in the interests of the banking company or its depositors so to do ⁵[it may at any time by order direct that a special audit of the banking company's accounts, for any such transaction or class of transactions or for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order either appoint a person duly qualified under any law for the time being in force to be an auditor of companies or direct the auditor of the banking company himself to conduct such special audit], and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the company.

(1-C) The expenses of, or incidental to, ⁶[the special audit] specified in the order made by the Reserve Bank shall be borne by the banking company.]

(2) The auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by

¹ Ins. by Act 1 of 1984, Sec. 27 (w.e.f. 15th February, 1984).

² Ins. by Act 66 of 1988, Sec. 8 (b) (w.e.f. 30th December, 1988).

³ Subs. by Act 58 of 1968, Sec. 8, for sub-section (7) (w.e.f. 1st February, 1969)

⁴ Ins. by *ibid.*, (w.e.f. 1st February, 1969).

⁵ Subs. by Act 66 of 1988, Sec. 9 (a), for the words "it may direct to auditor of the banking company to audit the accounts of the banking company in relation to any transaction or class of transaction, specified in the order" (w.e.f. 30th December, 1988).

⁶ Subs. by Act 66 of 1988, Sec. 9 (b), for the words "the audit of the transaction or class of transactions" (w.e.f. 30th December, 1988).

¹[Sec. 227 of the Companies Act, 1956 (1 of 1956)] ²[and auditors, if any, appointed by the law establishing, constituting or forming the banking company concerned.]

(3) In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall, in case of a banking company incorporated ³[in India], state in his report—

(a) whether or not the information and explanation required by him have been found to be satisfactory;

(b) whether or not the transactions of the company which came to his notice have been within the powers of the company;

(c) whether or not the returns received from branch offices of the company have been found adequate for the purposes of his audit;

(d) whether the profit and loss account shows a true balance ⁴[or profit or loss] for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the shareholders of the company.

COMMENT

Amendment.—An amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred.⁵

31. Submission of returns.—The accounts and balance-sheet referred to in Sec. 29 together with auditor's report shall be published in the prescribed manner and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of period to which they refer

Provided that the Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months

⁶[Provided further that a regional rural bank shall furnish such return also to the National Bank.]

COMMENT

Proviso.—In *Abdul Jabar Butt v. State of Jammu and Kashmir*⁷, it was held that a proviso must be considered with relation to the principal matter to which it stands as a proviso.⁸

¹ Subs. by Act 95 of 1956, Sec. 14 and Schedules for "Sec. 145 of the Indian Companies Act, 2913 (7 of 1913)" (w.e.f. 14th January, 1957).

² Ins. by Act 66 of 1988, Sec. 9 (c) (w.e.f. 30th December, 1988).

³ Subs. by Act 20 of 1950, Sec. 3, for "in a State".

⁴ Subs. by Act 55 of 1963, Sec. 75, for "of profit and loss" (w.e.f. 1st February, 1964)

⁵ *Y. And Nadar v. Authorized Officer, Land Reforms*, A.I.R. 1990 Mad. 33 of p. 35 (F.B.); B.G.

Gangadharappa v. S. Chandrashekar, (1992) 196 I.T.R. 277 at p. 287 (Knt.); *Gulabrai Hanumanbux v. Commr. W.T.*, (1992) 198 I.T.R. 132 at p. 137 (Gau.).

⁶ Ins. by Act 61 of 1981, the Second Schedule, Pt. II (w.e.f. 1st May, 1982).

⁷ 1957 S.C.R. 51.

⁸ *State of Punjab v. Kailash Nath*, 7989 (1) C.L.R. 60 at p. 64 (S.C.); *I.F. Ltd. v. C.I. of Factories and Boilers*, 1993 (66) F.L.R. 171 at pp. 177-178 (Ori.); *LT. Commissioner v. HICO Products P. Ltd.*, 1994 Tax L.R. 219 (Bom.).

¹ [(1-A) (a) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Reserve Bank, at any time, may also cause a scrutiny to be made by any one or more of its officers, of the affairs of any banking company and its books and accounts; and

(b) a copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request for the same or if any adverse action is contemplated against the banking company on the basis of the scrutiny.]

(2) It shall be the duty of every director or other officer ²[or employee] of the banking company to produce to any officer making an inspection under sub-section (1) ³[or a scrutiny under sub-section (1-A)] all such books, accounts and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) ⁵[or a scrutiny under sub-section (1-A)] may examine on oath any director or other officer ⁵[or employee] of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may in any other case, report to the Central Government on any inspection ⁵[or scrutiny] made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable by order in writing—

(a) prohibit the banking company from receiving fresh deposits;

(b) direct the Reserve Bank to apply under Sec. 38 for the winding up of the banking company:

Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

⁴[(6) The powers exercisable by the Reserve Bank under this section in relation to regional rural banks may (without prejudice to the exercise of such powers by the Reserve Bank may in relation to any regional rural bank whenever it considers necessary so to do) be exercised by the National Bank in relation to the regional rural banks, and accordingly, subsections (1) to (5) shall apply in relation to regional rural banks as if every reference to regional banks as if every

¹ Ins. by Act T of 1984, Sec. 29 (w.e.f. 75th February, 1984).

² Ins. by Act 55 of 1963, Sec. 17 (w.e.f. 1st February, 1964).

³ Ins. by Act T of 1984, Sec. 29 (w.e.f. 15th February, 1984).

reference therein to the Reserve Bank included also a reference to the National Bank.]

¹[*Explanation.*—For the purposes of this section, the expression "banking company" shall include—

(i) in the case of a banking company incorporated outside India, all its branches in India; and

(ii) in the case of a banking company incorporated in India

(a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside India;

(b) all its branches whether situated in India or outside India.]

²[**35-A. Power of the Reserve Bank to give directions.**—(1) Where the Reserve Bank is satisfied that—

(a) in the ³[public interest]; or

⁴[(aa) in the interest of banking policy; or]

(a) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally; it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any directions issued under sub-section (1) and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.]

COMMENTS

Powers of Reserve Bank of India.—The 'banking policy' and 'banking' are not independent but co-ordinating subjects and both are covered within the supervisory powers of the Reserve Bank of India within the meaning of Sec. 35-A of the Banking Regulation Act. Even otherwise, the directions issued by the Reserve Bank of India being a body of experts in banking, the directions given by it should not be lightly brushed aside.⁵

Transactions not invalid for breach of R.B.I. Instructions.— With regard to the finding of the Special Court that the transactions in question were illegal, as they were in contravention

¹ Ins. by Act 55 of 1963, Sec. 17 (w.e.f. 1st February, 1964).

² Ins. by Act 95 of 1956, Sec. 7 (w.e.f. 14th January, 1957).

³ Subs. by Act 7 of 1961, Sec. 2, for "national interest".

⁴ Ins. by Act 58 of 1968, Sec. 10 (w.e.f. 1st February, 1969).

⁵ *Janta Sahkari Bank Ltd. v. State of Maharashtra*, A.I.R. 1993 Boni. 252 at p. 255 : (1995) 82 Comp. Cases 707 (Boat.); *T.S. Arumugham v. Lakshmi Vilas Bank*, (1994) 80 Comp. Cas. 814 (Mad.); *Hemangni Finance and Leasing (P.) Ltd. v. Tamilnad Mercantile Bank Ltd.*, (1996) 3 Comp.L.J. 238 (C.L.B.); *Reserve Bank of India v. State Bank of India*, (1996) 85 Comp. Cases 554 (Boat.).

of the circulars which were issued by the Reserve Bank of India under the provision of the Act, it was contended by Mr. Cooper, learned counsel, that the circulars issued were no more than guidelines which were required to be followed by the bank and they were not mandatory in nature. Elaborating this contention, Mr. Cooper submitted that the Banking Regulation Act contains provisions which enable the Reserve Bank of India to issue directions which were mandatory and also to give advice to the banks.¹

Supervisory duty and powers of the Reserve Bank of India over the affairs of the insured Co-operative Banks—Scope of the provision of the section.—It is the duty and the business of the Reserve Bank of India to supervise the affairs of the insured Co-operative Banks. Section 35-A of the Banking Regulation Act authorises the Reserve Bank to give necessary directions to secure the proper management of any banking company. It is not in dispute that this provision applies to an insured Co-operative Bank also.²

Supervisory powers of—Reserve Bank within the meaning of the section—Directions of the Reserve Bank should not be lightly brushed aside.—"Banking policy" and "banking" are not independent but co-ordinating subjects and both are covered within the supervisory powers of the Reserve Bank of India within the meaning of Sec. 35-A of the Banking Regulation Act. Even otherwise it is felt that the directions issued by the Reserve Bank of India are in the larger interest of the public and the Reserve Bank of India being a body of experts in banking, the directions given by it should not be lightly brushed aside.³

35-B. Amendments of provisions relating to appointments of managing directors, etc. to be subject to previous approval of the Reserve Bank—(1) In the case of banking company—

(a) no amendment of any provision relating to ⁴[the maximum permissible number of directors or] the ⁵[appointment or re-appointment or termination of appointment or remuneration of a chairman,] ⁶[a managing director or any other director, whole-time or otherwise] or of a manager or a chief executive officer by whatever name called, whether that provision be contained in the company's memorandum or articles of association, or in agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of Directors shall have effect unless approved by the Reserve Bank;

⁷[(b) no appointment or re-appointment or termination of appointment of a chairman, a managing or whole-time director, manager or chief executive officer by whatever name called, shall have effect unless such appointment, re-appointment, or termination of appointment is

¹ B.O.I. Finance Ltd. v. Custodian, 1997 (2) Corp. L.A. 115 at pp.115 at pp.121,122 (S.C.): A.I.R. 1997 S.C. 1952 at p. 1960

² Reserve Bank of India v. Harisidh Co-op. Bank Ltd., 1988 Batik. L.J. 35 at p. 39 (Guj.) (F.B.).

³ Janta Sahakari Bank Ltd. v. State of Maharashtra, A.I.R. 1993 Boni. 252 at p. 255; Canara Bank v. P.R.N. Upadhyaya, (1998) 6 S.C.C. 526 at pp. 530, 531.

⁴ Ins. by Act 7 of 1984, Sec. 30 (w.e.f. 15th February, 1984).

⁵ Subs. by Act 58 of 1968, Sec. 17, for certain words (w.e.f. 1st February, 1969).

⁶ Subs. by Act 33 of 1959, Sec. 21, for "managing or whole-time director or a director not liable to retire by rotation" (w.e.f. 1st October, 1959).

⁷ Subs. by Act 58 of 1968, Sec. 11, for Cl. (b) (w.e.f. 1st February, 1969).

made with the previous approval of the Reserve Bank;]

¹[*Explanation.*—For the purposes of this sub-section any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office ²[of the chairman or the manager] or the chief executive officer by whatever name called or the managing director, or any other director, whole time or otherwise, shall be deemed to be a provision relating to his remuneration.]

(2) Nothing contained in Secs. ³(268 and 269, the proviso to sub-section (3) of Sec. 309, Secs. 310 and 311, the proviso to Sec. 387, and Sec. 388 (in so far as Sec. 388 makes the ⁴[provisions of Sec. 269, 310] and 311 apply in relation to the manager of a company] of the Companies Act, 1956 (1 of 1956) shall ⁵[apply to any matter in respect of which the approval of the Reserve Bank has to be obtained under sub-section (1)].

1[(2-A) Nothing contained in Sec. 198 of the Companies Act, 1956 (1 of 1956) shall apply to a banking company and the provisions of sub-section (1) of Sec. 309 and of Sec. 387 of that Act shall, in so far as they are applicable to a banking company, have effect as if no reference has been made in the said provisions to Sec. 198 of that Act.]

(3) No act done by a person ⁶[as chairman or a managing or whole-time director or a director not liable to retire by rotation or manager or chief executive officer by whatever name called, shall be deemed to be invalid on the ground that it is subsequently discovered that his ⁷[appointment or re-appointment] had not taken effect by reason of any of the provisions of this Act; but nothing in this sub-section shall be construed as rendering valid any act done by such person after his ⁸[appointment or re-appointment] has been shown to the banking company not to have had effect.]

36. Further powers and functions of Reserve Bank—(1) The Reserve Bank may—

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company;

(b) on a request by the companies concerned and subject to the provisions of Sec. ⁹[44-A], assist as intermediary or otherwise in proposals for the amalgamation of such banking companies;

¹ Ins. by Act 33 of 1959, Sec. 21 (w.e.f. 1st October, 1959).

² Subs. by Act 58 of 1968, Sec. 11, for "of the manager" (w.e.f. 1st February, 1969).

³ Subs. by Act 36 of 1962, Sec. 7 for "268, 269, 310, 311 and 388".

⁴ Subs. by Act 1 of 1984, Sec. 30 (w.e.f. 15th February, 1984).

⁵ Subs. by Act 33 of 1959, Sec. 21, for certain words (w.e.f. 1st October, 1959).

⁶ Subs. by Act 58 of 1968, Sch. 1, for "as a managing or whole-time director" (w.e.f. 1st February, 1969).

⁷ Subs. by Act 58 of 1968, Sch. 1, for "appointment" (w.e.f. 1st February, 1969).

⁸ Subs. by Act 58 of 1968, Sch. 1, for "appointment" (w.e.f. 1st February, 1969).

⁹ Subs. by Act 33 of 1959, Sec. 22, for "45" (w.e.f. 1st October, 1959).

(c) give assistance to any banking company means of the grant of a loan or advance to it under Cl. (3) of sub-section (1) of Sec. 18 of the Reserve Bank of India Act, 1934 (2 of 1934);

¹[(d) ²[at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors it is necessary so to do] by order in writing and on such terms and conditions as may be specified therein—

(i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company, or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;

(ii) depute one or more of its officers to watch the proceedings at any meeting of the Board of Directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to Reserve Bank;

(iii) require the Board of Directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to any meeting of the Board, committee or other body constituted by it;

(iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its officers or branches are being conducted and make a report thereon;

(v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary ³[* * *].

(2) The Reserve Bank shall make an annual report to the Central Government on the trend and progress of banking in the country, with particular reference to its activities under Cl. (2) of Sec. 17 of the Reserve Bank of India Act, 1934 (2 of 1934), including in such report its suggestions, if any, for the strengthening of banking business throughout the country.

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act.

COMMENTS

Validity of circulars issued by R.B.I.—The circulars issued by R.B.I. were confidential documents and required the banking companies to transact their businesses in a particular manner, namely, they should not enter into any buy-back contracts which were not according to

¹ Subs. by Act 95 of 1956, Sec. 8, for Cl. 1 (d) (w.e.f. 1461 January, 1957).

² Subs. by Act 58 of 1968, Sec. 12, for certain words (w.e.f. 1st February, 1969).

³ Certain words omitted by Act 58 of 1968, Sec. 12 (w.e.f. 1st February, 1969).

the terms of the circulars. The Act itself does not provide that where the directions issued by the confidential circulars are violated by the bank the contracts entered into with the third parties would in any way be invalidated. The said circulars also, did not say that the consequence of the directions contained therein not being followed by the banking companies will result in such transactions being regarded as void. Indeed no such stipulation could be made which would adversely affect third parties to whom no directions have been or could be issued and who were not aware of such directions issued to the banks.¹

Implication of the words "caution or prohibit".—Section 36 (1) (a) empowers the Reserve Bank to "caution or prohibit" the banking companies from entering into any particular type of transaction or generally to give advice to the said banking companies. The use of words "caution or prohibit" in Sec. 36 (1) (a) clearly implies that when the Reserve Bank of India prohibits the banking companies from entering into any particular transaction then such a direction which is issued would be binding on the banks and has to be complied with.²

³**(36-A. Certain provisions of the Act not to apply to certain banking companies.**—(1) The provisions of Sec. 11, sub-section (1) of Sec. 12, and Secs. 17, 18, 24 and 25 shall not apply to a banking company—

(a) which, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959), has been refused a licence under Sec. 22 or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a Court or by any order made in any proceeding relating to such compromise, or arrangement or scheme, or prohibited from accepting fresh deposits by virtue of any alteration made in its memorandum; or

(b) whose licence has been cancelled under Sec. 22, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959).

(2) Where the Reserve Bank is satisfied that any such banking company as is referred to in sub-section (1) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the Reserve Bank may, by notice published in the Official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act, and thereupon all the provisions of this Act applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be done before such notice.]

COMMENT

Ready Forward Transactions—Illegal and void.—Under the circumstances, it will have to be held that Ready Forward Transactions are illegal and void and that no rights can be created in favour of any third party under such contracts. It will have to be held that even though under

¹ *B.O.I. Finance Ltd. v. The Custodian, A.I.R. 1997 S.C. 1952 at p. 1960 : 2997 (2) Corp. L.A. 115 at p. 122 (S.C.).*

² *Ibid. at pp.1959, 2960.*

³ *Ins. by Act 33 of 1959, Sec. 23 (w.e.f. 1st October, 1959).*

such an agreement, properties are in the hands of third persons, the right, title and interest in those properties remain in the Notified Party and those properties stand attached under the provisions of the Special Court Act.¹

²[PART II-A

CONTROL OVER MANAGEMENT

36-AA. Power of Reserve Bank to remove managerial and other persons from office.—

(1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order remove from office, with effect from such date as may be specified in the order ³[any chairman, director,] chief executive officer (by whatever name called) or other officer or employee of the banking company.

(2) No order under sub-section (1) shall be made ⁴[unless the chairman, director] or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Reserve Bank against the proposed order:

Provided that if in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors the Reserve Bank may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct, that pending the consideration of the representation aforesaid, if any ⁵[the chairman or, as the case maybe director or chief executive officer] or other officer or employee, shall not, with effect from the date of such order.—

(a) ⁶[act as such chairman or director] or chief executive officer or other officer or employee of the banking company;

(b) in any way, whether directly or indirectly be concerned with, or take part in the management of, the banking company.

(3) (a) Any person against whom an order of removal has been made under sub-section (1) may, within thirty days from the date of communication to him of the order, prefer an appeal to the Central Government.

(b) The decision of the Central Government on such appeal and subject thereto, the order made by the Reserve Bank under sub-section (1), shall be final and shall not be called into question in any Court.

(4) Where any order is made in respect of ⁷[a chairman, director] or chief executive officer or other officer or employee of a banking company under sub-section (1), he shall cease to be ⁸[a chairman or as the case may be, a director,] chief executive officer or other officer or

¹ A.K. Menon v. Fairgrowth Financial Services Ltd., 7994 Bank. J. 662 at p. 692 (Spl. Court-Bom.).

² Ins. by Act SS of 7963, Sec. 1S (w.e.f. 1st February, 1964).

³ Subs. by Act SS of 1968, Sec. T 3, for "arty director" (w.e.f. 1st February, 7969).

⁴ Subs. by *ibid.*, for "unless the director" (w.e.f. 1st February, 1969).

⁵ Subs. by *ibid.*, for "the director or, as the case may be, chief executive officer" (w.e.f. 1st February, 1969)

⁶ Subs. by Act SS of 7968, Sec. 13 for "act as suds director" (w.e.f. 1st February, 1969).

⁷ Subs. by *ibid.*, for "a director" (w.e.f. 1st February, 1969).

⁸ Subs. by *ibid.*, for "a director or, as the case may be" (w.e.f. 1st February, 1969).

employee of the banking company and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of, any banking company for such period not exceeding five years as may be specified in the order.

(5) If any person in respect of whom an order is made by the Reserve Bank under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.

(6) Where an order under sub-section (1) has been made, the Reserve Bank may, by order in writing, appoint a suitable person in place of ³[the chairman or director] or chief executive officer or other officer or employee who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.

(7) Any person appointed as ¹[chairman, director or chief executive officer] or other officer or employee under this section, shall—

(a) hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) not incur any obligation or liability by reason only of his being a ⁵[chairman, director or chief executive officer] or other officer or employee or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

(8) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section that person shall not be entitled to claim any compensation the loss or termination of office.

COMMENT

Resignation when effective.—Resignation is voluntary act of an employee. He may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. He may also resign at a future date on the expiry, or beyond the period, of three months but for this no further consent of the bank is necessary. The acceptance of the argument of Dr. Anand Prakash would mean that, even though an employee might express a desire to resign from a future date the resignation can be accepted, even without his wishes, from an earlier date. This would not be the acceptance of a resignation in the terms in which it is offered. It amounts really to forcing a date of termination on the employee other than the one he is entitled to choose under the regulations. As rightly pointed out by the High Courts, the termination of service under Cl. (2) becomes effective at the instance of the employee and the services of the employees cannot be terminated by the employer under this clause.²

36-AB. Power of Reserve Bank to appoint additional directors.—(1) If the Reserve Bank is of ³[opinion that in the interest of banking policy or in the public

¹ Subs. by Act 55 of 1968, Sec. 23 for "director or chief executive officer" (w.e.f. 1st February, 1969).

² Chief Manager, Andhra Bank v. K. Sudha Nagaraj, 7996 Lab. LC. 2182 at p. 2783 (A.P.).

³ Subs. By Act 58 of 1968, Sec. 14, for "opinion that" (w.e.f. 1st February, 1969).

interest or] in the interests of the banking company or its depositors it is necessary so to do, it may, from time to time by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the banking company:

¹[* * * * *]

(2) Any person appointed as additional director in pursuance of this section,—

(a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;

(b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) shall not be required to hold qualification-shares in the banking company.

(3) For the purpose of reckoning any proportion of the total number of directors of the banking company, any additional director appointed under this section shall not be taken into account.

36-AC. Part II-A to override other laws.—Any appointment or removal of a director, chief executive officer or other officer or employee in pursuance of Sec. 36-AA or Sec. 36-AB shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force or in any contract or in any other instrument.]

²PART II-B

PROHIBITION OF CERTAIN ACTIVITIES IN RELATION TO BANKING COMPANIES

36-AD. Punishment for certain activities in relation to banking companies.—(1) No person shall—

(a) obstruct any person from lawfully entering or leaving any office or place of business of a banking company or from carrying on any business thereto, or

(b) hold, within the office or place of business of any banking company, any demonstration which is violent or which prevents, or is calculated to prevent, the transaction of normal business by the banking company, or

(c) act in any manner calculated to undermine the confidence of the depositors in the banking company.

(2) Whoever contravenes any provision of sub-section (1) without any reasonable excuse shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

¹ The proviso omitted by Act I of 1984, Sec. 31 (w.e.f. 15th February 1984).

² Parts 11-B and 11-C (Secs 36-AD to 36-AI) ins. by Act 58 of 1968, Sec. 15 (w.e.f. 1st February, 1969).

¹[(3) For the purposes of this section "banking company" includes the Reserve Bank, the Development Bank, the Exim Bank ²[the Reconstruction Bank], ³[the National Housing Bank] the National Bank, ⁴[the Small Industries Banks], the State Bank of India, a corresponding new bank, a regional rural bank and a subsidiary bank.

COMMENT

Object of.—The object of Sec. 36-AD is to provide punishment for certain activities which are prohibited. The prohibition is with reference to all persons in general—not with reference to any particular section or category of persons. Sub-section (1) thus enumerates the various prohibited acts. If any person does any act that is specified in sub-section (1) of Sec. 36-AD of the Act, he will have to face prosecution under sub-section (2) of Sec. 36-AD of the Act for the contravention of the provisions of sub-section (1) of that section. Thus no positive right is conferred on the banking company which can be enforced by a *writ of mandamus*. The Statute itself prohibits the acts specified in sub-section (1) of Sec. 36-AD and sub-section (2) of that section also imposes punishment for violation. There is no question of issuing a further directive by way of *writ of mandamus* directing the respondents not to violate the provisions of sub-section(1) of Sec. 36-AD. The case of Sec. 25-F of the Industrial Disputes Act, 1947 is altogether different. That section provides for the conditions precedent to be fulfilled for effecting retrenchment in a valid manner non-observance of those invalidates the retrenchment, in which case the employee is entitled to be continued in service which relief he may seek by way of writ of *mandamus* in appropriate cases.⁵

PART II-C

ACQUISITION OF THE UNDERTAKINGS OF BANKING COMPANIES IN CERTAIN CASES

36-AE. Power of Central Government to acquire undertakings of banking companies in certain cases.—(1) If, upon receipt, of a report from the Reserve Bank, the Central Government is satisfied that a banking company—

(a) has, on more than one occasion, failed to comply with the directions given to it in writing under Sec. 21 or Sec. 35-A, in so far as such directions relate to banking policy, or

(b) is being managed in a manner detrimental to the interests of its depositors,—and that —

(i) in the interests of the depositors of such banking company, or

(ii) in the interest of banking policy, or

(iii) for the better provision of credit, generally or of credit to any particular section of the community or in any particular area ;

¹ Subs. by Act 1 of 1934, Sec. 32, for sub-section (3) (w.e.f. 15th February, 1984).

² Ins. by Act 62 of 1984, Sec. 71, Sch. III (w.e.f. 20th March, 1985).

³ Ins. by Act 53 of 1987, Sec. 56 and Sch. II (w.e.f. 9th July, 1988).

⁴ Ins. by Act 39 of 1989, Sch. II, Pt. III (w.e.f. 7th March, 1990).

⁵ *Union Bank of India v. A.P. Union Bank Employees, Association*, 1994 (2) S.L.R. 597 at p. 599.

it is necessary to acquire the undertaking of such banking company, the Central Government may, after such consultation with the Reserve Bank as it thinks fit, by notified order, acquire the undertaking of such company (hereinafter referred to as the acquired bank) with effect from such date as may be specified in this behalf by the Central Government (hereinafter referred to as the appointed day):

Provided that no undertaking of any banking company shall be so acquired unless such banking company has been given a reasonable opportunity of showing cause against the proposed action.

Explanation.—In this Part—

(a) "notified order" means an order published in the Official Gazette;

(b) "undertaking", in relation to a banking company incorporated outside India, means the undertaking of the company in India.

(2) Subject to the other provisions contained in this Part, on the appointed day, the undertaking of the acquired bank and all the assets and liabilities of the acquired bank shall stand transferred to and vest in, the Central Government.

(3) The undertaking of the acquired bank and its assets and liabilities shall be deemed to include all rights, powers, authorities and privileges and all property whether movable or immovable, including, a particular, cash balances, reserve funds, investments deposits and all other interests and rights u1, or arising out of such property as may be in the possession of, or held by, the acquired bank immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations of whatever kind, then existing of the acquired bank.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is satisfied that the undertaking of the acquired bank and its assets and liabilities should, instead of vesting in the Central Government, or continuing to so vest, vest in a company established under any scheme made under this Part or in any corporation (hereinafter in this Part and in the Fifth Schedule referred to as the transferee bank) that Government may, by order, direct that the said undertaking, including the assets and liabilities thereof, shall vest in the transferee bank either on the publication of the notified order or on such other date as may be specified in this behalf by the Central Government.

(5) Where the undertaking of the acquired bank and the assets and liabilities thereof vest in the transferee bank under sub-section (4), the transferee bank shall, on and from the date of such vesting be deemed to have become the transferee of the acquired bank and all the rights and liabilities in relation to the acquired banks shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of the transferee bank.

(6) Unless otherwise expressly provided by or under this Part, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired bank is a party or which are in favour of the acquired bank shall be of as full force and effect against or in favour of the Central Government, or as the case may be, of the transferee bank, and may be enforced or acted upon as fully and effectually as if in the place of the acquired

bank the Central Government or the transferee bank had been a party thereto or as if they had been issued in favour of the Central Government or the transferee bank, as the case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding of whatever nature is pending by or against the acquired bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired bank or of anything contained in this Part, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central *Government* or the transferee bank, as the case may be.

36-AF. Power of the Central Government to make scheme.—(1) The Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the purposes of this Part in relation to any acquired bank.

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:

(a) the corporation, or the company incorporated for the purpose, to which the undertaking including the property, assets and liabilities of the acquired bank may be transferred, and the capital, constitution, name and office thereof;

(b) the constitution of the first Board of management (by whatever name called) of the transferee bank, and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;

(c) the continuance of the services of all the employees of the acquired bank (excepting such of them as, not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme) in the Central Government or in the transferee bank, as the case may be, on the same terms and conditions, so far as may be, as are specified in Cls.(i) and (j) of sub-section (5) of Sec. 45;

(d) the continuance of the right of any person who, on the appointed day, is entitled to or is in receipt of, a pension or other superannuation or compassionate allowance or benefit, from the acquired bank or any provident, pension or other fund or any authority administering such fund, to be paid by, and to receive from, the Central Government or the transferee bank, as the case may be, or any provident, pension or other fund, or any authority administering such fund, the same pension, allowance or benefit so long as he observes that the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he has so observed such conditions, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final;

(e) the manner of payment of the compensation payable in accordance with the provisions of this part to shareholders of the acquired bank, or where the acquired bank is a banking company incorporated outside India, to the acquired bank in full satisfaction of their, or as the case may be, its claims;

(f) the provision, if any, for completing the effectual transfer to the Central Government or the transferee bank of any asset or any liability which forms part of the undertaking of the acquired bank in any country outside India;

(g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the business, property, assets and liabilities of the acquired bank to the Central Government or transferee bank, as the case may be, is effectual, and complete.

(3) The Central Government may, after consultation with the Reserve Bank, by notification in the Official Gazette, add to, amend or vary any scheme made under this section.

(4) Every scheme made under this section shall be published in the Official Gazette.

(5) Copies of every scheme made under this section shall be laid before each House of Parliament as soon as may be after it is made.

(6) The provisions of this part and of any scheme made thereunder shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(7) Every scheme made under this section shall be binding on the Central Government or, as the case may be, on the transferee bank and also on all members, creditors, depositors and employees of the acquired bank and of the transferee bank and on any other person having any right, liability, power or function in relation to or in connection with the acquired bank or the transferee bank, as the case may be.

36-AG. Compensation to be given to shareholders of the acquired bank.—(1) Every person who, immediately before the appointed day, is registered as a holder of shares in acquired bank or, where the acquired bank is a banking company incorporated outside India, the acquired bank, shall be given by the Central Government, or the transferee bank, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired bank as is determined in accordance with the principles contained in the Fifth Schedule.

(2) Nothing contained in sub-section (1) shall affect the rights inter se between the holder of any share in the acquired bank and any other person who may have any interest in such shares and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such share, but not against the Central Government, or the transferee bank.

(3) The amount of compensation to be given in accordance with the principles contained in the Fifth Schedule shall be determined in the first instance by the Central Government, or the transferee bank, as the case may be, in consultation with the Reserve Bank, and shall be offered by it to all those to whom compensation is payable under sub-section (1) in full satisfaction thereof.

(4) If the amount of compensation offered in terms of sub-section (3) is not acceptable to any person to whom the compensation is payable, such person may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government in writing to have the matter referred to the Tribunal constituted under Sec. 36-AH.

(5) If, before the date notified under sub-section (4), the Central Government receives requests, in terms of that sub-section, from not less than one-fourth in number of the shareholders holding not less than one-fourth in value of the paid-up share capital of the acquired

bank, or where the acquired bank is a banking company incorporated outside India, from the acquired bank, the Central Government shall have the matter referred to the Tribunal for decision.

(6) If, before the date notified under sub-section (4), the Central Government does not receive requests as provided in that sub-section, the amount of compensation offered under sub-section (3), and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable under sub-section (1) and shall be final and binding on all parties concerned.

36-AH. Constitution of the Tribunal.—(1) The Central Government may, for the purpose of this part, constitute a Tribunal which shall consist of a Chairman and two other members.

(2) The Chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court, and, of the two other members one shall be a person, who, in the opinion of the Central Government, has had experience of commercial banking and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949).

(3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2), and any proceeding may be continued before the Tribunal, so constituted, from the stage at which the vacancy occurred.

(4) The Tribunal may, for the purpose of determining any compensation payable under this part, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

36-AI. Tribunal to have powers of a Civil Court.—(1) The Tribunal shall have the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witness or documents.

(2) Notwithstanding anything contained in sub-section (1), or in any other law for the time being in force, the Tribunal shall not compel the Central Government, or the Reserve Bank,—

- (a) to produce any books of account or other documents which the Central Government, or the Reserve Bank, claims to be of a confidential nature;
- (b) to make any such books or documents part of the record of the proceedings before the Tribunal; or
- (c) to give inspection of any such books or documents to any party before it or to any other person.

36-AJ. Procedure of the Tribunal.—(1) The Tribunal shall have power to regulate its own procedure.

(2) The Tribunal may hold the whole or any part of its inquiry *in camera*.

(3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.]

PART III

SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

¹[²36-B.] *High Court defined*.—*In this part and in Part III-A, "High Court" in relation to a banking company, means the High Court exercising jurisdiction in the place where the registered office of the banking company is situated or, in case of a banking company incorporated outside India, where its principal place of business in India is situated.]*

37. Suspension of business.—(1) The ³[High Court] may, on the application of a banking company which is temporarily unable to meet its obligations, make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period, so however that the total period of moratorium shall not exceed six months.

(2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted

Provided that the ⁴[High Court] may for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the ¹[High Court] shall call for a report from the Reserve Bank on the affairs of banking company, on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.

⁵[(3) When an application is made under sub-section (1), the High Court may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company.]

⁶[(4) Where the Reserve Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made, are being conducted in a manner detrimental to the interests of the depositors it may make an application to the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions

¹ Ins. by Act 52 of 1953, Sec. 3 (w.e.f. 30th December, 1953).

² Section 3b-A re-i2 numbered as 36-B by Act 33 of 1959, Sec. 24 (w.e.f. 1st October, 1959).

³ Subs. by Act 52 of 1953, Sec. 4, for "Court".

⁴ *Ibid.*

⁵ Ins. by Act 52 of 1953, Sec. 5 (w.e.f. 30th December, 1953).

⁶ Ins. by Act 33 of 1959, Sec. 25 (w.e.f. 1st October, 1959).

and proceedings against the company were stayed under that sub-section.]

COMMENT

Scope.—The main stress of the submissions made on behalf of the petitioners was that the power under sub-section (1) of Sec. 37 can only be exercised after the Registrar forms an opinion that the committee or any member thereof had persistently made default or had been persistently negligent in the performance of the duties imposed upon it or him by the Act or rules or the bye-laws or is found to have persistently committed any act, which is prejudicial to the interest of the society or its members. Unless, there is persistent negligence in the performance of duties imposed by the Act, rules or bye-laws or persistent commission of an act which is prejudicial to the interest of the bank or its member, the power cannot be exercised. After considering the pleas raised by the petitioners, respondent No.2 formed an opinion that the act on the part of the petitioners was definitely prejudicial to the interest of the bank. Whether such an act was prejudicial to the interests of the bank or not, opinion thereupon had to be formulated by respondent No.2 to her satisfaction. On examination of the pleas raised by the petitioners, coupled with the document placed on record and tape provisions of the Act and rules the Court did not find any infirmity in the ultimate decision arrived at by respondent No. 2. Such an act may not be an act of persistent default or negligence in the performance of duties imposed under the Act, rules or bye-laws but was definitely an act committed by the petitioners which was found by respondent No.2 to be prejudicial to the interest of the bank.¹

²[38. **Winding up by High Court.**—(1) Notwithstanding anything contained in Secs. 391, 392, 433 and 583 of the Companies Act, 1956 (1 of 1956), but without prejudice to its power under sub-section (1) of Sec. 37 of this Act, the High Court shall order the winding up of a banking company—

(a) if the banking company is unable to pay its debts; or

(b) if an application for its winding up has been made by the Reserve Bank under Sec. 37 of this section.

(2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under Cl. (b) of sub-section (4) of Sec. 35.

(3) The Reserve Bank may make an application under this section for the winding up of a banking company—

(a) if the banking company —

(i) has failed to comply with the requirements specified in Sec. 11;

or

(ii) has by reason of the provisions of Sec. 22 become disentitled to carry on banking business in India; or

(iii) has been prohibited from receiving fresh deposits by an order under Cl. (a) of sub-section (4) of Sec. 35 or under Cl. (b) of sub-section (3-A) of Sec. 42 of the Reserve Bank of India Act, 1934 (2 of 1934); or

¹ *Virendra Gautam v. State of H.P.*, 1992 (2) Bank C.L.R. 623 at pp. 626, 632 (HP.).

² Subs. by Act 33 of 1959, Sec. 26, for Sec. 38 (w.e.f. 1st October, 1959).

(iv) having failed to comply with the requirement of this Act other than requirements laid down in Sec. 11, has continued such failure, or, having contravened any provision of this Act has continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention has been conveyed to the banking company; or

(b) if in the opinion of the Reserve Bank,—

(i) a compromise or arrangement sanctioned by a Court in respect of the banking company cannot be worked satisfactorily with or without modifications; or

(ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or

(iii) the continuance of the banking company is prejudicial to the interest of its depositors.

(4) Without prejudice to the provisions contained in Sec. 434 of the Companies Act, 1956 (1 of 1956), a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(5) A copy of every application made by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the Registrar.]

COMMENTS

Winding up petition.—The petitioner in this petition has stated the reasons for its intervention W seeking the reliefs. It is not in dispute that all the banking operational activities of the said B.C.C.I. (O) have come to standstill from 5-7-91. After filing of the petition various orders have also been passed by the Courts in foreign countries whereunder the assets of the B.C.C.I. (O) have been seized and taken charge of by the Official Liquidator or the Receiver. Similar is the position as far as the banking activities of the said bank in this country are concerned. That the said B.C.C.I. (O) is unable to pay its debts is amply demonstrated from the fact that even joint Official Liquidators, Cayman Islands, who earlier opposed admission of this petition, have been now supporting the grant of reliefs in the petition and who have also approved the arrangement arrived at. What is more, even the said M/s. Vaz in their petition in paras.7 and & admit that the activities of the said B.C.C.I. (O) are detrimental and prejudicial to the public interest and the interest of the depositors and creditors. It is in these circumstances, that the petitioner Reserve Bank of India has approached the High Court seeking relief in this petition is granted.¹

¹ *R.B.I. v. J.P.L. Bank of Credit & Commerce International (Overseas) Ltd.*, A.I.R. 3994 (Bom.) 177 at p.181; *Vaz Forwarding Ltd. v. State Bank of India*, (1995)16 C.I.A. 238 (Bom.); (1996) 85 Comp. Cases 603 (Bom.).

Courts to act in the interests of depositors.—It would conclude that the arrangement as reached and arrived at, in the agreement between the parties and as sanctioned by the Court, is by and large in the best interest of the creditors and depositors of the B.C.C.I (O), Bombay Branch. It is noteworthy that 100% claims of such creditors and depositors are secured. The interest of the public at large is and should be a paramount consideration before the Court which should override the claim and the interest of any individual as in the case of M/s. Vaz whose interest, if any, has been safeguarded. The pendency of the petition of said M/s. Vaz by itself, in the circumstance, where facts and circumstances and the law justify the grant of reliefs as claimed, would not justify the Court in withholding the same. The delay would result in great prejudice to the creditors and depositors of the said B.C.C.I. (O), Bombay Branch. It would also adversely affect the S.B.I. and its subsidiary new company who have, in accordance with the approved arrangements, proceeded to take various steps and have complied with various formalities, such as, in corporation of the subsidiary company. As per order dated 3rd August, 1993 the Court has set February 1994 as a deadline for the completion. ¹

²[**3&-A. Court liquidator.**—(1) There shall be attached to every High Court a Court liquidator to be appointed by the Central Government for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court may impose.

³[* * *]

(4) Where having regard to the number of banking companies wound up and other circumstances of the case, the Central Government is of opinion that it is not necessary or expedient to attach for the time being a Court liquidator to a High Court, it may, from time to time, by notification in the Official Gazette, direct that this section shall not have effect in relation to that High Court.]

⁴[**39. Reserve Bank to be official liquidator.**—⁵[(1)] Notwithstanding anything contained in Sec. 38-A of this Act or in Sec. 448 or Sec. 449 of the Companies Act, 1956 (1 of 1956), where in any proceeding for the winding up by the High Court of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank, the State Bank of-India or any other bank notified by the Central Government in this behalf or any individual, as stated in such application shall be appointed as the official liquidator of the banking company in such proceeding and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.]

⁶[(2) Subject to such directions as may be made by the High Court, the remuneration of the official liquidator appointed under this section, the cost and expenses of his establishment

¹ R. B.1. v. Bank of Credit & Commerce International Ltd., 1994 (1) Bank L. J. 284 at p. 291 (Bom.): A.I.R. 1994 Bom. 177 at p. 181.

² Ins. b j Act 52 of 1953, Sec. 6

³ Sub-section (2) and (3) omitted by Act 95 of 1956, Sec. 14 and Schedule (w.e.f. 14th January, 1957).

⁴ 53 and Sch. IV; Act 79 of 1956 Sec. 43, Sch. II; Act 95 of 1956, Sec. 14 and Schedule; Act 33 of 1959, Sec. 27 and Act 37 of 1960, Sec. 2 to read as above. Section 39 has successively been amended by Act 52 of 1953 Secs. 4 and 7; Act 23 of 1955, Sec.

⁵ Section 39 was re-numbered as sub-section (T) of that section by Act 58 of 2068, Sec. 16 (w.e.f. 1st February, 1969).

⁶ Ins. by Act 58 of 1968, Sec. 16 (with retrospective effect).

and the cost and expenses of the winding up shall be met out of the assets of the banking company which is being wound up, and notwithstanding anything to the contrary contained in any other law for the time being in force, no fees shall be payable to the Central Government, out of the assets of the banking company.]

¹[**39-A. Application of Companies Act to liquidators.**—(1) All the provisions of the Companies Act, 1956 (1 of 1956), relating to a liquidator, in so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under Sec. 3&-A or Sec. 39.

(2) Any reference to the "official liquidator" in this part and Part III-A shall be construed as including a reference to any liquidator of a banking company.]

40. Stay of proceedings.—Notwithstanding anything to the contrary contained in ²[Sec. 466 of the Companies Act, 1956 (1 of 1956), the ³[High Court] shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the *T* [High Court] is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

⁴[**41. Preliminary report by official liquidator.**—Notwithstanding anything to the contrary contained in Sec. 455 of the Companies Act, 1956 (1 of 1956), where a winding-up order has been made in respect of a banking company whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), the official liquidator shall submit a preliminary report to the High Court within two months from the date of the winding-up order or where the winding-up order has been made before such commencement, within two months from such commencement, giving the information required by that section so far as it is available to him and also stating the amount of assets of the banking company in cash which are in his custody or under his control on the date of the report and the amount of its assets which are likely to be collected in cash before the expiry of that period of two months in order that such assets maybe applied speedily towards the making of preferential payments under Sec. 530 of the Companies Act, 1956 (1 of 1956), and in the discharge, as far as possible, of the liabilities and obligations of the banking company to its depositors and other creditors in accordance with the provisions hereinafter contained; and the official liquidator shall make for the purpose aforesaid every endeavour to collect in cash as much of the assets of the banking company as practicable.]

⁵[**41-A. Notice to preferential claimants and secured and unsecured creditors.**— (1) Within fifteen days from the date of the winding-up order of a banking company or where the winding-up order has been made before the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), within one month from such commencement liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company

¹ Ins. by Act 33 of 1959, Sec. 28 (w.e.f. 1st October, 1959).

² Subs. by Act 95 of 1956, Sec. 14 and Schedule, 'for Sec. 173 of the Indian Companies Act, 1913(1 of 1913)' (w.e.f. 14th January, 1957).

³ Subs. by Act 52 of 1953, Sec. 4, for "Court".

⁴ Subs. by Act 37 of 1960, Sec. 3, for "Sec. 41".

⁵ Subs. by Ibid., for "Sec. 41-A".

(other than its liabilities and obligations. to its depositors), by notice served in such manner as the Reserve Bank may direct, call upon—

(a) every claimant entitled to preferential payment under Sec. 530 of the Companies Act, 1956 (1 of 1956), and

(b) every secured and every unsecured creditor,
to send to the official liquidator within one month from the date of the service of the notice a statement of the amount claimed by him.

(2) Every notice under sub-section (1) sent to a claimant having a claim under Sec. 530 of the Companies Act, 1956 (1 of 1956), shall state that if a statement of the claim is not sent to the official liquidator before the expiry of the period of one month from the date of the service, the claim shall not be treated as a claim entitled to be paid under Sec. 530 of the Companies Act, 1956 (1 of 1956), in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

(3) Every notice under sub-section (1) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the official liquidator before the expiry of the said period, then the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

(4) If a claimant fails to comply with the notice sent to him under sub-section (1), his claim will not be entitled to be paid under Sec. 530 of the Companies Act, 1956 (1 of 1956), in priority to all other debts but shall be treated as an ordinary debt due by the banking company; and if a secured creditor fails to comply with the notice sent to him under sub-section (1), the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

42. Power to dispense with meetings of creditors, etc.—Notwithstanding anything to the contrary contained in ¹[Sec. 460) of the Companies Act, 1956 (1 of 1956), the ²[High Court] may in the proceedings for winding-up a banking company, dispense with any meetings of creditors or contributories ³[* * *) if it considers that no object will be secured thereby sufficient to justify the delay and expense.

⁴[**43. Booked depositors' credits to be deemed proved.**—In any proceeding for the winding-up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in ⁵[Sec. 474 of the Companies Act, 1956 (1 of 1956)], the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness.]

¹ Subs. by Act 1 of 1984, Sec. 33 (w.e.f. 15th February, 1984).

² Subs. by Act 52 of 1953, Sec. 4, for "Court".

³ The words "or with the appointment of a committee of inspection" omitted by Act 7 of 1984, Sec. 33 (w.e.f. 15th February, 1984).

⁴ Subs. by Act 52 of 1953, Sec. 8, for Sec. 43.

⁵ Subs. by Act 95 of 1956, Sec. 14 and Schedule, for "Sec. 797 of the Indian Companies Act, 1913 (7 of 1913)" (w.e.f. 74th January, 1957).

¹[43 A. *Preferential payments to depositors.*—(1) In every proceeding for the winding up of a banking company where a winding-up order has been made, whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), within three months from the date of the winding-up order or where the winding-up order has been made before such commencement, within three months therefrom, the preferential payments referred to in Sec. 530 of the Companies Act, 1956 (1 of 1956), in respect of which statements of claims have been sent within one month from the date of the service of the notice referred to in Sec. 41-A, shall be made by the official liquidator or adequate provision for such payments shall be made by him.

(2) After the preferential payments as aforesaid have been made or adequate provision has been made in respect thereof, there shall be paid within the aforesaid period of three months

- a) in the first place, to every depositor W the savings bank account of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less; and thereafter,
- b) (in the next place, to every other depositor of the banking company a sum of two hundred and fifty rupees or the balance at his credit whichever, is less,

in priority to all other debts from out of the remaining assets of the banking company available for payment to general creditors:

Provided that the sum total of the amounts paid under Cls. (a) and (b) to any one person who in his own name (and not jointly with any other person) is a depositor in the savings bank account of the banking company and also a depositor in any other account, shall not exceed the sum of two hundred and fifty rupees.

(3) Where within the aforesaid period of three months full payment cannot be made of the amounts required to be paid under Cl. (a) or Cl. (b) of sub-section (2) with the assets in cash the official liquidator shall pay within that period to every depositor under Cl. (a) or, as case may be, Cl. (b) of that sub-section on a pro rata basis so much of the amount due to the depositor under that clause as the official liquidator is able to pay with those assets; and shall pay the rest of that amount to every such depositor as and when sufficient assets are collected by the official liquidator in cash.

(4) After payments have been made first to depositors in the savings bank account and then to the other depositors in accordance with the foregoing provisions, the remaining assets of the banking company available for payment to general creditors shall be utilized for payment on a pro rata basis of the debts of the general creditors and of the further sums, if any, due to the depositors; and after making adequate provision for payment on a pro rata basis aforesaid of the debts of the general creditors, the official liquidator shall, as and when the assets of the company are collected in cash, make payment on a pro rata basis as aforesaid of the further sums, if any, which may remain due to the depositors referred to in Cls. (a) and (b) of sub-section (2).

(5) In order to enable the official liquidator to have in his custody or under his control in cash as much of the assets of the banking company as possible, the securities given to secured creditor

¹ Subs. by Act 37 of 1960, Sec. 4, for Sec. 43-A.

may be redeemed by the official liquidator—

- (a) where the amount due to the creditor is more than the value of securities as assessed by him or, as the case may be, as assessed by the official liquidator, on payment of such value; and
- (b) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due:

Provided that where the official liquidator is not satisfied with the valuation made by the creditor, he may apply to the High Court for making a valuation.

(6) When any claimant, creditor or depositor to whom any payment is to be made in accordance with ¹[the provisions of this section], cannot be found or is not readily traceable, adequate provision shall be made by the official liquidator for such payment.

(7) For the purposes of this section the payments specified in each of the following clauses shall be treated as payments of a different class, namely:

- (a) payments to preferential claimants under Sec. 530 of the Companies Act, 1956 (1 of 1956);
- (b) payments under Cl. (a) of sub-section (2) to the depositors in the savings bank account;
- (c) payments under Cl. (b) of sub-section (2) to the other depositors;
- (d) payments to the general creditors and payments to the depositors in addition to those specified in Cls. (a) and (b) of sub-section (2).

(8) The payments of each different class specified in sub-section (7) shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.]

²[(9) Nothing contained in sub-sections (2), (3), (4), (7) and (8) shall apply to a banking company in respect of the depositors of which the Deposit Insurance Corporation is liable under Sec. 16 of the Deposit Insurance Corporation Act, 1961 (47 of 1961).

(10) After preferential payments referred to in sub-section (1) have been made or adequate provision has been made in respect thereof, the remaining assets of the banking company referred to in sub-section (9) available for payment to general creditors shall be utilized for payment on pro rata basis of the debts of the general creditors and of the sums due to the depositors:

Provided that where any amount in respect of any deposit is to be paid by the liquidator to the Deposit Insurance Corporation under Sec. 21 of the Deposit Insurance Corporation Act, 1961 (47 of 1961), only the balance, if any, left after making the said payment shall be payable to the depositor.]

³ [44. **Powers of High Court in voluntary winding up.**—(1) Notwithstanding anything to the contrary contained in Sec. 484 of the Companies Act, 1956 (1 of 1956), no banking company

¹ Subs. by Act 47 of 1967, Sec. 51 and Sch. 11, Pt. 11, for "the foregoing provisions" (w.e.f. 1st January, 1962).

² Ins. by *ibid.*

³ Subs. by Act 33 of 1959, Sec. 30, for Sec. 44 (w.e.f. 1st October, 1959).

may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full its debts to its creditors as they accrue.

(2) The High Court may, in any case where a banking company is being wound up voluntarily, make an order that the voluntary winding up shall continue but subject to the supervision of the Court.

(3) Without prejudice of the provisions contained in Secs. 441 and 521 of the Companies Act, 1956 (1 of 1956), the High Court may of its own motion and shall, on the application of the Reserve Bank, order the winding up of a banking company by the High Court in any of the following cases, namely:

(a) where the banking company is being wound-up voluntarily and at any stage during the voluntary winding-up proceeding the company is not able to meet its debts as they accrue; or

(b) where the banking company is being wound-up voluntarily or is being wound-up subject to the supervision of the Court and the High Court is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued without detriment to the interests of the depositors.]

¹[44-A. *Procedure for amalgamation of banking companies.*—(1) Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.

(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated one of such newspapers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting of the company concerned or to the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Reserve Bank to claim from banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve Bank as to the value of the shares to be paid to the dissenting shareholder shall be final for all purposes.

(4) if the scheme of amalgamation is approved by requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in voting passed in his behalf,

¹ Ins. by Act 20 of 1950, Sec. 8.

be binding on the banking companies concerned and also on all the shareholders thereof.

¹[* * * *]

(6) On the sanctioning of a scheme of amalgamation by the Reserve Bank the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order be transferred to, and become the liabilities of the banking company which under the scheme of amalgamation is to acquire the business of the amalgamated banking company, subject in all cases to ²[the provisions of the scheme as sanctioned.]

³(6-A) Where a scheme of amalgamation is sanctioned by the Reserve Bank under the provisions of this section, the Reserve Bank may, by a further order in writing, direct, that on such date as may be specified therein the banking company (hereinafter in this section referred to as the amalgamated banking company) which by reason of the amalgamation will cease to function, shall stand dissolved and any such direction shall take effect notwithstanding anything to the contrary contained in any other law.

(6-B) Where the Reserve Bank directs a dissolution of the amalgamated banking company, it shall transmit a copy of the order directing such dissolution to the Registrar before whom the banking company has been registered and on receipt of such order the Registrar shall strike off the name of the company.

(6-C) An order under sub-section (4) whether made before or after the commencement of Sec. 19 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with, and a copy of the said order certified in writing by an officer of the Reserve Bank to be a true copy of such order and a copy of the scheme certified in the like manner to be a true copy thereof shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after commencement of the said Sec. 19), be admitted as evidence to the same extent as the original order and the original scheme.]'

⁴[(7) Nothing in the foregoing provisions of this section shall affect the power of the Central Government to provide for the amalgamation of two or more banking companies ⁵[* * *] under Sec. 396 of the Companies Act, 1956 (1 of 1956)

Provided that no such power shall be exercised by the Central Government except after consultation with the Reserve Bank.]

⁶[(7) **Restriction on compromise arrangement between banking company and creditors.** —⁸(1) Notwithstanding anything contained in any law for the time being in force, no

¹ Sub-section (5) omitted by Act 55 of 1963, Sec. 19 (w.e.f. 1st February, 1964).

² Subs. by *ibid.*, for the words "terms of the order sanctioning the scheme" (w.e.f. 1st February, 1964).

³ Ins. by *ibid.* (w.e.f. 1st February, 1964).

⁴ Ins. by Act 37 of 1960, Sec. 5.

⁵ Omitted by Act 7 of 1961, Sec. 3, for the words "in national interest".

⁶ Subs. by Act 20 of 1950, Sec. 9, for Sec. 45 (now re-numbered as 44-B).

⁷ Section 45 re-numbered as Sec. 44-B, by Act 37 of 1960, Sec. 6.

⁸ Re-numbered as sub-section (2) by Act 52 of 1953, Sec. 9.

¹[High Court] shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them ²[or sanction any modification in any such compromise or arrangement unless the compromise or arrangement or modification, as the case may be], is certified by the Reserve Bank ³[in writing as not being incapable of being worked and as not being detrimental to the interest of the depositors of such banking company.]

⁴[(2) Where an application under ⁵[Sec. 391 of the Companies Act, 1956 (1 of 1956)], is made in respect of a banking company, the ⁶[High Court] may direct the Reserve Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors and when such a direction is given, the Reserve Bank shall make such inquiry and submit its report to the ⁶[High Court.]

⁷**[45. Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation.—**

(1) Notwithstanding anything contained in the foregoing provisions of this Part or in another law or ⁸[any agreement or other instrument], for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of ⁹[a banking company].

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period, so however that the total period of moratorium shall not exceed six months.

(3) Except as otherwise provided by any direction given by the Central Government in the order made by it under sub-section (2) or at any time thereafter, the banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligation to any other creditors:

¹⁰[(4) During the period of moratorium, if the Reserve Bank is satisfied that

(a) in the public interest; or

(b) in the interests of the depositors; or

(c) in order to secure the proper management of the banking company; or

¹ Subs. by Act 52 of 1953, Sec. 4 for "Court".

² Subs. by Act 55 of 1963, Sec. 20, for "unless the compromise or arrangement" (w.e.f. 1st February, 1964).

³ Subs. by Act 52 of 1953, Sec. 9, for "as not being detrimental to the interest of the depositors of such company".

⁴ Ins. by *ibid.*

⁵ Subs. by Act 95 of 1956, Sec. 14 and Schedule, for "Sec. 153 of the Indian Companies Act, 1913 (7 of 1913), (w.e.f. 14th January, 1957).

⁶ Subs. by Act 52 of 1953, Sec. 4, for "Court".

⁷ Ins. by Act 37 of 1960, Sec. 6.

⁸ Subs. by Act 7 of 1961, Sec. 4, for "any agreement".

⁹ Subs. by Act 7 of 1967, Sec. 4, for "the banking company".

¹⁰ Subs. by *ibid.*, for sub-sections (4) to (9).

(d) in the interests of the banking system of the country as a whole, it is necessary so to do, the Reserve Bank may prepare a scheme—

(i) for the reconstruction of the banking company, or

(ii) for the amalgamation of the banking company with any other banking institution in this section referred to as "the transferee bank".]

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations, of the banking company on its reconstructions or, as the case may be, of the transferee bank;

(b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the banking company on its reconstruction or, as the case may be, of the transferee bank and the authority by whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum and articles of association of the banking company on its reconstruction or as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any action or proceedings pending against the banking company immediately before the date of the order of moratorium;

(f) the reduction of interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interests of the members, depositors and other creditors or for the maintenance of the business of the banking company;

(g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim—

(i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under Cl. (f), in respect of such interest or rights as so reduced;

(h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation whether their interest in such shares has been reduced under Cl. (f) or not, of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash not allotment of shares,

or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—

(i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under Cl. (f), in respect of their interest in shares or amalgamation; or

(i) the continuance of the service of all the employees of the banking company [excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme] in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or, as case may be, by which they were being governed, immediately before the date of the order of moratorium

Provided that the scheme shall contain a provision that—

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service [as are, at the time of such payment or grant, applicable] to the other employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service [as are, at the time of such payment or grant, applicable] to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank:

Provided further that if in any case under Cl. (ii) of the first proviso any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank, ¹[the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause], to the Reserve Bank whose decision thereon shall be final;

(j) notwithstanding anything contained in Cl. (i) where any of the employees of the banking company not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme under Cl. (i) or where any employees of the banking company have by notice in writing given to the banking company or, as the case may be, the transferee bank at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the banking company of its reconstruction or, as the case may be,

¹ Subs. 6y Act T of 1984, Sec. 34 (w.e.f. 15th February 2984).

of the transferee bank, the payment to the such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947 (14 of 1947), and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorizations of the banking company immediately before the date of the order of moratorium;

(k) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(6) (a) A copy of the scheme prepared by the Reserve Bank shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any, within such period as the Reserve Bank may specify for this purpose.

(b) The Reserve Bank may make such modifications, if any, in the draft scheme, as it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the amalgamation and from any members, depositors or other creditors of such of those companies and the transferee bank.

(7) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modifications or with such modification as it may consider necessary; and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

¹[(7-A) The sanction accorded by the Central Government under sub-section (7), whether before or after the commencement of Sec. 21 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (50 of 1963), shall be conclusive evidence that all the requirements of this section relating to reconstruction, or, as the case maybe, amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said Sec. 21), be admitted as evidence to the same extent as the original scheme.]

(8) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank; ²[including the trustees or other persons, managing, or connected in any other manner with, any provident fund or other fund

¹ Ins. by Act 55 of 1963, Sec. 22 (w.e.f. 1st February, 1964).

² Ins. by Act 2 of 1984, Sec. 34 (w.e.f. 15th February, 1984).

maintained by any of those companies or the transferee bank.]

(9) ¹[On and from the date of the coming into operation of, or as the case may be, the date specified in this behalf in the scheme,] the properties and assets of the banking company shall; by virtue of and to the extent provided in the scheme, stand transferred to, and vest in and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, become the liabilities of the transferee bank.

(10) If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(11) Copies of the scheme or of any order made under sub-section (10) shall be laid before both Houses of Parliament, or, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

(12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Central Government on the recommendation of the Reserve Bank may, by notification in the official Gazette, make for the purpose of giving full effect to the scheme:

Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(13) Nothing in this section shall be deemed to prevent the amalgamation with a banking institution by a single scheme of several banking companies in respect of each of which an order of moratorium has been made under this section.

(14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(15) In this section, "banking institution" means any banking company and includes the State Bank of India or ²[a subsidiary bank or a corresponding new bank.]

³[Explanation.-Reference in this section to the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.]

¹ Subs. by Act 1 of 1984, Sec. 34 (w.e.f. 15th February, 1984).

² Ins. by *ibid.*

³ Subs. by *ibid.*, (w.e.f. 15th February 1, 1984)

COMMENTS

Amalgamation of banks and fitment of the personnel.—In the instant case, there is nothing in the context or the circumstances of the statutory concerned provision to limit the content of the term "experience" to mere quantitative assessment and not to assessment of the same on a qualitative basis. While it is true that for the purpose of recruitment to a profession or to a technical institute or to an industrial concern, experience may generally connote length or duration of service in a profession or institution, Courts cannot altogether rule out the richness and the variegated nature of the experience in the matter of service in a bank. The "doubt or difference" may pertain to qualifications as well as to experience. Assessment individually with respect to the facts and circumstances of each case is impracticable, if not impossible, while dealing with a number of institutions and their multi-tiered staff; and, having regard to the expert body (Reserve Bank) to whose decision the collective assessment is left, and its special status and position in the banking world, one cannot find ground to cavil at the conferment of a power of group assessment. It is not correct to say that any disparity in regard to the nature of work and the quality and range of service and efficiency in the various banks could hell be levelled up by experience in the transferee bank for any short period, and that the object of the "the cushioning period" of three years provided under Sec. 45 (5) (i) proviso to Cl. (ii) was to level up this disparity. The outer-most limit of three years indicated in the above clause to effect the fitment does not necessarily prevent the transferee bank from effecting it at any earlier point of time, and the Courts are unable to read the cushioning period provided in the relevant provision as meant to cover up the deficiencies of the transferor bank and level up the disparity between it and the transferee bank.¹

The right of the employees of the banking company in the transferee bank on continuance of the service by virtue of such a provision in the scheme as provided in Cl. (i) of sub-section (5) is merely that which is contained in the proviso thereunder, that is, that the transferee bank would treat them at par with its own employees of corresponding rank or status subject to the qualifications and experience irrespective of the earlier terms and conditions of service. In other words, if the scheme provides for continuance of the services of the employees in the transferee bank, then beyond a period of three years from the date on which the scheme is sanctioned by the Central Government, the transferee bank cannot discriminate between such employees and its other employees of corresponding rank or status. The only right of such an employee whose service is so continued, is, therefore, to claim parity with the employees of the transferee bank itself of a corresponding rank or status subject to equivalent qualifications and experience and no more. The right of such an employee is provided in the proviso to Cl. (i) and not in the earlier enacting part of Cl. (i) of sub-section (5) as claimed by respondent No. 1 and upheld by the High Court. Clauses 10 and 12 of the scheme merely incorporate the matter specified in Cl. (i) and the proviso thereunder so read and understood, there is no ambiguity or conflict in those of the

¹ *State Bank of Travancore v. General Secretary, Association of the State Bank of Travancore, Tichur, (1978) Lab. I.C. 1343 at pp. 1347-48 (Ker.)*; *Chairman, Canary Bank v. M.S. Jasra, 1992 (1) Bank C.L.R. 555 (S.C.)*; *A.I.R. 1992 S.C. 1341*; *Debasis Pal Choudhury v. Allahabad Bank, 1992 (1) Bank C.L.R. 261*; *Reserve Bank of India v. State Bank of India, (1996) 85 Comp. Cases 554 at p. 568 (Born.)*.

Scheme either inter se or with Cl. (i) and the proviso thereunder in sub-section (5) of Sec. 45.¹

The mandate of Sec. 45 (5) (i) is that the scheme which is formulated may contain provisions with regard to continuation of service of the employees of the banking companies and such scheme should protect the remuneration and other terms and conditions of the employee. The second proviso to Sec. 45 (5) (i) of the Act as well as Cl. 12 of the scheme have to be read harmoniously with Sec. 45 (5) (i) and Cl. 10 of the Scheme.²

From enclosure 'A' it is absolutely clear that the Reserve Bank under S-c. 45 of the Act prepared a draft scheme of amalgamation and in terms of the said scheme the employees of the United Industrial Bank Ltd., Calcutta, shall continue to be in service and be deemed to have been appointed by Allahabad Bank on the same remuneration and conditions of service as were applicable to them immediately before the amalgamation. The Enclosure 'B' was the proforma of a draft of acceptance or refusal by an employee. The Allahabad Bank on the basis of the direction of the Reserve Bank of India's letter dated 19th July, 1989 wrote to the petitioner on 24th July, 1989 through the United Industrial Bank Ltd., reiterating that in terms of the proposed scheme, the employees shall continue to be in service and be deemed to have been appointed by Allahabad Bank on the same remuneration and conditions of service as were applicable to them immediately before the close of business on 10th June, 1989. In fact.. Allahabad Bank had to accept the direction given by the Reserve Bank of India and at this stage Allahabad Bank cannot avoid the directive as contained in Cl. (10) of the Scheme of amalgamation. The letter of the United Industrial Bank Ltd. of 29th October, 1989 addressed to the petitioner and duly received by him on the date of amalgamation on 31st October, 1989 is of no legal value in the light of the aforesaid documents. Once the direction of the Reserve Bank was given to the Allahabad Bank. The Allahabad Bank has no right or jurisdiction to flout that direction, whether it is written on the letter-head of the United Industrial Bank Ltd. or on the letter head of Allahabad Bank.³

Amalgamation of Banks—Right of employees.—*The use of the expression 'pay' or 'grant' seems to imply that the transferee bank was required to give something more than what the transferred employees were originally getting from the transferor bank. If the intention of the Legislature was that with the promulgation of the scheme there should be no difference in the conditions of pay, remuneration, etc. between the transferred employees and that of the existing employees of the transferee bank, then the protection contained in Sec. 45 (5) (i) would not have been there and, secondly the second proviso would have clearly stipulated that on a scheme being promulgated, notwithstanding the provisions of Sec. 45 (5) (i), all the employees of the transferee bank including employees like the petitioner, will get same remuneration and will be entitled to the same terms and conditions of service. No such provision has been incorporated in the Act or in the scheme. Clause 12 of the scheme or the second proviso of Sec. 45 (5) (i) cannot be read as to take away the vested rights of the transferred employees which rights were that*

¹ *Chairman, Canara Bank, Bangalore v. M.S. Jasra* 1992 Lab.L.C. 1001 at p. 1007 (S.C.).

² *M.S. Jasra v. Governor, R.B.I.*, 1992 Lab LC. 564 at pp. 567, 568 (Delhi): 1992 (46) D.L.T. 665.

³ *Debasis Pal Choudhuri v. Allahabad Bank* 1992 Lab. LC. 24 at p. 34 (Cal.).

their remuneration as well as the terms and conditions of service were not to be adversely affected.¹

Applicability of amalgamation scheme vis-a-vis Rent Control Act—Decree binding on tenant.—In *Shephard v. Union of India*² it was observed by the Supreme Court that the framing of the scheme under Sec. 45 of the Banking Regulation Act, 1949 does not involve a legislative process. It, *therefore, follows* that the scheme thereunder has no statutory force. Hence, the terms and conditions in the *scheme* shall be subject to the statutory provisions of the Rent Control Act and no such terms and conditions in the scheme can override the provisions of the Act.

In view of what has been laid down by the Supreme Court, it is not open to the petitioners to challenge the right of the first respondent as *transferee* of the original landlord to execute the decree which has *become final* and at this stage no Court has the jurisdiction to investigate as to whether or not respondent No. 1 also has the *bona fide* need of the premises for its own

to him while in service in the United Industrial Bank cannot be altered by the Allahabad Bank is not sustainable.¹

Right of bank employees transferred to another bank.—The right of the employees of the banking company in the transferee bank on continuance of the service by virtue of such a provision in the scheme as provided in Cl. (i) of sub-section (5) is merely that which is contained in the proviso thereunder, that is, that the transferee bank would treat them at par with its own employees of corresponding rank or status subject to the qualifications and experience irrespective of the earlier terms and conditions of service. In other words, if the scheme provides for continuance of the services of the employees in the transferee bank, then beyond a period of three years from the date on which the scheme is sanctioned by the Central Government, the transferee bank cannot discriminate between such employees and its other employees of corresponding rank or status. The only right of such an employee whose service is so continued is, therefore, to claim parity with the employees of the transferee bank itself of corresponding rank or status subject to equivalent qualifications and experience and no more. The right of such an employee is provided in the proviso to Cl. (i) and not in the earlier enacting part of Cl. (i) of sub-section (5) as claimed by respondent No. 1 and upheld by the High Court.²

It would not be necessary to issue a fresh charge-sheet in the matter on the ground that the charge-sheet issued by the transferor bank has ceased to exist with the merger of the said bank with the transferee bank. This clearly means that the respondent continues to be in the service of the transferee bank for all intents and purposes including his liability, if any, to face the charge-sheet served on him by the transferee bank.³

A clear case for moratorium would arise when there is an actual or likely run on the bank by the depositors or the creditors of the bank. A near or imminent possibility of a run on the bank can arise where a bank is on the brink of insolvency meaning thereby that the assets at any given point of time fall short of the liability. The situation may arise as a result of utter mismanagement of the affairs of the bank and indiscriminate advances made which either are not immediately recoverable or irrecoverable such loans are styled as sticky loans. Some of them may be irrecoverable and some are recoverable, but not immediately. In the case of banks, "moratorium" is undisputedly a measure which has to be adopted in rare cases and as a temporary measure to prevent the depositors and creditors of the bank from seeking realisation of their dues.⁴

Retirement age of transferor bank not available in transferee bank.—The mandate of Sec. 45 (5) (i) is that the scheme which is formulated may contain provisions with regard to continuation of service of the employees of the banking companies and such a scheme should protect the remuneration and other terms and conditions of an employee. The second proviso to

¹ Allahabad Bank v. All India Allahabad Bank Officers Association, 1996 (1) Batik L. J. 338 at pp. 346, 347 (Cal.).

² The Chairman Canara Bank, Bangalore v. M.S. Jasra, A.I.R. 1992 S.C. 110 at pp. 1105, 1106.

³ Canara Bank v. Y.L. Sharma 1991 (1) A.L.T. 446 at p. 451.

⁴ Shin Kumar Tulsian v. Union of India, 1990 (68) Comp. Cas. 720 at pp. 731, 732, 733 (Bon:).

Sec. 45 (i) of the Act as well as Cl. 12 of the scheme have to be read harmoniously with Sec. 45 (5) (i) and Cl. 10 of the scheme.¹

Post-decisional hearing.—The learned Judge has held that inasmuch as no hearing was given to the petitioners before the scheme was prepared, they should be given a hearing at least after the scheme was prepared. The post-decisional opportunity as contemplated by the learned Judge will be opposed to the very provisions of Sec. 45 of the Act. The High Court cannot direct the amendment of the scheme and include or delete the name of the persons in the schedule and in the scheme. When the scheme itself is law, as held by the learned Judge himself, the High Court cannot direct an amendment of that law. The scheme itself is not in challenge and the Act also is not challenged. It was held that the petitioners were not entitled to any hearing before the scheme was finalised and sanction was given. A post-decisional opportunity does not, therefore, arise in any case. Therefore, the High Court did not agree with the learned single Judge that the petitioners are entitled to any post-decisional opportunity. The direction so issued cannot, therefore, be sustained.²

Moratorium—The submissions that the bankers should have been heard before the moratorium was issued cannot be sustained in law as to give any notice of such a measure would be defeating the whole purpose of moratorium and this plea has been clearly discarded and overruled in matters of urgent nature.³

⁴[PART III-A

SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING-UP PROCEEDINGS

45-A. Part III-A to override other laws.—The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the⁵[Companies Act, 1956 (1 of 1956)], or the Code of Civil Procedure, 1908 (5 of 1908), or the⁶[Code of Criminal Procedure, 1973 (2 of 1974)], or any other law for the time being in force or any instrument having effect by virtue of any such law but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under this Part.

COMMENTS

Scope and applicability.—By Sec. 45-B of Part III-A of the Banking Regulation Act, 1949, exclusive jurisdiction to decide is conferred expressly on the High Court in respect of matters relating to, or arising out of, winding-up of banking companies. So the jurisdiction of Civil Courts in respect of matters other than those relating to winding-up remains unaffected. Section 45-A which precedes Sec. 45-B

¹ *M.S. Jasra v. Governor, Reserve Bank of India*, 1992 Lab. I.C. 564 at pp. 567, 568 (Del.): 1991 (63F.L.R. 902).

² *Reserve Bank of India v. Paul Francis A. Ambookan*, 1990 (69) Comp. Cas. 320 at pp. 338, 339 (Ker.).

³ *Bari Doab Bank Ltd. V. Union of India*, A.I.R. 1998 Delhi 95 at p. 124.

⁴ Subs. by Act 52 of 1953, Sec. 10, for the former Part 111 -A, which runs inserted by Act 20 of 1950, Sec. 10.

⁵ Subs. by Act 95 of 1956, Sec. 14 and Schedule (w.e.f. 14th January, 1957).

⁶ Subs. by Act 1 of 1984, Sec. 35 (w.e.f. 15th February, 1984).

further overrides the provision on any law which is repugnant to the Part III-A. Section 616 (b) of the Companies Act also provides that the provisions of the Act shall apply to banking companies in so far as they are not inconsistent with those of the Banking Regulation Act, 1949. So, any provision in the Companies Act which is repugnant to or inconsistent with Sec. 45-B of the Banking Regulation Act shall not apply to banking companies. Section 10 of the Companies Act also confers exclusive jurisdiction on the High Court only with respect of matters specifically mentioned in sub-section (2), and the section is neither repugnant to nor inconsistent with Sec. 45-B of the Banking Regulation Act. The present cause was one for recovery of money filed by a banking company against one of its ex-shareholders. The claim indisputably is not one arising out of winding-up proceedings. Therefore there is no hesitation in holding that the Civil Court has jurisdiction to entertain the suit.¹

Scope of the section.— Section 125 of the Companies Act, however appears to be saved by virtue of the *non-obstante* clause of Sec. 45-A of the Banking Regulation Act and more specifically by the language of Sec. 45-D and in particular sub-section (4) of it. Section 45-A of the Banking Regulation Act provides that the provisions of Part III-A of the Act dealing with winding-up of banking companies, would override other laws. The expression "any security" in sub-section (4) of Sec. 45-D would be wide enough having regard to the scheme of Part III-A, the *non-obstante* clause in Sec. 45-A and the phraseology of Sec. 45-D, to include security charge in respect of which is hit by Sec. 125 of the Companies Act. This would also be consistent with the purpose for which the special provisions were made in the Banking Regulation Act.²

45-B. Power of High Court to decide all claims in respect of banking companies.—The High Court shall, save as otherwise expressly provided in Sec. 45-C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under ³[Sec. 391 of the Companies Act, 1956 (1 of 1956)], by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding-up of the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953).

COMMENT

Definition of the word "Court".—The definition of the word "Court" no doubt indicates that it is a Court of special jurisdiction, but the question is whether Sec. 45-B vests in the High Court, the jurisdiction to decide the land acquisition cases. Section 45-B is very wide and confers on the High Court the exclusive jurisdictions to entertain and decide any claim made by or against a banking company which is being wound up. It does not limit the jurisdiction of the High Court

¹ *Bhagwandas Garg v. Canara Bank*, (2987) 51 *Comp. Cas.* 38 at pp. 41-42.

² *Ideal Bank Ltd. v. Pride of India Pictures Ltd.*, A.I.R. 7983 Delhi 546 at p. 550.

³ *Subs. by Act 95 of 1956, Sec. 74 and Schedule, for "Sec. 253 of the Indian Companies Act, 1913 (7 of 1913) (w.e.f. 14th January, 1957).*

to any particular claim or claims made by or against a banking company. It follows, therefore, that whatever may be the nature of the claim, when such claim is made by or against a banking company, the High Court will have the exclusive jurisdiction to decide the same. The word "exclusive" is very significant for, it overrides jurisdiction of all other Courts and Tribunals by necessary implication. Section 8 of the Land Acquisition Act, 1894, contemplates one application, that is one proceeding before the District Judge or the Land Acquisition Judge. The said proceeding may be regarding apportionment of the compensation, measurement of the area or enhancement of the amount of compensation. When there is a claim for apportionment and also for the enhancement of the amount of compensation in an application under Sec. 18, that application is generally heard on two instances: *firstly*, the claims for apportionment is disposed of and, thereafter, the question of enhancement of compensation is taken up for consideration. These two steps are in the same proceeding arising out of one application. It is difficult to split up the application under Sec. 18 into two applications or the proceeding started thereby into two separate proceedings. For the purpose of convenience of considering the question as to apportionment and enhancement of compensation the above procedure is generally adopted by the Land Acquisition Courts, but for that, it cannot be said that the two stages are two different and independent proceeding. Accordingly, the claim having been made by one application giving rise to a single proceeding, the same cannot be split up into two applications or two proceedings, so that the claim for the enhancement of compensation may be decided by the District Judge and the claim for apportionment of compensation may be decided by the High Court in view of Sec. 45-B. In these circumstances, it appears that the application under Sec. 18 of the Land Acquisition Act will have to be decided by the winding-up Court, that is, the High Court, in its entirety.¹

45-C. Transfer of pending proceedings.—(1) Where a winding-up order is made or has been made in respect of a banking company, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under this Act and which is pending in any other Court immediately before the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), or the date of the order for the winding-up of the banking company, whichever is later, shall be proceeded with except in the manner hereinafter provided.

(2) The official liquidator shall, within three months from the date of the winding-up order or the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under sub-section (2), the High Court may, if it so thinks fit give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under Sec. 45-U, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall thereafter

¹ *Baidyanath Bayen v. Berhampore Bank Ltd.*, A.I.R. 1976 Cal. 372 at pp. 375, 376.

be disposed of by the High Court.

(4) If any proceeding pending in a Court is not so transferred to the High Court under sub-section (3), such proceeding shall be continued in the Court in which the proceeding was pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

COMMENT

Section 45-C of the Banking Regulation Act provides for transfer of suit or other legal proceedings to the High Court pending in any other Court immediately before the commencement of the Banking Companies (Amendment) Act, 1953, or the date of the order for the winding up of the banking company, whichever is later. Section 45-C does not apply to the instant case, for the proceedings before the learned District Judge under Sec. 18 of the Land Acquisition Act were started long after the date of the winding-up order or the commencement of the Banking Companies (Amendment) Act, 1953. It is, however, argued that the word "Court" referred to in Sec. 45-C (*i*) means "Civil Court" and as the Land Acquisition Judge is not a Civil Court, Sec. 45-B does not contemplate to confer jurisdiction on the High Court to decide claims made by or against a banking company in liquidation, which are to be decided by a Court other than a Civil Court. This contention is without any substance. Even assuming that the Land Acquisition Court is not a Civil Court, it is difficult to hold that Sec. 45-C refers only to Civil Courts. The word "Court" in Sec. 45-C (1) refers to all Courts, excepting the High Court and the Supreme Court.¹

45-D. Settlement of list of debtors.—(1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the manner hereinafter provided a list of debtors of a banking company which is being wound up.

(2) Subject to any rules that may be made under Sec. 52, the official liquidator shall, within six months from the date of the winding-up order or the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), whichever is later, from time to time, file to the High Court lists of debtors containing such particulars as are specified in the Fourth Schedule:

Provided that such lists may, with the leave of the High Court, be filed after the expiry of the said period of six months.

(3) On receipt of any list under sub-section (2), the High Court shall wherever necessary, cause notices to be issued on all persons affected and after making an inquiry in such manner as may be provided by rules made under Sec. 45-U, it shall make an order settling the list of debtors

Provided that nothing in this section shall debar the High Court from settling any such list in part as against such of the persons whose debts have been settled without settling the debts of all the persons placed on the list.

(4) At the time of the settlement of any such list, the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary

¹ *Baidyanath Rayen v. Berhampore Bank, Ltd.*, A.I.12. 1967 Cal. 372 at pp. 375, 376.

in respect of the relief claimed, including reliefs against any guarantor or in respect of the realization of any security.

(5) Every such order, shall subject to the provisions for appeal, be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit.

(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

(7) At the time of settling the list of debtors or at any other time prior or subsequent thereto, the High Court shall have power to pass any order in respect of a debtor on the application of the official liquidator for the realization, management, protection, preservation or sale of any property given as security to the banking company and to give such powers to the official liquidator to carry out the aforesaid directions as the High Court thinks fit.

(8) The High Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by instalments.

(9) In any case in which any such list is settled *ex parte* as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the banking company on merits the High Court may vary the list and pass such orders in relation thereto as it thinks fit

Provided that the High Court may, if it so thinks fit, entertain the application after the expiry of the said period of thirty days.

(10) Nothing in this section shall—

(a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or

(b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other law for the time being in force.

COMMENTS

Whether Kerala Agriculturists Debt Relief Act, 1970, is inconsistent with Banking Regulation Act, 1949.—In the instant case, the first respondent has an overdraft amount with the Catholic Bank of India Ltd. since 1954. An order for the winding-up of the bank was made sometime in May, 1957. On a claim being filed by the official liquidator against the first respondent, the High Court of Kerala on 8th January, 1963, made an order asking the first respondent to pay a sum of Rs. 5,130.10 with future interest at the rate of 6 per cent. per annum on the principal amount of Rs. 4,663.39. This order was presumably made under Sec. 45-D (4) of the Banking Regulation Act, 1949 ("the Central Act"). On 1st May, 1970 Rs. 5130.10 was recovered from the first respondent leaving a balance of Rs. 2,375.80 carrying interest at 6

percent. per annum still to be realized. Sometime in July, 1970 the Kerala Agriculturists' Debt Relief Act, 1970 ("the Kerala Act"), came into force. A few days after the Kerala Act came into operation, the first respondent applies to the High Court under Secs. 4 and 5 of that Act praying for a declaration that "the respondent has discharged the debt due to the Catholic Bank of India Ltd. and that no more amount is due from him as per accounts". The application ultimately came up for hearing before a Division Bench of the High Court,¹ which held that the Central Act must exclusively govern the determination of the question of the amount due from the applicant and that he could not claim any benefit under the Kerala Act. Appellant, the State of Kerala, disputed the correctness of the view taken by the High Court.

The first respondent in his application under Secs. 4 and 5 of the Kerala Act asked for a declaration that he had discharged his debt to the bank and no further amount was due from him. Neither Sec. 4 nor Sec. 5 provides for such a relief. Section 4 lays down that an agriculturist may discharge his debt in instalment. It was contended on behalf of the appellant, State of Kerala, that Sec. 4 permitting the debtor to repay the debt in instalments does not really touch the determination by the High Court under Sec. 45-D (4) of the Central Act of the amount of debt. It was argued that Sec. 4 of the Kerala Act which relates only to the manner of recovery of the debt contemplates a stage subsequent to and distinct from the determination of this quantum and, therefore, does not affect the finality of the determination under sub-section (5) of Sec. 45-D of the Central Act. But that way, there will be no inconsistency between Sec. 4 of the Kerala Act and sub-sections (4) and (5) of Sec. 45-D of the Central Act. It is not clear from the judgment of the High Court in what way Sec. 4 or Sec. 5 affects the finality of an order under Sec. 45-D (4); the High Court has not examined the provisions of Secs. 4 and 5 of the Kerala Act and found that there is something in them that has the effect of scaling down the amount held under the Central Act as due from the debtor. There is nothing to disagree with the proposition that the manner of payment of the debt and the determination of the amount of debt are two distinct matters and, without anything more, there is no question or conflict between them.²

Jurisdiction to entertain the application.—The plea of want of jurisdiction was raised on the basis of the provisions of Sec. 45-D (10) of the Banking Regulation Act. Section 45-D (10) would, however, have no application unless the matter involves the proprietary right in immovable property. In the instant case neither the company nor its creditor claims any proprietary right in immovable property. In any event, that no part of any immovable property forms subject-matter of the pledge, hypothecation, etc. True, there is a reference in the agreement with regard to registration but that would not by itself be determinative of the true legal position. Section 45-D (10) is, therefore, clearly inapplicable and there is therefore, no want of jurisdiction in High Court to deal with these applications.³

Sections 45-D, 45-T and 46-A come into play in winding up operations.—
Sections 45-D, 45-T and 46-A of the Banking Regulation Act, 1949 will come into play only

¹ *M.T. Devassia v. Catholic Bank of India Ltd.*, (1972) 42 Com. Cas. 421.

² *State of Kerala v. M.T. Devassia*, (1978) 48 Com. Cas. 19 at pp. 20, 21, 22.

³ *Ideal Bank Ltd. v. Pride of India Pictures Ltd.*, A.I.R. 1983 Delhi 546 at p. 553.

when there is a proceeding for winding-up a banking company. They cannot be invoked in these proceedings under Art. 226 of the Constitution of India.¹

45-E. Special provisions to make calls on contributories.—Notwithstanding that the list of contributories has not been settled under ²[Sec. 467 of the Companies Act 1956 (1 of 1956)], the High Court may, if it appears to it necessary or expedient so to do at any time after making winding-up order make a call on and order payment thereof by any contributory under sub-section (1) of ³[Sec. 470 of the Companies Act, 1956 (1 of 1956)], if such contributory has been placed on the list of contributories by the official liquidator and has not appeared to dispute his liability.

45-F. Documents of banking company to be evidence.—(1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all ⁴[legal proceedings]; and all such entries may be provided either by the production of the books of accounts or other documents of the banking company containing such entries or by the production of a copy of the entries, certified by the official liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the banking company in his possession.

(2) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 (1 of 1872), all such entries in the books of account or other documents of a banking company shall, as against the directors ⁵[officers and other employees] of the banking company in respect of which the winding-up order has been made ⁶[* * *] be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

45-G. Public examination of directors and auditors.—(1) Where an order has been made for the winding-up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) or any person in the promotion or formation of the banking company or of any director or auditor of the banking company.

(2) If, on consideration of the report submitted under sub-section (1) the High Court is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a director or an auditor of the banking company should be publicly examined, it shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion, or formation or the conduct of the business of the banking company, or as to his conduct and dealings, in so far as they relate to the affairs of the banking company:

Provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be so examined.

¹ R.R. Dalavai v. Indian Overseas Bank, 1994 (81) Comp. Cas. 446 at p. 482 (Mad.).

² Subs. by Act 95 of 1956, Sec. 74 and Schedule, for "Sec. 184 of the Indian Companies Act, 1913(7 of 1913)" (w.e.f. 14th January, 1957).

³ Subs. by *ibid.*, for "Sec. 187 of the Indian Companies Act, 1913(7 of 1913)" (w.e.f. January, 1957).

⁴ Subs. by Act 55 of 1963, Sec. 22, for "proceedings by or against the banking company" (w.e.f. 1st February 1964).

⁵ *Ins. by ibid.*

⁶ Omitted by *ibid.*, for certain words (w.e.f. 1st February, 1963).

(3) The official liquidator shall take part in the examination and for that purpose may, if specifically authorized by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.

(4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.

(5) The High Court may put such question to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before High Court who shall be at liberty to put to him such question as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges made or suggested against him, the High Court may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) Where on such examination, the High Court is of opinion (whether a fraud has been committed or not)—

(a) that a person, who has been a director of the banking company, is not fit to be a director of a company, or

(b) that a person, who has been an auditor of the banking company or a partner of a firm acting as such auditor, is not fit to act as an auditor of a company or to be a partner of firm acting as such auditor,

the High Court may make an order that the person shall not, without the leave of the Court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be partner of a firm acting as auditors of any company for such period not exceeding five years as may be specified in the order.

45-H. Special provisions for assessing damages against delinquent directors, etc.—(1) Where an application is made to the High Court under ¹[Sec. 543 of the Companies Act, 1956 (1 of 1956)], against any promoter, director, manager, liquidator or officer of a banking company for repayment or restoration of any money or property and the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

¹ Subs. by Act 95 of 1956, Sec. 14 and Schedule, for "Sec. 235 of the Indian Companies Act, 1913 (7 of 1913)" (w.e.f. 74th January, 1957)

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under ¹[Sec. 543 of the Companies Act, 1956 (1 of 1956)] and the High Court has reason to believe that a property belongs to any promoter, director, manager, liquidator or officer of the banking company, whether the property stands in the name of such person or any other person as an ostensible owner, then the High Court may, at any time, whether before or after making an order under sub-section (1), direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to attachment of property shall, as far as may be, apply to such attachment.

45-I. Duty of directors and officers of banking company to assist in the realization of property.—Every director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may reasonably require in connexion with the realization and distribution of the property of the banking company.

45-J. Special provisions for punishing offences in relation to banking companies being wound up.—(1) The High Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or by any director, manager or officer thereof:

Provided that the offence is one punishable under this Act or under the ¹[Companies Act, 1956 (1 of 1956)].

(2) When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence, with which the accused may, under ²[Code of Criminal Procedure, 1973 (2 of 1974)], be charged at the same trial.

(3) In any case tried summarily under sub-section (1), the High Court

- (a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;
- (b) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court, necessary in the interests of justice ;
- (c) shall, before passing any sentence, record judgment embodying the substance of the evidence and also the particulars specified in Sec. 263 of the ²[Code of Criminal Procedure, 1973 (2 of 1974)], so far as that section may be applicable;

and nothing contained in sub-section (2) of Sec. 262 of the ²[Code of Criminal Procedure, 1973 (2 of 1974)] shall apply to any such trial.

¹ Subs. by Act 95 of 1956, Sec. 74 and Schedule for "Indian Companies Act, 1933 (7 of 1913)" (w.e.f. 14th January 1957).

² Subs. by Act 7 of 1934, Sec. 35 (w.e.f. 75th February, 1934).

(4) All offences in relation to winding-up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Act or under the ¹(Companies Act, 1956 (1 of 1956)) and which are not tried in a summary way under sub-section (1) shall notwithstanding anything to the contrary contained in that Act, or the ²[Code of Criminal Procedure, 1973 (2 of 1974)] or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the High Court other than the Judge for the time being dealing with the proceedings for the winding-up of banking company.

(5) Notwithstanding anything to the contrary contained in the ²[Code of Criminal Procedure, 1973 (2 of 1974)] the High Court may take cognizance of any offence under this section, without the accused being committed to it for trial ¹[***].

45-K. Power of High Court to enforce schemes of arrangements, etc.—Rep by the Banking Companies (Amendment) Act, 1959 (33 of 1959), Sec. 31.

45-L. Public examination of directors and auditors, etc. in respect of a banking company under schemes of arrangement.—(1) Where an application for sanctioning a compromise or arrangement in respect of a banking company is made under ²[Sec. 391 of the Companies Act, 1956 (1 of 1956)] or where such sanction has been given and the High Court is of opinion, whether on a report of the Reserve Bank or otherwise, that any person who has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, it may direct such examination of such person and the provisions of Sec. 45-G shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up.

(2) Where a compromise or arrangement is sanctioned under ¹ [Sec. 391 of the Companies Act, 1956 (1 of 1956)] in respect of a banking company, the provisions of ³[Sec. 543 of the said Act] and of Sec. 45-H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding-up to the banking company.

⁴[(3) Where ⁵[a scheme of reconstruction or amalgamation of banking company] has been sanctioned by the Central Government under Sec. 45 and the Central Government is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, that Government may apply to the High Court for the examination of such person and if on such examination the High Court finds (whether a fraud has been committed or not) that the person is not fit to be a director of a company or to act as an auditor of a company or to be a partner of a firm acting as such auditors, the Central Government shall make an order that the person shall not, without the leave of the Central Government, be a director of, or in any way, whether

¹ The words "and all such trials shall be without the aid of a junk" omitted by Act No. T of 1984, 'Sec. 35 W (w.e.f. 15th February, 1984).

² Subs. by Act 95 of 1956, Sec. 14 and Schedule, for "Sec. 153 of the Indian Companies Act, 1913(7 of 1913)" (w.e.f. 14th January, 1957).

³ Subs. by *ibid.*, for "Sec. 235 of the said Act" (w.e.f. 14th January, 1957).

⁴ Ins. by Act 37 of 1961, Sec. 7.

⁵ Subs. by Act 7 of 1967, Sec. 5, for certain words

directly or indirectly be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditor of, any company for such period not exceeding five years as may be specified in the order.

(4) Where ⁴[a scheme of reconstruction or amalgamation of a banking company] has been sanctioned by the Central Government under Sec. 45, the provisions of Sec. 543 of the Companies Act, 1956 (1 of 1956) and of Sec. 45-H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the scheme of reconstruction or amalgamation, as the case may be, were an order for the winding-up of the banking company; and any reference in the said Sec. 543 to the application of the official liquidator shall be construed as a reference to the application of the Central Government.]

45-M. Special provisions for banking companies working under schemes of arrangement at the commencement of the Amendment Act.—Where any compromise or arrangement sanctioned in respect of a banking company under ¹[Sec. 391 of the Companies Act, 1956 (1 of 1956)] is being worked at the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), the High Court may, if it so thinks fit, on the application of such banking company,

- (a) excuse any delay in carrying out any of the provisions of the compromise or arrangement; or
- (b) allow the banking company to settle the list of its debtors in accordance with the provisions of Sec. 45-D and in such a case, the provisions of the said section shall, as far as maybe, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for winding up of the banking companies.

45-N. Appeals.—(1) An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject-matter of the claim exceeds five thousand rupees.

(2) The High Court may by rules provide for an appeal against any order made under Sec. 45-J and the conditions subject to which any such appeal would lie.

(3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the High Court shall be final and binding for all purposes as between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them, on the other hand.

45-O. Special period of limitation.—(1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908),² or in any law for the time being in force in computing the period of limitation prescribed for a suit or application by a banking

¹ Subs. by Act 95 of 1956, Sec. 14 and Schedule, for "Sec. 153 of the Indian Companies Act, 1913 (7 of 1913)".

² See now the Limitation Act, 1963.

company which is being wound up, the period commencing from the date of the presentation of the petition for the winding-up of the banking company shall be excluded.

(2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908)² or ¹ [Sec. 543 of the Companies Act, 1956 (1 of 1956)] or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of banking company which is being wound up for the enforcement by the banking company against any of its directors of any claim based on a contract express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims ²[or five years from the date of the first appointment of the liquidator, whichever is longer.]

(3) The provisions of this section, in so far as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding-up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953).

45-P. Reserve Bank to tender advice in winding-up proceedings.—Where in any proceeding for the winding-up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator and the High Court has directed the official liquidator to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

45-Q. Power to inspect.—(1) The Reserve Bank shall, on being directed so to do by the Central Government or by the High Court, cause an inspection to be made by one or more of its officers of a banking company which is being wound up and its books and accounts.

(2) On such inspection, the Reserve Bank shall submit its report to the Central Government and the High Court.

(3) If the Central Government, on consideration of the report of the Reserve Bank, is of opinion that there has been a substantial irregularity in the winding-up proceedings, it may bring such irregularity to the notice of the High Court for such action as the High Court may think fit.

(4) On receipt of the report of the Reserve Bank under sub-section (2) or on any irregularity being brought to its notice by the Central Government under sub-section (3), the High Court may, if it deems fit, after giving notice to and hearing the Central Government in regard to the report, give such directions as it may consider necessary.

45-R. Power to call for returns and information.—The Reserve Bank may, at any time by a notice in writing, require the liquidator of a banking company to furnish it, within such time as may be specified in the notice or such further time as the Reserve Bank may allow, any statement or information relating to or connected with the winding-up of the banking company,

¹ Subs. by Act 95 of 1956, Sec. 14 and Schedule for "Sec. 235 of the Indian Companies Act, 1913 (7 of 1913)" (w.e.f. 14th January, 1957).

² Ins. by Act 33 of 1959, Sec. 32 (w.e.f. 1st October, 1959).

and it shall be the duty of every liquidator to comply with such requirements.

Explanation.—For the purposes of this section and Sec. 45-Q a banking company working under compromise or arrangement but prohibited from receiving fresh deposits, shall, as far as may be, be deemed to be a banking company which is being wound up.

45-S. Chief Presidency Magistrate and District Magistrate to assist official liquidator in taking charge of property of banking company being wound up.—(1) For the purpose of enabling the official liquidator or the special officer appointed under sub-section (3) of Sec. 37 to take into his custody or under his control all property, effects and actionable claims to which a banking company ¹[* * *] is or appears to be entitled, the official liquidator or the special officer, as the case may be, may request in writing the ²[Chief Metropolitan Magistrate or the Chief Judicial Magistrate] within whose jurisdiction any property, books of account or other documents of such banking company may be situate or be found, to take possession thereof, and the ²[Chief Metropolitan Magistrate or the Chief Judicial Magistrate] as the case may be, shall, on such request being made to him—

- ³[(a) take possession of such property, books of accounts or other documents, and
(b) forward them to the official liquidator or the special officer.]

⁴[(2) Where any such property and effects are in the possession of the ²[Chief Metropolitan Magistrate or the Chief Judicial Magistrate] as the case may be, such Magistrate shall, on request in writing being made to him by the official liquidator or the special officer referred to in sub-section (1), sell such property and effects and forward the net proceeds of the sale to the official liquidator or the special officer

Provided that such sale shall, as far as practicable, be effected by public auction.

(3) For the purpose of securing compliance with the provisions of sub-section (1), the [Chief Metropolitan Magistrate or the Chief Judicial Magistrate] may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(4) No act of the ²[Chief Metropolitan Magistrate or the Chief Judicial Magistrate] done in pursuance of this section shall be called in question in any Court or before any authority.]

45-T. Enforcement of orders and decisions of High Court.— (1) All orders made in any civil proceeding by a High Court may be, enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), a liquidator may apply for the execution of a decree by a Court other than the one which made it on production of a certificate granted under sub-section (6) of Sec. 45-D and

¹ Certain words omitted by Act 55 of 1963, Sec. 13 (w.e.f. 1st February, 1964).

² Subs. by Act 1 of 1934, Sec. 36 (w.e.f. 15th February, 1984).

³ Subs. by Act 55 of 1963, Sec. 23, for certain words (w.e.f. 1st February, 1964).

⁴ Sub-sections (2), (3), (4) substituted by Act No. 55 of 1963, Sec. 23, (w.e.f. 1st February, 1964).

on his certifying to such other Court in writing the amount remaining due or relief remaining unenforced under the decree.

(3) Without prejudice to the provisions of sub-section (1) or sub-section (2) any amount found due to the banking company by an order or decision of the High Court may, with the leave of the High Court, be recovered ¹[by the liquidator in the same manner as an arrear of land revenue and for the purpose of such recovery the liquidator may forward to the Collector within whose jurisdiction the property of the person against whom any order or decision of the High Court has been made is situate, a certificate under his signature specifying the amount so due and the person by whom it is payable.]

²[(4) On receipt of a certificate under sub-section (3), the Collector shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue

Provided that without prejudice to any other powers of the Collector, he shall, for the purposes of recovering the said amount, have all the powers, which under the Code of Civil Procedure, 1908 (5 of 1908), a Civil Court has for the purpose of the recovery of an amount due under a decree.]

45-U. [Power of High Court to make rules.]—The High Court may make rules consistent with this Act and the rules made under Sec. 52 prescribing

- (a) the manner in which inquiries and proceedings under Part III or Part III-A may be held;
- (b) the offences which may be tried summarily;
- (c) the authority to which, and the conditions subject to which, appeals maybe preferred and the manner in which such appeals maybe filed and heard;
- (d) any other manner for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

45-V. References to directors, etc. shall be construed as including references to past directors, etc.—For the removal of doubts, it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the banking company.

45-W. Part II not to apply to banking companies being wound up.—Nothing contained in Part II shall apply to a banking company which is being wound up.

45-X. Validation of certain proceedings.—Notwithstanding anything contained in Sec. 45-B or any other provision of this Part or in Sec. 11 of the Banking Companies (Amendment) Act, 1950 (20 of 1950), no proceeding held, judgment delivered or *decree or* order made before the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), by any Court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Act shall be invalid or be *deemed ever to* have been invalid merely by reason of the fact that such proceeding, judgment, decree or order was held, delivered or made

¹ Subs. by Act 55 of 1963, Sec. 24, for "in the same manner as an arrear of land revenue" (w.e.f. 1st February, 1964).

² Ins. by Act 55 of 1963, Sec. 24, for "in the same manner as an arrear of land revenue" (w.e.f. 1st February, 1964).

by a Court other than the High Court.

¹[PART III-B]

**PROVISIONS RELATING TO CERTAIN OPERATIONS
OF BANKING COMPANIES**

45-Y Power of Central Government to make rules for the preservation of records.—The Central Government may, after consultation **with the Reserve Bank and** by notification in the Official Gazette, make rules specifying the periods for which

- (a) banking company shall preserve its books, accounts and other documents; and
- (b) a banking company shall preserve and keep with itself different instruments paid by it.

45-Z. Return of paid instruments to customers.—(1) Where *a* banking company is required by its customers to return to him a paid instrument before the expiry of the period specified by rules made under Sec. 45-Y, the banking company shall not return the instrument except after making arid keeping in its possession a true copy of all relevant parts of such instrument, such copy being made by a mechanical or other process which in itself ensures the accuracy of the copy.

(2) The banking company shall be entitled to recover from the customer the cost of making such copies of the instrument.

Explanation.—*In this section, "customer" includes a Government department and a corporation incorporated by or under any law.*

45-ZA. Nomination for payment of depositor's money.—(1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the prescribed manner one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in *respect* of such deposit, where a nomination made in the prescribed manner *purports to confer* on any person the right to receive the amount of deposit from the banking company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to ^a!1 the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge of the banking company of its liability in respect of the deposit:

1. Ins. by Act 1 of 1984, Sec. 37 (w.e.f. 29th Mardi, 1985).

Provided that nothing contained in this sub-section shall effect the right or claim which any person may have against the person to whom any payment is made under this section.

COMMENTS

Refusal by Bank to permit withdrawal before maturity is wholly arbitrary.—In the instant case, it is not disputed that the petitioner is the nominee in respect of the deposits. In case Hira Lal the original depositor was alive, he could have withdrawn the deposits made by him. The only condition would have been that he could not have been given full interest on the said deposits. The petitioner being the nominee is also entitled to withdraw the amount before maturity. The Bank, of course, is entitled to change the rate of interest mentioned in the fixed deposit receipts if the amount is withdrawn before maturity. The refusal by the Bank to permit withdrawal before maturity is wholly arbitrary.¹

The bank, having accepted the deposit and having made use of that amount for all the years, cannot now be permitted to say that it will not allow withdrawal of the deposit by the petitioners who are admittedly the nominees of the depositor on the ground that the late Adivappa ought not to have nominated two persons instead of one person. Such a plea could have been taken only at the time of accepting the deposit. Having raised no such objection and having accepted the deposit, the bank must be deemed to have waived its objection to the making of two nominees. Section 45-ZA does not relate to the legal validity of the deposit or nomination. It is merely a direction to the bank to refuse to accept a deposit made with the names of two nominees. It is not intended by the section that in case the bank disregards the said direction: the whole transaction of deposit together with the nomination should be treated illegal. The bank cannot go back on the conditions subject to which the deposit has been made by Adivappa and accepted by it.²

Grant of Letters of Administration.—All monies payable to the nominees in respect of the transactions by the deceased would form part of his estate and would come to the common pool to be made available for distribution among his heirs. The application for grant of Letters of Administration was allowed.³

45-ZB. Notice of claims of other persons regarding deposits not receivable.— No notice of the claim of any person, other than the person or persons in whose name a deposit is held by a banking company shall be receivable by the banking company, nor shall the banking company be bound by any such notice even though expressly given to it

Provided that where any decree, order, certificate or other authority from a Court of competent jurisdiction relating to such deposit is produced before a banking company, the banking company shall take due note of such decree, order, certificate or other authority.

COMMENT

Bank has no right to withhold payment if funds are available.—Be that as it may, the conduct of the second opposite party in withholding clearance of the cheques issued

¹Parvati v. Central Bank of India, A.I.R. 1990 All. 103 at pp. 103, 104

²Chandramma v. State Bank of Hyderabad, 1990 (68) Com. Cas. 554 at p.557 (A.P.).

³Mrs. Leelawati Singh v. State, 75(1998) D.L.T. 694 at pp. 708, 709

by the complainant when there were sufficient funds in its accounts with the second opposite party is in contemptuous violation of the express provision of Sec. 45-ZB of the Banking Regulation Act of 1949. No banking institution should poke its nose into other man's affairs. It is not the business of a bank holding a customer's money in the customer's accounts to enter into or adjudicate upon the claims of third party. Even if a person had deposited his ill-gotten wealth in a bank, the bank must honour its commitments to the depositor and clear his cheques unless the bank itself has a claim against the depositor or unless there is an interdiction under the authority of law. The second opposite party ought not, therefore, to have entertained the claim alleged to have been put forward by the third opposite party that this amount of Rs.1,77,500/-belonged to it, instead it ought to have informed the third opposite party to seek remedy in the proper judicial form and cleared the cheque drawn by the complainant. That inference is irresistible that the second opposite party had tried to dabble in the dispute between the complainant and the third opposite party. The default of the second opposite party to clear the cheque for about 17 days is a clear case of deficiency of service and negligence. The point is found accordingly against the second opposite party.¹

45-ZC. Nomination for return of articles kept in safe custody with banking company.-(1) Where any person leaves any article in safe custody with a banking company such person may nominate, in the prescribed manner, one person to whom in the event of the death of the person leaving the articles in safe custody, such article may be returned by the banking company.

(2) Where the nominee is a minor, it shall be lawful for the person making the nomination to appoint in the prescribed manner any person to receive the article deposited W the event of his death during the minority of the nominee.

(3) The banking company shall, before returning any articles under this section to the nominee or the person appointed under sub-section (2), prepare in such manner as may be directed by the Reserve Bank from time to time, inventory of the said articles which shall be signed by such nominee or person and shall deliver a copy of the inventory so prepared to such nominee or person.

(4) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such article, where a nomination made in the prescribed manner purports to confer on any person the right to receive the article from the banking company, the nominee shall, on the death of the person leaving the article in safe custody, become entitled to the return of the article to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner

Provided that nothing contained in this section shall affect the right or claim which any person may have against the person to whom the article is returned in pursuance of this sub-section.

COMIMENTS

Scope of the section.-In the case of deposit of money the nominee, on the death of the depositor, not only acquires the right to receive the amount, but acquires in the amount, all the rights of the depositor to the exclusion of all other

¹ *Sakthivadivelu v. State Bank of India (S.C.D.R.C.), 1993 (2) Bank L./.* 473 at 17.478 (Mad.).

persons. The absence of any such provision vesting all the rights of the depositor in the nominee, in Sec. 45-ZE, is conspicuous, whereunder the nominee does not acquire any title in the locker or its contents. Sub-section (4) of Sec. 45-ZC dealing with deposit of articles also provides that on the death of a depositor, 'the nominee shall become entitled to the return of the article to the exclusion of all other persons'. The position, therefore, appears to be that while Sec. 45-ZA purports to confer on a nominee in respect of the deposit of money, not only the right to receive the amount but also the right to the amount itself, Sec. 45-ZC purports to confer on a nominee in respect of a deposit of articles only the right to the return of the article, but no right in the article itself.¹

Bank locker-Nominee's right-Validly constituted nominee cannot normally exclude the legal heirs of the nominator-Law explained.—A nominee, notwithstanding a valid nomination in his favour by the last holder in respect of any property, would not acquire any right, title or interest in the property itself, to the exclusion of the heirs on intestacy, unless the law governing such nomination clearly vests the same in the nominee. A nomination under Sec. 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable, but only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge. Section 45-ZE of the Act, contained in Part III-B thereof, was inserted by an Amendment in 1934 and sub-section (1) provides that a hirer of a locker may nominate another "to whom, in the event of the death of such individual (i.e. the hirer), the banking company may give access to the locker and liberty to remove the contents of the locker". Section 45-ZA deals with rights of a nominee in respect of deposit of money and Sec. 45-ZC deals with the rights of a nominee in respect of deposit of articles. Sub-section (2) of Sec. 45-ZA clearly provides that on the death of the depositor of money "the nominee shall ...become entitled to all the rights of the depositor in relation to such deposit to the exclusion of all other persons..." In the case of deposit of money, therefore, the nominee on the death of the depositor, not only acquires the right to receive the amount, but acquires in the amount, all the rights of the depositor to the exclusion of all other persons. The absence of any such provision vesting all the rights of the depositor in the nominee in Sec. 45-ZE, is conspicuous whereunder the nominee does not acquire any title in the locker or its contents. Sub-section (3) of Sec. 45-ZE dealing with deposit of article also provides that on the death of a depositor, "the nominee shall...become entitled to the return of the article to the exclusion of all other persons". The position, therefore, appears to be that while Sec. 45-ZA purports to confer on a nominee in respect of the deposit of money, not only the right to receive the amount but also the right to the amount itself, Sec. 45-ZE purports to confer on a nominee in respect of a deposit of articles only the right to the return of the article, but no right in the article itself.

Under Sec.370 of the Succession Act, 1925 there can be succession certificate only for debts and securities. The expression "security" has been defined in Sec. 370 (2) and cannot include the right of access to a Safety Locker and the right to receive or remove its contents. As to the expression "debt" there are authorities for the view that the expression in Sec. 370 does not include movable property other than a

¹ Rama Chakraborty N. Punjab National Barrk, 1991 (71) Com. Cas. 397x! pp. 4010, 407 (Cal)

specific or a ascertained sum of money. But even going by the wider connotation, the expression "debt" would mean a liability of one person to another person, in cash or in kind, whether secured or unsecured, which is or can be ascertained. The liability of say, a lessor, to allow the lessee access to the demised property on the termination of a lease in order to enable the lessee to remove his belongings therefrom is obviously not a debt or security by any test within the meaning of Sec. 370 of the Succession Act.¹

45-ZD. Notice of claims of other persons regarding articles not receivable.—No notice of the claim of any person, other than the person or persons in whose name any article is held by a banking company in safe custody, shall be receivable by the banking company, nor shall the banking company be bound by any such notice even though expressly given to it:

Provided that where any decree, order, certificate or other authority from a Court of competent jurisdiction relating to such article is produced before a banking company, the banking company shall take due note of such decree, order, certificate or other authority.

45-ZE. Release of contents of safety lockers.—(1) Where an individual is the sole hirer of a locker from a banking company, whether such locker is located in the safe deposit vault of such banking company or elsewhere, such individual may nominate one person to whom, in the event of the death of such individual, the banking company may give access to the locker and liberty to remove the contents of the locker.

(2) Where any such locker is hired from a banking company by two or more individuals jointly, and, under the contract of hire, the locker is to be operated under the joint signatures of two or more of such hirers, such hirers may nominate one or more persons to whom, in the event of the death of such joint-hirer or hirers, the banking company may give, jointly with the surviving joint-hirer or joint-hirers, as the case may be, access to the locker and liberty to remove the contents of such locker.

(3) Every nomination under sub-section (1) or sub-section (2) shall be made in the prescribed manner.

(4) The banking company shall, before permitting the removal of the contents of any locker by any nominee or jointly by any nominee and survivors as aforesaid, prepare, in such manner as may be directed by the Reserve Bank from time to time, an inventory of the contents of the locker which shall be signed by such nominee or jointly by such nominee and survivors and shall deliver a copy of the inventory so prepared to such nominee or nominee and survivors.

(5) On the removal of the contents of any locker by any nominee or jointly by any nominee and survivors as aforesaid, liability of the banking company in relation to the contents of the locker shall stand discharged.

(6) No suit for prosecution or other legal proceeding shall lie against a banking company for any damage caused or likely to be caused, for allowing access to any locker, and liberty to remove the contents of such locker, in pursuance of the provisions of sub-section (1) or sub-

¹ *Rama Chakraborty v. Manager, Punjab National Bank*, 95 C.W.N. 798 at pp. 802, 803, 804; *Sarbati Devi v Usha Devi*, A.I.R. 1984 S.C. 346 at p. 349 *Ramballav v. Gangadhar*, A.I.R. 1956 Cal. 275; *Life Insurance Corporation v. United Bank*, A.I.R. 1970 Cal. 513; *Surendra Tiwari v. Raj Kumari Devi*, 1999 (1) B.L.J. 168 at p. 171.

section (2), as the case may be.

45-ZF. Notice of claims of other persons regarding safety lockers not receivable.—No notice of the claim of any person, other than hirer or hirers of locker, shall be receivable by a banking company nor shall the banking company be bound by any such notice even though expressly given to it:

Provided that where any decree, other certificate or other authority from a Court of competent jurisdiction relating to the locker or its contents is produced before the banking company, the banking company shall take due note of such decree, certificate or other authority.

COMMENT

Where heirs of the deceased have obtained succession certificate, Bank should deliver contents of locker.—In the instant case six heirs joined together to have a succession certificate. No other person objected to the succession certificate being granted in favour of the six heirs who figure as petitioners. Thus, the requisite satisfaction of the bank vis-a-vis the heirs and the claimants of Shri S.L. Chopra can be arrived at from this single factor. In addition to this, these petitioners are ready and willing to abide by the terms and conditions and the guidelines.¹

PART IV

MISCELLANEOUS

46. Penalties.—(1) Whoever in any return, balance-sheet or other document ²[or any information required or furnished] by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub-section (2) of Sec. 35 it is his duty to produce or furnish, or to answer any question relating to the business of a banking company which he is asked by ³[an officer making an inspection or scrutiny under that section] he shall be punishable with a fine which may extend to ⁴[two thousand rupees] W respect of each offence, and if he persists in such refusal, to a further fine which may extend to ⁵[one hundred rupees] for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under Cl. (a) of sub-section (4) of Sec. 35, every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

¹ *Sharda Chopra v. State Bank of India*, A.I.R. 1997 M.P. 196 at p. 199

² Subs. By Act 95 of 1956, Sec. 9, for "required" (w.e.f. 14th January, 1957).

³ Subs. by Act 1 of 1934, Sec. 38 (w.e.f. 15th February, 1984).

⁴ Subs. By Act 33 of 1959, Sec. 33, for "five hundred rupees" (w.e.f. 1st October, 1959).

⁵ Subs. By Sec. 33, *ibid.*, for "fifty rupees" (w.e.f. 1st October, 1959)

¹[(4) If any other provision of this Act is contravened or if any default is made in—

(i) complying with any requirement of this Act or of any order, rules or direction made or condition imposed thereunder; or

(ii) carrying out the terms of, or the obligations under a scheme sanctioned under sub-section (7) of Sec. 45;

by any person, such person shall be punishable with fine which may extend to ²[fifty thousand rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where a contravention or default is a continuing one, with a further fine which may extend to two thousand and five hundred rupees] for every day, during which the contravention or default continues].

(5) Where a contravention or default has been committed by a company, every person who, at the time contravention or default was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention or default and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render, any such person liable to any punishment provided in this Act if he proves that the contravention or default was committed without his knowledge or that he exercised all due diligence to prevent the contravention or default.

(6) Notwithstanding anything contained in sub-section (5), where a contravention or default has been committed by a company, and it is proved that the same was committed with the consent or connivance of, or is attributable to any gross negligence on the part of, director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention or default and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.]

³[* * *]

COMMENT

Scope of.—A nationalised bank or a banking institution functioning under the provisions of the Banking Regulation Act and subject to the control of the Reserve Bank of India as the apex bank has no free hand in relation to the stipulation of interest on advances made by it to debtors and is bound by the periodical circulars issued by the Reserve Bank of India regulating the rate of interest on lending and this would constitute a special circumstance within the

¹ Subs. by Act 1 of 1984, Sec. 38 (w.e.f. 15th February, 1984).

² Subs. by Act 20 of 1994, Sec. 8 (w.e.f. 31st January, 1994).

³ Original sub-section (5) omitted by Act 33 of 1959, Sec. 33 (w.e.f. 1st October, 1959)

meaning of Expl. I to Sec. 3 (1) of Usurious Loans Act. In the instant case, it is not disputed by the respondents and the circumstance that petitioner is obliged to charge rates of interest in accordance with those circulars, would justify the recovery of the amounts as claimed by the petitioner from the respondents without the application of the provisions of the Usurious Loans Act to the transaction in question.¹

²[46-A. *Chairman, director, etc. to be public servants, for the purpose of Chapter IX of the Indian Penal Code.*—Every³ [Chairman, who is appointed on a whole-time basis, managing director, director, auditor] liquidator, manager and any other employees of a banking company shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code (45 of 1860).]

COMMENTS

Scope of the section.—Any authority which is under the control of the Government of India is a State within the purview of Art. 12. Nationalised Bank is an authority and is controlled by the Government of India and is instrumentality of Reserve Bank of India. It is a statutory body constituted under the Statute though registered under the Banking Act. Similarly, the word 'authorities' are very wide enough in Art. 12 of the Constitution of India and any authority which is an instrumentality or agency of the State falls within the purview of 'State' as defined in Art. 12 of the Constitution. Every employee of the State which falls within the purview of the 'State' as defined under Art. 12 automatically becomes the employee of the State. Every employee thus becomes the public employee because, he is an employee of the State. It will not be out of place to mention that number of co-operative societies are controlled, financed and managed by the State Government. Their employees will also become the 'public servant'.⁴

Public servant.—Section 46-A, Banking Regulation Act, 1949, lays down that a Chairman, director, manager and other employees of a banking company 'shall be deemed to be a public servant for the purposes of Chapter IX, Penal Code.'⁵

47. Cognizance of offences.—No Court shall take cognizance of any offence punishable under⁶ [sub-section (5) of Sec. 36-AA or] Sec. 46 except upon complaint in writing made by an officer of⁷ [the Reserve Bank or, as the case may be, the National Bank] generally or specially authorized in writing in this behalf by⁴ [the Reserve Bank or, as the case may be, the National Bank] and⁸ [no Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or any Court superior thereto], shall try any such offence.

COMMENT

Presidency Magistrate or a Magistrate of the first class shall try the offences punishable under sub-section (5) of Sec. 36-AA or Sec. 46 and no Court inferior to them can try the offences.

¹ *Indian Bank, Tiruvannamalai v. V.A. Balasubramania Gurukul A.I.R. 1982 Mad. 296 at p. 308: (1982) 2 M.L.J. 238.*

² *Ins. by Act 95 of 1956, Sec. 10 (w.e.f. 14th January, 1957).*

³ *Subs. by Act 20 of 1994, Sec. 9 (w.e.f. 31st January, 1994).*

⁴ *Kishan Lal Maharashtra v. State of Rajasthan 1988 Cri. L.J. 787 at p. 785.*

⁵ *N. Vaghul v. State of Maharashtra, 1987 Cri.L.J. 385 at p. 397 (Bonn).*

⁶ *Ins. by Act 55 of 1963, Sec. 26 (w.e.f. 15th February, 1964).*

⁷ *Subs. by Act 61 of 1982, the Second Schedule, Pt. 11, (w.e.f. 1st May, 1982).*

⁸ *Subs. by Act 1 of 1984, Sec. 39 (w.e.f. 25th February 1984).*

Cognizance shall be taken only upon complaint in writing made by an officer of the Reserve Bank generally or specially authorized in writing on this behalf by the Reserve Bank.

¹[47-A. *Power of Reserve Bank to impose penalty.*—(1) Notwithstanding anything contained in Sec. 46, if a contravention or default of the nature referred to in sub-section (3) or sub-section (4) of Sec. 46, as the case may be, is made by a banking company, then, the Reserve Bank may impose on such banking company—

(a) where the contravention is of the nature referred to in sub-section (3) of Sec. 46, a penalty not exceeding twice the amount of the deposits in respect of which such contravention was made;

(b) where the contravention or default is of the nature referred to in sub-section (1) of Sec. 46, a penalty not exceeding ²[five lakhs rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where such contravention or default is a continuing one, a further penalty which may extend to twenty-five thousand rupees]; for everyday, after the first, during which the contravention or default continues.

³[(2) For the purpose of adjudging the penalty under sub-section (1), the Reserve Bank shall serve notice on the banking company requiring it to show cause why the amount specified in the notice should not be imposed and a reasonable opportunity of being heard shall also be given to such banking company].

⁴[(3) * * * *]

(4) No complaint shall be filed against any banking company in any Court of law in respect of any contravention or default in respect of which any penalty has been imposed by the Reserve Bank under this section.

(5) Any penalty imposed by the Reserve Bank under this section shall be payable within a period of fourteen days from the date on which notice issued by the Reserve Bank demanding payment of the sum is served on the banking company and in the event of failure of the banking company to pay the sum within such period, may be levied on a direction made by the principal Civil Court having jurisdiction in the area where the registered office of the banking company is situated; or in the case of a banking company incorporated outside India, where its principal place of business in India is situated

Provided that no such direction shall be made except on an application made to the Court by the Reserve Bank or any officer authorized by that bank in this behalf.

(6) The Court which makes a direction under sub-section (5) shall issue a certificate specifying the sum payable by the banking company and every such certificate shall be enforceable in the same manner as if it were a decree made by the Court in a civil suit.

¹ Ins. by Act 58 of 2908, Sec. 17 (w.e.f. 1st February, 1969).

² Subs. by Act 20 of 1994, Sec. 70 (w.e.f. 31st January, 1994).

³ Subs. by *ibid.*, for sub-sections (2) and (3).

⁴ Omitted by *ibid.*, (w.e.f. 31st January 1994).

(7) Where any complaint has been filed against any banking company in any Court in respect of the contravention or default of the nature referred to in sub-section (2) or, as the case maybe, sub-section (4) of Sec. 46, then, no proceedings for the imposition of any penalty on the banking company shall be taken under this section.]

48. Application of fines.—A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

49. Special provisions for private banking companies.—The exemptions, whether express or implied, in favour of a private company in ¹[Sees. 90, 165, 182, 204 and 225, Cls. (a) and (b) of sub-section (1) of Sec. 293 and Secs. 300, 388-A and 416 of the Companies Act, 1956 (1 of 1956)], shall not operate in favour of a private company which is a banking company.

²**[49-A. Restriction on acceptance of deposits withdrawable by cheque.**— No person other than a banking company, the Reserve Bank, the State Bank of India or any other ³[banking institution, firm or other person notified by the Central Government in this behalf on the recommendation of the Reserve Bank] shall accept from the public deposits of money withdrawable by cheque

Provided that nothing contained in this section shall apply to any savings bank scheme run by the Government.

49-B. Change of name by a banking company.—Notwithstanding anything contained in Sec. 21 of the Companies Act, 1956 (1 of 1956), the Central Government shall not signify its approval to the change of name of any banking company unless the Reserve Bank certifies in writing that it has no objection to such change.

49-C. Alteration of memorandum of a banking company.— Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), no application for the confirmation of the memorandum of a banking company shall be maintainable unless the Reserve Bank certifies that there is no objection to such alteration.

50. Certain claims for compensation barred.—No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions ⁴⁴[contained in Secs. 10,12-A, 16, 35-A, 35-B, ⁵[36, 43-A and 45] or by reason of the compliance by a banking company with any order or direction given to it under this Act].

⁶**[51. Application of certain provisions to the State Bank of India and outer notified banks.**—⁷[(I) Without Prejudice to the Bank of India Act, 1955 (23 of 1955), or any other

¹ The words and figures "Secs. 17, 77, 83-B, 86-H and 91-D and sub-section (5) of Sec. 144 of the Indian Companies Act, 1973 (7 of 1973)" have successively been amended by Act 95 of 1956, Sec. 17, Act 33 of 1959, Sec. 34; and Act 55 of 1963, Sec. 27, to read as above.

² Ins. by Act 33 of 1959, Sec. 35 (w.e.f. 1st October, 1959).

³ Subs. by Act 55 of 1963, Sec. 28, for certain words (w.e.f. 1st February, 1964)

⁴ Subs. by Act 95 of 1956, Sec.12, for certain words (w.e.f. 14th January, 1957).

⁵ Subs. by Act 37 of 1960, Sec. 8, for "and 36".

⁶ Subs. by Act 79 of 1956, Sec. 43 and Sch. 11, for "Sec. 51 " (w.e.f. 22nd October, 1956).

⁷ Re-numbered by Act 1 of 1984, Sec. 40 (w.e.f.15th February, 1984)

enactment the provisions of Secs. 10, 13 to 15, 17, ¹[19 to 21-A, 23 to 28, 29, [excluding sub-section (3) ²(sub-sections (1-B), (1-C) and (2) of Secs. 30, 31] 34, 35, 35-A, 36 (excluding Cl. (d) of sub-section (1)], 45-Y to 45-ZF, 46 to 48), 50, 52 and 53 shall also apply; so far as may be, to and in relation to the State Bank of India ³[or any corresponding new bank or any Regional Rural Bank or any subsidiary bank] as they apply to and in relation to banking companies:

⁴[Provided that—

(a) nothing contained in Cl. (c) of sub-section (1) of Sec. 10 shall apply to the Chairman of the State Bank of India or to a ⁹[managing director] of any subsidiary bank ii so far as said clause precludes him from being a director of, or holding an office in, any institution approved by the Reserve Bank;

⁵[(b) nothing contained in sub-clause (iii) of Cl. (b) of sub-section (1) of Sec. 20 shall apply to any bank referred to in sub-section (1), in so far as the said sub-clause (iii) of Cl. (b) precludes that bank from entering into any commitment for granting any loan or advance to or on behalf of a company (not being a Government company) in which not less than forty per cent. of the paid-up capital is held (whether singly or taken together) by the Central Government or the Reserve Bank or a corporation owned by that bank; and

(c) nothing contained in Sec. 46 or in Sec. 47-A shall apply to,—

(i) an officer of the Central Government or the Reserve Bank, nominated or appointed as director of the State Bank of India or any corresponding new bank or a Regional Rural Bank or any subsidiary bank or a banking company, or

(ii) an officer of the State Bank of India or a corresponding new bank or a Regional Rural Bank or a subsidiary bank nominated or appointed as director of any of the said banks (not being the bank of which he is an officer or of a banking company.

⁶[* * * *]

⁷[(2) References to a banking company in any rule or direction relating to any provisions of this Act referred to in sub-section (1) shall, except where such rule or direction provides otherwise, be construed as referring also to the State Bank of India, a corresponding new bank, a Regional Rural Bank and a subsidiary bank.]

52. Power of Central Government to make rules.—(1) The Central Government may, after consultation with the Reserve Bank, make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the Official Gazette.

¹ Subs. by Act I of 1934, Sec. 40 (w.e.f. 15th February, 1984)

² Subs. by Act 66 of 1988, Sec. 10, for the figures "31" (w.e.f. 30th December, 1988).

³ Subs. by Act 1 of 1984, Sec. 40 (w.e.f. 15th February, 1984).

⁴ Subs. by Act 38 of 1959, Sec. 64 and Sch. III, Pt. III, for the proviso (w.e.f. 10th September, 1959).

⁵ Subs. by Act 7 of 1984, Sec. 40 (w.e.f. 15th February, 1984).

⁶ Explanation omitted by Act 58 of 1968, Sec. 18 (w.e.f. 1st February, 1969)

⁷ Ins. by Act 1 of 1984, Sec. 40 (w.e.f. 15th February, 1984)

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted ¹[and the form in which the official liquidator may file list of debtors to the Court having jurisdiction under Part III or Part III-A and the particulars which such lists may contain and any other matter which has to be, or may be, prescribed.)

²[* * * *]

³[(4) The Central Government may, by rules made under this section annul, alter or add to, all or any of the provisions of the Fourth Schedule.]

³[(5) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

COMMENTS

Scope of section.—The Central Government have power to make rules and this power is exercised after consultation with the Reserve Bank. The rules shall be published in the Official Gazette which are necessary for the purpose of giving effect to the provisions of the Act. These rules provide how to submit the returns, what type of form is necessary in which the official liquidator may file lists of debtors to the Court having jurisdiction. The Central Government have also got the power to alter or add to all or any of the provisions of the Fourth Schedule.

Assistance by legal practitioner in enquiry.— *In the absence of a rule/ regulation, it could not have been said that refusal to permit to be defended by a legal practitioner, even when demanded by a delinquent official would still be a denial of reasonable opportunity of hearing and thereby violating rules of natural justice. The Apex Court in the case of Crescent Dyes and Chemical's case, while considering the case, where Standing Orders of the Company permitted the delinquent official to be represented only by a clerk or workman working with him in the same department was pleased to observe as under:—*

“.....that the right to be represented through counsel or agent can be restricted, controlled or regulated by a statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right.”

In the present case, regulation specifically provides for securing the assistance of legal practitioner by a delinquent official, whenever a disciplinary

¹ Added by Act 52 of 1953, Sec. 77

² Sub-section (3) omitted by Act 7 of 1984; Sec. 47 (w.e.f. 15th February, 1984)

³ Ins. by Act 1 of 1984, Sec. 41 (w.e.f. 15.11.1984).

authority appoints a Presenting Officer who is a legally trained person to defend the case of the management, immaterial of the gravity of charges etc.¹

Disciplinary proceedings.—In the instant case it is manifest that neither the Original Authority nor the Appellate Authority considered the matter on merits having due regard to the explanation submitted by the writ petitioner. It may be open to the Disciplinary Authority while agreeing with the reasons given by the Enquiring Authority, not to give elaborate reasons. But that does not mean that the Disciplinary Authority need not give any reason at all, while agreeing with the order of the Disciplinary Authority. It is manifest that the Appellate Authority has not considered the explanation submitted by the petitioner with reference to the findings of the Enquiring Authority holding that the charges levelled against the writ petitioner have been proved against him. That apart, a perusal of the order of the Appellate Authority shows that the Appellate Authority has not applied his mind at all with reference to the points raised by the writ petitioner against the imposition of punishment as well as against the findings of the Disciplinary Authority. The order of the Appellate Authority is a laconic order and it does not contain reasons. In view of the aforesaid reasons, the impugned orders are not sustainable and are liable to be quashed. With reference to the contention that in the instant case there should be a Presenting Officer, it may be considered that if the Enquiring Authority is to consider only the documentary evidence, it may not be necessary to appoint a Presenting Officer. But, if the Enquiring Authority is to consider the evidence let in on behalf of the prosecution, it is necessary that the Disciplinary Authority should appoint a Presenting Officer. In the instant case, the Enquiring Authority has acted as the Presenting Officer, it was held that he cannot play the role of the Prosecutor as well as the Judge.²

It would be reasonable to hold that in case of the employees of the statutory institutions which are, in fact, the instrumentalities or agencies of the State, the employees will be deemed to be holding an appointment in connection with the affairs of the State particularly when, in fact, the statutory corporation is totally financed by the Government, W fact, owned by the Government and managed by the Government and its employees discharge the duties in public interest and which are in the realms of the duties the Government is bound to discharge in view of the Constitution. It would be reasonable to infer that the corporation being an instrumentality or the agent was functioning in connection with the affairs of the State. There is no reason not to hold that the employees of such a corporation are holding an appointment in connection with the affairs of the State.³

53. Powers to exempt in certain cases.—The Central Government may, on the recommendation of the Reserve Bank, declare, by the notification in the Official Gazette, that any or all of the provisions of this Act shall not apply to any banking company⁴[or institution] or to any class of banking companies either generally or for such period as may be specified.

¹ B.A. Prabhakar Rai v. General Manager, Vijaya Bank, 1997 Lab.I.C. 1659 at pp. 1663, 1664 (Knt.).

² T.N. Govindarajan v. Management, Indian Overseas Bank, 1992 Lab. I.C. 1832 at p. 1835 (Mad.).

³ Vijay Kumar Bhambari v. Rant Nath Bajaj, A.I.R. 1990 P.& H. 208 at p. 217

⁴ Ins. by Act 55 of 1963, Sec. 29 (w.e.f. 1st February, 1964).

54. Protection of action taken under the Act.—(1) No suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for anything which is in good faith done or intended to be done in pursuance of this Act.

(2) Save as otherwise expressly provided by or under this Act, no suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act.

55. Amendment of Act 2 of 1934.—The Reserve Bank of India Act, 1934, shall be amended in the manner specified in the fourth column of the First Schedule, and the amendments to Sec. 18 thereof as specified in the said Schedule shall be deemed to have had effect on and from the 20th day of September, 1947.

¹**(55-A. Power to remove difficulties.**—If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, as occasion requires, do anything (not inconsistent with the provisions of this Act) which appears to it to be necessary for the purpose of removing the difficulty

Provided that no such power shall be exercised after the expiry of a period of three years from the commencement of Sec. 20 of the Banking Laws (Amendment) Act, 1968 (58 of 1968).

²[PART V

APPLICATION OF THE ACT TO CO-OPERATIVE BANKS

56. Act to apply to co-operative societies subject to modifications.—The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies to the following modifications, namely

(a) Throughout this Act, unless the context otherwise requires,—

(i) references to a "banking company" or "the company" or "such company" shall be construed as reference to a Co-operative Bank,

(ii) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(b) in Sec. 2, the words and figures "the Companies Act, 1956 (1 of 1956) and" shall be omitted;

c) in Sec. 5,—

³[(i) after Cl. (cc), the following clauses shall be inserted, namely:

(cci) "Co-operative Bank" means a State Co-operative Bank,
a Central Co-operative Bank and a primary Co-operative Bank;

(ccii) "co-operative credit society" means a co-operative society,
the primary object of which is to provide financial

¹ Ins. by Act 58 of 1968, Sec. 20 (w.e.f. 1st February, 1969).

² Ins. by Act 23 of 1965, Sec. 14 (w.e.f. 1st March, 1966). The Original Sec. 56 was repealed by Act 36 of 1957, Sec. 2 and Sch. I

³ Subs. by Act 61 of 1981, Sec. 61 and the Second Schedule, Pt. II (w.e.f. 1st May, 1982).

accommodation to its members and includes a co-operative land mortgage bank;

(cciii) "director", in relation to a co-operative society, includes a member of any committee or body for the time being vested with the management of the affairs of that society;

(cciv) "primary agricultural credit society" means a co-operative society,—

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as a member

Provided that this sub-clause shall not apply to the admission of a Co-operative Bank as a member by reason of such Co-operative Bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society,—

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserve of which are not less than one lakh of rupees; and

(3) the bye-law of which do not permit admission of any other co-operative society as a member

Provided that this sub-clause shall not apply to the admission of a Co-operative Bank as a member by reason of such Co-operative Bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccvi) "primary credit society" means a co-operative society, other than a primary agricultural credit society—

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are less than one lakh of rupees; and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member

Provided that this sub-clause shall not apply to the admission of a Co-operative Bank as a member by reason of such Co-operative Bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.

Explanation.—If any dispute arises as to the primary object or principal business of any co-operative society referred to in Cls.

(cciv), (ccz9 and (ccvi), a determination thereof by the Reserve Bank . shall be final;

(ccvii) "Central co-operative bank", "co-operative society" "primary rural credit society" and "State Co-operative Bank" shall

have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981;]

¹[(ii) Cls. (ft), (h) and (lib) shall be omitted; (d) for Sec. 5-A, the following section shall be substituted, namely:

"5-A. *Act to override bye-law, etc.*—(1) The provisions of ²[this Act] shall have effect, notwithstanding anything to the contrary contained in the bye-law of a co-operative society, or in any agreement executed by it, or in any resolution passed by it in general meeting, or by its Board of Directors or other body entrusted with the management of its affairs, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965).

(2) Any provision contained in the bye-law, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of l[this Act], become or be void, as the case play be.";

(e) in Sec. 6, in sub-section (1),—

(i) in Cl. (b), the words "but excluding the business of a managing agent or secretary and treasurer of a company" shall be omitted;

(ii) in Cl. (d), after the word "company", the words "co-operative society" shall be inserted ;

(iii) in Cl. (m), after the word "company", the words "or co-operative society" shall be inserted;

³[(f) for Sec. 7, the following section shall be substituted, namely

"7. *Use of words 'bank', 'banker', 'banking'*.—(1) No co-operative society other than a Co-operative Bank shall use as part of its name or in connection with its business any of the words 'bank', 'banker', or 'banking', and no co-operative society shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) Nothing in this section shall apply to—

(a) a primary credit society, or

(b) a co-operative society formed for the protection of the Mutual *interest of* Co-operative Banks or Co-operative Land Mortgage Banks, or

(c) any co-operative society, not being a primary credit society, formed by the employees of—

¹ Subs. by Act 1 of 198, Sec. 42 (w.e.f. 15th February, 1984).

² Subs. by Act 58 of 1968, Sec. 21, For "this Part" (w.e.f. 1st February, 1969)

³ Subs. by Act 1 of 19,34, Sec. 42 (w.e.f. 15th February,17984)

(i) a banking company or the State Bank of India or a corresponding new bank or a subsidiary bank of such banking company, State Bank of India or a corresponding new bank, or

(ii) a Co-operative Bank or a primary credit society or a Co-operative Land Mortgage Bank,

in so far as the word 'bank', 'banker' or 'banking' appears as part of the name of the employer bank, or as the case may be, of the bank, whose subsidiary the employer bank is;"

¹[(*fi*) in Sec. 8, for the proviso, the following proviso shall be substituted, namely

"Provided that this section shall not apply,-

(a) to any such business as aforesaid which was in the course of being transacted on the commencement of Cl. (*ii*) of Sec. 42 of the Banking Laws (Amendment) Act, 1983, so, however, that the said business shall, be completed before the expiry of one year from such commencement, or

(c) to any business as is specified in pursuance of Cl. (o) of sub-section (1) of Sec. 6;"

(*fi*) in Sec. 9, for the second proviso, the following proviso shall be substituted, namely:

Provided further that in the case of a primary credit society which becomes a primary Co-operative Bank after the commencement of Cl. (*iii*) of Sec. 42 of the Banking Laws (Amendment) Act, 1983, the period of seven years shall commence from the day it so becomes a primary Co-operative Bank

Provided also that the Reserve Bank may, in any particular case, extend the aforesaid period of seven years by such period as it may consider necessary where it is satisfied that such extension would be in the interests of the depositors of the Co-operative Bank.]

(*g*)²[Sections 10,10-A, ³[10-B, 10-BB, 10-C] and 10-D] shall be omitted;

(*h*) for Sec. 11, the following section shall be substituted, namely:

"11. Requirement as to minimum paid-up capital and reserves.— (1)

Notwithstanding any law relating to co-operative societies for the time being in force, no Co-operative Bank shall commence or carry on the business of banking in India unless the aggregate value of its paid-up capital and reserves is not less than one lakh rupees:

Provided that nothing in this sub-section shall apply to,-

(n) any such bank which is carrying on such business at the commencement of the Banking Laws (applicable to Co-operative Societies) Act, 1965 (23 of 1965), for a period of three years from such commencement; or

¹ Ins. by Act 1 of 1984, Sec. 42 (w.e.f. 15th February, 1984).

² Subs. by Act 58 of 1968, Sec. 2, for "Sec. 10" (w.e.f. 1st February, 1969).

³ Subs. by Act I (f 7984, Sec. 42 (w.e.f. 15th February, 1984).

(b) to a primary credit society which becomes a primary Co-operative Bank after such commencement, for a period of two years from the date it so becomes a primary Co-operative Bank or for such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the primary Co-operative Bank may think fit in any particular case to allow.

(2) For the purposes of this section, 'value' means the real or exchangeable value and the normal value which may be shown in the books of the Co-operative Bank concerned.

(3) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any such Co-operative Bank, a determination thereof by the Reserve Bank shall be final for the purpose of this section.";

(i) Sections 12, 12-A, 13 and 15 to 17 shall be omitted;

(j) for Sec. 18, the following section shall be substituted, namely

"18. Cash reserves.—(1) Every Co-operative Bank, not being a State Co-operative Bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), (hereinafter referred to as a Scheduled State Co-operative Bank), shall maintain in India by way of cash reserve with itself of balance in a current account with the Reserve Bank or the State Co-operative Bank of the State concerned or by way of net balance in current accounts, or, in case of a primary Co-operative Bank, with the Central Co-operative Bank of the district concerned, or in one or more of the aforesaid ways, a sum equivalent to at least three per cent. of the total of its demand and time liabilities in India, as on the last Friday of the second preceding fortnight and shall submit to the Reserve Bank before the fifteenth day of every month a return showing the amount so held on alternative Fridays during a month with particulars of its demand the time liabilities in India on such Friday or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881(26 of 1881) at the close of business on the preceding working day.

Explanation.—In this section and in Sec. 24—

(a) 'liabilities in India' shall not include—

(i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the Co-operative Bank;¹

(ii) any advance taken from a State Government, the Reserve Bank, the Development Bank, the Exim Bank,²[the Reconstruction Bank],³[the National Housing Bank], the National Bank,⁴[the Small Industries Bank] or from the National Co-operative Development Corporation

¹ Subs. by Act 1 of 1934, Sec. 42 (w.e.f. 15th February, 1984).

² Ins. by Act 62 of 1984, Sec. 71, Sch. III (w.e.f. 20th March, 1985).

³ Ins. by Act 53 of 1987, Sec. 56 and Sch. II (w.e.f. 9th July, 1988).

⁴ Ins. by Act 39 of 1989, Sec. 53 and Sch. 11, Pt. 111 (w.e.f. 7th March, 1990)

established under Sec. 3 of the National Co-operative Development Corporation Act, 1962 (26 of 1962), by the Co-operative Bank;

(iii) in the case of a State or Central Co-operative Bank, also any deposit of money with it representing the reserve fund or any part thereof maintained with it by any other co-operative society within its area of operation, and in the case of a Central Co-operative Bank, also an advance taken by it from the State Co-operative Bank of the State concerned;

(iv) in the case of a primary Co-operative Bank, also any advance taken by it from the State Co-operative Bank of the State concerned or the Central Co-operative Bank of the district concerned ;

(v) in the case of any Co-operative Bank, which has granted an advance against any balance maintained with it, such balance to the extent of the amount outstanding in respect of such advance, and

(vi) in the case of any Co-operative Bank, the amount of any advance or other credit arrangement drawn and availed of against approved securities;

(b) fortnight shall mean the period from Saturday to the second following Friday, both days inclusive;

(c) net balance in current accounts shall in relation to a Co-operative Bank, mean the excess, if any, of the aggregate of the credit balances in current account maintained by that Co-operative Bank with the State Bank of India or a subsidiary bank or a corresponding new bank, over the aggregate of the credit balances in current accounts held by the said banks with such Co-operative Bank;

(d) for the purpose of computation of liabilities, the aggregate of the liabilities of a Co-operative Bank to the State Bank of India, a subsidiary bank, a corresponding new bank, a Regional Rural Bank, a banking company, or any other financial institution notified by the Central Government in this behalf shall be reduced by the aggregate of the liabilities of all such banks and institutions to the Co-operative Bank;

(e) any cash with a Co-operative Bank or any balance held by a Co-operative Bank with another bank, shall not, to the extent such cash or such balances represent the balance in, or investment of, agricultural credit Stabilisation Fund of such Co-operative Bank, be deemed to be cash maintained in India.

(2) The Reserve Bank may, for the purposes of this section and Sec. 24, specify from time to time, with reference to any transaction or class of transactions, that such transaction or transactions shall be regarded as liability in India of a Co-operative Bank, and if any question arises as to whether any transaction or class of transactions shall be regarded for the

purposes of this section and Sec. 24, as liability in India of a Co-operative Bank, the decision of the Reserve Bank thereon shall be final."

(k) for Sec. 19, the following section shall be substituted, namely

"19. Restriction on holding shares in other co-operative societies.—No Co-operative Bank shall hold shares in any other co-operative society except to such extent and subject to such conditions as the Reserve Bank may specify in that behalf:

Provided that nothing contained in this section shall apply to—

(i) shares acquired through funds provided by the State Government for that purpose;

(ii) in the case of a Central Co-operative Bank, the holding of shares in the State Co-operative Bank to which it is affiliated;

(iii) in the case of a primary Co-operative Bank, the holding of shares in the Central Co-operative Bank of the State in which it is registered

Provided further that where any shares are held by a Co-operative Bank in contravention of this section at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), the Co-operative Bank shall without delay report the matter to the Reserve Bank and shall, notwithstanding anything contained in this section, be entitled to hold the shares for such period and on such conditions as the Reserve Bank may specify.";

¹[(1) for Sec. 20 of the Principal Act, the following section shall be substituted, namely

"20. Restrictions on loans and advances.—(1) No Co-operative Bank shall—

(a) make any loans or advances on the security of its own shares; or

(b) grant unsecured loans or advances—

(i) to any of its directors; or

(ii) to firms or private companies in which any of its directors is interested as partner or managing agent or guarantor or to individuals in cases where any of its directors is a guarantor; or

(iii) to any company in which the Chairman of the Board of Directors of the Co-operative Bank (where the appointment of a Chairman is for a fixed term) is interested as its managing agent, or where there is no managing agent, as its Chairman or Managing Director:

Provided that nothing in Cl. (b) shall apply to the grant of unsecured loans or advances—

(a) made by a Co-operative Bank—

¹ Subs. by Act 58 of 1968, Sec. 21, for "Cl. (1)" (w.e.f. 1st February, 1969).

(i) against bills for supplies or services made or rendered to Government or bills of exchange arising out of *bona fide* commercial or trade transactions, or

(ii) in respect whereof trust-receipts are furnished to the Co-operative Bank;

(b) made by a primary Co-operative Bank to any of its directors or to any other person within such limits and on such terms and conditions as may be approved by the Reserve Bank in this behalf.

(2) Every Co-operative Bank shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the prescribed form and manner showing all unsecured loans and advances granted by it to companies in cases [other than those in which the Co-operative Bank is prohibited under sub-section (1) to make unsecured loans and advances] in which any of its directors is interested as director or managing agent or guarantor.

(3) If, on examination of any return submitted under sub-section (2) it appears to the Reserve Bank that any loans or advances referred to in that sub-section are being granted to the detriment to the interests of the depositors of the Co-operative Bank, the Reserve Bank may, by order in writing, prohibit the Co-operative Bank from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the Co-operative Bank to secure the re-payment of such loans or advance within such time as may be specified in the order."];

¹[*mi*] in Sec. 20-A, in sub-section (1),

(i) the words and figures "notwithstanding anything to the contrary contained in Sec. 293 of the Companies Act, 1956 (1 of 1956) shall be omitted ;

(ii) in Cl. (a), for the words "any of its directors", the words "any of its past or present directors" shall be substituted];

(*n*) in Sec. 21, in sub-section (2), in Cls. (*c*) and (*d*), for the words "any one company, firm, association of persons or individual", the words "any one party" shall be substituted;

(*o*) in Sec. 22,—

(i) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:

"(1) Save as hereinafter provided, no co-operative society shall carry on banking business in India unless-

(a) it is a primary credit society, or

(b) it is a Co-operative Bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose:

¹ Subs. by Act 1 of 1984, Sec. 42 (w.e.f. 15th February, 1984).

Provided that nothing in this sub-section shall apply to a co-operative society, not being a primary credit society or a Cooperative Bank carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), for a period of one year from such commencement.

¹["(2) Every Co-operative Society carrying on business as a Co-operative Bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), shall before the expiry of three months from such commencement, every Co-operative Bank which comes into existence as a result of the division of any other co-operative society carrying on business as a Co-operative Bank, or the amalgamation of two or more co-operative societies carrying on banking business shall, before the expiry of three months from its so coming into existence, every primary credit society which becomes a primary Co-operative Bank after such commencement shall before the expiry of three months from the date on which it so becomes a primary Co-operative Bank, and every co-operative society other than a primary credit society shall before commencing banking business in India, apply in writing to the Reserve Bank for a licence under this section

Provided that nothing in Cl. (b) of sub-section (1) shall be deemed to prohibit—

(i) a co-operative society carrying on business as Co-operative Bank at the commencement of the Banking Laws (Application Co-operative Societies) Act, 1965 (23 of 1965); or

(ii) a Co-operative Bank which has come into existence as a result of the division of any other co-operative society carrying on business as a Co-operative Bank, or the amalgamation of two or more co-operative societies carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), or at any time thereafter; or

(iii) a primary credit society which becomes a primary Co-operative Bank after such commencement, from carrying on banking business until it is granted a licence in pursuance of this section or is, by a notice in writing, notified by the Reserve Bank that the licence cannot be granted to it".]

²["(ii) sub-section (3-A) shall be omitted;

(iii) in sub-section (4) in Cl. (iii), the words, brackets, figure and letter and sub-section (3-A) shall be omitted;"]

¹ Subs. by Act 1 of 1934, Sec. 42 (w.e.f. 15th February, 1984)

² Ibid.

¹ [(p) in Sec. 23,-

² [(i) for sub-section (1), the following sub-section shall be substituted, namely:

"(1) Without obtaining the prior permission of the Reserve Bank, no Co-operative Bank shall open a new place of business or change otherwise than within the same city, town or village, the location of an existing place of business:

Provided that nothing in this sub-section shall apply to—

(a) the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the Co-operative Bank already has a place of business, for the purpose of affording facilities to the public on the occasion of an exhibition, a conference or a *mela* or any other like occasion;

(b) the ³[opening or changing the location or branches] by a Central Co-operative Bank within the area of its operation.";

² [(ii) after sub-section (4), the following sub-section shall be inserted, namely

"(4-A) Any Co-operative Bank other than a primary Co-operative Bank requiring the permission of the Reserve Bank under this section shall forward its application to the Reserve Bank through the National Bank which shall give its comments on the merits of the application and send it to the Reserve Bank Provided that the Co-operative Bank shall also send an advance copy of the application directly to the Reserve Bank";

⁴ [(q) in Sec. 24,—

(i) in sub-section (1), the words "After the expiry of two years from the commencement of this Act" shall be omitted;

(ii) for sub-sections (2) and (2-A), the following sub-sections shall be substituted, namely

"(2) In computing the amount for the purposes of subsection (1)—

(a) any balances maintained in India by a Co-operative Bank in current account with the Reserve Bank or by way of net balance in current account and in the case of a scheduled State Co-operative Bank, also the balance required under Sec. 42 of the Reserve Bank of India Act, 1934 (2 of 1934) to be so maintained,

¹ Ins. by Act 61 of 1981, and Sec. 61 and Sch. II (w.e.f. 1st May, 1982).

² Subs. by Act 23 of 1965, Sec. 14.

³ Subs. by Act 58 of 1968, Sec. 21, for "opening of branches" (w.e.f. 1st February, 1969).

⁴ Subs. by Act 1 of 1984, Sec. 42 (w.e.f. 15th February, 1984).

(b) any balances maintained by a Central Co-operative Bank with the State Co-operative Bank of the State concerned, and

(c) any balances maintained by a primary Cooperative Bank with Central Co-operative Bank of the district concerned or with the State Co-operative Bank of the State concerned,

shall be deemed to be cash maintained in India.

(2-A) (a) Notwithstanding anything contained in sub-section (1) and sub-section (2), after the expiry of two years from the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the Co-operative Bank concerned, may think fit in any particular case to allow

(i) a scheduled State Co-operative Bank, in addition to the average daily balance which it is or may be, required to maintain under Sec. 42 of the Reserve Bank of India Act, 1934 (2 of 1934), and

(ii) every other Co-operative Bank, in addition to the cash reserve which it is required to maintain under Sec. 18,

shall maintain in India, in cash, or in gold valued at a price not exceeding the current market price or in unencumbered approved securities valued at a price determined in accordance with such one or more of, or combination of, the following methods of valuation, namely, valuation with reference to cost price, market price, book value, or face value as may be specified by the Reserve Bank from time to time, an amount which shall not, at the close of business on any day, be less than twenty-five per cent. or such other percentage not exceeding forty per cent. as the Reserve Bank may, from time to time, by notification in the Official Gazette, specify, of the total of its demand and time liabilities in India, as on the last Friday of the second preceding fortnight.

(b) in computing the amount for the purpose of Cl. (a) the following shall be deemed to be cash maintained in India, namely:

(i) any balance maintained by a scheduled State Cooperative Bank with the Reserve Bank in excess of the balance required to be maintained by it under Sec. 42 of the Reserve Bank of India Act, 1934 (2 of 1934),

(ii) any cash or balances maintained in India by a Co-operative Bank, other than a scheduled State Co-operative Bank with itself or with the State Co-operative Bank of the State concerned, or in current accounts with the Reserve Bank or by way of net balance in current accounts and in the case of a primary Co-operative Bank, also any

balance maintained with the Central Co-operative Bank of the district concerned, in excess of the aggregate of the cash or balances required to be maintained under Sec. 18,

(iii) any net balance in current accounts.

Explanation.—For the purposes of this sub-section,—

(a) approved securities, or a portion thereof, representing investment of moneys of Agricultural Credit Stabilisation Fund of a Co-operative Bank shall not be deemed to be unencumbered approved securities,

(b) in case a Co-operative Bank has taken an advance against any balance maintained with the State Co-operative Bank of the State concerned or with the Central Co-operative Bank of the district concerned, such balance to the extent to which it has been drawn against or availed of shall not be deemed to be cash maintained in India;

(c) for the purpose of Cl. (a) the market price of an approved security shall be the price as on the date of the issue of the notification or as on any earlier or later date, as may be notified from time to time by the Reserve Bank in respect of any class or classes of securities;"

(iii) in sub-section (3), for the proviso, the following proviso shall be substituted, namely:

"Provided that every Co-operative Bank, other than a primary co-operative bank, shall also furnish within the said period, a copy of the said return to the National Bank."

(iv) in sub-section (6), in Cl. (a) for the words "fourteen days", the words "thirty days" shall be substituted;]

¹[*qq*) after Sec. 24, the following section shall be inserted, namely:

"24-A. Power to exempt.—Without prejudice to the provisions of Sec. 53, the Reserve Bank may, by notification in the Official Gazette, declare that, for such period and subject to such conditions as may be specified in such notification the whole or any part of the provisions of Sec. 18 or Sec. 24, as may be specified therein, shall not apply to any Co-operative Bank or class of Co-operative Banks, with reference to all or any of the offices of such Co-operative Bank or banks, or with reference of the whole or any part of the assets and liabilities of such Co-operative Bank or Banks."

(r) Section 25 shall be omitted;

²[(*r-i*) in the second proviso to Sec. 26, for the expression "Regional Rural Bank", the expression "Co-operative Bank, other than a primary Co-operative Bank" shall be substituted;

¹ Ins. by Act 1 of 1984, Sec. 42 (w.e.f. 15th February, 1984).

² Ins. by Act 61 of 1981, the Second Schedule, Pt. 11 (w.e.f. 1st May, 1982).

(r-ii) in Sec. 27, for sub-section (3), the following sub-section shall be substituted, namely:

"(3) Every Co-operative Bank, other than a primary Co-operative Bank, shall submit a copy of the return which it submits to the Reserve Bank, under sub-section (1) also to the National Bank and the powers exercisable by the Reserve Bank under sub-section (2) may also be exercised by the National Bank in relation to Co-operative Banks, other than primary Co-operative Banks";]

(s) for Secs. 29 and 30, the following section shall be substituted, namely:

"29. Accounts and balance-sheet—(1) At the expiration of each year ending with the 30th day of June, ¹[or at the expiration of a period of twelve months ending with such date as the Central Government may by notification in the Official Gazette specify in this behalf,] every Co-operative Bank, in respect of all business transacted by it, shall prepare with reference to that year ¹[or the period] a balance-sheet and profit and loss account as on the last working day of the year ¹[or the period] in the forms set out in the Third Schedule or is near thereto as circumstances admit:

¹[Provided that with a view to facilitating the transition from one period of accounting to another period of accounting under this sub-section, the Central Government may, by order published in the Official Gazette, make such provisions as it considers necessary or expedient for the preparation of, or for other matters relating to, the balance-sheet or profit and loss account in respect of the concerned year or period, as the case may be.]

(2) The balance-sheet and profit and loss account shall be signed by the manager or the principal officer of the bank and where there are more than three directors of the bank, by at least three of those directors, or where there are not more than three directors, by all the directors.

(3) The Central Government, after giving not less than three months' notice of its intention so to do by a notification in the Official Gazette, may from time to time by a like notification amend the forms set out in the Third Schedule";

²[(t) in Sec. 31,—

(i) for the words "within three months" and "of three months", the words "within six months" and "of six months" shall, respectively be substituted ;

(ii) for the second proviso, the following proviso shall be substituted, namely

"Provided further that a Co-operative Bank other than a primary Co-operative Bank shall furnish such returns also to the National Bank";]

(u) Sections 32 to 34 shall be omitted;

¹ Ins. by Act 54 of 1991, Sec. 2

² Ins. by Act 61 of 1981, the Second Schedule, Pt. II, Sec. (w.e.f. 1st May, 1982).

(v) in Sec. 34-A, sub-section (3) shall be omitted;
 (w) in Sec. 35,—

(i) in sub-section (1),—

(a) for the words and figures "Sec. 235 of the Companies Act, 1956 (1 of 1956)", the words "any law relating to co-operative societies for the time being in force" shall be substituted;

¹[(b) the following proviso shall be inserted at the end, namely:

"Provided that the Reserve Bank may, if it considers it necessary or expedient so to do, cause an inspection to be made of a primary Co-operative Bank under this sub-section by one or more officers of a State Co-operative Bank in the State in which such primary Co-operative Bank is registered";]

(ii) in sub-section (4), Cl. (b) shall be omitted;

²[(iii) after sub-section (4), the following sub-section shall be inserted, namely:

"(4-A) Without prejudice to the provisions of sub-section (4) the Reserve Bank may, if it considers it necessary or expedient so to do supply a copy of the report on any inspection or scrutiny to the State co-operative bank and the Registrar of Co-operative Societies of the State in which the bank which has been inspected or whose affairs have been scrutinised is registered";]

³ [(iv)] in sub-section (6), for the expressions "Regional Rural Banks" and "Regional Rural Bank" wherever they occur, the expressions "Co-operative Bank other than a primary Co-operative Bank" shall, respectively be substituted.];

⁴[(v)] the Explanation shall be omitted;

(x) in Sec. 35-A in sub-section (1) in Cl. (c), for the words "any banking company", the words "the banking business of any Co-operative Bank" shall be substituted;

(y) Section 35-B shall be omitted;

⁵[(z) in Sec. 36, in sub-section (1),—

(a) Clause (b) shall be omitted;

(b) for Cl. (d), the following clause shall be substituted, namely:

"(d) at any time, if it is satisfied that for the reorganisation or expansion of co-operative credit on sound lines it is necessary so to do, by an order in writing and on such terms and conditions as may be specified therein:

¹ Subs. by Act 1 of 1984, Sec. 42 (w.e.f. 15th February, 1984).

² Ins. by *ibid.*, (7o.e.f. 15th February, 1984).

³ Re-numbered by Act 61 of 1981, the Second Schedule, Pt. II (w.e.f. 1st May, 1982).

⁴ Re-numbered by *ibid.*

⁵ Subs. by Act 1 of 1984, Sec. 42 (w.e.f. 15th February, 1984).

(i) depute one or more of its officers to which the proceedings at any meeting of the Board of Directors of the Co-operative Bank or of any other body constituted by it and require the Co-operative Bank to give an opportunity to the officer so deputed to be heard at such meeting and to offer such advice on such matters as the officer may consider necessary or proper for the reorganisation and expansion of co-operative credit on sound lines, and also require such officer to send a report of such proceedings to the Reserve Bank;

(ii) appoint one or more of its officers to observe the manner in which the affairs of the Co-operative Bank or its offices or branches are conducted and make a report thereon."]

(z-a) in Sec. 36-A, ---

(i) for sub-section (1), the following sub-section shall be substituted, namely:

"(1) The provisions of Sec. 11, Sec. 18 and Sec. 24 shall not apply to a Co-operative Bank which has been refused a licence under Sec. 22 or whose licence has been cancelled under that section or which is or has been prohibited or precluded from accepting deposits by virtue of any order made under this Act or of any alteration made in its bye-laws";

(ii) after sub-section (2), the following sub-section shall be inserted, namely:

"(2) Subject to the provisions of sub-sections (1) and (2), a co-operative society carrying on business as a primary Co-operative Bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), or a co-operative society which becomes a primary Co-operative Bank after such commencement shall, notwithstanding that it does not at any time thereafter satisfy the requirements of the definition of primary Co-operative Bank ¹[in Cl. (ccv) of Sec. 5] continue to be a primary Co-operative Bank within the meaning of this Act, and may, with the approval of the Reserve Bank and subject to such terms and conditions as the Reserve Bank may specify in that behalf, continue to carry on the business of banking.";

¹[(z-aa) in Sec. 36-AD, sub-section (3) shall be omitted];

(z-b) Part 11-A, ²[Pt.11-C], Pt. III, except sub-sections (1), (2) and (3) of Sec. 45, Pt. III-A except Sec. 45-W shall be omitted;

¹[(z-c) in Sec. 46,-

(i) in sub-section (4), the word "or" occurring at the end of Cl. (i) and Cl. (u) shall be omitted;

¹ Subs. by Act 1 of 1984, Sec. 42 (w.e.f. 15th February, 1984).

² Ins. by Act 58 of 1968, Sec. 21 W.e.f. 1st February, 1969).

(ii) in Cl. (a) of the *Explanation*, after the words "includes A", the words "co-operative society" shall be inserted;

(z-d) in Sec. 47, the words, brackets, figures and letters "sub-section (5) of Sec. 36-AA or" shall be omitted;

(z-e) Section 49 shall be omitted;

(z f) in Sec. 49-A, for the proviso, the following proviso shall be substituted, namely

"Provided that nothing contained in this section shall apply to-

- a) a primary credit society,
- b) any other co-operative society accepting such deposits at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), for a period of one year from the date of such commencement; and
- c) any savings bank scheme run by the Government. ,

(z-g) Sections 49-B and 49-C shall be omitted;

(z-h) in Sec. 50, the figures and letters "10,12-A,16", "35-B" and "34-A" shall be omitted;

(z-i) Section 51 shall be omitted;

(z j) in Sec. 52,-

(i) in sub-section (2), the words, figures and letter "and the form in which the official liquidator may file lists of debtors to the Court having jurisdiction under Part III or Part III-A and the particulars which such lists may contain" shall be omitted;

(ii) sub-section (4) shall be omitted;

¹[(z ji) in Sec. 54, after the expression "Reserve Bank" wherever it occurs, the expression "or the National Bank" shall be inserted.]

(z-k) for Sec. 55 and the First Schedule, the following section shall be substituted, namely

"55. Act 18 of 1891 and Act 46 of 1949 to apply in relation to Co-operative Banks.—

(1) The Bankers' Books Evidence Act, 1891 shall apply in relation to a Co-operative Bank as it applies in relation to a bank as defined in Sec. 2 of that Act.

(2) The Banking Companies (Legal Practitioners' Clients' Accounts) Act, 1949, shall apply in relation to a Co-operative Bank as it applies in relation to a banking company as defined in Sec. 2 of that Act.";

(z-l) for the Third Schedule and the Fourth Schedule, the following Schedule shall be substituted, namely:

¹ Ins. by Act 62 of 1981, Sec. 61 and the Second Schedule, Pt. II (w.e.f. 1st May, 1982).

"THE THIRD SCHEDULE"

[See Sec. 29]

FORM A**Form of balance-sheet**

CAPITAL AND LIABILITIES	PROPERTY AND ASSETS
Rs. P. Rs. P.	Rs. P. Rs. P.
<p>1. Capital:</p> <p>(i) Authorised capital ...Shares of Rs each ...Shares of Rs..... each ..</p> <p>(ii) Subscribed capital ..Shares of Rs..... each ..Shares of Rs..... each </p> <p>(iii) Amount called up On shares at Rs each less calls unpaid On .. shares at Rs... each less calls unpaid Of (iii) above held by (a) Individuals (b) Co-operative institutions. (c) State Government</p> <p>2. Reserve Fund and other reserves :</p> <p>(i) Statutory Reserve. (ii) Agricultural (Credit Stabilization Fund). (iii) Building Fund (iv) Dividend Equalization Fund (v) Special Bad Debts Reserve..... (vi) Bad and Doubtful Debts Reserve..... (vii) Investment Depreciation Reserve..... (viii) Other funds and reserves (to be specified)</p> <p>3. Principal/Subsidiary State Partnership Fund Account: For share capital of (i) Central Co-operative Banks</p>	<p>1. Cash In hand and with Reserve Bank 1 [the National Bank], State Bank of India, State Co-operative Bank and Central Co-operative Bank </p> <p>2. Balances with other banks</p> <p>(i) Current deposits (ii) Savings bank deposits (iii) Fixed deposits..</p> <p>3. Money at call and short Notice</p> <p>4. Investments</p> <p>(i) In Central and State Government securities (at book value).....: Face value Rs Market value Rs . (ii) Other trustee securities (iii) Shares in co-operative institutions other than in item (5) below..... (iv) Other investments (to be Specified</p> <p>5. Investments out of the Principal/ Subsidiary State Partnership Fund In shares of- (i) Central Co-operative Banks..... (ii) Primary agricultural credit societies..... (iii) Other societies</p>

CAPITAL AND LIABILITIES

PROPERTY AND ASSETS

Rs. P.	Rs. P.
	(ii) Primary agricultural credit societies
	(iii) Other societies.....
4. Deposits and other accounts:	
	(i) Fixed deposits*
	(a) Individuals"
	(b) Central Co-operative Banks.....
	(c) Other societies.....
	(ii) Savings bank deposits-
	(a) Individuals**
	(b) Central co-operative banks.....
	(c) Other societies.....
	(iii) Current deposits.....
	(a) Individuals**.....
	(b) Central Co-operative banks.....
	(c) Other societies
	(iv) Money at call and short notice
5. Borrowings*:	
	(i) From the Reserve Bank [the National Bank] of India/State/ Central Co-operative Bank
	(a) Short-term loans, cash credits and over-drafts-
	Of which secured against—
	(A) Government and other approved securities.....
	(B) Other tangible securities @
	(b) Medium-term loans
	Of which secured against-
	(A) Government and other approved securities
	(B) Other tangible securities @
	(c) Long-term loans
	Of which secured against
	(A) Government and other approved securities.....
	(B) Other tangible securities@

Rs. P.	Rs. P.
6. Advances:	
	(i) Short-term loans, cash credits, overdrafts and bills discounted.....
	Of which secured against-
	(a) Government and other approved securities
	(b) Other tangible securities@
	Of the advances, amount due from Individuals.....
	Of the advances, amount overdue
	Considered bad and doubtful of recovery.....
	(ii) Medium-term loans.....
	Of which secured against
	(a) Government and other approved securities
	(b) Other tangible securities@.....
	Of the advances, amount due from individuals
	Of the advances, amount overdue
	Considered bad and doubtful of recovery.....
	(iii) Long-term loans
	Of which secured against-
	(a) Government and other approved securities
	(b) Other tangible securities @
	Of the advances, amount due from individuals
	Of the advances, amount overdue:
	Considered bad and doubtful of recovery.....
7. Interest receivable	
	Of which overdue
	Considered bad and doubtful of recovery

CAPITAL AND LIABILITIES	PROPERTY AND ASSETS
Rs. P. Rs. P.	Rs. P. Rs. P.
(ii) From the State Bank of India- (a) Short-term loans, cash credits and overdrafts Of which secured against (A) Government and other approved securities (B) Other tangible securities@ (b) Medium-term loans Of which secured against- (A) Government and other approved securities..... (B) Other tangible securities@ (c) Long-term loans Of which secured against (A) Government and other approved securities (B) Other tangible securities@ (iii) From the State Government- (a) Short-term loans Of which secured against (A) Government and other approved securities@ (B) Other tangible Securities (b) Medium-term loans Of which secured against- (A) Government and other approved securities (B) Other tangible securities@ (c) Long-term loans Of which secured against- (A) Government and other approved securities (B) Other tangible securities@ (iv) Loans from other sources (source and security to be specified)	8. Bills receivable being bills for collection as <i>per contra</i>..... 9. Branch adjustments..... 10. Premises less depreciation..... 11. Furniture and fixtures less depreciation..... 12. Other assets (to be specified)..... 13. Non-banking assets acquired satisfaction of claims (stating mode of valuation) 14. Profit and Loss
6. Bills for collection being bills receivable as <i>per contra</i>	

FORM B
FORM OF PROFIT AND LOSS ACCOUNT

Profit and Loss account for the year ended

EXPENDITURE		INCOME	
	Rs.	P.	
	Rs.	P.	
1. Interest on deposits, borrowing, etc			1. Interest and discount
2. Salaries and allowances and provident fund			2. Commissions exchange and brokerage
3. Directors' and local committee members' fees and allowances.....			3. Subsidies and donations
4. Rent, taxes, insurance, lighting, etc .			4. Income from non-banking assets and profit from sale of or dealing with such assets.....
5. Law charges			5. Other receipts
6. Postage, telegrams and telephone charges			6. Loss (if any)
7. Auditor's fees			
8. Depreciation and repairs to property			
9. Stationery, printing and advertisement, etc			
10. Loss from sale of or dealing with non-banking assets			
11. Other expenditure			
12. Balance of profit			
Total			Total

General Instructions.-The corresponding figures (to the nearest rupee, if so desired) for the year immediately preceding the year to which the profit and loss account relates should be shown in separate columns."]

THE FIRST SCHEDULE

(See Sec. 55)

AMENDMENTS

Year	No 1	No 2	Short title 3	Amendment 4
1934	2		The Reserve Bank of India Act, 1934.	<p>(1) In Sec. 17 to Cl. (15-A), the following shall be added, namely “and under the Banking Companies Act, 149”</p> <p>(2) (a) Section 18 shall be re-numbered as sub-section (1) of that section and in sub-section (1), as so re-numbered, (i) in Cl. (3), after the words "of that section", the following words shall be added, namely : "or when the loan or advance, is made to a banking company as defined in the Banking Companies Act, 1949, against such other form of security as the bank may consider sufficient”, (ii) for the words "under this section" wherever they occur, the words "under this sub-section" shall be substituted;</p> <p>(b) after sub-section (1), as so renumbered the following, sub-section shall be inserted, namely;</p> <p>"(2) Where a banking company to which a loan or advance has been made under the provisions of Cl. (3) of sub section (1) is wound up, and sums due to the bank in respect of such loan or advance shall, subject only to the claims, if any, of any other banking company in respect of any prior loan or advance made by such banking company against any security, be a first charge on the assets of the banking company".</p> <p>(3) In Sec. 42, for sub-section (6), the following sub-section shall be substituted namely:</p> <p>"(6) The bank shall, save as hereinafter provided, by notification in the <i>Gazette of India</i>,—</p> <p>(a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in any Province of India and which—</p> <p style="padding-left: 40px;">(i) has a paid-up capital and reserve of aggregate value of not less than five lakhs of rupees, and</p>

Year	No	Short title	Amendment
1	2	3	4

(ii) satisfies the bank that its affairs are not being conducted in a manner detrimental to the interest of its depositors; and

(iii) is a company as defined in Cl. (2) of Sec. 2 of the Indian Companies Act, 1913 (7 of 1913)¹ or a corporation or a company incorporated by or under any law in force in any place outside the Provinces of India;

(b) direct the exclusion from that Schedule of any scheduled bank-

(i) the aggregate value of whose paid-up capital and reserves becomes at any time less than five lakhs of rupees, or

(ii) which is, in the opinion of the bank after making an inspection under Sec. 35 of the Banking Companies Act, 1949, conducting its affairs to the detriment of the interests of its depositors, or

(iii) which goes into liquidation or otherwise ceases to carry on banking business

Provided that the bank may, on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction under sub-clause (i) or sub-clause (ii) of Cl. (b) for such period as the bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs ;

(c) alter the description in that Schedule whenever any scheduled bank changes its name.

¹ See now the Companies Act, 1956 (1 of 1956)

Explanation.-In this sub-section the expression 'value' means the real or exchangeable value and not the nominal value which may be shown in the books of the bank concerned; and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the bank shall be final for the purposes of this sub-section."

THE SECOND SCHEDULE.-[Repeals] Rep. by the Repealing and Amending Act, 1956 (36 of 1957), Sec. 2 and Sch.1.

¹ [THE THIRD SCHEDULE

(See Sec. 29)

²[FORM A

Form of Balance Sheet

Balance Sheet of ... (here enter name of the Banking Company)

Balance Sheet as on 31st March(Year)

(ooo's omitted)

Capital and Liabilities	Schedule	As on 31-3 (Current Year)	As on 31-3 (Previous Year)
Capital	1		
Reserves and Surplus	2		
Deposits	3		
Borrowings	4		
Other liabilities and provisions	5		
Total			
ASSETS			
Cash and balances with Reserve Bank of India	6		
Balances with banks and money at call and short notice	7		
Investments	8		
Advances	9		
Fixed-Assets	10		
Other Assets	11		
Total			

¹ Subs. By S.O. 28 (E), dated 18th January, 1991 (w.e.f. 18th April, 1991)

² Subs. By S.O. 20 (E), dated 26th March 1992

Capital and Liabilities	Schedule	As on 31-3 ... (Current Year)	As on 31-3... (Previous Year)
Contingent liabilities			
Bill for collection	12		

SCHEDULE I*Capital*

	As on 31-3 ... (Current Year)	As on 31-3 ... (Previous Year)
1. For Nationalised Banks Capital (Fully owned by Central Government)		
II. For Banks incorporated outside India Capital		
(i) The amount brought in by banks by way of start-up-capital (as prescribed by RBI should be shown under this head).		
(ii) Amount of deposit kept with the RBI under Sec. 11 (2) of the Banking Regulation Act, 1949.		
Total		
III. For other Banks		
Authorised Capital (Shares of Rs. each)		
Issued capital (Shares of Rs. each)		
Subscribed Capital (Shares of Rs. each)		
Called-up Capital (Shares of Rs. each)		
Less: Calls unpaid		
Add: Forfeited share		

SCHEDULE 2
[Reserves and Surplus]

	As on 31-3 ... (Current Year)	As on 31-3 ... Previous Year)
I. Statutory Reserves.		
Opening Balance		
Additions during the year		
Deductions during the year		
II. Capital Reserves		
Opening Balance		
Additions during the Year		
Deductions during the year		
III. Shares Premium		
Opening Balance		

Additions during the year
Deductions during the year
IV. Revenue and other Reserves
Opening Balance
Additions during the year
Deductions during the year
V. Balance in Profit and Loss Account
Total : (1, II, III, IV and V)

SCHEDULE 3
Deposits

	As on 31-3 ... (Current Year)	As on 31-3 ... (Previous Year)
A.I. Demand Deposits		
(i) From banks		
(ii) From others		
II. Savings Banks Deposits		
III. Term Deposits		
(i) From banks		
(ii) From others		
Total: (I, II, III)		
B. (i) Deposits of branches in India		
(ii) Deposits of branches outside India		
Total		

SCHEDULE 4
Borrowings

	As on 31-3... (Current Year)	As on 31-3... (Previous Year)
I.-Borrowing in India		
(i) Reserve Bank of India		
(ii) Other banks		
(iii) Other institutions and agencies		
II. Borrowings outside India		
Total (I and II)		

Secured borrowings included in I
and II above
Rs.

SCHEDULE 5
Other Liabilities and Provisions

	As on 31-3 (Current Year)	As on 31-3.... (Previous Year)
I. Bill payable		
II. Inter-office adjustment (net)		
III. Interest accrued		
IV. Others (including provisions)		
Total		

SCHEDULE 6
Cash and Balances with Reserve Bank of India

	As on 31-3 ... (Current Year)	As on 31-3... (Previous Year)
I. Cash in hand (including foreign currency notes)		
II. Balance with Reserve Bank of India (i) in Current Account (ii) in Other Accounts		
Total (I and II)		

SCHEDULE 7
Balance with Banks and Money at Call and Short Notice

	As on 31-3 (Current Year)	As on 31-3 (Previous Year)
I. In India		
(i) Balances with banks		
(a) in Current Accounts		
(b) In Other Deposit Accounts		
(ii) Money at call and short notice		
(a) With banks		
(b) With other institutions		
Total (i and ii)		

- II. Outside India
 (i) in Current Accounts
 (li) in other Deposit Accounts
 (iii) Money at call and short notice

Total (i, ii & iii)

GRAND TOTAL: (I and II)

SCHEDULE 8.

Investments

	As on 31-3 (Current Year)	As on 31-3 (Previous Year)
I. Investments in India in		
(i) Government securities		
(ii) Other approved securities		
(iii) Shares		
(iv) Debentures and Bonds		
(v) Subsidiaries and/or joint ventures		
(vi) Others (to be specified)		
Total		
II. Investments outside India in		
(i) Government securities (including local authorities)		
(ii) Subsidiaries and/or joint ventures abroad		
(iii) Other investments (to be specified)		
Total		
GRAND TOTAL: (I and II)		

SCHEDULE 9

Advances

	As on 31-3 ... (Current Year)	As on 31-3... (Previous Year)
A. (i) Bills purchased and discounted		
(ii) Cash credits, overdrafts and loans repayable in demand		

(iii) Term loans			
	TOTAL:		<hr/>
			<hr/>
B. (i) Secured by tangible assets			
(ii) Covered by Bank/Government Guarantees			
(iii) Unsecured			
	TOTAL:		<hr/>
			<hr/>
C.I. Advances in India			
(i) Priority Sector			
(ii) Public Sector			
(iii) Banks			
(iv) Others			
	TOTAL:		<hr/>
			<hr/>
II. Advances outside India			
(i) Due from banks			
(ii) Due from others			
(n) Bills purchased and discounted			
(b) Syndicate loans			
(b) Others			
	TOTAL:		<hr/>
	GRAND TOTAL: (C. I and II)		<hr/>
			<hr/>

SCHEDULE 10*Fixed Assets*

	As on 31-3 ... (Current Year)	As on 31-3.... (Previous Year)
	<hr/>	<hr/>
I. Premises		
At cost as on 31st March of the preceding year.		
Additions during the year		
Deductions during the year		
Depreciation to date		
II. Other Fixed Assets (including furniture and fixtures)		
At cost as on 31st March of the preceding year		
Additions during the year		
Deductions during the year		
Depreciation to date		
TOTAL: (I and II)		
	<hr/>	<hr/>

SCHEDULE 11***Other Assets***

	As on 31-3 (Current Year)	As on 31-3 (Previous Year)
I. Inter-office adjustments (net)		
II. Interest accrued		
III. Tax paid in advance/tax deducted at source		
IV. Stationery and stamps		
V. Non-banking assets acquired in satisfaction of claims		
VI. Others*		
TOTAL:		

*In case there is any unadjusted balance of loss the same may be shown under this item with appropriate foot-note.

SCHEDULE 12***Contingent Availabilities***

	As on 31-3 ... (Current Year)	As on 31-3... (Previous Year)
I. Claims against the bank not acknowledged as debts		
II. Liabilities for partly paid investments		
III. Liability on account of outstanding forward exchange contracts		
IV. Guarantee given on behalf of constituents		
(a) In India		
(b) Outside India		
V. Acceptances, endorsements and other obligations		
VI. Other items for which the bank is contingently liable		
TOTAL:		

FORM B***Form of Profit and Loss Account for the year ended on 31st March (year)***

	Schedule No.	Year ended on 31-3 (Current Year)	Year ended on 31-3 (Previous Year)
I. INCOME			
Interest earned	13
Other income	14
TOTAL:			
II. EXPENDITURE			
Interest expended	15
Operating expenses	16
Provisions and contingencies			
TOTAL:			
III. PROFIT/LOSS			
Net Profit/Loss (-) for the year Profit/ Loss (-) brought forward			
TOTAL:			
IV. APPROPRIATIONS			
Transfer to statutory reserves			
Transfer to other reserves			
Transfer to Government/ proposed dividend /Balance carried over to balance sheet.			
TOTAL:			

SCHEDULE 13***Interest Earned***

	Year ended on 31-3... (Current Year)	Year ended on 31-3 (Previous Year)
I. Interest/ discount on advance/bills		
II. Income on investments		
III. Interest on balances with Reserve Bank of India and other inter-bank funds		
Others		
TOTAL:		

SCHEDULE 14***Other Income***

	Year ended on 31-3 ..(Current Year)	Year ended on 31-3 ..(Previous Year)
I. Commission, exchange and brokerage		
II. Profit on sale of investments <i>Less:</i> Loss on sale of investments		
111. Profit on re-valuation of investments <i>Less:</i> Loss on re-valuation of investments		
IV. Profit on sale of land, buildings and other assets <i>Less:</i> Loss on sale of land, buildings and other assets		
V. Profit on exchange transactions <i>Less :</i> Loss on exchange transactions		
VI. Income earned by way of dividends, etc. from subsidiaries/ companies and/or joint ventures abroad/in India		
VII. Miscellaneous Income		
TOTAL:		

NOTE: Under items II to V loss figures may be shown in brackets.

SCHEDULE 15***Interest Expended***

	Year ended on 31-3 (Current year)	Year ended on 31-3 (Previous year)
I. Interest on deposits		
II. Interest on Reserve Bank of India/Inter-bank borrowings		
III. Others		
TOTAL:		

SCHEDULE 15
Operating expenses

	Year ended on 31-3 (Current year)	Year ended on 31-3 (Previous year)
I. Payments to and provisions for employees		
11. Rent, taxes and lighting		
III. Printing and stationery		
IV. Advertisement and publicity		
V. Depreciation on bank's property		
VI. Director's fees, allowances and expenses		
VII. Auditors' fees and expenses (including branch auditors)		
VIII. Law Charges		
IX. Postages, Telegrams, Telephones, etc.		
X. Repairs and maintenance		
XI. Insurance		
XII. Other expenditure		
TOTAL:		

¹[**THE FOURTH SCHEDULE**
(See rule 45-D (2))

List of Debtors

1. The Official Liquidator shall from time to time submit lists of debtors' to the High Court, each list being verified by an affidavit.
2. Every such list shall contain the following particulars
 - (a) Names and addresses of the debtors;
 - (b) Amount of debt due to the banking company by each debtor;
 - (c) Rate of interest, if any, and the date up to which such interest has been . calculated in the case of each debtor;
 - (d) Description of papers, writing and documents, if any, relating to each debtor;
 - (e) Relief or reliefs claimed against each debtors.
3. (a) In every such list, the Official Liquidator shall distinguish between the debts for which the banking company holds any security other than a personal security and the debts for which no security or only a personal security is given.
 - (b) In the case of secured debts, particulars of the securities claimed by the banking company, and whenever possible their estimated value, and the names and addresses of

¹Added by Act 52 of 1953, Sec. 12.¹

person or persons, if any, having an interest in the securities or the right of redemption therein.

(c) In case the debt is guaranteed by any person or persons, the name and address of the guarantor or guarantors with particulars as to the extent to which the debts is guaranteed and description of documents, papers or writings in support of such guarantee.

4. If the debtor is adjudged insolvent either before or after he has been included in any such list, but before such list is settled, the name and address of the assignee or the receiver of his estate, as the case may be, should be stated in, or added to, the list.

5. If the original debtor dies either before or after he has been included in any such list, but before such list is settled, there shall be substituted in his place the names and addresses of his legal representatives as far as the Official Liquidator is able to ascertain.]

¹[THE FIFTH SCHEDULE

(See Sec. 36-AG)

Principles of Compensation

1. The compensation to be given under Sec. 36-AG shall be an amount equal to the value of the assets of the acquired bank as on the day immediately before the appointed day, computed in accordance with the provisions of Part I of this Schedule *less* the total amount of liabilities thereof computed in accordance with the provisions of Part II of this Schedule.

Part I Assets

For the purposes of this Part "assets" means the total of the following:

(a) the amount of cash in hand and with the Reserve Bank and the State Bank of India (*including foreign* currency notes which shall be converted at the market rate of exchange);

(b) the amount of balances with any bank, whether on deposit or current account, and money at call and short notice, balances held outside India being converted at any market rate of exchange:

Provided that any balances which are not realisable in full shall be deemed to be debts and valued accordingly:-

(c) the market value, as on the day immediately before the appointed day, of any securities, shares, debentures, bonds and other investments, held by the bank concerned.

Explanation.—For the purposes of this clause,-

(i) securities of the Central and State Government [other than the securities specified in sub-clauses (ii) and (iii) of this Explanation] maturing for redemption, within five years from the appointed day shall be valued at the face value or the market value, whichever is higher;

(ii) securities of the Central Government, such as Post Office Certificates and Treasury Savings Deposit Certificates and any other securities or certificates issued or to be issued under the Small Savings Scheme of the Central Government, shall be valued at their face value or the encashable value or the market value, as on the day immediately before the appointed day, whichever is higher;

¹ Ins. by Act 58 of 1968, Sec. 22 (w.e.f. 1st Febrinry, 1969).

(iii) where the market value of any Government security such as the zamindari abolition bonds or other similar security in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the face value thereof or as otherwise appropriate, the security shall be valued at such an amount as is considered reasonable having regard to the instalments of principal and interest remaining to be paid, the period during which such instalments are payable, the yield of any security, issued by the Government to which the security pertains and having the same or approximately the same maturity, and other relevant factors;

(iv) where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its average market value over any reasonable period;

(v) where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable having regard to the financial position of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors;

(d) the amount of advances (including loans, cash credits, overdrafts, bill purchased and discounted), and other debts, whether secured or unsecured, to the extent to which they are reasonably considered recoverable, having regard to the value of the security, if any, the operations on the account, the reported worth and respectability of the borrower, the prospects of realisation and other relevant considerations;

(e) the value of any land or buildings;

(f) the total amount of the premia paid, in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium shall have been paid bears to the total term of the lease;

(g) the written down value as per books, or the realisable value, as may be considered reasonable, of all furniture, fixtures, and fittings;

(h) the market or realisable value, as may be appropriate, of other assets appearing on the books of the bank, no value being allowed for capitalised expenses, such as share selling commission, organisational expenses and brokerage, losses incurred and similar other items.

Part 11-Liabilities

For the purposes of this Part "liabilities" means the total amount of all outside liabilities existing on the appointed day, and all contingent liabilities which the Central Government or the transferee bank may reasonably be expected to be required to meet out of its own resources on or after the appointed day and where the acquired bank is a banking company incorporated outside India, includes the liabilities of the offices and branches in India of the acquired bank to its offices and branches outside India.

2. If the acquired bank is not incorporated in India, the assets or, as the case may be, the liabilities of the bank shall be, for the purposes of Part I and Part II, and subject to the other provisions therein, the assets and liabilities of the offices of the bank situated in India.

Compensation payable to shareholders

3. Every shareholder of the acquired bank to whom the compensation is payable, shall be given such amount as compensation, as bears to the total compensation, calculated in accordance with the provisions of paragraph 1, the same proportion as the amount of paid-up capital of the shares held by the shareholder bears to the total paid-up capital of the acquired bank.

Certain dividends not to be taken into account

4. No separate compensation shall be payable for any profits or any dividend in respect of any period immediately preceding the appointed day, for which, in the ordinary course, profit would have been transferred or dividend declared after the appointed day.]
