Salgaonkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8534 OF 2022

Bhalchandra Dinkar Gondekar & Ors. .. Petitioners

Versus

Reserve Bank of India through Governor & Ors. .. Respondents

WITH

WRIT PETITION NO.11079 OF 2024

Ramesh Lakhpatrai Aggarwal & Anr. .. Petitioners

Versus

Reserve Bank of India & Ors. .. Respondents

WITH

WRIT PETITION NO.5762 OF 2022

Paresh Mehta & Ors. .. Petitioners

Versus

Reserve Bank of India through Governor & Ors. .. Respondents

WITH

WRIT PETITION NO.7753 OF 2022

Maharashtra Rajya Sahakari Patasanstha Federation Ltd. through its Director .. Petitioner

Versus

The Union of India through the Secretary & Ors. .. Respondents

WITH

WRIT PETITION NO.7728 OF 2022

Nashik Road Nagari Sahakari Pat Sanstha Ltd. through its Chief Executive Officer through Chief Executive .. Petitioner

Versus

Punjab And Maharashtra Co-Op. Bank Ltd. through the Branch Manager & Ors. .. Respondents

ORDINARY ORIGINAL CIVIL JURISDICTION

WITH

WRIT PETITION NO.4302 OF 2022

Vilas M. Patel & Ors. .. Petitioners

Versus

The Union of India & Ors. .. Respondents

WITH

WRIT PETITION NO.2847 OF 2025

Neha Ramchandani .. Petitioners

Versus

Union of India, Joint Secretary, The Department of Finance .. Respondent

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Mr. Virendra Tulzapurkar, Senior Advocate with Mr. Sangram Chinnappa, Ms. Dipika Sahani, Ms.Bhoomika Vyas and Mr. Shantanu Shetty, for the Petitioners in WP/8534/2022 and WP/5762/2022.

Mr. Ankit Lohia with Mr. Siddharth Joshi, Viloma Shah, Mr. Harshad Vyas and Mr. Viraj Raiyani i/b M/s. AVP Partners, for the Petitioners in WP/4302/2022.

Mr. Dhaval Patil i/b M/s. K. Ashar and Co. for Respondent No. 4.

Mr.Shivam Mehra for Respondent Nos. 1 and 2 in WP/7728/2022.

Dr. Uday P. Warunjikar with Ms. Vaishnavi M. Gujarathi i/b Aditya P. Kharkar for the Petitioner in WP/7753/2022.

Mr. Anilkumar Patil with Ms. Zeel Jain for the Petitioner in WP/7728/2022.

Mr. Aseem Naphade with Ms.Subrata Sen, Mr. Akash Loya, Mr. Sujit Lahoti, Ms.Tejasvi Nakashe and Haaris Koradia i/b Sujit Lahoti and Associates for the Petitioner in WP/2847/2025.

Mr. Karl Tamboly with Mr. Bhavin Shah, Mr. Krupesh Bhosle and Mr. Maulik Tanna, Advocates for the Petitioners in WP/11079/2024.

Mr. Ravi Kadam, Senior Advocate with Mr. Ameya Gokhale, Mr. Rishabh Jaisani, Mr. Harit Lakhani, Ms. Richa Bharti and Mr. Ansh Kumar i/b Shardul Amarchand Mangaldas and Co., for the Respondent No.3 in WP/4302/2022, for the Respondent No.2 in WP/7753/2022, for the Respondent No.1 in WP/8534/2022, WP/11079/2024, WP/5762/2022, for the Respondent No. 3 in WP/7728/2022 and for the Respondent No.2 in WP/2847/2025.

Mr. Ashish Kamat, Senior Advocate with Mr. Shlok Parekh, Mr. Mustafa Kachwala, Mr. Shantam Mandhyan, Ms. Shrishti Shetty and Sakshi Sri i/b Krishnamurthy and Co. for Respondent Nos. 3 and 4 in WP/8534/2022.

Mr.Venkatesh Dhond, Senior Advocate with Mr. Prasad Shenoy, Mr.Parag Sharma, Ms.Aditi Phatak, Ms.Parichehr Zaiwalla, Ms. Ishita Desai, Ms. Megha More, Ms. Juhi Bhayani i/b BLAC Co. for the Respondent No.6(DICGC) in WP/4302/2022, WP/11079/2024, WP/8534/2022, WP/5762/2022.

Mr. Shlok Parekh a/w Mr. Mustafa Kachwala, Mr. Shantam Mandhyan, Ms. Shrishti Shetty and Sakshi Sri i/b

Krishnamurthy and Co. for Respondent No.5 in WP/2847/2025 and for the Respondent Nos. 4 and 5 in WP/4302/2022, for the Respondent No.3 in WP/11079/2024, for the Respondent Nos.3 and 4 in WP/5762/2022 and for the Respondent No. 4 in WP/7753/2022.

Mr. Kedar Dighe a/w Ashutosh Mishra for Respondent-UOI in WP/8534/2022, WP/5762/2022 and WP/7753/2022.

Mr. Mohamedali M. Chunawala with Mr. J. B. Mishra and Mr. Ashotosh Mishra, for Respondent No.1 in WP/4302/2022.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

RESERVED ON : 16th FEBRUARY, 2026
PRONOUNCED ON : 09th MARCH, 2026

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JUDGMENT (Per Bharati Dangre, J.)

1. The seven Writ Petitions before us raise a challenge to the Notification dated 25/01/2022, issued by the Ministry of Finance, thereby granting its approval to the scheme formulated by the Reserve Bank of India (for short, **'RBI'**) under Section 45 of the Banking Regulation Act, 1949 (for short, **'BR Act'**) in form of **"Punjab and Maharashtra Co-Operative Bank Ltd. (Amalgamation with Unity Small Finance Bank Limited) Scheme, 2022"**, which came into force w.e.f. 25/01/2022. In the separate Petitions filed by the individuals/society, diverse objections are raised against the scheme of amalgamation, but the commonality of the group of

Petitions listed before us is the relief sought i.e. issuance of writ of mandamus or any other appropriate writ for quashing and setting aside the scheme of amalgamation as non-constitutional, being ultra vires *inter alia* Article 14, 19(1)(g) and 300A of the Constitution of India and also being violative of provisions of the Banking Regulation Act, 1949.

Though we will be separately dealing with the grounds raised in each of the Petition, with each Petitioner staking a claim of its interest being adversely affected, before we deal with each of the contention, we would like to refer to the background facts, which are placed before us by the RBI, which is a common Respondent in all the Petitions alongwith the Ministry of Finance, New Delhi as well as Unity Small Finance Bank Ltd.(for short, '**USFBL**'), which has taken over the affairs of the Punjab and Maharashtra Co-Operative Bank (for short, '**PMC Bank'**)

(I) Factual Background Leading to filing of the Writ Petitions.

2. We have collated the background facts from the pleadings in the Petitions as well as the Affidavits filed on behalf of the RBI as well as the USFBL and through the rival contentions advanced before us.

3. We are concerned with PMC Bank, a Multi State Scheduled Urban Co-Operative Bank, which was registered under the Multi-State Co-Operative Societies Act, 2002 for carrying on the business of banking in India. As per the audited figures of PMC Bank, its deposit and advances as on 31/03/2019 were to the tune of Rs.11617.34 crores and Rs.8383.32 crores respectively as per the audited figure. The Bank was being managed through a Board of Directors under the Chairmanship of Mr.Waryam Singh, Director of the Bank since June 1999, whereas the post of Managing Director was held by Mr.Joy Thomas since 1987.

The prevailing audit machinery in Urban Co-Operative Bank at the relevant time existed in the form of statutory audit conducted on annual basis in terms of the provisions of the BR Act, 1949, coupled with concurrent audit system being implemented for timely transaction testing. In addition to the aforesaid, RBI, the Apex Bank also conduct statutory inspection of the Urban Co-Operative Bank under Section 35 read with Section 56 of the BR Act at regular intervals, depending upon the status of the Bank, its financial strength and assessment of the risk perception. The RBI in conduct of its statutory inspection rely on various reports/financial

statements including report of statutory and concurrent audit source data for inspection, besides undertaking sample check of bank's liabilities through deposits borrowings etc and assets portfolio alongwith transit account to assess the bank's financial-capital adequacy, assets quality, liquidity and earnings etc. alongwith the risk involved.

4. Housing Development and Infrastructure Limited (**'HDIL'**), being a company engaged in Real Estate Development founded by Mr.Rakesh Kumar Wadhwa, and its related entities alongwith the promoters faced accusation of committing serious financial fraud in various banks and companies and this included the PMC Bank.

On 17/09/2019, a complaint was received by RBI from senior official of PMC Bank alleging that the bank had sanctioned amount to HDIL group in gross violation of prudent banking practices and had manipulated data/information submitted to the RBI.

Pursuant to this, the statutory inspection of the bank was conducted by RBI from 19/09/2019 onwards, to assess its financial position and also to probe the allegations made by the complainant. The Managing Director of PMC Bank in his letter addressed to RBI also confessed to many of the alleged

irregularities and upon an inspection being conducted, the preliminary finding revealed serious financial irregularities leading to its precarious financial condition. The 2019 inspection disclosed that the total exposure to HDIL Group was camouflaged and severely under reported to the RBI.

The unreported exposures of PMC Bank towards HDIL being large and non-performing, warranted additional provisioning to be made as per the extant instructions of RBI. During the inspection carried out, it was discovered that the net worth and CRAR of PMC Bank had year-on-year plummeted from positive figure of Rs.706.20 crore and 12.72% as on 31/03/2018 to huge negative figure of Rs.(-)5278.21 crore and (-) 198.70%, with significant deposit erosion of 45.43% as assessed on 31/03/2019. Thus, the inspection pursuant to the complaint received, reflected the unstable financial position of the bank with a negative net worth and this warranted immediate action, so as to protect the depositor's interest.

5. Upon a detailed analysis carried out through the inspection and the necessary investigation/inquiry being conducted by the RBI, the Banker's bank, with expertise at its end to deal with the matters affecting the economy of the

entire country, it was noticed that the erstwhile management/concerned officials of the PMC Bank adopted a modus operandi, leading to a huge fraud, which could not be noted and this included (a) tampering with management information system and NPA identification process adopted, to camouflage the material data on NPAs.

The investigation revealed that the concerned officials of PMC Bank had assigned certain specific access codes to the loan accounts belonging to HDIL and its group entities, which were used for assigning restricted visibility and less than 25 officials of PMC Bank (out of 1800 staff) could access the specific codes belonging to HDIL group loan accounts. While running the script on all advances of PMC Bank for identification of NPA, certain officials of the Bank had deliberately excluded these accounts, as a result of which, all the stressed HDIL Group Accounts were omitted from the system generated report of NPA accounts and the overdrawn accounts list maintained by the Bank also do not include the HDIL related accounts.

This irregularity of non-reporting/exclusion of HDIL Group Accounts was not identified by the concurrent auditors of the PMC Bank, where these undisclosed accounts were

parked, though concurrent audit of the branch was conducted every month. Thus, HDIL Group Accounts had been excluded from various system generated reports and this came to light when the inspection was conducted by the RBI.

Apart from this, sanction of loan accounts by the Managing Director (MD) of PMC Bank and not mentioning loan sanctions in Loan Committee Minutes and Minutes of the Board of Directors also contributed to the catastrophe. In addition, the falsification of off-site returns submitted to RBI with respect to group exposure was also one of the factor why the RBI's inspectors could not identify the abnormally high exposure of PMC Bank to the HDIL group. Falsification of information indent submitted to the inspection team of RBI, *inter alia*, regarding outstanding loan accounts of PMC Bank was put to use so as to escape the real figures and data. While disclosing undisclosed HDIL Group Accounts from the master data, the erstwhile management of the PMC Bank replaced these accounts by adding 21049 fictitious loan accounts in the master data, so that the summation of outstanding balance of all the entities tallied with the balance sheet figure of the PMC Bank's loan portfolio. Thus, the inspection of the PMC Bank indicated huge loss and significant deposit erosion as per the

preliminary findings, which was concealed by the erstwhile management/concern officials of PMC Bank by fictitiously showing profits, which were thereafter used as the basis to declare dividend and the profit was arrived at by treating NPA accounts as standard (non-NPA) accounts by concealing major portion of the accounts of HDIL Group.

6. In the wake of the aforesaid situation brought to the notice of RBI, it took prompt steps to impose all inclusive directions as its immediate concern was to preserve the scarce resources of the bank, while it was being necessary to take steps to ensure protection of depositor's interest.

PMC Bank, in addition to large number of high value retail/individual deposits, also held deposits of large number of co-operative banks and co-operative societies apart from the deposit of institutions such as Trusts etc. RBI, with its expertise in financial and economic matters, considered it imperative that all efforts for a non-disruptive resolution of PMC Bank is made and it explored various possibilities which would serve the interest of the depositors the best, including capital infusion/merger by roping the State Government as well as exploring resolution through NPA recovery and merger with some strong bank. Eventually taking note of the financial

condition of the Bank and lack of proposals for capital infusion, it was deemed appropriate to proceed ahead by formulation of a scheme, in absence of which the drastic steps would have been cancellation of license and putting the bank under liquidation.

Considering the imminent prejudice caused due to this action to the depositors of the PMC Bank, RBI deemed it appropriate to proceed ahead by invoking the powers available to it under the BR Act, and in specific, the power under Section 45, and thereafter, on obtaining sanction of the Central Government to the said scheme, it was notified by the Ministry of Finance on 25/01/2022.

(II) "Punjab and Maharashtra Co-Operative Bank Ltd. (Amalgamation with Unity Small Finance Bank Limited) Scheme, 2022"

7. Before we consider the contentions raised on behalf of the Petitioners, raising their objections depending upon the capacity in which they stand, either individual/retail investors/institutional investors etc., we will highlight the salient features of the "Punjab and Maharashtra Co-Operative Bank Ltd. (Amalgamation with Unity Small Finance Bank Limited) Scheme, 2022 (hereinafter referred to as **"Amalgamation Scheme"**).

Prefacing the background in form of the precarious financial position of the PMC Bank, emerging in September, 2019 reflecting complete erosion of capital and substantial deposits, the Notification mention that RBI issued All Inclusive Directions under Section 35A read with Section 56 of the Banking Regulation Act, 1949 w.e.f. the close of its business of September 23, 2019 to protect the interest of the depositors and to ensure that the bank's available resources are not misused and diverted.

Recording the conclusion reached by the RBI that the position of the PMC Bank called for preparation of a scheme of amalgamation and since Unity Small Finance Bank Ltd., promoted by Central Financial Service Ltd. alongwith Resilient Innovation Pvt. Ltd., which was granted banking license by RBI on October 12, 2021 and it started transacting business and the promoters of Unity Small Finance Bank Ltd. alongwith the joint investors agreed to infuse capital of Rs.1105.10 crore, after the draft scheme being sent to the concern bank in accordance with the procedure contemplated under Section 45 of the Act of 1949 and on consideration of the suggestions and objections received in regard to the scheme, the Notification record that it was forwarded to the Central Government,

which sanctioned the scheme by its Notification dated 25/01/2022.

8. The subject scheme set out the appointed date as 25/01/2022. The eligible depositors was defined in Section 2(d) of the scheme as below :-

> "2(d) **'eligible depositors'** means depositors whose deposits are insured under the Deposit Insurance and Credit Guarantee Corporation Act, 1961."

The other two definitions, which are relevant for our purpose, are those contained in Sections 2(e) and (f), which read thus :-

> "2(e) **'institutional depositors'** means corporations, companies, partnership firms, societies, Association of Persons, Trusts, and all other depositors who are not retail depositors.
>
> 2(f) **'retail depositors'** means depositors who hold deposits in the bank in their individual capacity, either singly or jointly with other individual, and include proprietorship firms and Hindu Undivided Families (HUFs)."

Punjab and Maharashtra Co-operative Bank Ltd. was referred to as 'transferor bank', whereas Unit Small Finance Bank Ltd. was referred to as 'transferee bank'.

9. As per the (Amalgamation) Scheme of 2022, on and from the appointed date, the undertaking of the transferor bank stood transferred and vested in the transferee bank and it deemed to include all business, assets, estates, rights, titles, interest, powers, claims, licenses, authorities, permits, approvals, permissions, incentives, loans, subsidies and other

privileges and all property, movable and immovable etc. alongwith goodwill, copyright, cash balances, capital, reserve funds, investment, transactions in derivatives and all other rights and interests in, or arising out of such property and all the rights under the intellectual property etc. Section 3 of the scheme specifically provided for the effect of the transfer and Section 4 provided for closure of books of the transferor bank at the close of business on 22/11/2021.

10. Clause 6 specifically prescribed the manner of discharge of liability of transferor bank and it set out the manner in which the liability of the transferor bank shall be discharged by the transferee bank, and since, the objections raised in the Petitions revolve around the manner in which the amount is received by the depositors in the wake of this provisions, which is in form of a staggered payment, it is necessary to reproduce the same and it reads thus :-

> **"6. Discharge of liability of transferor bank :-** (1) In respect of:
>
> (a) any sums deposited by any employee of the transferor bank with that bank as staff security deposits, together with interest, if any, accrued thereon upto the appointed date, shall be paid, in case the employee has chosen not to continue in the services of the transferee bank or provided for in full by the transferor bank;
>
> (b) every savings bank account or current account or any other deposit account including a fixed deposit, cash certificate, monthly deposit, deposit payable at call or short notice or any other deposits by whatever name called with the transferor bank, the transferee bank shall open with itself on the appointed date a corresponding and similar account in the name of the respective holder thereof

crediting thereto full amount including interest accrued till March 31, 2021:

Provided that where the transferee bank entertains a reasonable doubt about the correctness of the entries made in any particular account, it may, with the approval of the Reserve Bank, withhold the credit to be made in that account for a period not exceeding three months from the appointed date, within which, the transferee bank shall ascertain the correct balance in such account.

(c) The transferee bank shall pay -

(i) the amount received from Deposit Insurance and Credit Guarantee Corporation to all the eligible depositors of the transferor bank, which would be an amount equal to the balance in their deposit accounts or 5,00,000rs (Rupees five lakh only), whichever is less, in accordance with the Deposit Insurance and Credit Guarantee Corporation rules of distribution of such amounts;

(ii) at the end of first year from the appointed date, over and above the payment already made, an additional amount equal to the balance in their deposit account or ₹50,000 (Rupees fifty thousand only), whichever is less, on demand only to the retail depositors of the transferor bank;

(iii) at the end of two years from the appointed date, over and above the payment already made, an additional amount equal to the balance in their deposit account or 50,000rs (Rupees fifty thousand only), whichever is less, on demand only to the retail depositors of the transferor bank;

(iv) at the end of three years from the appointed date, over and above the payments already made, an additional amount equal to the balance in their deposite account or 1,00,000rs (Rupees one lakh only), whichever is less, on demand only to the retail depositors of the transferor bank;

(v) at the end of four years from the appointed date, over and above the payment already made, an additional amount up to the balance in their deposit account or ₹2,50,000 (Rupees two lakh fifty thousand only), whichever is less, on demand only to the retail depositors of the transferor bank;

(vi) at the end of five years from the appointed date, over and above the payment already made, an additional amount up to the balance in their deposit account or ₹5,50,000 (Rupees five lakh fifty thousand only), whichever is less, on demand only to only the retail depositors of the transferor bank.

(vii) the entire remaining amount of deposits (after making payment as mentioned in clause (i), (ii), (ii), (iv), (v) and (vi) above in the accounts of the retail depositors of transferor bank after ten years from the appointed date, on demand.

(d) No interest on any of the interest bearing deposits with the transferor bank shall accrue after March 31, 2021 for a period of five years from the appointed date, and afterwards, simple interest at the rate of 2.75 per cent. per annum shall be paid at the end of each year for the amounts remaining outstanding which shall be payable from the date after five years from the appointed date.

(e) In respect of balances in any current account or any other non-interest bearing account, no interest shall be payable to the account holders, except that after a period of five years, simple interest at the rate of 2.75 per cent. per annum shall be paid to the balances of the retail depositors in the same manner as applicable to interest bearing deposits.

(f) On and from the appointed date, 80 per cent. of the uninsured deposits outstanding (aggregate in various accounts) to the credit of each institutional depositor of the transferor bank shall be converted into Perpetual Non-Cumulative Preference Shares of transferee bank with dividend of one per cent. per annum payable annually.

(g) At the end of the 10th year from the appointed date, transferee bank will use 'Net Cash Recoveries' (net of expenses related to such recoveries) from assets pertaining to Housing Development and Infrastructure Limited Group in excess of the principal amount of advances to Housing Development and Infrastructure Limited Group outstanding as on March 31, 2021 to buyback Perpetual Non-Cumulative Preference Shares at face value on a pro rata basis.

(h) From the end of 21st year, transferee bank will buy-back the outstanding principal of the Perpetual Non-Cumulative Preference Shares, at the rate of at least 1 per cent. of the total Perpetual Non-Cumulative Preference Shares issued under the scheme per annum, provided the following conditions are satisfied, namely:-

(i) all restructured liabilities pertaining to the transferor bank including those towards Deposit Insurance and Credit Guarantee Corporation under the Scheme are fully discharged;

(ii) capital adequacy ratio of the transferee bank is at least three hundred basis points higher than the regulatory minimum capital-to-risk weighted assets ratio applicable at that point of time;

(iii) net non-performing assets of transferee bank are at least two hundred basis points lower than the prescribed threshold for Prompt Corrective Action by Reserve Bank at that point of time;

(iv) minimum 'Net Cash Recovery' of the principal amount of advances to Housing Development and Infrastructure Limited Group as on March 31, 2021 from assets pertaining to Housing Development and Infrastructure Limited Group is more than 70 per cent. of the principal amount of advances;

(v) the buyback of the Perpetual Non-Cumulative Preference Shares shall be capped at 10 per cent. of the yearly net profit of the transferee bank for the previous year.

(i) The remaining 20 per cent. amount of the institutional deposits shall be converted into equity warrants of transferee bank at a price of 1rs per warrant and these equity warrants will further be converted into equity shares of the transferee bank at the time of the Initial Public Offer when the transferee bank goes for public issue. The price for such conversion will be determined at the lower band of the Initial Public Offer price.

(2) In respect of every other liability of the transferor bank including the claims not acknowledged as debt, the transferee bank

shall pay only the principal amounts within a period of five years from the appointed date to the creditors in terms of the agreements entered or the terms and conditions agreed upon between them prior to the appointed date.

(3) The credit balance in the "asset account" shall be applied notionally to the extent required to meet the liabilities under this paragraph and if the balance in the asset account is not sufficient, so much of the shortfall shall be treated as amount spent by the transferee bank."

11. One most relevant provision in the scheme is Clause 7, which direct that Deposit Insurance and Credit Guarantee Corporation ('**DICGC'**) shall pay to the transferee bank the amount due to the eligible depositors (as on appointed date) of the PMC Bank, in accordance with the provisions of the Deposit and Credit Guarantee Corporation Act, 1961 and the Regulations made thereunder. The said provision contemplated that the transferee bank shall have time upto 20 years from the appointed date to repay the amount received from DICGC, with other specifications clearly set out therein. Clauses 8 and 9 set out the rights and liabilities of the members and creditors of transferor bank and that of employees of the transferor bank.

Worth it to note that the said scheme by virtue of Clause 14, provided thus :-

"**14. Interpretation of the provisions of the Scheme.**- If any doubt arises in the interpretation of the provisions of this Scheme, the matter shall be referred to the Reserve Bank and its views on the issue shall be final and binding on all concerned."

(III) Contentions Advanced on Behalf of the Petitioners in the Writ Petitions.

12. Since we are called upon to consider the objections raised by the Petitioners to the scheme, each Petition involving different Petitioners with respect to their status and the challenge, we prefer to record the contentions of the respective counsel in each of the Petition, so as to broadly appreciate the challenge to the scheme.

13. We have heard respective counsel appearing for the Petitioners and also heard learned senior counsel Mr.Ravi Kadam, representing the RBI, learned senior counsel Mr.Ashish Kamat for Unit Small Finance Bank and Resilient Innovations Pvt. Ltd., learned counsel Mr.Kedar Dighe for Union of India and the learned senior counsel Mr.Dhond for Deposit Insurance and Credit Guarantee Corporation.

By consent of the parties, we deem it appropriate to issue Rule, which is made returnable forthwith.

(A) Writ Petition No.5762 of 2022

14. To start with, we have taken Writ Petition No.5762 of 2022, which is filed by Paresh Mehta and 130 Ors., who are the shareholders and/or retail depositors of erstwhile PMC Bank. Learned senior counsel Mr.Tulzapurkar representing the

Petitioners would invite our attention to the pleadings in the Petition and it is his submission that PMC Bank, a Multi-State Co-Operative Bank established in February 1984 till its downfall, was in good financial condition having capital adequacy ratio of 12.62%. According to him, the Managing Director of the PMC Bank had complained to RBI about the acts of omission and commission by the Bank in the year 1999, but for want of any regulatory and remedial steps by RBI, the position of the Bank deteriorated. This precarious position called for appointment of an Administrator, whose tenure came to an end on expiry of twelve months, but no positive steps were taken to uplift the status of the PMC Bank.

15. According to the learned senior counsel, on 23/11/2021, RBI published a draft scheme for amalgamating and/or transferring all assets of PMC Bank to Unity Finance Bank, and invited objections and suggestions, pursuant to which the Petitioners raised objections. RBI pretended that their objections were considered and notified the final scheme, which received approval of the Government of India, which allowed the transfer of assets of PMC Bank to Unity Finance Bank, providing for a long period for return of deposits.

16. Mr.Tulzapurkar, learned senior counsel, by inviting our attention to various clauses in the impugned scheme, has raised a serious objection about the final scheme providing for long period of return of deposits. His specific objection is to the clauses in the scheme, where the whole capital of PMC Bank is written off and the assets and liabilities stand transferred to Unity Finance Bank. He is extremely critical about the manner of disbursement of the amount in favour of the retail depositors and his emphasis is on the belated payments spreading over beyond a period of ten years from the appointed date and the clause denying interest after 31/03/2021 for a period of five years and, thereafter, permitting a simple interest at the rate of 2.75% at the end of each year for the amount remaining outstanding, which is payable from the date after five years. By inviting our attention to the manner in which the withdrawals are allowed to the retail depositors, the learned senior counsel has submitted that the significant number of the Petitioners are senior citizens, retirees and medically vulnerable individuals and freezing of their life savings deny them access to the funds for medical treatment and affect their livelihood and also their survival. With the ten year lock-in period for elderly

depositors, he would submit that it has deprived them of their right to life with dignity.

17. It is the submission of Mr.Tulzapurkar that Section 45 of the BR Act cannot override fundamental rights and co-operative principles and the overriding effect of Section 45(14) is not absolute. According to him, the federal structure requires that State laws on co-operatives cannot be completely overridden without valid constitutional basis, as the conversion is forced one and not voluntary.

He would submit that RBI's stance that it carefully examined and considered all the received suggestions and comments and made appropriate changes to the draft scheme is baseless as the annexure to the RBI's Summary Submissions at Annexure 1 clearly reflects that majority of the changes made were corrections or expansion of abbreviations used in the draft, and according to him, comparison of the draft and final Schemes reveals only cosmetic alterations, with the core terms, the 10-year lock-in, interest reversal, and write-off of share capital remaining unchanged. According to him, this paucity of substantive change, despite over 6,000 objections, proves that the consultation under Section 45(6)(b) was not

meaningful but a mere formality, rendering the Scheme procedurally arbitrary.

18. It is also the submission of Mr.Tulzapurkar that despite the recurring warnings, RBI failed to take timely and stringent corrective action under Section 35 of the BR Act and RBI has abdicated its duty by not supervising the affairs of the PMC Bank. He would submit that the RBI had red flagged serious issues pertaining to PMC Bank, like conflict of interest involving the Chairman of the Bank, ineffective audit committees and recovery mechanisms, diversion of funds, Director's related loans in violation of corporate governance norms, but despite this repeated warrants and serious issues being flagged, it failed to act for decades.

According to Mr.Tulzapurkar, the PMC Bank fraud was not just a bank failure, but it was an indictment of broken regulatory system, and the Petitioners are not the voluntary risk takers, but they are victims of mis-selling by the very bank, which RBI was supposed to supervise. It is his submission that having allowed the regulatory failure to fester the State cannot now discriminate them by treating their investment as 'risk capital' worthy of confiscation and this action, according to him, is arbitrary and unfair.

19. Mr.Tulzapurkar has submitted before us that Article 243ZL(2) of the Constitution alongwith Part IXB caps supersession of multi-state co-operative societies for six months and the Constitutional mandate introduced by the 97th Amendment has an overriding effect. It is also an attempt on part of Mr.Tulzapurkar to adopt and harmonious conception of Section 36AAA(4)(b) of the BR Act read with Section 38 and 49 of the Multi-State Co-Operative Societies Act, 2002, which according to him, reveal the true and limited scope of the Administrator's authority and exposes the fatal infirmity in the formulation of the impugned scheme. Opportunity to file written representation, according to Mr.Tulzapurkar, is not sufficient compliance as individualized hearing is required, when fundamental rights under Section 19(1)(g) and Article 300A are affected. According to him, placing a draft in public domain is a constructive notice, but not actual opportunity to be heard, and thus according to him, consultation was a farce, as the objections were dismissed with a cryptic and unreasoned reply.

20. By way of rejoinder, Mr.Tulzapurkar has submitted that the contention that the scheme provide equal, non-discriminatory treatment to all retail depositors is completely

incorrect. According to him, making depositors wait for ten years, when alternatives existed and a choice of liquidation was also available, RBI has chosen amalgamation without any lawful justification. According to him, there is a stark difference between liquidation under Section 43A and amalgamation under Section 45. The principle of equality underlying Section 43A (pro-rata distribution) should also be a part of exercise of power under Section 45, and according to him, even in amalgamation, all depositors of the same class must be treated equally, but in the present case, the retail depositors with deposit above Rs.5 lakh are receiving payments over 10 years, while those below Rs.5 lakh are paid earlier and this creates a discrimination within the same class. According to him, the RBI's contention that the liquidation would have been worse, presents a false binary, as other viable options would have been; merger with a public sector bank or co-operative bank with Government backing, scheme of amalgamation or re-organization of a co-operative bank under Section 18 of the Multi-State Co-Operative Societies Act, 2002, scheme by the Central Government under Section 36AF of the BR Act, Section 36AE of the BR Act i.e. power to Central Government to acquire undertakings of banking companies in

certain cases and lastly, transparent resolution preserving franchise value.

21. Mr.Tulzapurkar has placed heavy reliance upon the decision of the Apex Court in the case of ***Ganesh Bank of Kurundwad Ltd. & Ors. Vs. Union of India & Ors.***[1], which has extensively dealt with Section 45 of the Act of 1949 as regards the imposition of Moratorium on the bank, its permissibility and also the formulation of scheme of amalgamation by highlighting that under Section 45 of the Act, the primary consideration is public interest, as there is an underlying object of acting swiftly to protect the interest of the depositors and ensure public confidence in the banking system. A word of caution by the Apex Court is specifically highlighted by Mr.Tulzapurkar that exercise of power under Section 45 is an emergent situation which warrant action in expedition and this cannot be lost sight of while deciding the legality of the action. He has also focused on the observations in the said decision as regards the scope of judicial review in administrative matters, but he would submit that if the decision is tainted by any vulnerability, or any illegality, irrationality and procedural impropriety then the Court shall not hesitate in showing interference. He would also invoke

1 (2006) 10 SCC 645

the principles of 'Wednesbury's case', which has laid down the basic principles relating to judicial review of administrative or statutory directions. With the complete non-application of mind in formulation of the scheme, by the Reserve Bank of India and its approval by the Central Government, which do not protect the interest of the depositors, according to Mr.Tulzapurkar, the scheme is violative of Article 14 of the Constitution.

According to him, the impugned scheme is contrary to the provisions of the BR Act, as under Section 44A, any scheme of amalgamation of the bank has to be presented to the shareholders, but there is no compliance of this provision and the claim that the draft scheme was sent to the Administrator is of no consequence as the tenure of the Administrator had expired and in no case, he could have represented the shareholders.

In addition, he would also submit that the amounts of uninsured depositors are converted into perpetual non cumulative preference shares of Unity Bank with dividend of 1% p.a. payable annually and the scheme provide for buy back of outstanding principal of perpetual non cumulative preference shares at the rate of 1% of the total perpetual non

cumulative preference shares per annum subject to a cap of 10% of the yearly net profit of Unity Bank. The remaining 20% amount of institutional deposits would be converted into equity warrants at Rs.1 and it would be converted into equity shares of Unity Bank at the time of initial public offer,when it goes for public issue.

By the aforesaid scheme, according to Mr.Tulzapurkar, the existing shareholders are deprived of the value of the shares and though new equity shares would come into existence and this approach is unreasonable and arbitrary, as the existing shareholders are also deprived of surplus and reserve, which is created out of the profits, which is no longer available to them, as the PMC Bank cease to exist.

(B) Writ Petition No.4302 of 2022

22. Mr.Ankit Lohia represented 75 Petitioners in Writ Petition No.4302 of 2022, who are also the retail depositors. Even according to Mr.Lohia, the impugned amalgamation scheme has put the depositors in adverse position.

By inviting our attention to the scheme and the provision therein clause by clause, it is his submission that the relief to the Retail Depositors is prolonged and one of the reason, which he speculate is because the kitty of insurance has shrunk and

had the insurance amount come into the kitty of the PMC Bank at the relevant time, it would have increased its deposits and reduced the timeline of its payment. He would submit that a wrong impression is given that maximum of the depositors are settled and walked away with the money, as it is to note that only the small depositors were permitted to withdraw and a small depositor, who had deposited a sum say of Rs.10 Lakh was repaid, but a retailer, who has deposited Rs.1 Crore and brought business to the bank is made to suffer.

According to the Petitioners, they are aggrieved by the unprecedented freezing of their deposits and the non-payment of interest that has been mandated by the impugned scheme. Apart from this, it is the contention of the depositors and the impugned scheme falls within the Wednesbury Unreasonable test, viz., that the clauses pertaining to the depositors are so unreasonable that no rational person would make such a decision.

23. Focusing attention on the discrimination between the the depositors of PMC Bank *inter se*, leading to violation of their rights under Article 14, Mr.Lohia would submit that the depositors of PMC Bank had distinct amounts of moneys deposited. Mr.Lohia would submit that RBI has consistently

tried to project that a large percentage of the depositors have been paid out i.e. approximately 98%. But, according to him, one key point is missing here, being though 98% of depositors have withdrawn the balance in their accounts, this amount is at the most 39% (likely less) of the total amount of deposits held by PMC Bank. According to him, the Petitioners, though small in number compared to the entire body of depositors, have the lion's share of deposits of the erstwhile PMC Bank, but, unfortunately, this amount has remained frozen by implementation of the scheme.

According to him, instead of directing all the depositors to withdraw a pro rata amount of their deposits, the RBI has permitted a flat amount of withdrawals at certain intervals, meaning that the moneys to which the Petitioners would have been entitled on the basis of pro rata withdrawals, had been withdrawn by small depositors to the detriment of the larger deposit holders. He would submit that even under Section 43A of the Banking Regulation Act, payments made during the winding up of a banking company to the depositors are to be made pro rata and there is no logical reason to digress from such an accepted practice.

He would, in specific, invite our attention to the mechanism provided in sub-sections (3) and (4) of Section 43A, which is a provision in relation to preferential payment made to the depositors in the scheme of liquidation. According to him, a pro rata distribution is the norm and the bench mark when a bank is liquidated and it should equally apply when there is a amalgamation of bank under the scheme framed by the Reserve Bank of India, then if at all some deviation is warranted, the RBI ought to have assign reasons. According to him, the methodology adopted in this case is unique and probably adopted for the first time in contrast to the proceedings that were adopted in case of Yes Bank.

24. It is also his contention that impugned scheme could not reversed the interest paid to the deposits once it was credited, as he would submit that it is an admitted position that depositors were given interest on their deposits for the period between 01/04/2021 to 31/12/2021 and had also deducted TDS on the same. The impugned scheme reversed this interest and nullified the benefit of about Rs.400 crore that had accrued to them. He would submit that the impugned scheme declared the 'appointed date' as 25/01/2022, and it is supposed to take effect prospectively, and yet it reverses a

benefit that had accrued prior to 25/01/2022 and this is a primary example of the lack of application of mind when it comes to the impugned scheme.

25. It is also his contention that the amounts relating to Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR) should have been released, as ultimately it is the depositors money and Mr.Lohia urged that the CRR is a percentage of deposits of a bank held by the RBI as cash reserves for a rainy day and the SLR is a percentage of deposits held by a bank itself in the form of liquid assets, again for a rainy day. It is his contention that if the depositors continuously withdrew amounts from PMC Bank, the total deposits held by the bank reduced, and therefore, there ought to have been reduction in the amount to be kept aside towards CRR and SLR and it would be at a lower rate, bu the impugned scheme does not account for payout that ought to be made from CRR/SLR reserves as the total deposit amount continued to reduce. Instead of making such a payout to depositors such as Petitioners, the impugned scheme, according to Mr.Lohia, arranges for this amount to accrue to the benefit of the Unity Bank. Without prejudice to the aforesaid submission, the learned counsel would submit that it is always open to the RBI to relax the

CRR/SLR ratio as as to provide relief to affected deposit holders of PMC Bank. According to him, if there was a lower CRR fixed, more money would have been made available for distribution, but the scheme does not even take this into account.

26. Focusing his attention on the aspect of non-application of mind in regard to the money payable by DICGC, it is submitted by Mr.Lohia that DICGC's liability did not accrue in small deposits and relying upon the reply of DICGC, where it has given the total number of claims it has paid and the total amount disbursed, he would submit that an amount of Rs.3850 crores is stated to have been disbursed on the date of the scheme and this amounted to approximately 84% of the deposits. He has submitted that if approached correctly, the liability of DICGC ought to have been an additional Rs.920 crores to Rs.1120 crores and it ultimately indicated that it had paid lesser amount.

27. PMC Bank was placed under 'directions, with restrictions on withdrawals from September 2019 onwards, and according to the learned counsel, RBI had permitted some withdrawals through subsequent notifications, but the withdrawals by the account holders having amount of Rs.0 to

Rs.1 lakh and between Rs.1 lakh to Rs.5 lakhs. Between placing PMC Bank under 'directions' in September 2019 to the date of the impugned scheme in January 2022, over a period of two and half years have been passed and this gap, according to Mr.Lohia, is unprecedented as schemes pertaining to Laxmi Vilas Bank and Yes Bank, the gap was much less. Analysing the effect of this, Mr.Lohia has urged that the withdrawals made in the 2.5 year window period reduced the overall liability of the DICGC and an amount that ought to have been paid/borne by DICGC ended up being subtracted from the total deposit amounts held by PMC Bank to the detriment of the large deposit holders such as the Petitioners. According to him, the impact of this delay could have been averted by the RBI directing DICGC to make payouts starting from 2019 and not from January 2022, but this aspect has not at all been addressed in the impugned scheme. In short, it is the submission of Mr.Lohia that RBI could always have ensured that the liability for the period between moratorium and the impugned scheme was borne by DICGC, instead of making DICGC pay only from the appointed date in the scheme, thereby foisting the pre-scheme liability on the existing deposit holders and, particularly when the fraud and the

mismanagement of PMC Bank precede the impugned scheme and the imposition of moratorium.

28. Mr.Lohia also urged that the assertion of the RBI that the impugned scheme provide 100% protection to all retail depositors is demonstrably false because according to him for the first five years of the scheme, money of the depositors remain frozen with the Unity Bank and it earns no interest whatsoever. Thereafter, for the next five years, the interest earned is minuscule i.e. 2.75% and, therefore, Mr.Lohia submit that the claim of the RBI is falsified, when it assert that 100% of the money of the depositors is protected. According to Mr.Lohia, the Unity Bank offered the depositors like the Petitioners two schemes, which would involve the Petitioners taking a haircut upto 40% on the amount of their deposits lying frozen, and therefore, he would submit that if it was so clear that the depositors' money was protected, the Unity Bank would not have made an offer requiring them to take haircut and in no case, it make a commercial sense.

Based on the scheme, Mr.Lohia has prepared a rough indication of the real loss suffered by the Petitioners and which according to him, has reduced the value of his money multifold times.

29. Comparing the impugned scheme with the amalgamation scheme of Laxmi Vilas Bank with DBS Bank and the reconstruction scheme of Yes Bank, according to him, the interest of the depositors was not compromised in any way, as clause 6(3) of the Yes Bank Scheme clearly provided that 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 the scheme.

Mr.Lohia has also placed heavy reliance upon the decision in the case of ***Ganesh Bank of Kurundwad Ltd. & Ors.*** (supra). In addition to the aforesaid, he would also rely upon the decision of the Apex Court in the case of ***Deposit Insurance and Credit Guarantee Corporation Vs. Ragupathi Ragavan & Ors.***[2] to support his submission that all the depositors by an large have equal right. Reliance is also placed by him upon the decision of ***Axis Trustee Services Limited Vs. Union of India through the Ministry of Finance Department of Financial Services & Ors.***[3], wherein the Division Bench of this Court examined the challenge to a communication under which the

2 (2015) 9 SCC 629
3 (2023) 3 Bom CR 247

Administrator of Yes Bank Ltd. informed the Bombay Stock Exchange Limited and National Stock Exchange of the writing off the Additional Tier 1 Debenture bonds, and according to Mr.Lohia, the said decision has been quashed and set aside, and he would like us to follow the ratio flowing from the aforesaid authoritative pronouncement. We are informed that the SLP filed against the aforesaid decision is pending before the Apex Court and the stay granted by the High Court to the operation of the judgment is extended though it is made subject to the final orders to be passed.

(C) Writ Petition No.11079 of 2024

30. We have also heard Mr.Tamboly representing another set of retail depositors in Writ Petition No.11079 of 2024, who has also focused on manifest arbitrariness in the scheme of amalgamation sanctioned by the Government of India and although his challenge is limited to the validity of clauses 6 and 7 of the scheme, which according to him, discriminates between depositors based on the quantum of deposit and retrospectively confiscate accrued interest, which is clearly violative of Articles 14, 21 and 300A of the Constitution. Invoking clause 6(a)(c), which has segregated 'Retail Depositors' into those fully covered by DICGC upto Rs. 5 lakhs

and those with deposits above Rs.5 lakhs, according to Mr.Tamboly, create two artificial classes of unsecured depositors.

It is the specific contention of Mr.Tamboly that there is no rational nexus between the object of the scheme, being revival of the bank and the classification purported to be made depending upon the value of deposits. In his submission, there is no intelligible differentia that justifies sacrificing the life savings of a depositor simply because he or she saved more than Rs.5 lakhs. Prioritizing small depositors but penalizing larger depositors by locking their funds for a decare cannot amount to any social welfare goal, and this according to Mr.Tamboly, has resulted into 'privileged class' of depositors and a 'penalized class' of depositors, which amounts to hostile discrimination among persons similarly situated.

In addition to the aforesaid, Mr.Tamboly has urged that clauses 6(1)(c) and 6(1)(d) have effectively given a 10 year lock in period for the class of depositors who have invested amount more than Rs.5 lakhs. Citing an example of Petitioner No.1, who is 70 years of age, it is urged before us that a 10 year lock in period effectively would amount to permanent deprivation of funds to him and a time line that expects the life

expectancy of many depositors, according to Mr.Tamboly, is manifestly arbitrary and violates the Right to Livelihood enshrined in Article 21 of the Constitution. Further, fixing interest at 2.75% which is far below the inflation rate in effect erodes the principal value of the deposit and this according to Mr.Tamboly, enriches the private transferee bank at the cost of the public depositors.

31. Apart from the aforesaid submission, Mr.Tamboly has expressed criticism about the implementation of the scheme notified on 25/01/2022, but according to him, clause 6(1)(d) retrospectively freezes interest accrual from 31/03/2021 and Section 45 of the Banking Regulation Act definitely do not authorize the RBI to confiscate any property belonging to the depositors retrospectively. The interest accrued between 01/04/2021 and 24/01/2022, which is already credited in the account of the depositor is the property of the depositor and once the interest has already been transferred to the account of a depositor, a bank cannot unilaterally reverse the interest is his submission. According to him, no scheme/Notification/ provision of law can retrospectively authorize the bank to debit the account of a depositor once it has been credited in accordance with law and this would violate Article 300A of the

Constitution and definitely amounts to serious violation of the fundamental rights of a person and, therefore, he prayed that clause 6(1)(d) must be struck down.

Mr.Tamboly has placed before us a table reflecting the application of the scheme to depositors holding a deposit in three different slabs i.e. upto Rs.5 lakhs, above Rs.15 lakhs and above Rs.30 crores and putting these deposits in different phases, he would submit that a depositor more than Rs.15 lakhs will have his money locked in and it would cause serious erosion of his deposit.

Similarly, based on the scheme interest i.e. 0% from 2022 to 2027 and 2.75% interest from 2027 to 2032, by placing before us the following table, he would submit that value of Rs.30 crores in 2032 will be less than 40% on account of its deprivation.

32. It is an attempt on behalf of Mr.Tamboly to point out the inequality in three classes of depositors, and according to him, the mathematical reality to the aforesaid effect would demonstrate that the scheme is not merely restructuring the debt, but is in reality confiscatory and discriminatory, and according to him, though the net loss on deposit is 36.5%, the Erosion due to Inflation is actually almost 45% since the

amount the bank pays in 2032 would be 34.12 crores whereas the real worth of that amount as shown in Table B is only 19.06 crore. This implies that when the bank ultimately pays the depositor 34.12 crore in 2032, almost 45% of the amount i.e. 15.06 crore has no purchasing power compared to 2022. It is merely compensating for the increase in prices from 2022 to 2032.

33. Mr.Tamboly has placed reliance upon the decision of the Apex Court in ***K.T.Shephard & Ors. Vs. Union of India & Ors.***[4] holding that the scheme-making process is administrative and not legislative in character and necessarily the principles of natural justice are not excluded. In other words, according to him, fair play is part of public policy and is a guarantee for justice to citizens. He would also place reliance upon the decision in the case of ***Motor General Traders & Anr. Vs. State of Andhra Pradesh & Ors.***[5], and in particular, observations in paragraph 10, as regards Article 14 of the Constitution. He also submit that while Article forbids class legislation, it does not forbid classification for purposes of implementing the right of equality guaranteed by it.

4 (1987) 4 SCC 431
5 (1984) 1 SCC 222

(D) Writ Petition No.7753 of 2022

34. Learned counsel Mr.Warunjikar representing the Petitioner in Writ Petition 7753 of 2022,Maharashtra Rajya Sahakari Patasanstha Federation Ltd., has submitted that the Petitioner is a federation of various Credit Co-operative Societies and members of the Petitioner are different Credit Co-operative Societies whose depositors and/or shareholders are all common citizen of India and they are entitled to fundamental rights guaranteed under the Constitution of India. According to the present Petitioner, since the PMC Bank is Multi-Scheduled Urban Co-operative Bank registered under the provisions of the Multi-State Co-Operative Societies Act, 2002, the members of the Petitioner started keeping their hard earned money as deposit with the bank, but on account of the steps taken by RBI under Section 35A read with Section 56 of the Banking Regulation Act, directing the closure of the business of bank w.e.f. 23/09/2019, the Petitioner alongwith its members are put to tremendous loss.

It is the contention of Mr.Warunjikar that the members of the Petitioner are all institutional depositors, as they are various patsansthas, who have have collected money from the individuals and the scheme do not offer any protection to a

credit society, as it only take into consideration either retail or institutional depositors, which is the biggest flaw which the scheme suffers from. According to him, the members of the Petitioner have advanced loan to common persons, many of who are small depositors, and in fact this factor should have been taken into consideration by RBI as well as the Government, as it will now result into a failure as well as disruption in financial system of micro financing and certain long term measures ought to have been taken by the RBI. The money invested by the members of the Petitioner is now blocked for a long period and there is no exit, which is possible and the scheme introduced only permit repayment of the amount after the specific period is over and the erstwhile bank stand discharged of its liability after the payment, and hence, according to Mr.Warunjikar, the scheme formulated is contrary to the banking system in the country. This he says so, as according to him, the amount which is kept in deposit, nowhere in the banking system will fetch a lessor value in the future as a person invest the amount in the bank in the fixed deposit to get its appreciation, but the scheme has resulted into providing for a negative appreciation or lesser a appreciation than what is already accrued, and therefore, it is

contrary to the basic cannon of the banking. According to him, the Petitioner and its members ought to have been treated at par with individual depositors under the scheme of the Deposit Insurance and Credit Guarantee Corporation Act, and in absence of it, interference by this Court is necessary. It is the contention of Mr.Warunjikar that in a hurried manner, the entire exercise was completed which itself creates a doubt about the intentions of the concerned.

It is also contended that the by-laws of the Petitioner do not permit investment in private bank and that is why the money was deposited in a Multi-State Co-Operative Bank and that is how the Petitioner alongwith its 300 members are stuck. He has taken his submission ahead by submitting that the aforesaid scheme, resulting violation of his right under Article19(1)(c), which guarantees to the citizens fundamental right to form associations or unions or co-operative societies and by the said scheme, this right has been defeated and no steps are taken by the RBI to uplift the rights of the Petitioner and its members, which is guaranteed by the Constitution. Mr.Warunjikar has also submitted before us that the Directors of the Petitioner are getting notices of breach, as the money was deposited into PMC Bank. Another submission of

Mr.Warunjikar is, that if the PMC Bank was a co-operative bank so the merger ought to have been with the co-operative bank.

(E) Writ Petition No.2847 of 2025

35. Mr.Aseem Naphade representing the Petitioner in Writ Petition No.2847 of 2025 has again advanced his submission on behalf of retail depositors and he has asserted that the scheme has resulted into artificial distinction in two classes of depositors i.e. institutional and retail depositors, which has no nexus with the object sought to be achieved. According to him, Section 45 prohibits creation of two classes, but the scheme has ignored this and attempted to create an unjusticiable classification, which suffers from arbitrariness, and therefore, deserve to be quashed.

Citing an instance, Mr.Naphade would submit that it is evident from Section 45(5)(f) and (g) that 'reduction of interest or rights' is applicable to all 'depositors and other creditors' and Section 45 of the BR Act, which is an enabling provision under which the impugned Notification is issued do not permit creation of different class of depositors. Relying upon Section 45(k)(l) of the Banking Regulation Act providing that the scheme of reconstruction/amalgamation can contain

any other terms and conditions and such incidental, consequential and supplementary matters, have to be read in terms of the preceding clauses, according to Mr.Naphade, the said provision cannot be invoked to justify the creation of different class of depositors, which is prohibited by the preceding clauses i.e. clauses (f) and (g), which must apply with equal force to everyone. According to him, if required, every depositor will take haircut, but it must apply equally irrespective of the class in which the depositor find himself. His precise submission is, that the Notification issued under statutory enactment must be in conformity with the same and cannot contradict it.

He would adopt the arguments advanced by Mr.Lohia as well as by Mr.Tamboly, that the classification made by statute must be based on intelligible differentia, which have rational nexus to the object of the Act in question and if the object is to safeguard the right of the depositor, then there cannot be different classes of depositor entirely based on the status of the depositor, namely, individual, corporate etc. Apart from this, Mr.Naphade has urged that the institutional depositors include a partnership firm, whereas the retail depositors refer to depositors, who hold deposits in the bank in their individual

capacity, either singly or jointly and as it is the settled law that the partnership firm is a compendium of persons and does not have any separate legal existence, it has lead to an incongruous situation, where 'A' and 'B' are individuals holding two bank accounts, one in the name of a partnership firm where they are partners and the other in their own individual names, but this lead to different classification as the partnership firm account will be classified as an institutional depositor, whereas the individual account will be classified as retail depositor and this superficial distinction has no rational nexus with the object of the Act. Another submission of Mr.Naphade is relating to clause 8(2) of the Notification as regards Long Term Deposit (LTD) and he submit that there is equal treatment as that of the institutional depositors.

(F) Writ Petition No.7728 of 2022

36. In Writ Petition No.7728 of 2022, the Petitioners are represented by Mr.Anilkumar Patil, who adopts the arguments advanced by Mr.Warunjikar in Writ Petition No.7753 of 2022.

(G) Writ Petition No.8534 of 2022

37. In Writ Petition No.8534 of 2022, there is no appearance on behalf of the Petitioners.

IV) Submissions Advanced on behalf of RBI and Unity Bank- The Respondents.

38. The contentions of the respective counsel for the Petitioners received vehement opposition from learned senior counsel Mr.Ravi Kadam representing the Reserve Bank of India and the learned senior counsel Mr.Ashish Kamat representing the Unity Small Finance Bank Ltd.

Citing the background, Mr.Kadam has urged that the RBI received a complaint from the PMC Bank's senior officer with regard to HDIL group and the activity carried out being in violation of prudent banking practices and that there was manipulation of information submitted to RBI. This prompted the RBI to depute a team to carry out annual financial inspection of PMC Bank and scrutiny of HDIL account, the inspection focused on dealings and/or exposure of PMC Bank with the HDIL Group. The findings of the team, on 19/09/2019,highlighted that the total exposure to HDIL Group was camouflaged/or severely under reported to RBI and the assessed NPAs of the Bank were significantly higher than the reported NPAs. It also reported that the PMC Bank's net worth had turned negative and deposit erosion was significant.

In light of the aforesaid reporting, RBI acted swiftly and imposed 'All Inclusive Directions' under Section 35A read with

Section 56 of the BR Act, initially for a period of six months. These directions, according to Mr.Kadam, imposed restrictions on payment of deposits beyond the threshold limit as well as advancing of fresh loans and increasing the liabilities and this was done with the aim to prevent the possibility of preferential payment of deposits/reckless lending and preservation of the available assets of PMC, so that an attempt can be made for its revival.

RBI superseded the Board of Directors of PMC bank and appointed an Administrator on 23/09/2019, to handle day-to-day operational matters, including the recovery of NPA and payment to eligible depositors. It is the submission of Mr.Kadam that the Committee comprising of three experienced professionals was appointed to assist the Administrator in discharge of his duties.

39. Taking the sequence of events ahead, according to Mr.Kadam, from time to time, RBI continued to analyse the financial position of the Bank and withdrawal limits for depositors were enhanced from time to time from INR 1,000 to Rs.10,000/-, Rs.25,000/-, Rs.40,000/-, Rs.50,000/-and finally to Rs.1,00,000/- i.e. gradually more withdrawal were permitted. According to Mr.Kadam, even before the approval

and implementation of the scheme, with relaxation in the withdrawal limits, more than 84% of the depositors of the bank were able to withdraw their entire account balance and this limit was gradually enhanced, considering the hardship ground, including medical expenses, education, marriage etc.

40. On 30/09/2021, the net worth of PMC Bank was in the negative, and according to Mr.Kadam, to the extent of (-) 6737.61 crores and the deposit erosion steadily increased to 62.99%. As the analysis was in negative on 30/09/2021, around 83% of the PMC Bank's loan portfolio was non-performing asset and this hampered resolution of the PMC Bank through recovery. The realizable value of the assets was not sufficient to cover the operating expenses. Since PMC Bank had larger number of individual depositors and institutional depositors, RBI considered it imperative to arrive at a non-disruptive resolution/liquidation and it explored the multiple possibilities, but on finding that they are not feasible, on 03/11/2020, PMC Bank invited the expression of interest through public advertisement for investment/equity participation.

41. In this process, RBI was informed that three proposals were received, but only two submitted final offers. One of the

proposer-Centrum Financial Services Ltd. (Centrum) alongwith Resilient Innovation Pvt. Ltd. (RIPL) formed a joint venture, namely, Unity Small Finance Bank (Unity Bank), and a draft scheme of amalgamation of PMC Bank with Unity Bank was placed in public domain.

On consideration of suggestions and objections from members, depositors and other creditors, with a gap of three weeks, the proposal was forwarded to the Government on 17/02/2021 and on 25/01/2022, the Central Government sanctioned the scheme of amalgamation. Referring to the current status of implementation of the scheme as on 02/02/2026, Mr. Kadam make a statement that INR 4,852.33 crores have been paid to the depositors.

42. Heavy reliance is placed by learned senior counsel representing RBI on the decision of the Apex Court in the case of ***Peerless General Finance And Investment Co. Limited & Anr. Vs. Reserve Bank of India***[6], which had analysed the scheme formulated by Reserve Bank of India while discharging its role in regulating country's economy in the context of functioning of Residuary Non-Banking Companies.

Relying upon the relevant observations of the Apex Court, which has held that the Reserve Bank of India which is

6 (1992) 2 SCC 343

'Banker's bank' is a creature of statute and plays the important role in the economy and financial uplifts of India and its key function, being to regulate the banking, it was held by the Court that it had large contingent of expert advice relating to matters affecting the economy of the entire country and nobody can doubt the bonafides of the Reserve Bank in issuing directions under Section 45-K(3), being statutory in nature.

Mr.Kadam has also invoked the pertinent observations of the Apex Court in paragraph 36 to the following effect :-

> "The function of the Court is not to advise in matters relating to financial and economic policies for which bodies like Reserve Bank are fully competent. The Court can only strike down some or entire directions issued by the Reserve Bank in case the Court is satisfied that the directions were wholly unreasonable or violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This court has repeatedly said that matters of economic policy ought to be left to the government."

43. By relying upon the decision in the case of ***New Bank of India Employees' Union & Anr. Vs. Union of India & Ors.***[7], Mr.Kadam has urged that no scheme of amalgamation can be fullproof and the Court would be entitled to interfere only when it comes to a conclusion that either the scheme is arbitrary or irrational or has been framed on some extraneous consideration. It is, therefore, the submission of Mr.Kadam

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and unless and until this Court, based on the submissions advanced in relation to the flaw pointed out in the scheme, arrive at this conclusion, the interference in the scheme framed by the body with expertise in economic affairs and definitely at a higher footing than that of the individual Petitioners do not warrant any interference. Mr.Kadam has also placed reliance upon the observations of the Apex Court in the case of ***Deposit Insurance and Credit Guarantee Corporation*** (supra), and in specific, paragraphs 18 to 20, which read thus :-

> "18. Be that as it may, now we are concerned with a direction given by the High Court to the Official Liquidator and the Special Officer of the Bank, which is in liquidation, whereby they have been directed to pay the unpaid amount to the depositors instead of paying the same to the Corporation.
>
> 19. The object with which the Act has been enacted has been stated hereinabove in a nutshell. The object was to insure the depositors so that they may not have to stand in a queue before the Official Liquidator for every paisa deposited by them with the bank concerned. As on today, as per the provisions of Section 16(1) of the Act, a sum of Rs 1 lakh is being insured or guaranteed in respect of each depositor. So a depositor is safe and he has not to wash his hands off his deposit if the amount deposited by him is less than Rs 1 lakh. The Official Liquidator, as per the provisions of the Act, has to give details about the depositors and the amount deposited by them in a prescribed form within three months from the date on which the liquidation order is passed or from the day on which he takes charge, whichever is later and within two months from the date on which the details are submitted to the Corporation, the Corporation has to make payment to the above extent either to the depositors directly or to them through the Official Liquidator.
>
> 20. Thus, as per the abovereferred scheme, each depositor, including each original petitioner, must have received Rs 1 lakh from the Official Liquidator. Initially, upon the bank being ordered to be wound up, the original petitioners and other depositors had a right to recover Rs. 1 lakh or the amount deposited, whichever was less, from the Official Liquidator and the said amount must have been paid to them when the petitions were filed."

44. Mr.Kadam has advanced his submissions based on the affidavit filed by the General Manager of the Reserve Bank of India, Mr.Abhinav Pushp in Writ Petition No.2847 of 2025 affirmed on 30/01/2026, and according to him, the affidavit take care largely of all the arguments canvassed on behalf of the Petitioners. Recording the precarious position of the Bank the affidavit state thus :-

> "10. It is clear from the above table that the financial position of the PMC Bank has been precarious with negative net-worth of INR (-) 6737.61 crore as on 30 September 2021. Further, the deposit erosion has also steadily increased from 45.43% on 3l March 2019 to 62.99% on 30 September 2021
>
> 11. As on 30 September 2021, around 83% of the PMC Bank's loan portfolio was non-performing asset (.'NPA") and this further hampered resolution of the PMC Bank through recovery, since process of NPA recovery is generally tedious and long drawn, more so in the case of PMC Bank, where largescale fraud had taken place.
> 12. PMC Bank had a total deposit of Rs.10,535.47 crore as on 3l March 2021 and the number of depositors was around 9.25 lakh. The advances of the PMC Bank as on 3l March 2021 were Rs. 4,129.03 crores of which 82.05% were NPA. This meant that out of Rs.4129.03 crores of advances, Rs.3383.14 crores had turned NPA. Accordingly, as on 31 March 2021, PMC Bank had a huge gap between its assets and liabilities as reflected in negative net worth of Rs.(-)6,522.28 crore as on 31 March 2021. Its deposits were eroded to the extent of 6l.91% (as on 3l March 2021). Therefore, it is in the background of such grave financial circumstances, Respondent No. 2 was required to come up with a viable resolution which would be in the interest of all stakeholders.
> **Respondent No. 2 took into account all relevant factors including the contemporaneous financial position while arriving at the repayment schedule under the Scheme for both retail and institutional depositors."**

45. Regarding the staggered release of payment, the affidavit states thus :-

> "17. In fact, one of the suggestions received by Respondent No. 2, pertained to linking of repayment as per recoveries made by PMC Bank/Unity Bank. It is pertinent to note that as per the data

available, PMC bank was able to recover only Rs.184 crores for FY 2020-21 and Rs. 28 crores for FY 2021-22 (till September 30, 2021). Thus, the recovery amounts were too insignificant to link the same to repayment of depositors and would have led to much lower amounts being repaid as compared to current schedule of payment and would have been detrimental to the interest of the depositors. Therefore, at all stages of formulating the Scheme, including while reviewing the suggestions/objections received f'rom various stakeholders, the interest of the depositors was kept in mind by Respondent No.2.

18. In this background, it is clear that it was important for Respondent No.2 to categorize the depositors based on the nature of entity, since the prevailing financial position did not allow immediate or faster withdrawal of the entire uninsured deposits by depositors."

46. The affidavit, in great detail, has justified the decision of the RBI in adopting the scheme of amalgamation, as it is stated that pursuant to EOI issued by the PMC Bank and the deliberations and discussion, the draft scheme involving amalgamation of the Bank with Unity Bank was prepared and the reasoning as to why the Bank chose this mechanism over liquidation is also to be found in paragraph 19.15 which reads thus :-

"19.15 Given the financial condition of PMC Bank (eg. cash, balance with other banks and investments totalling INR 2882.51 crores as on 31 March 2021) and lack of proposals for capital infusion, Respondent No. 2, in the absence of the Scheme, would have had to consider cancellation of licence and taking PMC Bank into liquidation. However, this step would have been immensely prejudicial to the depositors of PMC Bank as the depositors would have only received amounts up to 5,000,000 which is the insurance coverage provided by Respondent No. 4, DICGC. Further, PMC Bank (which merged into Unity Bank) would not get the benefit of repaying DICGC within 20 years from 25 January 2022 (as provided in the Scheme) and would have had to make payments as per the DICGC Act upon liquidation of PMC Bank from the available assets/funds of PMC Bank. In such a situation, the deposit holders would not have received payout over and above INR 5 lakhs since the DICGC would have to be paid the amount paid by DICGC to the depositors of PMC Bank."

47. The contention about the artificial discrimination being created by the scheme, the RBI has categorically stated that the scheme was so formulated to protect interest of all the depositors and what is relevant to note is paragraphs 25 and 26 of the affidavit, which read thus :-

> **"25.** The Petitioners' primary grievance appears to be that the Scheme allegedly does not consider the quantum of the amount deposited by each depositor for the purpose of categorizing depositors into retail and institutional depositors. Further, it has also been contended that Petitioners' being purported HNI (which Respondent No. 2 does not admit) ought to have been classified as institutional depositors. However, such contentions are completely misplaced and legally not tenable. In any event and without prejudice to the other contentions of Respondent No. 2, the Petitioners having already taken benefit of payouts as retail depositors under the Scheme and cannot now seek classification as institutional depositors.
>
> **26.** The Scheme classifies depositors based on the nature of entity at the time of deposit having been made with PMC Bank i.e. two categories: (a) retail depositors, and (b) institutional depositors. The Petitioners being individual depositors (at the time of making their deposit with PMC Bank), have been correctly classified as retail depositors under the Scheme. The quantum of deposit does not alter the nature of the deposit. Therefore, merely because the Petitioners have relatively large amounts of deposits would not convert them from retail to institutional depositors. There is no basis to the contention of the Petitioners that the Petitioners should be treated as institutional depositors."

48. In order to rebut the contention that no consideration was given to the objections raised, and particularly, responding to the submission of Mr.Tulzapurkar, Mr.Kadam would submit that a draft was initially prepared and circulated and on the suggestions and objections, the Notification came to be issued and by the colour scheme of the Notification, he has demonstrated that the green marking is where the clauses are

shifted, whereas the red is the draft and the blue is the scheme that was adopted.

49. Another important facet of the matter argued by Mr.Kadam is the Deposit Insurance and Credit Guarantee Corporation Act, 1961(for short, **"DICGC Act")**, a statute providing for establishment of Corporation for the purpose of insurance of deposits and guarantee of credit facilities. Inviting our attention to the definition of the term 'deposit', he would submit that the term means the aggregate of the unpaid balances due to a depositor in respect of all his accounts, with a corresponding new bank or with a Regional Rural Bank or with a banking company or a co-operative bank. In addition, he would submit that 'eligible co-operative bank' in terms of the Act is a co-operative bank with a definition prescribed in Section 2 (gg).

Highlighting the provision in form of Section 16 as regards the liability of Corporation in respect of insured deposits, he has specifically focused his attention on sub-section (2) thereof, which is relevant qua an insured bank and he would submit that the transferee bank has to transfer/pay money to the insurer in 20 years and this is what is included in paragraph 7 of the scheme.

In addition, he would also invite our attention to Sections 18 and 18A alongwith Section 21 and as to how it is translated into the impugned scheme.

Apart from this, Mr.Kadam has also placed before us the Regulations of 1961 framed in exercise of power conferred by sub-section (3) of Section 50 of the DICGC Act.

Mr.Kadam would submit that the distinction made by the scheme between between an individual and institutional depositor is perfectly justified as the latter are business entities and they have been allotted preferential/equity shares in contrast the individual depositors. In any case, he would submit that this Court shall not sit in appeal over the wisdom exercised by RBI, definitely in larger public interest and few persons through the Petitions cannot call in question the said decision, as the scope of interference is very limited.

50. Learned senior counsel Mr.Ashish Kamat, representing the Unity Small Finance Bank Ltd., in addition to the submissions advanced by Mr.Kadam, has urged before us that some facts are undisputed and this include a fact that net-worth of the PMC Bank was in negative. It is also not in dispute that a decision was taken in a full drawn process by the RBI that amalgamation of the PMC Bank was the best

solution. Another point which he would urge before us that no procedural impropriety is alleged by the either of the Petitioners, and lastly, he would submit that what was done by the RBI was the best which could have been done in the given scenario.

Focusing his attention on the scope of judicial review in matter of economic complicity, involving technical aspect of banking and particularly in relation to the scheme, arising under Section 45 of the Banking Regulation Act, he would submit that Section 45 of the Act confer power to RBI to apply to the Central Government for suspension of business by a banking company and to prepare a scheme of reconstruction or amalgamation. Under sub-section (4), if the RBI is satisfied that the banking company is required to amalgamate with any other banking institute, it may draw up a scheme for the said purpose. Under sub-section (6), the RBI is required to forward the draft of the Scheme to the transferor and the transferee bank for suggestion and RBI shall make such modification, if any, in the draft scheme as it may consider necessary in light of the suggestions received. Thereafter, the said Scheme, under sub-section (7) has to be placed before the Central Government for approval.

According to the learned senior counsel, on a reading of Section 45 of the BR Act, it can be seen that, there is a thread mechanism providing for application of mind by the RBI, inviting of suggestions and the Government applying itself, to the proposed scheme. RBI being the regulatory body for the Indian banking system, has been given the power to draw up the scheme of amalgamation and thereafter only forward the same for 'suggestion'. Section 45(6) gives power to RBI to either accept or disregard to the suggestions given in relation to the scheme. Under Section 45 of the BR Act, RBI has been given complete power to formulate a Scheme being the expert and regulatory body. This is because, in matters of such economic complexity, it is RBI alone who would have the necessary expertise, and capacity to appreciate and appropriately evolve the scheme. He has also placed heavy reliance upon the verdict of the Apex Court in the case of ***Peerless General Finance And Investment Co. Limited & Anr.*** (supra).

51. According to Mr.Kamat, since the downfall of the PMC Bank had begun and as its net-worth had turned negative and deposit erosion was significant, and its financial position was precarious, RBI was forced to step in and exercise its power

under Section 45 of the BR Act to safeguard the interest of all the stakeholders and maintain the confidence of the depositors in the banking industry. The financial condition of the PMC Bank constrained the RBI to take relevant steps under Section 36AAA read with Section 56 of the BR Act, imposing restrictions on the functions of the PMC Bank and permitting withdrawals from time to time, which was followed by formulation of the scheme and his client, Unity Bank taking over affairs of the PMC Bank. According to him, the action taken by the RBI is in the interest of all the depositors, which includes the Petitioners in all the Writ Petitions.

Mr.Kamat has thrown light on the process followed by RBI, when it issued EOI, which ultimately culminated into formulation of scheme, which is fair, bonafide and reasonable. Mr.Kamat submitted that as per the EOI invitation, PMC Bank had total deposits of Rs.10727.12 crore, total advances of Rs.4471.78 crore and gross NPA of Rs.3518.89 crore as on 31/03/2020. The share capital of the bank was Rs.292.94 crore. However, the bank registered a net loss of Rs.6835 crores during the financial year of 2019-20 and had a negative net worth of Rs.5850.61 crore. As of 31/03/2021, the negative net worth of PMC Bank was Rs.7581 crores and pursuant to

the EOW, according to Mr.Kamat, the following steps were taken.

"6.2. Pursuant to the EOI, the following steps were taken:

i. On December 15, 2020, PMC Bank informed RBI that it has received initial proposals from (a) Central Financial Services Ltd ("**CFSL**") along wit Resilient Innovations Pvt. Ltd., ("**RIPL**"); (b) Dr. G. Mahesh Kumar, Group Chairman, RAMMMS Group of Companies; (c) Wyelands Capital Ltd. (through Liberty Street India Limited); and (d) Ideal Vitamin Food Products Ltd.

ii. As on February 1, 2021, at the expiry of the extended timelines, only Centrum/RIPL and LSIL submitted their final offers, while Ideal Vitamin submitted a tentative offer.

iii. PMC Bank informed RBI that Ideal Vitamin had failed to provide a final offer despite repeated follow ups and had indicated that it would conduct diligence only once its proposal was approved in principle.

iv. LSIL submitted a letter dated 16 March 2021 indicating that owing to some difficulty, the capital infusion would be delayed by another 9 to 12 months.

v. CFSL along with RIPL formed a joint venture, namely USFB which was granted small finance bank ("**SFB**") license. USFB was ready and complied with the timelines to infuse funds into the Bank."

52. As regards the credentials of USFBL is concerned, which participated in the process, which was in form of open competition, Mr.Kamat would submit that its credibility can be borne out of the following :-

"i. USFB is a joint venture of CFSL, who owns 51% stake in USFB and RIPL. who owns 49% stake in USFB. Both Central Financial Services Ltd and Resilient Innovations Pvt. Ltd are well-known entities providing financial services to its clients.

ii. The Centrum Group has 3 (three) licensed business verticals which have combined assets under management ("AUM") of Rs. 1800 crore. The group also manages AUM of Rs. 20,000 crores through other wealth management services. Respondent No.4 is India's number 1 acquirer of offline UPI transactions which

designs and develops consumer payment applications. Respondent No.4's brand "*BharatPe*" processes payments worth Rs. 48,000 crores annually.

iii. Therefore, both the entities promoting USFB are not unknown to the banking business and that they have immense experience and reputation in the banking industry. USFB may be a new entity, however the reputation of the companies promoting USFB cannot be ignored.

iv. Hence, RBI has considered the background of USFB and the financial solvency which it will bring in order to amalgamate with PMC."

53. Inviting our attention to the subsequent facts demonstrating successful implementation of the scheme by Unity Bank, Mr.Kamat would rely on the affidavit, which has stated thus :-

"7.2 As of 31st December 2025, 99.45% depositors of the PMC Bank has withdrawn a total amount of 3835.04 crores out of 3856.26 crores, which was released by DICGC.

7.3 In addition to the above, USFB, in compliance of the Scheme, has paid the following further amounts to the depositors :

a. On 25th January, 2023 -Rs.147.27 Crores
b. On 25th January, 2024-Rs.133.90 Crores
c. On 25th January 2025-Rs.238.98 Crores
d. On 25th January 2024-Rs.476.77 Crores

7.4 Pursuant to the sanction of the present Scheme and USFB taking over the management of the bank, USFB has substantially grown the business and the book of the bank:

i. USFB has grown its balance sheet at a CAGR of 60% from 11946 Crores in March 2023 to Rs.19152 Crores in March 2025. Further, USFB has been profitable during these years and that the profits have in fact increased from Rs.35 crores in March 2023 to Rs.482 crores in March 2025 i.e. the growth rate of 271%.

ii. Further, USFB has expanded beyond 6 states where PMC Bank operated to almost 20 states in India and from 110 branches to 291 branches, making it a PAN India bank. More and more savings and current accounts are being opened in the bank on an everyday basis."

In addition to the aforesaid, Mr.Kamat has also contested the claim raised in each Petition individually.

54. An additional affidavit is filed on behalf of the Authorised Signatory of USFBL, where a following statement is made.

> "3. Upon the approval of the Scheme, USFBL has largely implemented the Scheme and as on December 31, 2025, the depositors (including the Petitioners herein as also in the connected Writ Petitions) withdrew a total amount of Rs. 3835.04 crores out of Rs. 3856.26 crores released by Deposit Insurance and Credit Guarantee Corporation ("**DICGC**").
>
> 4. In addition to the above-mentioned amounts paid by DICGC, USFBL has also paid the following amounts as per the Scheme to the depositors (which include the Petitioners herein as also the connected Writ Petitions):
>
> a. On 25.01.2023-Rs. 147.27 crores
>
> b. On 25.01.2024-Rs. 133.90 crores
>
> c. On 25.01.2025-Rs. 238.98 crores
>
> d. On 25.01.2026 Rs. 476.77 crores
>
> Hence, it can clearly be seen that a considerable amount has been paid to the depositors (including the Petitioners herein and in the connected Writ Petitions) and therefore a large part of the Scheme has already been implemented.
>
> 5. On bare perusal of the Scheme it can be seen that, the Scheme envisages proposed payouts to the individual depositors in 3 stages, viz,
>
> i. Payment up to Rs.5,00,000/- by DICGC to all individual depositors;
>
> ii. Payment from Rs.5,00,000/- to Rs.15,00,000/- to individual depositors having more than Rs.5,00,000/- deposit and
>
> iii Payment above Rs.15,00,000/- to individual depositors having more than Rs.15,00,000/- deposit "

55. A positive statement is to be found in the said affidavit, which record thus :-

> "9. In addition to the above, it is also pertinent to note that USFBL has consistently grown its business. USFBL pursues profitable growth opportunities within its regulatory environment and has been a profitable bank since its operations i.e. from Financial Year 2022-23. It is pertinent to note that, USFBL has been profitable while ensuring to meet all its liabilities to the depositors of erstwhile PMC Bank.
>
> 10. USFBL has grown its balance sheet at a CAGR of 60% from Rs. 11946 crores in March 2023 to Rs. 19152 crores in March 2025. This has been on the back of strong growth in advances with the loans having grown at CAGR of 66% from Rs. 6601 crores in March 2023 to Rs. 10985 crores in March 2025, as well as strong mobilization of deposits which have grown from Rs. 2685 crores to Rs. 11952 crores in the same period. USFBL has been profitable during this period with the profits of the bank having increased from Rs. 35 crores in March 2023 to Rs. 482 crores in March 2025, a growth rate of 271%. The bank has adequate capital to continue to meet its growth projections with a CRAR of 29%, as against regulatory requirement of 15%.
>
> 11. … … …
>
> 12. Several customers have shown their trust in USFBL and the same is reflected from the fact that not only have they obtained loans from USFBL but have opened several current and savings bank accounts with USFBL. Hereto annexed and marked as **Exhibit A** is a list of current account and savings accounts opened after the Appointed Date of the Scheme."

The learned senior counsel ultimately seek dismissal of the Petitions.

56. Mr.Kedar Dighe, the counsel appearing for the Finance Ministry, has supported the impugned Notification and submitted that it is a well settled principle in law that in financial policy matters pertaining to the State and its instrumentalities, the Court shall be slow to show indulgence and impose its view. In particular, as regards the decision of RBI, he would submit that it comprises of experts in the field of

finance, who are competent to take advised policy decisions, whenever the need arises.

Apart from this, it is also submitted by Mr.Dighe that each of the Petitioners has derived benefit from the scheme, but have chosen to raise a challenge to the same, despite the fact that 97% of the account holders/depositors are repaid their deposited amount and all 100% will also be paid, but in time slabs as per the scheme, ensuring that every depositor shall get his money back.

Mr.Dighe has, therefore, prayed for dismissal of all the Writ Petitions.

57. The learned senior counsel Mr.Dhond, representing DICGC, has submitted that the Authority has very limited role to play as it performed a mechanical task of paying the amount to the depositors, who could not get the assured amount of Rs.5 lakhs and DICGC will compensate a depositor by paying the balance amount. In any case, it is the submission of Mr.Dhond that there is no relief sought against DICGC.

Mr.Dhond has placed before us a chart, with reference to the number of claims, the amount disbursed and the date of sanction of the amount, which is to the following effect :-

Sr. No.	Type of Claim	No of Claims	Amount	Date of Sanction
1.	Depositor List submitted by Unity SFB*	11,63,997.00	38,66,94,28,075.06	-
Eligible Claims Sanctioned by DICGC				
2.	Main Claim	8,47,506	37,91,55,33,367.64	31-03-2022
3.	Supplementary Claim List 1	19,225	38,98,08,655.80	05-07-2022
4.	Supplementary Claim List 2	1,531	20,30,50,195.17	22-11-2022
5	Supplementary Claim List 3	467	3,28,78,532.77	16-01-2024
6	Supplementary Claim List 4	126	75,11,698.21	13-09-2024
7	Supplementary Claim List 5	142	1,38,77,259.11	23-06-2025
		8,68,997	**38,56,26,59,708.70**	

It is his categorical submission that all the eligible and admissible claims submitted are paid with reference to the balance as on cut-off date of the original list.

V) Analysis of Rival Claims/Contentions :-

A] Scheme of Amalgamation under the Banking Regulation Act, 1949.

58. The rival contentions canvassed before us deserve appreciation in the background facts to which we have made reference in the primordial part of the judgment as to the circumstances, which warranted exercise of the power by the Reserve Bank of India, for suspension of business of the banking company and to prepare a scheme for amalgamation of the PMC Bank with Unity Small Finance Bank Ltd.. The

Notification issued on 25/01/2022 by the Ministry of Finance, is issued in exercise of the powers conferred by sub-section (4) of Section 45 of the Banking Regulation Act, 1949, granting sanction to the scheme referred to as "Punjab and Maharashtra Co-Operative Bank Ltd. (Amalgamation with Unity Small Finance Bank Limited) Scheme, 2022". The Notification contain a reference to the issuance of 'All Inclusive Directions' issued by the RBI to the PMC Bank under Section 35A read with Section 56 of the Banking Regulation Act with effect from close of business from 23/09/2019.

It also contain a reference to the supersession of the Board of Directors of the Bank and appointment of Administrator in exercise of the powers conferred under sub-section (1) and (2) of Section 36AAA read with Section 56 of the BR Act.

RBI invoked the provision contained in Section 45 for preparation of a scheme for amalgamation, as it arrived at a conclusion that the position of PMC Bank called for immediate attention. Upon the Centrum Financial Services Limited, as Promoters alongwith Resilient Innovation Private Limited as 'Joint Investor', expressing their interest in acquiring PMC Bank, through a suitable scheme of amalgamation, and since

they offered the desired solution in larger public interest, the proposal was accepted. The promoters alongwith the joint investor infused capital in Unity Small Finance Bank as on November 1, 2021 and the scheme was ready for implementation.

59. It is necessary to appreciate the scope of the power of the RBI, as contemplated in Banking Regulation Act, 1949 and the various steps, which it is competent to initiate for regulating the business of the PMC Bank, a Multi-State Scheduled Urban Co-Operative Bank, when it took cognizance of its precarious financial condition, on account of complete erosion of its capital in exercise of its supervisory jurisdiction. Section 35 of the BR Act aurhorises the RBI, at any time and on being directed by the Central Government to cause an inspection to be made of any banking company and its books and accounts and supplying it with a copy of a report. Sub-section (4) of Section 35 also confer a power on Reserve Bank, on being directed by the Central Government, to cause an inspection and report to it and if the Central Government, on the basis of the report, is satisfied that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, it may, after giving opportunity to the banking

company to make representation in connection with the report as, in the opinion of the Central Government, seems reasonable, (a) prohibit the banking company from receiving fresh deposits (b) direct the Reserve Bank to apply under section 38 for winding up of the banking company.

In the scheme of the enactment, the Reserve Bank is vested with the power to give directions and Section 35A permit the Reserve Bank to issue such directions generally or to any banking company in particular, from time to time, as it deems fit and the banking company, as the case may be, shall be bound to comply with such orders. If the RBI is satisfied that it is necessary (a) in the public interest or (aa) in the interest of banking policy or (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company, or (c) to secure the proper management of any banking company generally.

Section 56 of the Act, being included in Part V, inserted w.e.f. 01/03/1966, provide that the provisions of the Banking Regulation Act, 1949, notwithstanding anything contained in any other law for the time being in force, shall apply to, or in relation to, co-operative societies, as they apply to, or in

relation to, banking companies subject to the specified modifications. The term 'Co-operative bank' is defined to mean a state co-operative bank, a central co-operative bank and a primary co-operative bank, whereas 'multi-State co-operative bank' means a multi-State co-operative society which is a primary co-operative bank for the purposes of Part V. It is thus clear that the provisions of the Banking Regulation Act, 1949 are also applicable to the co-operative societies, with the modifications set out in Part V.

The aforesaid Part has the presence of Section 36AAA, which is a provision permitting the Reserve Bank of India to supersede the Board of Directors of a co-operative bank, if it is in a public interest or for preventing the affairs of the co-operative bank, being conducted in a manner detrimental to the interest of the depositors or for securing the proper management and the said provision reads thus :-

> "**36-AAA.** ***Supersession of Board of directors of a co-operative bank.-***
>
> (1) … … ..
>
> (2) … .. ..
>
> (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) … … …
>
> (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) ... ...

(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) ... ...

(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."

60. Section 45 also empower the RBI to apply to the Central Government for an order of moratorium, in respect of a banking company, if it appears to the bank that there is a good reason so to do and the Central Government on consideration of the application may make an order staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time, on such terms and conditions as it thinks fit and proper and it may, from time to time, extend the period. However that total period of moratorium shall not exceed six months.

By virtue of sub-section (4) of Section 45, during the period of moratorium or any other time, the Reserve Bank is satisfied that (a) in the public interest; or (b) in the interests of the depositors; or (c) in order to secure the proper management of the banking company, or (d) in the interest of

the banking system of the country as a whole,- it is necessary so to do, the Reserve Bank may prepare a scheme (i) for the reconstruction of the banking company, or (ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank".

Sub-section (5) of Section 45 prescribe the matters which shall be contained in the scheme and it include the following :-

> "(a) the constitution, name and registered office, the capital, assets, powers, rights, interests,authorities and privileges, the liabilities, duties and obligations of the banking company on its reconstruction or, as the case may be, of the transferee bank;
>
> (b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;
>
> (c) … … …
>
> (d) … … …
>
> (e) … … …
>
> (f) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the maintenance of the business of the banking company;
>
> (g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim—
>
> (i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or
>
> (ii) where there interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;
>
> (h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation [whether their interest in such shares has been reduced under clause (f) or not], of shares in the banking company

on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—

(i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(i) … … …

(j) … … …

(k) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out."

61. Sub-section (6) of Section 45 provide that a copy of the scheme prepared by Reserve Bank shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the reconstruction or amalgamation for suggestions and objections, if any, within such period as may be specified for the said purpose and it may make such modifications, if any in the draft scheme, as it may consider necessary in the light of the suggestions and objections received. Sub-section (7) then prescribe that the scheme shall be placed before the Central Government for its sanction, which may be sanctioned without any modification or with such modification as the Central Government may consider necessary and the scheme as sanctioned by the

Central Government shall come into force on such date as specified by it on that behalf. It is also permissible for the Central Government to specify different dates for different provisions of the scheme.

The consequences for coming into operation of the scheme are also clearly provided in Section 45, as sub-section (8) provide that on coming into operation of the scheme or any provision thereof, it shall be binding on the banking company, or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank,including the trustees or other persons managing, or connected to any other manner with, any provident fund or other fund maintained by any of those companies of the transferee bank.

Sub-sections (9) and (12) of Section 45 postulate the consequences of the applicability of the scheme of amalgamation in following words :-

> "(9) On and from the date of the coming into operation, or as the case may be, the date specified in this behalf in, the scheme, the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of

and to the extent provided in the scheme, stand transferred to, and become the liabilities of the transferee bank.

(10) … … …

(11) … … …

(12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Central Government on the recommendation of the Reserve Bank may, by notification in the Official Gazette, make for the purpose of giving full effect to the scheme :

Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business."

The supremacy of the scheme formulated under Section 45 is attained by sub-section (14) of Section 45, as it provide for as below :-

"(14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force."

B) <u>Applicability of the Statutory Scheme to the PMC Bank</u>:-

62. None of the Petitioners have raised any doubt about the power of the RBI to apply to the Central Government for any order of moratorium or for preparation of the scheme, but we have faintly heard some arguments that the amalgamation scheme framed by the Reserve Bank, to which the Central Government has granted approval, is not in public interest or in the interest of the depositors.

In the backdrop of the precarious financial situation in which the PMC Bank found itself, after detection of certain instances of fraud by HDIL and its group companies in September 2019, which resulted in complete erosion of capital and substantial deposit erosion, and the figures placed before us through the affidavit filed by the General Manager of the RBI are startling. The affidavit has stated that upon inspection of PMC Bank conducted by it in 2019, the net-worth and Capital to Risk Assets Ratio (CRAR) had plummeted from positive figures of Rs.706.20 crore and 12.72% as on 31/03/2018 to a huge negative figures of Rs.(-)5278.21 crore and (-)198.70% with significant deposit erosion of 45.43 per cent as assessed on 31/03/2019. The affidavit has placed before us the financial parameters of PMC Bank between 2019 and 2021, and as on 30/09/2021, the PMC Bank had negative net-worth of INR (-) 6737.61 crore. It is also noted that PMC Bank had a huge gap between the assets and liabilities on account of the negative net-worth and all these relevant factors,including the contemporaneous financial position, were taken into account, while taking recourse to the provisions under Section 45 of the BR Act.

Though we have also heard an argument on behalf of the Petitioners that the RBI was cautioned about gross irregularities in PMC Bank's functioning since 2011, but the RBI did not take any cognizance and it is only when a complaint was received by it from a senior official of the PMC Bank itself on 17/09/2019, where it was alleged that the bank has sanctioned large credit facility to HDIL Group in gross violation of prudent banking practices and the data/information furnished to RBI was manipulated, it woke up from deep slumber and ordered statutory inspections under Section 35 read with Section 56 of the BR Act, 1949 to find that the allegations made are true.

We do not find any reason in getting into the reason why the RBI did not take cognizance earlier, if some complaints were preferred, but it is sufficient to note that the preliminary findings on the inspection being conducted by RBI in 2019, revealed serious financial irregularities and brought on surface the perilous financial condition of the bank. The inspection also revealed that the total exposure to HDIL Group was camouflaged and severely under reported to the RBI and this had caused the bank dearly, as it had resulted into a steep deterioration in its financial calculations, warranting an

immediate action. In light of the fraud that had surfaced, upon the inspection being carried out, it was necessary for the Reserve Bank of India to sprung into action to protect the interest of the depositors and immediately explore the possibility of its rehabilitation.

63. From the affidavit-in-reply filed by the RBI, it is evidently clear that in the precarious situation that had surfaced on record through the inspection of the books and accounts as well as into its financial affairs, it was necessary to take prompt steps to impose 'All Inclusive Directions' and to preserve the scarce resources of PMC Bank while taking all steps to ensure protection of depositor's interest. Considering that the PMC Bank had large number of high value retail/individual depositors and it also held deposits of a large number of co-operative banks and co-operative societies apart from other institutions such as Trusts etc., RBI considered it imperative to take recourse for non-disruptive resolution of PMC Bank rather than a simple liquidation, which would not have been in the interest of the depositors and would have resulted in the depositors only receiving amounts upto Rs.5 lakhs from DICGC. Paragraph 19.14 of the affidavit of the RBI has disclosed the option exercised by the RBI and we reproduce its contents :-

"Accordingly, as detailed in the RBI Replies, various options were explored by Respondent No. 2. The options explored by Respondent No. 2/PMC Bank are as follows —

a) **Capital infusion/merger**: Respondent No. 2 consider infusion of fresh capital imperative for revival of PMC Bank. Several attempts were made to rope in the State Government by PMC Bank (with correspondence to the level of Principal Secretary, Government of Maharashtra) in the revival efforts. Several potential options were suggested including acquisition of properties belonging to the HDIL group by the government, acquisition of the branches of PMC Bank in Maharashtra etc. However, the efforts did not yield the desired results.

b) The option of reconstruction of PMC Bank under Section 45 read with Section 56 of the BR Act through restructuring of deposit liabilities including haircuts on the deposits was also explored. However, without infusion of fresh capital, revival of the bank was not found feasible. Respondent No. 2 through various discussions and deliberations was made aware that considering the financial condition of PMC Bank no investor might be willing to put in the minimum investment amount of more than Rs. 6000 Crores, which was required to make it a positive net worth bank and continue under the co-operative structure.

c) This is also evident from the fact that upon floating of the EOI, only four entities showed interest. Further, Unity Bank was the only contender found to be eligible since others had either backed out or indicated delay at their end. In this regard, the contents of the RBI Replies are reiterated.

d) **Exploring Resolution through NPA recovery**: While PMC Bank made efforts for recoveries by initiating actions under the available means, the progress had been rather slow because of various legal constraints. The realizable value of the securities available with PMC Bank was still not considered adequate.

e) **Merger with strong bank**: Respondent No. 2/PMC Bank also addressed correspondence to some of the (i) large nationalised banks such as State Bank of India, Bank of India, Canara Bank, Punjab National Bank; (ii) commercial banks such as Axis Bank, ICICI Bank; and cooperative banks such as Maharashtra State Co-operative Bank for a possible merger which again did not find favour with any of the other banks, owing primarily to the large gap between the liabilities and the realizable value of the assets.

C) Scope of Judicial Review :-

64. The stand adopted by the RBI deserve an appreciation in the backdrop that the monetary policy framework in India is

operated by the Reserve Bank of India, constituted under the Reserve Bank of India Act, 1934 for regulating the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in the country and generally to operate the currency and credit system of the country to its advantage. The role played by the Reserve Bank of India, was expanded from time to time, when the Reserve Bank of India Act, 1934 was amended, as and when the exigency arose and expanding the role of Reserve Bank of India to act as an agent of the Central Government for implementing the scheme in form of grant of loans by commercial banks and other financial institutions to variety of borrowers, by guaranteeing the loans sanctioned in respect of such unit and the amendment afforded an opportunity to authorise the bank to extend loan facilities to the State financial corporations and other institutions notified by the State Government. As and when the need was felt to further expand the role of RBI, by exercising control over the companies and institutions, which though not treated as banks but accepted deposits from general public or carry on the business, allied to banking, the Act came to be amended. The further amendment to the enactment took place taking into consideration the activities

of the non-banking institutions and unincorporated bodies receiving deposits.

The Reserve Bank of India has thus emerged as Regulatory Body for the Indian Banking System and Indian currency and it is responsible for control, issue and supply of Indian Rupee and it manages country's main payment system. From the preamble of the statute under which the Reserve Bank is constituted, its basic functions are set out, to regulate the issue of bank notes and keeping reserves and also to have a modern monetary policy framework to meet the challenge of increasingly complex economy, to maintain rights stability while keeping in mind the objective growth.

The Central Board of Directors is the main Committee of the Central Bank and the Government of India appoints the Directors for a fixed term. The Board consists of a Governor and not more than four Deputy Governors, four Directors to represent Regional Board, two Secretaries, Economic Affairs Secretary and Financial Services Secretary from the Ministry of Finance and ten other Directors from various fields. The objective of RBI, being to undertake consolidated supervision of the financial sector comprising commercial banks, financial institutions and non-banking finance companies, and since it

aims at ensuring financial stability and maintaining of public confidence in the banking system, the Central Board of Directors comprising of experts in the financial field, exercise the powers and discharge the functions entrusted to it by the statute. The Reserve Bank of India, which also works as a Central Bank where the commercial banks are account holders, is referred to as, 'Banker's bank' and it maintains banking accounts of all scheduled banks. It is the duty of RBI to control the credit through Cash Reserve Ratio (CRR), Repo rate and open market operations and as the Banker's Bank, it facilitate the clearing of cheques between the commercial banks and helps the inter-bank transfer of funds and is also empowered to grant financial accommodation to scheduled banks. It also act as the Lender of the last resort by arranging emergency advances to the banks.

The Reserve Bank of India is also the custodian of country's reserves of international currency and this enables to it deal with crisis connected with adverse balance of payments position.

65. The Reserve Bank of India, established under the statute thus discharges its functions through various experts, including the Monetary Policy Committee as the monetary

policy decision by the Central Bank can have far reaching implications for the economy, investors as well as borrowers, and individual decisions may prove to be detrimental at occasions, and therefore, the RBI Act was amended to hand over the job of monetary policy making in India to a Monitory Policy Committee which is a six-member panel, comprising of three members from the RBI and three independent members to be selected by the Governor. With an expertise at its hands, into the decisions involving maintaining price stability while focusing upon the objective of growth, the functions to be discharged by the bank involve crucial decisions and this include the decisions to be taken in larger public interest and the framework for which is to be found in the Banking Regulation Act, 1949, which has specifically set out the business of banking companies with the control to be exercised by the Reserve Bank, by empowering it to give directions in the public interest or in the interest of the banking policy, or to prevent the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or to secure the proper management of any banking company. Similarly the Central Government is also empowered to authorise RBI to issue directions to any banking company to

initiate any insolvency resolution process in respect of a default under the provisions of the Insolvency and Bankruptcy Code, 2016.

The Banking Regulation Act has conferred several powers upon the Reserve Bank of India, which includes the power to remove managerial and other persons from the office and take over the control as well as the power of supersession of the Board of Directors in certain cases. In the gamut of the powers conferred on the Reserve Bank, is the power of the Reserve Bank to apply to the Central Government for suspension of business by a banking company and to prepare a scheme of reconstruction or amalgamation as contemplated under Section 45 of the Act, the power which is permitted to be exercised for a good reason and if the Reserve Bank is of the opinion that it is in the 'public interest' or in the 'interest of the depositors' or in order to secure proper management of the banking company to prepare a scheme for reconstruction of the banking company or amalgamation of the banking company with any other banking institution. Needless to state that the power available is permitted to be exercised in public interest or in the interest of the depositors.

66. In the light of the statutory framework, permitting the supervision over the banking business in the country through the Reserve Bank of India through the power conferred upon it to issue directions from time to time relating to economic or financial policy, it is necessary to ascertain as to what extent the Court's intervention would be warranted, if a decision is taken by the 'Banker's Bank and the Lender of the Last Resort' whose objective is to ensure monetary stability in India and regulate the credit system in the country. In ***Peerless General Finance And Investment Co. Limited & Anr.*** (supra), the limited scope of interference of the court in the directions issued by the Reserve Bank of India in form of Directions of 1987 was examined, when it was noted that the Reserve Bank of India, which is a Banker's Bank is a creature of statute and it has large contingent of expert advice relating to matters affecting the economy of the entire country and nobody can doubt the bona fides of the Reserve Bank in issuing the impugned directions of 1987.

Emphasizing that the Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country, it is noted that the duty of the Reserve Bank is to

safeguard the economy and financial stability of the country. In this regard, the limited role which the Court can exercise in the whole affair was set out as below :

> "31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the Courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.
>
> 32. … … …
>
> 36……. It is not the concern of this court to find out as to whether actuarial method of accounting or any other method would be feasible or possible to adopt by the companies while carrying out the conditions contained in paragraphs 6 and 12 of the directions of 1987. The companies are free to adopt any mode of accounting permissible under the law but it is certain that they will have to follow the entire terms and conditions contained in the impugned directions of 1987 including those contained in paragraphs 6 and 12. It is not the function of the Court to amend and lay down some other directions and the High Court was totally wrong in doing so. The function of the Court is not to advise in matters relating to financial and economic policies for which bodies like Reserve Bank are fully competent. The Court can only strike down some or entire directions issued by the Reserve Bank in case the Court is satisfied that the directions were wholly unreasonable or violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This court has repeatedly said that matters of economic policy ought to be left to the government..."

67. Reliance is placed upon the observations of the Constitution Bench in the case of ***R.K.Garge Vs. Union of India***[8], where it is held that the Court should feel more inclined to give judicial deference to legislative judgment in the field of

8 (1981) 4 SCC 675

economic regulation than in other areas where fundamental human rights are involved. Quoting Frankfurter, J. in ***Morey v. Doud***[9]**,** paragraph 38 recorded thus :-

> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events-self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability".

In conclusion, it was held that if the Reserve Bank had issued Directions of 1987 to safeguard larger interest of public and small depositors, it cannot be said that the directions are so unreasonable to be declared as constitutionally invalid.

68. Examining the scheme of amalgamation in ***New Bank of India Employees' Union & Anr.*** (supra), the Apex Court noted that no scheme of amalgamation can be fullproof and the Court would be entitled to interfere only when it come to the conclusion that the scheme is arbitrary or irrational or has been framed on extraneous consideration and this was so reflected from the aforesaid decision, which recorded thus :-

> "Coming down to the second question the legal position is fairly settled that no Scheme of Amalgamation can be foolproof and a court would be entitled to interfere only when it comes to the conclusion that either the scheme is arbitrary or irrational or has been framed on some extraneous consideration. Learned Additional Solicitor General, Mr Reddy appearing for the respondents in this context contended that the only enquiry which the court can make

9 354 US 457

is whether the provisions of this scheme are arbitrary and irrational so that it results in no inequality of opportunities amongst employees belonging to the same class. In support of this contention he placed strong reliance on the decision of this Court in the case of Reserve Bank of India v. N.C.Paliwal. In that case the Reserve Bank had 5 different departments which were broadly divided into two groups called the general department and the specialised department and each department was treated as a separate wing for the purpose of determining seniority and promotion of the employees within the group. The employees of the specialised department were having greater opportunities for confirmation and promotion as compared to the employees of the general department. On account of this disparity the employees of the general department claimed for equalisation of their chance of confirmation and promotional opportunity by having a combined seniority list of all employees irrespective of the departments to which they belong. Ultimately the Reserve Bank of India introduced a scheme called Optee Scheme. In May 1972 the Reserve Bank issued another scheme called Combined Seniority Scheme which provided for integration of clerical staff of the general department with the clerical staff of the specialised department and it also made provision for determination of inter se seniority. The validity of the said scheme had been challenged on the ground that the scheme is violative of the constitutional principle of equality and must be held to be discriminatory. This Court negativing the aforesaid contentions held that the integration of different cadres into one cadre cannot be said to involve any violation of the equality clause.

D) Whether the Amalgamation Scheme, 2022 violate the rights of the Depositors and whether it is contrary to the Statutory Scheme.

69. Considering the limited scope of judicial interference as set out in the aforesaid authoritative pronouncements, we have considered the contentions advanced on behalf of the Petitioners, raising various challenges to the scheme of amalgamation.

In Writ Petition No.5762 of 2022 and Writ Petition No.4302 of 2022, the Petitioners are the retail depositors and they urged before us that the scheme has put them into an

adverse position. Learned counsel Mr.Tulzapurkar and learned counsel Mr.Lohia, have attacked the scheme and urged that under the scheme, Unity Bank shall pay the amount received from the deposit insurance and credit DICGC to all eligible depositors bank, which would be an amount equal to the balance in their account or Rs.5,00,000/- whichever is less. According to them, the scheme has assured staggered payment spread over timelines and at the end of the fifth year, Unity Bank would pay over and above an additional amount equal to their balance in the account or Rs.5,50,000/- whichever is less to the retail depositors, whereas entire remaining amount of deposits after making the aforesaid payments shall come to the retail depositors after ten years from the appointed date.

What is most objected to is the classification amongst the class of depositors, as it is urged that the classification between different type of depositors is unreasonable and not based on rational criteria. It is also urged that the depositors are deprived of interest after 31/03/2021 for a period of five years from the appointed ate and rate of interest is reduced to 2.75% p.a., which becomes payable after five years from the appointed date, which deprives the shareholders/depositors of

the value of their money and the shareholders are deprived of surplus and reserve, which were created out of profits and available to the shareholders of the PMC Bank.

The emphasis of Mr.Lohia is on not permitting the withdrawals of pro-rata amount of the deposits, but permitting flat amount of withdrawals at certain intervals, leading to a situation that small depositors were benefited to the detriment of the larger deposit holders, and this according to him, is violative of Article 14 of the Constitution of India.

70. This argument is dealt with by Mr.Kadam by submitting that, the small investors were settled first (83%), with an intention that the focus can then be shifted to large investors and do not find any unreasonableness here. Perusal of the scheme would reveal that the depositors are classified as 'retail depositors' i.e. depositors who hold deposits in the bank in their individual capacity and include Proprietorship Firms and Hindu Undivided Families. Other class of depositors as per the scheme are the 'institutional depositors' meaning Corporations, Companies, Partnership Firms, Societies, Association of Persons and Trusts and all other depositors who are not retail depositors.

Section 45 of the BR Act, which is the power of the Reserve Bank to apply to the Central Government to prepare a scheme for amalgamation, in essence, require the Reserve Bank to be satisfied, during the period of moratorium or at any other time about the public interest, the interest of the depositors or in order to secure the proper management of the banking company and this being the focus of the RBI for amalgamation of the banking company, with any other banking institution, it is permissible to have reduction of the interest or rights, which the members, depositors and other creditors have in the banking company before its amalgamation and such reduction shall be to such extent as the RBI considers necessary in public interest or in the interest of the depositors or creditors or for maintenance of the business of the banking company. The classification of the investors under the scheme was aimed at securing public interest and protecting the interest of the largest number of depositors by continuing the operations of the PMC Bank.

We find that by application of the scheme, 84% of the small depositors were the beneficiaries in the first run and they were prioritized over the institutional depositors. The argument that the scheme is discriminatory, as it has created

a 'privileged class of depositors' (small depositors holding INR 5 to 15 lakhs) and a 'penalized class of depositors' (larger depositors holding more than INR 15 lakhs), without any intelligible differentia, do not appeal to us. The classification between the retail depositors (individual) and institutional depositors is because of their peculiar characteristic, as retail depositors have deposits in their individual capacity, whereas the institutional depositors are the one, who are not the retail depositors. There is no separate class, as is sought to be canvassed by the Petitioners, being a class of small deposits or big deposits. The rational distinction attempted to be canvassed is not the feature of the scheme and if the Petitioners' contention is to be accepted then small depositors for a value of less than INR 5 lakhs would have to be waited for longer period and this definitely would not have been in the interest of the depositors or in the public interest, as looking at the figure of depositors, who have been settled i.e. approximately 84%, the potential unrest that would have been created because of the larger number of unsatisfied depositors, is taken care of.

71. The decision in the case of ***Ganesh Bank of Kurundwad Ltd. & Ors.*** (supra), on which heavy reliance is placed by the

counsel for the Petitioners, has clearly highlighted that under Section 45 of the Act, the primary consideration is 'public interest' and there is an underlying object of acting swiftly and decisively to protect the interest of the depositors and to retain public confidence in the banking system. The emergent situation, which warrants action with expedition, has been determined as the yardstick while deciding the legality of the action.

True it is that the decision involving Section 45 of the Act is permitted to be tested in the exercise of power of judicial review available to the Court, but is to be noted that this power shall be restricted in deciding whether the decision making authority has exceeded its power, committed an error of law, acted in breach of rules of natural justice or reached a decision, which no reasonable court/tribunal would have reached or it has abused its power. An administrative action, which is subject to control by judicial review, can be tested on the parameters of illegality, irrationality by applying the Wednesbury test of unreasonableness and on procedural impropriety.

72. When we tested the impugned scheme formulated by RBI, which has received the approval of Central Government,

in the backdrop of the submission that unequal cannot be treated equally and equal protection to unequal would violate 'equal protection class' enshrined by Article 14 of the Constitution, we find the principle inapplicable, as Article 14, which guarantees equality before law and equal protection of law, though forbid 'class legislation' but permit 'reasonable classification', provided it is based on intelligible differentia that distinguishes persons grouped together from others and the difference has a rational nexus to the object sought to be achieved.

The class of individual depositors stand apart from the class of institutional depositors and the classification is based on their nature of deposits/accounts, retail depositors included the individual deposits, whereas the institutional depositors are the business entities, institutions etc. whose deposits are commercial or non individual in nature and they have been separated from individual depositors. By prioritizing individuals over institutions, the scheme has achieved the mandate of 'public interest' and 'interest of depositors' as specified in Section 45 of the BR Act.

The submission that creation of two separate categories would tantamount to preferential treatment to certain section

of depositors fails to convince us about the discriminatory treatment being meted out to the depositors, as we find that the two classes are separate by the nature of their deposits and satisfying the claim of individual depositors in preference to the institutional depositors, according to us, has a direct nexus with the object of formulating the scheme, being to subserve the public interest and to protect the overall interest of the depositors, while the erstwhile bank is amalgamated with the transferee bank, which is considered to be necessary in public interest and to protect the interest of the depositors, irrespective of their class.

73. Another submission, which we deem necessary to mention just to be rejected, is the submission of Mr.Tulzapurkar about violation of principle of natural justice and his submission that RBI ought to have given a hearing or atleast response to the objections and representations made.

In the affidavit filed the Reserve Bank of India, it is categorically stated that RBI placed the draft scheme in public domain on 22/11/2021 and suggestions and the comments were invited by 10/12/2021 as contemplated under sub-section (6) of Section 45. Several suggestions and objections were received and the same were examined and considered

and some appropriate changes were also made to the draft scheme before its presentation to the Central Government.

Alongwith the affidavit filed by the RBI, the track mode of the draft scheme and the sanctioned scheme is placed on record, indicating the changes effected on consideration of the objections, which include deletion of some portion and shifting of certain clauses. In ***Ganesh Bank of Kurundwad Ltd. & Ors.*** (supra), the Apex Court has ruled that provisions of Section 45 provided an adequate opportunity for representation and no additional opportunity is required to be given. In a case where certain objections were raised and comments of RBI on them were forwarded to the Central Government alongwith final recommendations, there is no requirement of an opportunity of hearing as a written representation is sufficient compliance of the provision.

The tracking of the scheme placed before us reveal that on consideration of the objections raised, the scheme was modified before it received the final approval and in any case, we do not expect each and every depositor to be heard on the objection raised, as the view of every depositor will vary as everybody would be interested in securing his own interest and with the RBI possessing the expertise and applying its

mind before finalization of the scheme, as it is an expert body regulating the banking activities, we do not find substance in the submission raised in this regard.

Similarly, the submission that there is no compliance of Section 44A, as the scheme of amalgamation though notified on 25/01/2022, was not presented to the shareholders of the PMC Bank also deserve rejection as it is to be noted that the scheme was prepared under Section 45(4) read with Section 45(5) and not under Section 44A of the BR Act, which empower the RBI to make scheme for amalgamation of banks in public interest and Section 45 read with Section 56, is a complete code and once that is adhered to, the scheme becomes fullproof. Apart from this, it is to be noted that sub-section (14) of Section 45 gives the said section and the scheme framed under it, an overriding effect over any other provisions of the Act or any other law or agreement on instrument for the time being in force.

74. As far as the contention of Mr.Tulzapurkar as regards Section 36ACA of the Act limiting the power to supersede the Board of the banking company to six months and maximum period of twelve months and the Board of the PMC Bank was superseded for a period far in excess of that prescribed under

the said provision, we have noted that PMC Bank, being a co-operative bank, was superseded in exercise of power under Section 36AAA read with Section 56 of the BR Act.

The provision in form of Section 36AAA applicable to the co-operative bank, permit the RBI to supersede the Board of Directors for a period not exceeding five years, which may be extended from time to time so that the total period shall not exceed five years. Further, clause 10 of Section 36AAA provide that provision contained in Section 36ACA, shall not apply to the co-operative bank and, therefore, the limitation of twelve months of supersession, as contained in the said provision, is not made applicable to the PMC Bank.

75. A common contention largely on behalf of the Petitioners is about rate of interest having been reduced to 2.75% after five years from the appointed date. In this regard the affidavit filed by RBI in Writ Petition No.5762 of 2022 is perused by us and we have taken note of the precarious situation of the PMC Bank,which had a negative net-worth of INR (-) 6737.61 crores and the statutory inspection revealed the unreported exposures of the bank towards HDIL being large and non performing and this resulted in steep deterioration in the financials, warranting immediate action.

Since the investigation disclosed the failure of management at the Board level, immediate steps were taken to supersede the Board of Directors of the Bank and a committee of three experienced professionals being appointed to assist the Administrator in discharge of his duties in terms of Section 36AAA (5)(a) read with Section 56 of the Act. After reviewing the liquidity position of the bank and its ability to pay the depositors, with a view to mitigate the hardship of the depositors, RBI deemed it appropriate to permit the withdrawal of a meager sum of Rs.1,000/-, which was progressively enhanced from time to time. Upon the amalgamation of the PMC Bank with the Unity Bank as per the scheme, which was expected to carry on business, generate income/profit and make further provisions for withdrawals and eventually pay the depositors in a staggered manner, the RBI deemed it appropriate to stop accruing interest after 31/03/2021 and any interest accruals accounted post 31/03/2021 was reversed prior to amalgamation.

In order to maintain the stability, the scheme directed that no interest will accrue on the deposits between 31/03/2021 and five years from the appointed date of amalgamation and post that period, the interest will accrue at

the rate of 2.75% p.a. for both, interest bearing and non interest bearing accounts. As per the scheme, which targeted the 'public interest' by allowing the withdrawals of the maximum number of depositors and we are informed that as on 02/02/2026, 96.67% of depositors are paid in full and at the end of five years i.e. 25/01/2027, 98.82% depositors are expected to be fully repaid their deposits, and it is a meager figure of 1.18% of the depositors, who would have to await payments of their remaining amounts upto 2032. Even for this period, a depositor will be paid interest, at the reduced rate at the end of each year i.e. 2.75% p.a.

76. In the sequence of events, it is noted that on 23/09/2019, after conduct of the annual financial inspection of RBI Bank and scrutiny of HDIL accounts which revealed that the exposure to HDIL Group was camouflaged and the assessed NPAs of the Bank were significantly higher than the one reported and the Bank's net-worth had turned negative and deposit erosion was significant, RBI imposed All Inclusive Directions on 23/09/2019 initially for a period of six months imposing restrictions on the operations of the bank with a view to preserve the resources while giving PMC Bank an opportunity to revive itself, which would have been in the

interest of the depositors. The Administrator was appointed to oversee the affairs of the Bank by superseding the existing Board of Directors and taking into consideration the net-worth gap between the assets and liabilities of the PMC Bank, certain curbs were imposed on the withdrawal limits of the depositors.

Exploring various possibilities of infusing capital for revival of the Bank or its merger with a stronger bank vis-a-vis the cancellation of license and liquidation, the expression of interest were invited through public advertisement for investment/equity participation, and upon Unity Bank coming forward, the Central Government sanctioned the scheme of amalgamation on 25/01/2022. Considering weak financial position of PMC Bank and since the RBI is authorised to reduce the rate of interest, all deposits transferred from PMC Bank stopped accruing interest after 31/03/2021.

77. The implementation of the scheme could be concised with the reference to the number and percentage of the depositors eligible to withdraw their deposits in the following manner.

Repayment Date (From Effective Date)	**Amount to be repaid to each eligible depositor**	**Number and percent of depositors eligible to withdraw their entire deposit amount**
After implementation of the Scheme	₹ 5 lakhs or actual outstanding, whichever is less (from DICGC)	8,56,456 (95.98%)

At the end of 1st year	₹ 50,000 or actual outstanding, whichever is less	8,56,456+3,035 = 8,59,491 (96.32%)
At the end of 2nd year	₹ 50,000 or actual outstanding, whichever is less	8,59,491+2,723= 8,62,214 (96.62%)
At the end of 3rd year	₹ 100,000 or actual outstanding, whichever is less	8,62,214+4,308= 8,66,522 (97.11%)
At the end of 4th year	₹ 250,000 or actual outstanding, whichever is less	8,66,522+7,060= 8,73,582 (97.90%)
At the end of 5th year	₹ 550,000 or actual outstanding, whichever is less	8,73,582+8,258=8,81,840 (98.82%)

As we are apprised by DICGC, represented by learned senior counsel Mr.Dhond that as on 23/06/2025 868997 claims have been settled resulting into disbursement of Rs.38,56,26,59,708.70 by crediting the amount to the account of the Unity Bank for payment of eligible depositors of the PMC Bank.

78. An allegation is also levelled that the scheme is prejudicial to the rights and interest of the shareholders of the Bank, as RBI, by writing of capital value of the Petitioners' share, have violated their rights and failed to fulfill its statutory duty to protect the interest of the shareholders. The scheme also face an accusation that the shareholders were kept in dark by the RBI and the Administrator.

It is pertinent to note that the scheme of amalgamation of PMC Bank is formulated under Section 45 of the BR Act, to

the contrary of the procedure contemplated under Section 44A, which require a Resolution to be approved by majority of the shareholders. In the wake of the steps taken by RBI, being placed before us through Mr.Kadam and projected through the affidavits filed, in the backdrop of its precarious financial position, which necessitated issuance of All Inclusive Directions and eventually merger with Unity Small Finance Bank as per the scheme, we find a serious effort on part of the RBI to protect the interest of all stakeholders irrespective of their class/category. As per the scheme, the depositors had access to Rs.5 lakhs of their deposits immediately, which enable more than 95% of the depositors to withdraw the entire balance in their respective deposit accounts. Further, with the depositors were permitted to get additional amount of Rs.15 lakhs within first five years, around 99% of retail depositors will be able to withdraw the entire balance in their accounts and rest of the retail depositors will be paid after ten years.

As against this, the institutional depositors, who formed a class by themselves, are also protected by the scheme as they had large deposits in PMC Bank and they are also protected from wiping out of their entire deposit amount, which could have resulted into huge losses and systematic

damage to the co-operative banking sector and, therefore the institutional depositors were repaid through capital investments, as the scheme has a distinct arrangement for them as on and from the appointed date, 80% of the uninsured deposits outstanding to the credit of each institutional depositor is converted into perpetual non cumulative preference shares of transferee bank with dividend of 1% p.a. payable annually. As far as remaining 20% of the institutional deposits, by the scheme are converted into equity warrants of transferee bank at the price of Rs.1/- per warrant, which are to be converted into equity shares of transferee bank at the time of initial public offer, when the transferee bank goes for public issue, the price for such conversion to be determined at the lower band of initial public offer price. We find the above arrangement only suited for institutional depositors.

79. Another objection about the scheme being arbitrary is advanced by stating that by permitting withdrawal of amounts during imposition of moratorium prior to the scheme, the liability of DICGC has been reduced by approximately INR 920 to 1120 crores.

As regards the said contention, it is to be noted that on 23/09/2019, RBI imposed All Inclusive Directions under

Section 35A read with Section 56 of the BR Act and between 26/09/2019 to 19/06/2020, on analysing the financial position of the bank, enhanced the withdrawals by the depositor from INR 1,000/- to INR 10,000/- and finally upto INR 1,00,000/-. This was done to ensure immediate financial relief to the depositors in order to enable them to meet critical expenses and to avoid any hardship faced by the depositors. Despite this amount being permitted to be withdrawn upfront, the additional payment made by DICGC has to be repaid as per the DICGC Act. Considering that the additional liability towards DICGC would have put extra burden on the Unity Bank and affected its operations, thereby hindering the repayments to the depositors under the scheme, the amount was not infused immediately, but in any case, the liability of the DICGC under the scheme is ensured as per the provisions of the Act and it has never been reduced or increased.

It is also an allegation of the Petitioners that the liability of DICGC has been limited to Rs.5 lakhs per depositor, which is also arbitrary and violative of the provisions of the Act. It is worth to note that DICGC has been constituted to provide deposit insurance cover to the deposits placed in the bank and as per the principle of deposit insurance, DICGC collect

premium from all banks in the country and in case of failure on part of the bank, protect the depositors upto the ceiling of deposit insurance as prescribed in the DICGC Act and the Regulations framed thereunder. The funds available from DICGC to the insured bank are limited to the cover prevalent at the relevant time and though initially the protection was only upto Rs.1 lakh, the limit has been raised to Rs.5 lakhs w.e.f. 04/02/2020 and, therefore, in terms of Section 16 of the Act, DICGC is entitled to offer funds equal only to the insured portion of deposits i.e. all depositors fund upto maximum of Rs.5 lakhs.

Section 21 of the Act read with Regulation 22 provide for 'repayment of amount' to the Corporation and the aforesaid provision makes it mandatory for the insured bank or the transferee bank, as the case may be, to repay the amount to the DICGC within such time and in such manner, as may be prescribed. The Petitioners' apprehension that their deposit will be encumbered is unfounded, as the depositors are free to carry on any transactions in their saving accounts, which are now transferred to Unity Bank, as their accounts have been credited with the funds received by Unity Bank from DICGC.

A categorical statement is made in the affidavit that pursuant to the said scheme, various depositors have withdrawn the amounts from their savings accounts now maintained with the Unity Bank.

In light of the specific scheme formulated under the Act and in specific Section 16, which has prescribed the liability of Corporation in respect of insured deposits, inapplicable to scheme of amalgamation, the Corporation is liable to pay to every depositor an amount equivalent to the difference between the amount so paid and the original amount or the difference between the amount so paid or credited and the specified amount whichever is less.

By virtue of Section 18 in relation to the scheme of amalgamation of any insured bank with any other banking institution as in the present case Unity Bank, the Corporation becomes liable to pay to the depositors of the insured bank under sub-section (2) of Section 16 and the transferee bank, where the scheme is of amalgamation, with the least possible delay and in any case, not later than three months from the date on which such scheme takes effect, furnish the list to the Corporation to be certified by its Chief Executive Officer, showing separately deposits of each depositor and the amount

of set of and also the amount paid or credited or deemed to have been paid.

As per Section 21 of the Act, it is the duty of the transferee bank in a scheme of amalgamation to repay to the Corporation out of the amount, if any, to be paid or credited in respect of any deposit after the date of coming into force of the scheme, such sum which would make up the amount paid or provided by the Corporation in respect of the said deposit. It is open for the Corporation to differ or vary the time limit for receipt of the repayments due to it from the transferee bank, as the case may be.

Therefore, we do not find any violation of the provisions of the DICGC Act or the Regulations.

80. All the Writ Petitions filed before us, raised a challenge to the scheme of amalgamation formulated under Section 45 of the BR Act, the challenge being mounted on the count of Article 14, Article 19(1)(g) and Article 300A of the Constitution.

We have examined the challenge by keeping in mind the scope of judicial review in relation to such scheme, which is formulated in larger interest of the public, including the depositors and finally received approval from the Central

Government. The procedure for formulating a scheme for amalgamating one banking company with any other banking institution is itself provided in the statute in form of Section 45, a provision which exists, as a special one, notwithstanding anything contained in the provisions of the Act itself or any other law or any agreement or instrument for the time being in force, the power being vested in the Reserve Bank to apply to the Central Government for an order of moratorium. Upon such an application being preferred by the RBI, the Central Government, ordered moratorium i.e. restricted operations of the bank, staying the commencement or continuation of all actions and proceedings against the company for a fixed period, in an attempt to provide a resolution to the problem faced by it.

The RBI is given complete power to formulate the scheme being a regulatory body possessing the necessary expertise, although what shall be length and width of the scheme is specifically highlighted in sub-section(5) of Section 45 and it is permissible for the RBI to provide for all or any of the matters specifically provided therein. We have noted that the precarious financial situation of the PMC Bank allowed or rather made it imperative for the Reserve Bank to take

appropriate steps to protect the interest of the depositors and consider all the viable options, that were open to it and ultimately in the interest of the depositors, it decided to amalgamate the PMC Bank with Unity Bank, by transferring the business of the former to the latter alongwith all its properties, assets and liabilities. As the scheme contemplate reduction of the interest or rights which the depositors and the other creditors had or against the banking company, it is well within the powers of Reserve Bank to make the payment to the depositors in the satisfaction of their claim in the manner set out in the scheme and this include the staggered payment and classification of the depositors considering their worth/investment in the bank. Since the financial condition of the PMC Bank was alarming and its net-worth had turned negative, appreciating the downfall of PMC Bank, the RBI was forcefully required to step in and exercise the powers available to it under Section 36AAA read with Section 56 of the BR Act, superseding its Board of Directors and appointing an Administrator and issuing All Inclusive Directions, *inter alia*, imposing restrictions on its functions, including withdrawals of deposits to be followed by formulation of the scheme by which the business of PMC Bank is transferred to a new entity.

The action of the RBI, in our view, is in the interest of the depositors as we must note that if the liquidation proceedings were to be adopted, then we doubt whether the eligible depositors would have entitled for a sum more than Rs.5 lakhs from the DICGC irrespective of their total deposits with the PMC Bank, and in any case, it would have been a long drawn process and the depositors would have been required to stand in queue and wait for their turn till the other creditors are satisfied.

81. We have also noted that the whole process adopted by the Reserve Bank was rightful, open and transparent. Though it is vehemently urged that only the Administrator's objections were considered, from the reply affidavit filed on behalf of the RBI, we have noted that the objections were considered before the draft of the scheme was given a final shape, and according to us, in such a situation every objector/depositor need not be heard or his objection need not be considered, as the power under Section 45 of the Banking Regulation Act, 1949 is a power to be exercised in an emergent and peculiar scenario. When in the larger public interest or in the interest of the depositors or to secure proper management of the banking company, a scheme is to be formulated and ultimately, it is the

satisfaction of the Reserve Bank of India that, it is necessary to impose a moratorium staying the commencement or continuation of the business of a particular bank for such period as it deem fit, considering the surrounding circumstances and in this case, we are satisfied that in the wake of the debacle of the PMC Bank with its net-worth was already in the negative and to prevent its annihilation, it was necessary for the RBI, a supervisory body, to step in and take prolific and productive steps to prevent further damage and we find that this is what RBI did precisely. Since Section 45 of the BR Act, 1949 is a non obstante provision, it operates independently and has its effect over all other provisions in the Act or any law for the time being in force, we do not find any legal or procedural impropriety on part of the RBI or the Central Government in approving the scheme of the amalgamation.

On a consideration of the merit in the objection about the distribution to the depositors not being pro-rata and, hence, the scheme being not equitable, we have noted that the two classes of depositors are created in the scheme, the 'individual' and the 'institutional', but since they are two distinct classes of depositors, though definitely have been treated differently,

but it is not a case, where equals are treated unequally as all similarly placed depositors received equal treatment.

The aim of the scheme of RBI, according to us, is intelligible, being return of the deposits of every Depositor to its full extent, though the period of waiting would differ depending upon the class to which he belong. The depositors in PMC Bank are of all age group and, no benefit is granted only because a particular class is of a senior citizens and, according to us, applying the pro-rata principle would not have served the interest of all the depositors and we reject the contention that Section 43A, which is applicable in proceedings of winding up of a company and based on pro-rata basis, but this definitely do not hold good for a scheme framed under Section 45, in the wake of a non obstante clause. We conclude that the RBI in its economic wisdom, which it possess, had formulated the scheme, which received the final approval from the Central Government in larger interest of the public as well as of the depositors, do not suffer from any legal infirmity though it might have caused some inconvenience to a few.

Equally incorrect is the submission that the CRR should have been distributed as it is the money of depositors, as we

find that the CRR is the Cash Reserve Ratio, imperative to be maintained by every bank as a going concern and paying the depositors from all the reserves of the bank would *ipso facto* result in liquidating the bank itself. Similarly, the payment of minimum interest of 2.75%, to be paid after five years which is also alleged to be arbitrary, do not deserve any interference as the statutory scheme under Section 45 of the BR Act itself contemplate reduction of interest or rights of the depositors and other creditors and if the purpose of the scheme is to benefit the maximum depositors, and the scheme intends to return the principal amount, small or large whatever the depositor has invested, we find it to be a profitable deal as otherwise on account of the negative net-worth of the Bank, all the depositors would have been deprived of their money, had the PMC Bank put under liquidation, and in our view, unless and until it is pointed out that the decision taken by RBI and Central Government is arbitrary or smack of *mala fides*, we refrain ourselves from exercising the power of judicial review.

82. As far as arguments advanced on behalf of the Petitioner in Writ Petition 7753 of 2022, which is a federation of various Credit Co-operative Societies, we find various Credit Co-Operative Societies hold deposits in the bank, whose investors

are individuals. The depositors of the Credit Co-Operative Societies have deposited their money in respective Credit Co-Operative Society, which in turn invested/deposited it in the PMC Bank as a group of persons. Had they invested in individual capacities, they would have been categorised as 'retail depositors', but since they have deposited through Credit Co-Operative Societies, which is an association of persons, they lose their identity as 'retail depositors' and are considered as 'institutional depositors'.

Mr.Warunjikar has argued that the Petitioner has 300 members and some of the members are shareholders and institutional depositors and citing an example, he would submit that Shivkrupa's investment in PMC Bank is Rs.88 crores, but when we specifically sought clarification from him, he would submit that the Federation has 363260 shareholders, but they are not the shareholders in the PMC Bank, but his grievance is that there is no provision for protection of a federation like the Petitioner, which is a society and when it is seen that the societies are covered in the definition of 'institutional depositors', as defined in Section 2(e), he would submit that there is no category of co-operative society, though Banking Regulation Act is specifically made

applicable to the co-operative society. For this contention, we have no answer as it is for the Legislature to create class of depositors and it is not the function of the Court.

83. In any case, since we do not agree that the scheme formulated is arbitrary or so perverse, which would have warranted our interference, in exercise of judicial review available to us, we uphold the impugned scheme, as we find that the objections raised, do not justify disruption of the formulation of the Amalgamation Scheme, its approval and its present existence and operation.

Through the affidavit placed before us by the Unity Small Finance Bank Limited, its banking activity is placed before us and we find that as on 31/12/2025, 99.45% depositors of the PMC Bank have withdrawn the total amount of Rs.3835.04 crores out of Rs.3856.26 crores, which was released by DICGC. Apart from this, the Unity Bank has also grown its balance sheet from Rs.11946 crores in March 2023 to Rs.19152 crores in March 2025, and in fact it is also pointed out to us that the Unity Bank is making a profitable business and the profits have increased from Rs.35 crores in March 2023 to Rs.482 crores in March 2025 i.e. its growth rate is 271%. Apart from this, the bank has expanded its business to 20 States in India and

have spread over to 291 branches in place of 110 branches, making it a PAN India Bank, with more and more savings and current accounts being opened. Since this statement is made on oath by filing an affidavit by the Unity Bank represented by learned senior counsel Mr.Kamat, we have no reason to dispute the same.

Thus, we must note that the Unity Bank had literally pulled up the PMC Bank and its depositors, who faced an acute financial crisis and has rather offered a fresh breath of air, by securing the interest of the depositors right from the small depositors below Rs.5 lakhs to an institutional depositor, who has deposited amount more than Rs.5 lakhs.

We do not find any reasons to disrupt the existing scheme of amalgamation, which is presently in operation and which has done best for the depositors and is doing best for those who have not yet received their principal amount back, but the scheme has assured 100% return of their principal with the permissible interest, as provided in the scheme.

The comparison of the schemes in relation to other banks is not of any succor to the Petitioners as we find that every case had to be considered on its own merits and on the basis of the existing and surrounding circumstances and ultimately

since we find that the expert body like Reserve Bank of India had made a serious attempt to save an ailing bank and its depositors, we do not find any scope to interfere merely because for some other bank, the provisions of the scheme differed, as long as the present scheme of amalgamation is in consonance with the statutory scheme under Section 45 of the Banking Regulation Act.

In light of the above, finding no merit and substance, we dismiss all the Writ Petitions.

Rule is discharged.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**