

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

WRIT PETITION NO.785 OF 2021

Axis Trustee Services Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Axis House, Bombay Dyeing Mills Compound, Pandurang Budhkar Marg, Worli, Mumbai - 400 025 and Corporate office at The Ruby 2nd floor, SW, 29 Senapati Bapat Marg, Dadar West, Mumbai - 400 028 in its capacity as debenture trustee, acting on the instructions of the debenture holders/beneficial owners

...Petitioner

Versus

- 1 Union of India
Through the Ministry of Finance
Department of Financial Services
Jeevan Deep Building, Parliament
Street, New Delhi - 110 001
- 2 Reserve Bank of India, a bank
established and incorporated
under the provisions of Reserve
Bank of India Act, 1934 having
its office at Central Office
Building, Shahid Bhagat Singh
Road, Fort,
Mumbai - 400 001
- 3 Prashant Kumar, appointed u/s
36 ACA (2) of the Banking
Regulation Act, 1949 as the
Administrator of Yes Bank Ltd.

- 4 Yes Bank Limited, a company incorporated under the provisions of the Companies Act, 1956 and carrying on the business of banking under the Banking Regulation Act, 1949, through its Administrator Mr.Prashant Kumar appointed u/s 36 ACA (2) of the Banking Regulation Act, 1949 and having its registered office at 9th floor, Nehru Centre, Discovery of India, Dr.A.B.Road, Worli, Mumbai - 400 018

- 5 National Securities Depositories Limited, a company incorporated under the Companies Act, 1956 and a SEBI (Depositories and Participants) 1996, registered as a depository participant under the Securities and Exchange Board of India (Depositories and Participant) Regulations having its office at Trade World, A Wing, 4th floor, Kamala Mills Compound, Lower Parel, Mumbai - 400 013.

- 6 Central Depositors Services (India) Limited a company incorporated under the Companies Act, 1956 and SEBI (Depositories and Participants) Regulations 1996, registered as a depository participant having its office at Marathon Futurex, A Wing, 25th Floor, Mafatlal Mills Compound, N M Joshi Marg, Parel, Mumbai, Maharashtra 400 013.

...Respondents

**WITH
WRIT PETITION (L) NO. 1069 OF 2022
WITH
INTERIM APPLICATION NO.189 OF 2022**

- 1 Sushil Anand, R/O 178, Tagore Park, G.T.B. Nagar, Dr.Mukherjee Nagar, North Delhi, Delhi - 110009
- 2 Jagdish Anand HUF, R/o 178, Tagore Park, G.T.B. Nagar, Dr.Mukherjee Nagar, North Delhi, Delhi - 110009
- 3 Meera Bansal, R/o 17 Moore Avenue, Regent Park, Kolkata - 700040
- 4 Sumedha Bansal, R/o 17 Moore Avenue, Regent Park, Kolkata - 700040
- 5 Reshu Bansal (Formerly Known as Rashmi Bansal), R/o 17 Moore Avenue, Regent Park, Kolkata - 700040
- 6 Shruti M. Bansal, R/o 17 Moore Avenue, Regent Park, Kolkata - 700040
- 7 Devendra Nath Swain, R/o Flat No.-083, Block-C, Cosmopolos Arya Village, Bhubaneshwar, Khandagiri, Khorda, Orissa-751030
- 8 Sandeep Sharma, R/O Calle Vinos Del Condado 10, Olivares 41804, Sevilla, Spain,
Correspondence Address at
Flat B3-B 10th Floor,
Sunny Valley CGHS, Plot No.27,

Sector 12, Dwarka, New Delhi -
110078.

9 Brig. Arun Sabherwal, R/O
Rangoli Green, Tower 8, Flat No-
701, Maharana Pratap Marg,
Vaishali Nagar, Jaipur,
Rajasthan - 302021.

10 Ashok Kumar Gulati, R/o B21/2
1st Floor, Ramesh Nagar,
New Delhi-110015.

...Petitioners

Versus

1 Reserve Bank of India, A Bank
established under the provisions
of Reserve Bank of India Act,
1934 having its office at Central
Office Building, Shahid Bhagat
Singh Road, Fort,
Mumbai - 400 001.

2 Union of India
Secretary, Department of
Financial Services,
Ministry of Finance,
3rd Floor, Jeevan Deep, Building
Sansad Marg,
New Delhi - 110 001

3 Securities and Exchange Board of
India, SEBI Bhavan, Plot No.C4A,
Bandra-Kurla Complex,
Bandra (East),
Mumbai - 400 051.

4 M/s.Yes Bank Limited, through
its Administrator Mr.Prashant
Kumar having its registered office
at 9th floor, Nehru Centre,
Discovery of India, Dr.A.B.Road,
Worli, Mumbai - 400 018

- 5 Yes Securities (India) Ltd.
Unit No.602A, 6th Floor, Tower 1
& 2, India Bulls Finance Centre,
Senapati Bapat Marg,
Elphinstone Road, Mumbai 400
013.
- 6 M/s.Axis Trustee Services
Limited, Having its Registered
Office at Axis House, Bombay
Dyeing Mills Compound,
Pandurang Budhkar Marg, Worli,
Mumbai 400 025.
- 7 National Securities Depositories
Limited, having its registered
office at Trade World, A Wing,
4th floor, Kamala Mills Compound,
Lower Parel, Mumbai - 400 013.
- 8 Central Depositors Services
(India) Limited, having its
registered office at Marathon
Futurex, A Wing, 25th Floor,
Mafatlal Mills Compound, N M
Joshi Marg, Parel, Mumbai,
Maharashtra 400 013.
- 9 M/s.Bombay Stock Exchange
Ltd., having its registered
address at Phiroze Jeejeebhoy
Towers, Dalal Street,
Mumbai - 400001.
- 10 Indiabulls Housing Finance Ltd.,
having its Registered Office at
Indiabulls House, 448-451, Udyog
Vihar, Phase-V,
Gurugram-122001. Haryana.
- 11 ECL Finance Ltd. Having its
Registered Office at Edelweiss
House, Off. CST Road, Kalina,
Mumbai 400 098.

- 12 Phillip Capital (India) Pvt.Ltd.
Having its registered office at
No.1, 18th Floor, Urmi Estate, 95,
Ganpatrao Kadam Marg, Lower
Parel West, Mumbai 400 013.
 - 13 A.K.Capital Finance Limited,
having its registered office at 30-
39, Free Press House, 3rd floor,
Free Press Journal Marg, 215,
Nariman Point, Mumbai 400021.
 - 14 Karvy Capital Ltd., having its
registered office at, 702,
Hallmark Business Plaza, Sant
Dnyaneshwar Marg, Off. Bandra
Kurla Complex, Bandra (East),
Mumbai 400 051.
 - 15 Edelweiss Broking Ltd., having its
registered office at 2nd floor, office
no.201-203, Zodiac Plaza, Xavier
College Road, Off. C.G.Road,
Ahmedabad 380009
 - 16 ICICI Securities Limited having
its registered office at ICICI
Centre, H.P. Parekh Marg,
Churchgate, Mumbai - 400 020.
- ...Respondents

**WITH
WRIT PETITION NO.1518 OF 2022**

Indiabulls Housing Finance Ltd.
A company incorporated under
the erstwhile Companies Act,
1956 having its registered office
at Indiabulls House, 448-551,
Udyog Vihar, Phase - V,
Gurugram - 122 001, Haryana

...Petitioner

Versus

- 1 Union of India
Through the Ministry of Finance
Banking Division, Department of
Financial Services
Jeevan Deep Building, Parliament
Street, New Delhi - 110 001

- 2 The Reserve Bank of India, a bank
established and incorporated
under the provisions of Reserve
Bank of India Act, 1934 having
its office at Central Office
Building, Shahid Bhagat Singh
Road, Fort, Mumbai - 400 001

- 3 Yes Bank Limited, Acting through
its administrator Mr.Prashant
Kumar a company incorporated
under the erstwhile Companies
Act, 1956 and carrying on the
business of banking under the
Banking Regulation Act, 1949,
having its registered office at 9th
floor, Nehru Centre, Discovery of
India, Dr.A.B.Road, Worli,
Mumbai - 400 018, through its
Administrator Mr.Prashant
Kumar appointed under Section
36ACA (2) of the Banking
Regulation Act, 1949.

- 4 M/s.Axis Trustee Services Ltd. A
company incorporated under the
erstwhile Companies Act, 1956,
having its registered office at Axis
House, Bombay Dyeing Mills
Compound, Pandurang Budhkar
Marg, Worli, Mumbai 400 025.

- 5 National Securities Depositories
Limited, The Indian Central
Securities Depository, having its
registered office at National
Securities Depository Ltd. Trade

World, A Wing, 4th floor, Kamala
Mills Compound, Senapati Bapat
Marg, Lower Parel,
Mumbai - 400 013

...Respondents

**WITH
WRIT PETITION NO.100 OF 2021**

Arun Nanda
of Mumbai, Indian Inhabitant,
residing at Row House 11,
Grand Paradi, August Kranti
Marg, Kemp's Corner,
Mumbai - 400 036

...Petitioner

Versus

- 1 Union of India
Through the Ministry of Finance
Department of Financial Services
Jeevan Deep Building, Parliament
Street, New Delhi - 110 001
- 2 Reserve Bank of India, a bank
established and incorporated
under the provisions of Reserve
Bank of India Act, 1934 having
its office at Central Office
Building, Shahid Bhagat Singh
Road, Fort, Mumbai - 400 001
- 3 Yes Bank Limited, a company
incorporated under the
provisions of the Companies Act,
1956 and carrying on the
business of banking under the
Banking Regulation Act, 1949,
through its Administrator
Mr.Prashant Kumar appointed u/
s 36 ACA (2) of the Banking
Regulation Act 1949 and having
its registered office at 9th floor,
Nehru Centre, Discovery of India,
Dr.A.B.Road, Worli,

Mumbai - 400 018

- 4 Prashant Kumar, appointed u/s
36 ACA (2) of the Banking
Regulation Act, 1949 as the
Administrator of Yes Bank Ltd. ...Respondents

**WITH
WRIT PETITION (L) NO.1000 OF 2020
WITH
INTERIM APPLICATION NO.4045 OF 2022
WITH
IN PERSON APPLICATION (L) NO.4939 OF 2020**

L.V.Srinivasan
Old no.12, New no.27,
Vijayaraghava Road, T. Nagar,
Chennai 600017. ...Petitioner

Versus

- 1 Union of India
Through the Ministry of Finance
Department of Financial Services
Jeevan Deep Building, Parliament
Street, Sansad Marg, New Delhi -
110 001
- 2 Reserve Bank of India,
New Central Office Building,
Shahid Bhagat Singh Road, Fort,
Mumbai - 400 001
- 3 Yes Bank Limited,
Yes Bank Tower,
IFC 2, 15th floor,
Senapati Bapat Marg,
Elphinstone (W),
Mumbai - 400 013.
- 4 National Securities Depositories
Ltd, Trade World, A Wing, 4th &
5th Floors, Kamala Mills

Compound, Lower Parel,
Mumbai - 400 013.

5 BSE Limited,
Corporate Relations Department
P.J.Towers, Dalal Street,
Mumbai - 400 001.

6 National Stock Exchange of India
Limited,
Exchange Plaza
Plot No.C/1, G Block,
Bandra - Kurla Complex,
Bandra (E), Mumbai - 400 051.

...Respondents

**WITH
WRIT PETITION (L) NO.1001 OF 2020
WITH
INTERIM APPLICATION NO.4046 OF 2022
WITH
IN PERSON APPLICATION (L) NO.4946 OF 2020**

L.D.Venkataraman HUF
represented by its Karta
L.D. Venkataraman Through its
Power of Attorney Holder
L.V.Srinivasan
Old no.12, New no.27,
Vijayaraghava Road, T. Nagar,
Chennai 600017.

...Petitioner

Versus

1 Union of India
Through the Ministry of Finance
Department of Financial Services
Jeevan Deep Building, Parliament
Street, New Delhi - 110 001

2 Reserve Bank of India,
New Central Office Building,
Shahid Bhagat Singh Road, Fort,
Mumbai - 400 001

- 3 Yes Bank Limited,
Yes Bank Tower,
IFC 2, 15th floor,
Senapati Bapat Marg,
Elphinstone (W),
Mumbai - 400 013.
- 4 National Securities Depositories
Ltd, Trade World, A Wing, 4th &
5th Floors, Kamala Mills
Compound, Lower Parel,
Mumbai - 400 013.
- 5 BSE Limited,
Corporate Relations Department
P.J.Towers, Dalal Street,
Mumbai - 400 001.
- 6 National Stock Exchange of India
Limited,
Exchange Plaza
Plot No.C/1, G Block,
Bandra - Kurla Complex,
Bandra (E), Mumbai - 400 051. ...Respondents

**WITH
WRIT PETITION (L) NO.6589 OF 2021
WITH
INTERIM APPLICATION NO.535 OF 2021**

- 1 Yes Bank ATI Bondholders
Association, Through Its
President, Having Its Office
AT-11-C, Ground Floor,
Vishwakarma Park, Laxmi Nagar,
Delhi - 110092 ...Petitioner

Versus

- 1 Reserve Bank of India, A Bank
established under the provisions
of Reserve Bank of India Act,
1934 having its office at Central
Office Building, Shahid Bhagat

Singh Road, Fort,
Mumbai - 400 001.

- 2 Union of India Through
Secretary, Department of
Financial Services, Ministry of
Finance, 3rd Floor, Jeevan Deep,
Building Sansad Marg,
New Delhi - 110 001
- 3 Securities and Exchange Board of
India, SEBI Bhavan, Plot No.C4A,
Bandra-Kurla Complex, Bandra
(East), Mumbai - 400 051.
- 4 M/s.Yes Bank Limited, through
its Administrator Mr.Prashant
Kumar having its registered office
at 9th floor, Nehru Centre,
Discovery of India, Dr.A.B.Road,
Worli, Mumbai - 400 018
- 5 Yes Securities (India) Ltd.
Unit No.602A, 6th Floor,
Tower 1 & 2,
India Bulls Finance Centre,
Senapati Bapat Marg,
Elphinstone Road,
Mumbai 400 013.
- 6 M/s.Axis Trustee Services
Limited, Having its Registered
Office at Axis House, Bombay
Dyeing Mills Compound,
Pandurang Budhkar Marg, Worli,
Mumbai 400 025.
- 7 National Securities Depositories
Limited, having its registered
office at Trade World, A Wing, 4th
floor, Kamala Mills Compound,
Lower Parel, Mumbai - 400 013.

- 8 Central Depositors Services (India) Limited, having its registered office at Marathon Futurex, A Wing, 25th Floor, Mafatlal Mills Compound, N M Joshi Marg, Parel, Mumbai, Maharashtra 400 013.
- 9 M/s.Bombay Stock Exchange Ltd., having its registered address at Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai - 400001.
- 10 Indiabulls Housing Finance Ltd., having its Registered Office at Indiabulls House, 448-451, Udyog Vihar, Phase-V, Gurugram-122001. Haryana.
- 11 ECL Finance Ltd. Having its Registered Office at Edelweiss House, Off. CST Road, Kalina, Mumbai 400 098.
- 12 Phillip Capital (India) Pvt.Ltd. Having its registered office at No.1, 18th Floor, Urmi Estate, 95, Ganpatrao Kadam Marg, Lower Parel West, Mumbai 400 013.
- 13 A.K.Capital Finance Limited, having its registered office at 30-39, Free Press House, 3rd floor, Free Press Journal Marg, 215, Nariman Point, Mumbai 400021.
- 14 Karvy Capital Ltd., having its registered office at, 702, Hallmark Business Plaza, Sant Dnyaneshwar Marg, Off. Bandra Kurla Complex, Bandra (East), Mumbai 400 051.

- 15 Edelweiss Broking Ltd., having its registered office at 2nd floor, office no.201-203, Zodiac Plaza, Xavier College Road, Off. C.G.Road, Ahmedabad 380009
- 16 ICICI Securities Limited having its registered office at ICICI Centre, H.P. Parekh Marg, Churchgate, Mumbai - 400 020.

...Respondents

**WITH
WRIT PETITION NO.220 OF 2021
WITH
INTERIM APPLICATION NO.133 OF 2021**

- 1 Gaurav Mathrawala
A-904, Florentine, Dosti Acres,
Wadala (East), Mumbai - 400037
- 2 Mrs. Sharada C.
45, Radhesham Krupa,
Nanjappa Road,
Shantinagar, Bengaluru - 560027
- 3 Mrs. Khushi Dawda
G1, LA Marvel Colony, Dona Paula,
Panjim, Goa - 403004
- 4 Mr. Chimanlal Talreja
45, Radhesham Krupa,
Nanjappa Road,
Shantinagar, Bengaluru - 560027
- 5 Mr. Naveen Kumar Arora
H.No.2097/4, Urban Estate,
Sector - 4,
Gurgaon, Haryana - 122001
- 6 M/s. Sumit Apparels Limited
AG-23, Shalimar Bagh,
Delhi - 110088
through its Director Mr.Subhash
Gupta

- 7 M/s. Kamlex Industries LLP
AG-23, Shalimar Bagh,
Delhi - 110088
through its Director Mr.Subhash
Gupta
- 8 Subhash Gupta & Son (HUF)
AG-23, Shalimar Bagh,
Delhi - 110088
- 9 M/s. Regent Exim International
Limited
AG-23, Shalimar Bagh,
Delhi - 110088
- 10 Mr. Mukesh Basantkumar Mishra
Amrut Surti Near Dhantoli Garden,
Nagpur - 440012
- 11 Mr. Mosur Venkatarama Chandran
No.23, Second Main Road,
Raja Annamalaipuram,
Chennai-600028
- 12 Mrs. Sumathi Chandran
No.23, Second Main Road,
Raja Annamalaipuram,
Chennai-600028
- 13 Mr. J. A. Lawrence
B2F, VGN Imperia Phase-1, 3rd Main
Road, VGN Mahalakshmi Nagar,
Perumal Agaram, Thiruverkadu,
Chennai-600077
- 14 Mr. Ajay Murdia
9-Govindpura Colony, Opp.M.B.
College Ground, Udaipur, Rajashtan
- 15 Mr. Bipin Hirji Mathrawala
Bungalow No.1, Gulab View Society,
Near Basant Cinema, Dr. C.G. Road,
Chembur, Mumbai - 400074
- 16 Bipin Hirji Mathrawala H.U.F.

Bungalow No.1, Gulab View Society,
Near Basant Cinema, Dr. C.G. Road,
Chembur, Mumbai - 400074
Through its Karta Mr.Bipin Hirji
Mathrawala

- 17 Mrs. Toral Bipin Mathrawala
Bungalow No.1, Gulab View Society,
Near Basant Cinema, Dr. C.G. Road,
Chembur, Mumbai - 400074
- 18 M/s. Mathrawala and Sons Insurance
Brokers Private Limited
Office No.701 & 702, Swastik
Chambers, C.S.T. Road, Chembur,
Mumbai through its Director
Mr.Bipin Mathrawala
- 19 Mr. Hasmukhrai S. Panchamatia
604, Praladh Opp. Arya Samaj,
Linking Road, Santacruz West,
Mumbai - 400054
- 20 Mr. Dilip Bhaskar Boralkar
602, Amar Residency, V.N. Purav
Marg, Punjabwadi, Deonar,
Mumbai-400088
- 21 Mr. K.S. Ramachandran,
A-301, Sabari Aashiana, Near BARC
Hospital, Deonar Farm Road, Deonar,
T.F. Deonar, S.O. Mumbai - 400088
- 22 Mr. Subhash Namdev Kharat
136/4588, Vishal CHS, Mother Dairy
Road, Nehru Nagar, Kurla East,
Mumbai-400024
- 23 Mr. Subirkumar S. Suchak
501, Shraddha Manor Apartment
Dhantoli Road, Near Yashwant
Stadium, Dhantoli Nagpur,
Maharashtra - 440012

..... Petitioners

Versus

- 1 Union of India
Through the Ministry of Finance
Department of Financial Services
Jeevan Deep Building, Parliament
Street, New Delhi - 110001
- 2 Reserve Bank of India
Established and incorporated under
the provisions of Reserve Bank of
India Act, 1934 having its office at
Central Office Building, Shahid
Bhagat Singh Road, Fort,
Mumbai - 400001
- 3 Yes Bank Limited, a company
incorporated under the provisions of
the Companies Act, 1956 and now
existing under the Companies Act,
2013 and carrying on the business of
banking under the Banking
Regulation Act, 1949, through its
Administrator Mr.Prashant Kumar
appointed u/s 36 ACA (2) of the
Banking Regulation Act 1949 and
having its registered office at 9th floor,
Nehru Centre, Discovery of India,
Dr.A.B.Road, Worli,
Mumbai - 400 018
- 4 Prashant Kumar, appointed u/s 36
ACA (2) of the Banking Regulation
Act, 1949 as the Administrator of
Yes Bank Ltd.
- 5 National Securities Depositories
Limited A company incorporated
under the Companies Act, 1956 and a
SEBI (Depositories and Participants)
1996, registered as a depository
participant under the Securities and
Exchange Board of India
(Depositories and Participants)
having its office at Trade World, A
Wing, 4th floor, Kamala Mills

Compound, Lower Parel,
Mumbai - 400 013.

.... Respondents

**WITH
WRIT PETITION NO.3324 OF 2021
WITH
INTERIM APPLICATION NO.1767 OF 2021**

- 1 Vasu Mitra Arora, R/O D-603,
Shivam Apartments,
Vikram Nagar CGHS Ltd.
Plot No - 14, Sector 12,
Dwarka, South West,
Delhi, Delhi - 110075
- 2 Kanhaiya Lal Singh, R/O A-008,
Parsvanath Green Ville,
Sector 48, Gurgaon,
Opp. Omex Gurgaon Mall,
Sohna Road- 122018
- 3 Jatinder Kumar Varma,
R/O 25, Sunder Nagar,
New Delhi - 110003
- 4 Som Prakash Mohan, R/O
H. No.52, Sector-31, Gurgaon,
Correspondence Address:
H. No. 52, Sector-31, Gurgaon
- 5 Taattai Anantasayanam
Pillapakam R/O GF-1, Sri Lakshmi
Residency RR Gardens, Patamata
Vijayavada (Urban), Autonagar
Krishna District Andhra
Paradesh - 520007
- 6 Qualichem Industries Pvt Ltd.
Through Himanshu D. Rach R/O
A/56, Roop Darshan. Juhu Lane,
Behind New India Staff Qtrs,
Andheri West, Mumbai-400058,

Correspondence Address:

Room no.17, 1st Floor, OM Shanti
Co-op. Housing Society, 42/44,
Babu Genu Road, Kalbadevi,
Mumbai-400002

- 7 Himanshu D. Rach R/O A/56,
Roop Darshan, Juhu Lane, Behind
New India Staff Qtrs, Andheri
West Mumbai-400058;

Correspondence Address:

Room no.17, 1st Floor, OM Shanti
Co-op. Housing Society, 42/44,
Babu Genu Road, Kalbadevi,
Mumbai-400002

- 8 Rushabh D. Rach R/O A/56, Roop
Darshan, Juhu Lane, Behind New
India Staff Qtrs, Andheri West
Mumbai-400058:

Correspondence Address:

Room no.17, 1st Floor, OM Shanti
Co-op. Housing Society, 42/44,
Babu Genu Road, Kalbadevi,
Mumbai-400002

- 9 Rupali Himanshu Rach R/O A/56,
Roop Darshan, Juhu Lane, Behind
New India Staff Qtrs, Andheri
West Mumbai-400058:

Correspondence Address:

Room no.17, 1st Floor, OM Shanti
Co-op. Housing Society, 42/44,
Babu Genu Road, Kalbadevi,
Mumbai-400002

- 10 Naini Suresh Chandra, R/O H.
No.3-3-171/6, Kachiguda,
Hyderabad

11 Pawan Kumar R/O House No. 569, Guru Gobind Singh Avenue, Jalandhar-I, Jalandhar, Punjab-144009

12 Rama Setia R/O House No. 569, Guru Gobind Singh Avenue, Jalandhar-I, Jalandhar, Punjab-144009

...Petitioners

Versus

1 Reserve Bank of India, A Bank established under the provisions of Reserve Bank of India Act, 1934 having its office at Central Office Building, Shahid Bhagat Singh Road, Fort, Mumbai - 400 001.

2 Union of India
Secretary, Department of Financial Services,
Ministry of Finance,
3rd Floor, Jeevan Deep, Building Sansad Marg,
New Delhi - 110 001

3 Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4A, Bandra-Kurla Complex, Bandra (East), Mumbai - 400 051.

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5 Yes Securities (India) Ltd.
Unit No.602A, 6th Floor,
Tower 1 & 2,
India Bulls Finance Centre,

Senapati Bapat Marg,
Elphinstone Road,
Mumbai 400 013.

- 6 M/s.Axis Trustee Services Limited, Having its Registered Office at Axis House, Bombay Dyeing Mills Compound, Pandurang Budhkar Marg, Worli, Mumbai 400 025.
- 7 National Securities Depositories Limited, having its registered office at Trade World, A Wing, 4th floor, Kamala Mills Compound, Lower Parel, Mumbai - 400 013.
- 8 Central Depositors Services (India) Limited, having its registered office at Marathon Futurex, A Wing, 25th Floor, Mafatlal Mills Compound, N M Joshi Marg, Parel, Mumbai, Maharashtra 400 013.
- 9 M/s.Bombay Stock Exchange Ltd., having its registered address at Phiroze Jeejeebhoy Towers, Dalal Street, Mumbai - 400001.
- 10 Indiabulls Housing Finance Ltd., having its Registered Office at Indiabulls House, 448-451, Udyog Vihar, Phase-V, Gurugram-122001. Haryana.
- 11 ECL Finance Ltd. Having its Registered Office at Edelweiss House, Off. CST Road, Kalina, Mumbai 400 098.
- 12 Phillip Capital (India) Pvt.Ltd. Having its registered office at

No.1, 18th Floor, Urmi Estate, 95,
Ganpatrao Kadam Marg, Lower
Parel West, Mumbai 400 013.

...Respondents

**WITH
WRIT PETITION NO.1997 OF 2021**

1 Budge Budge Refineries Ltd.
A company registered under the
provisions of the Companies Act,
1956 and having its registered
office at 23B, A.M.Ghosh Road,
Budge Budge, Kolkata 700137.

2 Shyam Sundar Nangalia, of
Kolkata
Indian Inhabitant, residing at
32C, New Road, Alipore,
Kolkata 700 027.

...Petitioners

Versus

1 Union of India
Through the Ministry of Finance
Department of Financial Services
Jeevan Deep Building, Parliament
Street, New Delhi - 110 001

2 Reserve Bank of India, a bank
established and incorporated
under the provisions of Reserve
Bank of India Act, 1934 having
its office at Central Office
Building, Shahid Bhagat Singh
Road, Fort, Mumbai - 400 001

3 Yes Bank Limited, a company
incorporated under the
provisions of the Companies Act,
1956 and carrying on the
business of banking under the
Banking Regulation Act, 1949,
through its Administrator

Mr.Prashant Kumar appointed
u/s 36 ACA (2) of the Banking
Regulation Act 1949 and having
its registered office at 9th floor,
Nehru Centre, Discovery of India,
Dr.A.B.Road, Worli,
Mumbai - 400 018

- 4 Prashant Kumar, appointed u/s
36 of the Banking Regulation Act,
1949 as the Administrator of Yes
Bank Ltd.

...Respondents

Mr. Janak Dwarkadas, Sr. Adv. a/w. Dr. Birendra Saraf, Sr. Adv.,
Mr. Ankit Lohia, Mr. Sunil Tilokchandani, Mr. Sachin Chandarna
and Mr. Vikram Trivedi, Ms. Pooja Batra, Ms. Neha Javeri, Ms. Nipa
Ghosh i/b. Manilal Kher Ambalal & Co. for Petitioner in
WP/785/2021.

Mr. Dinyar Madon, Sr. Adv. a/w. Ms. Tanushree Kejriwal i/b.
Parinam Law Associates for Petitioner in WPL/849/2020,
WP/1518/2022.

Mr. Dinyar Madon, Sr. Adv. a/w. Mr. Paras Parekh, Ms. Tanushree
Kejriwal, Adv. Shuthara Swami, Mr. Ashish Venugopal, Mr.
Abhineet Sharma, Adv. Shonan Bangera i/b. Parinam Law
Associates for Petitioner for the Respondents in WP/6589/2021.

Mr. Sharan Jagatiani, Sr. Adv. a/w. Ms. Apurva Manwani, Mr.
B.Gopalkrishnan a/w. Mr. Nilesh Ghadge, Mr. Parikshit Desai, Mr.
Ashish Dalal, Ms. Saloni Shah for Petitioner in WP/220/2021.

Mr. Zal Andhyarujina a/w. Mr. Karan Bhide, Mr. Pradeep Bakhru,
Mr Nikhil Gupta, Mr. Shreya Sancheti, Ms. Labdhi Mehta i/b. Wadia
Ghandy & Co. for Petitioner in WP/100/2021.

Mr. Shrijan Sinha a/w. Ms. Prerna Gandhi, Ms. Preet Chheda for
Petitioner in WPL/1069/2021, WP/3324/2021, WPL/6589/2021.

Mr. Pradeep Bakhru, Mr Nikhil Gupta, Ms. Labdhi Mehta i/b. Wadia
Ghandy & Co. for Petitioner in WP/1997/2021.

Mr. L.V.Srinivasan, Petitioner- in-person in WPL/1000 and 1001 OF 2020.

Mr. Aspi Chinoy, Sr. Adv. a/w. Mr. Rohaan Cama, Mr. Rohan Dakshini, Mr. Vishesh Malviya, Ms. Nikita Mishra, Mr. Kyrus Modi, Mr. Aman Sadiwala i/b M/s. Rashmikant & Partners, for Respondents Nos. 3 in WP/1518/2020 for Respondent no.3 and 4 in WP/785/2021.

Mr. Ravi Kadam, Sr. Adv. a/w. Mr. Ashish Kamat, Mr. Vivek Shetty, Mr. Nishant Upadhyay, Mr. Dhaval Vora, Mr. Akilesh Menezes, Mr. i/b AZB & Partners, for Respondent No. 2 -RBI.

Mr. J.P.Sen, Sr. Adv. a/w. Mr. Rohaan Cama, Mr. Rohan Dakshini, Mr. Vishesh Malviya, Ms. Nikita Mishra, Mr. Kyrus Modi, Mr. Aman Sadiwala i/b M/s. Rashmikant & Partners for Respondents Nos. 3 and 4 in WP/100/2021 and Respondent no.4 in WPL/6589/2021.

Mr. Vrushabh Vig i/b M/s. Crawford Bayley & Co. for Petitioner in WP/8068/2020.

Mr. Sharad Bansal a/w. Mr. Kunal Parekh i/b. Dua Associates AOR for Res. No.11 in WP/3324/2021.

Mr. Naushad Engineer a/w. Mr. Kunal Parekh i/b. Dua Associates AOR for Respondent no.11 in WPL/6589/2021.

Mr. Kunal Parekh i/b. Dua Associates AOR for Respondent no.15 in WPL/6589/2021.

Mr. Abhiraj Arora, Mr. Shourya Tanay, Mr. Harshvardhan Nankani i/b. Economic Laws Practice for Respondent no.3 (SEBI) in WP/6589/2021.

Ms. Kanksha Vyas i/b. Juris Link for Respondent no.12 in IA/535/2021 in WP/6589/2021.

Mr. D.P.Singh a/w. Mr. Aditya Thakkar for Respondent no.1 UOI in WP/785/2021.

Mr. Anubhav Ghosh a/w. Mr. Pranav Kamdar i/b. TRILEGAL for Respondent no.5. in WP/785/2021 for Respondent nos.7 & 16 in WPL/6589/2021, WPL/849/2020.

Mr. Mihir Mody and Mr. Harshvardhan Melanta, Mr. Shreyas Pandlai i/b. M/s. K.Ashar & Co. For Respondent no.6. in WPL/6589/2021.

Mr. Mayur Khandeparkar a/w. Mr. Rohan Dakshini, Mr. Vishesh Malviya, Ms. Nikita Mishra, Kr. Kyrus Modi, Mr. Aman Sadiwala i/b M/s. Rashmikant & Partners, for Respondents Nos. 4 in WP/3324/2021, Respondent no.3 in WPL/1001/2020, for Respondent no.3 and 4 in WP/220/2021 for Respondent no.3. in WPL/1000/2020 for Respondent no.4 in IA/189/2022 in WPL/1069/2022.

Mr. Rohaan Cama a/w Mr. Rohan Dakshini, Mr. Vishesh Malviya, Ms. Nikita Mishra, Mr. Kyrus Modi, Mr. Aman Sadiwala i/b M/s. Rashmikant & Partners, for Respondent nos.3 & 4 in WP/1997/2021.

Mr. Gautam Ankhad a/w. Mr. Hetal Thakore & Mr. Kunal Parekh i/b. Dua Associates for Respondent no.15 in WPL/6589/2021.

Ms. Chitra Rentala a/w. Mr. Pranay Kamdar, Ms. Sonal Singh i/b. TRILEGAL for Respondent no.5. in WP/785/2021 and WP/1518/2022, for Respondent no.7 & 16 in IA/535/2021 in WPL/6589/2021, WPL/849/2020.

Ms. Khursheed Vajifdar i/b. Legasis Partners for Res. CDSL in WP/785/2021 AND WPL/6589/2020.

**CORAM: S.V.GANGAPURWALA, ACJ &
S.M.MODAK, JJ.**

**RESERVED ON : OCTOBER 20, 2022
PRONOUNCED ON : JANUARY 20, 2023**

JUDGMENT : (PER : ACTING CHIEF JUSTICE)

1 Rule.

Rule made returnable forthwith. By consent of the parties, taken up for final disposal.

2 The substratum of the challenge is the communication dated March 14, 2020 under which the Administrator of the Yes Bank Ltd., informed the (Bombay Stock Exchange) BSE Limited and National Stock exchange the decision (“impugned decision”) of the writing off of the Additional Tier 1 Debenture bonds.

3 The petitioner therein seeks that the impugned decision be set aside and quashed. It further seeks directions against the National Securities Depositories Limited and Central Depository Services to take such steps to reverse the effect of any accounting, entries, noting, write-offs, cancellations, or any such steps that may have been undertaken pursuant to the impugned decision to write off the Additional Tier 1 bonds.

4 Various writ petitions are filed to seek the same declaration. As all these writ petitions are based on similar set of facts and involve common questions of law, as such to avoid rigmarole, the petitions are decided together. For convenience purposes, the facts as mentioned in the Writ Petition No.785 of 2021 are referred to.

5 We have heard Senior Advocate Mr.Zal Andhyarujina for the petitioners in Writ Petition No.100 of 2021, Senior Advocate Mr.Vikram Nankani for the petitioners (in the Transferred Writ

Petition No. 8069 of 2020: 63 Moon Technologies Limited v. RBI), Senior Advocate Mr. Sharan Jagtiani for the petitioners (in Writ Petition No. 220 of 2020: Gaurav Mathawala v. Union of India), Senior Advocate Srijan Sinha and Mr. M. G. Doctor for the petitioners (in Writ Petition No. 6589 of 2021), party-in-person (in Writ Petition (L) No. 1000 of 2020: L.V. Srinivasan v. Union of India), Senior Advocate Aspi Chinnoy for the respondent Administrator and the respondent Yes Bank, Senior Advocate Ravi Kadam for the respondent Reserve Bank of India.

6 The learned Advocate for the petitioners submitted against the Master Circular issued by the Reserve Bank of India has statutory force. The Reserve Bank of India under section 35A of the Banking Regulation Act, 1949 (**Act of 1949**) is empowered to issue directions as it may deem fit and the banking companies shall be bound to comply with such directions. Reliance is placed on the judgment of the Division Bench of the Madras High Court in the case of *Piyush Bokaria and others v. Reserve Bank of India and others*¹. Party in person relied upon the judgment of the Karnataka High Court in the case of Velankani Information Systems vs. Secretary, Ministry of Home Affairs in Writ Petition No. 6775 of 2020 and also the Division Bench judgment in the case of Karnataka Bank Ltd. v. Rekha Rao in

1 (2020) SCC Online Mad 2693

Writ Appeal No.8541 of 1996.

7 According to the party in person, the write down of AT-1 bonds has affected the legal rights of a class of citizens and thus is amenable to writ jurisdiction. It is also further submitted that one of the petitioners i.e the Yes Bank AT-1 Bondholders Association in Writ Petition No. 1145 of 2020 had approached the Supreme Court with a writ petition and they had declined to entertain the same and directed the petitioner to approach the concerned High Court under Article 226.

8 It is further contended by the learned counsel for the Petitioners that the Information Memorandums are statutory contracts as Additional Tier 1 Bonds are common equity Tier 1 instruments that are regulated and governed under Basel Convention as contained in the Master Circular. The Master Circular is binding on the Yes Bank and the provisions, therefore have to be complied by them irrespective of whether all provisions thereof are incorporated in the Information Memorandums or not. The Information memorandums are statutory contracts. Reliance is placed on the judgment of the Apex Court in the case of *India Thermal Power Ltd. v. State of Madhya Pradesh and others*². It is further contended by the learned counsel for the petitioner that

2 (2000) 3 SCC 379

there is a commercial contract in place in the form of Information Memorandums, it would curtail the writ jurisdiction when the subject matter of challenge is an arbitrary decision of the bank supported by RBI which has led to loss of significant savings of the public.

9 The exercise of the power to write down the bonds is a statutory power exercised in public interest under the provisions of Section 35A and 45 of the Act of 1949 read with the Basel III Compliant regulations. The writing down of the AT-1 bonds is an exercise of statutory powers under section 45 of the Act of 1949 read with Clause 2.15 of the Master Circular. The contractual documents viz. the Information Memorandums and Debenture Trust Deeds contain the relevant provisions for the write-off of the AT-1 bonds which are adopted from the Master Circular. It is further contended by them that administrator is appointed by Reserve Bank of India under section 36 ACA of the Act of 1949 which is a statutory scheme. The administrator discharges public function which is an indicator that it can be construed as a statutory authority. The Administrator is a public functionary discharging duty of board under private capacity because it is under the supervision of the Reserve Bank of India. The Administrator is bound by the directions/decisions taken by the Reserve Bank of India. The

appointment of the Administrator is under notification in the official gazette by the Reserve Bank of India and Administrator's salary and allowances are decided by the Reserve Bank of India.

10 As per Section 35 r/w Section 45 of the Act of 1949, all the actions taken by the Yes Bank after the declaration of the moratorium on March 5, 2020 is an act in its reconstructed capacity, which is of a State under Article 12 of the Constitution of India. Reliance is placed on the judgment of the Apex Court in the case of *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Others*³ to submit that any authority in which there is deep and pervasive functional, administrative and financial control of the Central Government, it shall be within the meaning of Article 12 of the Constitution. It is further contended by them that as the petition is directed against the Sectoral Regulators including the Reserve Bank of India and SEBI which are both statutory bodies that failed to perform their statutory duties, violating the petitioner's fundamental rights under Article 14 and 21.

11 The party in persons contends that the impugned decision taken by the Administrator violated the doctrine of legitimate expectations and violated the Final scheme as the clause for writing down the AT-1 bonds was not included in the final scheme after

3 (2002) 5 SCC 111

considering the suggestions of the stakeholders.

12 The learned advocates for the petitioners contend that the impugned decision is in conflict with the Master Circular. Making determinations and taking actions prescribed under the Basel III Capital Regulations is a matter within the exclusive domain of the “relevant authorities”. The phrase “relevant authorities”, though not defined, refers to the Reserve Bank of India in consultation with the Central Government, referred to in section 45 of the Act of 1949. Clause 2.15 also lays down the methods in which the power of the relevant authorities has to be exercised, and such writing-down of the AT-1 bonds cannot be effected in any manner or by any other person than that prescribed by the statute/Master Circular.

13 The final scheme as sanctioned and notified neither provides for conversion nor for write off. Therefore, there was no power in the Administrator or the Yes Bank to write off the bonds in purported “implementation of the scheme”. Mere extension of moratorium for 3 days after the commencement of the scheme cannot be read to mean that it confers a power either on the Respondent no.3 or Respondent no.4 to alter/modify the scheme by writing off the bonds. As section 45(3) of the Act of 1949 merely provides that during the period of moratorium - “the bank shall not make any

payment to any depositors or discharge any liabilities or obligation to any other creditors.” Clause 11 which provides that the order or moratorium will cease to have effect on the third working day from the date of commencement of this scheme, itself demonstrates that the scheme not only came into effect as on March 13, 2020, but commenced on and from that date.

14 The learned advocate for the petitioners also submit that the impugned decision violated the power of Reserve Bank of India under section 45(5)(f) of the Act of 1949 as the decision to affect the interests of the creditors of a banking company can only be that of the RBI in consultation with the Central Government and the Administrator has no power in this regard.

15 The learned advocate for the petitioners submit that if the scheme is notified u/s 45(7) of the Act of 1949 and it comprehensively deals with a topic, then it will rule out any contrary provision found elsewhere and express provision of the Scheme must be given effect to. The Draft Scheme of Reconstruction is to be placed before the Central Government for its sanction and the Central Government is entitled to make such modifications as it may consider necessary to the proposed scheme. And, it is this scheme as sanctioned by the Central Government which then comes

into force. By way of the final scheme, the Central government was pleased to delete the provision for writing-down of the said AT-1 Bonds and instead provided to save and keep them. Under the scheme of 45, no such decision can be taken without due authorization from the Central Government.

16 By virtue of Section 45(8) of the Act of 1949, the date from the coming into operation of the Final scheme, the scheme or such provisions as may be specified by the Central Government is to become binding on all the stakeholders: the banking company as also on all members, depositors, other creditors of the banking company, including the Administrator who acts in place of the suspended Board of Directors. By virtue of section 45(14) of the Act of 1949, the provisions of this scheme and of any scheme made under it is to have effect, notwithstanding anything to the contrary contained in any other provision of this Act or in any other law or any agreement, award or other instrument for the time being in force. Therefore, no decision could have been taken and/or no right under any instrument could have been exercised which was contrary to the Final Scheme itself.

17 The learned advocate for the petitioner submits that the impugned decision is in violation of the Final Scheme of

Reconstruction, as the RBI directions contained in Clause 6 of the Final Scheme dated March 13, 2020 expressly saves the AT-1 bonds and deletes the provision for writing down of the said AT-1 bonds as appearing in the Draft Scheme. The Final Reconstruction Scheme was notified after the Union of India in exercise of its powers u/s 45(7) of the Act of 1949 which removed the clause regarding the write-off of the AT-1 bonds from the draft scheme and replaced it with Clause 6.1 which states that all bonds of any kind shall subsist in the same manner as they did prior to the Scheme coming into force. Clause 6(3) of the said scheme provides that unless “expressly” provided for in the FRS, all the deposits and liabilities of the reconstructed bank will continue towards its investors as if the reconstruction never occurred. The FRS promulgated by the Union Government left no gap u/s 45(7) r/w section 45(1) of the Act of 1949. Reliance is placed on the Doctrine of Covered field. It can be concluded that all the rights and liabilities of Respondent no.4 will continue as it is, as if reconstruction never took place. The clause 6 of the Final Scheme does not empower the Administrator of the Bank to convert or write off the bonds. The effect of clause 6 is to only preserve the contractual rights in the Information Memorandums alive for the future events i.e., in case of occurrence of a trigger event after the bank is reconstituted.

18 In the note submitted by the RBI to the Central Government under section 45(7) of the Act of 1949, RBI had proposed to balance the interests of all stakeholders and in fact proposed conversion of the said AT-1 Bonds and a decision was taken to write-down the same.

19 The party in person also submits that Section 45 of the Act of 1949 has an overriding effect and is a complete code by itself. Further, any reduction in the interest of creditors has to be mentioned in the Final Scheme under Section 45 of the Act of 1949. If the scheme is silent on such reduction then the inevitable conclusion is that the write down has not happened. The party in person relies on the Hon'ble Supreme Court's judgment in the case of *Chairman, Canara Bank, Bangalore vs. M.S. Jasra and Ors.*⁴ wherein it is held that it is not necessary that all clauses of section 45(5) of the Act of 1949 may be incorporated in the scheme unless the scheme specifically includes such a manner. Section 45(11) of the Act of 1949 mandates that the copies of the scheme shall be laid before both the houses of Parliament. This demonstrates the power and sanctity of the scheme prepared under section 45 of the Act of 1949. Any reduction of creditor's interest cannot be circumvented by doing it outside the scheme and such an act would be *void ab*

4 1992 AIR 1100

initio.

20 It is submitted that the administrator is not competent to take such a decision as the Administrator does not enjoy the powers of the Reserve Bank of India nor is he empowered to act on behalf of the RBI. The administrator is bound to follow the directions of the RBI: u/s 36 ACA(3) of the Act of 1949, the administrator is not the substitute of the RBI and the Central Government. Therefore, he is bound by the decision of the RBI and the Central Government to save and keep alive the AT-1 Bonds which was a direction issued u/s 36ACA r/w S. 45.

21 The learned advocate for the petitioners further submits that the writing down of the AT-1 bonds was in pursuance of statutory powers and not in exercise of purported contractual rights. They contend that the write down was under contractual documents i.e the Information Memorandums is not sustainable. Annexure-16 of the Master Circular deals with Minimum requirement of Loss Absorbency of AT-1 Instruments (Bonds) in Section 2 thereof. Section 5 is divided into 5 parts. There are two routes/methods of writing down AT-1 Bonds. One is by the bank, which is a contractual route covered by Part II and the other is the statutory route covered by Part III of Section of the Master Circular. These two methods are

mutually exclusive. Part II of Section 2 deals with level of pre-specified trigger and amount of equity to be created by conversion/write-down, which applies when the bank itself proposed to write down or convert to common shared the AT-1 Bonds; Part III of Section 2 deals with treatment of AT-1 instrument in the event of winding up, amalgamation, acquisition, reconstitution etc. of the bank. This part III applies *inter alia*, when sub-part (b) a scheme of reconstitution or amalgamation of a banking company is undertaken under section 45 of the Act of 1949. The deeming fiction in Clause 2.15 is restricted only to determine whether the pre-specified trigger level has occurred. On the question of write-down or conversion, Clause 2.15 provides that the same has to be done before the reconstitution. The deeming fiction provision under Clause 2.15 stands invoked only when RBI (relevant authority) decides to reconstitute the bank under section of the Act of 1949. The write-down must happen after the decision to reconstitute is taken by the RBI and before the reconstitution.

22 They further submit that the decision to reconstitute the bank was taken by RBI on March 6, 2020 when the draft was issued and the reconstitution happened on March 13, 2020 when the final scheme was issued. The write down could only have been done between this period.

23 Under Clause 2.15, only RBI can write-down. The purported exercise based contractual documents by the Administrator in writing down the AT-1 bonds post reconstitution of a bank under section 45 can be undertaken under contractual documents (assuming such a right survives) only by following the procedure prescribed under Clause 2.3 to 2.9 and not by recourse to legal fiction under Clause 2.15. So if the bank was to exercise its contractual rights, the Master Circular provides for sufficient safeguards as contained in Clause 2.5 (certified from statutory auditors and legal opinion), Clause 2.6 (extent of write-down) and Clause 2.9 (restriction on further obligation/booking assets after write-down). These safeguards are introduced to ensure that the bank does not exceed its contractual rights.

24 They further submit that upon passing of the scheme of reconstruction in accordance with the section 45 of the Act of 1949 and the provisions of Clause 2.15 of the Master Circular and Clause 57 of the Information memorandum, the banking company was deemed to have been reconstructed and revived. If this is not accepted, then the entire purpose of Clause 2.15 and Clause 57 would be frustrated if even after the passing of a Scheme of Reconstruction in accordance with section 45 of the Act of 1949, it is

inferred that the trigger events are deemed to exist.

25 They submit that the deeming provision or legal fiction created under Clause 2.15 of the Master Circular is only for the purposes of section 45 of the Act of 1949. This provision merely deems that the bank is non-viable and thereby legal fiction activates the pre-specified trigger. They contend that the Yes Bank claims to have written down under the contractual documents, for them this legal fiction is not available. The petitioners rely on the judgment in the case of *Apollo Tyres Ltd. vs Commissioner Of Income Tax, Kochi along with connected matters*⁵ to state that the deeming provision or legal fiction applies only to the purpose of which the same was created and cannot be extended to any other purpose.

26 The party in person submits that as per Clause 2.15 of the Master Circular the write down has to be done before the reconstruction. The reconstruction came into force on March 13, 2020 but the write down happened on March 14, 2020. A similar write down was done in the case of Laxmi Vilas Bank in November 2020, wherein the write down was done before the amalgamation scheme came into force.

27 But, the learned advocates for the petitioners contend that the

5 (2002) 9 SCC 1

Administrator acted in pursuance to Clause 2.15 of the Master Circular and not under Clause 56 (Information Memorandum December 22, 2016) and Clause 57 (Information Memorandum October 17, 2017). The provision that the write off of the bonds had to be undertaken prior to the injection of the public capital does not apply.

28 The learned advocate for the petitioners submit that though the Information Memorandum dated October 17, 2017 does not provide an option of conversion if the RBI has itself recommended conversion of the AT-1 Bonds into equity shares. The Master Circular has statutory force which grants the option to either convert or to write down the said bonds. The Clause 64 of the Information Memorandum provides –

“ In the event of any inconsistency in terms of the Bonds as laid down in any of the transaction document(s) and terms of the BASEL III guidelines, the provisions of the RBI Circular on BASEL III guidelines shall prevail.”

29 The learned advocate for the petitioners submits that the principles of natural justice were not followed when the impugned decision was passed. Under section 45(6) of the Act of 1949 which lays down the procedure by which the RBI may prepare a scheme of reconstruction which invites suggestions and objections *inter alia* from the creditors of the banking company in response to the

proposed scheme. If the Administrator was entitled to write down the AT-1 Bonds, then it was incumbent upon the administrator to comply with 45(6) of the Act of 1949 and give an opportunity to make representations. The petitioners relied on the case of ***State Bank of Patiala & Ors v. S.K. Sharma***⁶ which held that the principles of natural justice are implicit in administrative actions and that a failure to comply with a substantive provision to provide an opportunity/hearing results in the actions taken by the authority becoming void.

30 The petitioners further submit that the decision was disproportionate, unreasonable, arbitrary and without assigning any reasons. The petitioner relied on the judgment of ***Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others***⁷ to explain that the term reasonable connotes the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the public interest. The petitioners also relied on the judgment of ***Anuradha Bhasin v. Union of India and Ors. along with connected matters***⁸ where the Hon'ble Supreme Court held that the doctrine of proportionality necessitates an enquiry into the possible goal sought to be achieved by the imposition of restrictions by the State and

6 (1996) 3 SCC 364

7 (2016) 7 SCC 353

8 (2020) 3 SCC 637

whether such restriction is legitimate and in public interest. There was a stress on the need to balance competing interests and to investigate into viable alternatives which are equally efficacious and less restrictive. The decision to write down the AT-1 bonds was disproportionate as various recommendations and objections were received by RBI providing material justifying conversion of the AT-1 Bonds as opposed to writing down the same. This was also relied upon by the RBI in their note to the Central Government u/s 45(7) of the Act of 1949, where RBI had proposed to balance the interests of all stakeholders and in fact proposed conversion of the said AT-1 Bonds and a decision was taken to write-down the same. The decision of the Administrator fails to demonstrate why the option to convert the AT-1 bonds into common shares of Respondent no.4 was not taken, which would have entitled the petitioner to continue his stake/principal investment and life savings without having to forego the same in its entirety. The decision is also contended to be arbitrary as the First tranche of the AT-1 bonds issued by Respondent no.4 on December 31, 2013 aggregating of Rs. 280 Crores was not made subject to any writing down whereas the second and third tranche of the AT-1 bonds were. No reason provided by Respondent no.3 regarding this discrimination.

31 The learned advocates for the petitioners submit that the action of the Administrator in writing down the AT-1 bonds deprived the petitioner of its constitutional right to property within the meaning of Article 300 A and for bringing out such writing down, authority of law is required. The petitioners relied on the judgment of *K.T Plantation Pvt. Ltd. and Another v. State of Karnataka*⁹ where the expression 'property' employed in Article 300A is not confined to land alone, and includes intangibles like copyrights and other intellectual property rights and embraces every possible interest recognized by law. The AT-1 bonds constitute property of the Petitioner, which cannot be deprived save by accordance with law. It cannot be said that section 45 of the Act of 1949 or Clause 2.15 of the Master Circular or Regulation 51 of the SEBI Regulations, 2015 furnish any specific authority of law in favour of the Administrator entitling him to make a decision to write-down the AT-1 Bonds.

32 The learned advocates for the petitioners contend that the sale of AT-1 Bonds to the petitioner was itself illegal. They rely on clause 8 of the Information Memorandum stipulating the ineligibility clause which stipulates that resident individual investors, HUFs and foreign nationals are such classes of investors that are ineligible to participate in the purchase of these AT-1 Bonds. Despite these the

9 (2011) 9 SCC 1

Yes Bank had sold these to the petitioners, most of whom were pre-existing Fixed Deposit holders in the bank. Clause 1.22 of Annexure 4 of the Master Circular provides that the banks shall not use its Fixed Deposit rate as a benchmark to advertise or sell such instruments. But, Respondent no.4 circulated emails to the relationship managers, directing them to spread the reach of the bonds to the ineligible retail investors, including HUFs etc.

33 The petitioners further stipulate that pursuant to the complaints preferred by certain customers of the banks, SEBI conducted an enquiry and vide its order dated April 12, 2021 held that the Yes Bank indulges in illegal and fraudulent selling of AT-1 bonds to its otherwise ineligible individual customers. Apparently, SEBI has passed another order dated September 7, 2022 holding that the sale of AT-1 Bonds to the individuals were in fact illegal. This order has not been appealed by the Yes Bank. The petitioners in their additional affidavit submit that the Investment in the AT-1 bonds by vulnerable and ineligible investors was at the insistence and misrepresentation by the officials of Respondent no.4 which is negated by fraud and misrepresentation. That the Yes Bank and its shareholders continue to make profits at the cost of them.

34 The party in person submits that the Yes Bank equated these bonds with FD and lured the customers by mis-selling. The risks were not explained to the retail investors. For a secondary market transaction between the seller and the buyer, the bank is actively involved in these trades by coordinating the purchase/sale.

35 The learned advocates for the petitioners contend that they do not argue regarding the essentiality of the action of write down for the reconstitution of the Bank, only highlighting the disproportionality of the action taken by the Administrator. The recommendations and suggestions sent to RBI providing material justifying conversion of the AT-1 Bonds as opposed to writing down the same. That the RBI in its note to the Central Government had proposed to balance the interests of all stakeholders by proposing conversion of the said AT-1 Bonds on the basis of conversion ratio of 19,551 equity shares of Rs. 2/- each of the reconstructed bank to be issued for each AT-1 Bond which has a face value of Rs. 10,00,000. There was significant capital infusion by a state instrumentality i.e SBI after the financial crisis. There was an increase in the share price of the Yes Bank. The promoter shareholding in Respondent no.4 remained unaffected by the scheme.

36 Per contra, the learned counsel for the respondents contend that the Yes Bank is a private sector and is not established under

any statute, nor is it engaged in or performing any public duty and/or statutory function. Therefore, it does not constitute a State under Article 12. The actions taken by the Yes Bank are in larger public interest which is a matter of commercial expertise and policy. The AT-1 bonds were issued in pursuance to the contract executed between the Yes Bank and the Axis Bank Ltd. These are governed by the terms and conditions of the Information Memorandum (December 22, 2016) and (October 17, 2017). So also the Debenture Trust Deed (March 15, 2017) and (December 28, 2017). It is further contended by them that though the Master Circular issued by the Reserve Bank of India has statutory force, the petitioner has not challenged the Information Memorandums or the Debenture Trust Deeds or the Master Circular which regulates the write off of the AT-1 bonds. Any challenge to the write off without any challenge to these is not legally tenable. It is further contended by the learned counsel for the Respondents that the position is not altered by the appointment of the Administrator under section 36 ACA who merely substituted the Board of Directors until a new board is reconstituted. The administrator is not the representative of the Reserve Bank of India and neither were the directions to write down the bonds were given to the Administrator by the Reserve Bank of India. Section 36 ACA(2) expressly states that the

administrator is not an officer of the Government. The administrator exercises and discharges all powers, functions and duties that are discharged by the Board of Directors, or by a resolution passed in a general meeting of the banking company, until the reconstitution of the Board of Directors of the bank. The action of the administrator as a representative of the Yes bank, therefore, in accordance with the terms of Information memorandums and Debenture Trust Deeds and purely contractual. They rely upon the judgment of the Apex Court in the case of *Federal Bank Ltd v. Sagar Thomas and others*¹⁰. It is further contended that National Securities Depository Limited (NSDL) is a depository as defined in Depository Act, 1996 and is regulated by the SEBI as per section 11 of the Securities and Exchange Board of India Act, 1993. It is not a government company or a public sector undertaking. It does not qualify as a State or as an instrumentality of State under Article 12 of the Constitution. It merely provides the infrastructure that facilitates holding and securities in dematerialised form in the Indian Capital market. It can extinguish a bond only after receipt of necessary application and documents from the issuer company in accordance with its Byelaws, Business rules and circulars.

10 (2003) 10 SCC 733

37 The learned advocate for the respondents submit that the action for reconstitution was recommended by the Reserve Bank of India and was sanctioned by the Central Government under section 45 of the Banking Regulation Act, pursuant to which the AT-1 bonds have been written off by the Administrator. Hence, the decision of the Administrator is in pursuance of the Master Circular.

38 The learned advocate for the respondent, the Reserve Bank of India contends that the notified Final scheme provides for continuation of the same rights and liabilities of the bondholders. Hence, the bonds continue to remain subject to the Master Circular and continue to be open for write-off. The write-off was lawful but also necessary for ensuring protection of more than two lakh depositors/individual account holders. The omission of the provision to fully write off of the AT-1 bonds in the final scheme does not imply that such provision has not been accepted in the final scheme. The power to write off is contractually governed between the debenture holders and Respondent no.4. Additionally the same is also provided for in the Master Circular which continues to apply. As the PONV trigger was triggered as per Clause 2.15, the Central Government did not consider it necessary to include regulations which exist already.

39 The learned advocate for the respondent, the Administrator and the Yes Bank contend that as the final scheme stipulated that all contracts shall be effective to the extent and in the same manner as they were before the Scheme commenced and all deposits and liabilities of the reconstituted bank shall continue in the same manner and with the same terms and conditions, completely unaffected by the scheme. Pursuant to this, under the clauses 55 and 57 in the Information Memorandums enabled Respondent no.4 to write down the AT-1 bonds in the event the Bank was reconstituted by the authorities u/s 45. Therefore, Respondent no.4 was fully entitled under these contractual provisions to write down the AT-1 Bonds. Further, the decision to write down was a commercial decision taken in exercise of and pursuant to contractual agreements and rights and powers contained therein.

40 The learned advocate for the respondent, Reserve Bank of India submit that though under section 36 ACA, the RBI may issue such directions to the Administrator as it may deem appropriate, but RBI has not issued any directions to the administrator to write down the AT-1 bonds. The impugned decision taken by the Administrator is in a fair, unbiased and reasonable manner.

41 The learned advocates for the respondents further submit that *per se* there is no challenge to the decision of the writing down off by

the Administrator as the petitioners are challenging the letter dated March 14, 2020, which is merely a communication to the stock exchanges of a corporate action that had already taken place viz. writing down of the AT-1 bonds. The AT-1 bonds were written down and stood extinguished with immediate effect upon the Order dated March 14, 2020 being made by the erstwhile Respondent no.3. The intimation to the stock exchanges is merely a procedural formality. The AT-1 bonds were written down and stood extinguished prior to the implementation of the Notified Scheme of reconstruction and have already been effected in the Bank's books of accounts.

42 The learned advocates for the respondent, the Reserve Bank of India contend that the Information Memorandums of AT-1 Bonds issued by the Yes Bank state that these bonds have been issued in terms of the Master Circular and are subject to loss absorbency features required of AT-1 instruments at pre-specified trigger level and at the PONV. By virtue of the said provisions without the need of the consent of the bondholders or Trustee, the bonds may be written-off or converted into common shares upon the occurrence of the following trigger events. The writing down of the AT-1 Bonds is done in pursuance of Clause 2.15 of the Master Circular r/w Clause 57 of the Information Memorandum, and the question of the AT-1 Bonds being written down under Clauses 55 and 56 of the Information

Memorandum, as being triggered by (i) loss absorbcency; or (ii) point of non-viability does not arise.

43 They further submit that the Reserve Bank of India in its exercise of financial expertise decided to reconstitute the Yes Bank. If clause 2.15 is not allowed in full and free play and is bogged down with the procedure contemplated in other situations, the entire purpose of having this clause would be defeated and public interest would suffer since the entire procedure would take time and in the meantime moratorium and restriction imposed for and in respect of the bank concerned would continue and so would cause prejudice to the public depositors. The purpose of the deeming fiction would be defeated, if the procedure as contemplated under clause 3 is to be repeated for determining non-viability of the bank. Once clause 2.15 is triggered, the bank is deemed non-viable.

44 The learned advocates for the respondent, the Reserve Bank of India submit that in case of the Yes Bank, PONV did not trigger as per Clause 3.1 of the Master Circular. However, upon the decision to reconstitute Respondent no.4 u/s 45 of the Act of 1949, Respondent no.4 was deemed to be non-viable or approaching non-viability. Accordingly, this triggered the conditions of Clause 2.15 of Annexure 16 under which AT-1 Bonds have been written down. Reading of the Clause 2.15 makes it evident that both the triggers

were triggered. Since section 45 of the Act of 1949 has been invoked by Respondent no.2 and Respondent no.1, the bank is deemed to be non-viable or approaching non-viability and accordingly triggers for write-down of AT-1 instruments have been activated. Therefore, the AT-1 instruments are required to be and have been written down fully. According to the final scheme, the bonds are to remain subject to all extant laws, rights and obligations, the terms of the Information Memorandums, Debenture Trust Deeds, and Master Circular. Hence, de hors the scheme, the AT-1 bonds are required to be written off by the respondents. This position has been contractually accepted by the petitioners. The decision for reconstitution u/s 45 of the Act of 1949 has not been challenged, the bank is deemed to be non-viable or approaching non-viability. The pre-specified trigger and the trigger at the point of non-viability are activated, and the bank is entitled wither fully convert/write down permanently.

45 They further submit that the decision to reconstitute a bank is deemed to be a PONV trigger. No separate action is required on behalf of RBI to write off the AT-1 bonds after the decision to reconstitute Respondent no.4 u/s.45 of the Act of 1949 was taken. The decision to reconstitute is the trigger and consequently the AT-1 bonds have been written off by Yes Bank. It is denied that the

decision to write-off AT-1 bonds can only be taken when the equity capital is virtually written off and has lost all value. Clause 12 of the notified scheme makes RBI's views on interpretation on the provisions of the scheme final and binding.

46 It is contended by the learned Senior Advocate for the RBI that as the RBI is the author of the Circular, they are relying on the principle of 'executive construction', the interpretation put by the RBI should prevail over the suggested by the petitioners. But the learned advocate for the petitioner submit that any interpretation by the RBI which is contrary to the statutory provisions of Section 45 of the Act of 1949 ought not to be accepted.

47 The learned advocates for the respondents submit that the decision of the Central Government to reconstitute the bank in accordance with the notified scheme activated both the pre-specified trigger and the PONV trigger. The bank accordingly took a decision to write down the AT-1 bonds in accordance with the contractual clauses i.e provisions of the Information Memorandum so as to ensure that the Bank continued as a viable/stable going concern. The bank took advice from external legal counsels to write down the AT-1 bonds of Rs. 8415 crores as the contractual terms of the relevant Information Memorandum governing the said issue

permitted the Bank to do so on activation of the pre-specified trigger and PONV.

48 They further submit that the Clause 57 of the Information Memorandum (October 17, 2017) enables the AT-1 bonds to be written down “before reconstruction in accordance with these rules” which means before the reconstitution is effected/implemented. This is also clear from the terms of the Reconstitution scheme which required the State Bank/other investor banks to be allotted equity shares within 2 working days following the commencement of the scheme and continued the Moratorium till the third working day from the commencement of the scheme. Thus, it can be inferred that according to the interpretation of the petitioner, the trigger for the writing off is the reconstitution of the bank by the authorities can never precede the notification of the reconstitution scheme. Clause 56 of the Information Memorandum provides that in the case of PONV trigger, the write off or conversion upon the trigger event must occur prior to any public sector injection of capital so that the capital provided by the Public sector is not diluted. This posits that the write-off is required to occur after the trigger event (i.e the reconstitution of the bank) and before the public injection of capital which was to take place within two days of the Notified Scheme.

49 They contend that the decision to write off or issuance of any new shares as a result of conversion consequent upon the trigger event must occur prior to any public sector injection of capital so that the capital provided by the public sector is not diluted. The notified scheme required equity shares to be allotted to the investors of the reconstructed Bank within 2 working days, and the Basel III regulations and the Information Memorandums required writing down of AT-1 bonds to take place prior to any capital infusion/reconstitution. Therefore, before the equity shares were allotted and the reconstitution was implemented, the write down of the AT-1 bonds was carried out and given effect to. The write down was effected in the Bank's books of accounts and the stock exchanges were duly informed. Thereafter, the shares were allotted to the investor bank and other banks participating in the reconstruction pursuant to the Notified Scheme.

50 While the learned advocate for the respondents submits that sufficient time was provided to various stakeholders to submit their suggestions/comments on the draft scheme. Any proposal sent by the petitioner was not accepted by the Respondent no.2 for conversion of the AT-1 bonds into equity on behalf of RBI. The communications annexed to the petition are unilateral correspondences. The final decision vests with the Central

Government regarding the Reconstitution scheme, Respondent no.2 has never accepted any of the proposals/suggestions made. Further, the exercise of contractual rights under the Information Memorandums does not require any opportunity of hearing or attracts the principles of natural justice. The decision for write down was not disproportionate as it was in accordance with the Information Memorandums and not an act done under public law/administrative law. Therefore, there was no question of furnishing reasons. Further, in the 2017 Information memorandum, there was no option to convert the bonds into equity.

51 The learned advocates for the respondents further contend that the allegations regarding mis-selling of AT-1 bonds are incorrect and disputed questions of fact and cannot be determined by the High Court whilst exercising extraordinary jurisdiction under Article 226 of the Constitution of India and under the Information memorandums, these AT-1 bonds are perpetual and there is provision for redemption by the bondholders. As far as the Order of SEBI is concerned, the same has been stayed by the Securities Appellate Tribunal Mumbai vide Order dated May 21, 2021. They also *prima facie* observed “that the risk factor was already existing on the website and it was in the knowledge of everyone”. In Writ Petition No.100 of 2021 the petitioner alleged that he was misled

into buying the AT-1 bonds in the secondary market. These are disputed questions of fact. Even otherwise they are incorrect as the petitioner was fully aware of the cognizant of the nature of the AT-1 bonds as:

a. Petitioner was one of the directors of the Respondent bank.

b. In 2013, when the bonds were issued by the bank the petitioner was a member of the Capital Raising Committee of the Bank which approved such an issue.

52 The learned advocate for the administrator and the Yes bank submit that the decision to write down the bonds was necessary to ensure that the Bank continues as a going concern. Based on the independent auditor's review, the auditors have expressly endorsed the Bank's view that based on the Notified Scheme, the contractual terms and legal assessment, the AT-1 bonds can be utilized to enhance the common equity of the Bank and the capital infusion and consideration of the AT-1 bonds is expected to improve the CET1 ratio of the bank and enable it to meet the minimum requirements of the RBI. Further, the Master Circular provides that the action of writing off the AT-1 bonds is done for equity infusion. The provisions of infusion of equity as set out in the draft scheme as well as the final scheme were with the objective of protection of interests of more than two lakh depositors of Respondent no.4. The advantage of SBI holding a large stake is that being the largest and credible public

sector bank, it will instill confidence among all stakeholders, particularly depositors and potential investors, leading to stability for Respondent no.4 but also in the banking and financial system.

53 The learned advocates for the respondent, the Reserve Bank of India submit that the AT-1 bonds are unsecured, perpetual bonds that are issued by banks to shore up their core capital base to meet the Basel III norms. They carry higher interest rates as compared to Tier II bonds and are also higher as compared to regular interest rates paid by the banks for parking funds. They carry a different risk level as such bonds carry rate of around 9 - 9.5% on the principal amount, whereas the rate of interest in case of deposits with the Banks are somewhere around 6 - 7.5%. They carry higher degree of risk as these instruments are required to absorb losses as per the specified trigger and at point of non-viability. They are generally issued on private placement basis, without having any maturity period. The banks even have the option to skip payment of coupon payment. Various bond holders subscribed to higher returns of investment which carried the inherent risk of write off. Through Information Memorandums, RBI Circulars, the petitioners and the bondholders were made cognizant of this position. Investors in such financial instruments are by nature savvy, with risk appetite and cognizant of the high reward - high risk principle.

54 They further submit that the potential investors are always advised by the issuer to carefully consider all the risk factors mentioned in the Information Memorandum before making any investment decision relating to the debentures. They are advised to make their own independent investigations of the financial conditions and affairs of the bank and their own appraisal of the creditworthiness of the bank. The bondholders having enjoyed higher coupon/interest year after year, cannot turn around and in disregard of the contractual provisions.

55 Under the provisions of the Information memorandums, following the write-off of the bonds and claims and demands, neither the bank nor any other person on the banks behalf shall be required to compensate or provide any relief, whether absolutely or contingently, to the bondholder or any other person claiming for or on behalf of or through such holder and all claims and demands of such persons, whether under law, contract or equity, shall stand permanently and irrevocably extinguished and terminated.

56 They further submit that there is no particular hierarchy to be followed. The write off of any common equity or any other regulatory capital, whether senior or *pari passu* or subordinate, and whether a Tier 1 capital or otherwise shall not be required before the write-off

of any of the bonds. There is no right available to the bondholders or any other person claiming for or on behalf of or through such holder to demand or seek that any other regulatory capital be subject to prior or simultaneous write-off or that the treatment offered to holders of such other regulatory capital be also offered to the bondholders.

57 We have considered the erudite submissions of the learned Senior Advocates and the advocates for the Petitioners and Respondents.

58 It appears that the Basel Committee on Banking Supervision (BCBS) formulated Basel III reforms to improve the banking sector's ability to absorb shocks arising from the financial and economic stress to reduce the risk of spill over from the financial sector to the real economy. Basel III reforms strengthen the bank level i.e micro prudential regulation, with the intention to raise the resilience of individual banking institutions in periods of stress. These new global regulatory and supervisory standards mainly seek to raise the quality and level of capital to ensure banks are better able to absorb losses on both a going concern and a gone concern basis, increase the risk coverage of the capital framework, introduce leverage ratio to serve as a backstop to the risk-based capital measure, raise the standards for the supervisory review process and public disclosures.

59 In pursuance to this, the Reserve Bank of India issued a “Master Circular” to lay down the guidelines on the Basel III reforms on May 2, 2012. The Basel III capital regulations were to be implemented from April 1, 2013 in India in phases until March 31, 2019. Under these guidelines the banks are required to maintain a minimum Pillar 1 Capital to Risk Weighted Assets ratio (CRAR) of 9% on an ongoing basis. The Reserve bank will take into account the relevant risk factors and the internal capacity adequacy assessments of each bank to ensure that the capital held by a bank is to commensurate with the bank’s overall risk profile. For this purpose the total regulatory capital held by the banks was to constitute of:

- (i) Tier 1 Capital (going-concern capital) (a) Common Equity Tier 1 (b) Additional Tier 1
- (ii) Tier 2 Capital (gone-concern capital)

60 The RBI allows banks to meet their capital adequacy requirements by issuing perpetual debts instruments in form of debenture bonds as part of Additional Tier 1 capital, provided they meet certain conditions under Annexure 4.

61 Clause 4.2.4.1 of the Master Circular provides that for any debt capital instrument to be eligible for inclusion in Additional Tier

1 capital, they have to comply with the regulatory requirements as specified in the Annexure 4 of the Master Circular. Annexure 16 of the Master Circular provides for the minimum requirements to ensure Loss Absorbency of Additional Tier 1 instruments at Pre-specified Trigger and of all Non-equity Regulatory Capital Instruments at the Point of Non-Viability.

62 Therein under Basel III non-common equity element to be included in Tier 1 capital they should absorb losses while the bank remains a going concern. One of the important criteria for Additional Tier 1 instruments is that these instruments should have principal loss absorption through either (i) conversion into common shares or (ii) a write-down mechanism, which allocates losses to the instrument at an objective pre-specified trigger point. In this case, we are concerned only with the Perpetual Debt instruments, which are referred to as the AT-1 Capital Bonds.

63 Yes Bank Ltd., is a banking company registered under the Companies Act, 1956 and carrying on the business of banking in India. In or around 2016, for the purpose of augmenting its Additional Tier 1 Capital, Yes Bank decided to issue certain Basel III Compliant Additional Tier 1 Capital Bonds in the form of non-convertible debentures on a private placement basis vide Debenture

Trustee Agreement dated December 22, 2016, Axis Bank, the petitioner was appointed as the Debenture trustee to act on behalf of the debenture holders.

64 On December 22, 2016, Yes Bank floated an Information memorandum for the private placement of Basel III Compliant Additional Tier 1 Capital Bonds in the form of non-convertible debentures for an aggregate value of Rs. 2100 crore with a greenshoe option of an additional Rs. 1500 Crore in case of over subscription of the said debentures.

65 Following the floating of this Information memorandum, Yes Bank executed a Debenture Trust Deed with the petitioner, pursuant to which the Yes Bank issued 30,000 listed, perpetual, and unsecured, debentures bearing coupon rate of 9.5% in favour of the debenture holders/beneficial owners. The said debentures were rated as Care AA/Stable (Double A Stable) by CARE and IND AA/Stable (India Ratings Double A Stable) by India Ratings Research Pvt. Ltd, indicating a high degree of safety.

66 In or around 2017, for the purpose of augmenting its Additional Tier 1 Capital, Yes Bank again decided to issue certain additional Basel III compliant AT-1 Capital Bonds in the form of non-

convertible debentures on a private placement basis vide Debenture Trustee Agreement dated October 16, 2017, the petitioner was appointed as the Debenture Trustee by the Yes Bank for these debentures as well. On October 17, 2017, the Yes Bank floated an Information memorandum for the private placement of Basel III Compliant AT-1 Capital Bonds in the form of non-convertible debentures in the form of debentures for an aggregate value of Rs. 3000 Crore with a greenshoe option of an additional Rs. 3000 Crore in case of over subscription of the said debentures.

67 Following the floating of this Information memorandum, the Yes Bank executed a Debenture Trust Deed with the petitioner, pursuant to which the Respondent no.4 issued 54,150 perpetual and unsecured debentures bearing coupon rate of 9% in favour of the debenture holders. The said debentures were rated as IND AA/ Outlook: Stable by India Ratings Research Pvt. Ltd, and ICRA AA (hyb) (positive) by ICRA Ltd, indicating a high degree of safety.

68 Due to a catena of reasons, the financial position of the Yes bank was increasingly precarious. Yes Bank witnessed a steady deterioration in its capital adequacy and asset quality.

69 Due to the financially tenuous position of the Yes Bank, the Reserve Bank of India was in constant engagement with the Yes

bank's management to find ways to strengthen the balance sheet and liquidity of the Yes Bank. The Yes Bank's management's negotiations with private investors for further capital infusions were not yielding any positive result – as indicated to the officials of the Reserve Bank of India. All the while the Reserve Bank of India preferred a market led revival of the Yes Bank over regulatory restructuring for which many opportunities were granted to the Yes Bank's management to draw up a credible revival plan. But no such credible revival plan came to fruition.

70 The Reserve Bank of India came to the conclusion that in absence of a credible revival plan, and in public interest and the interests of the bank's depositors to invoke its powers under section 45 of the Banking Regulation Act, 1940 and applied to the Central Government for imposition of moratorium on the Yes Bank. Accordingly, on March 5, 2020, the Central Government vide notification bearing no. S.O. No. 993 (E) imposed a moratorium on the Yes Bank from 20.00 hrs on March 5, 2020. Along with this the Reserve Bank has also issued further directions to the Yes Bank under Section 35 A of the Act of 1949, wherein the Yes Bank shall not *inter alia* grant or renew any further loans, make any investment, dispose of any properties or assets, enter into any compromises etc., except as provided under the said directive.

71 The RBI appointed Administrator exercising its powers under section 36ACA of the Act of 1949. The RBI under sub section 3 of section 36ACA may issue such directions to the Administrator as it may deem appropriate and the Administrator is bound to follow such directions. All the powers of the Board of Directors until the Board of Directors of the banking company is reconstituted, can be exercised by the Administrator.

72 On March 6, 2020 the Reserve Bank of India vide its press release placed in public domain a draft scheme for reconstruction of the Yes Bank Ltd. Paragraph 6 of the scheme laid down the provisions of the writing off of the Additional Tier 1 bonds. The draft scheme invited suggestions and comments up to March 9, 2020. In light of the extremely short time frame given by the Reserve Bank to file suggestions and objections to the Draft Scheme, the petitioner as instructed by the bond holders filed a writ petition seeking further time to make representations.

73 Between March 9, 2020 and March 11, 2020 various discussions were held between the petitioners, the debenture holders, the representatives of Reserve bank of India and the Yes Bank representatives of some of the proposed investors i.e the State Bank of India. On March 11, 2020 the petitioner on behalf of the

majority bond holders sent a letter to the Reserve Bank suggesting allotment of 170 crore shares in lieu of Additional Tier 1 Bonds outstanding and also agreed for a lock-in restriction up to 36 months. If these terms were acceptable then the bond holders were willing to not pursue any further legal recourse and withdraw the current writ petition pending before this Court.

74 The Union of India in exercise of the powers conferred by 45(4) and 45(7) of the Act of 1949, notified the Final Yes Bank Reconstruction Scheme, 2020 on March 13, 2020.

75 The Administrator of the Yes bank by the impugned letter bearing no. YBL/CS/2019-20/186(2) addressed to the BSE Limited and National Stock Exchange of India Limited informing that the:

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

4. In light of the above provisions of the Basel III Circular, the Perpetual Subordinated Basel III Complaint

Additional Tier 1 Bonds issued by the Bank for an amount of Rs. 3000 crores on December 23, 2016 and the Perpetual Subordinated basel III Compliant Additional tier 1 Bonds issued by the Bank for an amount of Rs. 5,415 crores on October 18, 2017 have been fully written down and stand extinguished with immediate effect.”

The effect of writing down of the Additional Tier 1 bonds according to the Master Circular:

“2.1...The write-down will have the following effects:

*(a) reduce the claim of the instrument in liquidation;
(b) reduce the amount re- paid when a call is exercised; and
(c) partially or fully reduce coupon/dividend payments on the instrument.”*

76 It is this action of the administrator of the Yes Bank in writing down the AT-1 bonds assailed in the present petition.

77 The matter being fiscal in nature, this Court would not dwell into the aspect as to whether the writing off the AT-1 bonds was necessary. We would not enter into a debate as to whether the AT-1 bonds could have been converted into the shares and or whether they could have been proportionately written down. The Court would not possess the necessary expertise of the same. This Court would only consider whether the decision making process has been

adhered to and that it was within the competence of the Administrator to write down the AT-1 bonds in the facts and circumstances of the present case.

78 AT-1 bonds are Unsecured, Perpetual, Subordinated, Basel III compliant. The bonds are neither secured nor covered by the guarantee of the Bank nor its related entity or other arrangements that legally or economically enhances the seniority of the claim *vis-a-vis* creditors of the bank. The bond holders are not allowed to participate in the management of the issuer. Clause 4 of the Information Memorandum prescribes that the claims of the bond holders in the bonds shall be superior to the claims of the investors in equity shares and perpetual non-cumulative prescribes shares issued by the bank and subordinate to the claims of depositors, general creditors and subordinate debt of the bank other than any subordinated debt qualifying as Additional Tier 1 Capital as defined in Basel III guidelines.

79 The claims of the bond holders is subject to the provisions of “Coupon Discretion”, “Loss Absorbency” and other events mentioned in the disclosure document. The coupon rate was 9.5% p.a. subject to Coupon Discretion and / or Loss Absorbency.

80 Under clause 55, the said bonds are subject to certain loss

absorbency features without the consent of the bond holders. The bonds may be written off or converted into shares in capital or in part upon the occurrence of the trigger events (1) pre-specifying trigger level (2) point of non-viability. Pre-specifying trigger level is also detailed in clause 55.

81 The thrust of the contention of the Petitioners it appears is that Information Memorandum pursuant to which the debentures (AT-1 Bonds) are issued, have a statutory flavour and that upon reconstruction of the bank pursuant to the final reconstruction scheme, the administrator of the Yes Bank had no power to write off these AT-1 bonds. Whereas the Respondents contend that issuance of AT-1 bonds to the Petitioners by the bank is a contractual transaction and that as per Clause 57 of the contract, the administrator was well within his right to write off the bonds and as it is purely a contractual matter and the Yes Bank being a private bank, the Writ Petition would not be maintainable under Article 226 of the Constitution of India.

82 The clause of the Information Brochure invoked for writing down the AT-1 bonds viz. Clause 57 reads thus:

57. Other Events :

Treatment of Debentures in the event of Winding-up:

(a) If the Bank goes into liquidation before the Bonds have been written-down, the Bonds will absorb losses in accordance with the order of Seniority as specified in this Information Memorandum and as per usual legal provisions governing distribution in a winding up.

(b) If the Bank goes into liquidation after the Bonds have been written-down, the Bondholders will have no claim on the proceeds of liquidation.

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

Subject to the provisions Banking Regulation Act 1949 as amended from time to time:

(a) If the Bank is amalgamated with any other bank before the Bonds have been written-down, the Bonds will become part of the corresponding categories of regulatory capital of the new bank emerging after the merger.

(b) If the Bank is amalgamated with any other bank after the Bonds have been written-down temporarily, the amalgamated entity can write-up the Bonds as per its discretion.

(c) If the Bank is amalgamated with any other bank after the Bonds have been written-down permanently, these Bonds cannot be written up by the amalgamated entity.

Scheme of reconstitution or amalgamation of a banking company :

Subject to the provisions of Banking Regulation Act 1949 as amended from time to time:

If the relevant authorities decide to reconstitute the Bank or amalgamate the Bank with any other bank under the Section 45 of BR Act 1949, the Bank will be deemed as non-viable or approaching non-viability and both the pre-specified trigger and the trigger at the point of non-viability for conversion/write-down of AT instruments will be

activated.

Accordingly, the Bonds will be fully converted/ written-down permanently before amalgamation / reconstitution in accordance with these rules.

83 The Master Circular dated 02.05.2012 issued by the Reserve Bank of India is based on the guidelines on the Basel III reforms. The Master Circular is issued by the RBI by exercising the statutory powers. The said Master Circular would have a statutory recognition. The Master Circular provides for procedure to be adopted in writing down the AT-1 bonds and / or the manner in which the same are to be dealt with. Clause 57 reproduced (Supra) under which the powers are exercised for writing down the AT-1 bonds is based upon the Master Circular. Clause 57 of Information Brochure and Clause 2.15 of the Master Circular appear to be *ad verbatim*.

84 The Reserve Bank of India invoked its powers under section 45 of the Act of 1949 of taking steps for reconstruction of Yes Bank. Reserve Bank of India under sub section 1 of section 45 of the Act of 1949 made an order of moratorium of Yes Bank commencing from March 5, 2020 along with directions under section 35A of the Act, 1949. The Reserve Bank of India also appointed Administrator over the Yes Bank during this period of moratorium on or about March 6,

2020. RBI placed in public domain a scheme of reconstruction of Yes Bank Limited. Paragraph 6 of the Scheme laid down the provisions of the writing down of AT-1 bonds. Suggestions were invited to the draft scheme upto March 9, 2020. The objections were raised by the debenture / AT-1 bond holders. Subsequently, the final reconstruction was notified on March 13, 2020. Sub section 8 of section 45 of the Act of 1949 prescribes that on and from the date of coming into operation of the scheme, the scheme shall be binding on the banking Company, or, as the case may be, on the transferee bank and another banking company concerned and all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and any other person having any right or liability in relation to any of those companies or transferee bank. Sub section 9 of section 45 of the Act of 1949 further prescribes that on and from the very date of coming into operation, or as the case may be, the date specified in this behalf, 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 liabilities of the transferee bank.

85 The date when the scheme came into operation would be

relevant.

86 It also is required to be noted that in the draft scheme, provision was made for writing off all the AT-1 bonds. In the final scheme, the said clause was deleted. Final scheme dated March 13, 2020 did not contain the provisions for writing off the AT-1 bonds. The question would be whether the Administrator would be competent to write off the AT-1 bonds on March 14, 2020 i.e. the day after the final Yes Bank Reconstruction Scheme 2020 was notified on March 13, 2020.

87 Clause 57 of the Information Memorandum, according to Respondents is a clause authorizing to write down the AT-1 bonds and contractually agreed by the parties could have been invoked on March 14, 2020. Under clause 55 also, the bonds could be written off subject to the provisions of Act of 1949. If the relevant authorities decide to reconstitute the bank or amalgamate the bank with any other bank under the Section 45 of the Act of 1949, the bank will be deemed as non-viable or approaching non-viability and both the pre-specified trigger and the trigger at the point of non-viability for conversion/write-down off AT-1 instruments will be activated and accordingly, the bonds will be fully converted, written-down permanently before amalgamation / reconstitution in

accordance with these rules as contemplated under clause 57 of the Information Memorandum.

88 The draft scheme specifically provided that the appointed date shall be the date mentioned in paragraph 2 of clause 1 of the final reconstruction scheme. Paragraph 2 of clause 1 of the final reconstruction scheme prescribes March 13, 2020 as the date the scheme would come into force.

89 Sub section 5 of section 45 of the Act of 1949 prescribes the matters to be stipulated in the final scheme. The Final Reconstruction Scheme did not engulf within its fold writing down / off the AT-1 bonds.

90 The scheme came into force on March 13, 2020. Yes Bank stood reconstructed on March 13, 2020. Clause 57 of the Information Brochure also suggest that the written-down of AT-1 bonds could only be done before the bank is reconstructed.

91 Under the final scheme, the moratorium period was only extended to three working days from the date of notification of the scheme and the appointment of administrator was continued till 7 working days. Only because the moratorium period was extended and or the administrator was continued for further period of 7 days,

that in itself would not be sufficient to conclude that the reconstruction scheme has not come into effect on March 13, 2020.

92 The draft scheme under paragraph 1 (2) states that it shall come into force on such date as the Central Government may, by notification in the official gazette specify. Clause 2(1) (b) of the draft scheme provided that 'Appointed date' means the date which the Central Government specifies under sub paragraph (2) of paragraph 1 of the scheme. Final scheme provides that the scheme shall come into force on March 13, 2020 and that would be the appointed date. Sub section 8 of section 45 of Act of 1949 specifically provides that on and from the date of coming into operation of the scheme, the scheme shall be binding on the banking company and all the members, depositors and creditors and employees of each of those companies and the transferee bank and that on and from the date of coming into operation, 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 of the scheme, stand transferred to, and become the liabilities of, the transferee bank.

93 As observed above, the draft scheme contained the clause that

AT-1 bonds would be written off. Objections were invited from the stake holders purportedly in tune with sub-section 6(a) of Section 49 of the Act of 1949. Section 45(6)(a) provides that a copy of the scheme prepared by the Reserve Bank shall be sent in draft to the Banking Company and also to the transferee bank and other Banking Company concerned in the (Reconstruction or Amalgamation), for suggestion and objection, if any. Pursuant thereto, it appears the Petitioner raised objection to the writing down of AT-1 bonds and even suggested for converting into shares.

94 It appears that upon consideration of the objections the Reserve Bank made modification in the draft scheme, as permissible under section 45(6)(b) of the Act of 1949. It deleted the clause of writing down of AT-1 bonds. After said modification the scheme was placed by RBI before the Central Government as required and mandated under sub section 7 of Section 45 of the Act of 1949. The Central Government thereafter sanctioned the scheme sans clause of writing down AT-1 bonds. The final scheme sanctioned by the Central Government did not contain the clause or provision for writing down AT-1 bonds. Section 45(7) further provides that the scheme sanctioned by the Central Government shall come into force on such date as the Central Government may specify. Proviso to sub section 7 of section 45 of Act of 1949 empowers the Central

Government to specify different dates for different provisions of the scheme.

95 In the final scheme, March 13, 2020 is the date prescribed of coming into force the scheme, the same would mean that the Bank stood reconstituted on March 13, 2020.

96 Only because the shares were to be allotted to SBI within two working days of the final scheme being notified, would not extend the date from which the scheme came into force nor it would extend the appointed date or the date the Bank is reconstituted. Yes Bank stands reconstituted on March 13, 2020. Under the Scheme, Moratorium period was extended by three days and the Administrator to vacate the office after seven calendar days from the date of cessation of moratorium.

97 One more aspect that requires consideration is that the Yes Bank stood reconstituted on March 13, 2020 upon the Notification of the final Yes Bank Ltd. Reconstruction Scheme, 2020. After the bank was reconstituted, the Administrator could not have taken such a policy decision of writing off the debentures. The Board of Directors were notified in the final scheme. However, actual time period was given for the Board of Directors to take over from the Administrator and for that purpose, tenure of the Administrator was

also extended to seven days from the date of reconstitution of the bank. During this period, the Administrator could not have taken such a policy decision of writing down the AT-1 bonds. Nor the RBI had authorized him to do so. The Final Reconstruction Scheme also did not authorize Administrator to write off the AT-1 bonds. It appears that Administrator exceeded his powers and authority in writing off AT-1 bonds after the bank was reconstructed on March 13, 2020.

98 Reading clause 57 of the Information Memorandum along with the Final Reconstruction Scheme, it would be manifest that the administrator could not have exercised his powers after reconstitution of the bank.

99 Much emphasis has been laid by the Respondents on the maintainability of Writ Petition under Article 226 of the Constitution against the Yes Bank, being a private bank and further the Writ cannot be entertained as a contractual right has been exercised.

100 The clauses in the Information Memorandum which according to the Respondents is a contract between two private parties, is based on the Master Circular. The Master Circular is issued by the Reserve Bank under its statutory powers. The covenant and the terms in the Information Brochure i.e. between the parties is based

on statutory Master Circular. Information Memorandum and its clauses refer to Master Circular. The said Information Brochure has a statutory flavour. It is based on the statutory Master Circular. In that event, the agreement would have a statutory base and such an agreement can certainly be enforceable. Reliance can be had to the judgment of the Apex Court in the case of *India Thermal Power Ltd.* (Supra). In the said case, the Apex Court observed that if entering into a contract containing the prescribed terms and conditions is a must under the statute then the contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it, which are statutory then the said contract to that extent is statutory. Clause 57 of the Information Memorandum binding the parties and relevant for our consideration is extracted from the Master Circular based on Basel III Norms. Clause 57 also suggests that the writing off or conversion to shares would be in accordance with these rules. In view of that, Writ Petition would be tenable before this court.

101 In light of the above discussion, the impugned letter dated March 14, 2020 and decision to write off Additional Tier 1 (AT-1) bonds deserve to be set aside and is hereby quashed and set aside. Necessary consequences shall follow.

102 The present judgment and order would not be an impediment for the Respondents to take further course of action as may be permissible under law.

103 The Rule is made absolute in the aforesaid terms.

104 The Writ Petitions are disposed of. No costs.

105 Interim Applications also stand disposed of.

(S.M.MODAK, J.)

(ACTING CHIEF JUSTICE)

106 At this stage, the learned counsel for the Respondents seeks stay of this order for a period of eight weeks. The learned counsel for the Petitioner opposed the said request.

107 Considering the nature of the matter, this order is stayed for a period of six weeks. Needless to state that on lapse of six weeks, the protection granted shall come to an end.

(S.M.MODAK, J.)

(ACTING CHIEF JUSTICE)