REPORTABLE

2026 INSC 1132

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3182 OF 2025

YES BANK LIMITED & ANR. ...APPELLANTS

VERSUS

AXIS TRUSTEE SERVICES LIMITED & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NOS.3193-3202 OF 2025

YES BANK LIMITED & ETC. ...APPELLANTS

VERSUS

INDIABULLS HOUSING FINANCE LTD.
ETC. ETC. & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NOS.3183-3192 OF 2025

RESERVE BANK OF INDIA ...APPELLANT

VERSUS

AXIS TRUSTEE SERVICES LIMITED
ETC. ETC. & ORS. ...RESPONDENTS

AND

CIVIL APPEAL NOS.3203-3212 OF 2025

UNION OF INDIA ...APPELLANT

VERSUS

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AXIS TRUSTEE SERVICES LIMITED
ETC. ETC. & ORS. ...RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

I. INTRODUCTION

1. On the tip of Switzerland, sharing its borders with France and Germany, lies the city of Basel. Through this city runs the river Rhine. As the river winds through the city, the Bank for International Settlements (BIS), a pivotal institution at the heart of the global financial system, stands prominently on its *bank*.

2. In or about 2008, a certain *bank* — the term used loosely at this juncture — collapsed. What followed therefrom led to a series of one of the biggest financial meltdowns in history, ripples of which were felt across the world. This led to, among other things, the enactment in 2010 of the Basel III Capital Regulations or the Basel III framework by the Basel Committee on Banking Supervision at the BIS. The Reserve Bank of India[1] has implemented this framework through its Master Circular – Basel III Capital Regulations[2].

3. The present judgment interprets parts of the RBI's mammoth Master Circular—possibly, the first of its kind by this Court to date. The novelty of this decision is less of a fascination and more of a formidable challenge, as we are mindful of the large-scale impact it may have, both immediate and gradual. Over the course of the last few decades, the banking and finance industry has ballooned into a sector worth

[1] RBI
[2] Master Circular

billions. To a large extent, the RBI regulates this space. Its rules, regulations, and guidelines are routinely subjected to interpretation by law firms, senior advocates, retired judges and the like. Seldom do these disputes reach this Court. This leads to challenges in judicial clarity over matters of fiscal nature. Keeping all of this in mind, we now approach the matter at hand.

II. THE FACTS

4. A judgment and order dated 20th January, 2023[3], passed by the High Court of Judicature at Bombay[4] is impugned before us. The impugned order succinctly records the detailed factual matrix; to avoid prolixity, we advert only to a few dates that are relevant to the analysis which follows.

5. On 23rd December, 2016, Yes Bank Limited[5] issued Basel III Compliant Additional Tier I Bonds[6] in the form of non-convertible debentures for Rs. 3,000 crore. On 18th October, 2017, a further tranche of AT-1 Bonds was issued for Rs. 5,415 crore. For both sets of AT-1 Bonds, Axis Trustee Services Limited[7] was appointed as the trustee company. The AT-1 Bonds were regulated by the Master Circular.

6. Since the financial position of YES BANK underwent a steep decline, on 5th March, 2020, the Central Government imposed a moratorium on it under section 45 of the Banking Regulation Act, 1949[8] till 3rd April,

[3] impugned order
[4] High Court
[5] YES BANK
[6] AT-1 Bonds or Bonds, used interchangeably
[7] Axis Trustee
[8] BR Act

2020. On the same day, a notification under section 36ACA of the BR Act came to be issued by the RBI appointing an Administrator in supersession of the Board of Directors of YES BANK and to oversee it. On the day following, 6th March, 2020 to be precise, a draft scheme[9] of reconstruction of YES BANK was placed in the public domain and comments were invited from the general public by 9th March, 2020. Objections were duly lodged.

7. On 13th March, 2020, the Central Government notified the final reconstruction scheme called the '*Yes Bank Limited Reconstruction Scheme, 2020*'[10]. The Reconstruction Scheme, in its final form, underwent certain changes from the Draft Scheme, which we propose to deal with at a later part of this judgment.

8. On 14th March, 2020, the Administrator wrote down the AT-1 Bonds. This was also communicated to the Bombay Stock Exchange[11] and the National Stock Exchange[12]. While there is a substantial difference between the words '*write off*' and '*write down*' as per the Master Circular, throughout our reasoning, we would refer to the Administrator's act as writing down since those are the very words used in his letter dated 14th March, 2020.

9. It was this act of writing down of the AT-1 Bonds by the Administrator on 14th March, 2020 which was impugned in several writ petitions

[9] Draft Scheme
[10] Reconstruction Scheme
[11] BSE
[12] NSE

before the High Court. While allowing the challenge, the High Court set aside the Administrator's action.

III. PROCEEDINGS BEFORE THIS COURT

10. Hearings on these appeals have spanned over several days, with several versions and iterations of written notes and submissions, compilations of documents and precedents being filed before and after the hearing concluded. Several senior counsel and counsel were heard by us at considerable length.

11. Notably, we have heard the erudite arguments of the Solicitor General of India, Mr. Tushar Mehta for the RBI and the State Bank of India[13], and learned senior counsel Mr. Shyam Divan and Mr. Balbir Singh for YES BANK and its Administrator, respectively, who assailed the impugned judgment urging various grounds. We have also heard equally erudite arguments from learned senior counsel, viz. Mr. C.A. Sundaram, Dr. Abhishek Manu Singhvi, and Mr. Neeraj Kishan Kaul, and other counsel appearing for the respondents, as well as the party-in-person Mr. L.V. Srinivasan who, joining online, sought to sustain the impugned judgment.

IV. ANALYSIS

12. The issues arising for our consideration are:

A. Whether, in view of developments subsequent to the writing down of the AT-1 Bonds, a decision on merits is unwarranted?

[13] SBI

B. Whether the Administrator could write down the AT-1 Bonds in the absence of a specific provision in the Reconstruction Scheme?

C. Whether the act of the Administrator in writing down the AT-1 Bonds was in consonance with the Master Circular and the terms of the Information Memorandum of the AT-1 Bonds?

ISSUE A: WRITING DOWN AND ITS FINANCIAL IMPLICATIONS

13. Appellants contend that if the impugned judgment is allowed to stand, it would trigger a severe financial avalanche; not just for YES BANK but for the entire banking system, undoing the very reconstruction exercise meant to lift YES BANK out of the financial crisis it faced.

14. Respondents, conversely, contend that YES BANK's financial position has since risen well above regulatory levels, and that the impugned judgment — which struck down the Administrator's decision to write down the AT-1 Bonds — should therefore be sustained. After SBI infused funds under the Reconstruction Scheme, YES BANK's share price rose; and once the Scheme's three-year lock-in period expired, SBI sold its majority stake in YES BANK at a substantial profit[14]. All parties, the respondents contend, have gained from the exercise.

15. The issue does not brook a short-cut; hence, we do not propose to end the *lis* by simply taking note of events subsequent to the impugned judgment and close the matter. We are reminded of a decision of this Court in ***Yash Deep Trexim Private Limited v. Namokar Vinimay***

[14] While no document recording the sale has been placed on record, we have simply noted the submission.

Pvt. Ltd.[15] where this Court left the short but precise legal question[16] open for decision in an appropriate case without, perhaps, foreseeing that such an appropriate case may never arise again. Be that as it may, the *lis* which unfolds before us calls for a resolution taking into consideration the position and circumstances that stood on the date when the Administrator ordered the AT-1 Bonds to be written down, *i.e.*, on 14th March, 2020. Trite it is, in cases of challenge to an administrative action, the validity of such action must be tested as it existed on the date on which it took place, in view of the law as it stood then. Subsequent actions, inaction, or change in circumstances, that affect the impugned decision cannot and ought not to have an effect on the outcome of the *lis* raised in the writ petition. To this extent, we are fortified by the view taken by this Court in ***Nawabkhan Abbaskhan v. State of Gujarat***[17].

16. As noted, the respondents before us challenged the validity of the Administrator's action in several writ petitions presented before the High Court. The High Court was tasked to examine the validity of such action as it stood on the day when the order of writing down the AT-1 Bonds was passed. The High Court did so and struck down the Administrator's order. We too, therefore, wish to examine it in view of the facts and the law as it stood as on date.

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[15] (2014) 1 SCC 545
[16] Whether the Sick Industrial Companies (Special Provisions) Act is applicable to foreign companies registered in India under Section 591 of the Companies Act, 1956?
[17] (1974) 2 SCC 121

ISSUE B: THE DRAFT SCHEME, THE RECONSTRUCTION SCHEME, AND THE ADMINISTRATOR'S AUTHORITY

17. The primary ground urged by the respondents and accepting which the High Court *vide* the impugned judgment allowed the writ petitions, was that the Reconstruction Scheme did away with the clause providing for the writing down of the AT-1 Bonds. In the absence of a specific clause authorising the Administrator to write down the Bonds — and given, in particular, the Central Government's deletion of the clause that had provided for such a write down — the Administrator's action fell afoul of the Reconstruction Scheme.

18. In order to appreciate this contention, we reproduce the relevant provisions of the BR Act, the relevant clauses of the Draft Scheme and the Reconstruction Scheme, and the events that took place between 6th March, 2020 and 13th March, 2020.

19. YES BANK was reconstituted/reconstructed — the word 'reconstituted' having been amended to 'reconstructed' by the Banking Regulation (Amendment) Act, 2020 — under the provisions of section 45 of the BR Act.

20. Clause 6 of the Draft Scheme read thus:

> **6. Rights and liabilities of the Reconstructed Bank:**
> Unless otherwise expressly provided in the scheme, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature, subsisting or having effect immediately before the Appointed date, shall be effective to the extent and in the same manner, as was applicable before the Scheme.
> It shall not be necessary to obtain the consent of any third party or other person who is a party to any of the aforesaid instruments or arrangements to give effect to them.
> All the deposits with and liabilities of the Reconstructed bank, except as provided in the scheme, and the rights, liabilities and obligations of its

creditors, will continue in the same manner and with the same terms and conditions, completely unaffected by this Scheme.
The instruments qualifying as Additional Tier 1 capital, issued by the YES BANK Ltd. under Basel III framework, shall stand written down permanently, in full, with effect from the Appointed date. This is in conformity with the extant regulations issued by Reserve Bank of India based on the Basel framework.
No accountholder shall be entitled to get any compensation from the Reconstructed bank on account of the changes occurred in the Reconstructed bank by virtue of the Scheme.
Any cause of action accrued, suit, appeal or other proceeding of whatever nature pending, and decree or recovery certificate obtained by or against the Reconstructed bank, will remain unaffected by the Scheme.
(emphasis supplied by learned senior counsel for the respondents)

21. The corresponding clause of the Reconstruction Scheme reads thus:

6. Rights and liabilities of the Reconstructed Bank:
(1) Unless otherwise expressly provided in this scheme, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature, subsisting or having effect immediately before the commencement of this Scheme, shall be effective to the extent and in the same manner, as was applicable before such commencement.
(2) It shall not be necessary to obtain the consent of any third party or other person who is a party to any of the aforesaid instruments or arrangements to give effect to them.
(3) All the deposits with and liabilities of the reconstructed bank, except as provided in this Scheme, and the rights, liabilities and obligations of its creditors, shall continue in the same manner and with the same terms and conditions, completely unaffected by this Scheme.
(4) No person shall be entitled to get any compensation from the Reconstructed bank on account of the changes in the reconstructed bank by virtue of this Scheme.
(5) Any cause of action accrued, suit, appeal or other proceeding of whatever nature pending, and decree or recovery certificate obtained by or against the reconstructed bank, will remain unaffected by this Scheme.
(emphasis supplied by learned senior counsel for the appellants)

22. A juxtaposition of the two clauses reveals a conspicuous absence: what would otherwise have been sub-clause (4) of clause 6 is missing from the Reconstruction Scheme. The paragraph providing that the AT-1 Bonds would be written down in full was omitted.

23. Certain events occurred before the moratorium was imposed on 5th March, 2020 as well as between the publication of the Draft Scheme and the publication of the Reconstruction Scheme; we notice these,

hereafter, both to ascertain whether they were at all relevant and, if so, to what extent.

24. Several stakeholders, including the primary stakeholder Axis Trustee (respondent no. 1), wrote to YES BANK Limited a day before the moratorium was imposed, *i.e.*, on 4th March, 2020, expressing concern about its functioning and apprehension that the bondholders' interests could be prejudiced. Axis Trustee requested a face-to-face meeting with YES BANK's senior management within twenty-four hours.

25. Likewise, Indiabulls Housing Finance Limited[18], an investor in the AT-1 Bonds, also wrote to YES BANK on 3rd March, 2020, requiring it, *inter alia*, to redeem all the AT-1 Bonds and not to write them down.

26. After the Draft Scheme was published, Axis Trustee, on 8th March, 2020, voiced concerns over the proposed write down on behalf of various institutional and retail bondholders. *Inter alia*, Axis Trustee raised the delayed announcement of financial results for the quarter ended December 2019, and its effect on the AT-1 Bonds, and pleaded that the bonds be converted into equity instead.

27. Around the same time, IHFL also wrote to the RBI opposing the Draft Scheme's proposal to write down the AT-1 Bonds.

28. Before the Reconstruction Scheme could be notified, Axis Trustee had already filed a writ petition[19] before the High Court. Pursuant to that petition, Axis Trustee wrote to the RBI again, on 11th March, 2020, calling for the bonds to be converted to equity instead of being written

[18] IHFL

[19] the writ petition having been later disposed of by a separate order, neither the petition nor the order has been placed on record.

down entirely, and undertook that should the RBI adopt this course, it would withdraw the petition.

29. At this juncture, an internal note[20] submitted by the RBI to the Department of Financial Services, Government of India (subsequently obtained through the mechanism of the Right to Information Act, 2005) becomes relevant. The Note was circulated to seek the approval of the Union Finance Minister and the Cabinet, and records that, after publication of the Draft Scheme, the RBI received comments from individuals and investors expressing concern in regard to the writing down of the AT-1 Bonds. These observations appear at paragraph 3.4.6 of the Note. Given the reliance placed on it by all the parties, we set out the relevant portion *verbatim* as under:

> *AT1 bonds*
>
> 3.4.6. With regard on AT1 bonds, RBI has stated that the bank has issued three series of AT1 bonds at different points of time as under:
>
> | | ISIN | Amount (in crore Rs.) | Issue date | Coupon |
> |---|---|---|---|---|
> | 1 | INE528G08261 | 280.00 | 31.12.2013 | 10.5% |
> | 2 | INE528G08352 | 3,000.00 | 23.12.2016 | 9.5% |
> | 3 | INE528G08394 | 5,415.00 | 18.10.2017 | 9.0% |
> | | TOTAL | 8,695.00 | | |
>
> 3.4.6.1 RBI has stated that it is pertinent to note that in the first series of Rs. 280 crore, a clause has been included in the term-sheet under which the bonds can be written down on the occurrence of loss-absorption events only after the common equity capital has been written down. Since bonds of this series are not Basel-III compliant instruments, these have not been reckoned for the purpose of write down or conversion in the scheme. The second bond series, aggregating Rs. 3,000 crore, provides for write-down and conversion at both the pre-specified trigger level and point of non-viability (PONV). The terms of the third bond, aggregating Rs. 5,415 crore, provide for only write-down at both the triggers.

[20] F. No. 7/19/2020-BOA.I: the Note hereafter

3.4.6.2 RBI guidelines contained in Annex 16 of RBI's Master Circular on Basel III Capital Regulations, 2015 state as under.

> (a) Paragraph 2.3: Write-down of common equity tier I capital shall not be required before a write-down of any AT1 capital.
>
> (b) Paragraph 2.15: If relevant authorities decide to reconstitute a bank or amalgamate a bank with any other bank under section 45 of B. R. Act, such a bank will be deemed as non-viable or approaching nonviability and both the pre-specified trigger and trigger at PONV for conversion/write-down of AT1 instruments will be activated. Accordingly, AT1 instruments will be fully converted or Written down permanently before amalgamation/reconstitution in accordance with the rules. In case of reconstitution or amalgamation of banking company under section 45 ibid, at PONV, conversion or write-down of AT1 instruments will be activated and such conversion/write down will be before amalgamation or reconstitution of the bank.
>
> (c) Paragraph 3.1: In case of PONV trigger, write-off of any CET1 capital shall not be required before write-off of any non-equity (AT1 and Tier 2) regulatory capital instrument.

3.4.6.3 RBI has stated that it is thus very clear from the above that as per RBI guidelines on Basel III capital regulations, write-off/conversion of AT1 capital has to happen before write-off of CET1 capital. RBI has further stated that it is seen that the term-sheet of AT1 bonds provide multiple options providing 'only write down' or 'conversion or write down', which could lead to possible litigation. To prevent any present and future litigation, the bond trustee of AT-1 bonds has proposed conversion. By this, bonds are getting converted at Rs. 51, which is close to the share price as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") formula for preferential allotment as per SEBI rules. Effectively, because of new investors, as the other investors participating in the scheme are being allotted equity shares at Rs. 10 per share, allotting 1.955 per share per Rs. 100 will tantamount to AT1 bondholders getting 20% value of their investment with possibilities for future upside.

3.4.6.3.1 With regard to treatment of AT-1 bonds, the extant guidelines/rules/ regulations of RBI and bond conditions apply. Therefore, it may not be appropriate to modify these through the proposed Reconstruction Scheme. Accordingly, related provision in the draft scheme furnished by RBI may be dropped.

(emphasis ours, by underlining)

30. The Note also took into consideration the pending litigation concerning the AT-1 bonds. Its observations, at paragraph 3.4.10, read as under:

Writ petition filed by Axis Trustee Services Limited

3.4.10 RBI has informed that that it has received a notice of filing of a writ petition in Bombay High Court by Axis Trustee Services Limited on 9.3.2020, vide which the petitioner has prayed-

> (a) To issue direction to RBI to give an effective opportunity to the petitioner to make a detailed representation, incorporating

reservations, objections and suggestions to RBI on the draft scheme, and to provide an opportunity of hearing and audience on its representation;

(b) To pass an order refraining RBI and Union of India from implementing the scheme, until the petitioner is given a hearing and audience by the respondent, and consider the representation of the petitioner; and

(c) To restrain RBI from implementing the scheme to the extent that the said scheme purports to write off, permanently, in full, the debenture issued to the petitioner under Debenture Trusts Deed dated 15.3.2017 and 28.12.2017 respectively; pending hearing and disposal of the present petition, the court may restrain RBI in implementing the scheme.

3.4.10.1 RBI has informed that the matter was to be heard on 11.3.2020, but no hearing took place and that it is not listed for any further date. The petitioner has requested RBI that the matter being *sub-judice*, RBI should not precipitate any action to the prejudice of the AT1 bondholders. RBI has stated that, however, as at the time of sending of this letter, there is no stay granted by the Court on the scheme, and that RBI is forwarding the final draft of the scheme to the Central Government for sanction and notification.

3.4.10.2 RBI has stated that it may be observed that the petitioner had already submitted its detailed comments/suggestions on the draft 'YES BANK Reconstruction Scheme-2020', vide email dated 8.3.2020 and, as mentioned earlier, all the comments received from various quarters have been duly analysed and appropriate action taken. These comments include the comments submitted by Axis Trustee Services Ltd. Further, wide (*sic* vide) letter dated 11.3.2020, Axis Trustee Services Ltd (the petitioner), which is acting as trustee for the Basel-III bonds, has stated that majority bondholders (three fourth) of AT1 bonds are agreeable that upon notification of the final Scheme of reconstruction of the bank, the AT-1 bonds shall stand fully converted on the basis of a conversion ratio of 19,551 equity shores (sic) of Rs. 2 each of the reconstructed bank to be issued for each AT-1 Bond with a face value of Rs. 10,00,000. Accordingly, shares shall be allotted to the existing AT1 holders in proportion to their current holding of these bonds. RBI has informed that the suggestion has suitably been considered and incorporated in the revised Reconstruction Scheme.

31. The final clause of the Note, which summarises the salient features of the proposed Reconstruction Scheme, reads thus:

Final draft of the Reconstruction Scheme

3.4.12 Against this background, RBI has placed the final draft of the "YES BANK Ltd. Reconstruction Scheme, 2020" ("Reconstruction Scheme") [pp. 279-184/c] for sanction and notification.

3.4.12.1 Salient features of the proposed Reconstruction Scheme are as under:

…

(q) The Basel III compliant AT-1 bonds issued by the reconstructed bank shall stand fully converted on the basis of a conversion ratio of 19,551 equity shares of Rs. 2 each of the reconstructed bank to be issued for each AT-1 Bond with a face value of Rs. 10,00,000. Accordingly, share shall be allotted to the existing Basel III compliant AT-1 bond holders in proportion to their current holding of these bonds.

32. Approval of the Union Finance Minister was sought in the following terms:

8. Approval sought

8.1 Approval of the Finance Minister is sought for the following:

(a) The updated draft note for the Cabinet, placed below, for soliciting approval of the Cabinet for sanction to the "YES BANK Ltd. Reconstruction Scheme, 2020", and submitting the note for the Cabinet to the Cabinet Secretariat with the request that the Ministry of Law and Justice may make its views known in the meeting of the Cabinet through the Minister of Law and Justice;

(b) In the event of Cabinet according approval to the proposed scheme by 13.3.2020, keeping in view RBI's communication that it would prefer that the Reconstruction Scheme is notified on 13.3.2020, to notify the said date as the appointed date for the scheme; and

(c) In the event of Cabinet according approval to the proposed scheme, issuing on the same date the notification recommended by RBI under section 53 of B.R. Act, for exempting State Bank of India (SBI) from the application of the provision of section 19(2) *ibid*. insofar as they relate to the holding of shares of SBI in YES BANK Ltd., for a period of four years from the date of notification.

33. On 13th March, 2020, the Reconstruction Scheme was published in the Official Gazette[21], with the clause as set out in paragraph 21 hereinabove. On the next day, 14th March, 2020, the Administrator wrote down the AT-1 Bonds which was impugned in the writ petitions before the High Court.

34. Two material observations, of relevance, emerge from these events: (a) the cognizance taken by the RBI of the comments and suggestions

[21] Gazette

submitted by various stakeholders, as revealed by the Note; and (b) the complete absence, from the Reconstruction Scheme, of the clause providing for the writing down of the AT-1 Bonds.

35. Both these events, considered together, lift the curtain on the reasons and deliberation that took place which crystallised into the finally approved Reconstruction Scheme. The RBI and the Central Government noticed the concerns and the apprehensions raised by the investors. Having done so, the Note reflects that substantial changes were made to the Draft Scheme. The suggestion of the primary stakeholder, *viz*. Axis Trustee, that the bonds may be converted into equity was also taken into consideration and necessary changes were suggested.

36. A crucial fact that has remained inconspicuous is the writ petition filed soon after the Draft Scheme was published. The Note records that a majority of investors had agreed to conversion of the bonds into equity shares — Rs. 2 each, for each bond of face value Rs. 10,00,000.00 — a proposal the RBI accepted as presented by Axis Trustee, acting in a fiduciary capacity on behalf of the bondholders.

37. For reasons undisclosed but of little relevance, the proposal to write down or convert the bonds was abandoned in its entirety at the stage when the scheme was considered by the Central Government. It would necessarily follow, in the entire deliberative process, that the Central Government thought it fit not to tinker with the bonds at all through the Reconstruction Scheme. While it remains a matter of speculation,

it appears the intent was to avoid the pending litigation concerning the bonds, which had already been instituted.

38. It would not be out of place to presume that the Central Government was well aware of the direct effect on the Common Equity Tier 1 ratio of not writing down or converting the bonds in the Reconstruction Scheme. By consciously choosing not to incorporate any clause in the Reconstruction Scheme that would affect the bonds, the Central Government thus gave its imprimatur to leaving it untouched.

39. For the Administrator to then turn volte-face the decision of the Central Government by writing down the AT-1 Bonds entirely, did away with the deliberative process that occurred between the Draft Scheme and the Reconstruction Scheme. After the Reconstruction Scheme having been notified on 13th March, 2020, the understanding would be that YES BANK stood reconstituted/reconstructed in its entirety. It was viable enough to continue surviving as a banking institution. It would be unreasonable to infer that the RBI and the Central Government would undertake the entirety of a long-drawn process of crafting the Reconstruction Scheme and seemingly leave out the crucial part concerning the AT-1 Bonds. If the appellants' arguments were to be accepted, the Reconstruction Scheme would be akin to a half-baked pie, where the last step of the process is left to the Administrator.

40. Even otherwise, we are afraid, accepting the argument that the authority of the Administrator under the Reconstruction Scheme to write down the AT-1 Bonds was retained would have its own ramifications. We have good reasons to infer that the Central

Government had taken a conscious decision to exclude the clause permitting writing down of the AT-1 Bonds from the Reconstruction Scheme, based on consideration of the objections lodged. If it were the intention of the Central Government to allow the Administrator to write down the AT-1 Bonds after publication of the Reconstruction Scheme even after exclusion of the relevant clause from the Draft Scheme, that would have made it susceptible to face the criticism of acting clandestinely and the accusation of committing an act amounting to a fraud on public. We do not, for a moment, think that the Central Government intended to have the AT-1 Bonds written down, having regard to the turn of events right from 3rd March, 2020. Instead, it happened to be the Administrator who, in our opinion, acted under an erroneous impression or mistaken belief that reconstruction of YES BANK by virtue of the Reconstruction Scheme notwithstanding, he retained the authority to write down the AT-1 Bonds. This, in our opinion, was an impermissible act and *ultra vires* the Master Circular read with the Reconstruction Scheme.

41. Before parting with this segment of the discussion, we place on record reliance placed by Mr. Divan and Mr. Singh upon sub-clause (1) of clause 6 of the Reconstruction Scheme which sought to preserve the efficacy of the bonds in the same manner before its commencement. They further contended that the Reconstruction Scheme did not abrogate the Administrator's inherent power to execute a write-down of the AT-1 Bonds. While it is true that the Administrator's residuary powers are preserved under the aforementioned clause, such a general

savings provision does not, by itself, confer the specific authority to write down the AT-1 Bonds after YES BANK came to be reconstructed. A definitive mechanism governing the treatment of AT-1 Bonds is prescribed by the Master Circular and the respective Information Memoranda, stipulating a separate and distinct procedural framework for each issuance in strict conformity with the Master Circular. It is a settled legal principle that a power not specifically conferred cannot be implicitly vested through a general, omnibus savings clause. To that extent, we rule against YES BANK and the Administrator.

42. Thus, the High Court correctly held that the Administrator could not have written down the Bonds in contravention of the Reconstruction Scheme.

ISSUE C: THE MASTER CIRCULAR, THE INFORMATION MEMORANDA AND THE ADMINISTRATOR'S ACT OF WRITING DOWN THE AT-1 BONDS

43. It has been contended by all the appellants that notwithstanding the finally published Reconstruction Scheme, the Administrator was always empowered to write down the AT-1 Bonds. The specific contention of the appellants was that the Administrator acting under Section 36ACA of the BR Act and under the Information Memoranda of the AT-1 Bonds was empowered to write them down, in terms of the conditions stipulated therein. It was further contended that even if the Reconstruction Scheme did not provide for writing down the bonds, that in itself would not preclude the Administrator from exercising such power.

44. We proceed to consider this issue unaffected by the outcome of the part discussed before, which is unfavourable to the appellants.

45. The contention raised must be examined from two perspectives: *first*, the conditions that empowered the Administrator to write down the bonds; and *secondly*, whether the conditions that were required to be satisfied in the exercise of such power. To do so, we first examine the Master Circular and the Information Memorandum to the extent relevant for the present purpose.

46. The Master Circular, under paragraph 4, divides regulatory capital of a bank in 2 parts: Tier 1 Capital and Tier 2 Capital. Tier 1 Capital is termed as the '*going-concern capital'*, whereas Tier 2 Capital is termed '*gone-concern capital'*. As is self-explanatory, going-concern capital can absorb losses without triggering a bank's insolvency, whereas gone-concern capital absorbs losses in the event of the bank's liquidation.

47. Tier 1 Capital is further divided into Common Equity Tier 1[22] and Additional Tier 1[23]. Under the Master Circular, a bank must maintain total Tier 1 Capital equal to at least 7% of its Risk Weighted Assets (RWAs). Of this, at least 5.5% must be in the form of CET1. What constitutes CET 1 Capital is provided in clause 4.2.3 of the Master Circular read with Annex 1 thereof. The remaining 1.5% may, optionally, be met through AT1 Capital; which means that a bank is

[22] CET1
[23] AT1

not required to have any AT1 Capital at all and may choose to meet the entire 7% requirement through CET1 alone.

48. AT1 capital may be issued in various forms, such as Perpetual Non-Cumulative Preference Shares (PNCPS) or debt capital instruments, as in the present case. As long as an instrument complies with the conditions stipulated for it in the Master Circular, it can be reckoned towards AT1 capital. Here, Annex 4 of the Master Circular provides the criteria for issuance of the bonds.

49. Annex 16 of the Master Circular has been extensively relied upon by counsel for the parties; for that reason, we examine its components at this juncture.

50. Annex 16 provides the loss absorbency feature of the AT1 instruments. It further specifies two trigger events at which the loss absorbency feature may be exercised *viz*. (i) Pre-Specified Trigger Level; and (ii) Point of Non-Viability.

51. As per clause 2 of Annex 16, the Pre-Specified Trigger Level is reached when a bank's CET1 ratio falls below 6.125% of RWA (in case of YES BANK, 5.5% before 31st March, 2019, and 6.125% on or after that date, as per the Information Memorandum). This 6.125% threshold comprises the minimum CET1 requirement (5.5%) plus 25% of the capital conservation buffer of 2.5%, i.e., 0.625%.

52. Thus, the moment YES BANK's CET1 ratio fell below the threshold of 6.125%, YES BANK had the option to convert or write down the AT1 instruments.

53. The unaudited financial results for the third quarter and nine months ended 31st December, 2019 were considered and taken on record by the Administrator on 14th March, 2020, and intimated to the BSE and the NSE. It may be noted that the publication of reports in terms of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 was delayed even before the Administrator took charge. A perusal of the accompanying statement by the auditor reveals that as on 31st December, 2019, about 2 months prior to the moratorium and the Reconstruction Scheme, the CET1 ratio stood at an astonishing 0.6% as against a requirement of 7.375%.

54. Thus, despite having the option but not the obligation to convert or write down the bonds, YES BANK chose not to. We do not intend to question such wisdom.

55. Instead, attempt was made to raise further capital. Having failed to do so, the Central Government intervened and imposed a moratorium on 5th March, 2020, and the RBI appointed the Administrator under section 36ACA of the BR Act. The Draft Scheme was published the following day.

56. After the Reconstruction Scheme came to be published in the Gazette following the statutory procedure, the Administrator decided to write down the bonds in its entirety. The reasons given by the Administrator for writing down the bonds, as recorded in his order, read thus:

> B) Position under RBI regulations
>
> 1) As per the provisions of the Master Circular - Basel III Capital Regulations dated July 1, 2015 issued by the RBI, ("Basel III Circular"), more specifically, clause 2.15 of Annex 16 of the Basel III Circular,

"If the relevant authorities decide to reconstitute a bank or amalgamate a bank with any other bank under the Section 45 of BR Act, 1949, such a bank will be deemed as non-viable or approaching non- viability and both the pre-specified trigger and the trigger at the point of non-viability for conversion /write-down of AT 1 Instruments will be activated. Accordingly, the AT1 instruments will be fully converted/written-down permanently before amalgamation/reconstitution in accordance with these rules"

2) Given that Section 45 of the Banking Regulation Act, 1949 has been invoked by the RBI and the Scheme has been notified, the Bank is deemed to be non-viable or approaching non-viability and accordingly, the triggers for a write-down of the AT 1 Bonds has been triggered. Such AT 1 Bonds would need to be fully written down permanently before any reconstruction of the Bank is undertaken.

In light of the above provisions of the Basel III Circular, it is hereby ordered that the Perpetual Subordinated Basel III Compliant Additional Tier I Bonds issued by the Bank for an amount of Rs. 3000 crores on December 23, 2016 and the Perpetual Subordinated Basel III Compliant Additional Tier 1 Bonds issued by the Bank for an amount of Rs. 5415 crores on October 18, 2017 be fully written down and shall stand extinguished with immediate effect.

57. Mr. Divan and Mr. Singh have strenuously contended that, under the Master Circular, the publication of the Reconstruction Scheme in the Gazette both triggered that write down as well as empowered the Administrator to write down the AT-1 Bonds.

58. *Per contra*, much emphasis has been placed by the respondents on clause 2.15 of the Master Circular and particularly on the phrase '*before reconstitution*' therein.

59. It would, thus be profitable to read what the Master Circular provides in relation to schemes of amalgamation and reconstruction. The relevant clause reads as under:

(a) Amalgamation of a banking company: (Section 44 A of BR Act, 1949)

2.12 If a bank is amalgamated with any other bank before the AT1 instruments have been written-down/converted, these instruments will become part of the corresponding categories of regulatory capital of the new bank emerging after the merger.

2.13 If a bank is amalgamated with any other bank after the AT1 instruments have been written down temporarily, the amalgamated entity can write-up these instruments as per its discretion.

2.14 If a bank is amalgamated with any other bank after the non-equity regulatory capital instruments have been written-down permanently, these cannot be written-up by the amalgamated entity.

(b) Scheme of reconstitution or amalgamation of a banking company: (Section 45 of BR Act, 1949)

2.15 If the relevant authorities decide to reconstitute a bank or amalgamate a bank with any other bank under the Section 45 of BR Act, 1949, such a bank will be deemed as non-viable or approaching non-viability and both the pre-specified trigger and the trigger at the point of nonviability for conversion / write-down of AT1 instruments will be activated. Accordingly, the AT1 instruments will be fully converted / written-down permanently before amalgamation / reconstitution in accordance with these rules.

(emphasis ours)

60. To interpret the phrase '*before reconstitution*', reliance has been placed on clause 1 and clause 2(1)(d) of the Reconstruction Scheme, which read thus:

1. Short title and commencement — (1) This Scheme may be called the Yes Bank Limited Reconstruction Scheme, 2020.

(2) it shall come into force on the 13th day of March, 2020.

2. Definitions. (1) In this Scheme, unless the context otherwise requires—

…

d) "reconstructed bank" means the YES BANK Limited, a banking company having its registered office at YES BANK Tower, IFC-2, 15th Floor, Prabhadevi (W), Mumbai-400013, Maharashtra;

61. The definition of 'reconstructed bank' was pressed upon us, repeatedly, by learned senior counsel for the appellants to contend that the reconstruction process of YES BANK did not start until the Reconstruction Scheme was published in the Gazette, and that the right to write down the AT-1 Bonds arose only thereafter. Responding to our query as to when would the reconstruction exercise stand completed, the answer given was: not until every obligation under the Reconstruction Scheme had been discharged — meaning the exercise would continue until the last act under the Reconstruction Scheme was

performed, which might well be three years after the Scheme's notification.

62. Relying on the definition of a 'reconstructed bank', Mr. Divan submitted that reconstruction of the reconstructed bank is a continuous process in terms of the Reconstruction Scheme. The contention advanced was that the reconstruction process did not commence until the Reconstruction Scheme was published in the Gazette, and more crucially, it remains ongoing until every obligation under the Scheme is completely discharged. On this premise, it was argued that the power to write down the AT-1 Bonds would continue to subsist with the Administrator until such time the reconstructed bank is fully reconstructed.

63. This part of the controversy turns on an incorrect interpretation of Clause 2.15 of Annex 16 of the Master Circular. The trigger *viz*. the point of non-viability is deemed to have been reached when the relevant authorities decide to reconstruct YES BANK, and in such an event the AT-1 Bonds ought to have been written down before the initial step of the reconstitution/reconstruction happened, i.e., the Reconstruction Scheme came into force. The preposition '*before*' can only mean before the Reconstruction Scheme takes effect. True, the effects of a reconstruction scheme may run for years together; but that, by itself, cannot be read as empowering the relevant authority to write down the AT-1 Bonds at any point within the following three years. Had the intention been otherwise, the clause ought to have read "before reconstitution is complete". We cannot by taking the aid of any

tool of interpretation read words in the relevant clause which are conspicuous by its absence. To read the clause in its present form in the manner urged by Mr. Divan would not only defeat the very object of the AT-1 Bonds but would produce an inherent absurdity, leaving investors to wonder at what point the guillotine blade might fall.

64. History bears this out. In the counter-affidavit filed by one of the respondents, i.e., 63 Moons Technologies Limited, a similar scenario involving a *pari materia* clause has been placed on record. Lakshmi Vilas Bank Limited was amalgamated with DBS Bank India Limited, and the information memorandum for its bonds — Basel III compliant Tier 2 Bonds — contained a similar clause, activating the trigger for writing down the bonds upon amalgamation / reconstitution. The amalgamation scheme was published in the Gazette on 25th November, 2020, and was due to come into force on 27th November, 2020. The bonds worth Rs. 318.20 crore were written down by the administrator in that case on 26th November, 2020, a day ahead of the amalgamation scheme coming into force — in other words, *before* the amalgamation took effect. Why the same course was not adopted remains unexplained.

65. Another issue which must be considered is the Administrator's authority under the Master Circular and the Information Memoranda to write down the Bonds.

66. Clause 2.15 of Annex 16 of the Master Circular states that the point of non-viability would be deemed to have been triggered and, accordingly, the AT-1 Bonds would have to be converted or written

down in accordance with the rules. We examine both the pre-specified trigger and the point of non-viability, as provided in the Information Memorandum.

67. Clause 56, which provides for loss absorbency, reads as follows:

> Loss absorbency:
>
> The Bonds (including all claims, demands on the Bonds and interest thereon, whether accrued or contingent) are issued subject to loss absorbency features applicable for non-equity capital instruments issued in terms of Basel III Guidelines and are subject to certain loss absorbency features as described herein and required of Additional Tier 1 instruments at Pre-Specified Trigger Level and at the PONV.
>
> Accordingly, without the need of the consent of Bondholders or Trustee, the Bonds and any claims or demands of any Bondholder or any other person claiming for or on behalf of or through such Bondholder, against the Bank, may be written-off, in whole or in part, upon the occurrence of the following trigger events:
>
> (i) Pre-Specified Trigger Level;
>
> (ii) Point of Non-Viability.
>
> (i) Loss Absorption at Pre-Specified Trigger Level
>
> If the CET1 of the Bank falls below 5.5% of RWA before 31st March, 2019 and if CET1 falls below 6.125% of RWA on or after 31st March 2019. Each of the trigger levels referred to hereinabove is called the "Pre-Specified Trigger Level"
>
> A write-off of the Bonds may have the following effects:
>
> (i) reduce the claim of the Bond (up to nil) in liquidation;
>
> (ii) reduce the amount to be re-paid on the Bond when call is exercised (up to nil);
>
> (iii) partially or fully reduce Coupon payments on the Bond.
>
> The write-down of any Common Equity Tier 1 capital shall not be required before a write-down of any AT1 instruments (including the Bonds). The Bank shall have full discretion to determine the amount of AT1 Instruments (including the Bonds) written down subject to the amount of write-down not exceeding the amount which would be required to bring CET1 ratio to 8% of RWAs. Further, the aggregate amount to be written-down for all AT1 Instruments on breaching the trigger level shall be at least the amount needed to immediately return the bank's CET1 ratio to the trigger level (i.e. CET from write-down generated under applicable Indian Accounting Standards or RBI Instructions net of contingent liabilities, potential tax liabilities etc., if any) or, if this is not possible the full principal value of the instruments. The Bank shall have the discretion to write-down the Bonds

multiple times in case the Bank hits Pre-Specified Trigger Level subsequent to the first write-down. The Bonds which have been written off can be written up (partially or full) at the absolute discretion of the Bank and subject to compliance with RBI instructions (including permission, consent if any).

(ii) Loss Absorption at the Point of Non-Viability ("PONV")

A write-off of the Bonds at the PONV may have the following effects:

(i) reduce the claim of the Bond (up to nil) in liquidation;

(ii) reduce the amount to be re-paid on the Bond when call is exercised (up to nil);

iii) partially or fully reduce coupon payments on the Bond.

PONV trigger event shall be as defined in the aforesaid Basel III Guidelines and shall be determined by the RBI.

RBI may in its imminence alter or modify the PONV trigger whether generally or in relation to the Bank or otherwise. In any case it should be noted that following writing-off of the Bonds and claims and demands as noted above neither the Bank, nor any other person on the Bank's behalf shall be required to compensate or provide any relief, whether absolutely or contingently, to the Bondholder or any other person claiming for or on behalf of or through such holder and all claims and demands of such persons, whether under law, contract or equity, shall stand permanently and irrevocably extinguished and terminated. Unless otherwise specified in this Information Memorandum, the write-off of any common equity or any other regulatory capital (as understood in terms of the aforesaid circular or any replacement/amendment thereof), whether senior or pari passu or subordinate, and whether a Tier 1 capital or otherwise shall not be required before the write-off of any of the Bonds and there is no right available to the Bondholder hereof or any other person claiming for or on behalf of or through such holder to demand or seek that any other regulatory capital be subject to prior or simultaneous write-off or that the treatment offered to holders of such other regulatory capital be also offered to the Bondholders.

(emphasis in underline ours)

68. Clause 57, which provides for the point of non-viability, reads as follows:

Without the need of the consent of Bondholders or Trustee, the Bonds (including all claims, demands on the Bonds and interest thereon, whether accrued or contingent), at the option of the RBI, can be permanently written down upon the occurrence of the trigger event called "Point of Non-Viability Trigger" ("PONV Trigger")

The PONV Trigger event is the earlier of:

(i) a decision that a permanent write-off without which the Bank would become non-viable, as determined by the Reserve Bank of India; and

(ii) the decision to make a public sector injection of capital, or equivalent support, without which the Bank would have become non-viable, as determined by the relevant authority.

The amount of non-equity capital to be written-off will be determined by RBI.

The Write-off of any Common Equity Tier 1 capital shall not be required before the write-off of any Non-equity (Additional Tier 1 and Tier 2) regulatory capital instrument. The order of write-off of the Bonds shall be as specified in the order of seniority as per this Information Memorandum and any other regulatory norms as may be stipulated by the RBI from time to time.

The Bonds can be written-down multiple times in case the Bank hits the PONV Trigger Level subsequent to the first write-down. The Bonds which has been written off shall not be written up.

Such a decision would invariably imply that the write-off consequent upon the trigger event must occur prior to any public sector injection of capital so that the capital provided by the public sector is not diluted. The Bondholders shall not have any residual claims on the Bank (including any claims which are senior to ordinary shares of the Bank), following any trigger event. In any case it should be noted that following writing-off of the instruments and claims and demands as noted above neither the Bank, nor any other person on the Bank's behalf shall be required to compensate or provide any relief, whether absolutely or contingently, to the Bondholder or any other person claiming for or on behalf of or through such holder and all claims and demands of such persons, whether under law, contract or equity, shall stand permanently and irrevocably extinguished and terminated. Unless otherwise specified in this Information Memorandum, the write-off of any common equity or any other regulatory capital (as understood in terms of the aforesaid circular or any replacement/amendment thereof), whether senior or pari passu or subordinate, and whether a Tier 1 capital or otherwise shall not be required before the write-off of any of the Bonds and there is no right available to the Bondholder hereof or any other person claiming for or on behalf of or through such holder to demand or seek that any other regulatory capital be subject to prior or simultaneous write-off or that the treatment offered to holders of such other regulatory capital be also offered to the Bondholders.

For these purposes, the Bank may be considered as non-viable if:

The Bank which, owing to its financial and other difficulties, may no longer remain a going concern on its own in the opinion of the RBI unless appropriate measures are taken to revive its operations and thus, enable it to continue as a going concern. The difficulties faced by the Bank should be such that these are likely to result in financial losses and raising the Common Equity Tier 1 capital of the Bank should be considered as the most appropriate way to prevent the Bank from turning non-viable. Such measures would include write-off of non-equity regulatory capital in combination with or without other measures as considered appropriate by the Reserve Bank.

> The Bank facing financial difficulties and approaching a PONV will be deemed to achieve viability if within a reasonable time in the opinion of RBI, it will be able to come out of the present difficulties if appropriate measures are taken to revive it. The measures including augmentation of equity capital through write off of Bonds/ public sector injection of funds are likely to:
>
> a. Restore depositors'/investors' confidence;
>
> b. Improve rating /creditworthiness of the Bank and thereby improve its borrowing capacity and liquidity and reduce cost of funds; and
>
> c. Augment the resource base to fund balance sheet growth in the case of fresh injection of funds.
>
> The trigger at PONV will be evaluated both at consolidated and solo level and breach at either level will trigger write-off.
>
> (emphasis ours)

69. On a reading of clauses 56 and 57, the pre-specified trigger, as mentioned above is reached when the CET1 ratio falls below the specified minimum. At that threshold, the Bank may choose whether to write off, write down, or convert the bonds, and which of the bonds are to be treated in which way, as per the options available in the Information Memorandum. However, once the point of non-viability is reached, or the Bank approaches non-viability, it no longer retains that discretion — it is then the RBI which determines, as per the standards set out in the Master Circular, whether the Bank is approaching or has reached the point of non-viability[24], and it is then the RBI which must write down the Bonds.

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[24] Annex 16, Clause 3. Minimum requirements to ensure loss absorbency of Non-equity regulatory capital instruments at the point of non-viability
I. Mode of Loss Absorption and Trigger Event
3.1 The terms and conditions of all non-common equity Tier 1 and Tier 2 capital instruments issued by the banks in India must have a provision that requires such instruments, at the option of Reserve Bank of India, to either be written off or converted into common equity upon the occurrence of the trigger event, called the Point of Non-Viability (PONV)' Trigger' stipulated below:
…

70. In the present case, admittedly, the point of non-viability was deemed to have been triggered when the relevant authorities decided to reconstruct YES BANK or even earlier. No sooner was the point of non-viability triggered than the RBI was required to write down the Bonds. Yet it was not the RBI that decided to write down the Bonds, but the Administrator appointed by the RBI, who wrote them down and communicated the same to the stock exchanges. The question is whether the Administrator can be said to have exercised the power vested in the RBI. We hold he cannot.

71. The Administrator exercises power under section 36ACA of the BR Act, the relevant portion of which reads as follows:

> 36ACA. Supersession of Board of Directors in certain cases.—
>
> (1) Where the Reserve Bank is satisfied, in consultation with the Central Government, that in the public interest or for preventing the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or any banking company or for securing the proper management of any banking company, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such banking company for a period not exceeding six months as may be specified in the order:
>
> Provided that the period of supersession of the Board of Directors may be extended from time to time, so, however, that the total period shall not exceed twelve months.
>
> (2) The Reserve Bank may, on supersession of the Board of Directors of the banking company under sub-section (1) appoint in consultation with the Central Government for such period as it may determine, an Administrator (not being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy.
>
> (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 banking company, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956),—

3.5 The amount of non-equity capital to be converted/ written-off will be determined by RBI.

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

(b) all the powers, functions and duties which may, by or under the provisions of the Companies Act, 1956 (1 of 1956) 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 banking company, or by a resolution passed in general meeting of such banking company, shall, until the Board of Directors of such banking company 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 banking company.

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

…

(emphasis ours)

72. Thus, an administrator appointed under the BR Act has to act squarely within the four corners of the powers conferred upon him under the statute. He acts as a substitute for the Board of Directors, to run the company in an efficient manner. Any act performed by the administrator beyond the powers clothed upon him would be wholly illegal and void.

73. Thus, as per the Information Memorandum read with the Master Circular, there were 2 triggers for the bonds to be written down/written off. The first was for YES BANK to exercise; which it admittedly did not. The second was for the RBI to exercise which, not only did it express its intention not to—by eliminating the clause providing for writing down—but chose not to exercise it at all. The Administrator could not have assumed the regulatory role of the RBI and exercise a power which it did not have at all.

74. Mr. Divan, in his signature tenor, attempted his best to emphasize on the necessity of '*bail in*' and '*bail out*' as an integral part of the reconstruction scheme. He contended that either of these events, by itself, could not bring back YES BANK to life again and restore the CET1 ratio. A combined effort, *first* by writing down the bonds, and the subsequent infusion of funds by SBI—the chronology being of essence—was necessary to revive YES BANK. This submission was adopted by Mr. Mehta.

75. It may well be true that both of these events were necessary to revive YES BANK. However, mere necessity cannot possibly circumvent the manner in which the write down ought to have been exercised. This was required to be done in terms of the Master Circular only. The *bail in* and *bail out* events merely provided a right to write down the bonds, not the manner.

76. The pressing questions before us — to which the appellants ostensibly proffer no answer — are these: Was SBI not aware of the Draft Scheme, the Reconstruction Scheme, and the absence of the clause for writing down in the Reconstruction Scheme, when it was the one infusing funds for equity? Was the RBI, the regulator, not aware of the consequences of not retaining the write down clause in the Reconstruction Scheme? Was the RBI and the Administrator appointed by the RBI not aware as to who had the authority to write down the AT-1 Bonds as per the Master Circular? Was the Central Government not aware that the bonds had not yet been not written down when the Reconstruction Scheme was notified?

77. These questions left unanswered answer the disjunct in the entire process carried out by the RBI, the Administrator and YES BANK. The question is not whether the AT-1 Bonds could have been or ought to have been written down off. The question is the manner in which it was done, *de hors* the Master Circular and the Information Memoranda. A conscious decision by the Central Government while approving the Reconstruction Scheme by deleting the clause from the Draft Scheme, evidently in favour of the bondholders, came to be dismantled at the hands of the Administrator.

78. The triumvirate of the RBI, the Administrator, and of course, YES BANK, in conducting the entire affair of dealing with the bonds worth more than 8,514 crore is, to put it mildly, questionable. Putting the investors to such uncalled-for risk, could have well been avoided. The purpose of the AT-1 Bonds is imperative: it acts as a safety barrier to the Bank from collapsing altogether. That purpose could have been served had the RBI and YES BANK acted in accordance with the terms of the Master Circular. The RBI was a mere bystander, allowing the CET1 ratio of YES BANK to drop to an astonishing low of 0.6% while the business of YES BANK was being carried out in a clandestine manner. It cannot be denied that material irregularities in functioning of YES BANK were noticed much prior; criminal prosecution has also been initiated against the personnel of YES BANK. However, to have the investors at the receiving end of the administrative lapses would be highly unfair.

79. We also note that the Master Circular specifies the classes of investors to whom AT1 instruments may be offered including, among others,

mutual funds and insurance companies. The AT-1 Bonds are high-risk securities and thus, as per the RBI, must be offered only to institutional investors. However, we find that YES BANK not only permitted but actively offered these instruments to individual investors in violation of the Master Circular. SEBI, in its counter affidavit, has stated that the bonds which were traded on BSE and NSE platforms were in compliance with the relevant SEBI regulations. In fact, SEBI also imposed penalty on a private wealth management firm as well as on the then Managing Director of YES BANK for facilitating sale of the bonds to private individual investors. However, the bonds which were offered directly by YES BANK to individual investors were beyond the purview of SEBI Regulations. An email dated 28th December, 2016, has been placed on record by the party in person before us, seemingly addressed by the Senior Manager – Financial Advisor of YES BANK, Chennai offering for sale the bonds to the individual investors. Many a bank has been hauled up by the regulator for offering such bonds to individual investors without necessary risk disclosures. A tighter scrutiny ought to have been exercised before luring individual investors to such high-risk securities.

IV. CONCLUSION

80. Accordingly, for the foregoing reasons, we see no reason to interfere with the impugned judgment. The appeals are dismissed. Interim order, if any, stands vacated.

81. The payment of annual coupon rate shall remain unaffected by the outcome of these appeals and must be made in terms of the Information Memoranda.

82. Parties are left to bear their own costs.

83. It is clarified that observations made are only for the purpose of decision on these appeals. Any pending proceeding may be taken to its logical conclusion uninfluenced by any such observation.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
OCTOBER 15, 2026.