

HIGH COURT OF GUJARAT (D.B.)

DINESH RAMANLAL TRIVEDI

Versus

KALUPUR COMMERCIAL CO-OPERATIVE BANK

Date of Decision: 22 December 2023

Citation: 2023 LawSuit(Guj) 2438

Hon'ble Judges: [Sunita Agarwal](#), [Aniruddha P Mayee](#)

Case Type: Special Civil Application; Letters Patent Appeal; Civil Application (For Vacating Interim Relief); Civil Application (For Direction); Civil Application (For Bringing Heirs)

Case No: 7393 of 2021, 5745 of 2020, 5693 of 2020, 8052 of 2021, 1422 of 2019, 13793 of 2015, 7434 of 2021, 7394 of 2021, 7399 of 2021, 7404 of 2021, 9682 of 2021, 7397 of 2021, 3686 of 2014, 3686 of 2014, 3687 of 2014, 3687 of 2014, 4018 of 2014, 4018 of 2014, 12371 of 2020, 12756 of 2020, 12423 of 2015, 12702 of 2015, 12703 of 2015, 12704 of 2015, 12705 of 2015, 12706 of 2015, 12707 of 2015, 12708 of 2015, 13354 of 2018, 13354 of 2018, 4646 of 2017, 4647 of 2017, 4648 of 2017, 4649 of 2017, 4650 of 2017, 4653 of 2017, 4654 of 2017, 4655 of 2017, 15126 of 2020, 14654 of 2020, 14718 of 2020, 17612 of 2017, 17612 of 2017, 18917 of 2021, 25204 of 2022, 26230 of 2022, 12544 of 2021, 10312 of 2021, 12963 of 2021, 12739 of 2021, 12536 of 2021, 12716 of 2021, 16832 of 2021, 15783 of 2021, 15791 of 2021; 1483 of 2023; 1 of 2018; 1 of 2020; 1 of 2023

Subject: Arbitration, Banking, Civil, Labour and Industrial

Acts Referred:

[Industrial Disputes Act, 1947 Sec 2\(k\)](#)

[Arbitration And Conciliation Act, 1996 Sec 11\(6\), Sec 34, Sec 2\(4\), Sec 37](#)

[Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 Sec 2\(d\)\(VI\)](#)

[Banking Regulation Act, 1949 Sec 5\(CA\), Sec 44A, Sec 56\(CCI\), Sec 35A, Sec 56, Sec 56\(cciia\), Sec 56\(cciib\)](#)

[Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 Sec 13\(2\), Sec 13\(4\), Sec 2\(1\)\(c\)\(iva\)](#)

[Gujarat Co-Operative Societies Act, 1961 Sec 2\(19\), Sec 96, Sec 2\(7\), Sec 115A, Sec 9, Sec 17\(2\), Sec 86, Sec 2\(17\), Sec 17\(1\)\(aa\), Sec 17\(3\), Sec 17\(4\), Sec 115A\(3\), Sec 115A\(2A\)](#)

[Multi State Co-Operative Societies Act, 2002 Sec 6, Sec 17\(10\), Sec 85\(1\)\(a\), Sec 3\(e\), Sec 10\(2\), Sec 3\(t\), Sec 84, Sec 10, Sec 17, Sec 7, Sec 5, Sec 8, Sec 4](#)

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Cases Referred in (+): 24

Sunita Agarwal, C.J.

[1] The above referred bunch of writ petitions have been filed by different set of the persons, amongst them there are defaulters of the loan advanced to them by the erstwhile cooperative banks against whom the proceedings for recovery had been initiated. The challenge in the writ petitions essentially is to the amalgamation/merger of Local Cooperative Bank with Multi-state Cooperative Bank; the maintainability of Lavad suit by the Multi-state Cooperative Bank and the validity of Section 84 of the Multi-state Cooperative Societies Act, 2002 ('MSCS Act, 2002' in short) which provides for reference of any dispute touching the constitution, management or business of Multi-state Cooperative Society, as per the provision therein. Another set of petitioners are the bank employees and the erstwhile directors against whom action had been initiated and FIR had been lodged on the allegations of financial misappropriation, irregularities etc. while functioning in their official capacity. They have joined to agitate the issues of merger of the Local Cooperative Bank with the Multi-state Cooperative Society and the validity of Section 84 of the Act, 2002. The question of their locus to maintain the writ petitions would be dealt with at the appropriate stage of this judgment.

(I) SPECIAL CIVIL APPLICATION NOS.7393, 7394, 7397, 7399, 7404, 7434, 8052 & 9682 OF 2021 :

[2] The petitioners in these set of writ petitions are the erstwhile Deputy General Managers of the respondent No.6 bank, namely Udhana Citizens Cooperative Bank Limited ('Udhana Cooperative Bank' in short), the partnership firm in the name of which the loan was advanced. The wife of the Deputy General Manager has joined as partner of the Loanee firm. The petitioner who was Deputy General Manager claims to have joined in the writ petition in individual capacity as per the cause-title of the arbitration case as also an owner of Mahadev Associates, a Partnership Firm (reference paragraph 2.1 of the writ petition). All the petitioners in eight petitions are same set of persons, put up in different order in the array of parties. The allegations against the petitioner namely are of financial misappropriation, irregularities etc. while functioning

as Deputy General Manager with the Udhana Cooperative Bank. As per the statement made in the writ petition, the Udhana Cooperative Bank got merged with the Kalupur Cooperative Bank, a Multi-state cooperative society by the merger order dated 03.12.2013. Arbitration Suit No.34 of 2016 under Section 84 of the MSCS Act, 2002 had been filed against the petitioner and other defendants. The allegations against the petitioner along with other officials of the erstwhile Udhana Cooperative Bank are that they in connivance with the borrowers of the bank and each other, played fraud upon the bank (Udhana Cooperative Bank) by granting unsecured loans beyond their authority to certain accounts. It is stated in the writ petition that the petitioner herein, namely Mr.Dinesh Ramanlal Trivedi had resigned from his position as Deputy General Manager of Udhana Cooperative Bank on 31.08.2009 and the resignation came to be approved in the Board meeting held on 07.09.2009. In the year 2009-10, housing loan came to be advanced by the erstwhile Udhana Cooperative Bank to the partnership firm to the tune of Rs.7.03 Lakhs. In the year 2012, FIR bearing C.R.No.1-17 of 2012 came to be filed against the petitioner, namely Mr.Dinesh Ramanlal Trivedi on the allegations of fraud and misappropriation with the erstwhile Udhana Cooperative Bank. Another FIR bearing C.R.No.58 of 2012 was filed with respect to the loan accounts wherein the petitioner got anticipatory bail order. The charge-sheet has been filed against the petitioner and the trial is pending. The assertion in paragraph 2.23 of the Special Civil Application No.7393 of 2021 is that the petitioner had played no role in the bank failing and it was the act of higher officials and hence he was enlarged on bail on the deposit of Rs.25,00,000/-.

[3] Lavad Case No.34 of 2016 has been filed by the respondent Multi-state Cooperative Bank against the said petitioner and other defendants for recovery of Rs.3,37,13,093.05ps. The challenge in the writ petition is to the arbitration proceedings on the ground that the petitioner being an officer as per Section 3(t) of MSCS Act, 2002, cannot be held liable for fraud more so when he had resigned on 31.08.2009. The Lavad suit filed by the respondent Multi-state Cooperative Bank in December, 2016, is not maintainable. The independence and impartiality of the arbitrator are questionable. Despite resignation, the petitioner remains a member of erstwhile local cooperative bank, namely Udhana Bank having a membership bearing No.2257. The allegations of connivance of the petitioner with the borrowers and other office-bearers are unsustainable. The prayers sought in Special Civil Application No.7393 of 2021 are as under :-

"A. Be pleased to declare Reserve Bank Of India's Guidelines For Merger / Amalgamation Of Urban Co-Operative Banks (Ucbs) Dated 2.2.2005 as ultra vires the Constitution of India, 1950 and/or Reserve Bank of India Act, 1934 and/or

Company Act, 1956 and/or Gujarat State Co-operative Bank Act, 1961 and/or Multi State Co-operative Societies Act, 2002.

B. Be pleased to quash and set aside order dated 3.12.13 passed by the Registrar of Co-operative Societies allowing the merger of Udhna Citizen Co-operative Bank to Kalupur Commercial Co-operative Bank:

C. Be pleased to declare S. 17(1)(aa) of the Gujarat Co-operative Societies Act, 1961 as ultra vires to the Constitution of India.

D. Be pleased to declare Notification dated 24th February 2003 issued by the Respondent No. 10 Ministry of Agricultural, New Delhi as ultra vires to the Constitution of India 1950 and/or Multi State Co-operative Societies Act, 2002 (Act No. 39 of 2002).

E. Be pleased to quash and set aside No objection certificate issued by Central Registrar dated 11.09.2013;

F. Be pleased to quash and set aside No Objection certificate issued by Reserve Bank of India and its extension dated 20.12.2012 and 13.06.2013;

G. Be pleased to declare Section 4, 84 and 85(1)(a) of the Multi State Cooperative Societies Act, 2002 as ultra vires the Constitution of India 1950;

H. Be pleased to declare Section 2(4) of the Arbitration and Conciliation Act, 1996 as ultra vires the Constitution of India 1950;

I. Be pleased to quash and set aside the Arbitration Case no. 34 of 2016 filed before the Respondent Arbitrator;

J. Be pleased to quash and set aside the order dated 22.01.2021 passed in Arbitration Case no. 34 of 2016 by the Respondent Arbitrator;

K. Be pleased to quash and set aside the appointment of Ld. Arbitrator (or his successor in office) by the Respondents.

L. Pending Admission, Hearing and Final disposal of this Petition be pleased to call upon Respondent Kalupur Commercial Co-operative bank and Respondent State Registrar (Co-operative societies) to place on record copies of the procedure of appointment of Ld. Arbitrator;

M. Pending Admission, Hearing and Final disposal of this Petition, stay the further proceedings of Arbitration Case no. 34 of 2016;

N. Pending Admission, Hearing and Final disposal of this Petition, stay the implementation of order dated 22.01.2021 passed in Arbitration Case no. 34 of 2016 by the Respondent Arbitrator;

O. Costs of this Petition be awarded."

[4] In the above background of the case noted from the contents of the writ petition, we are of the prima-facie view that an employee of the erstwhile cooperative society registered under the Gujarat Cooperative Societies Act, 1961 ('the GSCS Act, 1961' in short) cannot be permitted to raise the challenge to the merger of the local cooperative bank with the Multi-state Cooperative Bank, that too when as per his own case, he had resigned from the services of the Udhana Bank in the year 2009. The First Information Report lodged in the year 2012 are with respect to the act of fraud and misappropriation committed by him while being employed with the erstwhile Udhana Bank. In the instant case, the merger of erstwhile Udhana Bank with the multi-state cooperative society, namely Kalupur Cooperative Bank had taken place in the year 2012 by the merger order dated 03.12.2013. We may record our strong reservation about the locus of the petitioners to maintain the present writ petition.

(II) SPECIAL CIVIL APPLICATION NOS.12702, 12703, 12704, 12705, 12706, 12707 & 12708 OF 2015 :

[5] In the set of the above noted writ petitions, the petitioners are third parties, who are neither borrowers nor guarantors and not even members of the respondent bank, namely Gujarat Industrial Cooperative Bank. They are the persons who had purchased the mortgaged properties of the respondent borrowers. They are seeking to challenge their joining in the pending arbitration proceedings between the respondent bank and its borrowers and guarantors on the ground that there is no provision for joining the third parties. The prayers made by the petitioners in Special Civil Application No.12702 of 2015 are as under :-

"(a) Be pleased to declare Notification dated 24 th February 2003 issued by the Respondent No.10 Ministry of Agricultural, New Delhi as ultra vires to the Constitution of India 1950 and/or Multi State Co-operative Societies Act, 2002 (Act No.39 of 2002).

(b) Be pleased to declare Section 4 of the Multi State Co-operative Societies Act, 2002 as ultra vires the Constitution of India 1950.

(c) Be pleased to declare Section 84 of the Multi State Co-operative Societies Act, 2002 as ultra vires to the Constitution of India, 1950.

(d) Be please to quash and set aside impugned order dated 14.03.2015 passed by the Respondent Arbitrator in Arbitration Case No. 4 of 2010.

(e) Be pleased to quash and set aside arbitration proceedings pending before the Respondent Arbitrator, i.e. Arbitration Case no.4 of 2010 qua the Petitioners.

(f) Pending Admission, Hearing and Final disposal of this Petition, stay the implementation, operation of the order dated 14.03.2015 passed by the Respondent No. 1 in Arbitration Case No. 4 of 2010.

(g) Pending Admission, Hearing and Final disposal of this Petition, stay the further proceedings of the Arbitration Case No.4 of 2010 pending on before the Respondent Arbitrator.

(h) Costs of this Petition be awarded."

(III) SPECIAL CIVIL APPLICATION NO.17612 OF 2017 :

[6] The petitioners herein (three in number) state that they are neither the borrowers nor guarantors of respondent bank, namely the Gujarat Industrial Cooperative Bank Limited which was initially registered under the Gujarat Cooperative Societies Act, 1961 and subsequently in the year 2003, it got registered under the Multi-state Cooperative Societies Act, 2002. The respondent bank, thus, is a Multi-state Cooperative Society which went into liquidation. The proceedings under Section 84 of the Multi-state Cooperative Societies Act, 2002 had been initiated. The allegations against the petitioners are that the petitioner No.1 Company had availed financial assistance from the respondent bank in the year 2000 for an amount of Rs.10,00,000/- and petitioner Nos.2 and 3 along with other directors of the petitioner No.1 Company are the guarantors of the said loan. The reliefs sought in the writ petition are as under:-

"(a) Be pleased to declare Notification dated 24 th February 2003 issued by the Respondent No.10 Ministry of Agricultural, New Delhi as ultra vires to the Constitution of India 1950 and/or Multi State Co-operative Societies Act, 2002 (Act No.39 of 2002).

(b) Be pleased to declare Section 4 of the Multi State Co-operative Societies Act, 2002 as ultra vires the Constitution of India 1950.

(c) Be pleased to declare Section 84 of the Multi State Cooperative Societies Act, 2002 as ultra vires to the Constitution of India, 1950.

(d) Be pleased to quash and set aside order dated 20.02.2017 passed by the Respondent Arbitrator in Arbitration Case No.3 of 2015.

(e) Be pleased to quash and set aside arbitration proceedings pending before the Respondent Arbitrator, i.e. Arbitration Case No.3 of 2015 qua the Petitioners."

[7] The challenge to the Notification dated 24.02.2003 of the Ministry of Agriculture, Department of Agriculture and Cooperation, Government of India to the appointment of the State Registrar of Cooperative Societies as Arbitrator under Section 84 of the Multi-state Cooperative Societies Act, 2002, in respect of the societies located in their respective jurisdiction. It is stated in the writ petition that the proceedings under Section 84 of the MSCS Act, 2002 had been initiated against the petitioners with the delay of fourteen years registered as Arbitration Case No.3 of 2015. Notice dated 22.12.2015 was received by the petitioners, they appeared in the said proceedings and filed their response. By the order dated 20.02.2017 passed by the Arbitrator, the petitioners were restrained from selling, transferring or creating third party interest over the mortgaged property. The challenge to the vires of Section 84 of MSCS Act, 2002 is raised by filing the writ petition in the year 2017, being aggrieved by the interim order dated 20.02.2017 passed by the Arbitrator as aforesaid.

(IV) SPECIAL CIVIL APPLICATION NOS.4646, 4647, 4648, 4649 & 4650 OF 2017 AND 4653, 4654 & 4655 OF 2017 :

[8] The petitioners in this bunch of writ petition are erstwhile Directors of Udhana Cooperative Bank who have been impleaded in the arbitration proceedings on the allegations of opening bogus/fictitious accounts and committing serious fraud for the period from 2002-2004 and are seeking to challenge the arbitration proceedings on the ground of being time-barred and that the arbitration petition is filed by the Chief Legal Officer of Kalupur Commercial Cooperative Bank Limited (a Multistate Co-operative Bank), with which the Udhana Cooperative Bank (a local cooperative bank) has been merged, on the ground that Kalupur Bank is not privy to matters of Udhana Bank. The reliefs sought in Special Civil Application No.4646 of 2017 essentially are noted as under :-

"A. Be pleased to declare Reserve Bank Of India's Guidelines For Merger / Amalgamation Of Urban CO Operative Banks (Ucbs) Dated 2.2.2005 as ultra vires the Constitution of India, 1950 and/or Reserve Bank of India Act, 1934 and/or Company Act, 1956 and/or Gujarat State Co-operative Bank Act, 1961 and/or Multi State Co-operative Societies Act, 2002.

B. Be pleased to quash and set aside order dated 3.12.13 passed by the Registrar of Co-operative Societies allowing the merger of Udhna Citizen Cooperative Bank to

Kalupur Commercial Co-operative Bank.

C. Be pleased to declare S. 17(1)(aa) of the Gujarat Co-operative Societies Act, 1961 as ultra vires to the Constitution of India.

D. Be pleased to declare Notification dated 24th February 2003 issued by the Respondent No. 10 Ministry of Agricultural, New Delhi as ultra vires to the Constitution of India 1950 and/or Multi State Co-operative Societies Act, 2002 (Act No. 39 of 2002).

E. Be pleased to declare Section 4 and 84 of the Multi State Co-operative Societies Act, 2002 as ultra vires the Constitution of India 1950.

F. Be pleased to quash and set aside the Arbitration Case no. 32 of 2016 filed before the Respondent Arbitrator.

(FA). Be pleased to quash and set aside the appointment of the Respondent no. 2 (Arbitrator) dated 12.6.14 along with the extension dated 18.6.15 and 1.6.16

G. Pending Admission, Hearing and Final disposal of this Petition, stay the further proceedings of Arbitration Case no. 32 of 2016.

H. Costs of this Petition be awarded.

I. Such further and other relief, order or direction which may be just, fit, proper and equitable in the facts and circumstances of the Petition."

(V) SPECIAL CIVIL APPLICATION NO.14718 & 14654 OF 2020 :

[9] The petitioners are borrowers and guarantors of Udhana Cooperative Bank which has been merged into Kalupur Cooperative Bank. They are essentially challenging the proceedings initiated under Section 84 of the MSCS Act, 2002 by unilaterally appointing an arbitrator. The reliefs sought in Special Civil Application No.14718 of 2020 are as under :-

"A. Be pleased to declare Reserve Bank Of India's Guidelines For Merger/ Amalgamation Of Urban Co-Operative Banks (Ucbs) Dated 2.2.2005 as ultra vires the Constitution of India, 1950 and/or Reserve Bank of India Act, 1934 and/or Company Act, 1956 and/or Gujarat State Co-operative Bank Act, 1961 and/or Multi State Co-operative Societies Act, 2002.

B. Be pleased to quash and set aside order dated 3.12.13 passed by the Registrar of Co-operative Societies allowing the merger of Udhna Citizen Co-operative Bank to Kalupur Commercial Co-operative Bank.

C. Be pleased to declare S. 17(1)(aa) of the Gujarat Co-operative Societies Act, 1961 as ultra vires to the Constitution of India.

D. Be pleased to quash and set aside the no objection dated 11.09.13 granted by the Central Registrar.

E. Be pleased to quash and set aside the no objection dated 20.12.12, 13.06.13 and 5.12.13 granted by the Reserve Bank of India.

F. Be pleased to declare Notification dated 24th February 2003 issued by the Respondent No. 10 Ministry of Agricultural, New Delhi as ultra vires to the Constitution of India 1950 and/or Multi State Co-operative Societies Act, 2002 (Act No. 39 of 2002).

G. Be pleased to declare Section 4, 84 and 85 of the Multi State Co-operative Societies Act, 2002 as ultra vires the Constitution of India 1950.

H. Be pleased to quash and set aside the Arbitration Case no. 07 of 2020 filed before the Respondent Arbitrator.

I. Pending Admission, Hearing and Final disposal of this Petition, stay the further proceedings of Arbitration Case no. 07 of 2020.

J. Costs of this Petition be awarded.

K. Such further and other relief, order or direction which may be just, fit, proper and equitable in the facts and circumstances of the Petition."

(VI) SPECIAL CIVIL APPLICATION NO.18917 OF 2021 :

[10] This petition has been filed by the petitioners against whom final award has been passed by the Arbitrator under Section 84 of the MSCS Act, 2002. After rejection of their application under Section 34 of the Arbitration Act, appeal preferred by them under Section 37 of the Arbitration Act, 1996 is pending before this Court. The reliefs sought in the writ petition are :-

"A. Be pleased to declare Section 4 and 84 of the Multi State Co-operative Societies Act, 2002 as ultra vires the Constitution of India 1950 and consequently be pleased to quash and set aside award dated 20.02.2016 by Ld. Sole Arbitrator, in Lavad Case no. 65 of 2014 and Order dated 19.01.2018 by the Ld. 6 th Additional District Judge, Surat in Civil Misc. Application no. 160 of 2016, Execution Application no. 3112 of 2021 initiated before Hon'ble Additional District Judge, Surat and all other

proceedings undertaken under Section 84 of the Multi State Co-operative Societies Act, 2002;

B. Be pleased to quash and set aside order dated 3.12.13 passed by the Registrar of Co-operative Societies allowing the merger of Udhna Citizen Co-operative Bank to Kalupur Commercial Co-operative Bank.

C. Be pleased to declare S. 17(1)(aa) of the Gujarat Cooperative Societies Act, 1961 as ultra vires to the Constitution of India.

D. Be pleased to declare Notification dated 24 th February 2003 issued by the Respondent No.10 Ministry of Agricultural, New Delhi as ultra vires to the Constitution of India 1950 and/or Multi State Cooperative Societies Act, 2002 (Act No.39 of 2002).

E. Pending Admission, Hearing and Final disposal of this Petition, stay the execution proceedings of Arbitration award dated 20.02.2016 initiated vide notice dated 14.10.2021, by the Hon'ble Additional District Judge, Surat in Execution Application no. 3112 of 2021;

F. Costs of this Petition be awarded.

G. Such further and other relief, order or direction which maybe just, fit, proper and equitable in the facts and circumstances of the Petition."

[11] The contention is that the challenge in the writ petition is limited to the validity of the law. It is the case of the petitioners that the loan was availed by one M/s.Tejas Industries, impleaded as respondent No.5 and there is no connection or nexus between the predecessor-in-interest of the petitioners, namely late Ratnamalaben or petitioners with respondent No.5. The petitioners being legal heirs of late Ratnamalaben had been illegally joined as alleged mortgagor and guarantor of Udhana Cooperative Bank on the allegations of forgery in collusion with the office-bearers of Udhana Cooperative Bank. The contention is that final award was passed by the arbitrator without hearing the petitioners.

(VII) SPECIAL CIVIL APPLICATION NOS.12371, 12756 & 15126 OF 2020 :

[12] This set of writ petitions have been filed challenging the merger of Vepar Vikas Cooperative Bank Limited to Ahmedabad Mercantile Cooperative Bank Limited on 24.02.2011 and also to declare the RBI guidelines for merger/amalgamation of urban cooperative banks dated 02.02.2005 as ultra vires to the Constitution of India and, the Gujarat State Cooperative Societies Act, 1961 and Multi-state Cooperative Societies Act, 2002. The petitioners herein are guarantors and mortgagors of erstwhile Vepar

Vikas Cooperative Bank Limited. The petitioner No.1 in Special Civil Application No.12756 of 2020 was the Director of Vepar Vikas Cooperative Bank Limited from the year 1986 to 2002. The reliefs sought in Special Civil Application No. 12371 of 2020 are as under :-

"(a) Be pleased to declare Reserve Bank of India's Guidelines For Merger/Amalgamation Of Urban Co-Operative Banks (UCBs) Dated 2.2 2005 as ultra vires the Constitution of India, 1950 and/or Reserve Bank of India Act, 1934 and/or Company Act, 1956 and/or Gujarat State Co-operative Bank Act, 1961 and/or Multi State Co-operative Societies Act, 2002.

(b) Be pleased to quash and set aside order passed by the Registrar of Co-operative Societies allowing the merger of Vepar Vikas Co-operative Bank Ltd. to Ahmedabad Mercantile Cooperative Bank Limited dated 24.12.11.

(c) Be pleased to quash and set aside Summary Lavad Case No. 238 of 2001 [(newly renumbered) Summary Lavad Case No.455 of 2018] pending before Ld. Board of Nominees, Vadodara;

(d) Be pleased to quash and set aside order dated 12.09.2012 passed by Ld. Board of Nominees, Vadodara in Summary Lavad Case No. 238 of 2001 [(newly renumbered) Summary Lavad Case No.455 of 2018];

(e) Pending Admission, Hearing and Final disposal of this Petition, stay the further proceedings of Summary Lavad Case No. 238 of 2001 [(newly renumbered) Summary Lavad Case No.455 of 2018] pending before Ld. Board of Nominees, Vadodara,

(f) Pending Admission, hearing and Final disposal of this Petition, be pleased to direct the Respondent to maintain status quo qua the proceedings pending before the Board of Nominees i.e. Summary Lavad Case No. 238 of 2001 Summary Lavad Case No.455 of 2018];

(g) Cost of this Petition.

(h) Any other relief, order or direction which Hon'ble Court may deem just, fit, proper and equitable in the facts of the case."

(VIII) SPECIAL CIVIL APPLICATION NOS.3686, 3687 & 4018 OF 2014 :

[13] These writ petitions have been filed by the same set of persons as petitioners impleaded in the array of parties in different order. The petitioners are borrowers of Udhna Co-operative Bank against whom the proceedings under the SARFAESI Act had

been initiated with the issuance of notice dated 09.12.2019 under Section 13(2) of the said Act. The initial challenge in the writ petition filed in the year 2014-15 was to the proceedings initiated under the SARFAESI Act. The relief was sought to quash the merger of Udhna Cooperative Bank with Kalupur Cooperative Bank dated 15.12.2013 and declare the RBI guidelines dated 02.02.2005 as ultra vires to the Constitution of India and the provisions RBI Act, 1934, etc. By an amendment permitted in the year 2018, various prayers have been added to challenge the merger including the prayer to declare Section 17(1)(aa) of the Gujarat Cooperative Societies Act, 1961 as ultra vires to the Constitution of India and declare the orders passed by the RBI in granting sanction for the merger as illegal and bad in law.

(IX) Civil Application No.1422 of 2019 in R/Letters Patent Appeal No.1483 of 2023 :

[14] The original appellants/ applicants are the original petitioners in Special Civil Application No.13793 of 2015, wherein they had challenged the merger of Udhna Cooperative Bank with Kalupur Cooperative Bank on various grounds. Three applicants in the aforesaid application/petitioners in Special Civil Application No.13793 of 2015 are same as that in Special Civil Application No.5693 of 2020 and Special Civil Application No.5745 of 2020, they are Dinesh Rameshbhai Trivedi, Ramilaben Dineshbhai Trivedi and Raj Silk Mills. The reliefs prayed in the original writ petition No.13793 of 2015 are relevant to be noted hereinunder :

"(A) Your Lordships be pleased to declare the guidelines dated 15.12.2013 issued by the RBI for merger Udhna Citizen Cooperative Bank into Kalupur Commercial Cooperative Bank Ltd. and further be pleased to quash and set aside the said merger;

(B) Your Lordships may be pleased to quash and set aside the impugned notices issued by the Kalupur Coop. Bank under Ss.13(2) and 13(4) of the SARFAESI Act, 2002;

(C) Pending admission hearing and final disposal of the petition, Your Lordships may be pleased to say further proceedings in respect of the impugned notice under S.13(4) of the SARFAESI Act, 2002;

(D) Pending admission hearing and final disposal this petition, Your Lordships be pleased to command the Respondent Bank to decide the application of the petitioners for One Time Settlement in accordance with law;"

[15] Delay of 22 days in filing the R/Letters Patent Appeal No.1483 of 2023 is sought to be condoned in Civil Application No.1422 of 2019. Considering the averments made

in the application, the delay in filing the appeal is hereby condoned. Hence, the delay condonation application is allowed.

(X) Special Civil Application Nos.25204 & 26230 of 2022 :

[16] The said writ petitions are filed by the common petitioner, namely Babulal Khokhra, who was serving with respondent No.4 Bank as Chief Executive Officer, as defined under Section 3(e) of the MSCS Act, 2002, appointed under Section 51 of the said Act. The petitioner was also functioning as General Manager of respondent No.4 bank therein. The relief sought in the writ petitions are to declare Sections 4 and 84 of the MSCS Act, 2002 as ultra vires as also challenging the arbitration proceedings.

[17] We may note, at this juncture, that with regard to the reliefs sought seeking for quashing of the notices/proceedings initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the SARFAESI Act, 2002' in short) in the year 2014 while challenging the validity of Section 2(1)(c)(iva) of the SARFAESI Act, 2002 and Section 2(d)(vi) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 being ultra vires to the Constitution of India, that the said issue has been set at rest during the pendency of the present bunch. It was submitted by the learned counsels for the petitioners that they confine their arguments to the merger of local cooperative bank with Multi-state Cooperative Bank and the validity of Section 84 of the Multi-state Cooperative Societies Act, 2002.

[18] However, dealing with the larger legal issues raised before us during the course of argument, we may record that the above noted bunch of writ petitions have been divided by the counsels for the petitioners mainly in three groups depending upon the legal issues raised by the petitioners therein. They are :-

(i) Group A : Question of merger of local cooperative bank with multi state cooperative bank (S.C.A. Nos.3686, 3687 & 4018 of 2014, S.C.A. No.12423 of 2015, S.C.A. Nos.13354 of 2018, 5693, 5745, 12756, 12371 & 15126 of 2020)

(ii) Group B : Merger of local cooperative bank with Multi-state Cooperative Bank as well as the validity of Section 84 of the Multi-state Cooperative Societies Act, 2002 (S.C.A. Nos.4646, 4647, 4648, 4649, 4650, 4653, 4654 & 4655 of 2017, S.C.A. Nos.14718 & 14654 of 2020, S.C.A. Nos.7393, 8052, 7434, 7394, 7399, 7404, 9682, 7397 & 18917 of 2021)

(iii) Group C : Only challenge to the validity of Section 84 of the Multi-state Cooperative Societies Act, 2002 (S.C.A. Nos.12702, 12703, 12704, 12705, 12706, 12707 & 12708 of 2015, S.C.A. No.17612 of 2017)

SPECIAL CIVIL APPLICATION NO.12544, 10312, 12963, 12739, 12536, 12716, 16832, 15783, 15791 OF 2021 :

[19] This set of writ petitions were listed on 19.10.2023 after the judgment was reserved in the aforesaid bunch. The matters were heard at length and the counsels for the parties appearing in this bunch have submitted that in addition to what has been argued in the bunch of writ petitions heard earlier, they were making their submissions.

[20] We have heard Shri Yatin N. Oza, learned Senior Counsel assisted by Shri Aditya A. Gupta, learned advocate appearing for the petitioners, Shri Anand B. Gogia, learned advocate appearing for the petitioners, Shri J.R.Shah, learned advocate appearing for the respondent Bank, Shri Jaimin Pandya, learned advocate appearing on behalf of Shri Premal S. Rachh, learned advocate for the respondent Arbitrator at length.

[21] At the outset, we may record that the matter was argued by Mr.Yatin N. Oza, learned Senior Advocate assisted by Mr. Aditya A. Gupta, learned advocate. Mr.Anand Gogia, learned advocate for the petitioners had adopted the arguments of Mr.Yatin Oza, learned Senior Advocate. The petitioners in this bunch are borrowers of the Multi-state Cooperative Bank, Rajkot Nagrik Sahakari Bank Limited. The writ petitions have been filed in the year 2021. The Special Civil Application No.10312 of 2021 has been filed initially challenging the Notification dated 24.02.2003 of the Ministry of Agriculture, New Delhi and the order of appointment of Arbitrator dated 31.01.2013 under Section 84 of the MSCS Act, 2002. By way of a draft amendment moved later on, the relief to declare Sections 4 and 84 of the MSCS Act, 2002 as ultra vires to the Constitution of India was sought.

[22] The main arguments of Shri Yatin Oza, learned Senior Advocate appearing for the petitioners was to the concept of independence of Arbitrator under the Arbitration and Conciliation Act, 1996. It was argued that, normally, the person, who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole Arbitrator. This has to be taken as the essence of the amendment brought in by Arbitration and Conciliation (Amendment) Act, 2023 and recognized by the Apex Court in the case of [Perkins Eastman Architects Dpc vs. Hscc \(India\) Ltd.](#), 2020 AIR(SC) 59. It was argued that under Section 4, the Central Registrar is appointed by the Central Government. However, further power given to the Central Registrar, under Sub-section (2) of Section 4, to delegate the power to be exercised by any other officer of the Central Government or the State Government is unfettered. The sub-delegation of power of the Central Registrar under Section 4 is, thus, contrary to the law, which provides that sub-delegation of power can only be for limited purposes. The notification dated 24.02.2003 issued by the Ministry of Agriculture, Department of Agriculture and

Cooperation, in exercise of powers conferred by Sub-section (2) of Section 4 of the MSCS Act, 2002, has been challenged to submit that the delegation of power for appointment of Arbitrators by the State Registrar, Cooperative Societies, by exercising powers under Section 84 of the MSCS Act, 2002, is unfettered and arbitrary. The fact that retired Joint Registrar had been appointed, in the instant cases to exercise power under Section 84 of the Act, 2002 is also one of the reasons to set aside the appointment of Arbitrator being contrary to the Notification dated 24.02.2003. It is stated that the Arbitrator appointed in the above noted cases to exercise the power under Section 84 of the MSCS Act, 2002 is a retired Joint Registrar, who had been superannuated in the year 2011. Moreover, one person cannot be appointed as permanent Arbitrator, inasmuch as the appointment of Arbitrator, as per the Arbitration and Conciliation Act, 1996, can only be in the eventually of the dispute arising between the parties. It was further argued that the independence of the Arbitration Tribunal cannot be compromised. Civil servant, who has been an officer of the State, cannot be treated as an independent person to be given charge to act as an Arbitrator. No guidelines have been provided to the Arbitrator to deal with the dispute. The challenge to the vires under Section 84 of the MSCS Act, 2002 is, thus, raised on various aspects of appointment of Arbitrator under the Arbitration and Conciliation Act, 1996, such as choice of the parties to appoint an Arbitrator, independence of Arbitrator and the procedural aspects for appointment of Arbitrator. Reliance was placed by Mr. Yatin Oza, learned Senior Counsel on the following decisions :-

1. [Madras Bar Association vs. Union of India](#), 2010 11 SCC 1.
2. [Madras Bar Association vs. Union of India](#), 2015 8 SCC 583.
3. [Madras Bar Association vs. Union of India](#), 2014 10 SCC 1.
4. **Shamnad Basheer vs. Union of India W.P.No.1256 of 2011 (SLP against the aforesaid judgment was dismissed in SLP No.18142 of 2015).**
5. **Gujarat Co-operative Bar Association vs. State of Gujarat, Misc. Civil Application (For Review) No.2908 of 2011, Division Bench of this Court.**
6. [SREI Infrastructure Finance Limited vs. Tuff Drilling Private Limited](#), 2018 11 SCC 470.
7. [Gullapali Nageshwar Rao vs. State of Andhra Pradesh](#), 1959 AIR(SC) 1376.
8. [PK Ghosh vs. J.G.Rajput](#), 1995 6 SCC 744.
9. [Perkins Eastman Architects Dpc vs. Hscc \(India\) Ltd.](#), 2020 AIR(SC) 59.

ISSUES FOR CONSIDERATION :

[23] We may set out the issues raised by the learned counsels appearing in different sets of writ petitions at this juncture :-

(1) Whether the merger of the Udhana Citizens Cooperative Bank, a society registered under the Gujarat Cooperative Societies Act, 1961 with the Kalupur Commercial Cooperative Bank, a society registered under the Multi-state Cooperative Societies Act, 2002 can be said to suffer from the vice of statutory provisions pertaining to the field?

(2) Whether the challenge to the provisions of Section 17(1)(aa) of the Gujarat Cooperative Societies Act, 1961, inserted by Gujarat Act No.19 of 2013 with effect from 19.09.2013, as ultra vires to the Constitution of India, raised by the petitioners in Group 'A' of the writ petitions is sustainable, more so when the petitioners who have joined in the group of writ petitions in Part-I and Part-II of Group-A (set out above) are defaulters of the erstwhile Udhana Bank? And/or the said reliefs added in the year 2018 by way of amendment of the writ petitions is only a cloak to get away from the rigours of the recovery proceedings initiated against the petitioners/defaulters/ mortgagors?

(3) Whether the Lavad suit filed under Section 96 of the Gujarat Cooperative Societies Act, 1961 by the erstwhile local cooperative bank can be pursued/continued by permitting the substitution of the Multi-state Cooperative Bank after merger?

(4) Whether the amalgamation of Vepar Vikas Cooperative Bank with the Ahmedabad Mercantile Cooperative Bank on 24.12.2011, as per the Reserve Bank of India's guidelines for merger/ amalgamation of urban cooperative banks dated 02.02.2005 is hit by the vice of the constitutional provisions and the statutory provisions in the Reserve Bank of India Act, 1934; the Gujarat Cooperative Societies Act, 1961 and the Multi-state Cooperative Societies Act, 2002?

(5) Whether Section 84 of the Multi-state Cooperative Societies Act, 2002 is to be declared invalid to the constitutional provisions on the plea of vagueness and uncertainty etc. as urged by the petitioners?

(6) Whether the appointment of arbitrator to adjudicate the dispute under Section 84 of the Multi-state Cooperative Societies Act, 2002 is in any way hit by any vice of illegality such as defect in the procedure, violation of principles of natural justice and fair play, choice of the parties to appoint arbitrator, etc. as also independent of the Arbitrator as urged by the petitioners?

(7) Whether the challenge to the validity of Section 2(4) of the Arbitration and Conciliation Act, 1996 about the applicability of the provisions contained in Part-I of the Arbitration Act, 1996 to every arbitration under any enactment for the time being in force results in forced statutory arbitration, violating the concept of parties' consent, parties' autonomy and is to be held manifestly arbitrary?

(8) Whether the delegation of power exercisable by the Central Registrar as per Section 4 of the Multi-state Cooperative Societies Act, 2002, permits delegation of unbridled, uncanalised power and amounts to excessive delegation?

(9) Whether the third party, purchasers of the mortgaged property with encumbrance on it, joined in the arbitration proceedings under Section 84 of the Multi-state Cooperative Societies Act, 2002 can be permitted to challenge the arbitration proceedings on the ground that there is no privity of contract between the petitioners and the respondent bank?

(A) ISSUE NOS.1, 2 & 3 (Merger of Udhana Bank with Kalupur Bank, validity of Section 17(1)(aa) of the GSCS Act, 1961 and continuance of Lavad Suit) :

[24] These three issues are to be taken together as they are related to each other.

FACTS IN BRIEF :-

[25] To deal with the controversy at hands raised in the writ petitions falling in Part I of Group 'A' challenging the merger of Udhana Cooperative Bank with Kalupur Cooperative Bank (Multi-state Cooperative Bank), we are required to note certain factual events of the case.

[26] In the instant case, while the proceedings of merger were going on, a Public Interest Litigation, namely Writ Petition No.77 of 2012 was filed before this Court challenging the proposed merger of Udhana Cooperative Bank with Kalupur Cooperative Bank, a Multi-state Cooperative Bank. The said writ petition had been dismissed by this Court as not maintainable noticing that no element of public interest was involved therein and further that the petitioner had no locus. In the meantime, Kalupur Cooperative Bank in an extraordinary meeting held on 05.03.2012 had passed resolution for merger. On 13.06.2013, RBI had extended permission of sanction for merger. On 11.07.2013, Union of India gave NOC for the proposed merger. On 19.09.2013, after all sanctions were given, the State of Gujarat had amended the Gujarat Cooperative Societies Act, 1961 paving for merger of a State Cooperative Society to a Multi-state Cooperative Society. On 03.12.2013, the Registrar, Cooperative Societies, Gujarat passed an order granting permission to the merger of Udhana Cooperative Bank with Kalupur Cooperative Bank, a local cooperative bank with the

Multi-state Cooperative Bank. On 12.12.2013, the registration of Udhana Cooperative Bank was cancelled and the merger of Udhana Cooperative Bank to Kalupur Cooperative Bank came into effect on 15.12.2013.

ARGUMENTS OF THE LEARNED COUNSELS FOR THE PARTIES:-

[27] Opening arguments on the question of merger of local cooperative bank with Multi-state Cooperative Bank in the writ petitions falling in Group A has been made by Mr.Masoom K. Shah, learned advocate in Special Civil Application No.3686 of 2014 (Part I : Merger of Udhana Cooperative Bank with Kalupur Cooperative Bank). It is vehemently argued by Mr.Masoom K. Shah, learned counsel that there was no provision in the MSCS Act, 2002 for the merger of a local State Cooperative Bank with the Multi-state Cooperative Bank on the date of merger, i.e. 03.12.2013. Section 17 of the MSCS Act, 2002 deals with the situations of amalgamation or transfer of assets and liabilities, divisions of a Multi-state Cooperative Society into two or more Multi-state Cooperative Societies, or cooperative societies, but there is no provision for merger therein. In absence of any corresponding provision in the Multi-state Cooperative Societies Act, 2002 prior to insertion of Section 17(10) in the said Act by the Amending Act of 2023 for the first time on 03.08.2003, the proceedings for merger of Udhana Bank with Kalupur Bank initiated in the year 2002 was illegal exercise culminated into the merger order dated 03.12.2013. The merger of Udhana Bank with Kalupur Bank is illegal as the proceedings commenced without any statutory sanction.

[28] The entire process of merger uptill grant of No Objection Certificate by the RBI on 20.12.2012 becomes an illegal exercise in absence of a statutory scheme. Subsequent extension of NOC by RBI and the grant of no objection by the Union of India on 11.07.2013 will not regularize the proceedings, inasmuch as, Section 17(1)(aa) came into force only in the month of September, 2013 with the amendment of GSCS Act, 1961. This amendment being prospective in nature, cannot be applied to the proceedings initiated prior to the insertion of Section 17(1) (aa). Reliance is placed on the decision of this Court in [Issan Overseas Ltd. and others vs. Abhyuday Cooperative Bank Ltd. and others](#), 2013 4 GLR 3613, (appended at pages '202 to 214' of the compilation No.2 of the judgments provided by Mr.Masoom K. Shah, learned advocate) to urge that on 26.09.2012, the Division Bench of this Court has held that the merger of a local cooperative bank with a Multi-state Cooperative Bank is impermissible in law.

[29] Reference is made to the observations in paragraph '11' of the said decision to vehemently argue that the Division Bench of this Court in the said case has categorically held that there is no specific provision under the GSCS Act, 1961, which permits or empowers a State Cooperative Bank to merge with the Multi-state Cooperative Bank and further that the MSCS Act, 2002 came later and, as such, there

was no occasion for such provision being incorporated in GSCS Act, 1961. It is urged that it has been held therein that Section 17 of the MSCS Act, 2002 does not empower a Multi-state Cooperative Bank to take over a State Cooperative Bank.

[30] Another decision of the Division Bench of this Court in **Jagdishbhai Ishwarbhai Rochani vs. Cosmos Cooperative Bank Ltd. and others**, being **Letters Patent Appeal No.383 of 2010** dated 26.09.2012 has been relied upon to assert that the issue as to the validity of the merger of a State Cooperative Bank with the Multi-state Cooperative Bank has been adjudicated in the said case and it has been held therein that even from the reading of the Circular dated 02.02.2005, it can be discerned that there are no specific provisions in the State Act or the Central Act for the merger of the cooperative society under the State Act with that under the Central Act.

[31] The judgment of the Apex Court in [Naresh Shankar Srivastava vs. State of Uttar Pradesh and others](#), 2009 16 SCC 157 has been pressed into service to assert that it has been held by the Apex Court therein that Multi-state Cooperative Society cannot act under the local State laws. As such, there was no power with the Kalupur Cooperative Bank to apply to the Registrar under the GSCS Act, 1961 seeking to pass the order of merger.

[32] The Constitutional Bench of the Apex Court in [Achyutyanand Singh vs. State of Bihar](#), 1972 3 SCC 172 has been placed to argue that the controversy relating to amalgamation of a Local Cooperative Society into a Multi-state Cooperative Society has been dealt with by the Apex Court therein. The order passed by the Assistant Registrar, Cooperative Societies directing for compulsory amalgamation of local society with three other societies mentioned therein so as to form a new Multi-purpose Cooperative Society has been held to be bad therein.

[33] Placing the above noted judgments, and other decisions in the compilation No.2, on the question of merger, it was vehemently argued by the learned counsel for the petitioners that the entire process of merger was conducted prior to the insertion of Section 17(1)(aa) in the GSCS Act, 1961 in the month of September, 2013. The resolution passed by the Board of Kalupur Cooperative Bank (a Multi-state Cooperative Bank) is dated 31.01.2012. The Board of Udhana Bank passed resolution on 25.02.2012. Public notice was issued by Kalupur Bank on 24.02.2012 and the application was moved by Kalupur Bank on 09.03.2012 to the State Registrar for merger. Advertisement was issued by Udhana Bank on 28.03.2012. In the meantime, the Division Bench of this Court in **Issan Overseas Ltd. (supra)** had expressed opinion in its judgment and order dated 26.09.2012 that there is no provision either in the GSCS Act, 1961 or MSCS Act, 2002 for merger. The Reserve Bank of India granted NOC on 20.12.2012 without taking note of the statutory regime at the relevant point of

time. The contention, thus, is that the subsequent extension of No Objection Certificate by the RBI on 13.06.2013 and the NOC of Union of India dated 11.07.2013 would not improve the case of the respondents. All the events having taken place prior to September, 2013, before insertion of Section 17(1)(aa) in GSCS Act, 1961, the amendments can be applied only prospective in nature and the procedure being illegal without jurisdiction, merger order cannot be sustained.

[34] It was further argued that in a Public Interest Litigation (PIL) in the case of **Consumer Protection and Analytic Committee vs. State of Gujarat and others**, being **Writ Petition (PIL) No.77 of 2012**, this Court even while dismissing the same on the ground of locus has observed that the Reserve Bank of India and other authorities are required to consider the viability, legality and validity of the order of the proposal of a local cooperative bank registered under the GSCS Act, 1961 with that of Multi-state bank, registered under the MSCS Act, 2002. It was argued that the said observations of the Division Bench are binding on the respondents herein. It is further submitted that even in the RBI guidelines for amalgamation and the NOC given by the Union of India, it was noted that there was no provision for the merger of a local cooperative bank into a Multi-state Cooperative Bank.

[35] In rebuttal, Mr. Amar N. Bhatt, learned advocate appearing for Reserve Bank of India (RBI) would submit that the No Objection Certificate granted by RBI in terms of its guideline dated 02.02.2005 is a matter of policy decision which may not be interfered with by this Court. Under Section 5(c)(a) of the Banking Regulation Act, 1949, banking policy means any policy which is specified from time to time by RBI in the interest of the banking system or in the interest of monetary stability or sound economic growth. Having regard to the interest of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and efficient use of these deposits and resources, the banking policy has been framed by the RBI. The RBI guidelines dated 02.02.2005 provide for financial considerations to be kept in mind by RBI while according approval to the merger of cooperative banks under Section 115(A) of the GSCS Act, 1961. The regulatory role of RBI has been recognized by the Apex Court in a recent decision in [Akshay N. Patel vs. Reserve Bank of India and another](#), 2022 3 SCC 694. In the said case, the RBI guidelines on merchanting trade transactions dated 23.01.2020 had been tested and held valid on the test of proportionality. Reference was made to paragraph Nos. '11 to 19, 21, 25, 27 and 31' of the said decision to assert that four questions framed by the bench about legitimacy, suitability, the necessity of the measure and whether the measure adequately balanced with the right of the individual, have been considered therein. It was held that the impugned policy is a measure enacted in furtherance of a legitimate aim which is of sufficient importance to override a constitutional right of freedom to conduct business.

[36] It was further argued that merger of a weak or loss making bank with a strong bank is considered healthy alternative internationally as it is a non-disruptive exit in the benefit of banks, its depositors, shareholders and other stakeholders. The RBI guidelines is in the interest of depositors and cooperative banking sector and the challenge of the petitioners to the same is not at all tenable. It is further argued that keeping in mind the framework of banking laws as they exist, the provisions of Banking Regulation Act, 1949, are required to be interpreted not in a static manner rather in a dynamic way as ongoing statutes, "always speaking" statutes to encompass and taken new facts and situations if the words are capable of comprehending them. Reference has been made to the Apex Court's decision in *Dharani Sugars and Chemicals Ltd. VS. Union of India*, 2019 5 SCC 482 to assert the said point.

[37] It is further argued that there is no prohibition in MSCS Act, 2002 against such merger. Harmonious reading of the GSCS Act, 1961, MSCS Act, 2002 and the Banking Regulation Act, 1949 makes it clear that merger of a State Cooperative Bank with Multi-state Cooperative Bank was permissible. Moreover, the guidelines dated 02.02.2005 are now being repealed with the issuance of Master directions dated 23.03.2021 by the RBI under Section 44A read with Section 35A of the Banking Regulation Act, 1949 as amended in September, 2020.

[38] It is further submitted that it is a settled law that "salus populi est suprema lex" which means regard for the public welfare is the highest law. In the facts of the instant case, having regard to the larger interest of the depositors, shareholders and other stakeholders of the erstwhile State Cooperative Bank, namely Udhana Bank, the writ petitions are liable to be dismissed. Reliance is placed on the decision of the Apex Court in [State of Maharashtra and others vs. Prabhu](#), 1994 2 SCC 481, to place the observations therein that one of the principle inherent in the exercise of power of writ court should be for the sake of justice. One of the yardsticks for it is that if the quashing of the order results in greater harm to the society then the Court may restrain from exercising the power.

[39] It is urged that the liquidation of a weak bank has a cascading effect on the cooperative banking sector and in case of winding up of a bank, the depositors would have had to stand in a queue for their money. The State Cooperative Bank was a loss making bank and was financially weak whereas the Multi-state Cooperative Bank is financially a strong bank. With the transfer of assets and liabilities to the Multi-state Cooperative Bank, the depositors of the State Cooperative Bank are fully protected. The RBI, therefore, in the larger public interest granted its No objection to the transfer of assets and liabilities of a State Cooperative Bank with a Multistate Co-operative Bank. The sanction granted by RBI was in furtherance of the objects and purpose of the Banking Regulation Act, 1949.

[40] On behalf of Kalupur Commercial Bank (MSCS bank), it was urged by Shri Kunal Nanavati and Mr.Kaustubh Shrivastav, learned advocates that the petitioners have filed the writ petitions with a view to defeat the legitimate claims of the depositors/shareholders and stakeholders of Udhana Bank by raising frivolous objections with regard to the alleged illegality/ invalidity at a belated stage. The attempt of the petitioners is to defeat the legitimate claims of Udhana Bank which had been merged with Kalupur Bank. The entire act in challenging the merger is malafide designed to defeat the outstanding claims against the petitioners herein. The challenge is running against the interest of the banking sector at large and moreover, accepting the claim of the petitioners would result in loss of public money.

[41] It is further argued on behalf of respondent No.5 namely the State respondents that none of the fundamental or legal rights of the petitioners could be said to have been violated because of any action or inaction on the part of the office of the Registrar, Cooperative Societies. The challenge to the order dated 03.12.2013 passed by the Cooperative Commissioner and Registrar, Cooperative Societies, Gandhinagar cannot be sustained as the said order is in consonance with the amended provisions of GSCS Act, 1961, which permit for merger.

[42] Heard learned counsels for the parties and perused the record.

(i) MERGER OF UDHANA CITIZENS COOPERATIVE BANK LTD. WITH KALUPUR COMMERCIAL COOPERATIVE BANK :

[43] On the question of merger, it would be apt to set out the relevant provisions of GSCS Act, 1961, MSCS Act, 2002 and the RBI Circular dated 02.02.2005, prevailing as on the date of merger of Udhana Bank with Kalupur Cooperative Bank as on 03.12.2013.

[44] The Gujarat Cooperative Societies Act, 1961 (GSCS Act, 1961) defines 'cooperative bank' in Section 2(7) as under :-

"Co-operative bank" means a society registered under this Act and doing the business of banking, as defined in clause (b) of sub-section (1) of section 5 of the Banking Companies Act, 1949.

[45] The 'Registrar' defined in Section 2(17) reads as under :-

"Registrar" means a person appointed to be the Registrar of Cooperative Societies under this Act: and includes to the extent of the powers of the Registrar conferred on any other person under this Act, such person and includes an Additional or Joint Registrar.

[46] 'Society' defined in Section 2(19) means that :- "Society" means a co-operative society registered, or deemed to be registered, under this Act;

[47] Section 9 of the GSCS Act, 1996 provides for registration of a society and issuance of certificate of registration by the Registrar. Section 17 provides for amalgamation, transfer, division or conversion of societies as under :-

"17. (1) Subject to the provisions of the rules and the previous sanction of the Register a society may, by resolution passed by two-thirds majority of the members present and voting at a special general meeting held for the purpose, decide-

- (a) to amalgamate with another society;
- (b) to transfer its assets and liabilities, in whole or in part, to any other society;
- (c) to divide itself into two or more societies;
- (d) to convert itself into another class of society; or
- (e) to change its object.

(2) Where the amalgamation, transfer, division or conversion referred to in subsection (1) involves a transfer of the liabilities of society to any other society, the Registrar shall not sanction the resolution of the society unless he is satisfied that-

(i) the society, after passing such resolution, has given notice thereof in writing to all its members, creditors and other persons whose interests are likely to be affected (hereinafter, in this section referred to as "other interested persons"), giving the option, to be exercised within one month from the date of the receipt of such notice, of becoming members of any of the new societies, or continuing their membership in the amalgamated or converted society, or of withdrawing their investments in its shares, their deposits and loans and demanding payment of their other dues, if any.

(ii) all the members and creditors and other interested persons, have assented to the decision, or are deemed to have assented thereto by having failed to exercise the option within the period specified, have been met in full.

(iii) All claims of members and creditors and other interested persons, who exercise the option within the period specified, have been met in full.

(3) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908, in the event of division or conversion, the registration of the new societies or, as the case may be, of the converted society,

and in the event of amalgamation, on the amalgamation the resolution of the societies concerned with amalgamation, shall in each case be sufficient conveyance to vest the assets and liabilities of the original society or amalgamating societies in the new societies or converted or amalgamated society, as the case may be.

(4) The amalgamation, transfer, division or conversion made under this section shall not affect any right or obligation of the societies so amalgamated, or of the society so divided or converted, or of the transferee, or render defective any legal proceedings which might have been continued or commenced by or against the societies which have been amalgamated, or dividend or converted; and accordingly such legal proceedings may be continued or commenced by or against the amalgamated society, the converted society, the new societies or the transferee, as the case may be."

[48] Section 17A confers power on the Registrar to pass an order to direct amalgamation and reorganization of societies in public interest. Section 115A as contained in Chapter X-A provides for the order for winding up, reconstruction, supersession of committee, etc. of insured cooperative bank and provides that an order for winding up or sanction of scheme of compromise or arrangement or of amalgamation or reconstruction (including division or reorganization) of the bank may be made only with the previous sanction in writing of the Reserve Bank of India (RBI). Sub-section (2-A) of Section 115A provides implementation of regulatory prescription given by the RBI including supersession and winding up of the State Cooperative Bank and Central Cooperative Bank, notwithstanding anything contained in the Act or the rules made therein. Sub-section (3) of Section 115A states that if so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an administrator may be appointed for the time as is specified by the RBI, in supersession of the committee. Sub-section (4) provides that an order for winding up of the bank or amalgamation or reconstruction etc. or the order of suppression of the committee of the bank and appointment of an administrator in place thereof, shall be made with the previous sanction in writing or on the requisition of the RBI, which shall be final.

[49] Section 17(1)(aa) of GSCS Act, 1961 brought into force with effect from 19.09.2013 with the Gujarat Act No.19 of 2013 provides for amalgamation of a cooperative society registered under the GSCS Act, 1961 with another society registered under the MSCS Act, 2002, with the previous sanction of the Registrar, by resolution passed by 2/3rd majority of the members present and voting at a special general meeting held for the purpose.

[50] The Multi-state Cooperative Societies Act, 2002 (MSCS Act, 2002) defines the term "cooperative bank", "cooperative society", "multi-state cooperative society", in Section 3 as under :-

(f) "cooperative bank" means a multi-state cooperative society which undertakes banking business;

(h) "cooperative society" means a society registered or deemed to be registered under any law relating to cooperative societies for the time being in force in any State;

(p) "multi-state cooperative society" means a society registered or deemed to be registered under this Act and includes a national cooperative society and a Federal cooperative;

[51] Section 4 provides for appointment of Central Registrar by the Central Government in the following manner :-

"4. Central Registrar - (1) The Central Government may appoint a person to be the Central Registrar of Cooperative Societies and may appoint such other persons as it may think fit to assist the Central Registrar.

(2) The Central Government may, by notification, direct that any power exercisable by the Central Registrar under this Act (other than the power of registration of a multi state cooperative society) shall, in relation to such society, and such matters as may be specified in the notification, be exercisable also by any other officer of the Central Government or of a State Government as may be authorised by the Central Government subject to such conditions as may be specified therein:

Provided that no officer of a state government shall be empowered to exercise such power in relation to a national cooperative society."

[52] Sections 5, 6, 7 and 8 deal with the registration of a Multi-state Cooperative Society. Section 17 of the MSCS Act, 2002 provides for amalgamation or transfer of assets and liabilities, or division of Multi-state Cooperative Societies. Sub-section (1) of Section 17 provides that a multistate co-operative society may transfer its assets and liabilities in whole or in part to any other Multistate Co-operative Society or cooperative society; divide itself into two or more Multi-state Cooperative Societies; divide itself into two or more cooperative societies, by a resolution passed by a majority of not less than 2/3rd of the members present and voting at a general meeting of the society held for the purpose. Section 18 confers power on the Central Registrar to prepare scheme of amalgamation or reorganization of a cooperative bank in certain cases, with the

previous approval of RBI in writing. Section 22 facilitates conversion of a cooperative society into a Multi-state Cooperative Society by amendment of its bye-laws, to extend its jurisdiction and convert itself into a Multi-state Cooperative Society, which is to be registered by the Central Registrar.

[53] With the registration of a Multi-state Cooperative Society, it becomes a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to acquire, hold and dispose of property, both movable and immovable, enter into contract, institute and defend suits and legal proceedings and shall sue or be sued by or in its name. The principal place and other places of business of multi-state cooperative society etc. is to be provided in the bye-laws which are to be made in accordance with the provisions of Section 10 of the MSCS Act, 2002. Section 17 of the Multi-state Cooperative Societies Act, 2002, has been amended with the Amendment Act 11 of 2023 w.e.f. 03.08.2023 to insert Sub-section (10) in the following manner :-

"(10) Any co-operative society may, by a resolution passed by majority of not less than two-thirds of the members present and voting at a general meeting of such society, decide to merge into an existing multi-State co-operative society:

Provided that such resolution shall be subject to the provisions of the respective State Co-operative Societies Act for the time being in force under which such co-operative society is registered."

[54] The Banking Regulation Act, 1949 is an Act to consolidate and amend the laws relating to banking and shall not apply to :-

"3. Act not to apply to certain co-operative societies. - Notwithstanding anything contained in the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), this Act shall not apply to-

(a) a primary agricultural credit society; or

(b) a co-operative society whose primary object and principal business is providing of long term finance for agricultural development,

if such society does not use as part of its name, or in connection with its business, the words "bank", "banker" or "banking" and does not act as drawee of cheques."

[55] Section 5(ca) of the Banking Regulation Act, 1949 defines the "banking policy" means any policy which is specified from time to time by the Reserve Bank of India in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of

deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources. Under Section 35A, 44A read with Section 56 of the Banking Regulation Act, 1949, the RBI is empowered to issue general or specific directions to the banking companies/company, from time to time, as it deem fit, and the banking companies or the company shall be bound to comply with such directions, scheme for amalgamation of one banking company with another banking company after approval by the requisite majority of shareholders in accordance with the provisions of the Banking Regulation Act, 1949, requires sanction by the RBI. Section 56 states that the provisions of the Banking Regulation Act, 1949 apply to, or in relation to, cooperative societies as they apply to, or in relation to banking companies subject to the modifications provided therein. The terms "cooperative bank", "cooperative society", "multi-state cooperative society" have been defined in Clause (cci), (ccia), (cciiib) of Section 56 of the Act.

[56] On February 2, 2005, the Reserve Bank of India sent a copy of the guidelines for merger/amalgamation of urban cooperative bank, to the executive officers of all primary (urban cooperative banks). It is stated therein that though there is no specific provision in the Banking Regulation Act, 1949 empowering the RBI to formulate a scheme with regard to merger and amalgamation of cooperative bank, but as in the Cooperative Societies Act framed by the respective State Governments, a provision for obtaining prior sanction in writing from the RBI has been made for sanctioning a scheme of amalgamation or reconstruction, to facilitate consolidation and emergence of strong entities and providing an avenue for non-disruptive exit of weak/unviable entities in the cooperative banking sector, the RBI has decided to frame guidelines to encourage merger/amalgamation in the sector. It is clarified in paragraph '3' of the said guidelines that the RBI confines its examination only to financial aspects and to the interest of depositors as well as the stability of the financial system while considering proposals from banks registered under the Multi-state Cooperative Societies Act, 2002 for taking over of a bank registered under the State Act. However, the merits of the said proposal has to be tested on the question of compliance of relevant statutes to the administrators of the acts. The scheme received by the RBI will be examined with reference to the financial aspects and the interests of the depositors as well as stability of the financial system.

[57] Taking note of the statutory scheme, we find that Section 17(1)(aa) which came into force on 19.09.2013 facilitates amalgamation of a cooperative society registered under the GSCS Act, 1961 with another society registered under the Multi-state Cooperative Societies Act, 2002. The consequence of amalgamation as provided in Section 17(2) shows that the amalgamation involves a transfer of liabilities of the

existing society to another society. The rider is that the Registrar shall not sanction the resolution of the society unless he satisfies that :-

(i) the notice in writing after passing such resolution was given to all its members, creditors and other likely to be affected persons giving them the option to be exercised within one month from the date of receipt of such notice, of becoming members of any of the new societies, or continuing their membership in the amalgamated society, or of withdrawing their investments in its shares, their deposits and loans and demanding payment of their other dues, if any.

(ii) all the members and creditors and other interested persons, have assented to the decision, or are deemed to have assented thereto by having failed to exercise the option within the period specified in Clause (i), hereinabove.

(iii) all claims of members and creditors and other interested persons who exercise the option within the period specified, have been met in full.

[58] Sub-Section (3) of Section 17 further states that notwithstanding anything contained in the Transfer of Property Act, 1882 or the Indian Registration Act, 1908, in the event of amalgamation, the resolution of the societies concerned with amalgamation, shall in each case be sufficient conveyance to vest the assets and liabilities of the original society or amalgamating societies in the new society or amalgamated society, as the case may be.

[59] Sub-Section (4) of Section 17 is the saving clause which provides that amalgamation made under Section 17 shall not render defective any legal proceedings which might have been continued or commenced by or against the societies which have been amalgamated, and such legal proceedings shall continue or commence by or against the amalgamated society, or the transferee, as the case may be. It states that the amalgamation, transfer, division or conversion made under Section 17 shall not affect any right or obligation of the societies so amalgamated, or of the society so divided or converted, or of the transferee.

[60] The merger of Udhana Cooperative Bank with Kalupur Cooperative Bank, in the area of operation of Udhana Cooperative Bank having been made after insertion of Section 17(1)(aa) in GSCS Act, 1961, cannot be faulted on the contentions of the learned counsels for the petitioners based on the decision of Division Bench of this Court in **Issan Overseas Limited (supra)**, which was rendered prior to the amendment of the GSCS Act, 1961, as on 19.09.2013 by Gujarat Act No.19 of 2013. The reliance placed by the learned counsel for the petitioners on the decisions of this Court in **Issan Overseas Ltd. (supra)**, **Jagdishbhai Ishwarbhai Rochani (supra)**,

Naresh Shankar Srivastava (supra), Achyutyanand Singh (supra), Consumer Protection and Analytic Committee (supra) noted above, is of no benefit to them.

[61] A perusal of the decision of the Division Bench of this Court in **Issan Overseal Limited (supra)** further indicates that the issues framed therein with regard to legal provisions under the GSCS Act, 1961 and the MSCS Act, 2002 were answered in one paragraph on the concession of the counsels for the parties. The said observations will not be of any help in view of the amendment brought in the GSCS Act, 1961 noted above.

[62] Furthermore from the submissions of the counsel for the RBI, it may be noted that the No Objection Certificate was granted by RBI in consonance with the Circular dated 02.02.2005 keeping in mind the interest of all the depositors, shareholders and other stakeholders of Udhana Cooperative Bank. No infirmity with regard to the decision of RBI on the aspects of financial viability and the interest of the depositors could be pointed out.

[63] The contentions of the learned counsels for the petitioners that all the proceedings pertaining to merger of Udhana Cooperative Bank with Kalupur Cooperative Bank, a local cooperative society into a Multi-state Cooperative Society was undertaken prior to the amendment with the insertion of Section 17(1) (aa) are unsustainable, inasmuch as, the decision making process at the level of various authorities, which culminated into a final decision by the competent authority at the point of time when statutory power rests with such authority, cannot be faulted with. Moreover, the procedure for amalgamation of one society into another society with the previous sanction of the Registrar has been provided in Section 17 of the Gujarat Cooperative Societies Act, 1961 and no fault in the decision making process contrary to the provisions contained therein could be pointed out.

[64] Above all, the petitioners herein are borrowers of the erstwhile bank, namely Udhana Bank. The institution of writ petitions challenging validity of the merger seems to be a design devised by the petitioners to avoid payment of the dues of the bank.

(ii) VALIDITY OF SECTION 17(1)(aa) OF THE GUJARAT COOPERATIVE SOCIETIES ACT, 1961 :

[65] As regards the constitutional validity of Section 17(1)(aa) of the GSCS Act, 1961, the argument of the learned counsel for the petitioners is that the relevant entries in the Union List and State List to bring such amendments are as under :-

"LIST-I UNION LIST :

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

LIST-II STATE LIST :

32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities, unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."

[66] It was argued that the Multi-state Cooperative Society falls under the Union List Entry No.44 as per the decision of the Apex Court in **(i) [Apex Cooperative Bank of Urban Bank of Maharashtra and Goa Ltd. vs. Maharashtra State Cooperative Bank Ltd. and others](#)**, 2003 11 SCC 66 and **(ii) [Thallapam Service Cooperative Bank Ltd. vs. State of Kerela](#)**, 2013 16 SCC 82. The impugned section 17(1)(aa) permits the merger of the local cooperative society/bank with Multi-state cooperative society/bank and hence after the merger takes place what survives at the end of the process is the Multi-state Cooperative Society/Bank. The effect is that Section 17(1)(aa) leads to formation of a Multi-state Cooperative Society and thus, this section regulates the Multistate Co-operative Society by permitting the Multistate Cooperative Society to take the sanction of the State Registrar by placing its resolution and taking order from him. In pith and substance, Section 17(1) (aa) deals with Multi-state Cooperative Society. The State List, Entry No.22 empowers the State to legislate on any matters other than those specified in List-I. Meaning thereby the State Legislature is not permitted to legislate upon incorporation, regulation and winding up of Multi-State Cooperative Society. It is contended that under Section 22 of the MSCS Act, 2002, a cooperative society can extend its jurisdiction to convert itself into a Multi-state Cooperative Society by amendment of its bye-laws. Further, Section 103 facilitates formation of the Multi-state Cooperative Society on reorganization of States. Apart from the above two provisions, there is no other provision in the MSCS Act, 2002 providing for conversion of a local society registered under the State Act to a Multi-state society, creation of a Parliamentary Legislation.

[67] It is vehemently argued by Mr.Masoom K. Shah and Mr.Vishwas K. Shah, learned advocates appearing for the petitioners that the Parliamentary Legislation, namely MSCS Act, 2002 overrides the GSCS Act, 1961 in view of clear language of Article 246(1) read with 246(3) of the Constitution of India and in the said scenario, the merger in the instant case was not permissible and the insertion of Section 17(1) (aa) in the GSCS Act, 1961 to facilitate an illegal merger is a case of colourable legislation by the State Government. It was urged that it is settled that when the legislature provides for particular thing to be done in a particular way, it can be done in that way alone and no other way. The State Government, thus, had no competence to carry out

amendment to insert Section 17(1)(aa) into the GSCS Act, 1961. Lastly, it was vehemently argued that the MSCS Act, 2002 was interpreted by two benches of this Court in the decisions noted in the foregoing paragraphs wherein it is held that the merger of a State Cooperative Society with Multi-state Cooperative Society is not permissible under the said Act. The insertion of Section 17(1)(aa) in the GSCS Act, 1961 is nothing but a head on collision with the aforesaid decisions in **Jagdishbhai Ishwarbhai Rochani (supra)** and **Issan Overseas Limited (supra)**.

[68] In rebuttal, Mr. Kamal Trivedi, learned Advocate General for the State respondents would submit that the above noted two decisions of this Court, on careful consideration of the ratio thereof, do not lay down any proposition to the effect that "unless both the State law and Central law simultaneously have provisions for merger of State Cooperative Bank into a Multi-state Cooperative Bank, such a merger will be illegal". It is incorrect to contend that by providing for State Cooperative Societies to amalgamate with Multi-state Cooperative Societies with the insertion of Section 17(1)(aa), the State Legislature has transgressed the prohibited area occupied by the Central Act. Section 17(1)(aa) categorically deals with the State Cooperative Societies registered under the State Act only and none of its provisions relate the incorporation, regulation and winding up of a Multi-state Cooperative Society which is otherwise a Union subject. By mere reference in the provisions "to another society registered under Multi-state Cooperative Societies Act, 2002", Section 17(1)(aa), cannot be said to be trenching/encroaching upon the prohibited field exclusively meant for the Central Act. The expression 'regulation' as used in Entry No.32 of List-II (State List) is a term of wide import, which within its purview, covers all the aspects relating to regulation of a cooperative society including the aspect with regard to their amalgamation with Multi-state Cooperative Societies.

[69] Reliance is placed on the decision of the Apex Court in [Indu Bhushan Bose vs. Rama Sundari Debi](#), 1969 2 SCC 289, to assert that the word 'regulation' cannot be narrowly interpreted so as to confine to the incidents other than amalgamation of a State Cooperative Society with a Multi-state Cooperative Society. By applying the doctrine of 'pith and substance', the State Act is an Act to consolidate and amend the law relating to cooperative societies in the State of Gujarat and it in no way regulates the matters relating to Multi-state Cooperative Societies registered with the Central Registrar. However, incidental trenching, if any, while regulating the affairs of State Cooperative Society would not invalidate the enactment. It is further submitted that there is no embargo or prohibition in the Central Act with reference to permissibility of merger of a State Cooperative Society into Multi-state Cooperative Society. Though earlier there was no express provision, but such a merger could have been possible in view of Section 3(h), (p), Section 9, Section 10(z)(d) of the Multistate Co-operative

Societies Act, 2002 as also the bye-laws No.5(b)(XX) of Multi-state Cooperative Bank, i.e. Kalupur Commercial Cooperative Bank (at Pages '234-236' in Special Civil Application No.3686 of 2014). Moreover, the concept of 'inconsistency' as per Article 254 of the Constitution of India can be applied only in a case where the State Legislation is relatable to a particular subject falling in List-I. The petitioners have not been able to demonstrate any 'inconsistency', or 'repugnancy' of whatever nature between the State Act and the Central Act. It is trite in law that widest construction of a constitutional entry is to be made while examining the validity of a statute on the plea of lack of competence.

[70] Reference has been made to the decision of the Apex Court in [PGF Limited vs. Union of India](#), 2015 13 SCC 50, to submit that the challenge to the validity of Section 17(1)(aa) of the State Act has been raised by the petitioners herein with a view to thwart the applicability and rigour of the recovery proceedings of dues from them. Reference has been made to the decision of the Privy Council in *Prafulla Kumar Mukherjee and others vs. Bank of Commerce Ltd*, 1947 34 AIR(PC) 60 and the Apex Court's decision in [A.S.Krishna and others vs. State of Madras](#), 1957 AIR(SC) 297, to submit that the pith and substance or the true nature and character of the statute is to be ascertained for the purpose of determining whether it is a legislation with respect to matters in different lists of the 7th Schedule of the Constitution of India. Once it is determined, it can be decided as to whether the subjects still overlap. If on such examination, it is found that the legislation is in substance on one or a matter assigned to the legislature, even though it might incidentally trench on matters which are beyond its competence, it would be quite an erroneous approach to hold it repugnant.

[71] Considering the said submissions, having noted that the Entry No.32 in List II (State List) in 7th Schedule of the Constitution of India provides for 'incorporation, regulation and winding up of cooperative societies, other than those specified in List-I, and that the Gujarat Cooperative Societies Act, 1961 is a State Legislature, which has been enacted to consolidate and amend the laws relating to cooperative societies in the State of Gujarat', it can be said beyond any strata of doubt that the matters for regulating cooperative societies, registered under the GSCS Act, 1961, such as its amalgamation to another society even under MSCS Act, 2002, can only be dealt with by the State Legislature. The provision permitting amalgamation of State Cooperative Society into a Multi-state Cooperative Society incorporated with the insertion of Section 17(1)(aa) into the GSCS Act, 1961, is well within the competence of the State Legislature in view of Entry No.32 in List-II (State List). Reference to Entry No.44 of List-I (Union List) relatable to the subject is a misconceived argument. As noted above, Section 17 of the Gujarat Cooperative Societies Act, 1961 provided for amalgamation of a cooperative society with another society and with the insertion of Section 17(1)

(aa), the State Cooperative Society can be amalgamated with another society under the MSCS Act, 2002, in compliance of the procedure prescribed therein. Applying the doctrine of pith and substance, the true nature and character of the GSCS Act, 1961, which is to regulate the affairs of a society registered with the State Registrar, the provision for amalgamation pertaining to regulation of the affairs of the State Cooperative Society would fall in List-II, Entry No.32 of the State List. There is no overlapping in the subject matter, inasmuch as, the Multi-state Cooperative Societies Act, 2002 does not regulate the merger of a State Cooperative Society and further that there cannot be any contrary provision in the MSCS Act, 2002 to restrict the same. As there is no overlapping or inconsistency, the argument with regard to supremacy of the parliamentary legislation are found to be misconceived.

[72] In light of the above discussion, we may note the decision of the Apex Court in **PGF Limited (supra)**, wherein a note of caution to be observed has been added by the Apex Court that whenever the issue of vires of any provision of law is raised before the Court by way of a writ petition. The guidelines provided in paragraph '36' therein are to be noted hereinunder :-

"36. xxx xxx xxx we feel that it is worthwhile to state and note certain precautions to be observed whenever a vires of any provision of law is raised before the Court by way of a writ petition. It will be worthwhile to lay down certain guidelines in that respect, since we have noticed that on very many occasions a challenge to a provision of law, as to its constitutionality is raised with a view to thwart the applicability and rigour of those provisions and as an escape route from the applicability of those provisions of law and thereby create an impediment for the concerned authorities and the institutions who are to monitor those persons who seek such challenges by abusing the process of the Court. Such frivolous challenges always result in prolongation of the litigation, which enables such unscrupulous elements who always thrive on other peoples money to take advantage of the pendency of such litigation preferred by them and thereby gain, on the one side, unlawful advantage on the monetary aspect and to the disadvantage of innocent victims, and ultimately, gain unlawful enrichment of such ill-gotten money by defrauding others. In effect, such attempts made by invoking the extraordinary jurisdiction of the writ Courts of many such challenges, mostly result in rejection of such challenges. However, at the same time, while taking advantage of the long time gap involved in the pending proceedings, such unscrupulous litigants even while suffering the rejection of their stand at the end as to the vires of the provisions, always try to wriggle out of their liabilities by stating that the time lag had created a situation wherein those persons who were lured to part with huge sums of money are either not available to get back their money or

such unscrupulous petitioners themselves are not in a position to refund whatever money collected from those customers or investors. It is, therefore, imperative and worthwhile to examine at the threshold as to whether such challenges made are bona fide and do require a consideration at all by the writ courts by applying the principle of 'lifting the veil' and as to whether there is any hidden agenda in perpetrating such litigation. With that view, we lay down some of the criteria to be kept in mind whenever a challenge to a provision of law is made before the Court."

[73] Noticing the above, by applying the principle of 'lifting the veil' to see as to whether there is any hidden agenda in perpetrating the litigation challenging the vires of statutory provision, this Court reaches at an irresistible conclusion that in the instant case, an attempt has been made by the petitioners by invoking the extraordinary jurisdiction of the writ Court to thwart the applicability and rigours of the statutory provisions, as an escape route from the applicability of the provisions, which would permit recovery of dues/defaulted amount from the petitioners. The challenge is not bona fide rather is an effort to wriggle out of the stringent provisions of law and its machinery.

[74] In any case, the petitioners being borrowers cannot be permitted to challenge any of the steps taken by the majority of members present and voting at a Special General Meeting held for the purpose, in accordance with Section 17(1) of the Act, 1961, to amalgamate the erstwhile State Society, namely Udhana Cooperative Bank with the Multi-state Cooperative Society, namely Kalupur Cooperative Bank.

(iii) CONTINUATION OF LAVAD SUIT UNDER SECTION 96 OF GSCS ACT, 1961 AFTER MERGER :-

[75] On the said issue, suffice it to say that with the amalgamation, as per the resolution of the societies, the assets and liabilities of the original society (Udhana Bank) vest with the amalgamated society (Kalupur Bank) and all rights and obligations of the society so amalgamated will remain unaffected. The legal proceedings commenced by the erstwhile society (Udhana Bank) shall remain unaffected in view of Sub-sections (3) and (4) of Section 17.

[76] In light of the above, Issue Nos.1, 2 and 3 are decided against the petitioners.

[77] Writ petitions in Group-A, Part-I on the question of merger of Udhna Cooperative Bank with Kalupur Cooperative Bank, namely, Special Civil Application Nos.3686, 3687, 4018 of 2014 and 12423 of 2015 filed by the three petitioners, in common, therein along with other petitioners, borrowers of Udhna Cooperative Bank and defaulters, are, therefore, liable to be dismissed.

[78] Two writ petitions namely, Special Civil Application Nos.5693 of 2020 and 5745 of 2020 have been filed by common petitioners, namely, Ramila Dinesh Trivedi and Dinesh Trivedi along with M/s.Raj Silk Mills and others. Dinesh Trivedi was the Deputy General Manger of Udhna Co-operative Bank and Ramila Dinesh Trivedi, wife of Mr.Dinesh Trivedi and as per the statement made in the writ petitions, she is partner of the partnership firm, in the name of which loan was granted by Udhna Cooperative Bank. The allegations against Mr.Dinesh Trivedi, the petitioner therein, the Deputy General Manager of Udhna Co-operative Bank are of fraud and misappropriation for which the proceedings under Section 84 of the MSCS Act, 2002 have been initiated. The official of the erstwhile Bank, against whom allegations are of misuse of his position, cannot be permitted to challenge the merger of Udhna Co-operative Bank with Kalupur Co-operative Bank for the reasoning given hereinabove. The aforesaid two petitions are also liable to be dismissed.

[79] Special Civil Application No.13354 of 2018 has been filed by the heirs of legal representative of deceased Ratanlal Vitthalbhai Chaudhary, who was guarantor/ mortgagor of the loan, wherein default had been committed and the proceedings were initiated by erstwhile Udhna Co-operative Bank for the reasoning given hereinabove. The said writ petition is also liable to be dismissed.

Group A: Special Civil Application Nos.12756, 12371 and 15126 of 2020:- Merger of Vepar Vikas Co-operative Bank Limited with Ahmedabad Mercantile Cooperative Bank Limited :

[80] The petitioners in two writ petitions, namely, Special Civil Application No.12756 of 2020 and 12371 of 2020 are common. They are guarantors and mortgagors of the loan advanced to one Pan Pipes Resplendents Limited, wherein the petitioner No.1, namely, Shri Pradeepbhai Sundarlal Parikh was the Director from 1986 to 2002. The prayer made in the writ petition is to declare Reserve Bank of India ("RBI" in short) guidelines for merger/amalgamation of Urban Cooperative Banks dated 02.02.2005 as ultra vires to the Constitution of India and the statutory provisions of Reserve Bank of India Act, 1934, Companies Act, 1956, Gujarat State Cooperative Societies Act, 1961 and Multi-state Co-operative Societies Act, 2002. Further challenge is to the merger of Vepar Vikas Cooperative Bank Limited with Ahmedabad Mercantile Cooperative Bank Limited dated 24.12.2011. Special Civil Application No.15126 of 2020 is filed by the two persons, namely, Harishbhai Sundarlal Parikh and Sapnaben Harishbhai Parikh, who are guarantors of the loan advanced to the same entity, namely, M/s.Pan Pipes Resplendents Limited. Petitioner No.1-Harishbhai Sunderlal Parikh is the brother of Paresh Sunderlal Parikh in the above noted writ petitions. It is stated in the writ petitions that he is on strained terms with his brother and has been arraigned as defendant No.2 in the Lavad Suit. The said writ petition filed for the same relief, as

noted hereinabove, is by the guarantor/mortgagor. The merger of Vepar Vikas Co-operative Bank Limited, a State Co-operative Bank with Ahmedabad Mercantile Co-operative Bank Limited, a Multi-state Co-operative Bank, has been challenged on the same ground, as noted hereinabove, that there was no statutory provision in the GSCS Act, 1961 and MSCS Act, 2002 providing for the merger. Moreover, the amended provisions of Section 17(1)(aa) are not applicable in the merger of Vepar Vikas Cooperative Bank Limited with Ahmedabad Mercantile Cooperative Bank Limited, as the merger took place in the year 2011. The merger of Vepar Vikas Cooperative Bank Limited with Ahmedabad Mercantile Cooperative Bank Limited took place under the order dated 24.02.2011 passed by the Registrar, Cooperative Societies.

[81] At the outset, it may be noted that there was no challenge in any of the above noted petitions herein to the merger and the writ petitions had been filed in the year 2020, after a period of nine years when the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" in short) was initiated against the petitioners, who are the guarantors of the loan. The challenge in the writ petition essentially was to the notice under Sections 13(2) and 13(4) of the SARFAESI Act, which was issued in the month of June, 2020 and September, 2020; respectively. The loan account was declared NPA, which has led to filing of Lavad Suit being Summary Lavad Case No.238 of 2001 before the Board of Nominees, Vadodara for recovery of Rs.84,91,819.19/-. The Ahmedabad Mercantile Cooperative Limited, which is a Multi-state Cooperative Bank, has been impleaded in the Lavad Suit on 24.06.2011 as a result of merger. The first demand notice under Section 13(2) of the SARFAESI Act was issued to the petitioner on 25.07.2012.

[82] On a writ petition, namely, Special Civil Application No.11424 of 2012 filed by the petitioner, the Division Bench of this Court in 2013 (3) GLR 2337 had allowed the writ petition and held that proceedings under the SARFAESI Act against the petitioners cannot continue. The judgment and order dated 22.04.2013 passed by this Court has been set aside and the Special Leave Petitions filed by the Cooperative Banks have been allowed by the Apex Court vide judgment and order dated 05.05.2020 holding that the measures under the SARFAESI Act can be taken by the Cooperative Banks for recovery of their dues. Reference is made in the case of [Jagdishbhai Ishwarbhai Rochani vs Vishwarao Patil Murgud Sahkari Bank Ltd & Ors](#), 2020 9 SCC 215.

[83] After the aforesaid decision, the Ahmedabad Mercantile Cooperative Bank Limited, withdrew the earlier notice under Section 13(2) dated 25.07.2012, issued fresh notice under section 13(2) for recovery of the outstanding dues of Rs.25 Crores and odd. It is evident that the petitioners herein had filed the present writ petitions only after initiation of proceedings under the SARFAESI Act. While filing the above

noted three writ petitions, separately in the year 2020, a new relief to challenge the merger of Vepar Vikas Cooperative Bank Limited with Ahmedabad Mercantile Cooperative Bank Limited was sought along with the notice under Sections 13(2) and 13(4) of SARFAESI ACT, 2002. The fact that the challenge to the merger completed in the year 2011 had been made after nine years and that too in the second round of litigation brought by the petitioners herein, itself is sufficient to dismiss the writ petitions. Repeated actions on different grounds for different reliefs arising out of the same cause of action are to be deprecated.

[84] To challenge the merger after a period of nine years of the merger and 22 years of declaration of NPA Account, we do not find any good ground to entertain this writ petition. It is further relevant to note that the Lavad Suit filed against the petitioners in the year 2001 has been decreed on 22.06.2005 by the Board of Nominees. The petitioners herein preferred Appeal No.53 of 2015 before the Gujarat Co-operative Tribunal, Ahmedabad. It is pointed out by learned Senior Counsel Mr.R.S.Sanjanwala appearing for respondent No.1 that no objection has been taken with regard to continuance of Lavad Suit on the plea of illegality of the merger order, at any point of time, either before the Board of Nominees or in Appeal. The aforesaid appeal, filed by the petitioners, has been allowed on 09.02.2008 and the matter is remanded to the Board of Nominees and, at present, is pending as new Summary Lavad Case No.455 of 2018.

[85] It may be noted that in the matter of merger, the Resolution dated 26.07.2010 was passed by the Vepar Vikas Co-operative Bank Limited with respect to the merger and similar Resolution dated 30.08.2010 was passed in the Extraordinary General Meeting of Ahmedabad Mercantile Cooperative Bank Limited, whereafter the Registrar, Cooperative Societies, Gujarat wrote a letter dated 25.08.2010 requesting the RBI to grant its no objection to the merger. No objection was granted by the RBI on 27.12.2010. The Department of Agriculture and Cooperation, Government of India also granted no objection on 09.02.2012. A public notice dated 13.01.2011 was issued by both Vepar Vikas Co-operative Bank Limited and Ahmedabad Mercantile Co-operative Bank Limited in daily newspaper to invite objections. All the documents were submitted before the Registrar, Co-operative Societies on 06.02.2011 and after verification of compliance, the Registrar, Co-operative Societies, Gujarat sanctioned the merger with effect from 01.03.2011 by a separate order dated 23.02.2011, the Registrar, Co-operative Societies had cancelled registration of Vepar Vikas Co-operative Bank Limited and branch licence was granted to Ahmedabad Mercantile Co-operative Bank Limited by the RBI on 01.03.2011 to operate from the branch of the erstwhile Vepar Vikas Co-operative Bank Limited. The merger, thus, is effective from 01.03.2011, it is brought on record that the Ahmedabad Mercantile Co-operative Bank Limited had recovered

dues aggregating 151.92 lakhs including interest from 35 NPA Accounts. As on 24.03.2021, the Ahmedabad Mercantile Co-operative Bank Limited, the erstwhile Vepar Vikas Co-operative Bank Limited, operates 1480 Savings Accounts holding Rs.299.74 lakhs, 239 Current Accounts holding of Rs.85.82 lakhs, 459 Fixed Deposit Accounts holding of Rs.985.14 lakhs, 115 Accounts for Loans and Advances aggregating to Rs.596.87 lakhs.

[86] It is stated in the affidavit filed on behalf of respondent No.1, namely, Ahmedabad Mercantile Co-operative Bank Limited that as on 26.03.2021, only 18 NPA Accounts remained with outstanding amount of Rs.92.46 lakhs, out of which, approximately 74.20 lakhs is the extent of liability of the petitioners only. The Ahmedabad Mercantile Co-operative Bank Limited has repaid all depositors of the Vepar Vikas Co-operative Bank Limited on maturity and the members of the Vepar Vikas Co-operative Bank Limited were also paid at the time of merger. The above noted facts and figures show that the merger had prevented a possible loss to the depositors. It is stated that the above stated figures only prevented a possible loss to the depositors and, in fact, all stakeholders have been benefited from the merger. All receivables and liabilities of Vepar Vikas Co-operative Bank Limited stood assigned to Ahmedabad Mercantile Cooperative Bank Limited.

[87] Noticing the above facts, we may note that there is no challenge to the merger of Vepar Vikas Cooperative Bank Limited by any of the stakeholders. Moreover, no legal right of the borrower or guarantor (the petitioners herein) could be said to have been affected by the merger, and the borrower has no right to challenge the merger order. It is, thus, evident that the writ petitioners have no locus to challenge the merger order and further on account of gross delay and laches on their part, when over the period of nine years, the bank has altered its position, the challenge to the legality of the merger, at the hands of the petitioners, who are guarantors, cannot be sustained. No writ can be issued as it would cause serious prejudice to the Bank and its members and other stakeholders.

[88] Issue No.4 is, thus, decided against the petitioners of the above noted writ petitions.

Issue Nos. 5, 6, 7, 8 - Challenge to the constitutionality of the provisions of Sections 4 and 84 of the MSCS Act, 2002, Section 2(4) of the Arbitration and Conciliation Act, 1996 and challenge and the procedure for appointment of Arbitration under Section 84 of the MSCS Act, 2002 :

[89] Issue Nos.5, 6, 7 and 8 raised in the writ petitions kept in Group-B are the challenge raised at the instance of the Directors and officials of the erstwhile Udhna

Bank. Some of the writ petitions have been filed by the borrowers, same persons who are the petitioners in writ petitions i.e. Special Civil Application Nos.3686, 3687 and 4018 of 2014.

[90] Writ Petitions (i) i.e. Special Civil Application Nos. 4646, 4647, 4648, 4649, 4653, 4654, 4655 (07 in number) of 2020 have been filed by eight petitioners, who are common in all the writ petitions and the prayer made therein are same, except the difference in Arbitration Case numbers filed against them. They are erstwhile Directors of Udhna Co-operative Bank against whom the proceedings under Section 84 of the MSCS Act, 2002, had been initiated. The show cause notices were issued to the petitioners in the years 2009 and 2010 by the erstwhile Udhna Cooperative Bank under Section 86 of the Gujarat Cooperative Societies Act, wherein inquiry was ordered. FIRs came to be filed, wherein chargesheets have been submitted and the trial is pending.

[91] In the Writ Petitions (ii) i.e. Special Civil Application Nos.14718 and 14654 of 2020, the petitioners are borrowers and guarantors of the erstwhile Udhna Cooperative Bank and are challenging the proceedings under Section 84 of the MSCS Act, 2002 pending before the Arbitrator.

[92] Special Civil Application Nos.7393, 7394, 7397, 7399, 7404, 7434, 8052 and 9682 of 2021 have been filed by the two petitioners who are common in all the writ petitions. One of the petitioners, namely, Dinesh Trivedi, was the Deputy General Manager of Udhna Cooperative Bank, the erstwhile Cooperative Bank against whom, Arbitration case under Section 84 of the MSCS Act, 2002 had been initiated on the allegations of financial misappropriation, irregularities etc. Petitioner No.2 is partner of the firm, which had allegedly taken fraudulent advances from Udhna Cooperative Bank and misappropriated the same. Both the petitioners are husband and wife. The FIRs have been lodged against them on the allegations of fraud and misappropriation.

[93] Special Civil Application No.18917 of 2021 has been filed by heirs and legal representatives of late Ratnamalaben, who was the guarantor/mortgagor of the loan advanced by the erstwhile Udhna Co-operative Bank. The allegations against them are of fraud, false, fabricated and forged documents in collusion with the officer-bearers of the erstwhile Bank. The final award under Section 84 has been passed by the Arbitrator and the petition under Section 34 of the Arbitration Act has been dismissed. The petitioners have preferred Appeal under Section 34 of the Arbitration and Conciliation Act, 1996, which is pending before this Court.

[94] Coming to the challenge raised by the learned counsel for the petitioners in the above noted set of writ petitions, it may be noted that the arguments were made by Mr.Vishwas Shah, learned counsel and Mr.Yatin Oza, learned Senior Advocate, mainly

on the procedure prescribed under Section 84 for appointment of Arbitrator. The validity of Section 84 of the MSCS Act, 2002 is sought to be challenged on comparison of the provisions of the Arbitration and Conciliation Act, 1996 with that of Section 84. It is argued that the manner in which the dispute is referred to Arbitrator appointed by the Central Registrar by issuance of Notification under Sub-section (4) of Section 84 of the MSCS Act, 2002, runs counter to the concept of Arbitration. The Arbitrator exercises judicial power and exercise of such power by the Executive Officer appointed by the Central Registrar cannot be countenanced. The Central Registrar, however, delegated the power to the State Registrar. The special delegation of statutory power of delegation is not permissible. Learned counsel for the petitioner has gone to the extent of submitting that the powers conferred on the Central Registrar to appoint the Arbitrator is uncanalised and unbridled to the extent that even the peon can be appointed by the Central Registrar, as the Act does not provide classification for appointment of Arbitrator, but, Judicial Members, Lawyer, Deputy Registrar (without legal knowledge), bank officer, chartered accountant and accountants etc., can be appointed by the Central Registrar and there is no parallel common thread of classification amongst them. The Arbitrator appointed by the Central Registrar cannot exercise judicial power as it has no such expertise. Comparison from the provisions of the Arbitration and Conciliation Act, 1996 has been made to assert that in exercise of powers under Section 11(6) of the Arbitration and Conciliation Act, 1996 retired High Court and Supreme Court Judges are being appointed as Arbitrators, whereas, the Parliament did not provide any qualification for appointment of Arbitrator in the disputes relating to the Multi-state Cooperative Society under Section 84 of the MSCS Act, 2002. Various judgments of the Apex Court in the joint compilations given by both the counsels have been relied upon to argue that the power of appointment of Arbitrator cannot be delegated as the same vests with the Central Registrar. Section 4 of the MSCS Act, 2002 permits the delegation of uncanalised and unbridled power and abdicates essentially legislative functioning by permitting any officer to appoint an Arbitrator. The conditions of service and qualifications are essentially legislative functions and they cannot be abdicated. The phrase used in Section 4 "any officer" of the Central and State Government is a reflection of arbitrary powers of delegation conferred upon the Central Registrar. The appointment of Arbitrator is required to be delegated to the concerned Ministry of Law. The independence of the arbitrator is of prime concern which has not been taken care of by the legislature. The arbitration proceedings are not maintainable against the petitioners for various reasons stated in the writ petitions.

[95] Testing of these submissions of the learned counsel for the parties, we are required to note that the Multi-state Cooperative Societies Act, 2002 has been enacted by the Parliament to consolidate and amend the law relating to the Cooperative

Societies, with objects not confined to one State and serving the interest of members in more than one State to facilitate the democratic functioning of Cooperatives as people's institutions based on self-help and mutual aid and to enable them to promote their economy and social betterment and to provide functional autonomy.

[96] In this set up, the Central Registrar, Co-operative Societies, is appointed by the Central Government under Section 4 of the MSCS Act, 2002 to exercise the powers under the Act. Every Multi-state Cooperative Societies registered under the MSCS Act, 2002 is governed by the bye-laws made by it consistent with the provisions of the Act and the Rules made thereunder, providing for the matters prescribed in Section 10(2) of the MSCS Act, 2002. For the amendment of bye-laws, 2/3rd majority of the members, present and voting, at the General Meeting of the Society are required and the registration of the same on the application made to the Central Government. Registered Cooperative Society is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of the property both movable and immovable. In this democratic set up, independence given to the Cooperative Society, Section 25 provides as to who can be admitted as a Member of the Multi-state Cooperative Society. The general body of Multi-state Cooperative Society consists of all the members of such society. The Board of Directors of Multi-state Cooperative Societies consists of such number of members as specified in Section 41 and are elected by a resolution in a General Meeting of the members of the society. Section 79 confers power on the Central Registrar to make an inspection into the constitution, working and financial condition of a Multi-state Cooperative Society. Every officer or member of of a Multi-state Cooperative Society is mandated to furnish such information with regard to the working of the Society as a Central Registrar or the person making such inspection may inquire. Section 84 of the MSCS Act, 2002 provides for reference to the dispute other than the dispute regarding disciplinary action taken by a Multi-state Cooperative Society against its paid employee or any industrial dispute as defined in Clause (k) of Section 2 of the Industrial Disputes Act, 1947, which arises as prescribed under Section.

[97] The fact is that such a dispute is to be referred to arbitration and is to be settled or decided by the Arbitrator to be appointed by the Central Registrar. The MSCS, 2002 is a special provision pertaining to the affairs of the Multistate Co-operative Societies registered under the said Act. The general provisions of the Arbitration and Conciliation Act, 1996 would not apply in view of the settled principle of law that the Special would prevail over the general. Further Sub-section (4) of Section 2 provides that Part-I of the Arbitration and Conciliation Act, 1996 applies to the Arbitration under another enactment, to the extent that the provisions of the Arbitration and Conciliation Act,

1996 are not inconsistent with that of the other enactments or with any Rules made thereunder.

[98] Both the MSCS, 2002 and the Arbitration and Conciliation Act, 1996 are Parliamentary Legislation and the Legislature in its own wisdom has provided the manner of an appointment of Arbitrator under Section 84(4), and thus excludes the provisions of Section 11 contained in Part-I pertaining to appointment of arbitrator etc. The submissions of the learned counsels for the petitioners are based on the comparison of Arbitration and Conciliation Act, 1996 to assail the validity of Section 84 of the MSCS Act, 2002, which cannot be sustained in the eye of law. In view of the above discussion, Issue Nos.5, 6, 7 and 8 are decided against the petitioners.

ISSUE NO.9 - CHALLENGE BY THIRD PARTIES :-

[99] On the last issue No.9, the challenge in the writ petitions falling in Group-C, Special Civil Application Nos, 17612, 12702, 12703, 12704, 12705, 12706 and 12708 of 2015 are by the third parties, who have purchased the mortgaged property from the borrowers/guarantors. They have been impleaded in the arbitration proceedings and are assailing the order of impleadment on the premise that they are bona fide purchasers and cannot be impleaded in place of borrowers and guarantors. The challenge made by them that their joining in the writ petitions is illegal and is not substantiated by any other ground. Further challenge is to the merger and statutory arbitration on the premise that the petitioners are forced to participate in the arbitration proceedings, the basic concept of which is the consent of the parties. Having noted that the petitioners in Group-C are third parties, who have been impleaded in the Arbitration proceedings in the year 2015-17, the writ petitions challenging the validity of Section 84 of the Act'2002 are liable to be dismissed.

[100] The question raised before us that the petitioner cannot be permitted to be impleaded in the arbitration proceedings, as there is no privity of contract between the petitioners and the respondent Bank, is not to be examined by us, as the said issue can be raised by the petitioners in the present proceedings.

[101] In the end, it may be noted that the huge amount of loan is outstanding against the petitioners herein, who on one or the other ground have succeeded in getting the interim orders from this Court. Many of the petitioners in the bunch of writ petitions are same, which have been filed on the same ground arising out of the same cause of action. The multiplicity of litigation at the hands of the petitioners, while raising common question of law is an effort to stall the proceedings of recovery of the outstanding loan against them as also initiation of action for misuse of their official

position. All the writ petitions herein are cloak to avoid the rigors of law and result in sheer abuse of process of the Court/law.

[102] None of the judgments relied on by the learned counsels for the petitioners are of any help to them for the facts and circumstances of the cases before us.

[103] For the above discussion, all the writ petitions in this bunch are dismissed. Interim relief, if any, stands vacated. Consequently, connected Civil Applications also stand disposed of. Rule discharged. No orders as to costs.

[104] The Civil Application No.1422 of 2019 seeking condonation of delay has been allowed, but the Letters Patent Appeal No.1483 of 2023, challenging the order of the learned Single Judge in dismissing the writ petition holding that the merger which had taken place in the year 2013 cannot be challenged after six years that too when proceedings under SARFAESI Act, 2002 had been initiated against the petitioner and the petitioner has alternative remedy under Section 17 of the Act, 2002, is found devoid of merits and hence dismissed.

FURTHER ORDER

[105] After pronouncement of the judgment, the request made by Mr.Vishwas K. Shah, learned advocate for the petitioners to stay the operation of the judgment, to grant protection to the petitioners herein, is turned down.