HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3627 OF 2013

Sahakari Bank Karmachari Sangh ..Petitioner

Vs.

The Commissioner-Co-operative Societies

State of Maharashtra and Another ..Respondents

Mr. Neel Helekar, for the Petitioner.

Ms. Sushma Bhende, Asst. Govt. Pleader, for the Respondent No.1.

Mr. R. V. Govilkar i/b Mr. Suhas S. Inamdar, for the Respondent No.2.

CORAM :- **S.C. DHARMADHIKARI &**
B.P.COLABAWALLA, JJ.

DATE :- **MARCH 10, 2017.**

ORAL JUDGMENT (Per. S. C. Dharmadhikari, J.)

Rule. Respondents waive service. By consent, rule made returnable forthwith.

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2 By this Writ Petition under Article 226 of the Constitution of India, the Petitioner is challenging the legality and validity of an order dated 25th June, 2012. The Petitioner is also seeking a writ of mandamus or any other writ, order or direction in the nature thereof directing the Respondents to release the payment of compensation as per order dated 3rd April, 2012.

3 This Writ Petition is filed on 13th March, 2013 and the material averments therein are that, the Petitioner is a union. It represents the cause of 55 employees whose names are mentioned in Annexure-A to the Petition. 1st Respondent is the Commissioner Co-operative Societies, State of Maharashtra who has passed the order impugned in this Writ Petition. 2nd Respondent is the bank styled as Solapur Nagari Audyogic Sahakari Bank Limited sued through its liquidator.

4 The Petitioner states that it is a representative union functional under the Bombay Relations Act, 1946. The Petitioner union has negotiated several demands of the employees and that is why it has been granted the above

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status. Relying upon this position and a Agreement / Settlement with the 2nd Respondent, it is submitted that the bank was registered as a Co-operative Society under the provisions of the Maharashtra Co-operative Societies Act, 1960. It is carrying on banking business since 19th October, 1979. The Petitioner states that from 2001, this bank was in financial crisis. There was an audit undertaken by the Reserve Bank of India as well as of the audit department in the Ministry of Co-operation, Government of Maharashtra. The conclusion drawn after this exercise is that on account of certain wrong financial policies and decisions, the bank is losing its ground. It is not possible to improve its financial position which deteriorated further. It is stated that the bank was directed by the Reserve Bank of India by invoking the powers conferred vide Section 35-A of the Banking Regulation Act, 1949 to improve its financial condition. That an opportunity of six months was granted so as to improve its financial condition. Later on, on 12th August, 2011 the bank was directed to show cause as to why its licence should not be cancelled.

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5 The bank could not improve its financial position. It could not also provide any restructuring or revival plan. Hence, on 4th November, 2011, the Reserve Bank of India acted under the Banking Regulation Act, 1949. It invoked Section 22 thereof to pass an order cancelling the banking licence. This order, copy of which is at Exhibit-A to the Petition was passed on 4th November, 2011. Thereupon, 1st Respondent made an order on 11th November, 2011 putting the bank under liquidation and appointed a Liquidator.

6 The Liquidator had taken charge and thereupon the Petitioner union approached him with a representation dated 20th December, 2011. They submitted that an Appeal was filed against an order cancelling the banking licence. The union requested the Liquidator to release the arrears of Dearness Allowance as payable to the employees. It also gave reference to several awards and orders of the Labour Court. The details of dues payable were also provided on 5th January, 2012. The 2nd Respondent prepared a proposal of the entire dues payable to the employees and forwarded it to

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1st Respondent. The above exercise is reflected from Exhibits-D and E to the Petition.

7 The Petitioner relies upon a Voluntary Retirement Scheme. It is stated that the bank even prior to its liquidation declared this scheme and stated that those who do not accept it, the services of such employees would be terminated forcibly.

8 It is on account of the fear of termination that 55 employees mentioned in Annexure-A and on whose behalf the Petition is filed submitted their applications. They sought Voluntary Retirement from the services of 2nd Respondent bank. That was with effect from 1st November, 2011. However, though the applications were accepted, the retirement came into effect, but their dues or compensation was not paid.

9 That is how the Petitioner submits that after order of liquidation, 1st Respondent gave approval to the Voluntary Retirement Scheme which was sent by the then management

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on 25th October, 2011. As per the scheme, the employees were granted only one months' salary for minimum services and plus ten months' salary as extra compensation. Though this scheme was forwarded for approval, till the date of liquidation the approval was not granted. It is only on 19th January, 2012, that this scheme was approved. As per the approval, concerned 55 employees were entitled to receive an amount of compensation equivalent to one months' salary for each remaining period of the service. Exhibit-F is a copy of the order/approval.

10 Then, 2nd Respondent submitted a proposal on 17th February, 2012 seeking to enhance the amount of compensation. Three separate proposals were submitted. One for payment of existing 97 staff and another for 55 covered by the Petition for payment of compensation. Third proposal was for payment of arrears of Dearness Allowance and yearly increments and amount of salary deduction.

11 All the three proposals including particulars of the financial condition were forwarded. 1st Respondent, after

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considering the financial position, granted approval to all the three proposals. The 1st Respondent directed 2nd Respondent to disburse the amounts. The order to this effect is dated 3rd April, 2012. The concerned 55 employees, therefore, became entitled to receive certain sums towards compensation in terms of this order.

12 The complaint of the Petitioner is that despite such approval, the amounts have not been disbursed. A provision was made and two statutory authorities, namely, the Deposit Insurance and Credit Guarantee Corporation so also the Reserve Bank of India was informed.

13 The Petitioner is aware of the position that in the bank there were deposits and of those constituents and members who expressed their faith and trust invested their valuable monies, based on such trust. The interests of such depositors has to be protected and that is why the deposit insurance policy and credit guarantee was obtained in terms of the Deposit Insurance and Credit Guarantee Corporation, Act, 1961 ("DICGC Act").

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14 The Petitioner is further aware of the fact that 2nd Respondent being a bank, licence to carry on banking operations by the Reserve Bank of India is required. The Bank obliged to adhere to the terms and conditions of the licence and provisions of the Banking Regulation Act, 1949. It is bound and liable to act in terms of the directives and circulars of the Reserve Bank of India and they bind it. Hence, in actual disbursal of amounts and payments, it is these two statutory authorities would have a definite role. Therefore, the information has to be provided to them.

15 So long as these steps were taken by 2nd Respondent, the Petitioner union did not raise any objection but they moved this Petition after they noticed that 1st Respondent Commissioner has passed a further order on 25th June, 2012 by which he recalled his earlier direction contained in the order dated 3rd April, 2012. It is in these circumstances that this Writ Petition is filed.

16 Though the Petitioner approached 1st Respondent

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and requested him to cancel the earlier order of 25th June, 2012, he has rejected or has not taken any note of the same. It is in these circumstances that this Writ Petition is filed.

17 Mr. Helekar appearing for the Petitioner would submit that the impugned order is contrary to law in as much as once the Liquidator proceeded on the footing that all employees and serving the bank have to be treated on par and none can be selected or given a march over the other for disbursement of the compensation, then, the three proposals approved earlier ought to have been allowed to be implemented and taken to their logical end. The grievance of the Petitioner is that by the impugned order at Exhibit-H to the Petition, what 1st Respondent has done was to inform 2nd Respondent Liquidator that though the Liquidator has taken up the cause of such of the affected 55 employees who have been requesting for Voluntary Retirement four days prior to cancellation of the banking licence, still, the position now emerging is that it is the employees who were in service when the order of liquidation was made, who are alone held to be

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entitled and paid the compensation. The members of the Petitioner were not in service prior to the winding up order or on the date of the same, they had obtained voluntary retirement or availed of the same four days prior to the cancellation of the banking licence. After noticing this position, the earlier order dated 3rd April, 2012 is cancelled. The Liquidator, therefore, should abide by earlier direction contained in the letter dated 19th January, 2012, is the further impugned direction. Mr. Helekar would submit that 1st Respondent cannot determine the issue of employer-employee relationship in this manner. His understanding that somebody who had sought voluntary retirement and prior to four days of the cancellation of banking licence is not in service of the bank on the date of winding up order, is incorrect. As is apparent, according to Mr. Helekar, that there is a Voluntary Retirement Scheme. That is nothing but an offer made by the bank. That offer has to be accepted by the members of the Petitioner union. That acceptance has to be convened. After that acceptance is convened, the Voluntary Retirement Scheme and the benefits thereof have

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to be extended and in terms of the scheme. So long as the benefits and flowing from the scheme are not extended nor the amounts thereunder fully paid, it cannot be said that the employer-employee relationship had come to an end. The presumption that it comes to an end, when the application seeking Voluntary Retirement is tendered, is therefore, erroneous and not sustainable in law. 1st Respondent has taken over the adjudication of such vexed and contested issue and determined that perfunctorily without any application of mind. The justification provided in the impugned order is therefore not sound but untenable in law. The impugned order is also vitiated by a non-application of mind. It is on this footing that it is required to be quashed and set aside.

18 The Chairman of the Liquidator Board Mr. Bapurao Shivaji Katare filed his affidavit in reply. He submitted that this Writ Petition proceeds on an erroneous assumption that the cancellation of the banking licence is the only triggering fact. It was also pointed out to the employees

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that the bank's position is precarious and critical. The Reserve Bank of India had given a warning and from time to time called upon the bank to improve its financial position. The Reserve Bank informed the Board of Directors that Bank Staff should be reduced. The staff strength had to be brought down. That is how the management issued circulars on 15th and 19th September, 2011. The Voluntary Retirement Scheme was declared. The employees were granted 15 days salary for remaining service. Since there was no response from the employees, the then management announced another scheme by circular dated 20th September, 2011. This affidavit annexes copies of these circulars. 56 employees submitted their resignations as per the scheme and claimed compensation. As per the scheme, the employees were granted one month salary for remaining service. The copy of resignation of one of the employees is annexed. The Managing Committee, in its meeting dated 30th September, 2011, accepted resignation of 55 employees and rejected the resignation of one. Accordingly, 55 employees informed about acceptance of resignation with effect from 1st

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November, 2011 as per Voluntary Retirement Scheme dated 20th September, 2011. A copy of this letter is also annexed to this affidavit.

19 On 10th October, 2011, the then Management requested the Reserve Bank of India for permission for payment of the amount to the employees who had accepted this voluntary retirement. On 13th October, 2011, the Reserve Bank of India informed that the authority for approval of the said Voluntary Retirement Scheme is not with the Reserve Bank of India but the Commissioner and Registrar of Co-operative Societies, Maharashtra State. That is how the bank approached the Commissioner-1st Respondent on 25th October, 2011 and sought his approval. It was informed that the Management has relieved these 55 employees from service with effect from 1st November, 2011.

20 In the meanwhile, the banking licence of 2nd Respondent was cancelled on 4th November, 2011. As soon as that was cancelled, 1st Respondent passed an order putting the bank under liquidation and appointing the Board of

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Liquidator. The Liquidator had taken charge on 11th November, 2011. It is stated that on 19th January, 2012, the Voluntary Retirement Scheme was approved by 1st Respondent. He informed that the compensation be paid to these 55 employees as per that scheme. 55 employees were paid gratuity, medical allowances, leave with wages etc on 31st October, 2011 and compensation on 7th January, 2013 to the extent of Rs. 132.45 lakhs. A chart is annexed. It is submitted that neither the Voluntary Retirement Scheme nor the approval granted by 1st Respondent has been challenged by any of these employees (55). They have accepted the scheme and also the approval.

21 When the Petitioner union submitted a proposal for compensation to the existing employees on the date of liquidation and claimed four months wages per year for remaining service, the Liquidator passed a Resolution for payment to these existing employees. He sought approval of 1st Respondent to disburse the amounts and based on the availability of the funds. That was approved by 1st

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Respondent. The payment of two and half months wages per year for remaining service towards compensation has been granted and accepted. The Liquidator has thus paid to the 97 employees Rs. 153.70 lakhs on 8th January, 2013.

22 The Petitioner union submitted proposal for compensation to existing employees on the date of liquidation and the Liquidator Committee passed Resolution on 13th February, 2012 and forwarded a proposal dated 17th February, 2012 to 1st Respondent for approval. That was approved on 3rd April, 2012. The reasoning therein is then referred and in paragraph 11 of this affidavit it is submitted that the cash in hand available with the bank is Rs. 11.36 lakhs and bank balance of Rs.83.20 lakhs up to 31st August, 2013 was not enough to satisfy the liability of Rs. 5643.60 lakhs. It is at this stage, 2nd Respondent presses the issue of the interest and benefit of depositors. It is submitted that the depositors deposited Rs. 2496.06 lakhs with the bank. The balance amount has to be utilized, therefore, to make payment of these depositors as per the claim list. Once the

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present funds are insufficient to meet the demands, then, the Petition deserves to be dismissed.

23 The Petitioner filed an additional affidavit and pointed out that 2nd Respondent bank has forced 55 employees to take the Voluntary Retirement Scheme on 30th October, 2011. The Reserve Bank of India cancelled banking licence on 4th November, 2011. The contention that the employees have accepted the Voluntary Retirement Scheme voluntarily and were paid their legal dues accordingly, is incorrect. The Voluntary Retirement Scheme was never sanctioned by 1st Respondent till April 2012. The letter dated 17th February, 2012 which is at Annexure-E to the Petitioner clearly reflects this position.

24 The letter of 19th January, 2012 is not reflected or referred in the letter of 17th February, 2012. Therefore, in the order passed on 3rd April, 2012, 1st Respondent granted approval to a proposal of 2nd Respondent dated 17th February, 2012. 1st Respondent has not mentioned anything in respect

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of a letter or order of 19th February, 2012. The Petitioner has thus disputed the existence of such a letter. On 25th June, 2012, such a non-existent letter could not have been referred and to make the impugned order of 25th June, 2012 is thus the stand taken in this additional affidavit dated 12th October, 2012.

25 What we then have on record is an additional affidavit tendered by 2nd Respondent in this Court on 22nd February 2017. That affidavit was tendered after a brief hearing of this Writ Petition by this Court and rather by this Bench. This Bench raised several questions and queries. That order of the Bench dated 1st February, 2017 reads as under:-

> "1. Pursuant to our earlier order, the Liquidator is present in court. The Liquidator's advocate has handed over a complete file and in relation to the transactions/deal, particularly about the sanction and approval of the voluntary retirement scheme of the employees.
>
> 2. When this file was handed over, we inquired from the learned advocate as to what prevents the present Liquidator from acting in accordance with law. Meaning thereby, if the amounts have been sanctioned and disbursed though with purported prior approval of the

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Registrar, what the Reserve Bank of India informs the union and equally the Registrar writes to the then Liquidator is that the amounts have to be paid and disbursed in terms of the priorities and determined by the Liquidator. Secondly, he has to abide by the law. Therefore, we would like a clarification from the Liquidator and presently in-charge as to how prior to his taking over, the amounts towards voluntary retirement scheme were sanctioned and disbursed to some employees and in doing that, whether Sub-section (1) of section 105 of the Maharashtra Co-operative Societies Act, 1960 and particularly clauses (e) and (f) thereof were adhered to. Equally, the mandate flowing from Rule 89, which requires the Liquidator to exercise powers under section 105 and in some cases with prior approval of the Registrar. Therefore, what is the prior approval, what is placed before us is the prior approval or otherwise, if priorities are determined or not determined till date and if finally everything is not found in accordance with law, will the Liquidator make a report to the Registrar and recommend to call back all such disbursements and sanctions and made till date, which do not conform with the mandate of law.

3. It is no answer that the present Liquidator has taken charge in 2013 and therefore, was not responsible for any acts and deeds committed prior thereto. He has been in-charge from 2013 and is presumed to be aware of the law. Whether he has adhered to the law and if not, the reason for not adhering to the same are the particulars and details sought from him and which he must furnish to this court. Eventually, such Liquidators are accountable and answerable to the court. Hence, we find that in the absence of a proper affidavit on the above points we will not be in a position to issue any directions. For us to issue binding directions and to all concerned, we would require these details.

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> 4. At the request of the learned advocate and to enable him to tender this affidavit of the Liquidator, we grant time of three weeks. Stand over to 22nd February, 2017. To be listed on the "Supplementary Board".

26 The additional affidavit of 2nd Respondent therefore traces the entire history. It is stated that the deponent is the Deputy Registrar, Co-operative Societies, Solapur city and presently Chairman of the Board of Liquidators of the Solapur Nagari Audyogik Sahakari Bank Limited, Solapur (2nd Respondent bank). He says that he took charge on 2nd February, 2017. He has perused the Petition and the Annexures thereto. He has also perused the relevant records and has gathered certain information. He is deposing on the basis of the same and after setting out certain Government Resolutions, Circulars and guidelines issued by 1st Respondent, in paragraphs 2 and 3 it is pointed out that the legal position as emerging from the Maharashtra Co-operative Societies Act, 1960 is that in the case of a bank, 1st Respondent has to act in terms of his power and conferred vide Section 110-A. Inviting our attention to Chapter-X-A which is inserted by Maharashtra Act 54 of 1969, it is

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pointed out that an order for winding up of a Co-operative Bank (2nd Respondent) shall be made by the Registrar if so required by the Reserve Bank of India in the circumstances referred to in Section 13-D of the DICGC Act. It is submitted that the Registrar had made the order of winding up. After that order was passed, the stand taken is that the prior Chapter-X, titled "Liquidation" would come into play. Section 102 provides for a winding up order being passed independent of the situation contemplated by Section 110. Once such a winding up order has been passed and in terms of Section 102, it is appealable under Section 104. However, appointment of a Liquidator is contemplated by Section -103. It is stated that the Committee of Liquidator can be appointed even in terms of Section 103. Apart therefrom, there are powers conferred by Section 105. Our attention is invited to Clause (e) of sub-section-1 of Section 105. Our attention is also invited to Section 18-A of the Act. Our attention is then invited to the Maharashtra Co-operative Societies Rules, 1961. It is submitted that the Rules and which have been referred to by this Court, namely, Rule 89 dealing with

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appointment of Liquidator and procedure to be followed and powers to be exercised by him, contemplates that the Liquidator must proceed in terms thereof. However, that does not rule out the applicability of other Rules or provisions in the Act. That is why the Liquidator realized that priorities can be determined by taking recourse to either Section 18-A, dealing with a situation on par with winding up and also by relying upon other Rules, namely Rule 18-A of the same Rules. Those are Rules which enable realizing of the assets and liquidating a liability of a deregistered society by an official assignee. A situation of winding up is on par with a deregisteration of the society and that is why recourse to this Rule is permissible.

27 Proceeding on these lines, it is then contended that there are circulars issued as to how the bank should proceed. Relying upon two Circulars it is submitted that as far as properties are concerned, it is this Court's judgment and order in Writ Petition No.1886 of 2012 which would guide 2nd Respondent. It is submitted that this judgment and order

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dated 19th August, 2013 is relied upon. It is then, that reference is made to the meeting of the Board of Directors dated 10th August, 2009 and a discussion therein on the Voluntary Retirement Scheme. On 11th July, 2009, the Voluntary Retirement Scheme was finalized. Copy of the same is at Exhibit-3 to this affidavit. The approval contained also the guidelines for implementation of the policy. On the basis of this decision of the Board of Directors, on 7th April, 2010 a Circular was issued. The employees were informed that as per the directions/instructions of the Reserve Bank of India, it has became necessary to reduce the number of employees and they can therefore opt for Voluntary Retirement Scheme. Those who opt for Voluntary Retirement Scheme would be paid one months salary for each year of balance service. However, the Voluntary Retirement Scheme compensation would be to the extent of and for a period of 10 years maximum and therefore an appeal was made to opt for this Voluntary Retirement Scheme on 15th April, 2010. Those who do not opt for the same would be retrenched from the services of the bank. This Circular did

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not meet with any response. Therefore, one more Circular dated 20th September, 2011 was issued after one year and five months. The employees were requested to opt for Voluntary Retirement Scheme by 24th September, 2011. They were specifically informed that any application for Voluntary Retirement Scheme received after this date would not be considered and the employees would be removed from the services compulsorily. Initially, 56 employees applied for Voluntary Retirement Scheme. Lateron, one of them withdrew the application. The Board of Directors in its meeting dated 30th September, 2011 considered these applications and resolved that the resignation of these employees who had applied for Voluntary Retirement Scheme, be accepted on/from 1st November, 2011 and they be paid salary at the rate of 30 days per year and for balance period of their service, however, restricted to the period of 10 years maximum. The compensation to these 55 employees, whose applications for Voluntary Retirement Scheme were accepted, was paid on 7th January, 2013. That is how the bank transferred a sum of Rs.1,47,66,769/- being

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the service dues of 97 employees who did not opt for the Voluntary Retirement Scheme and to be paid, transferred through RTGS or NEFT to their respective accounts. The amounts were paid out of the own funds of the bank in liquidation and not from financial assistance from DICGC. The bank in liquidation, thereafter, by letter dated 10th October, 2011 addressed to the Chief General Manager, Reserve Bank of India sought permission of the Reserve Bank of India to sanction the Voluntary Retirement Scheme of 56 members pointing out that after reduction of the strength of the staff, a sum of Rs. 65 lakhs would be reduced and the management costs would then stand reduced accordingly. The Reserve Bank of India addressed letter on 13th October, 2011 and the contents of the same are already referred by us herein-above. The gist is that it is the job of 1st Respondent whether to accept the Voluntary Retirement Scheme or sanction or approve it or otherwise. The Reserve Bank of India is not concerned with the same. However, the Board of Directors resolved that on receipt of the requisite sanctions / approvals amount due to the 55 employees be paid. In the

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meanwhile, however, the banking licence was cancelled and the liquidation intervened.

28 There was indeed a communication dated 19th January, 2012 where-under 1st Respondent accorded its sanction for the Voluntary Retirement Scheme. The Chairman on 17th February, 2012 informed the Commissioner about the financial position. It is accepted that on 3rd April, 2012 the order was made and in terms referred above. However, the bank by its letter dated 16th April, 2012 informed DICGC about its financial position and details of expenses. On 16th April, 2012, this letter and duly forwarded to 1st Respondent was received and acting in terms thereof, he cancelled the permission dated 3rd April, 2012 on the ground that 55 employees were not in the service on the date of liquidation, and therefore, permission granted by letter dated 3rd April, 2012 to pay compensation to them was cancelled. Then, it is stated that the DICGC addressed a letter on 20th July, 2012 and specifically informed that the issue of payment of legal dues of the employees was not within the

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purview of DICGC or the statute. Even, the Reserve Bank of India stated that this is a matter governed by the liquidation Rules. Further, a sum of Rs.32,47,89,564.65 received from DICGC under a Deposit Insurance Scheme for settlement of the claim of the depositors, was fully utilized for settlement of their claims and no part of that amount was used towards the dues of the employees. It is in these circumstances that the fresh orders were issued. It is therefore contended that the dues of the employees were paid as per resolution of the Board of Directors prior to cancellation of the banking licence. The Reserve Bank of India as well as DICGC clarified the position that after cancellation of this licence, the issue of payment of dues to the employees, was under the authority of the Registrar of the Co-operative Societies. The DICGC has also expressed an opinion that the issue of payment of dues of the employees was within the authority of the Registrar. That is how the further affidavit reads and it is submitted that the Liquidator has been acting in terms of the existing policies which are defined and clear. He has not deviated in any manner therefrom.

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29 Mr. Govilkar appearing for 2nd Respondent and contesting the Writ Petition therefore supported the impugned order and consistent with this affidavit. He has addressed us in detail about the ambit and scope of the legal provisions. It is in these circumstances that he would submit that the Writ Petition be dismissed.

30 With the assistance of all advocates, we have perused the Writ Petition and all the Annexures thereto. A Division Bench order passed by this Court in Writ Petition No.1886 of 2012 was dealing with two Writ Petitions. One was filed by a Credit Society and another by Sangli District Co-operative Central Bank Limited.

31 While it is true that there could be an authority to pass a winding up order post the developments and noticed under Section 110-A, namely, cancellation of the banking licence and which order in the present case has been passed by the Competent Authority, still, the question remains as to how the priorities have to be determined.

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32 We are mindful of the fact that the Act has made provisions in the Rules for dealing with such contingencies. The Division Bench has referred to Chapter-IX of the Rules titled "Liquidation". Rule 87 therein deals with mode of communication of an interim order under Section 102. Rule 88 provides for cost of hearing Appeal. Rule 89 deals with appointment of Liquidator and the procedure to be followed and powers to be exercised by him. The appointment of the Liquidator has to be notified by the Registrar. When the Liquidator receives the Registrar's final order confirming the interim order, the Liquidator shall publish by such means as he may think proper a notice requiring all claims against the society to be notified to him within two months of the publication of the notice and thereafter proceed to take such further action as he is empowered to take under the Act. All liabilities recorded in the account books of the society shall be deemed *ipso facto* to have been duly notified to the Liquidator under this Rule. By sub-Rule (5) of Rule 89 the Liquidator shall, after settling the assets and liabilities of the society as

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they stood on the date on which the winding up order is made, proceed to determine the contribution to be made or remaining to be made to the assets of the society by persons and estates referred to in clause (h) of Section 105 and by order call upon each of them to pay the amount specified in the order as contribution and costs of the liquidation determined under clause (k) of Section 105. Every such order shall be submitted for approval to the Registrar, who may modify it or refer it back to the Liquidator for further inquiry or other action or may forward it for execution under Section 98. If the sum is assessed against any member but is not recovered, then, there are further provisions in the sub-rules enabling the Liquidator to pass or to issue a subsidiary order. A quarterly progress report and other returns and statements have to be filed and duly forwarded to the Registrar. Then, there are other enabling provisions. We have seen that all the powers which the Liquidator exercises and in terms of clause (e) of Section 105, are not to be exercised without the prior approval of the Registrar. Thus, though there is sufficient guidance in this rule to the

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Liquidator, yet, till the disposal of surplus assets and other steps, the determination of the priorities has to be made. For that purpose, the Division Bench of this Court derived assistance from Section 21-A titled as "deregistration of societies" and a Rule enabling appointing a official assignee, after such deregistration order is passed, to carry it out and give it effect. In that, there are certain references to the determination of priorities. So far there could not be any dispute.

33 In the instant case, however, we find that the Liquidator may have rightly forwarded certain proposals and for approval of the Registrar. Has the Liquidator proceeded on the footing that the Registrar is empowered to even deal with and decide vexed issues and contested claims?, is a moot question. On the own showing of 2nd Respondent and as reflected in the additional affidavit, what we find is that this is a case of winding up a bank. The depositors' interests are protected by the DICGC in terms of DIC Act, 1961. So far so good, we do not harm the interests of the depositors nor we

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make any observations and render any findings in that regard.

34 Equally, we are mindful of the mandate of the Banking Regulation Act, 1949. In that, even a Co-operative Bank will have to obtain licence from the Reserve Bank of India before commencing and carrying on banking operations. Once it is a bank, then, the above regime comes in.

35 In the instant matter, however, the bank is put in liquidation. Admittedly, the Voluntary Retirement Scheme was mooted when the bank's position was precarious and critical. Admittedly, one proposal for Voluntary Retirement Scheme and as disclosed in the additional affidavit did not impress and was never accepted by the employees. Therefore, another proposal was mooted. The dates in that regard are crucial. On the own showing of the deponent, the bank mooted another proposal by issuing a Circular dated 20th September, 2011. A copy of this Circular is at Exhibit-5

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to this additional affidavit. It says that the bank has decided to moot a proposal for Voluntary Retirement Scheme. The bank has issued Circulars on 15th and 19th September, 2011. By this Circular of 20th September, 2011, all employees were informed that on account of the directions of the Department of Co-operation and the Reserve Bank, it is imperative to reduce the number of employees. Therefore, those who opt for this scheme of Voluntary Retirement, they would be paid one months salary for the remaining service (basic+Dearness Allowance and one month salary per year with 10 years sealing). However, the willingness has to be conveyed before 24th September, 2011. Page 129 is a copy of this Circular. Then, what we find is that this affidavit makes a reference to the minutes of the Board of Directors meeting held on 30th September, 2011. It is proclaimed that these applications were considered by the Board and it was held that the resignation of those employees who applied for Voluntary Retirement be accepted on or before 4th November, 2011 and they be paid 30 days salary per year for the balance period of their service restricted to the period of 10 years maximum.

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The crucial aspect comes after this development is noted. The compensation of those 55 employees who tendered their applications for Voluntary Retirement was paid on 7th January, 2013.

36 In paragraph 5 of the additional affidavit at pages 102 and 103, it is reiterated that a sum of Rs.1,47,66,769/- being service dues of the balance 97 employees came to be transferred to their accounts. These 97 employees did not opt for Voluntary Retirement Scheme. We are therefore of the clear opinion that till 7th January, 2013 on which date the amount was purportedly disbursed, several developments have taken place. The banking licence was cancelled and a winding up order came into effect. If the disbursement is much after the winding up order, then, how did the Registrar determine and approved this scheme of payment of money or disbursal of funds by presuming that 55 employees who get nothing beyond what is stipulated in the Voluntary Retirement Scheme, is not clear to us at all. If in one breath he says that on 3rd April, 2012 even these 55 employees are

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entitled to receive amounts on par with these 97 who did not opt for Voluntary Retirement Scheme, then, why this position had to be changed or reviewed or what was the requirement for such alteration or review of the earlier position, is equally unclear. These are not matters which should be determined by letters, communications and interse between the Committee of Liquidators and 1st Respondent. These matters and issues vitally affect the rights of parties like the members of the Petitioner union and other employees. Equally, they affect the interests of other creditors. 1st Respondent and equally the Committee of the Liquidators cannot proceed on the footing that beyond the employees dues or that of the depositors, nobody else is entitled to receive any amount from them. That there are no liabilities other than these, is the assumption and based on which everybody has proceeded. Even if there are liabilities, those persons would not be entitled to receive any sum earlier than the employees is another presumption. If reliance is placed on the priorities as determined in Rule 18-A and in cases of de-registration, then, the wages and salaries of the employees

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according to this committee of Liquidators takes precedent / or priority even over secured loans, or otherwise has not been indicated in the impugned order. That means the understanding is that even when the Voluntary Retirement is accepted but the amounts are not disbursed, all employees have to be treated on par. Whether that is the legal position or otherwise is not reflected from the impugned order.

37 It is clear from a perusal of the same that it does not decide any of these aspects and with clarity. Neither is the employee given any opportunity nor the union. It is pointed out in the affidavit in rejoinder/additional affidavit dated 12th October, 2014 by the Petitioner (page 95) that there is a serious dispute about the communication of 19th January, 2012 purportedly exchanged between 2nd and 1st Respondent. They also rely on a letter of 17th February, 2012. It is in these circumstances that they would submit that the impugned letter works serious prejudice.

38 It is this aspect which has weighed with us, and therefore, we agree with Mr. Helekar that the same would

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have to be looked into again. For that to be looked into, we cannot sustain the directions in the letter of 25th June, 2012. Equally, we cannot proceed on the footing that everything that was determined on 3rd April, 2012 is correct and in accordance with law. We think that just as a winding up order was passed with exercise of due care and caution and by adhering to the mandate of the Act, similarly even when determining such issues as are now sought to be determined, 1st Respondent / Commissioner would have to be careful, attentive and hold a proper adjudication.

39 The letter of 25th June, 2012 addressed to the Committee of these Liquidators would not suffice and meet the requirement in law. A perusal of the same (page 44) would reveal that though it purports to affect the future entitlement of all the employees, it is not at all meeting the ordinary and common expectation of fairness, equity and justice. Those vitally affected were not even heard nor is their stand reflected. A short communication like this therefore cannot be sustained.

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40 We, therefore, proceed to quash and set aside the said communication.

41 We direct the 1st Respondent to re-adjudicate and reconsider all issues and as enumerated by us above. 1st Respondent shall hear not only the Committee of the Liquidators but the representative of the Petitioner and such others representing 97 employees who did not opt for Voluntary Retirement Scheme. 1st Respondent shall consider all the matters arising out of the Voluntary Retirement Scheme, its acceptance and the vital factor of disbursement in terms thereof and made on 7th January, 2013. Whether that accords with the mandate and flowing from Section 105 Clause (e), Rule 89 and Section 18-A and enabling Rules, must be determined by him. 1st Respondent would have to therefore consider the priorities of the creditor's dues. Whether he can make any segregation of the claims of the two sets of employees must also be clarified and with reasons. In substance, 1st Respondent must pass a speaking order. That he should do after hearing above parties and

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perusing all the records. 1st Respondent shall not be influenced by his earlier exercise and communicated in the letter of 25th June, 2012 and prior letter of 3rd April, 2012. If it is decided that the employees dues rank on par ignoring the voluntary retirement scheme, then, that course also is open to the 1st Respondent but whether he should go by the same or not is entirely for him. We clarify that while we set aside the earlier direction we do not guide him in any above manner. We have noted the controversy and the rival contentions as that has missed and escaped his attention completely. We, therefore, expect him to pass an order uninfluenced by any observations in this order. The Writ Petition is allowed in these terms with no order as to costs. We direct that the above exercise shall be completed within a period of four months from the date of receipt of a copy of this order. Rule is made absolute in the above terms.

(B. P. COLABAWALLA, J.) **(S. C. DHARMADHIKARI, J.)**

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