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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L)NO.34124 OF 2023

Shri Sandeep S. Ghandat & Others … Petitioners

Versus

Reserve Bank of India & Others …Respondents

Mr. Atul Rajadhyaksha, Sr. Advocate with Mr. Uttam Dubey, Mr. Abhishek Karnik i/b. Mr. Bhushan Bankar, for the Petitioners.

Mr. Venkatesh Dhond, Sr. Advocate with Mr. Rohan Kelkar, Mr. Prasad Shenoy, Mr. Parag Sharma, Ms. Aditi Pathak, Ms. Kirti Ojha, Mr. Vijay Salokhe, Ms. Megha More, Mr. Ankit Upadhyay, Ms. Saloni Chordia i/b. BLAC Co., for Respondent No.1 - RBI.

Mr. Naushad Engineer, Sr. Advocate with Mr. Viraj Parikh and Mr. Omkar Kelkar, for Respondent Nos.2, 3 and 5.

Smt. Uma Palsuledesai, AGP for the Respondent-State.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

RESERVED ON: 23rd OCTOBER, 2024
PRONOUNCED ON: 18th NOVEMBER, 2024

JUDGEMENT (Per FIRDOSH P. POONIWALLA, J.):-

1. **RULE.** Respondents waive service. Rule made returnable forthwith, heard finally by consent of the parties.

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2. This Writ Petition has been filed under Article 226 of the Constitution of India, seeking the following final reliefs:-

> *"(a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ and/or order and direction under Article 226 of the Constitution of India calling for records and proceedings of the impugned order dated 24.11.2023 passed by the Respondent No.1 and after looking into legality and propriety of the impugned order dated 24.11.2023, the same be quashed and set aside;*
>
> *(b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ and/or order and direction under Article 226 of the Constitution of India after looking into legality and propriety of the impugned order dated 24.11.2023 direct the Respondent No.1 to withdraw the impugned order dated 24.11.2023."*

3. The case of the Petitioners in the Petition is as follows:-

(a) In 1964, Respondent No.7, i.e. Abhyudaya Co-operative Bank Limited, was registered under the Maharashtra Co-operative Societies Act, 1960 ("the MCS Act, 1960").

(b) In 1965, Respondent No.7 was converted into a bank with the permission of Respondent No.1, i.e. Reserve Bank of India, and the Commissioner of Co-operation.

(c) In September, 1988, Respondent No.7 complied with the norms to become a Scheduled Bank. Thereafter, Respondent No.7 has been declared as a Scheduled Bank by Respondent No.1.

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(d) In 2007, two banks in Gujarat and one bank in Karnataka were amalgamated into Respondent No.7 and, therefore, Respondent No.1 became a Multi State Co-operative Bank w.e.f. September, 2007.

(e) Respondent No.1 issued supervisory directions from 28th February, 2014 to 17th February,2020 to Respondent No.7 whereby restrictions were placed upon Respondent No.7 for advancing loans and thus restricting Respondent No.7 to loan transactions for not more than Rs.6329.11 Crores.

(f) It is the case of the Petitioner that this affected profit of Respondent No.7.

(g) On 17th February, 2020, Respondent No.1 lifted the supervisory restrictions upon the advances of loan and Respondent No.7 was permitted to advance loans as per the exposure limit, which was Rs. 130 Crores per borrower.

(h) It is the case of the Petitioners that the functioning of Respondent No.7 was very smooth and it was making profit. In March, 2020, Respondent No.7 was classified as "A" class in the Audit of the Bank up to March, 2020. Respondent No.7 could pay dividend at the rate of 5% for the Financial Year 2018-2019 with the permission of Respondent

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No.1 and thus the functioning of Respondent No.7 was very regular up to March, 2020.

(i) From March, 2020, the Covid Pandemic spread all over Maharashtra, Gujarat and Karnataka and all business activities virtually stopped. This pandemic situation adversely affected the volume of business conducted by persons who had availed of loans from Respondent No.7. In the result, the recovery of loan amounts was also severally prejudiced.

(j) On 28th May, 2021, Respondent No.1 imposed a Supervisory Action Framework. Pursuant to this restrictions, as imposed by Respondent No.1, Respondent No.7 duly complied with the Action Framework timeline and submitted all the relevant and requisite documents to the satisfaction of Respondent No.1. This action was supervised by the Board of Directors, i.e. the Petitioners, and the documents to that effect are a part of Respondent No.7.

(k) On 1st June, 2021, Respondent No.7 constituted a Board of Management as per the directions of the Supervisory Action Framework dated 28th May, 2021. This Board of Management consisted of two bankers and one Advocate as external members and two Chartered Accountants and one person having more than 25 experience in banking as internal members.

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(l) On 22nd July, 2021, Respondent No.1 appointed one Shri Rajendra Kumar, DGM, RBI as an Additional Director for a period of two years as an observer upon the functioning of Respondent No.7.

(m) It is the case of the Petitioner that, despite Respondent No.7 following the instructions given by the Additional Director from time-to-time, Respondent No.1 issued a letter dated 8th December, 2021, putting various restrictions upon the functioning of Respondent No.7, which, according to the Petitioners, were totally illegal.

(n) On 30th September, 2022, Respondent No.1 issued another directive reducing the loan advances limit from Rs.65 Crores to sanctioning of fresh loans only up to Rs. 50 lakhs for single party/ group.

(o) It is the case of the Petitioners that this also had direct impact on the business of Respondent No.7-bank as the existing borrowers, who had running loan advances for their respective businesses, were not inclined to continue with Respondent No.7- bank and moved on to other banks only for the reason that Respondent No.7, in view of the existing directives of Respondent No.1, was unable to cater to their additional financial requirements. Thus, Respondent No.7 had to lose existing borrowers and suffer financial losses as well.

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(p) In August, 2023, Respondent No.1 had conducted an inspection of Respondent No.7 and submitted an Inspection Report and a Risk Assessment Report as on 31st March, 2023.

(q) It is the case of the Petitioner that, on 17th October, 2023, Respondent No.7, as per Rules and Regulations, submitted a Compliance Report to Respondent No.1.

(r) Further, a team of one Senior Supervisory Manager and two Assistant General Managers from Respondent No.1 regularly visited the Head Office, Regional Offices, Departments as well as branches of Respondent No.7 in the state of Maharashtra, Gujarat and Karnataka. The function of these officers were to look into and supervise the day-to-day affairs of Respondent No.7 -bank. All documents and transactions of Respondent No.7 were supervised by them. Moreover, Respondent No.1 appointed one Chief General Manager who was supervising the overall functioning of the bank and was regularly updated by the appointed officers.

(s) It is the case of the Petitioner that in addition to that, the Petitioner had also take steps to reduce costs, to increase the share capital, to recover the outstanding NPA loans and to redeem security receipts. Respondent No.7 submitted reports to Respondent No.1 from time to time. Despite the same, Respondent No.1 suddenly issued impugned Order dated

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24th November, 2023, without giving an opportunity of hearing whereby the board of directors of Respondent No. 7 was superseded. The operative part of the said Order dated 24th November, 2023 reads as under:-

> *"THEREFORE, in exercise of the powers conferred under sub-sections (1) and (2) of section 36AAA of the Banking Regulation Act, 1949 read with section 56 of the Banking Regulation Act, 1949, the Reserve Bank of India hereby supersedes the Board of Directors of Abhyudaya Co-operative Bank Limited, Mumbai for a period of one year with effect from November 24, 2023 and appoint Shri Satya Parkash Pathak as Administrator of the said bank from that date for a period of one year, i.e. upto November 23, 2024. The Administrator shall have all the powers of the Board of Directors of the bank and shall discharge the duties and functions of the Board of Directors as per provisions of the Multi State Co-operative Societies Act, 2002 and Rules framed thereunder, as well as in compliance with the Banking Regulation Act, 1949 (as applicable to cooperative societies."*

4. The Petitioners have filed the present Petition impugning the said Order dated 24th November, 2023. The Petitioners have restricted their arguments to legal issues relevant to the impugned Order dated 24th November, 2023 as set out hereinbelow and have not addressed arguments pertaining to the merits of the impugned Order dated 24th November, 2023. It is for this reason that we have not heard Mr.Engineer, the learned Senior Counsel appearing on behalf of Respondent Nos.2, 3 and 5.

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5. Based on the arguments of the parties, the following three questions arise for the consideration of this Court:-

I. Whether, by virtue of the provisions of Part IXB of the Constitution of India, and Article 243ZT in particular, having come into force on 15th February 2012, Section 36AAA of the Banking Regulation Act, 1949, ceases to operate?

II. Whether the provisions of Section 36AAA of the Banking Regulation Act, 1949, as amended, mandate consultation with the Central Government?

III. Whether the principles of natural justice can be read into Article 36AAA?

SUBMISSIONS OF THE PARTIES ON QUESTION NO.I

6. Mr. Atul Rajadhyaksha, the learner Senior Counsel appearing on behalf of the Petitioners, first submitted that, by virtue of the provisions of Part IXB of the Constitution of India and Article 243ZT in particular, having come into force on 15th February 2012, Section 36AAA of the Banking Regulation Act, 1949 ("B.R.Act") ceases to operate at present, and is not available to Respondent No.1, the Reserve Bank of India, to pass an order

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superseding or suspending the board of a multi-state banking cooperative society like Respondent no.7.

7. In support of this submission, Mr.Rajadhyaksha made details submissions. He submitted that with the enactment and insertion of Part IXB into the Constitution in 2011 and with the Supreme Court, by a majority verdict in ***Union of India vs. Rajendra Shah and others***[1] holding Part IXB not to be unconstitutional qua multi-state cooperative societies, including those carrying on the business of banking, Part IXB applies to multi-state cooperative societies. Taking Part IXB as a whole, Section 36AAA of the B.R.Act, which is a provision of law in conflict with the provisions of Article 243ZL, ceases to operate after the lapse of a year from the commencement of Part IXB, i.e. from 15th February 2013, by virtue of the provisions of article 243ZT. He submitted that Section 36AAA is now not available to the RBI in the year 2023 to pass any order superseding or suspending the board of a multi-state banking cooperative society. He also submitted that it is not the case of the Petitioners that the provisions of Section 36AAA of the B.R.Act are unconstitutional and ought to be struck down. The simple case of the Petitioners is that Section 36AAA of the B.R. Act does not continue to be in operation.

1 (2021) SCC OnLine 474

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8. In this context, Mr.Rajadhyaksha submitted that, prior to 1965, the B.R.Act, then known as the Banking Companies Act, 1949, governed banking companies and did not apply to co-operative societies engaged in banking business in India. Hence, in 1965, Part V in the B.R.Act was inserted by the Banking Laws (Application to Co-operative Societies) Act, 1965. Part V came into effect from 1st March 1966. By virtue of the said insertion of Part V in the B.R.Act, certain selected provisions of the B.R.Act as then in force applied to co-operative societies carrying on the business of banking as they applied to banking companies subject to the modifications set out in Part V.

9. Mr.Rajadhyaksha submitted that significantly when Part V was inserted in the B.R.Act, the B.R.Act did not contain Section 36AAA. Section 36AAA of the B.R.Act was enacted in 2004 and inserted after 36AA but it was placed in part V of the B.R.Act which was and is titled "APPLICATION OF THE ACT TO COOPERATIVE BANKS". Section 36AAA when enacted was titled as "Supersession of Board of directors of a multi-state cooperative bank". It applied to multi-state banking cooperative societies. Mr. Rajadhyaksha, therefore, submitted that Section 36AAA was a provision relating to co-operative societies. By enacting Section 36AAA of the B.R.Act, Parliament empowered the RBI to supersede the Board of Directors of a multi-state banking co-operative society for the first time in 2004 and for an aggregate period of five years.

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10. Mr.Rajadhyaksha then submitted that Section 36AAA did not continue after one year of Part IXB of the Constitution being brought into force. The status of Section 36AAA post the expiry of a year of Part IXB of the Constitution having been brought into force was simply that the said Section was not in operation, which is materially different in law from repeal of an Act. He submitted that in the case of repeal of the law, the repealed law ceases to exist and, therefore, cannot be amended unless re-enacted. In the case of a law which is not in force, such law exists, but is not in operation and can be amended. He submitted that, in fact, Article 243ZT expressly recognizes the concept of "repeal" and "ceasing to continue" being different. He submitted that the amendment made to section 36AAA in the year 2020 does not alter the legal position, namely that section 36AAA had ceased to be in operation one year after Part IXB of the Constitution had come into effect.

11. Mr.Rajadhyaksha further referred to Part IXB of the Constitution which dealt with "THE CO-OPERATIVE SOCIETIES". He referred to Article 243ZH which is the definition clause. Further, he referred to Article 243ZL which provides for supersession and suspension of the board and interim management of co-operative societies. He submitted that it was important and significant note that the opening part of Article 243ZL reads as follows:

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> *"Notwithstanding anything contained in any law for the time being in force no board shall be superseded or kept under suspension for a period exceeding 6 months."*

12. Mr.Rajadhyaksha submitted that the non-obstante clause of Article 243ZL deals with" any law" and therefore includes law made by the States or law made by Parliament. He submitted that if the non-obstante clause in Article 243ZL is contrasted with the non- obstante clause in the previous Article 243ZK, it becomes obvious that whereas Article 243ZK provides that the provisions of that Article will prevail over any law made by the Legislature of a State Article 243ZL provides that the provisions of Article 243ZL shall prevail over any law for the time being in force, irrespective of the fact whether such law has been made by the Legislature of the State or by Parliament.

13. Further, Mr.Rajadhyaksha submitted that the provision contained in Article 243ZL must be understood in the light of the Statements and Objects of the 97th Amendment which states, *inter alia*, as follows:

> *"The proposed new Part in the Constitution, inter alia, seeks to empower the Parliament in respect of multi-state cooperative societies... to make appropriate law laying down the following matters namely:- .....(d) providing for a maximum time limit of six months during which a board of directors of a co-operative society could be kept under supersession or suspension"*

14. Mr.Rajadhyaksha submitted that the said Statement and Objects provide that Parliament would enact law in India which would provide for

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supersession or suspension of the board of a co-operative society for six months only.

15. Mr.Rajadhyaksha further submitted that following up on this representation in the Statement of Objects and Reasons, Parliament enacted the Multi-state Co-operative Societies (Amendment) Act, 2023 which substituted into the provisions of Section 123 of the Multi-State Co-operative Societies Act, 2002 ("the MSCS Act, 2002), the maximum time limit of six months. The period of six months was substituted for the period of one year. This was made so that the power of supersession or suspension of a multi-state banking co-operative society was restricted, limited and confined to six months only and no more as provided under Article 243ZL of the Constitution.

16. Mr.Rajadhyaksha submitted that, similarly, in the MCS Act, 1960, Section 110(iii) was amended on 14th February 2013 to provide that a board of directors of a banking co-operative society could be superseded or suspended for a limited and confined period of six months and not exceeding a year. He submitted that this was also as per Article 243ZL of the Constitution read with the fourth proviso thereof.

17. Mr.Rajadhyaksha submitted that thus all law prevalent must be read as providing the period of supersession of an elected body such as the multi-state co-operative society in the banking sector or otherwise to be six

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months and no more. No law providing for anything longer can be allowed to continue by virtue of the provisions of Part IXB of the Constitution. Therefore, any law that permits any period in excess of six months of supersession or suspension of a multi-state banking co-operative society cannot continue and be in force once the period of a year has elapsed from the commencement of Part IXB of the Constitution.

18. Further, Mr. Rajadhyaksha submitted that, the non-obstante provision in Article 243ZT limiting the continuance of all provisions of law inconsistent with Part IXB notwithstanding any provision made in Part IXB means therefore that notwithstanding that the Third Proviso to Article 243ZL provides that in the case of a co-operative society carrying on the business of banking, the provisions of the B.R.Act shall also apply, the provision contained in Section 36AAA of the B.R.Act insofar as it provides for supersession or suspension for five years cannot be said to continue after a year from the commencement of Part IXB of the Constitution.

19. Mr.Rajadhyaksha submitted that Article 243ZR provides that the provisions of Part IXB shall apply to multi-state co-operative societies subject to the modifications stated therein. This would mean that it was the clear intention of Parliament that the overarching provision of Article 243ZL(1) that a supersession or suspension of a board of a co-operative society shall not exceed six months applied to a banking multi-state co-operative society. Mr.

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Rajadhyaksha submitted that the other provision, namely, Article 243ZT, begins with a non-obstante clause and provides that any provision of any law relating to co-operative societies in force in the State immediately before the commencement of the Constitution (97th Amendment) Act, 2011, which is inconsistent with the provisions of Part IXB shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement whichever is less. He submitted that, by virtue of the provisions of Article 243ZR, references to the State would now be references to the Centre when it applies to a banking multi-sate co-operative society. He submitted that the implication of this provision, insofar as Section 36AAA of the B.R.Act is concerned, is that the same does not continue to be in force given that more than one year has expired since Part IXB of the Constitution has come into force. Mr. Rajadhyaksha also submitted that this Court cannot read six months into Section 36AAA of the B.R.Act in lieu of five years because by such process, this Court would be entering into the field of legislation, which is not within its jurisdiction.

20. Mr.Rajadhyaksha submitted that by the impugned order dated 24th November 2023, the RBI had superseded the board of Respondent No.7 for one year under a power it does not possess, and in any case not for the period of one year in the case of multi-state banking co-operative society.

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Mr.Rajadhyaksha submitted that, on this ground alone, the impugned order ought to be set aside.

21. Mr.Rajadhyaksha relied upon the judgement of the Supreme Court in ***Bandu Ramaswamy and Ors. v. Bangalore Development Authority and Ors.***[2] and submitted that the same explained that the provisions of Article 243ZF as creating a window of one year for the competent legislature to remove the inconsistency. Mr.Rajadhyaksha submitted that Article 243ZF is in identical terms as Article 243ZT except that the former applies to municipalities and the latter to co-operative societies. He submitted that the same principle applies to the present case.

22. Next, Mr.Rajadhyaksha submitted that a reading of the Joint Committee on Multi-State Co-operative Societies (Amendment) Bill 2002, which contains, *inter alia* a reference to making of "suitable amendments in the B.R.Act so that its provisions are in consonance with the Constitution" is an acceptance of the fact that there are provisions as of the date of the said Report in the B.R.Act which are not in consonance with the Constitution and, therefore, they need to be amended. He submitted that Parliament has provided in Article 243ZT a window of one year from the date of commencement of Part IXB of the Constitution for such provisions to be brought in consonance with the Constitution. He submitted that this window

2 (2010) 7 SCC 129

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is necessary, as otherwise, on the day Part IXB of the Constitution comes into force, such provisions would be invalid on that day itself on the ground that they are not in consonance with the provisions of the Constitution. Hence, to postpone the invalidity and to give the appropriate legislature an opportunity to do way with the invalidity by adopting suitable amendment into such provisions, a period of one year was made available in Article 243ZT. Mr.Rajadhyaksha submitted that it is an admitted position that no amendment had been made to the B.R.Act subsequently, though it is acknowledged that there are provisions in the B.R.Act which need to be brought in consonance with the Constitution of India. He submitted that an example of one of such provisions that need amendment is Section 36AAA because it provides for the supersession or suspension of a board of a multi-state co-operative society for a period of five years and that is in clear conflict with the provisions of Part IXB of the Constitution of India.

23. Mr.Rajadhyaksha submitted that the failure to amend the provisions of the B.R.Act (including Section 36AAA) is a classic case of "casus omissus", a phenomenon known to the law as a case of the concerned legislature failing to make a provision which otherwise necessarily ought to be enacted. Mr.Rajadhyaksha submitted that it is also equally well-settled that in case of "casus omissus", it is not for the Court to supply the provision and fill in the gap except in the rare circumstances where either words "have been

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accidentally omitted or the omission has an effect of making any part of the statute meaningless". In this context, he relied upon the judgement of the Supreme Court in ***Ebix Singapore (P) Ltd vs. Educomp Solutions Ltd.***[3] Mr.Rajadhyaksha submitted that the Court must steer clear of the same and at best can indicate that such a change in the law is required and then leave it to the appropriate legislature to amend the provision of the law.

24. Further, Mr.Rajadhyaksha submitted that the well- settled maxim Dura Lex Sed Lex ought to be applied in the present case. He submitted that the maxim states as follows:

> *"when the language of the statute is plain and clear then the literal rule of interpretation has to be applied and there is ordinarily no scope for consideration of equity, public interest or seeking the intention of the legislature. It is only when the language of the statute is not clear or ambiguous or there is some conflict, etc. or the plain language leads to some absurdity that one can depart from the literal rule of interpretation....."*

25. Mr.Rajadhyaksha submitted that hence, the literal rule of interpretation must be applied. When there is a conflict between the law and equity, it is the law which must prevail as stated in the Latin maxim Dura Lex Sed Lex which means " the law is hard but it is the law". In this context, Mr. Rajadhyaksha relied upon the judgment of the Supreme Court in ***Vijay N. Thatte vs. State of Maharashtra***[4].

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3 (2022) 2 SCC 401

4 (2009) 9 SCC 92

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26. Lastly, Mr.Rajadhyaksha submitted that, if the interpretation placed by RBI were to be adopted as correct, it would lead to absurdity or a logical fallacy. It would mean that even in cases of "fraud or misappropriation" or the like (which is brought in by the amendment of 2023 to the MSCS Act, 2002), the Central Government can supersede or suspend the board of the multi-state co-operative for six months but the RBI, which expressly has no power under the B.R.Act for "fraud or misappropriation", can do so for five years.

27. The second proposition of Mr.Rajadhyaksha was that in case of a repugnancy or inconsistency between the provisions of the Constitution and other legislation made by Parliament, whether existing or subsequent to the provision in the Constitution, the provisions of the Constitution would prevail over the other legislation.

28. Mr.Rajadhyaksha submitted that the consequence of the aforesaid proposition was that Section 36AAA of the B.R.Act must give way to the mandate in part IXB of the Constitution. Article 243ZL of the Constitution provides that the superseding or suspension or a "board" of Directors of a society, including a multi-state co-operative society, shall not exceed six months. Therefore, there is a clear conflict between the provision in Article 243ZL of the Constitution and Section 36AAA of the B.R.Act. The former providing that the period of supersession or suspension being limited to six

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months and no more notwithstanding any law for the time being in force. The result is that the former applies and any order passed by any authority which runs counter to the provision in Article 243ZL of the Constitution and declares the supersession or suspension of a multi-state banking co-operative society beyond six months must be regarded and declared to be contrary to law and is liable to be quashed and set aside.

29. Mr.Rajadhyaksha submitted that this Court was not sitting in appeal over the impugned Order and, therefore, had no appellate powers to read down the period of one year mentioned in the impugned Order to six months. He submitted that this Court should be concerned with whether the impugned order is within the confines of the law. If it is not, this Court should not allow it to stand and ought to quash the same.

30. In response to the aforesaid propositions canvassed by Mr.Rajadhyaksha, Mr.Venkatesh Dhond, the learned Senior Counsel appearing on behalf of Respondent No.1 submitted that the Section 36AAA of the B.R.Act gives the RBI the power to supersede the board of any "co-operative bank", upto five years. This section was introduced by Act 24 of 2004 w.e.f. 24th September 2004. As enacted, it applies to "Supersession of Board of directors of a multi-State co-operative bank". He submitted that from the Statement of Objects and Reasons for the 2004 Amendment, and the Rajya Sabha debate preceding it, the legislative intent behind Section

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36AAA is crystal clear i.e. that the Co-operative Banks required monitoring and in certain cases a period of five years may be needed to clear up the affairs of the co-operative bank.

31. Mr.Dhond then submitted that the *vires* of section 36AAA is not under challenge. He submitted that keeping this in mind the Court ought to be slow in accepting a plea that a provision in a primary legislation, i.e. Section 36AAA, that exists on the statute books for twenty years, should be declared "legally non-existent". He further submitted that the Court will be even more wary where the Parliament has post the said provision [having become allegedly "legally non-existent"], amended that very provision. He submitted that applying the doctrine of "implied repeal" or any other doctrine of whatever name is to not only attribute to the Parliament / the legislature forgetfulness in failing to amend the law in the first instance, but deliberate ignorance in seeking to amend something which it had originally overlooked. This must be very sparingly done. In support of his submissions, Mr.Dhond relied upon the judgements of the Supreme Court in a) ***Chandra Mohan v. State of Uttar Pradesh & Ors.***[5] b) ***Kishorebhai Khamanchand Goyal v. State of Gujarat & Anr.***[6] c) ***Rama Rao & Anr. v. Narayan & Anr.***[7] and (d) ***R.S.Raghunath v. State of Karnataka & Anr.***[8]

5 (1967) 1 SCR 77 @ 87; placitum D-E

6 (2003) 12 SCC 274; para 6

7 (1969) 1 SCC 167; paras 27, 29 and 30

8 (1992) 1 SCC 335; paras 5-7, 9, 11-13 and 15

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32. Next Mr.Dhond submitted that the Petitioners are completely mis-reading Article 243ZL of the Constitution. He submitted that the Petitioners' interpretation is a distortion of the true mandate of that Article. Also the Petitioners' interpretation creates a totally unwholesome result where uni-state co-operative banks (USCBs) can be superseded for five years, but multi-state co-operative banks (MSCBs) which are typically much larger in size and footprint can be superseded only for six months. Mr.Dhond submitted that not only are the words of Article 243ZL absolutely clear, but the legislative history of various provisions leading to and succeeding the introduction of Part IXB reinforces Parliamentary intent, which is the exact opposite of what the Petitioners contend.

33. Mr.Dhond next submitted that it would be gainful to highlight upfront a few central planks of banking policy, experience and law. He submitted that the same were also noted in the Speech of the Finance Minister when the 2004 Amendments to the B.R.Act were being discussed and are as follows:

> *"(a) Co-operative banks are a very different specie and have, therefore, been treated and regulated differently from co-operative societies.*
>
> *(b) This different treatment and regulation (logically) extends to all aspects of their functioning, including supersession (grounds + duration).*
>
> *(c) This different treatment is, inter alia, because co-operative banks, by their very nature (as opposed to vanilla co-operative societies) deal with large amounts of public money and affect the banking system and depositors. They need special regulation.*

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(d) Among co-operative banks, MSCBs have - by and large - a greater / larger profile (geographical presence and financial scale), and need greater regulation.

(e) The co-operative banking segment has its own problems. Co-operative banks need more regulation than (more tightly controlled) banking companies."

34. Next Mr.Dhond submitted that to fully appreciate the meaning of Article 243ZL of the Constitution, it must be read sequentially, especially because of the presence of four provisos. He submitted that the Article's opening words are a non obstante clause. Its enacting words are "no board shall be superseded or kept under suspension for a period exceeding six months". He submitted that the mandate of the enacting words, (if the provisos following it are ignored), therefore, is to place a total and complete bar on the supersession of any co-operative society (which would include a co-operative bank) for more than six months.

35. Mr.Dhond next referred to the four provisos to Article 243ZL(1). He submitted that the first proviso enumerates, as a general matter, the circumstances under which any board (banking or non banking) may be superseded. Therefore, it operates to strengthen the intention of protecting the co-operative societies from laws that may be made by the States, by prescribing conditions when a co-operative society can be superseded. Therefore, in the first proviso, the grounds of supersession are also prescribed.

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36. Mr.Dhond submitted that the second proviso goes even further. It immunizes certain boards against supersession, even in circumstances enumerated in the opening words and the first proviso. What it stipulates is that societies that do not involve the use of any governmental property or funds, by way of shareholding, loans or guarantees, cannot be superseded. He submitted that if the language and scheme of Article 243ZL of the Constitution is read upto the second proviso, the result is that a) co-operative banks which do not involve government funds (shares, loans, finances, guarantees), could never be superseded; b) Those who fell outside the limited grounds of the first proviso could never be superseded and c) those who fell outside the second proviso, but within the first proviso could only be superseded for six months. He submitted that, in the case of co-operative banks, this would have a very grave consequence. Parliament did not desire it and, therefore, the third proviso was enacted. He submitted that the 3rd proviso makes special provision for boards of societies "carrying on the business of banking" i.e. co-operative banks and states that to such boards, "the provisions of the B.R.Act shall also apply". He submitted that, therefore, as per the third proviso, co-operative banks would therefore be subject to the B.R.Act on all matters, including matters relating to grounds for supersession and length of supersession.

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37. Mr.Dhond further submitted that the fourth proviso makes further special provision for boards of co-operative banks "other than" Multi-State Co-operative Banks stating that the boards of such non-MSCB co-operative banks, i.e. Uni-State co-operative Banks or "USCBs", may be superseded for a period upto one year. He submitted that the rationale behind enacting fourth proviso was to ensure that the Uni-State Cooperative Banks would not be exposed to the sudden spectre of a supersession for whatever period may be prescribed by the B.R.Act, including by future amendments thereto.

38. Mr.Dhond next submitted that if the Petitioners' construction of Article 243ZL of the Constitution was upheld, it would lead to strange consequences. It would mean that :

> *"(a) RBI has no power to supersede a board outside the limited parameters set out in the first proviso, and if the bank has no governmental shareholding, loan or guarantee, then under the 2nd proviso, no matter how poorly it is run, or how many depositors', shareholders' or members' interests are in jeopardy, or how many of the grounds in the first proviso are, in fact, made out, its board shall be invincible;*
>
> *(b) even if there were any governmental shareholding, loan or guarantee, the board would be subject to supersession or suspension for no more than six months - regardless of whether that period is or is not sufficient to resolve the bank's difficulties, or to fully protect the interests of depositors, shareholders and members;*
>
> *(c) in particular, will - of necessity - require the Court to overlook the 4th proviso [which recognises the fact that co-operative banks (even Uni-State ones) need a period of upto one year to recover from the actions of a superseded / suspended board] entirely;*
>
> *(d) notwithstanding Parliament's deliberate choice to apply the whole of the B.R.Act to co-operative banks (3rd proviso), portions of that Act*

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shall stand impliedly repealed without the expression of any such intent by Parliament itself;

(e) this would require the Court to judicially parse the 3rd proviso (i.e. choose which parts of the B.R.Act to apply to co-operative banks, and which not); and

(f) Parliament's careful delineation of the applicable laws / rules / principles to co-operative societies on the one hand, and co-operative banks on the other, shall be read out of existence."

39. Mr.Dhond referred to Article 243ZT of the Constitution. Mr.Dhond firstly submitted that all arguments on Article 243ZT are irrelevant and academic because there is no inconsistency between Section 36AAA of the B.R.Act and Article 243ZL of the Constitution in order to attract Article 243ZT.

40. Further, Mr.Dhond submitted, in the context of Article 243ZT, that the Petitioners' arguments overlook several apparent features of Article 243 ZT. He submitted that a bare reading of Article 243ZT makes it clear that what it intended / was sought to be applied to, was 'any law relating to co-operative societies'. He submitted that the B.R.Act is not a law relating to co-operative societies. He submitted that the same is no longer *res integra* as it was declared so by the Supreme Court in ***Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Limited*** [9]. Therefore, Article 243ZT has absolutely no application.

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41. Mr.Dhond next submitted that the arguments of the Petitioners is that Article 243ZT saves only those provisions dealing with co-operative societies as are consistent with the whole of Part IXB of the Constitution. He submitted that the Petitioners contend that a period of one year was given as a migration period for Central and State legislatures to make constitutional changes to their laws bringing them in line with the 97th Amendment. He submitted that the Petitioners contend that Section 36AAA of the B.R.Act ought to have been amended by excluding the reference to five years and bringing it down to six months insofar as multi-State co-operative banks were concerned. He submitted that it is the Petitioners submission that, since this was not done, by reason of Article 243ZT, the period of five years in Section 36AAA should be read down to six months. Mr.Dhond submitted that this submission is equally misconceived. It does not appreciate the mandate of Article 243ZT properly; and secondly, it simply assumes that the period of five years in section 36AAA is inconsistent with the mandate of the 97th Amendment. He submitted that Article 243ZT only applies to laws which are inconsistent with the 97th Amendment. He further submitted that, by reason of the third proviso to Article 243ZL, the B.R.Act is expressly declared to "apply" to every co-operative society doing the business of banking. Thus, no provision of Section 36AAA of the B.R.Act would fall afoul of Article 243ZT. Article 243ZT in fact recognizes and upholds the validity of the provisions of the B.R.Act, including Section 36AAA in its entirety.

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42. Mr.Dhond next submitted that another obvious fallacy in the Petitioners' submission is that Parliament did not amend Section 36AAA despite itself imposing a year's migration window. He submitted that it is not that Parliament was unaware of the amendments to the Constitution brought about by itself in the form of the 97th Amendment. In fact Parliament amended the provisions of the B.R.Act, from time to time, even after 2013. Therefore, it is very clear that no amendments were carried out only because no amendments were deemed necessary.

43. Further, it could not be said that Section 36AAA had escaped Parliament's attention post 2012-13, as the same was amended by Parliament as recently as in June 2020.

44. Mr.Dhond submitted that, therefore, the Petitioners' argument attributes to Parliament ignorance of the fact that it was amending a Section containing provisions which are supposedly constitutionally not in force.

45. Mr Dhond next submitted that it is the argument of the Petitioners that both the State and the Central legislatures have acted on the mandate of Articles 243ZL and 243 ZT by amending relevant provisions of the MCS Act, 1960(section 110-A) and the MSCS Act, 2002 (section 123) to reduce the period of supersession/suspension to six months. He submitted that it is the Petitioners' submission that the Parliament and the State Legislatures, therefore, supposedly, understood Articles 243 ZL and 243 ZT

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in the manner in which the Petitioners claim. Mr Dhond further submitted that, as an adjunct to this, the Petitioners submitted that Parliament for some inexplicable reason forgot to amend section 36AAA to curtail the power to supersede / suspend the powers of MSCB boards to six months. He submitted that it is the contention of the Petitioners that this Parliamentary forgetfulness continued even when Parliament returned to amend Section 36AAA in 2020. Mr Dhond submitted that, apart from the fact that a plea of Parliamentary forgetfulness is not to be readily accepted, the present case is not a case of Parliamentary forgetfulness but that of Parliamentary intervention not required because, on a true construction of Article 243ZL, there was no requirement to amend Section 36AAA.

46. Referring to the Petitioners submissions in respect of the amendments to the MSCSA 2002, Mr Dhond submitted that Section 123 of the MSCS Act 2002 confers the power of suspension on the Central Government. The fact that the power of suspension is conferred upon the Central Government does not, *ipso facto,* divest any other body or authority of any power to supersede since that power may be vested in more than one agency, and is required to be exercised in different situations or on the happening of different events.

47. Mr Dhond submitted that the reason why the Central Government is given power to supersede the board of a MSCS is because that

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is the power to supersede the board of any MSCS, in the sence of a vanilla society, and not a bank. The MSCS is defined in the Explanation to Section 123 to mean a MSCS where there is some Government shareholding or loan or financial assistance. Since the Government holds shares in the such society, or may have extended a loan to it, or may stand guarantor for the society, the Government is given the power, under Section 123, to supersede the board of such a society. Mr Dhond submitted that this is not in derogation of the powers of the RBI in relation to MSCSBs.

48. Mr Dhond submitted that the other fallacy in the Petitioners' argument is that the amendments that they have referred to are ones brought in by the Amending Act of 2023. The Petitioners accept that the Constitutional amendment adding Articles 243ZL to 243ZT was introduced on 15th February 2012. The period of one year within which any inconsistent law had to be amended, in order to ensure compliance with those Articles, expired on 15th February 2013. Therefore the amendment to Section 123 of the MSCS Act 2002 is not solely relatable to Part IXB. Further, in this context, Mr Dhond submitted that, insofar as the issue of the power of RBI to supersede is concerned, the reason why amendments to Section 123 were made in the year 2023 is clear because by the same Amending Act, Parliament introduced Sections 120A and 120B. Section 120B makes the provisions of the B.R. Act applicable. Therefore, since Parliament had made the whole of

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the B.R.Act applicable to MSCS (banks), Parliament did not think it necessary to make a separate provision in the proviso to Section 123 for MSCBs. This had already been provided for. Mr Dhond submitted that, therefore, the rationale behind the 2023 amendments is totally different and not as contended by the Petitioners.

FINDINGS AND CONCLUSIONS ON QUESTION NO.(I)

49. It is basically the case of the Petitioners that Article 243 ZL(1) of the Constitution provides that no board of a co-operative society shall be superseded or kept under suspension for a period exceeding six months. The Petitioners would not dispute that, by virtue of the fourth proviso to Article 243 ZL(1), in case of a co-operative society other than a MSCS carrying on the business of banking, the word "six months" in Article 243 ZL(1) would have to be read as one year. In other words, according to the Petitioners, by virtue of the provisions of Article 243ZL(1), read with the fourth proviso, the board of a MSCS can be superseded or suspended for only 6 months.

50. It is next the submission of the Petitioners that Section 36AAA of the B.R.Act, which provides for superseding of the board of a co-operative bank for a period not exceeding five years, is inconsistent with Article 243 ZL. It is the submission of the Petitioners that, on account of this inconsistency, by virtue of the provisions of Article 243ZT, Section 36AAA shall continue to be in force only if it is amended by a competent legislature to reduce the period

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mentioned there into six months within a period of one year from the commencement of the 97th Amendment Act. If Section 36AAA is not so amended within a period of one year as mentioned aforesaid, then the same would not be in force after that period of one year.

51. It is the case of the Petitioners that since Section 36AAA is neither amended or repealed, it ceased to be in force one year after the commencement of the 97th amendment act which came into force on 15th February 2012 that is on 15th February 2013. Therefore, it is the submission of the Petitioners that the impugned Order could not have been passed under the provisions of Section 36AAA and ought to be quashed and set aside on this ground alone.

52. To consider the submission of the Petitioners it would be appropriate to set out the provisions of Articles 243ZL and 243 ZT of the Constitution and Section 36AAA of the B.R. Act,(which was inserted by Act 24 of 2004 (w.e.f.24/09/2004), Section 56(a)(cci) and Section 56(a)(cciii-a) of the B.R.Act, which read as under:

> *"243-ZL. Supersession and suspension of board and interim management.—*
>
> *1) Notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months:*
>
> *Provided that the board may be superseded or kept under suspension in case—*
>
> *(i) of its persistent default; or*

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(ii) of negligence in the performance of its duties; or

(iii) the board has committed any act prejudicial to the interests of the co-operative society or its members; or

(iv) there is a stalement in the constitution or functions of the board; or

(v) the authority or body as provided by the Legislature of a State, by law, under clause (2) of Article 243-ZK, has failed to conduct elections in accordance with the provisions of the State Act:

Provided further that the board of any such co-operative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:

Provided also that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (10 of 1949) shall also apply:

Provided also that in case of a co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of this clause shall have the effect as if for the words "six months", the words "one year" had been substituted.

(2) In case of supersession of a board, the administrator appointed to manage the affairs of such co-operative society shall arrange for conduct of elections within the period specified in clause (1) and handover the management to be elected board.

(3) The Legislature of a State may, by law, make provisions for the conditions of service of the administrator.

***243-ZT. Continuance of existing laws.**—Notwithstanding anything in this Part, any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less.*

***36-AAA. Supersession of Board of Directors of a Co-operative bank.**—*

(1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a Co-operative bank being conducted in a manner detrimental to the interest of the depositors or of the Co-operative bank or for securing the proper management of the Co-operative bank, it is necessary so to do, the Reserve Bank may, for

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reasons to be recorded in writing, by order, supersede the Board of Directors of such Co-operative bank for a period not exceeding five years as may be specified in the order, which may be extended from time to time, so, however, that total period shall not exceed five years. Provided that in the case of a co-operative bank registered with the Registrar of Co-operative Societies of a State, the Reserve Bank shall issue such order in consultation with the concerned State Government seeking its comments, if any, within such period as the Reserve Bank may specify.

(2) The Reserve Bank may, on supersession of the Board of Directors of the Co-operative bank under sub-section (1), appoint an Administrator for such period as it may determine.

(3) The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the Board of Directors of a Co-operative bank,—

(a) The chairman, managing director and other directors as from the date of supersession of the Board shall vacate their offices as such;

(b) All the powers, functions and duties which may, by or under the provisions of the Multi-State Co-operative Societies Act, 2002 or this Act or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of Directors of such a Co-operative bank or by a resolution passed in general meeting of such co-operative bank, shall, until the Board of Directors of such co-operative bank is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (2): Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of such Co-operative bank.

(5)(a) The Reserve Bank may constitute a committee of three or more persons who have experience in law, finance, banking, administration or accountancy to assist the Administrator in discharge of his duties.

(b) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank.

(6) The salary and allowances to the Administrator and the members of the committee constituted by the Reserve Bank shall be such as may be specified by the Reserve Bank and be payable by the concerned Co-operative bank.

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(7) On and before expiration of period of supersession of the Board of Directors as specified in the order issued under sub-section (1), the Administrator of the Co-operative bank shall call the general meeting of the society to elect new directors.

(8) Notwithstanding anything contained in any other law or in any contract or bye-laws of a Co-operative bank, no person shall be entitled to claim any compensation for the loss or termination of his office.

(9) The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of Directors of the multi-State co-operative society has been constituted.

(10) The provisions of Section 36-ACA shall not apply to a co-operative bank.

56. Act to apply to co-operative societies subject to modifications -

(a)(cci)"Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

(a)(cciii-a) "multi-State co-operative bank" means a multi-State co-operative society which is a primary co-operative bank; ”

53. The primary question that arises for consideration is whether Section 36AAA of the B.R. Act is inconsistent with Article 243ZL of the Constitution. For this purpose, we have to consider the provisions of Article 243ZL of the Constitution. It is well settled in law that the proviso to a Section or Sub-Section provides an exception to that Section or Sub-Section. The third proviso to Article 243ZL(1) provides that in the case of a co-operative society carrying on the business of banking, the provisions of the

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B.R.Act shall also apply. What the third proviso means is that although, under Article 243 ZL(1), the board of a MSCS can be superseded or suspended for six months, if the co-operative society carries on the business of banking, the provisions of the B.R.Act shall also apply. If it is a MSCS Bank, it can be superseded for a period not exceeding 5 years as provided by Section 36AAA of the B.R.Act and if it is a USCS Bank, its board can be superseded or kept under suspension for a period of one year as provided in the fourth proviso to Article 243 ZL. Therefore, by virtue of the third proviso to Article 243 ZL(1), the MSCS carry on the business of banking, to which the provisions of the B.R.Act, including Section 36AAA apply, can be superseded for a period not exceeding five years as provided under Section 36AAA.

54. In our view, the object of this provision is very clear. The co-operative society which carries on the business of banking deal with large amounts a public money and depositors. Therefore, such co-operative societies carrying on the business of banking need to be regulated under the provisions of the B.R.Act. Further, amongst co-operative banking societies, the MSCBs have by and large a greater geographical presence and financial involvement and, therefore, require greater regulation.

55. In our view, therefore, there is no inconsistency between Article 243ZL and Section 36AAA. In fact, the third proviso to Article 243 ZL

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makes 36AAA applicable to a co-operative society carrying on the business of banking.

56. Further, since there is no inconsistency between Section 36AAA and Article 243ZL, the question of Article 243 ZT being applicable does not arise at all. Article 243ZT is applicable only if there is any inconsistency between any provision of law relating to co-operative society with the provisions of Part IXB of the Constitution. Since, as held by us, there is no inconsistency between Article 243ZL and Section 36AAA, Article 243ZT does not become applicable at all. For this reason Section 36AAA continues to be in force and we cannot accept the argument of the Petitioners that Section 36AAA is no longer in force. In view of our above finding, the impugned Order dated 24th November 2023 superseding the board of Respondent No. 7 for the period of one year can validly be passed under section 36AAA. If the Petitioners' interpretation is to be accepted, then, notwithstanding Parliament's deliberate choice to apply the whole of the B.R.Act to cooperative banks, by virtue of the third proviso to Article 243ZL, portions of the B.R.Act shall stand impliedly repealed without the expression of any such intent by Parliament. Moreover this would require this Court to judicially parse the third proviso i.e. choose which parts of the B.R.Act apply to co-operative banks and which do not. It is an exercise not permissible in law. Further, if the Petitioners' interpretation is accepted, Parliament's careful

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delineation of the laws applicable to co-operative societies, on one hand, and co-operative banks on the other hand, shall be rendered otiose and will be read out of existence.

57. Further as far as the arguments of the Petitioners regarding the amendment of the MSCS Act 2002 are concerned, Section 123 of the MSCS Act, 2002, is relevant in that regard and reads as under:

> ***123. Supersession of board of specified multi-State co-operative society.—***
>
> *(1) If in the opinion of the Central Government, the board of any specified multi-State co-operative society is persistently making default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or has committed any act which is prejudicial to the interests of the society or its members, or has omitted or failed to comply with any directions given to it under section 122 or that there is a stalemate in the constitution or functions of the board, the Central Government may, after giving the board an opportunity to state its objections, if any, and considering the objections, if received, by order in writing, remove the board and appoint one or more administrators, who need not be members of the society, to manage the affairs of the society for such period not exceeding six months, as may be specified in the order which period may, at the discretion of the Central Government, be extended from time to time; so, however, that the aggregate period does not exceed one year:*
>
> *Provided that in the case of a co-operative bank, the provisions of this sub-section shall have effect as if for the words "one year", the words "two years" had been substituted.*
>
> *(2) The Central Government may fix such remuneration for the administrators, as it may think fit and the remuneration shall be paid out of the funds of the specified multi-State co-operative society.*
>
> *(3) The administrator shall, subject to the control of the Central Government and to such instructions as it may from time to time give, have power to exercise all or any of the functions of the board or of any officer of the specified multi-State co-operative society and take all such actions as may be required in the interests of the society.*

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(4) Save as otherwise provided in sub-section (5), the administrator shall, before the expiry of his term of office, arrange for the constitution of a new board in accordance with the bye-laws of the specified multi-State co-operative society.

(5) If, at any time during the period the administrator is in office, the Central Government considers it necessary or expedient so to do, it may, by order in writing giving reasons therefor, direct the administrator to arrange for the constitution of a new board for such specified multi-State co-operative society in accordance with the bye-laws of such society and immediately on the constitution of such board, the administrator shall hand over the management of such society to such newly constituted board and cease to function.

(6) Where a specified multi-State co-operative society is indebted to any financial institution, the Central Government shall, before taking any action, under sub-section (1) in respect of that society, consult the financial institution.

Explanation.--For the purposes of sections 122 and 123, "specified multi-State co-operative society" means any multi-State co-operative society in which not less than fifty-one per cent. of the paid-up share capital or, of total shares, is held by the Central Government.

58. Section 123 of the MSCS Act, 2002 confers the power of superseding on the Central Government. The fact that the power of superseding is conferred upon the Central Government does not *ipso facto* divest any other body or authority like the RBI of the power to supersede the board of a MSCB, since such a power can be vested in more than one agency and can be exercised in different situations or on the happening of different events.

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59. Further, the reason as to why Central Government is given the power to supersede the board of the MSCS is because it has the power to supersede the board of any MSCS. A MSCS is, in turn, defined in the Explanation to make a Section 123 to make a MSCS where there is some Government shareholding, loan or financial assistance. Since the Government holds shares in such society or may have extended a loan to it or may stand as guarantor to the society, the Government is given the power under Section 123 to supersede the board of such a society . This is not in derogation of the powers of the RBI in relation to a MSCSB.

60. The other fallacy in the Petitioners' argument is that the amendments that they refer to are brought in by the Amending Act of 2023. It is an accepted fact that the Constitutional Amendment adding Articles 243ZL to 243ZT was introduced on 15th February 2012. The period of one year within which any inconsistent laws had to be amended, in order to ensure compliance with those Articles, expired on 15th February 2013. Therefore, the amendments to Section 123 of the MSCS Act, 2002 are not solely relatable to Part IXB. Insofar as the power of RBI to supersede is concerned, the reason why the amendments to Section 123 were made in the year 2023 is clear because by the same Amending Act, Parliament introduced Sections 120A and 120B. Section 120B makes the provisions of the B.R.Act applicable. Therefore, since Parliament had made the whole of the B.R.Act applicable to

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MSCS carrying on the business of banking, Parliament did not think it necessary to make a separate provision in the proviso to Section 123 for MSCBs, as this has already been provided for. Therefore, the rationale behind the 2023 amendment is indifferent to Article 243ZL.

61. For all the aforesaid reasons, we are unable to accept the submission of the Petitioners that Section 36AAA of the B.R.Act is no longer in force and that the impugned Order dated 24th November 2023 could not have been passed under section 36AAA of the B.R.Act.

SUBMISSIONS OF THE PARTIES ON QUESTION NO.(II)

62. The next submission of Mr. Rajadhyaksha, on behalf of the Petitioners, is that the provisions of Section 36AAA of the B.R. Act, as amended, mandate consultation with the Central Government, which has not taken place, and on that ground also the impugned Order dated 24 November 2023 is liable to be quashed.

63. In support of this submission Mr. Rajadhyaksha submitted that Section 36AAA of the B.R. Act when enacted, w.e.f. 24 September 2004, did not provide or require any consultation between the RBI and any other body or authority before passing an order under the said provision. By an amendment to Section 36AAA of the B.R. Act, the earlier proviso to Sub-Section (1) of Section 36AAA was deleted and a new proviso was substituted for the earlier

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one. At the same time when the proviso was substituted, the provisions of Section 56 of the B.R. Act were amended and *inter alia* provided that reference to "Registrar" in the B.R. Act shall be construed as references to the "Central Registrar" under the law under which a co-operative bank is registered. Mr.Rajadhyaksha further submitted that the expression "co-operative bank" has been defined by the same amendment to the B.R. Act to mean "a State Co-operative Bank, a Central Co-operative Bank and a primary Co-operative Bank". He submitted that it is also not disputed that Respondent No.7 is a Multi State Co-operative Society under the MSCS Act, 2002. In Section 3(d) of the MSCS Act, 2002 the "Central Registrar" has been defined to mean the Central Registrar appointed as per clause (f) of Article 243ZH of the Constitution read with Section 4(1) of the MSCS Act, 2002 and includes any officer empowered to exercise the powers of the Central Registrar under Section 4 (2) of the MSCS Act, 2002. Mr. Rajadhyaksha submitted that the provision for consultation enacted in the proviso to Section 36AAA (1) of the B.R. Act must therefore be read to mean consultation with the Central Government.

64. Mr. Rajadhyaksha further submitted that “consultation” has been explained by the Supreme Court in the context of such a provision and has been held it to be mandatory. In support of this submission he relied upon the judgements of the Supreme Court in ***The State of Madhya Pradesh v.***

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Sanjay Nagayach[10]*; Indian Administrative Services Association, U.P. and Ors. v. Union Of India and Ors.*[11] *and in S.C. Advocates-on-record v. Union of India*[12]*.*

65. Further, Mr. Rajadhyaksha submitted that another fundamental principle of Administrative law is that if any power is to be exercised in a particular manner in a statute, it must be exercised in that particular manner or not at all. In support of this submission he relied upon the judgements of the Supreme Court in ***J. N. Gantra v. Morvi***[13] ***and Dhananjaya v. State of Karnataka***[14]***.*** Mr. Rajadhyaksha submitted that therefore the power under Section 36AAA can be exercised only upon consultation with the Central Government, and this not having been done, the procedure under the said provision has not been followed thus vitiating the impugned Order dated 24 November 2023.

66. In response, Mr. Venkatesh Dhond, on behalf of the Respondents, submitted that the proviso to Section 36AAA (1) is clear and unambiguous. It refers not simply to "Registrar" but to the "Registrar of Co-operative Societies of a State", and it refers to "State Government" and no other. Mr. Dhond submitted that, on their plain meaning, they can only mean what they say and

10 (2013) 7 SCC 25
11 (1993) Supp. (1) SCC 730
12 (1993) 4 SCC 431
13 (1996) 9 SCC 495
14 (2001) 4 SCC 9

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nothing more, and, therefore, on its plain meaning, the proviso to Section 36AAA (1) does not not apply to Multi State Co-operative Banks.

67. Mr. Dhond submitted that the said proviso was inserted by an Amending Act (39 of 2020) that also expanded the scope of Section 36AAA from covering only MSCBs to covering all Co-operative Banks. Because Parliament was granting the RBI the power to supersede even the Board of a State Co-operative Bank, and bearing in mind the Constitution's solicitude for co-operative federalism, it only made that power to supersede an Uni State Co-operative Bank contingent upon a consultation with the relevant State Government.

68. Further, Mr. Dhond submitted that given that the two amendments were part of a single Amending Act, the same must be read together. If that is done, the legislative intent becomes absolutely clear, i.e. to bring Uni-State Co-operative Banks within the ambit of Section 36AAA and, while doing so, adding an additional safeguard of consultation only in respect of Uni-State Co-operative Banks. Thus, he submitted that the safeguard of consultation has to be read logically and severally, and applied only to Uni-State Co-operative Banks that were brought within Section 36AAA by the same amendment.

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69. Further, Mr. Dhond submitted that before the 2020 amendment MSCBs were always subject to the rigours of unamended Section 36AAA from as far back as the year 2004. In all these years there was no provision requiring consultation. Therefore, till 2020, the Boards of MSCBs could be proceeded against without consultation. He submitted that the 2020 Amendment does not seek to modify this position. It only asks to make consultation mandatory to USCBs which were being brought within the ambit of Section 36AAA by the same Amending Act. Lastly, Mr. Dhond submitted that Section 56(a)(v), which has been relied upon by the Petitioners, is an interpretative provision applicable "unless the context otherwise requires". It states that should the context of a provision outside Section 56 so require, references to 'Registrar' or 'Registrar of Companies' shall be construed as references to 'Central Registrar' or ' 'Registrar of Co-operative Societies' under the law under which a Co-operative Bank is registered. He submitted that such references to Registrar are to be found, for instance, in Sections 32, 38 and 44 (6B) of the B.R. Act. Mr. Dhond submitted that Section 56(a)(v) applies only to such provisions and not to clearly worded provisions like the proviso to Section 36AAA (1) that identifies with great specificity which Registrar is being referred to, namely that of Co-operative Societies in a State.

FINDINGS AND CONCLUSIONS ON QUESTION NO.(II)

70. The proviso to Section 36AAA (1) reads as under:-

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> *[Provided that in the case of a co-operative bank registered with the Registrar of Co-operative Societies of a State, the Reserve Bank shall issue such order in consultation with the concerned State Government seeking its comments, if any, within such period as the Reserve Bank may specify.]*

71. We are unable to accept the argument of the Petitioners that this proviso requires prior consultation with the Central Government before the Board of Directors of a Multi State Co-operative Bank is superseded. In our view the same is evident from a plain reading of the said proviso. Firstly, the proviso refers to a Co-operative Bank and not to a Multi State Co-operative Bank. Secondly, it refers to a Co-operative Bank which is registered with the Registrar of the Co-operative Societies of a State which necessarily means a Uni-State Co-operative Bank and not a Multi State Co-operative Bank. Thirdly, the proviso requires RBI to consult the concerned State Government. This also shows that the proviso is dealing with Uni-State Co-operative Banks which have been registered with the Registrar of Co-operative Societies of a particular State. Therefore, on a plain reading of the said proviso, the same does not apply to Multi State Co-operative Banks as contended on behalf of the Petitioners.

72. The argument of the Petitioners that since Section 56(a)(v) of the B.R. Act provides that references to 'Registrar', 'Registrar of Companies' shall be construed as references to 'Central Registrar' or 'Registrar of Co-operative

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Societies' as the case may be under the law under which a Co-operative Bank is registered, the word "Registrar" in the said proviso should be read as referring to the Central Registrar and the words State Government should be read as referring to the Central Government. We cannot accept this argument as the said proviso to Section 36AAA (1) does not use the words "Registrar" or Registrar of Companies". It specifically refers to the Registrar of the Co-operative Societies of a State which clearly shows that the proviso is in respect of the USCB and not in respect of MSCBs. This is further fortified by the fact that, under the said proviso, the consultation has to be with the State Government. Further, it is also important to note that, whilst giving the above definition of 'Registrar' or 'Registrar of Companies' in Section 56(a)(v), Section 56(a) starts with the words 'unless the context otherwise requires'. In the present case, read in the context of the proviso, the words Registrar of Co-operative Societies of a State cannot be read as meaning a Central Registrar, especially since the proviso further provides that the consultation is to be with the concerned State Government.

73. Further, as rightly submitted on behalf of the Respondents, the said proviso was inserted by Amending Act, 39 of 2020 which, apart from adding the said proviso, also expanded the scope of Section 36AAA to bring within its ambit Co-operative Banks other than MSCBs. As rightly pointed out by the Respondents, since the Parliament was granting the RBI the power to

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supersede even the Board of a State Co-operative Bank, and bearing in mind the principle of federalism as provided in the Constitution, the Parliament made only the power to supersede the Board of a USCB contingent upon consultation with the relevant State Government. The legislative intent of the said amendment is very clear, i.e., firstly to bring USCBs within the ambit of Section 36AAA and, whilst doing so, providing an additional safeguard of consultation only for the purposes of USCBs. In our view, this also clearly shows that the said proviso is not applicable to MSCBs. Further, before the said 2020 Amendment, MSCBs were covered by the provisions of Section 36AAA from as far back as the year 2004. In all these years there was no provision requiring any consultation as far as MSCBs were concerned and the Board of MSCBs could be proceeded against without consultation. The 2020 Amendment does not seek to modify this position. It only makes consultation mandatory in respect of USCBs which were brought within the ambit of Section 36AAA by the same Amending Act. The proviso and the 2020 Amendment as a whole are therefore specific to USCBs.

SUBMISSIONS OF THE PARTIES ON QUESTION NO.(III)

74. Mr. Rajadhyaksha next submitted that the power exercised under Section 36AAA must be subject to the minimum standards of the principles of natural justice. He submitted that before passing the impugned order dated 24

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November 2023 the RBI ought to have issued a Show Cause Notice and given a hearing to the Petitioners. He submitted that it is an admitted position that no such Show Cause Notice was issued nor was any hearing given before the impugned Order dated 24 November 2023 was passed. In support of his submissions, Mr. Rajadhyaksha relied upon the judgements of the Supreme Court in ***Institute of Chartered Accountants of India v. L. K. Ratna and ors.***[15] ***and in State Bank of India v. Rajesh Agarwal and ors***[16]**.** Mr. Rajadhyaksha submitted that since no Show Cause Notice had been issued prior to the passing of the impugned Order nor any hearing had been given, the impugned Order, on this count alone, is required to be quashed and set aside.

75. In response, Mr. Venkatesh Dhond submitted that Section 36AAA does not require principles of natural justice to be followed. He submitted that, on a plain reading of the said Section, it does not speak of the principles of natural justice. He submitted that the question is whether Section 36AAA warrants reading in principles of natural justice. Mr. Dhond relied upon the judgement of the Supreme Court in ***Union of India v. Col. J. N. Sinha and anr***[17]to submit that the Section does not warrant reading in of principles of natural justice.

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15 (1986) 4 SCC 537

16 (2020) 6 SCC 1

17 (1970) 2 SCC 458

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76. Further Mr. Dhond referred to Section 36AA of the B.R. Act. He submitted that Section 36AA, which immediately precedes Section 36AAA provides for a hearing whilst Section 36AAA does not provide for a hearing. He submitted that this clearly shows that personal hearing is impliedly excluded by the legislature in Section 36AAA.

77. Next Mr. Dhond referred to Section 45IE of the RBI Act, 1934. He submitted that the said Section is in *pari materia* with Section 36AAA of the B.R. Act. He submitted that in the case of ***Adisri Commercial Private Limited and Anr. V. Reserve Bank of India & Ors.***[18] this Court had held in respect of Section 45IE that the principles of natural justice need not be read into the said Section. Mr. Dhond submitted that, on the same logic, the principles of natural justice cannot be read into Section 36AAA.

FINDINGS AND CONCLUSIONS ON QUESTION NO.(III)

78. Section 36AAA does not provide for giving of any Show Cause Notice or hearing. The question that arises is whether the right to a Show Cause Notice or hearing can be read into Section 36AAA. To consider this issue it would be appropriate to refer to the judgements relied upon by the parties in this regard.

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79. Paragraphs 13 to 19 of the judgment in ***L. K. Ratna*** (supra) are relevant and read as under:-

> *"13. At this point it is necessary to advert to the fundamental character of the power conferred on the Council. The Council is empowered to find a member guilty of misconduct. The penalty which follows is so harsh that it may result in his removal from the Register of Members for a substantial number of years. The removal of his name from the Register deprives him of the right to a certificate of practice. As is clear from Section 6(1) of the Act, he cannot practice without such certificate. In the circumstances there is every reason to presume in favour of an opportunity to the member of being heard by the Council before it proceeds to pronounce upon his guilt. As we have seen, the finding by the Council operates with finality in the proceeding, and it constitutes the foundation for the penalty imposed by the Council on him. We consider it significant that the power to find and record whether a member is guilty of misconduct has been specifically entrusted by the Act to the entire Council itself and not to a few of its members who constitute the Disciplinary Committee. It is the character and complexion of the proceeding considered in conjunction with the structure of power constituted by the Act which leads us to the conclusion that the member is entitled to a hearing by the Council before it can find him guilty. Upon the approach which has found favour with us, we find no relevance in James Edward Jeffs v. New Zealand Dairy Production and Marketing Board [(1967) 1 AC 551 : (1967) 2 WLR 136 : (1966) 3 All ER 863] cited on behalf of the appellant. The Court made observations there of a general nature and indicated the circumstances when evidence could be recorded and submissions of the parties heard by a person other than the decision making authority. Those observations can have no play in a power structure such as the one before us.*
>
> ***14.*** *Our attention has been invited to the difference between the terms in which Section 21(3) and Section 21(4) have been enacted and, it is pointed out, that while in Section 21(4) Parliament has indicated that an opportunity of being heard should be accorded to the member, nowhere in Section 21(3) do we find such requirement. There is no doubt that there is that difference between the two provisions. But, to our mind, that does not affect the questions. The textual difference is not decisive. It is the substance of the matter, the character of the allegations, the far-reaching consequences of a finding against the member, the vesting of responsibility in the governing body itself, all these and kindred considerations enter into the decision of the*

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question whether the law implies a hearing to the member at that stage.

15. *Learned counsel for the appellant relies on Chandra Bhavan Boarding and Lodging v. State of Mysore [(1969) 3 SCC 84 : AIR 1970 SC 2042 : (1970) 2 SCR 600] , where this Court found that the procedure adopted by the Government in fixing a minimum wage under Section 5(1) of the Minimum Wages Act, 1948 was not vitiated merely on the ground that the Government had failed to constitute a committee under Section 5(1)(a) of that Act. Reference was also made to K.L. Tripathi v. State Bank of India [(1984) 1 SCC 43 : 1984 SCC (L&S) 520] where the petitioner complained of a breach of the principles of natural justice on the ground that he was not given an opportunity to rebut the material gathered in his absence. Neither case is of assistance to the appellant. In the former, the court found that reasonable opportunity had been given to all the concerned parties to represent their case before the Government made the impugned order. In the latter, the court held that no real prejudice had been suffered by the complainant in the circumstances of the case.*

16. *It is next pointed out on behalf of the appellant that while Regulation 15 requires the Council, when it proceeds to act under Section 21(4), to furnish to the member a copy of the report of the Disciplinary Committee, no such requirement is incorporated in Regulation 14 which prescribes what the Council will do when it receives the report of the Disciplinary Committee. That, it is said, envisages that the member has no right to make a representation before the Council against the report of the Disciplinary Committee. The contention can be disposed of shortly. There is nothing in Regulation 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the Council when it proceeds to render its finding. The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary.*

17. *It is then urged by learned counsel for the appellant that the provision of an appeal under Section 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under Section 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in*

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some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir William Wade's erudite and classic work on Administrative Law 5th Edn. But as that learned author observes (at p. 487), "in principle there ought to be an observance of natural justice equally at both stages", and

"If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

And he makes reference to the observations of Megarry, J. in Leary v. National Union of Vehicle Builders [(1971) Ch 34, 49] . Treating with another aspect of the point, that learned Judge said:

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

The view taken by Megarry, J. was followed by the Ontario High Court in Canada in Re Cardinal and Board of Commissioners of Police of City of Cornwall [(1974) 42 DLR (3d) 323] . The Supreme Court of New Zealand was similarly inclined in Wislang v. Medical Practitioners Disciplinary Committee [(1974) 1 NZLR 29] , and so was the Court of Appeal of New Zealand in Reid v. Rowley [(1977) 2 NZLR 472] .

18. *But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected an publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the*

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> *King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding.*
>
> ***19.** Upon the aforesaid considerations, we are of definite opinion that a member accused of misconduct is entitled to a hearing by the Council when, on receipt of the report of the Disciplinary Committee, it proceeds to find whether he is or is not guilty. The High Court is, therefore, right in the view on this point."*

80. It is important to note that in paragraph 16 of ***L. K. Ratna*** (supra) the Supreme Court had held that the principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary.

81. Paragraphs 36, 55, 62 to 76, 80 and 81 of the Judgement of the Supreme Court in ***Rajesh Agarwal*** (supra) are relevant and are set out hereunder:-

> *36. We need to bear in mind that the principles of natural justice are*

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not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence : (i) nemo judex in causa sua, which means that no person should be a Judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.

55. *Classification of the borrower's account as fraud under the Master Directions on Frauds virtually leads to a credit freeze for the borrower, who is debarred from raising finance from financial markets and capital markets. The bar from raising finances could be fatal for the borrower leading to its "civil death" in addition to the infraction of their rights under Article 19(1)(g) of the Constitution. Since debarring disentitles a person or entity from exercising their rights and/or privileges, it is elementary that the principles of natural justice should be made applicable and the person against whom an action of debarment is sought should be given an opportunity of being heard.*

62. *Classification of a borrower's account as fraud has the effect of preventing the borrower from accessing institutional finance for the purpose of business. It also entails significant civil consequences as it jeopardises the future of the business of the borrower. Therefore, the principles of natural justice necessitate giving an opportunity of a hearing before debarring the borrower from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds. The action of classifying an account as fraud not only affects the business and goodwill of the borrower, but also the right to reputation.*

63. *In State of Maharashtra v. Public Concern for Governance Trust [State of Maharashtra v. Public Concern for Governance Trust, (2007) 3 SCC 587] , a two-Judge Bench of this Court held that a decision taken by any authority affecting the right to reputation of an individual has civil consequences. Therefore, in such situations the principles of natural justice would come into play. The Court held that any order or decision of the authority adversely affecting the personal reputation of an individual must be taken after following the principles of natural justice : (SCC p. 606, para 41)*

"41. It is thus amply clear that one is entitled to have and

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> *preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before being adversely commented upon is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review."*

64. *RBI and lender banks have relied on Peerless General Finance & Investment Co. Ltd. v. RBI [Peerless General Finance & Investment Co. Ltd. v. RBI, (1992) 2 SCC 343] , Joseph Kuruvilla Vellukunnel v. RBI [Joseph Kuruvilla Vellukunnel v. RBI, AIR 1962 SC 1371] and Internet & Mobile Assn. of India v. RBI [Internet & Mobile Assn. of India v. RBI, (2020) 10 SCC 274] to submit that the Master Directions on Frauds are akin to a statutory regulation and a decision on economic policy, which must be accorded a level of deference.*

65. *The competence of RBI to issue the Master Directions on Frauds is not a bone of contention in these appeals. RBI, in its estimation, has the power to determine and frame economic measures in the public interest to ensure the proper management of banking companies. The point however is that the implementation of a decision to secure the health of banking companies must comport with the due process of law. The civil consequences which follow upon a classification of a borrower's account as fraud are serious and prejudicial to the interests of a borrower. Principles of fair play require that the borrower ought to be given an opportunity of being heard before classifying the account as fraud in accordance with the procedure laid down under the Master Directions on Frauds.*

D.3. No implied exclusion of audi alteram partem

66. *RBI and the lender banks have contended that the Master Directions on Frauds impliedly exclude the right to be heard. The objective of the Master Directions on Frauds is to ensure timely detection and reporting of cases of fraud to alert other banks and initiate criminal proceedings. The Directions contemplate an opportunity of hearing to a third party who is involved in the commission of fraudulent activity, but do not explicitly provide for hearing to a borrower. Thus, it is urged that hearing to the borrowers is excluded by necessary implication.*

67. *The Master Directions on Frauds do not expressly exclude a right of hearing to the borrowers before action to class their account as frauds is initiated. The principles of natural justice can be read into a statute or a notification where it is silent on granting an opportunity of a hearing to a party whose rights and interests are likely to be affected by the orders that may be passed.*

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68. In a decision of a three-Judge Bench of this Court in Swadeshi Cotton Mills v. Union of India [Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664] , the issue was whether the Central Government was required to comply with the requirements of audi alteram partem before it took over the management of an industrial undertaking under Section 18-AA(1)(a) of the Industries (Development and Regulation) Act, 1951. R.S. Sarkaria, J. speaking for the majority consisting of himself and D.A. Desai, J. laid down the following principles of law : (SCC p. 689, para 44)

> *"44. In short, the general principle — as distinguished from an absolute rule of uniform application — seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play 'must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands'. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."*
>
> *(emphasis supplied)*

69. The main point for consideration before this Court in Swadeshi Cotton Mills [Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664] was whether the use of the phrase "immediate action is necessary" under Section 18-AA(1)(a) of the IDR Act impliedly excluded the application of the audi alteram partem rule. Sarkaria, J. held that the expression "immediate action", construed in light of the overall context, object and reasons of the legislation, did not necessarily indicate an intention to exclude the requirement of prior hearing. The Court held that the use of the phrase does not exclude the duty to comply with the audi alteram partem rule : (SCC pp. 704-705, para 77)

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> *"77. The second reason — which is more or less a facet of the first — for holding that the mere use of the word "immediate" in the phrase "immediate action is necessary", does not necessarily and absolutely exclude the prior application of the audi alteram partem rule, is that immediacy or urgency requiring swift action is a situational fact having a direct nexus with the likelihood of adverse effect on fall in production. And, such likelihood and the urgency of action to prevent it, may vary greatly in degree. The words "likely to affect … production" used in Section 18-AA(1)(a) are flexible enough to comprehend a wide spectrum of situations ranging from the one where the likelihood of the happening of the apprehended event is imminent to that where it may be reasonably anticipated to happen sometime in the near future. Cases of extreme urgency where action under Section 18-AA(1)(a) to prevent fall in production and consequent injury to public interest, brooks absolutely no delay, would be rare. In most cases, where the urgency is not so extreme, it is practicable to adjust and strike a balance between the competing claims of hurry and hearing."*
>
> *(emphasis supplied)*
>
> *Sarkaria, J. observed that that the owner of an undertaking is entitled to a fair hearing at the pre-decisional stage because the power of the Central Government under Section 18-AA(1)(a) to take over is far-reaching and adversely affects the rights and interests of owners.*

70. *In Mangilal v. State of M.P. [Mangilal v. State of M.P., (2004) 2 SCC 447 : 2004 SCC (Cri) 1085] , a two-Judge Bench of this Court held that the principles of natural justice need to be observed even if the statute is silent in that regard. In other words, a statutory silence should be taken to imply the need to observe the principles of natural justice where substantial rights of parties are affected : (SCC pp. 453-54, para 10)*

> *"10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the*

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> *absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. … Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves."*
>
> *(emphasis supplied)*

71. *As a counter to the above legal position, RBI and lender banks have contended that the principles of natural justice could be excluded in cases where there is a requirement of promptitude or exigent action. In support of the submission, RBI and banks have relied upon Ajit Kumar Nag v. Indian Oil Corpn. Ltd. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] , which in turn relied on the Constitution Bench decision of this Court in Union of India v. Tulsiram Patel [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672] . In Tulsiram Patel [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672] , this Court observed that a right to a prior notice and an opportunity to be heard could be excluded if allowing for such a right would obstruct the taking of prompt action : (Tulsiram Patel case [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672] , SCC p. 479, para 101)*

> *"101. … So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, …"*

72. *The borrowers have dwelt on Clause 8.9.6 of the Master Directions*

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on Frauds according to which the entire exercise commencing from the detection of fraud by an individual bank up to the declaration of fraud by JLF is to be completed within six months. Clause 8.9.6 provides thus:

> *"8.9.6 It may be noted that the overall time allowed for the entire exercise to be completed is six months from the date when the first member bank reported the account as RFA or fraud on the CRILC platform."*

73. *In K.I. Shephard v. Union of India [K.I. Shephard v. Union of India, (1987) 4 SCC 431 : 1987 SCC (L&S) 438] , this Court was called upon to decide the validity of amalgamation schemes drawn by RBI, whereunder three private banks were amalgamated with nationalised banks. At the time of merger, some employees of the private banks were excluded from employment as their services were not taken over by the transferee banks in view of allegations of misconduct against them. While noting the fact that the entire process of amalgamation was statutorily required to be completed within 6 months, this Court held that the said time-frame provides scope for granting an opportunity of hearing to the affected employees : (SCC p. 448, para 15)*

> *"15. … We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time-frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment."*

74. *The decision of this Court in Swadeshi Cotton Mills [Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664] and K.I. Shephard [K.I. Shephard v. Union of India, (1987) 4 SCC 431 : 1987 SCC (L&S) 438] demonstrates that the exigency of a situation is contextual. The Court must lean in favour of reading in the principles of natural justice when faced with a regulatory silence. Any exclusion must be confined to the narrowest possible limits. The application of the requirement of a prior hearing could be excluded only in situations where importing it would have the effect of paralysing the entire process.*

75. *As mentioned above, Clause 8.9.6 of the Master Directions on Frauds contemplates that the procedure for the classification of an account as fraud has to be completed within six months. The procedure adopted under the Master Directions on Frauds provides enough time to the banks to deliberate before classifying an account as fraud. During this interval, the banks can serve a notice to the borrowers, and give them an opportunity to submit their reply and representation regarding*

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the findings of the forensic audit report. Given the wide time-frames contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for banks to provide an adequate opportunity of a hearing to the borrowers before classifying their account as fraud.

76. *The exclusion contemplated in the decision of this Court in Tulsiram Patel [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672] would not be applicable because giving an opportunity of a hearing to the borrowers will not obstruct the taking of prompt action under the Master Directions on Frauds.*

80.*Audi alteram partem has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected. In Tulsiram Patel [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672] , this Court explained the wide amplitude of audi alteram partem : (SCC p. 476, para 96)*

> *"96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry."*
>
> *(emphasis supplied)*

81.*Audi alteram partem, therefore, entails that an entity against whom evidence is collected must : (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF, have to decide*

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> *whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds."*

82. Again it is important to note that, even in ***Rajesh Agarwal*** (supra), in paragraph 74, the Supreme Court has held that the application of the requirement of a prior hearing can be excluded only in situations where importing it would have the effect of paralyzing the entire process.

83. The next judgment relied upon by the parties is the Judgement of the Supreme Court in ***Col. J. N. Sinha*** (supra). Paragraphs 8 to 11 of the said Judgement are relevant and read as under:-

> ***"8.*** *Fundamental Rule 56(i) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150] "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the*

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principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

9. *Now corning to the express words of Fundamental Rule 56(j) it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been farmed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of mala fide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the government servants. That rule merely embodies one of the facets of the pleasure doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in government organizations, there is good deal of dead wood. It is, in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual government servant and the interests of the public. While a minimum service is guaranteed to the government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest.*

10. *It is true that a compulsory retirement is bound to have some adverse effect on the government servant who is compulsorily retired*

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> *but then as the rule provides that such retirements can be made only after the officer attains the prescribed age. Further, a compulsorily retired government servant does not lose any of the benefits earned by him till the date of his retirement. Three months' notice is provided so as to enable him to find out other suitable employment.*
>
> ***11.*** *In our opinion the High Court erred in thinking that the compulsory retirement involves civil consequences. Such a retirement does not take away any of the rights that have accrued to the government servant because of his past service. It cannot be said that if the retiring age of all or a section of the government servants is fixed at 50 years, the same would involve civil consequences. Under the existing system there is no uniform retirement age for all government servants. The retirement age is fixed not merely on the basis of the interest of the government servant but also depending on the requirements of the society."*

84. In ***Col. J. N. Sinha*** (supra) also the Supreme Court has held that the principles of natural justice cannot be read into a statute if the statutory provision either specifically or by necessary implication excludes the application of any or all of the principles of natural justice. The Supreme Court further held that Courts cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provisions the principles of natural justice.

85. On the basis of the principles laid down in the aforesaid judgements, we have to consider whether the principles of natural justice can be read into Section 36AAA.

86. Section 36AA, which immediately precedes Section 36AAA, provides that an order removing any Chairman, Director, Chief Executive

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Officer or other Officer or employee of a banking company under Sub Section (1) of Section 36 A shall not be made 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 of India against the proposed order. However, Section 36AAA, which immediately follows Section 36AA, does not provide for any such opportunity of hearing before any order is passed by the RBI. In our view, therefore, this clearly shows that the intention of the Parliament is not to include the principles of natural justice in Section 36AAA. In other words, there is a clear mandate to the contrary in the statute. Looking at it in another way it can also be said that the statute excludes by necessary implication the principles of natural justice from Section 36AAA. In our view, for this reason the principles of natural justice cannot be read into Section 36AAA.

87. Further, the judgment in ***Rajesh Agarwal*** (supra) provides that principles of natural justice should not be read into a statute where importing them would have the effect of paralyzing the entire process. It is important to note that RBI has to exercise the power under Section 36AAA when it is satisfied that in the public interest or for preventing the affairs of a co-operative Bank being conducted in a manner detrimental to the interest of the depositors or of the Co-operative Bank or for securing the proper management of the Co-operative Bank it is necessary to do so. In our view, considering the

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circumstances in which the power under Section 36AAA has to be exercised, if a Show Cause Notice or hearing is given, then it would lead to delay causing further deterioration in the affairs of the Bank and further mismanagement thereby further prejudicing the interests of the Bank and its depositors. This would have the effect of defeating the purposes for which the said power is conferred on the Reserve Bank in Section 36AAA. In our view, for this reason also, the principles of natural justice cannot be read into Section 36AAA.

88. In this context it would be appropriate to refer to the Judgment of a Co-ordinate Bench of this Court in ***Adisri Commercial Private Limited*** (supra), where the Court was considering the challenge to an order passed by RBI under Section 45IE of the RBI Act which is in *pari materia* with Section 36AAA of the B.R. Act and provides for superseding the Board of Directors of a non banking financial company if the RBI is satisfied that in the public interest or to prevent the affairs of a non banking financial company being conducted in a manner detrimental to the interest of the depositors or creditors or of the non Banking Financial Company or for securing the proper management of such company or for financial suitability it is necessary to do so. Paragraphs 14 to 16 of the said Judgment in ***Adisri Commercial Private Limited*** (supra) are instructive and read as under:-

> *"14. As per section 45IE of the RBI Act, Reserve Bank of India is empowered to supersede the Board of Directors if it is satisfied that in the public interest or to prevent the affairs of a non-banking*

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financial company being conducted in a manner detrimental to the interest of the depositors or creditors or for securing the proper management of such company or for financial stability it is necessary so to do. Upon such supersession, it may appoint a suitable person as the administrator.

15. *Coming to the press release dated 04.10.2021, not only Reserve Bank of India has informed about supersession of the Board of Directors and appointment of administrator but it has also informed that it intends to shortly initiate the process of corporate insolvency resolution of respondent Nos. 2 and 3 under the Insolvency and Bankruptcy Code, 2016 and more particularly under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 and would apply to the NCLT for appointing the administrator as the insolvency resolution professional.*

16. *Upon thorough consideration of the entire matter, we are of the view that present is not a fit case where we should invoke our extra ordinary jurisdiction under Article 226 of the Constitution of India. We are unable to agree to the contention made on behalf of the petitioner that there is no proximate cause for issuance of the impugned order. As a matter of fact there need not be any proximate cause for an action like the impugned one. Because the financial position of respondent No. 2 was considered as on 31.03.2020 and because respondent No. 2 had transferred assets and liabilities of respondent No. 3 by way of slump exchange despite non-receipt of no objection in October, 2019 would not in any manner impeach the decision-making process. On the contrary, it may indicate that despite opportunity granted to rectify governance issues and improve financial condition, nothing was done. It cannot be said that Reserve Bank of India has acted without jurisdiction or in violation of the principles of natural justice. These are matters of financial, economic and corporate decision making to handle which statutory bodies like Reserve Bank of India are fully empowered and competent. It would be hazardous and risky for the courts to enter into such domain which are dealt with by expert bodies. Court should be very circumspect in interfering in such matters as was held by the Supreme Court in Peerless General Finance and Investment Company Limited (supra)."*

89. For all these reasons we are not inclined to read the principles of natural justice in Section 36AAA.

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90. In these circumstances, in our view, the impugned Order dated 24 November 2023 cannot be assailed on the ground that no notice or hearing was given before passing the said Order.

91. In the light of the aforesaid discussion, and for the aforesaid reasons, we are not inclined to interfere with the impugned order dated 24 November 2023 in our writ jurisdiction under Article 226 of the Constitution of India.

92. In these circumstances, the Petition is hereby rejected and the rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)

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