

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

WRIT PETITION NO. 1383 OF 2022

IN THE MATTER OF
ARTICLE 226 OF THE
CONSTITUTION OF INDIA
1950

AND

IN THE MATTER OF
CHALLENGING THE
CONSTITUTIONAL
VALIDITY OF THE
BANKING REGULATION
(AMENDMENT) ACT 2020

AND IN THE MATTER OF
ARTICLE 226 OF THE
CONSTITUTION OF INDIA
IN THE MATTER OF
CHALLENGING THE
VALIDITY OF CIRCULAR
DATED 25TH JUNE 2021
ISSUED BY THE RESERVE
BANK OF INDIA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION

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1. The Dapoli Urban Co-Operative Bank Ltd.

Through its Chairman

Mr. Jaywant Shankar Jalgaonkar

Having office at:-

Veer Savarkar Marg, Post Lane,
Dapoli, Dist:- Ratnagiri - 415712

Through the Power of Attorney

Mrs. Sayali Bhoir

Chief Executive & Secretary

The Maharashtra Urban Cooperative
Banks Federation Ltd.

Having Head Office at:

Bharati Krida Mandir,
4th Floor, Vadala,
Mumbai 400031

2. The Maharashtra Urban Cooperative
Banks Federation Ltd.

Through its Chief Executive & Secretary

Mrs. Sayali Bhoir

Having Office at :

Bharati Krida Mandir,
4th Floor, Vadala,
Mumbai 400031

PETITIONERS

VERSUS

1. The Union of India
Through its Secretary
Ministry of Finance
New Delhi, India 110001

2. Reserve Bank of India
Through its Secretary
16th Floor, Central Office Building,
Saheed Bhagatsingh Marg,
Mumbai 400001

RESPONDENTS

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TO,

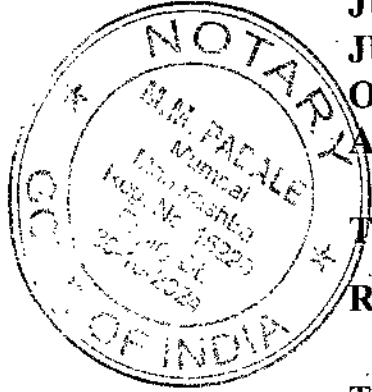
**THE HONOURABLE THE CHIEF JUSTICE
AND THE COMPANION HONOURABLE
JUDGES OF HIGH COURT OF
JUDICATURE OF BOMBAY,
ORIGINAL SIDE,
AT BOMBAY**

**THE ABOVE NAMED PETITIONERS MOST
RESPECTFULLY SHEWETH:**

The facts and circumstances from which the present Writ Petition arises are capsualised herein below for the sake of ready reference and convenience.

FACTS OF THE PETITION

1. The Petitioner No.1 is the Urban Co-operative Bank. The Petitioner no. 2 is the Chief Executive & Secretary of the Petitioner no.2, which is the umbrella body of all Urban the Cooperative Banks in Maharashtra. It is largest federation in India and has been playing an important role in voicing the grievances of its member Banks before the appropriate forums, including the Central Government, Reserve Bank of India, State Government, Commissioner of Cooperation, Registrar of Cooperative Societies, Income Tax Authorities and other related Government bodies.
2. The Petitioner states that Respondent No. 1 is the Union of India. The Petitioner vide the present Petition seeks to challenge the constitutional validity of the Banking Regulation (Amendment) Act, 2020 and two Circulars issued

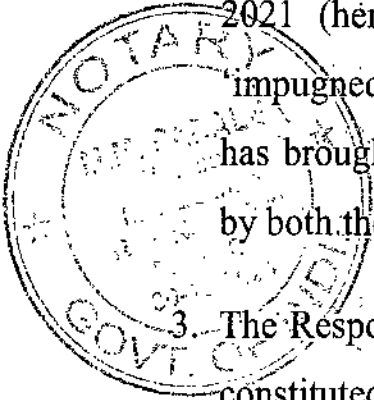


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by the Respondent No. 2 dated 27th April, 2021 and 25th June 2021 (hereinafter referred to as the 'impugned Act' and 'impugned Circulars' respectively). The Respondent No. 1 has brought into effect the impugned Act after it was passed by both the houses of the Parliament.



3. The Respondent No. 2 is the Reserve Bank of India which is constituted or which is established under Reserve Bank of India Act, 1934. The impugned Circular is issued by Respondent No. 2. Respondent No. 1 as well as Respondent No. 2 are State within the meaning of Article 12 of the Constitution of India and are thus amenable to the writ jurisdiction of this Hon'ble High Court.

4. The Petitioner states that vide the present Petition, the Petitioner seeks to challenge the constitutional validity of the Banking regulation (Amendment) Act 2020 as well as a Circulars issued by Respondent No. 2 dated 27th April, 2021 and 25th June 2021.

5. The Petitioner states that the impugned Act was published in the official gazette on 29th September, 2020 and was brought into force with effect from 26th June 2020 except Section 4 which was brought into force from 1st April, 2021 vide a separate notification published in the official Gazette on 23rd

Exh: 'A'

Exh: 'B'

December 2020. Hereto annexed and marked as **EXHIBIT A** and **EXHIBIT B** are the copies of the Gazette Notification dated 29th September 2020 as well as Gazette Notification dated 23rd December 2020.

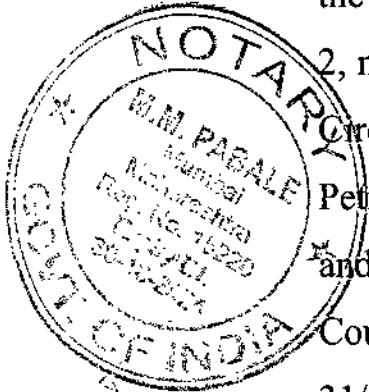
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6. The Petitioner states that the Petitioner also seeks to challenge the impugned Circulars which are issued by Respondent No. 2, namely the Circular dt:-31/12/2019, Circular dt:-27/4/2021, Circular dt:-25/6/2021 and it is the categorical case of the Petitioner herein that even the said Circulars are ultra vires and hence the Petitioner constrained to approach this Hon'ble Court by impugning the same. The copy of the Circular dt:-31/12/2019 issued by the Resp.No.2 is annexed hereto and marked as "EXHIBIT-C". The copy of the Circular dt:- 27/4/2021 issued by the Resp.No.2 is annexed hereto and marked as "EXHIBIT-D". The copy of the Circular dt:- 25/6/2021 issued by the Resp.No.2 is annexed hereto and marked as "EXHIBIT-E".

7. The Petitioners submit that, it is necessary to look into the history. It is submitted, that in the year 1965 there was an issue as to whether the regulation of the Reserve Bank of India in respect of the Co-operative Bank is to be accepted or not. It is submitted that in the year 1965 only for the insurance cover of Rs. 1500/- of the deposit credit guarantee insurance it was suggested by the then Madras and the Mysore Government, that the Regulation in of the State Government should not be taken.

8. However, Shri Dhananjayrao Gadgil the pioneer of the Co-operative society movement Vaikunthabai Mehta and then Reserve Bank of India Governor assured that the regulation of the Urban Co-operative Bank will be given to a separate



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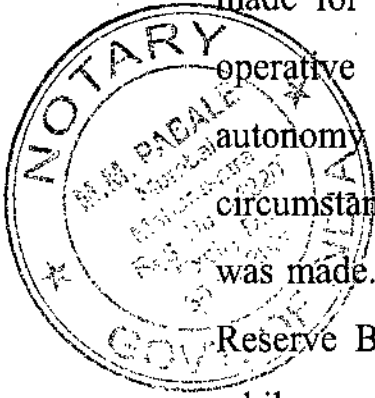
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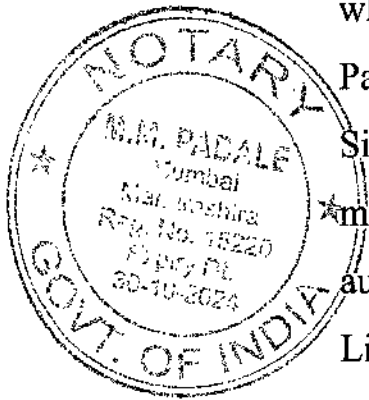
department of the Reserve Bank of India by name Agricultural Credit Department. It was also, assured that necessary amendment in the Banking Regulation Act will be made for the purpose of regulating the control of the Co-operative Bank but at the same time maintaining the autonomy of the Co-operative bank. It is in these circumstances that, the Banking Regulation Act Amendment was made. At that time the then Honourable Governor of the Reserve Bank of India P.C. Bhattacharya had assured that, while regulating the parameters of the control on the banking on the Co-operative Bank the autonomy of the Co-operative society will be taken care off. However, the present amendment and ordinance which have been made in the year 2020 would clearly show that assurance is completely violated in the instance case.



9. The Petitioners submit that in order to deal with the controversy at hand and the challenge to the Impugned Act as well as the Impugned Circulars, the Petitioner places reliance on Article 246 of the Constitution of India. The provision of Article 246 of the Constitution of India empowers the Union Legislature consisting of the Lok Sabha and Rajya Sabha and the State Legislature which consist of Legislative Assembly and Legislative Council. Further the power to legislate has been categorized into three Lists viz. Union List, State List and Concurrent List. The said lists can be found in the 7th Schedule of the Constitution of India. The Petitioners submit

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that amongst the three list, list I is known as the Union List, which consist those subjects in respect of which the Union Parliament alone shall have the authority to make legislation. Similarly list II is known as State List in which the subject mentioned therein shall be under the exclusive power and authority of the State Government to make legislation on and List III is the Concurrent List in respect of which the Union as well as the State Legislature shall have the power and authority to make legislation. The Petitioners submit that in list I, there is an entry viz. Entry No. 45, which deals with Banking. The Petitioners submit that similarly list II viz. the State List, consist of subject in respect of which the State Legislature exclusively has a jurisdiction, power and authority to enact laws. In respect of the subjects, which are included in the State List, the Parliament shall not be in a position to make any laws.

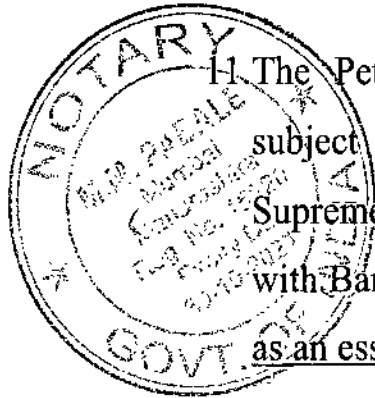
10. The Petitioners submit that with regards to the controversy at hand, since the Banking Regulation Amendment Act, 2020 (for short "said Act",) has been enacted by the Parliament thereby empowering the Respondent No. 2 to issue circular in respect of subjects which are other than the "Banking" as a business. Therefore, these issues became relevant and in the humble submissions of the Petitioner are ultra vires to the provisions of the Constitution of India, 1950. The Petitioner however, makes it clear that with regards to the present case we are not concerned with the concurrent list at all. The Petitioners submit that the real dispute is between the

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provisions of entry 45 of the union list as opposed to entry 32 of the State List.



11. The Petitioners submit that this controversy had been a subject matter of some judgments where the Honourable Supreme Court has said that entry 45 of list I, which deals with Banking, would mean "Banking as a business or banking as an essential business". (*Emphasis supplied*).

12. The Petitioners submit that on the contrary entry 32 of list II, of the 7th schedule of the Constitution of India deals with Cooperative Society, incorporation, management and aspects other than banking as a business. (*Emphasis supplied*).

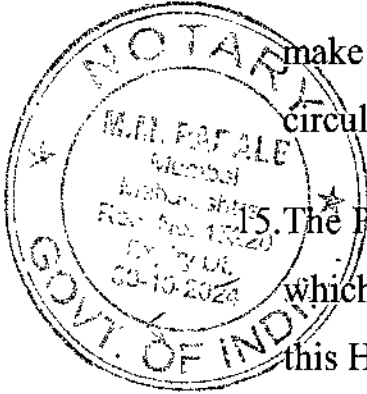
13. The Petitioners submit that, the matter as to who should be a Managing Director or a Chief Executive Officer or what should be their prescribed qualifications or what should be the prescribed qualification of the directors or who should be auditor are the matters which really have nothing to do with banking as a business. The Petitioners submit that these are essentially in respect of Managing Committee viz. incorporation of the Management of the Cooperative Society as a person.

14. The Petitioners submit that, therefore ex-facie the aspect relating to the incorporation and the management of the Co-operative Society as a person are distinct and different from the "Businesses of Banking" and therefore, the same would fall outside the preview of Entry 45 of list I, of the schedule VII of the Constitution of India. The Petitioners submit that

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therefore, the parliament may not have any jurisdiction to make any law such as the said Act, and the consequent circular which has been issued by the Respondent No. 2.



15. The Petitioners submit that, however, there is one more aspect which requires consideration and calls for interference from this Honourable Court i.e. apart from the provision of entry 45 of List I and entry 32 of List II of the Schedule VII of the Constitution of India.

16. The Constitution of India was amended by 97th Amendment Act, by which Part IX-B was inserted in the Constitution. This was an independent power irrespective of Article 246 read with the 7th Schedule of the Constitution of India. This being the position the said amendment was challenged before the Honourable Gujarat High Court and the High Court vide judgment reported in 2013 SCC Online Gujarat 2242 declared the said Part IX-B of the Constitution of India to be unconstitutional. The Petitioner states that it is important to note that while declaring the said part IX-B unconstitutional the Honourable Gujarat High Court had not granted any stay on the operation of the said order even after a specific request by Union of India made in that regard.

17. The Petitioner states that at this juncture the Petitioner places reliance on the judgment in case of *Kusum Ignot and Alloys Pvt. Ltd.* reported in 2004 (6) SCC 254 in which the Honourable Supreme Court of India held that when a judgment with respect to a Central Legislation is delivered by

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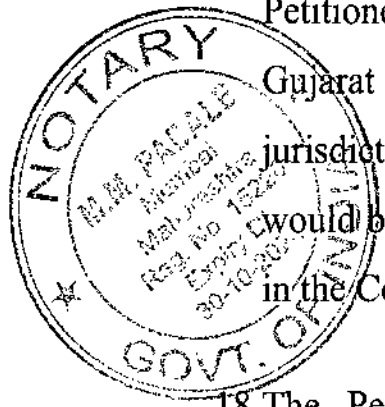
the High Court it would have a Pan India effect. The Petitioner states that in other words the scope of Honourable Gujarat High Court Judgment is not confined only to the jurisdiction of the Honourable Gujarat High Court but it would be applicable even in Maharashtra and all others states in the Country.

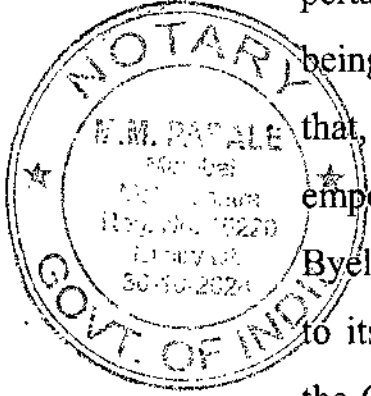
18. The Petitioner states that it places reliance on another judgment with regards to this point viz. the judgment in case of the *Union of India Vs. Rajendra Shah* Reported in 2021 SCC Online SC 474 on 28th July 2021 wherein even the Honourable Supreme Court of India has confirmed the judgment of the Gujarat High Court and has modified the same only to the extent of Multi-state Co-operative Societies which modification is not concerned with the respect to the controversy at hand.

19. The Petitioner states that in the light of this it will not be possible for the Respondent No.1 to rely upon the provision of Part IX-B of the Constitution to justify the said Act.

20. The Petitioners state, that, Respondent Union of India, by legislating the said Act, has essentially encroached upon the domain which is within the exclusive spear of *State List*, thereby affecting the day to day management of the Cooperative Societies. The certain aspects of the managing and running of the Cooperative societies, such as the contribution of Share capital, Elections to the Board of

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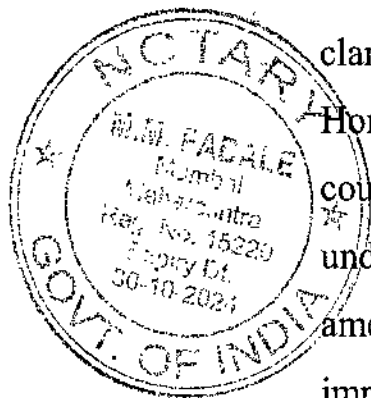
Directors and their eligibility criteria, Tenure which are not pertaining to the aspect of "Banking as Business" are also being affected as a result of the Amending Act. It is stated, that, by virtue of the Amending Act, the Resp.No.2 has been empowered to regulate or even the power to amend the Byelaws of the Society to name the few, having been subject to its prior approval. It is stated that, Resp.No.2, has issued the Circulars dt:-27/4/2021 and dt:-25/6/2021, issuing certain guidelines, thereby severally affecting the management of the Co-operative Societies across the state. It is submitted, aggrieved, thereby by the provision of Banking regulation (Amendment) Act 2020 as well as a Circulars issued by Respondent No. 2 dated 27th April, 2021 and 25th June 2021, the Petitioner seeks to approach this Hon'ble High Court in its Writ Jurisdiction U/Art.226 of the Constitution of India, 1950 on following grounds amongst other, which are being taken without prejudice to each other:-

GROUNDS OF OBJECTION

21. That Constitution U/Art.246 has clearly laid down the separation of powers between the Parliament and the State Legislature, thereby marking the subjects on which the respective Legislative bodies would have *exclusive jurisdiction*, which is not to be encroached upon by the other. In the submission of the Petitioner, as per the list II viz.. the State List includes incorporation, regulation and winding up of Co-operative societies as a subject under the State List

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clarification with regards to this point. It is clarified by the Honourable Supreme Court of India that the 97th Amendment could not be implemented for Co-operative Society registered under the State Act. That the Banking Regulation Act amendments also suffers from the same vice hence its implementation is under a clout and is ultra vires to the Constitution of India.

25. That as per all the State Co-operative Societies Act the share capital of the Society has to be contributed exclusively by its members and that the impugned Act is in contravention to this basic principle which stipulates that the share capital can be contributed even by the Non-members even if they are outside the societies area of operation. [Emphasis supplied]
26. That this provision is prima facie against the object of all the State Acts with respect to Co-operative Society. In the submission of the Petitioner, the impugned Act is liable to struck down, as the same is in direct conflict with the state legislation.
27. That one of basic principle of Co-operation is voluntary association of person.
28. That in accordance with and as per the State Act a member can at any time relinquishes membership and withdraw his contribution of share capital.

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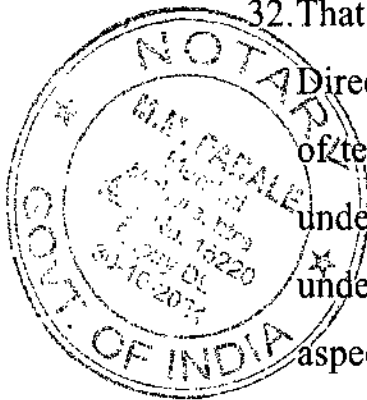
29. That however as per the provisions of the impugned Act withdrawing share capital is not permissible and the said option is completely taken away. This means a person becomes share holder of a society and has to compulsorily continue to be a member irrespective of his willingness or otherwise.

30. That there is yet another contrast which has occurred due to the coming into effect of the impugned Act viz. merger of two cooperative institutions both ordinarily happens only with the consent and approval of the Managing Committee and General Body of the two institutions as per the respective State Cooperative Laws. However, in striking contravention to the said provision are the provisions of the impugned Act which provide for merger or acquisition between two cooperative banks as per the decisions of RBI. (emphasis supplied). This again in the humble submission of the Petitioner is against the State Cooperative Societies Act.

31. That the elections to the Board of Directors of Cooperative Institutions are conducted by officers of the Cooperative department as per the provisions of the respective State Acts. This is because such Directors of Cooperative Societies are democratically elected. That the powers to decide about the qualification and other eligibility criteria of such directors has been now entrusted to the Respondent No. 2 vide the impugned Act and the same in the humble submission of the Petitioner is against the provisions of the constitution of India.

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32. That several other aspects such as tenure of elected Board of Directors, eligibility criteria for Chairman, maximum number of term for which a person can be Chairman etc. are covered under the jurisdiction of State Act as Cooperation is listed under the State List i.e. List II. However, changes in these aspects have also been incorporated in the impugned Act which is once again against the basic principles enlisted in the Constitution of India.

33. That the employee's appointments are also to be done in cooperative institutions as per the provisions of the State Act and Rules. That the Managing Director / Chief Executive Officer are also an employee covered under these provisions. That the impugned Act has made changes in these aspects also giving power to the RBI to determine their eligibility criteria or period of employment as also an additional stipulation that RBI permissions to be obtained for such appointments. That this being against the constitutional provision also violates the rights of democratically elected Board of Directors.

34. That the State Acts do not have any provision for Board of Management. However, RBI has been empowered to constitute a Board of Management in cooperative Banks and has also been given the powers over the members of Board of Management as also the CEO and/or the MD which again has

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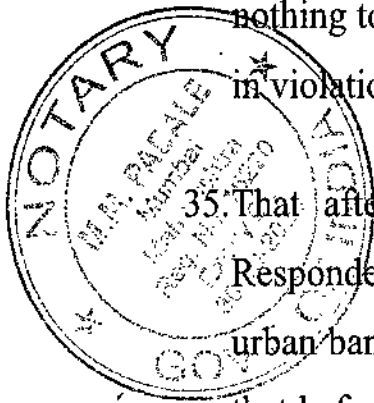
nothing to do with the business of banking per se and hence is in violation of the constitutional provisions.

35. That after the coming into effect of the impugned Act, Respondent No. 2 has imposed restrictions on cooperative urban banks for amending their bye-laws. That was stipulated that before amending the bye-laws, Union Cooperative Banks have to obtain the permission of the Respondent No. 2. That this is an attempt to infringe the democratic right of cooperatives. That as per the cooperative principle and also the statute which stipulates body of the shareholders is the highest decision making body and that attempts to curb or restrict on this democratic right would be in violation of the constitution.

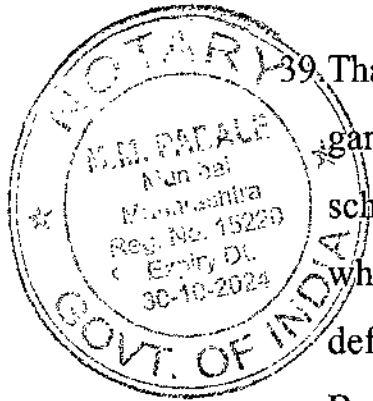
36. That the impugned Act has also empowered RBI to frame regulation for appointment of statutory auditors and that RBI without considering the ground realities of the places in which the urban cooperative Banks are functioning and the absence of auditors meeting RBI stipulated criteria at these places has issued new regulations. That besides this causing unavoidable problems for cooperative it is also in conflict to the provisions of the State Act.

37. The impugned Act is ex-facie unconstitutional and requires interference by this Honourable Court.

38. The impugned Act is ultra-vires to the constitution and is beyond the Legislative competence of the Parliament.



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39. That the impugned Act is enacted by the Parliament under the garb of exercising its powers under Entry 45 of list I of the 7th schedule. However, the said entry is limited to provisions which affect the 'essential business of Bank' qua the definition of the word "banking" as defined u/s. 2(b) of the Banking Regulation Act.

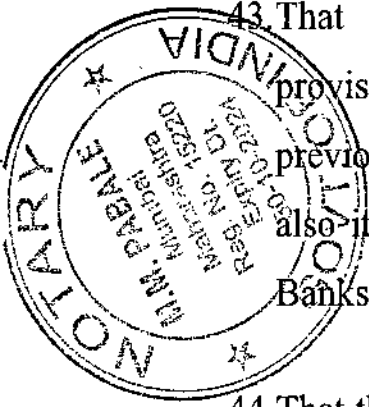
40. That essentially what the Reserve Bank of India regulates is purely Banking related activities viz. permission to open branches, framing of policies with regards to loan, asset qualification, liquidity requirement etc. However, what is sought to be done by the impugned Act is expanding the power and control of Reserve Bank of India qua the matter is related to the Legislative Head viz. incorporation, management and Liquidation of Cooperative Societies which essentially falls under Entry 32 of List II of 7th schedule of Constitution and not under Entry 45 of List I.

41. That although the impugned Act is brought into force purportedly by exercising the powers under entry 45 of List 1, yet it completely encroaches upon a field which is exclusively within the domain of entry 32 of the state list.

42. That essentially the object of the Banking Regulation Act is purely to regulate the aspects of Banking whereas the primary object of the Maharashtra Cooperative Societies Act is for development, management and regulation of cooperatives societies in general and also urban banks in particular.

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43. That the impugned Act essentially tries to revive the provisions of the Banking Regulation Act which were previously omitted with respect to the cooperative Banks and also it tries to make provisions generally with respect to all Banks.

44. That the Parliament lacks complete Legislative competence to regulate any function with respect to cooperative societies in respect of rights, duties and functions of the members of the cooperative societies at least under entry 45 of the list 1 of the 7th schedule.

45. That the functions which are sought to be encroached upon by the impugned Act are expressly included in the state list and on the other hand are expressly and unequivocally excluded from entry 43 of List 1 of the 7th schedule.

46. That on bare perusal of entry 32 of List 2 in contrast with entry 43 read with entry 45 of List 1 of the 7th schedule of the constitution, it can be said that there is a clear demarcation of Legislative fields by the framers of the constitution.

47. That even as per Article 19(1c) which is a fundamental right to form association and/or cooperative societies guaranteed under the constitution of India is read with the right to govern such association or cooperative society as is formed therein under. Hence it is all the more impermissible to interfere with the association or cooperative societies so formed.

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48. That even if the statement of objects and reasons of the 1966 Amendment of Banking Regulation Act is seen, it will be clear that the said amendment was brought in specifically to refrain from Legislating in fields which would have an impact on entry 32 of List 2 and furthermore without any sort of a ratification from the State Legislature as contemplated by law the impugned Act cannot pass the muster of constitutionality.

49. Furthermore the impugned Act essentially affects the basic structure of the constitution viz. the federal structure and hence it is unconstitutional and all the more unsustainable and therefore shall be struck down by this Hon'ble Court.

50. That the impugned Act is also unconstitutional in the light of the Judgment given by the Hon'ble Gujrat High Court which was subsequently confirmed by the Hon'ble Supreme Court of India wherein a challenge to the provisions of Article 243ZN (1) were challenged and by which the provisions of the Banking Regulation Act were sought to be made applicable to the cooperative societies running banking business. Thus even following the precedents by the Hon'ble Supreme Court of India this impugned Act is absolutely unconstitutional and deserves to be struck down.

51. That perusal of Section 4A of the impugned Act would show that the words "notwithstanding anything content in any law for time being in force" For the words ' the provision

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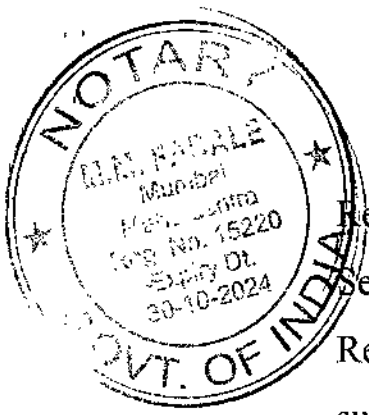
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of this Act, as in force for the time being” in Section 56 of the Banking Regulation Act, as its stood prior to the impugned amendment. That the words any other law for time being in force itself gives an overriding effect to the Banking Regulation Act over the Maharashtra Co-operative Societies Act. That the provision of Section 56 of the Banking Regulation Act after the amendment deal with the matters pertaining into incorporation, regulation and winding up in addition to the matters relating to the banking and in so far as provision relating to banking are concerned the exclusive domain of legislation lies with the Parliament whereas for matters pertaining to incorporation, regulation and winding up. The exclusive domain for legislation lies with the state. That consequently the said non-obstante clause a newly introduced wide the impugned Act would have effect that the said amendment provision would supersede the state legislation that the Maharashtra Co-operative Societies Act in relation to incorporation, regulation and winding up.

52. That Section 4F of the impugned Act, that vide Section 4F of the impugned Act, Section 56 (f) (i) section 56 (fi) and Section (g) of the Banking Regulation Act. Prior to the impugned Act, Section 56 (f)(i) provided for certain modification to Section 8 of the Banking Regulation Act in relation to its Application to Co-operative Bank. Similarly Section 56 (fii) provides for certain modification to section 9 of the Banking Regulation Act, in relation to its Application to Co-operative Bank. Similarly Section 56 (g) of the Banking

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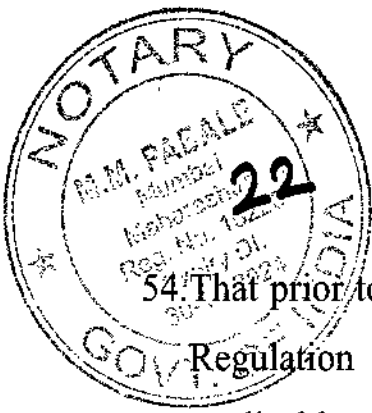


Regulation Act, prior to the impugned Act provided that Section 10, 10A, 10BB, 10C and 10D of the Banking Regulation Act would not apply to Co-operative Bank. It is submitted that modification made vide Section 56 to the Banking Regulation Act, in relation to applicability of the Banking Regulation Act, two cooperative bank have been withdrawn by the impugned provision of the impugned Act. That by virtue of Section 4F of the impugned Act, Section 56 (fi), Section 56 (fii) and Section 56 (g) of the Banking Regulation Act, stands omitted resultantly section 8, 9, 10, 10A, 10B, 10BB , 10C and 10D as the exists in the Banking Regulation Act, would directly become applicable to Cooperative banks. By virtue of the aforesaid Section 10, 10A, 10B, 10BB, 10C, and 10D of the Banking Regulation Act being made applicable to Co-operative Bank essential Aspect of management of Co-operative Bank which were previously governed by concerned state legislation shall not be governed by the Banking Regulation Act.

53. That the management of Co-operative Society including Co-operative Bank are matters which can be legislated only under Entry 32 of List II and as such cannot be governed by Section 10 , 10A, 10B, 10BB, 10C, and 10D of the Banking Regulation Act. Consequently it is submitted that the provision of the impugned Act, which may applicable to the aforesaid section relating to management of Co-operative Bank is without legislative competence and as such deserve to be held and ultravires and unconstitutional.

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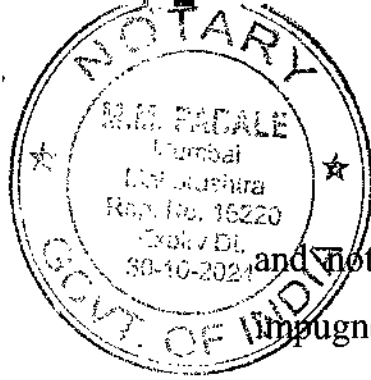
54. That prior to the impugned Act, Section 56(i) of the Banking Regulation Act, as it stood then specifically excluded the applicability of Section 12, 12A, 13, 15, 16, and 17 of the Banking Regulation Act, to Co-operative Banks. However, upon amendment to the said Section 56 (i) the provision of the said Section of the Banking Regulation Act, have now been made applicable to Co-operative bank. That upon perusal of the said Section of the Banking Regulation Act, it can be seen that the essential deal with matter concerning the incorporation, regulation and winding up of co-operative bank which are purely beyond the legislative Competence of the Parliament with regards to the banking Regulation Act.

55. That extending Application of Section 12A to the Co-operative bank would mean that the voting rights and concerns of the Management of the Co-operative bank for which regulation can only be prescribed under Entry 32 of the List II is now sought to be taken away from the resume of the Maharashtra Co-operative Societies Act, and is sought to be placed within the resume of the Banking Regulation Act which is without any legislative competent.

56. That Section 16 of the Banking Regulation Act, provides for restriction on persons who can be appointed as Directors in Co-operative bank which is beyond any doubt a matter concerning the management of the Co-operative bank on which regulation can be made only under Entry 32 of List II

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and not under entry 45 f List 1. Even on this ground the impugned Act, deserved to be quash and set aside.

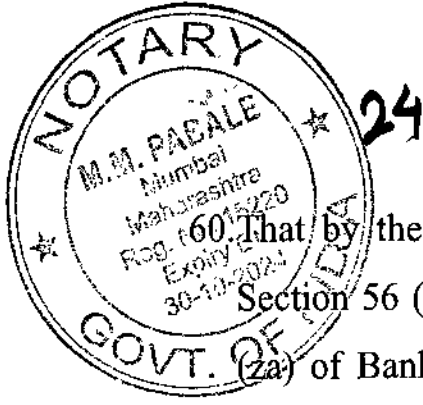
57. That by the impugned Act, Section 56 (r), Section 56 (ri) and Section 56 (sa) of the Banking Regulation Act stands omitted. That prior to the impugned Act coming into force Section 56 (r) omitted Section 25 of the Banking Regulation Act in its applicability to cooperative Banks.

58. That Section 56 (ri) of the Banking Regulation Act made modification to Section 26 in their application to Cooperative Banks and Section 56 (a) provided for different audit mechanism for cooperative Banks, by substituting Section 30 with a different mechanism in so far as cooperative Banks were concerned.

59. That by virtue of amendment to Section 56, 56 (ri) and 56 (sa) having been repealed and consequently Section 25, 26 and 30 of the Banking Regulation Act been made applicable to cooperative Banks. Prior to amendment the RBI under Section 56 (sa) was only competent to pass orders for additional audit without prejudice to any other law. However, by virtue of impugned Act, Section 30 of the Banking Regulation Act is made applicable in terms to cooperative Banks thereby conferring upon the RBI, supervisory power on non-banking aspects of a cooperative society including on matters of audit which essentially is of management itself (emphasis supplied).

all

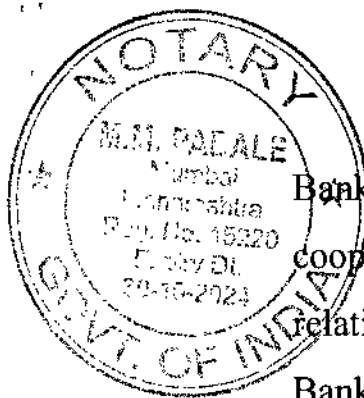
OS



That by the impugned Act, Section 56 (u), Section 56 (v), Section 56 (x), Section 56 (y), Section 56 (z) and Section 56 (za) of Banking Regulation Act stands omitted. Prior to the amendment Section 56 (u) provided for omission of Sections 32 to Section 34 in its application to the cooperative Banks. Section 56 (v) provided for the exclusion of Section 34A (3) in so far as cooperative Banks are concerned. Section 56 (x) provided for modification of certain words in Section 35A of the Banking Regulation Act in connection with the Cooperative Banks. Section 56 (y) provide for omission of Section 35B in relation to the application of Banking Regulation Act to cooperative Banks. Section 56 (z) provided for certain modification and Section 36 in connection to its application to cooperative banks. By Section 56 (za) modifications were made to Section 36 A of the Banking Regulation Act in connection with cooperative Bank.

61. By enacting the impugned Act, the Sections 32 to 34 which were previously excluded from application in connection to cooperative banks have now been made applicable and the provisions of these Sections are crystal clear to show that what is sought to be done by the said Sections is purely outside the purview of Banking Regulation Act in application to the cooperative societies and the cooperative Banks.

62. That Section 56 (y) of the Banking Regulation Act has been omitted by the impugned Act. Similarly, Section 35 (B) of the

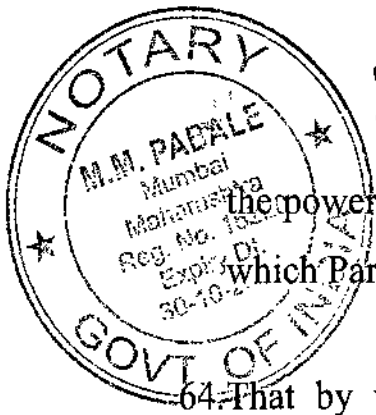


Banking Regulation Act has been made applicable to cooperative Banks which provides for certain provisions relating to appointment of Managing Directors etc and the Banking Companies. The said provision also requires the cooperative Bank to take prior approval of the RBI in relation to matters concerning appointment of Managing Directors etc. and Banking Companies. This provision amount to restriction on the Management rights of the cooperative banks, which restrictions can only be imposed under entry 32 to List 2. Therefore, they are ultravires for having been enacted without Legislative parties.

63. That Section 4 (M) of the impugned Act, amends Section 56 (zaa) of the Banking Regulation Act. Prior to the amendment Section 56 (zaa) provided for certain modification to Section 36AAA in its application to cooperative societies. By virtue of the amendment in Section 56 (zaa) vide Section 4M of the impugned Act. The applicability of Section 56AAA is extended to all Cooperative Banks in addition to multistate cooperative Banks, as a result of which the power to supersede the Board of Cooperative Banks gets conferred upon the Respondent No. 2 which power as such is in derogation to powers conferred on the registrar of the cooperative societies of the State who is now assigned a mere consultative role as provided in the proviso of Section 36AAA (1) introduced by Section 4M of the impugned Act. As a result of the said amendment powers to supersede to the Board of the cooperative Bank which is an essential fosset of

d/

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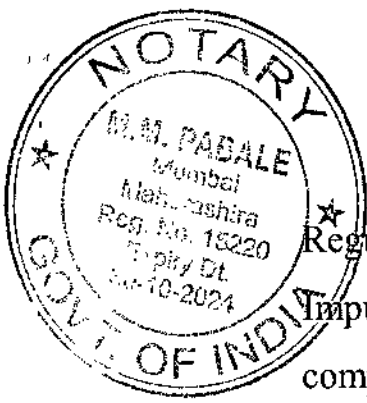


the power to regulate its management is conferred on RBI for which Parliament lacks legislative competence.

64. That by virtue of Section Z56 '(zb) of the and amended Banking Regulation Act the Application of Part II A part 2A except Sections 36AAA, 36AAB, and 36AAC part 2C, part III except section 45 (1) (2) and (3) and Part IIIA except Section 45W were omitted in their application to cooperative banks. However section 4N substitutes it with the words '(zb) part II shall be omitted' and therefore the provision of the Part IIA, Part IIIA are made applicable to State Co-Operative Bank thereby granting control over the management of the Co-operative bank to RBI permitting suspension of business and winding up etc. Consequently it is submitted that Section 4M as also Section 4N of the Impugned Act are unconstitutional for want of legislative competent.

65. It is submitted that vide Section 4Q the Impugned Act Section 56 (zg) of the Banking Regulation Act, stands amended. Prior to the Amendment Section 49B and 49C of the Banking Regulation Act, were not applicable to cooperative banks. Section 49C deals with the power to amend the MOA of the Banking Company. It is submitted that by virtue of the Amendment in Section 4Q of the Impugned Act, Section 49C has been made applicable to Co-operative Bank as a result of which amendments to the MOA and management cannot be undertaken without the consent from the RBI. Consequently it is submitted that essential functions of Management

ON



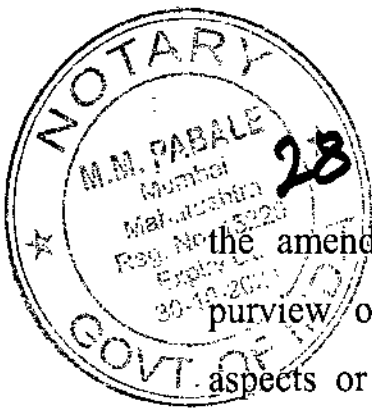
Regulation is being dealt with vide Section 4Q of the Impugned Act for which Parliament has no legislative competence being within the exclusive domain of entry 32 of list II.

66. That the Parliament competence to amend the Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 in relation to its applicability to cooperative banks was considered by the constitutional bench of the Honourable Supreme Court. The entity of cooperative banks stands protected and the judgment of the Honourable Supreme Court categorically holds that the affairs of the cooperative society running a bank other than its banking affairs would continue to be controlled by the law made by the State Legislature exclusively under entry 32 of list II of the seventh schedule of Constitution of India.

67. That it is not only the banking affairs which are sought to be control but it is the very entity of the society which is sought to be now controlled by the parliamentary legislation thereby making state legislation completely redundant.

68. That entry 32 of list II of the seventh schedule of Constitution of India is exhaustive and Parliamentary intrusion is constitutionally impermissible as regards incorporation regulation and winding up of cooperative banks.

69. That there are aspects of dimensions of incorporation, regulation and winding up of cooperative banks writ large in



the amending act and they are definitely not within the purview of the Banking Regulation Act and hence such aspects or dimensions of the aforesaid activities would be clearly without and beyond the Legislative competence of the Parliament under entry 45 of list one.

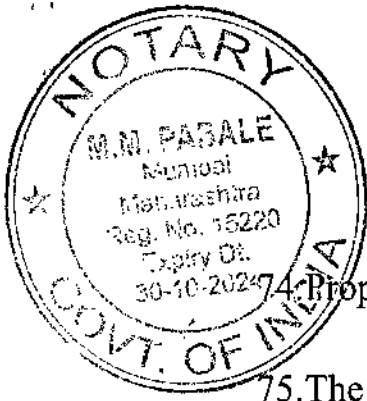
70. That where a field is exclusively allocated to the state legislature under list II and a legislation fully occupying the said field exists the impugned act which intends to invade the autonomy preserved in state legislature cannot take the shape of law to be made by the Parliament under entry 43 read with entry 45 of list one of seventh schedule of the Constitution of India.

71. That it is rather to take control of the affairs of the cooperative society so as to completely regulate on the ground that Parliament has given full competence to make any law even touching upon the affairs of the society because the society nothing else but the cooperative bank.

72. That the impugned circulars issued by the Respondent No. 2 is in purported exercise of powers derived by the RBI under the impugned act and hence the same is also unconstitutional and unsustainable and without authority of law and deserves to be struck down as ultravires.

73. That the impugned act as otherwise bad in law unconstitutional ultravires and deserves to be struck down.

W



CONCLUDING PARAGRAPHS

74. Proper Court fees stamp is paid, i.e. Rs. 125/-.

75. The Cause of action has arisen in District: Mumbai, viz. within the extraordinary territorial Jurisdiction of this Honourable Court. Hence this Honourable Court has jurisdiction to try, entertain and decide this petition.

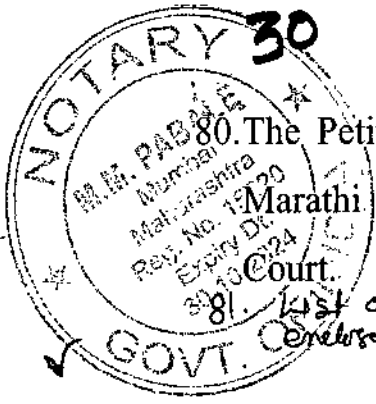
76. The Petitioner has not preferred any other Writ Petition, appeal or application, either in this Honourable Court or any other court on in the Honourable Supreme Court of India, in respect of this cause of action.

77. The Petitioner has not received Notice regarding the Caveat Application.

78. The last impugned Circular has been issued on 25th June 2021, the Petitioner thereafter consulted his Advocate. Taking into consideration the time required for this, the Petitioner is approaching this Honourable Court without any laches or negligence on his part. Hence this petition is filed within the period of limitation.

79. Against the impugned Judgment & Order no appeal is provided under Section 115 of the Code of Civil Procedure 1908. Therefore except this Writ Petition there is no other alternative and efficacious remedy available to the Petitioner. Hence this petition is maintainable.

MS



The Petitioner undertakes to give the English translation of Marathi documents when so required by the Honourable Court.

list of documents on which Petitioner will rely upon is enclosed herewith.

PRAYERS

THE PETITIONERS THEREFORE RESPECTFULLY PRAY AS UNDER :-

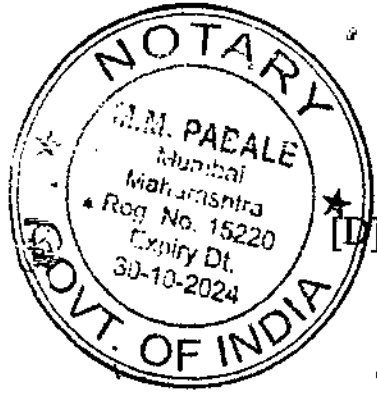
[A] That this Honourable Court be pleased to issue a writ Certiorari or writ in the nature of Certiorari or any other writ order direction in the nature of Certiorari thereby declaring that the Banking Regulation (Amendment Act) 2020 as violative of Article 14, 19 of the Constitution of India, 1950 and for want of competence be declared unconstitutional and the same to be quashed and set aside.

[B] That this Honourable Court be pleased to issue writ mandamus or writ in the nature of mandamus or any other writ order direction in the nature of mandamus thereby permanently restraining the Respondent from implementing executing enforcing and giving effect to the Banking Regulation (Amendment) Act, 2020.

[C] That this Honourable Court be pleased to issue writ certiorari or writ in the nature of certiorari or any other writ order direction thereby quashing and setting aside the circular dated 31st December 2019 issued by the Respondent No.2 **(Exhibit-C hereto)** as also impugned circular dated 27th April 2021 issued by the Respondent No.2 **(Exhibit-D hereto)** and 25th June 2021 issued by the Respondent No.2 **(Exhibit-E hereto)**

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as the same being ultravires and unconstitutional and the same deserves to be quash and set aside.

[D] That pending final disposal of this Writ Petition the Respondent be restrain by suitable order injunction or direction from implementing executing enforcing or giving into effect to the Banking Regulation (Amendment) Act, 2020.

[E] That pending the hearing and final disposal of the present Petition the Respondent be restrain the suitable order injunction or direction from implementing, executing, enforcing or giving effect to the impugned circular the circular dated 31st December 2019 issued by the Respondent No.2 (Exhibit-C hereto) as also impugned circular dated 27th April 2021 issued by the Respondent No.2 (Exhibit-D hereto) and 25th June 2021 issued by the Respondent No.2 (Exhibit-E hereto).

[F] Ad-interim relief in terms of prayer Clause (D), (E) above be granted in favour of the Petitioner.

[G] That the costs of this Writ petition be awarded in favour of Petitioner against Respondent, by this Honourable Court.

[H] For such other orders as justice and convenience may demand from time to time be passed in favour of the Petitioner by this Honourable Court.

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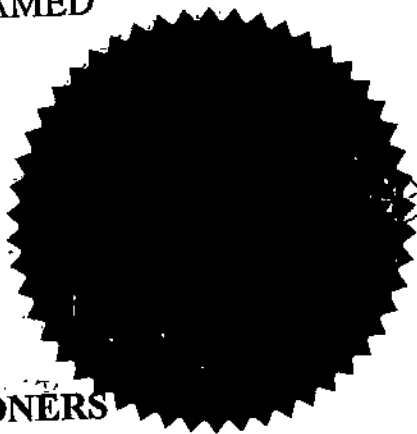
32

AND FOR THIS ACT OF KINDNESS THE ABOVE NAMED

PETITIONER SHALL DUTY BOUND EVER PRAY.



[Signature]
C.E. & Secretary
The Dapoli Urban Co-Operative Bank Ltd.
Through Sayali Bhoir,



[Signature]
ADVOCATE FOR THE PETITIONERS

PLACE: BOMBAY
DATE: 28/02/2022

VERIFICATION

I, Mrs. Sayali Bhoir, Chief Executive & Secretary, The Maharashtra Urban Cooperative, Banks Federation Ltd., Having Head Office at: Bharati Krida Mandir, 4th Floor, Vadala, Mumbai 400031, being the Power of Attorney holder of the Petitioner, do solemnly declare that what is stated in paragraphs 1 to 73 and true to my own knowledge, and that what is stated in the remaining paragraphs 74 to 81 are stated on information and belief, and I believe the same to be true.

Solemnly declared at Bombay on this 28 day of February 2022.

For The Maharashtra Urban Co-op. Banks' Federation Ltd.

[Signature]
BEFORE ME,

C.E. & Secretary

ASST. MASTER /ASSOCIATE,
HIGH COURT, BOMBAY.

NOTED & REGISTERED

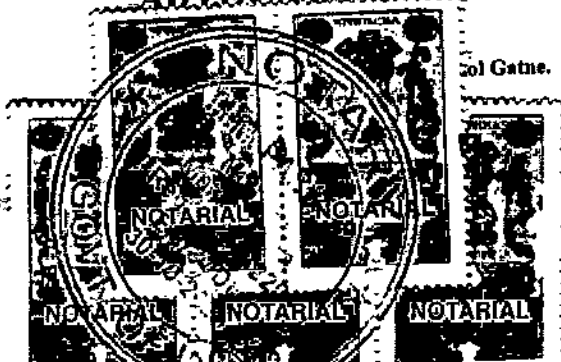
Page No. 17/32 Sr. No. 132

Date 28 FEB 2022

IDENTIFIED BY ME

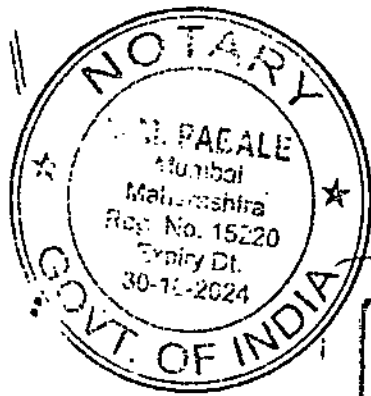
[Signature]
ADVOCATE FOR THE PETITIONERS

BEFORE ME



[Signature]
MANISH M. PABALE
B.Sc. LL.M.
ADVOCATE & NOTARY (GOVT. OF INDIA)
104, Natwar Chambers,
94 Nagindas Master Road,
Fort Mumbai - 400 001

[Signature]



33


भारतीय न्यायिक प्राधिकरण
India Identification Authority of India

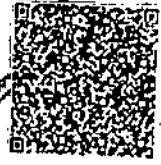
पत्ते W/O: संजय जयराम भोईर, 802, विनोबा, हिरानंदानी ईस्टेट, घोडबुंदर रोड, पाटपेडा, ठाणे वेस्ट, ठाणे, सैन्डीबेग, महाराष्ट्र, 400607
Address: W/O: Sanjay Jayram Bhoir, 802, Winoba, Hiranandani Estate, Ghodbunder Road, Patpada, Thane West, Thane, Sandobegh, Maharashtra, 400607

7492 3242 8841

1947 1800 300 1947 help@uidai.gov.in www.uidai.gov.in

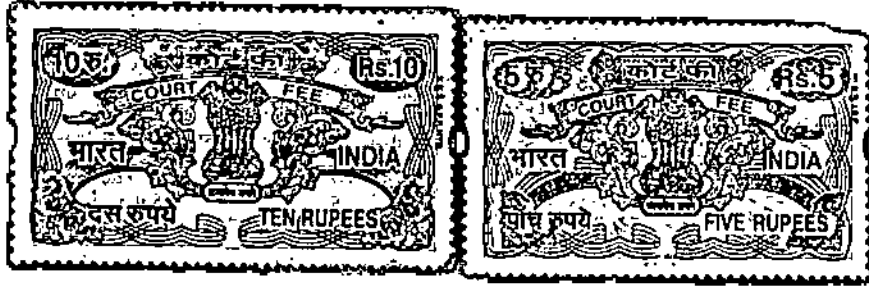
भारत सरकार
Government of India


सायली संजय भोईर
Sayali Sanjay Bhoir
जन्म वर्ष / Year of Birth : 1969
स्त्री / Female



7492 3242 8841

आधार - सामान्य माणसाचा अधिकार



DISTRICT

MUMBAI

VAKALATNAMA

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

WRIT PETITION NO. _____ OF 2022

IN THE MATTER OF
ARTICLE 226 OF THE
CONSTITUTION OF INDIA
1950

AND

IN THE MATTER OF
CHALLENGING THE
CONSTITUTIONAL
VALIDITY OF THE
BANKING REGULATION
(AMENDMENT) ACT 2020

AND

IN THE MATTER OF
CHALLENGING THE
VALIDITY OF CIRCULAR
DATED 25TH JUNE 2021
ISSUED BY THE RESERVE
BANK OF INDIA

1. The Dapoli Urban Co-Operative Bank Ltd.
Through its Chairman
Jaywant Shankar Jalgaonkar
Having office at:-
Veer Savarkar Marg, Post Lane,

35

Dapoli, Dist:- Ratnagiri - 415712

Through the Power of Attorney
Sayali Bhoir
Chief Executive & Secretary
The Maharashtra Urban Cooperative
Banks Federation Ltd.
Having Head Office at:
Bharati Krida Mandir,
4th Floor, Vadala,
Mumbai 400031

2. The Maharashtra Urban Cooperative
Banks Federation Ltd.
Through its Chief Executive & Secretary
Mrs. Sayali Bhoir
Having Office at :
Bharati Krida Mandir,
4th Floor, Vadala,
Mumbai 400031

PETITIONERS

VERSUS

1. The Union of India
Through its Secretary
Ministry of Finance
New Delhi, India 110001
2. Reserve Bank of India
Through its Secretary
16th Floor, Central Office Building,
Saheed Bhagatsingh Marg,
Mumbai 400001

RESPONDENTS

*To the Prothonotary & Sr. Master
High Court Oct. Mumbai*

- I, Sayali Bhoir, Chief Executive & Secretary, The Maharashtra
Urban Cooperative, Banks Federation Ltd., Having Head Office
at: Bharati Krida Mandir, 4th Floor, Vadala, Mumbai 400031,
being the Power of Attorney holder of the Petitioner, in the above



matter hereby appoint following Advocate, **Shri. Shri. Amol Gatne, (12926)** High Court to appear and act for me/us as my/our Advocate/s.

Witness my/our hand this 9th day of February 2022.

Signature/s
For The Maharashtra Urban Co-op Banks' Federation Ltd.

Sayali Bhoir
C.E. & Secretary

[Power of Attorney Holder]

Petitioner

for self and as Power of Attorney Holder on behalf of petition no. 1. Copy of Power of Attorney is enclosed herewith.

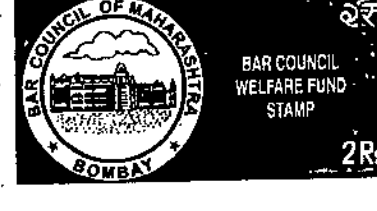
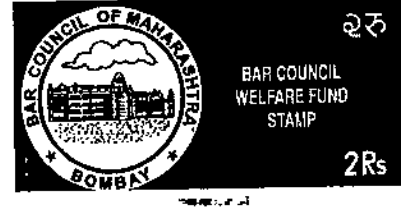
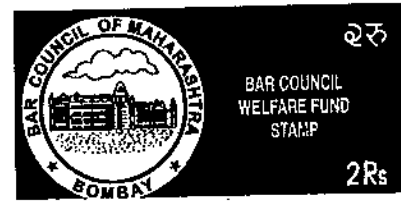
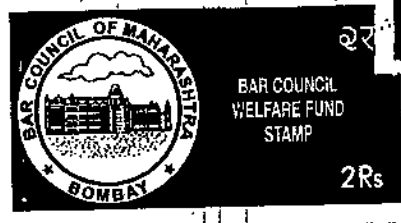
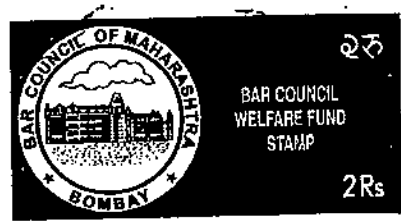
(I am not the member of Welfare Fund)

Amol Gatne
(Advocate)
C/o Anturkar & Associates,
93, Engineering Premises, Co-op Society, Ground Floor,
Mumbai Samachar Marg, Opp. British Hotel Lane,
Next to Jammu and Kashmir Bank
Fort, Near Bombay Stock Exchange
Mumbai 400023.
Tel.: (022) 22626433, 32977451 Fax (022) 22632045
(Mob: +91 94222 04360)
gatneaa@gmail.com

MAH No:-1412/2021
Advocate Code:- I 2926
O.S. Registration No:- 13212
3/10/13

Regd. Clerk's Address at Mumbai (for service)

Shri. Sarjerao Shinde,
High Court Appellate Side,
Mumbai - 400 032
(Mob. 9833410513)





महाराष्ट्र MAHARASHTRA

2016 24 DEC 2021

AB 780082

१	मुद्रांक चिह्नी कोटपट्टी कायु. क्रमांक/दिनांक	जसु क्रमांक ०१९३०७ दिनांक २७ DEC 2021
२	सुसंवादा प्रकार	मुद्रांक/पत्र
३	संकेत कोटपट्टी करणार माहेत का १	शेष /नाही
४	मिळवणीचे मोडक्यात वर्णन	-सा संपोती
५	मुद्रांक चिह्ना वेगळ्याचे नाव व सही	जयवंत शंकर जालगाणकर, दापोली
६	सही असल्यास त्याचे नाव व पदा व सही	
७	मुद्रांक पत्रकाराचे नाव	
८	मुद्रांक मुल्य रक्कम	₹ ५००/- (सहा पाचशे रु)
९	परवानाधारक मुद्रांक चिह्नाचाही सही व परवाना क्रमांक तसेच मुद्रांक चिह्नाचे ठिकाण / पत्ता	सुशंकरकरी परवाना क्रं ४/९१ ठिकाण - पोळगळी दापोली सा संपोती वि. रत्नागिरी



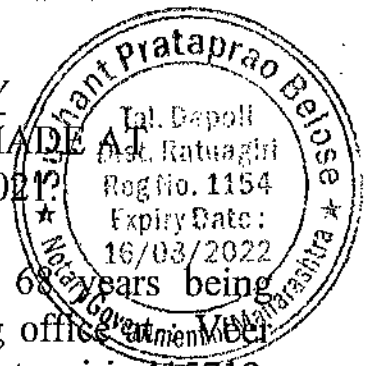
उप कोषीगार
अधिकारी
दापोली

पदा करणाऱ्याची व्हांनी मुद्रांक सही केला त्यांनी त्याच करणाऱ्याची मुद्रांक सही केवढातून व अधिकार पावले बंधनकारक आहे

SPECIAL POWER OF ATTORNEY

THIS SPECIAL POWER OF ATTORNEY IS MADE

At Dapoli.. ON THIS ..28th... DAY OF December... 2021



(Signature)
Chairman

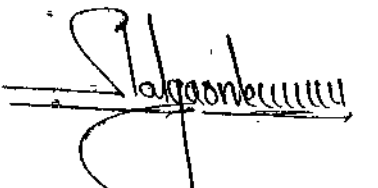
Dapoli Urban Co-Op. Bank Ltd., Dapoli

I, Shri. Jaywant Shankar Jalgaonkar, Age :- 68 years being Chairman of Dapoli Urban Co-Op. Bank Ltd. having office at Savarkar Marg, Post Lane, Dapoli, District :- Ratnagiri 415712, Maharashtra, solemnly state that I have appointed.

(Signature)

Mrs. Sayali S. Bhoir, Chief Executive & Secretary of the Maharashtra Urban Co-operative Bank's Federation Ltd. having office address at Bharatiya Krida Mandir, 4th Floor, Wadala, Mumbai - 400 031 as our Power of Attorney and I give the following powers to her :

- (a) To engage and discharge an Advocate, to file, act, appear, plead, withdraw and compromise Litigation in the Honourable High Court of Judicature of Bombay.
- (b) To make signature/s on the Affidavit/s and Vakalathnama, Civil Application/s on my behalf, in respect of the said Litigation.
- (c) To receive all kind of correspondence from the office of the Advocate engaged on my behalf and further to give instructions to him/her on my behalf in respect of the said litigation.


Chairman
Dapoli Urban Co-Op. Bank Ltd., Dapoli.



(d) To do all other necessary compliance in connection with the said litigation.

Solemnly affirmed at Dapoli on this 28th day of December 2021

I KNOW THE EXECUTANT ADVOCATE



EXECUTANT



Shri. Jaywant Shankar Jalgaonkar
Chairman
Dapoli Urban Co-op. Bank Ltd., Dapoli.

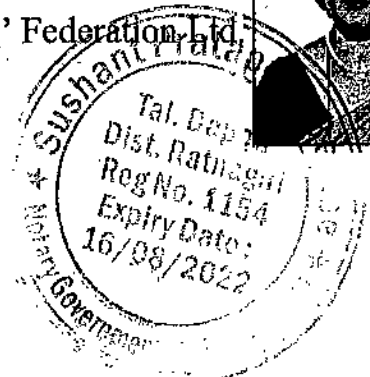


I ACCEPT

Sayali Bhoir



Mrs. Sayali Bhoir
The Maharashtra Urban Co-operative Banks' Federation Ltd.
SAYALI S. BHOIR
Chief Executive & Secretary
The Maharashtra Urban Co-Operative Banks' Federation Ltd. Mumbai.



Aditya Ravindra Mulukh
Aditya Ravindra Mulukh
Jalgaon Lashkarwadi,
Dapoli.

TRUE COPY
[Signature]
Advocate

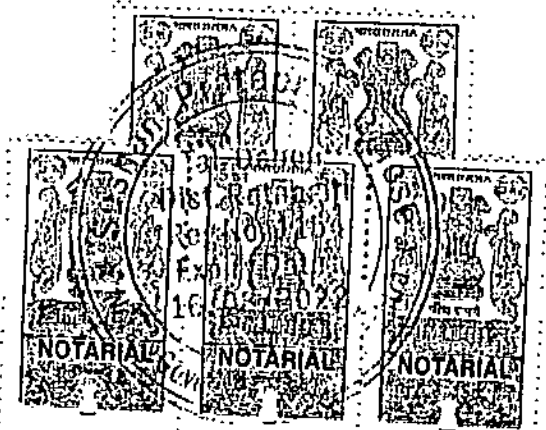
[Signature]

40

Executed
BEFORE ME



SUSHANT P. BELOSE
Bsl.LL.B.
Reg.No. 1154
NOTARY & ADVOCATE
Shop No. 42, Beela Apt.
Dapoli, Dist. Ratnagiri.



Solemnly affirmed before me
by Mr./Mrs. *Jaywant S. Jalgonkar*
who is identified to me by
Mr./Mrs. *Aditya Ravindra Mulukh*
to whom I know Personally


Noted and Registered
at Sr.No. 98/2021

28/12/2021




41

भारत सरकार
Government of Maharashtra



Jaywant Shankar Jalgaonkar
DOB : 27/02/1954
Male



8243 0117 0696




मेरा आधार, मेरी पहचान

Ataprao Belose
I. P. Poll
Ratnagiri
No. 1154
piry Date :
/08/2022
Government of Maharashtra

भारत सरकार
Unique Identification Authority of India

Address:
254, Bouadha Wadi, Talsure, Talsure, Ratnagiri,
Maharashtra, 415712

8243 0117 0696

1947   
talsure@uidai.gov.in www.uidai.gov.in

Jalgaonkar
17-12-21

42

आयकर विभाग भारत सरकार
INCOME TAX DEPARTMENT GOVT OF INDIA

JAYWANT SHANKAR JALGAONKAR
SHANKAR KRISHNAJI JALGAONKAR

27/02/1954
Permanent Account Number
AATEJ2824L



ataprao B...

I.I. ...
Rahingri
No. 1154
iry Date:
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iry Date:
08/2022

West Maharashtra

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भारत सरकार
Government of India

आदित्य रविंद्र मुलूख
Aditya Ravindra Mulukh
जन्म तारीख/DOB: 04/01/2001
पुरुष/ MALE

3613 2942 8514
VID: 9163 3448 3831 0892

माझे आधार, माझी ओळख

Department of
Ratnagiri
No. 1154
Date:
13/2022
Department of Maharashtra

भारत सरकार
Government of India

पत्ता:
लश्कर वाडी, जालगाव, दापोली, रत्नगिरी,
महाराष्ट्र - 415712

Address:
laskhar wadi, jalgaon, Dapoli, Ratnagiri,
Maharashtra - 415712

3613 2942 8514
VID: 9163 3448 3831 0892

QR Code with Photograph

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[Signature]

Advocate

44

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

WRIT PETITION NO. _____ OF 2022

Dapoli Urban Co-Operative Bank Ltd.
and another

PETITIONERS

VERSUS

The Union of India
and another

RESPONDENTS

**MEMORANDUM OF REGISTERED ADDRESS OF THE
PETITIONER**

The Dapoli Urban Co-Operative Bank Ltd.
Through Sayali Bhoir
Chief Executive & Secretary
The Maharashtra Urban Cooperative
Banks Federation Ltd.
Having Head Office at:
Bharati Krida Mandir,
4th Floor, Vadala,
Mumbai 400031

C/o

Amol Gathe

Advocate High Court,

93, Engineer's Premises Co.op. Soc. Ltd.,

Ground Floor, Opp. British Hotel Lane,

Mumbai Samachar Marg,

Next to J & K Bank, Near Bombay Stock

Exchange,

Fort, Mumbai: 400 023.

Code: I 2926/ Reg.:

ADVOCATE FOR THE PETITIONERS

PLACE: BOMBAY

DATE: 28/2/2022

96/12137

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

WRIT PETITION NO. _____ OF 2022

Dapoli Urban Co-Operative Bank Ltd.
and another

PETITIONERS

VERSUS

The Union of India
and another

RESPONDENTS

**LIST OF DOCUMENTS ON WHICH THE PETITIONER WILL
RELY.**

SR. NO.	EXHI BITS	PARTICULARS	PAGES FROM	TO
1.	A.	True copy of the Gazette Notification dated 29 th September 2020.	46	49
2.	B.	True copy of the Gazette Notification dated 23 rd December 2020.	50	50
3.	C.	True copy of the Circular dt:- 31/12/2019 issued by the Resp.No.2.	51	61
4.	D.	True copy of the Circular dt:- 27/4/2021 issued by the Resp.No.2.	62	78
5.	E.	True copy of the Circular dt:- 25/6/2021 issued by the Resp.No.2.	79	105


ADVOCATE FOR THE PETITIONERS

PLACE: BOMBAY

DATE: 29 / 1 / 2022

96/12137

Exhibit :- 'A'

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—20

REGISTERED NO. DL—(N)04/0007/2003



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-अ.-29092020-222114

CG-DL-E-29092020-222114

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 64] नई दिल्ली, मंगलवार, सितम्बर 29, 2020/आश्विन 7, 1942 (शक)
No. 64] NEW DELHI, TUESDAY, SEPTEMBER 29, 2020/ASVINA 7, 1942 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 29th September, 2020/Asvina 7, 1942 (Saka)

The following Act of Parliament received the assent of the President on the 29th September, 2020 and is hereby published for general information:—

THE BANKING REGULATION (AMENDMENT) ACT, 2020

No. 39 OF 2020

[29th September, 2020.]

An Act further to amend the Banking Regulation Act, 1949.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Banking Regulation (Amendment) Act, 2020.

Short title
and
commencement.

(2) It shall be deemed to have come into force on the 26th day of June, 2020, except section 4, which, in so far as it relates to—

(i) primary co-operative banks, be deemed to have come into force on the 29th day of June, 2020;

(ii) state co-operative banks and central co-operative banks, come into force on such date as the Central Government may by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for state co-operative banks and central co-operative banks and any reference in any such provision to the

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commencement of this Act shall be construed as a reference to the coming into force of that provision.

Substitution of new section for section 3.

2. In the Banking Regulation Act, 1949 (hereinafter referred to as the principal Act), for section 3, the following section shall be substituted, namely:—

10 of 1949.

Act. not to apply to certain co-operative societies.

"3. Notwithstanding anything contained in the National Bank for Agriculture and Rural Development Act, 1981, this Act shall not apply to—

61 of 1981.

(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."

Amendment of section 45.

3. In section 45 of the principal Act,—

(i) in the marginal heading, for the word "reconstitution", the word "reconstruction" shall be substituted;

(ii) in sub-section (3), after the words "other creditors", the words "or grant any loans or advances or make investments in any credit instruments" shall be inserted;

(iii) in sub-section (4), after the words "During the period of moratorium", the words "or at any other time" shall be inserted;

(iv) in sub-section (5), in clauses (e), (f) and (g), for the words "date of the order of moratorium", the words "reconstruction or amalgamation" shall be substituted;

(v) in sub-section (6), in clause (a), for the word "amalgamation", the words "reconstruction or amalgamation" shall be substituted;

(vi) in sub-section (15), the words "or a subsidiary bank" shall be omitted.

Amendment of section 56.

4. In section 56 of the principal Act,—

(A) in the opening portion, for the words "The provisions of this Act, as in force for the time being," the words "Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act" shall be substituted;

(B) in clause (a), after sub-clause (ii), the following sub-clauses shall be inserted, namely:—

(iii) references to "memorandum of association" or "articles of association" shall be construed as references to bye-laws;

(iv) references to the provisions of the Companies Act, 1956, except in Part III and Part IIIA, shall be construed as references to the corresponding provisions, if any, of the law under which a co-operative bank is registered;

1 of 1956.

(v) references to "Registrar" or "Registrar of Companies" shall be construed as references to "Central Registrar" or "Registrar of Co-operative Societies", as the case may be, under the law under which a co-operative bank is registered; ;

(C) clause (d) shall be omitted;

(D) in clause (e), sub-clauses (i) and (ii) shall be omitted;

(E) in clause (f), in section 7 as so substituted, in sub-section (2),—

(i) in clause (b), the words "or co-operative land mortgage banks" shall be omitted;

(II) in clause (c), in sub-clause (ii), the words "or a co-operative land mortgage bank" shall be omitted;

(F) clauses (fi), (fii) and (g) shall be omitted;

(G) for clause (i), the following clause shall be substituted, namely:—

(i) for section 12, the following section shall be substituted, namely:—

"12. (1) A co-operative bank may, with the prior approval of the Reserve Bank, issue, by way of public issue or private placement,—

(i) equity shares or preference shares or special shares, on face value or at premium; and

(ii) unsecured debentures or bonds or other like securities with initial or original maturity of not less than ten years,

to any member of such co-operative bank or any other person residing within its area of operation, subject to such conditions and ceiling, limit or restriction on its issue or subscription or transfer, as may be specified by the Reserve Bank in this behalf.

(2) Save as otherwise provided in this Act,—

(i) no person shall be entitled to demand payment towards surrender of shares issued to him by a co-operative bank; and

(ii) a co-operative bank shall not withdraw or reduce its share capital, except to the extent and subject to such conditions as the Reserve Bank may specify in this behalf.";

(H) clauses (i), (n) and (p) shall be omitted;

(I) in clause (q), sub-clauses (ii) and (iv) shall be omitted;

(J) clauses (r), (ria) and (sa) shall be omitted;

(K) in clause (s), sub-clause (i) shall be omitted;

(L) clauses (u), (v), (x), (y), (z) and (za) shall be omitted;

(M) in clause (zaa),—

(a) in section 36AAA as so inserted,—

(i) for the words "multi-State co-operative bank", wherever they occur, the words "co-operative bank" shall be substituted;

(ii) in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that in the case of a co-operative bank registered with the Registrar of Co-operative Societies of a State, the Reserve Bank shall issue such order in consultation with the concerned State Government seeking its comments, if any, within such period as the Reserve Bank may specify.";

(iii) after sub-section (9), the following sub-section shall be inserted, namely:—

"(10) The provisions of section 36ACA shall not apply to a co-operative bank.";

(b) section 36AAB as so inserted shall be omitted;

(N) for clause (zb), the following clause shall be substituted, namely:—

"(zb) Part IIC shall be omitted.";

Issue and regulation of paid-up share capital and securities by co-operative banks.

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(O) in clause (zc), sub-clause (i) shall be omitted;

(P) clauses (zd) and (zf) shall be omitted;

(Q) for clause (zg), the following clause shall be substituted, namely:—

'(zg) in section 49B, references to "Central Government" shall be construed as references to "Central Registrar" or "Registrar of Co-operative Societies", as the case may be, under the law under which a co-operative bank is registered;'

(R) clause (zh) shall be omitted;

(S) for clause (zj), the following clause shall be substituted, namely:—

'(zj) after section 53, the following section shall be inserted, namely:—

"53A. Notwithstanding anything contained in any other provisions of this Act, the Reserve Bank may, from time to time, on being satisfied that it is necessary so to do, declare, by notification in the Official Gazette, that the provisions of item (iii) of clause (b) of sub-section (1) and sub-section (2), of section 10, clause (a) of sub-section (2) of section 10A, sub-section (1A) of section 10B and clause (b) of sub-section (1) of section 35B of this Act shall not apply to a co-operative bank or class of co-operative banks, either generally or for such period as may be specified therein, subject to such conditions, limitations or restrictions as it may think fit to impose.";

Powers to exempt co-operative banks in certain cases.

Repeal and savings.

5. (1) The Banking Regulation (Amendment) Ordinance, 2020 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Banking Regulation Act, 1949, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act as amended by this Act.

Ord. 12 of 2020.

10 of 1949.

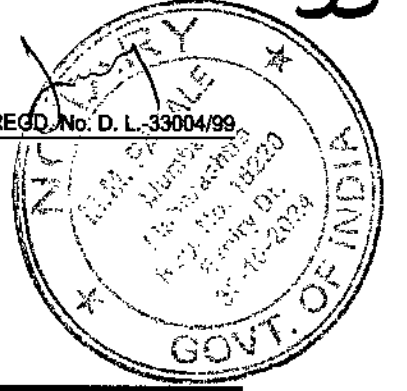
DR. G. NARAYANA RAJU,
Secretary to the Govt. of India.



Exhibit:- 'B'

रजिस्ट्री सं. डी.एल.- 33004/99

REGD. No. D. L.-33004/99



सत्यमेव जयते

भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-अ.-23122020-223895
CG-DL-E-23122020-223895

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 4113]

नई दिल्ली, बुधवार, दिसम्बर 23, 2020/पौष 2, 1942

No. 4113]

NEW DELHI, WEDNESDAY, DECEMBER 23, 2020/PAUSHA 2, 1942

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

अधिसूचना

नई दिल्ली, 23 दिसम्बर, 2020

का.आ. 4676(अ).—बैंककारी विनियमन (संशोधन) अधिनियम, 2020 (2020 का 39) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, अप्रैल 2021 की 1 तारीख को उस तारीख के रूप में नियत करती है जिस तारीख को उक्त अधिनियम की धारा 4 के उपबंध राज्य सहकारी बैंकों और केन्द्रीय सहकारी बैंकों के लिए प्रभावी होंगे।

[फा. सं. 7/146/2019-बीओए-1]

पंकज जैन, अपर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

NOTIFICATION

New Delhi, the 23rd December, 2020

S.O. 4676(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Banking Regulation (Amendment) Act, 2020 (39 of 2020), the Central Government hereby appoints the 1st day of April, 2021 as the date on which the provisions of section 4 of the said Act shall come into force for State Co-operative Banks and Central Co-operative Banks.

[F. No. 7/146/2019-BOA-1]

PANKAJ JAIN, Addl. Secy.

6310 GI/2020

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and Published by the Controller of Publications, Delhi-110054.

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Advocate

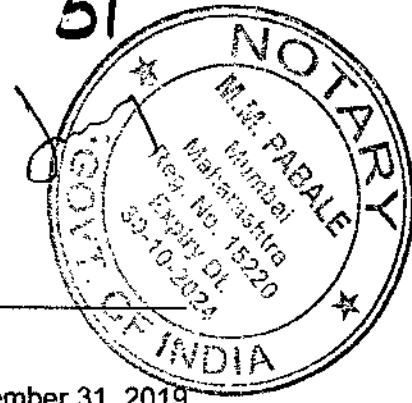
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MANOJ KUMAR VERMA
Date: 2020.12.23
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Exhibit :- 'C'

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भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in



RBI/2019-20/128

DoR (PCB).BPD.Cir.No.8/12.05.002/2019-20

December 31, 2019

The Chief Executive Officers of
All Primary (Urban) Co-operative Banks

Madam / Dear Sir,

Constitution of Board of Management (BoM) in Primary (Urban) Co-operative Banks (UCBs)

Reserve Bank of India had released draft guidelines on constituting BoM in UCBs on June 25, 2018 inviting comments from banks and other stakeholders. Taking into consideration the responses received, it has been decided to issue the guidelines on BoM as per **Annex I**.

2. UCBs shall constitute a BoM by making suitable amendments in their bye-laws. The BoM shall comprise of persons with special knowledge and practical experience in banking to facilitate professional management and focused attention to the banking related activities of the UCBs through appropriate amendments to their bye-laws, in accordance with the enclosed guidelines following the due process. While constituting the BoM, the Board of Directors (BoD) of UCB shall carry out a process of due diligence to determine the suitability of the person for appointment as the member of the BoM, based upon qualification, expertise, track record, integrity and other 'fit and proper' criteria as set out in Appendix I. Similar process of due diligence shall be carried out for determining the suitability of a candidate for appointment as CEO. For this purpose, banks shall obtain declaration-cum-undertaking from the proposed member of BoM/CEO in the format enclosed to the guidelines in Appendix II. The process of due diligence shall also be undertaken at the time of renewal of appointment.

3. UCBs with deposit size of ₹100 crore and above shall constitute BoM which will also be a mandatory requirement for allowing such banks to expand their area of operation and open new branches. UCBs with a deposit size less than ₹100 crore and Salary Earners' Banks are exempted from constituting BoM. However, for having good governance practices, such banks may also constitute BoM, if they so desire.

विनियमन विभाग, केंद्रीय कार्यालय, सी-7, पहली/दूसरी मंज़िल, बान्द्रा-कुर्ला संकुल, बान्द्रा (पूर्व), मुंबई - 400 051

टेलीफोन/Tel No: 022-26571112 फैक्स/ Fax No: 022-26571117

Department of Regulation, Central Office, C-7, 1st/2nd Floor, Bandra-Kurla Complex, Bandra (East), Mumbai - 400 051

हिंदी आसान है, इसका प्रयोग बढ़ाइए—

चेतावनी : भारतीय रिज़र्व बैंक द्वारा ई-मेल, डाक, एसएमएस या फोन कॉल के जरिए किसी की भी व्यक्ति की जानकारी जैसे बैंक के खाते का न्यौरा, पासवर्ड आदि नहीं मांगी जाती है। यह धन रखने या देने का प्रस्ताव भी नहीं करता है। ऐसे प्रस्तावों का किसी भी तरीके से जवाब मत दीजिए।
Caution: RBI never sends mails, SMSs or makes calls asking for personal information like bank account details, passwords, etc. It never keeps or offers funds to anyone. Please do not respond in any manner to such offers.

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-1-

4. Further, as per the guidelines, UCBs having deposit size of ₹100 crore and above shall obtain prior approval of Reserve Bank for appointment of CEO. In this connection, it is advised that Scheduled UCBs shall approach the Department of Regulation of Reserve Bank for approval at least three months prior to the end of tenure of the incumbent CEO. The banks shall submit the proposal for appointment of CEO along with the declaration-cum -undertaking of the CEO designate as per Appendix II of these guidelines along with the list of supporting documents as given in Annex II. Non-Scheduled UCBs shall approach the concerned Regional Office of the Department of Supervision for the requisite approval in the similar manner mentioned above. Reserve Bank reserves the right to seek additional information/documents, if deemed necessary.

5. A copy of the amended bye-laws providing for constitution of BoM shall be forwarded to the concerned Regional Office of the Department of Supervision for information and record along with details of the members of BoM immediately after constitution of BoM. UCBs shall also be required to submit an annual return furnishing details of the members of the BoM as per the format given in Annex III as on December 31 each year, within 15 days of the end of the period to the respective Regional Offices of the Reserve Bank of India.

Yours faithfully,

(Neeraj Nigam)
Chief General Manager

Encls: Annex I, II, III; Appendix I, II

-2-



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Annex I

Guidelines on Board of Management for Primary (Urban) Co-operative Banks
(Refer circular DoR (PCB).BPD.Cir No.8/12.05.002/2019-20 dated December 31, 2019)

1. Introduction

The Expert Committee on "Licensing of New Urban Co-operative Banks" constituted under the Chairmanship of Shri Y.H.Malegam (2011) had, *inter-alia*, opined that in order to address the issues arising out of dual control and to bring about an improvement in the functioning of the UCBs, it was desirable that the persons who manage the affairs of UCBs are professionally competent, devoid of vested interests and subject to supervision and control. Accordingly, it had proposed a new organization structure consisting of a Board of Management in addition to the Board of Directors. The issue was also deliberated by the High Powered Committee under the chairmanship of Shri R. Gandhi (2015) which reiterated that the concept of BoM as put forward by the Malegam Committee has to be one of the mandatory conditions for expansion of UCBs. The Reserve Bank placed the report of the High Powered Committee (HPC) on its website on August 20, 2015 for seeking comments from general public and stakeholders. RBI also held discussions on the recommendations made by HPC with the members of the Standing Advisory Committee for UCBs and subsequently, also with select Registrars of Co-operative Societies / their representatives. After considering the feedback of the stakeholders, it has been decided to implement the suggestion of the Malegam Committee on putting in place a Board of Management (BoM) in addition to Board of Directors in UCBs. The guidelines in this regard are set out below:

2. Objective

Under the present legal framework, the Board of Directors of a UCB perform both the executive and supervisory roles and has the responsibility to oversee the functioning of UCB as a co-operative society as well as its functions as a bank. Since UCBs are accepting public deposits, it is imperative that a separate mechanism be put in place to protect the interests of depositors. Accordingly, it is proposed to implement a Board of Management consisting of members with special knowledge and practical experience in banking to facilitate professional management and focussed attention to banking related activities of UCBs.

3. Constitution of Board of Management (BoM)

3.1 There shall be a Board of Management (BoM) in every UCB with deposit size of ₹100 crore and above in addition to the Board of Directors. BoM shall be constituted by the Board of Directors (BoD) of such UCBs within a period of one year from the date of the circular. In



addition to the functions as furnished in Para 4 below, the BoD may delegate such powers as deemed necessary for the proper functioning of the bank.

3.2 Other UCBs including Salary Earners' Banks may also constitute BoM voluntarily. For the UCBs with deposit size of ₹100 crore and above, constitution of BoM shall be a mandatory condition for opening of new branches / expansion of area of operation.

4. Functions of Board of Management

The BoM shall exercise oversight over the banking related functions of the UCBs, assist the BoD on formulation of the policy and any other related matters specifically delegated to it by the Board for proper functioning of the bank. The functions of the BoM shall include the following:

- i. Rendering expert advice on all proposals being put up to the Board or any Committee of the Board for sanction of loans
- ii. Recommending action for recovery of NPAs, One Time Settlement or Compromise Settlement and assisting the Board in monitoring the same
- iii. Overseeing the management of funds and borrowings in the bank
- iv. Recommending proposals for investment of bank's funds as per the board approved policy
- v. Oversight on internal controls and systems and risk management in the bank
- vi. Exercising oversight on implementation of computerisation, technology adoption and other incidental issues in the bank
- vii. Overseeing internal audit and inspection functions including compliance
- viii. Oversight on complaint redressal system
- ix. Assisting the Board in formulation of policies related to banking functions, illustratively loan policy, investment policy, recovery policy, ALM and Risk management, etc. to ensure that policies are in tune with RBI guidelines
- x. Any other responsibility as may be delegated to it by the BoD.

NB: In the event where the BoD differs with the recommendations of BoM, it shall do so by recording, in writing, the reasons thereof.

5. Size of BoM

The BoM (excluding CEO) shall have a minimum of five members. The maximum number of members in BoM shall not exceed twelve. The CEO would be a non-voting member.



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6. Qualifications of Members of BoM

- (i) All the members of BoM shall consist of persons having special knowledge or practical experience in respect of one or more of the following matters, namely:-
 - a. Accountancy
 - b. Agriculture and rural economy
 - c. Banking
 - d. Co-operation
 - e. Economics
 - f. Finance
 - g. Law
 - h. Small scale industry
 - i. Information Technology
 - j. Any other subject, which would, in opinion of the Reserve Bank, be useful to the UCB
- (ii) The members of BoM shall at all times satisfy the 'Fit and Proper' Criteria as furnished in Appendix I.
- (iii) Members of the BoM may be drawn from the members of the Board of Directors provided they meet the criteria specified. However, not more than 50 per cent of the BoM members shall be from BoD. Under all circumstances, BoM shall have at least two members from outside the BoD.
- (iv) A member of BoM can be appointed in more than one bank, subject to a maximum of three, provided that there is no overlapping in area of operation.
- (v) Any disqualification prescribed for member of a BoD under respective co-operative societies act will also apply to a member of a BoM.

7. Meetings of BoM

BoM may hold meetings at such periodicity as deemed necessary. The Chairman of the BoM may be elected by the members of BoM from amongst themselves or appointed by the BoD. Under no circumstances the Chairman of the BoD shall be appointed as Chairman of the BoM and every UCB shall maintain proper record of the minutes of the meeting and the same shall be put up to BoD. The quorum for the meeting shall be two-third of the total members of BOM.

8. Sitting fees

Members of BoM may be paid allowance / sitting fees for their services as may be provided for in the bye-laws of UCB or with the approval of BoD.



9. Tenure of BoM

The tenure of BoM shall be co-terminus with the tenure of BoD.

10. Functions of Board of Directors

The BoD is responsible for the general direction and control of a UCB. They will continue to look after all the administrative functions as spelt out in the respective Co-operative Societies Act. BoD will continue to be the apex policy setting body and constitute various committees of the Board including the Board of Management to assist the Board in carrying out its responsibilities. It will delegate powers to the various committees as considered appropriate. BoD may ensure that there are no conflicts in powers delegated to the Committees of the Board and BoM. The CEO of a UCB may be appointed by the Board and who shall be a person meeting the 'fit and proper' criteria as prescribed in Appendix I. UCBs having deposits of Rs.100 and above crore shall obtain prior approval of RBI for appointment of CEO.

11. Functions of CEO

The CEO shall be under the general superintendence, direction and control of the BoD and exercise such powers and discharge such functions as may be delegated by the BoD. He/ she shall be an ex-officio member of the BoD and also the BoM.

12. RBI's powers over BoM and CEO

RBI shall have powers to remove any member of BoM and/ or the CEO if the person is found to be not meeting the criteria prescribed by RBI or acting in a manner detrimental to the interests of the bank or its depositors or both. The BoD shall seek concurrence from RBI before removing any member of the BoM / accepting the resignation tendered by any member of the BoM. RBI shall also have powers to supersede the BoM if the functioning of BoM is found unsatisfactory. After removal of the member of BoM or CEO or supersession of BoM, BoD shall appoint a new member or CEO or constitute a new BoM as the case may be within a period of three months. As an interim arrangement, BoD may carry out the functions of BoM.

13. Amendments to bye-laws

UCBs shall make suitable amendments to their bye-laws, with the approval of the General Body and Registrar of Co-operative Societies to provide for constitution of BoM, in addition to the BoD.



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Annex II

List of Documents

(Refer circular DoR (PCB). BPD.Cir No.8/12.05.002/2019-20 dated December 31, 2019)

1. Covering Letter by UCB submitting the application for approval of appointment of CEO duly signed by the authorised signatory with bank's seal
2. Declaration and Undertaking by CEO prescribed in Appendix II of guidelines on BoM.
3. Board Resolution approved in AGM / Special AGM recommending the appointment of CEO subject to approval from RBI
4. Identity document (any one) – PAN Card / Election Card / Driving License / Passport
5. Educational Qualification - HSC Passing Certificate, Graduation and Post-Graduation Certificate, any other document evidencing the educational qualification/Professional qualification of the CEO designate
6. Experience Certificate/s from previous employer/s
7. Credit Information Report (Score + complete report) (not older than 6 months)
8. Bankers Report



Annex III

Details of the members of BoM /CEO

(Refer circular DoR (PCB).BPD.Cir No.8/12.05.002/2019-20 dated December 31, 2019)

Name of the Bank: _____

Classification of Bank*: Tier I/Tier II

For the year ended: December ____, 20XX

Name	Date of appointment	Qualification	External/Internal Member

*Strike out whichever is not applicable

**'Fit and Proper' criteria**

(Refer circular DoR (PCB). BPD.Cir No.8/12.05.002/2019-20 dated December 31, 2019)

A. Chief Executive Officers or Managing Directors of UCB

- i) The person shall be a graduate with
 - (a) CAIIB / DBF / Diploma in Co-operative Business Management or equivalent qualification; or
 - (b) Chartered / Cost Accountant; or
 - (c) Post graduate in any discipline.
- ii) The person may preferably not be less than 35 years of age and not more than 70 years of age at the time of appointment.
- iii) The person shall have at least 8 years' work experience at the middle / senior level in the banking sector.

B. Members of Board of Management

- i) All members of BoM shall have special knowledge or practical experience in respect of one or more of the following matters:
 - a. Accountancy
 - b. Agriculture and Rural Economy
 - c. Banking
 - d. Co-operation
 - e. Economics
 - f. Finance
 - g. Law
 - h. Small Scale Industry
 - i. Information Technology
 - j. Any other subject, which would, in opinion of the Reserve Bank, be useful to the UCB
- ii) Any person who has had a business relationship with the bank, in question, during the immediate preceding three years will not be eligible. A person having deposits with the UCB will not be classified as having business relationship for the purpose.

C. The Board of Directors of the UCB shall obtain a declaration-cum-undertaking as in Appendix II from the CEO or member of BoM at the time of his / her appointment. The BoD shall undertake a process of due diligence in respect of such persons relying on the information given in the Declaration.

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Appendix II

Name of Bank :

Declaration- cum-Undertaking by CEO / Member of Board of Management

(Refer DoR (PCB).BPD.Cir No.8/12.05.002/2019-20 dated December 31,2019 with enclosures as appropriate in Annex II list)

I.	Personal details	
a.	Full Name	
b.	Date of Birth	
c.	Educational Qualifications	
d.	Work Experience	
e.	Permanent Address	
f.	Present Address	
g.	E-mail Address & Telephone/ Mobile Number	
h.	Permanent Account Number under the Income Tax Act	
i.	Any other information relevant to the appointment	
II	Relevant Relationships of candidate	
a.	List of Relatives, if any, who are connected with the Bank	
b.	List of entities if any in which he / she is considered as being interested	
c.	Name of Bank in which he / she is or has been a member of the board (giving details of period during which such office was held)	
d.	Fund and non-fund facilities, if any, presently availed of by him / her and / or by entities listed in II (b) above from the bank	
f.	Cases, if any, where the candidate or entities listed in II (b) above are in default or have been in default in the past in respect of credit facilities obtained from the bank or any other bank.	
III	Records of professional achievements	
a.	Relevant professional achievements	
IV.	Proceedings, if any, against the candidate	
a.	If the candidate is a member of a professional association / body, details of disciplinary action, if any, pending or commenced or resulting in conviction in the past against him / her or whether he / she has been banned from entry of at any profession / occupation at any time.	
b.	Details of prosecution, if any, pending or commenced or resulting in conviction in the past against the candidate and / or against any of the entities listed in II (b) above for violation of economic laws and regulations	
c.	Details of criminal prosecution, if any, pending or commenced or resulting in conviction in the past against the candidate	
d.	Has the candidate or any of the entities at II (b) above been subject to any investigation at the instance of any Government department or agency?	
e.	Has the candidate at any time been found guilty of violation of rules / regulations / legislative	



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	requirements by customs / excise / income tax / foreign exchange / other revenue authorities, if so give particulars	
f.	<p>Whether the candidate or any of the entities listed at II (b) above have at any time come to the adverse notice of a regulator such as SEBI, IRDA, DCA, RCS, ICAI, etc.</p> <p>(Though it shall not be necessary for a candidate to mention in the column about orders and findings made by regulators which have been later on reversed / set aside in toto, it would be necessary to make a mention of the same, in case the reversal / setting aside is on technical reasons like limitation or lack of jurisdiction, etc, and not on merit. If the order of the regulator is temporarily stayed and the appellate / court proceedings are pending, the same also should be mentioned).</p>	
V.	Any other explanation / information in regard to items I to III and other information considered relevant for 'fit and proper' judgment.	
Undertaking		
<p>I confirm that the above information is complete and true to the best of my knowledge and belief. I undertake to keep the bank fully informed, as soon as possible, of all events which take place subsequent to my appointment which are relevant to the information provided above.</p> <p>I also undertake to execute the deed of covenant required to be executed by all directors of the bank.</p>		
		Signature of Candidate
	Place :	
	Date :	
VI.	Remarks of BoD	
Name & Signature of the authorised official of the bank		
Place :		
Date :		

TRUE COPY

[Signature]

Advocate

Exhibit: - 'D'

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RBI/2021-22/25

Ref.No.DoS.CO.ARG/SEC.01/08.91.001/2021-22

The Chairman/Managing Director/Chief Executive Officer,
All Commercial Banks (Excluding RRBs)
All Primary (Urban) Co-operative Banks (UCBs)
All Non-Banking Finance Companies (NBFCs) (Including Housing Finance Companies)

Madam/Dear Sir,

Guidelines for Appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SAs) of Commercial Banks (excluding RRBs), UCBs and NBFCs (including HFCs)

The following guidelines are issued under Section 30(1A) of the Banking Regulation Act, 1949, Section 10(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 and Section 41(1) of SBI Act, 1955; and under provisions of Chapter IIIB of RBI Act, 1934 for NBFCs. These guidelines supersede all previous guidelines (list enclosed at Table 1) issued on the subject.

2. Applicability:

2.1 These guidelines will be applicable to the **Commercial Banks (excluding RRBs), UCBs and NBFCs including HFCs (hereinafter referred to as the Entities)** for Financial Year 2021-22 and onwards in respect of appointment/reappointment of SCAs/SAs¹ of the Entities. However, non-deposit taking NBFCs with asset size² below ₹1,000 crore have the option to continue with their extant procedure.

2.2 As RBI guidelines regarding appointment of SCAs/SAs shall be implemented for the first time for UCBs and NBFCs from FY 2021-22, they shall have the flexibility to adopt these guidelines from H2 (second half) of FY 2021-22 in order to ensure that there is no disruption.

¹ SCAs in case of the Entities which appoint separate Statutory Branch Auditors (SBAs) and SAs in case of all other Entities

² For the purpose, asset size means total assets.

पर्यवेक्षण विभाग, भारतीय रिजर्व बैंक, केंद्रीय कार्यालय, वर्ल्ड ट्रेड सेंटर, सेंटर 1, कफ परेड, कोलाबा,
मुम्बई - 400005, टेलिफोन 022 - 22188482, ईमेल- cgmicdosco@rbi.org.in

Department of Supervision, Reserve Bank of India, Central Office, World Trade Centre 1, Cuffe Parade, Colaba, Mumbai - 400
005, Tel: 022- 22188482, e-mail: cgmicdosco@rbi.org.in

हिंदी आसान है, इसका प्रयोग बढ़ाएँ



3. Prior Approval of RBI:

3.1 Commercial Banks (excluding RRBs) and UCBs will be required to take prior approval of RBI (Department of Supervision) for appointment/reappointment of SCAs/SAs, on an annual basis in terms of the above-mentioned statutory provisions. For the purpose, they should apply to Department of Supervision, RBI before 31st July of the reference year and the Public Sector Banks (PSBs) shall approach RBI within one month of receipt of list of eligible audit firms from RBI.

3.2 For the purpose, all Commercial Banks (excluding RRBs) in India and UCBs under Mumbai Region shall approach the Central Office of RBI (Department of Supervision). Other UCBs shall approach the concerned Regional Office of RBI (Department of Supervision), under whose jurisdiction their Head Office is located.

3.3 While NBFCs do not have to take prior approval of RBI for appointment of SCAs/SAs, all NBFCs need to inform RBI (to the same office as applicable to UCBs, as stated in Para 3.2 above) about the appointment of SCAs/SAs for each year by way of a certificate in **Form A** within one month of such appointment.

4. Number of SCAs / SAs and Branch Coverage

4.1 For Entities with asset size of ₹15,000 crore and above as at the end of previous year, the statutory audit should be conducted under joint audit of a minimum of two audit firms [Partnership firms/Limited Liability Partnerships (LLPs)]. All other Entities should appoint a minimum of one audit firm (Partnership firm/LLPs) for conducting statutory audit. It shall be ensured that joint auditors of the Entity do not have any common partners and they are not under the same network³ of audit firms. Further, the Entity may finalise the work allocation among SCAs/SAs, before the commencement of the statutory audit, in consultation with their SCAs/SAs.

4.2 The Entities should decide on the number of SCAs/SAs based on a Board/Local Management Committee (LMC) Approved Policy, *inter alia*, taking into account the relevant factors such as the size and spread of assets, accounting and administrative units, complexity of transactions, level of computerization, availability of other independent audit inputs, identified risks in financial reporting, etc.

³ As defined in Rule 6(3) of the Companies (Audit & Auditors) Rules, 2014



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Considering the above factors and the requirements of the Entity, the actual number of SCAs/SAs to be appointed shall be decided by the respective Boards/LMC, subject to the following limits:

Sl. No.	Asset Size of the Entity	Maximum number of SCAs/SAs
1.	Upto ₹5,00,000 crore	4
2.	Above ₹ 5,00,000 crore and Upto ₹ 10,00,000 crore	6
3.	Above ₹ 10,00,000 crore and Upto ₹ 20,00,000 crore	8
4.	Above ₹ 20,00,000 crore	12

The above limits have been prescribed to ensure that the number of SCAs/SAs appointed by the Entities are adequate, commensurate with the asset size and extent of operations of the Entities, with a view to ensure that audits are conducted in a timely and effective manner. This will be subject to review in future based on the experience.

4.3 In terms of RBI guidelines on 'Norms on eligibility, empanelment and selection of Statutory Branch Auditors in Public Sector Banks (PSBs)', PSBs shall allot the Top 20 branches (to be selected strictly in order of the level of outstanding advances) to SCAs in such a manner as to cover a minimum of 15% of total gross advances of the bank by SCAs. For other Entities (excluding Payment Banks and Core Investment Companies), SCAs/SAs shall visit and audit at least the Top 20 branches/Top 20% of the branches of the Entities (in case of Entities having less than 100 branches), to be selected in order of the level of outstanding advances, in such a manner as to cover a minimum of 15% of total gross advances of the Entities. In addition, the banking companies and NBFCs shall ensure adherence to the provisions of Section 143 (8) of the Companies Act, 2013 regarding audit of accounts of all branches.

5. Eligibility Criteria of Auditors

Each Entity is required to appoint audit firm(s) as its SCA(s)/SA(s) fulfilling the eligibility norms as prescribed in Annex I.

6. Independence of Auditors

6.1 For Commercial Banks (excluding RRBs) and NBFCs⁴, the Audit Committee of the Board (ACB)/ LMC shall monitor and assess the independence of the auditors and conflict of interest position in terms of relevant regulatory provisions, standards and best practices. Any concerns

⁴ For the NBFCs which are required to constitute an Audit Committee of the Board (ACB) in terms of Para 70 (1) of Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 to be read with Section 177 of the Companies Act, 2013.



in this regard may be flagged by the ACB/LMC to the Board of Directors of the Commercial Bank (excluding RRBs)/NBFC and concerned Senior Supervisory Manager (SSM)/Regional Office (RO) of RBI.

For UCBs/remaining NBFCs, the Board of Directors shall monitor and assess the independence of the auditors. Any concerns in this regard may be flagged by the Board of the UCB/NBFC to the concerned SSM/RO of RBI.

6.2 In case of any concern with the Management of the Entities such as non-availability of information/non-cooperation by the Management, which may hamper the audit process, the SCAs/SAs shall approach the Board⁵/ACB/LMC of the Entity, under intimation to the concerned SSM/RO of RBI.

6.3 Concurrent auditors of the Entity should not be considered for appointment as SCAs/SAs of the same Entity. The audit of the Entity and any entity with large exposure⁶ to the Entity for the same reference year should also be explicitly factored in while assessing independence of the auditor.

6.4 The time gap between any non-audit works (services mentioned at Section 144 of Companies Act, 2013, Internal assignments, special assignments, etc.) by the SCAs/SAs for the Entities or any audit/non-audit works for its group entities should be at least one year, before or after its appointment as SCA/SA. However, during the tenure as SCA/SA, an audit firm may provide such services to the concerned Entities which may not normally result in a conflict of interest⁷, and Entities may take their own decision in this regard, in consultation with the Board/ACB/LMC.

6.5 The restrictions as detailed in para 6.3 and 6.4 above, should also apply to an audit firm under the same network⁸ of audit firms or any other audit firm having common partners.

7. Professional Standards of SCAs/SAs

7.1 The SCAs/SAs shall be strictly guided by the relevant professional standards in discharge of their audit responsibilities with highest diligence.

⁵ Board shall be directly approached only when ACB is non-existent in the Entity or the auditors notice a matter of concern involving any member of the ACB.

⁶ As defined in RBI instructions on 'Large Exposures Framework'

⁷ A conflict would not normally be created in the case of the following special assignments (indicative list):

(i) Tax audit, tax representation and advice on taxation matters, (ii) Audit of interim financial statements, (iii) Certificates required to be issued by the statutory auditor in compliance with statutory or regulatory requirements. (iv) reporting on financial information or segments thereof

⁸ As defined in Rule 6(3) of the Companies (Audit & Auditors) Rules, 2014



7.2 The Board⁹/ACB/LMC of Entities shall review the performance of SCAs/SAs on an annual basis. Any serious lapses/negligence in audit responsibilities or conduct issues on part of the SCAs/SAs or any other matter considered as relevant shall be reported¹⁰ to RBI within two months from completion of the annual audit. Such reports should be sent with the approval/recommendation of the Board/ACB/LMC, with the full details of the audit firm.

7.3 In the event of lapses in carrying out audit assignments resulting in misstatement of an Entity's financial statements, and any violations/lapses vis-à-vis the RBI's directions/guidelines regarding the role and responsibilities of the SCAs/SAs in relation to Entities, the SCAs/SAs would be liable to be dealt with suitably under the relevant statutory/regulatory framework.

8. Tenure and Rotation

8.1. In order to protect the independence of the auditors/audit firms, Entities will have to appoint the SCAs/SAs for a continuous period of three years¹¹, subject to the firms satisfying the eligibility norms each year. Further, Commercial Banks (excluding RRBs) and UCBs can remove the audit firms during the above period only with the prior approval of the concerned office of RBI (Department of Supervision), as applicable for prior approval for appointment, as mentioned at Para 3.2 of this circular. NBFCs removing the SCAs/SAs before completion of three years tenure shall inform concerned SSM/RO at RBI about it, along with reasons/justification for the same, within a month of such a decision being taken.

8.2 An audit firm would not be eligible for reappointment in the same Entity for six years (two tenures) after completion of full or part of one term of the audit tenure¹². However, audit firms can continue to undertake statutory audit of other Entities.

8.3. One audit firm can concurrently take up statutory audit of a maximum of four Commercial Banks [including not more than one PSB or one All India Financial Institution (NABARD, SIDBI, NHB, EXIM Bank) or RBI], eight UCBs and eight NBFCs during a particular year, subject to compliance with required eligibility criteria and other conditions for each Entity and

⁹ Board shall review the performance of SCAs/SAs in case ACB is non-existent in the Entity.

¹⁰ Circular dated March 26, 2004 on 'Assessment of Performance of Statutory Auditors' addressed to the PSBs has been superseded by this circular.

¹¹ Office of C&AG will continue to appoint Statutory Auditors of the Government Companies and Government Controlled Other Companies under Section 139 (5) and 139 (7) of the Companies Act, 2013. Such Companies are also subject to supplementary/test audit by the Office of C&AG under Section 143 (6) and (7) of the said Act. Such Entities will be guided by the C&AG Guidelines regarding tenure and rotation policy. However, such appointments for Jammu & Kashmir Bank Ltd. and India Post Payments Bank Ltd. will be done by the Office of C&AG with RBI's concurrence. Further, the audit firms which have already completed tenure of 1 year or 2 years with any Entity may be permitted to complete the balance tenure only, i.e. 2 years and 1 year respectively, if they fulfill the eligibility norms on an annual basis.

¹² In case an audit firm has conducted audit of any Entity for part-tenure (1 year or 2 years) and then not appointed for remainder tenure, they also would not be eligible for reappointment in the same Entity for six years from completion of part-tenure.

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within overall ceiling prescribed by any other statutes or rules. For clarity, the limits prescribed for UCBs exclude audit of other co-operative societies by the same audit firm. For the purpose of this circular, a group of audit firms having common partners and/or under the same network, will be considered as one entity and they will be considered for allotment of SCA/SA accordingly. Shared/Sub-contracted audit by any other/associate audit firm under the same network of audit firms is not permissible. The incoming audit firm shall not be eligible if such audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

9. Audit Fees and Expenses

9.1 The audit fees for SCAs/SAs of all the Entities shall be decided in terms of the relevant statutory/regulatory provisions. Public Sector Banks will continue to be guided by relevant RBI instructions in the matter.

9.2 The audit fees for SCAs/SAs of all the Entities shall be reasonable and commensurate with the scope and coverage of audit, size and spread of assets, accounting and administrative units, complexity of transactions, level of computerization, identified risks in financial reporting, etc.

9.3 The Board/ACB/LMC of Entities shall make recommendation to the competent authority as per the relevant statutory/regulatory instructions for fixing audit fees of SCAs/SAs.

10. Statutory Audit Policy and Appointment Procedure

10.1 Each Entity shall formulate a Board/LMC Approved Policy to be hosted on its official website/public domain and formulate necessary procedure thereunder to be followed for appointment of SCAs/SAs. Apart from conforming to all relevant statutory/regulatory requirements in addition to these instructions, this should afford necessary transparency and objectivity for most key aspects of this important assurance function.

10.2 Guidelines on minimum procedural requirements are given at Annex II.

Yours faithfully,

(Ajay Kumar Choudhary)
Chief General Manager-In-Charge

FAQs - Guidelines for Appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SAs) of Commercial Banks (excluding RRBs), UCBs and NBFCs (including HFCs)

**ANNEX I****Eligibility Criteria for Appointment as SCA/SA****A. Basic Eligibility**

Asset Size of Entity as on 31st March of Previous Year	Minimum No. of Full-Time partners (FTPs) associated with the firm for a period of at least three (3) years Note 1	Out of total FTPs, Minimum No. of Fellow Chartered Accountant (FCA) Partners associated with the firm for a period of at least three (3) years	Minimum No. of Full Time Partners/ Paid CAs with CISA/ISA Qualification Note 2	Minimum No. of years of Audit Experience of the firm Note 3	Minimum No. of Professional staff Note 4
Above ₹15,000 crore	5	4	2	15	18
Above ₹ 1,000 crore and Up to ₹15,000 crore	3	2	1	8	12
Upto ₹1,000 crore	2	1	1*	6	8

* Not mandatory for UCBs/NBFCs with asset size of upto ₹ 1,000 crore.

Note 1: There should be at least one-year continuous association of partners with the firm as on the date of empanelment (for PSBs)/ shortlisting (for other Entities) for considering them as full time partners. Further, for appointment as SCAs/SAs of all Commercial Banks (excluding RRBs), and other Entities with asset size above ₹ 1,000 crore, at least two partners of the firm shall have continuous association with the firm for at least 10 years.

For all Commercial Banks (excluding RRBs), and UCBs/NBFCs with asset size above ₹ 1,000 crore, the full-time partner's association with the firm would mean exclusive association. The definition of 'exclusive association' will be based on the following criteria:

(a) The full-time partner should not be a partner in other firm/s.



- (b) She/He should not be employed full time / part time elsewhere.
- (c) She/He should not be practicing in her/his own name or engaged in practice otherwise or engaged in other activity which would be deemed to be in practice under Section 2(2) of the Chartered Accountants Act, 1949.
- (d) In case of PSBs, the income of the partner from the firm/LLP should not be below the threshold limits prescribed by the Office of C&AG for the purpose of consideration as full-time partners for appointment as auditors of Public Sector Undertakings. For other Entities, the Board/ACB/LMC shall examine and ensure that the income of the partner from the firm/LLP is adequate for considering them as full-time exclusively associated partners, which will ensure the capability of the firm for the purpose.

Note 2: CISA/ISA Qualification:

For UCBs and NBFCs with asset size upto ₹ 1,000 crore, there is no minimum requirement in this regard. However, such Entities may give priority to firms with full time partners or full time CAs having CISA/ISA qualification. There should be at least one-year continuous association of Paid CAs with CISA/ISA qualification with the firm as on the date of empanelment (for PSBs)/ shortlisting (for other Entities) for considering them as Paid CAs with CISA/ISA qualification for the purpose.

Note 3: Audit Experience:

For Commercial Banks (excluding RRBs), audit experience shall mean experience of the audit firm as Statutory Central/Branch Auditor of Commercial Banks (excluding RRBs)/ AIFIs. For UCBs and NBFCs, audit experience shall mean experience of the audit firm as Statutory Central/Branch Auditor of Commercial Banks (excluding RRBs)/ UCBs/NBFCs/ AIFIs. In case of merger and demerger of audit firms, merger effect will be given after 2 years of merger while demerger will be effected immediately for this purpose.

Note 4: Professional Staff

Professional staff includes audit and article clerks with knowledge of book-keeping and accountancy and who are engaged in on-site audits but excludes typists/stenos/computer operators/ secretaries/subordinate staff, etc. There should be at least one-year continuous association of professional staff with the firm as on the date of empanelment (for PSBs)/ shortlisting (for other Entities) for considering them as professional staff for the purpose.

B. Additional Consideration

- (i) The audit firm, proposed to be appointed as SCAs/SAs for Entities, should be duly qualified for appointment as auditor of a company in terms of Section 141 of the Companies Act, 2013.



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(ii) The audit firm should not be under debarment by any Government Agency, National Financial Reporting Authority (NFRA), the Institute of Chartered Accountants of India (ICAI), RBI or Other Financial Regulators.

(iii) The Entities shall ensure that appointment of SCAs/SAs is in line with the ICAI's Code of Ethics/any other such standards adopted and does not give rise to any conflict of interest.

(iv) If any partner of a Chartered Accountant firm is a director in any Public Sector Bank (PSB), the said firm shall not be appointed as SCA/SA of any PSB. Further, if any partner of a Chartered Accountant firm is a director in any Entity, the said firm shall not be appointed as SCA/SA of any of the group entities¹³ of that Entity.

(v) The auditors for Entities with asset size above ₹1,000 crore should preferably have capability and experience in deploying Computer Assisted Audit Tools and Techniques (CAATs) and Generalized Audit Software (GAS), commensurate with the degree/ complexity of computer environment of the Entities where the accounting and business data reside in order to achieve audit objectives.

(vi) For audit of UCBs, the SA of the firm should have a fair knowledge of the functioning of the cooperative sector and shall preferably have working knowledge of the language of the state in which the UCB/branch of the UCB is located.

C. Continued Compliance with basic eligibility criteria

In case any audit firm (after appointment) does not comply with any of the eligibility norms (on account of resignation, death etc. of any of the partners, employees, action by Government Agencies, NFRA, ICAI, RBI, other Financial Regulators, etc.), it may promptly approach the Entity with full details. Further, the audit firm shall take all necessary steps to become eligible within a reasonable time and in any case, the audit firm should be complying with the above norms before commencement of Annual Statutory Audit for Financial Year ending 31st March and till the completion of annual audit.

In case of any extraordinary circumstance after the commencement of audit, like death of one or more partners, employees, etc., which makes the firm ineligible with respect to any of the eligibility norms, RBI will have the discretion to allow the concerned audit firm to complete the audit, as a special case.

¹³ For the purpose of this circular, Group entities shall mean two or more entities related to each other through any of the following relationships, viz. Subsidiary – parent (defined in terms of AS 21), Joint venture (defined in terms of AS 27), Associate (defined in terms of AS 23), Promoter-promotee [as provided in the SEBI (Acquisition of Shares and Takeover) Regulations, 1997] for listed companies, a related party (defined in terms of AS 18), Common brand name, and investment in equity shares of 20% and above.

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ANNEX II

Procedure for Appointment of SCAs/SAs

1. The Entities shall shortlist minimum of 2 audit firms for every vacancy of SCAs/SAs so that even if firm at first preference is found to be ineligible/refuses appointment, the firm at second preference can be appointed and the process of appointment of SCAs/SAs does not get delayed. However, in case of reappointment of SCAs/SAs by banks/UCBs till completion of tenure of continuous term of 3 years, there would not be any requirement of shortlisting and sending names of multiple audit firms to RBI while seeking approval to appointment.

2. The banking companies shall continue to follow the existing procedure followed by them for selection of SCAs/SAs. They shall place the name of shortlisted audit firms, in order of preference, before their ACB/LMC for selection as SCAs/SAs. Upon selection of SCAs/SAs by the bank in consultation with their ACB/LMC and verifying their compliance with the eligibility norms prescribed by RBI, the bank shall seek RBI's prior approval for appointment of SCAs/SAs.

3. For PSBs, empanelment of audit firms eligible for appointment as SCAs will continue to be done by the Office of C&AG, based on the norms prescribed by RBI, as on January 1 of the relevant year.

The list of firms as furnished by C&AG to RBI will be subjected to scrutiny by RBI for identifying the eligible firms and excluding audit firms who have been denied audit by C&AG/RBI. RBI will forward a single list¹⁴ of all audit firms eligible for appointment as SCAs to all PSBs on an annual basis. PSBs shall shortlist audit firms from the said list of eligible audit firms as received from RBI, based on certain objective criteria (like number of full time partners, number of professional staff, number of CISA/ISA qualified partners/paid CAs, number of FCAs, etc.) as laid down in the bank's policy for appointment of statutory auditors. Further, the PSBs shall place the list of shortlisted firms, in order of preference, before the ACB for selection of SCAs in a transparent manner. Upon selection of SCAs by the PSBs in consultation with their ACB and verifying their compliance with the eligibility norms prescribed by RBI, the PSBs shall seek RBI's prior approval for appointment of SCAs.

4. The UCBs shall place the name of shortlisted audit firms, in order of preference, before their Board for selection as SCA/SA. Upon selection of SCAs/SAs by the UCBs in consultation with

¹⁴ RBI will provide a single list of eligible audit firms to PSBs as the requirement of mandatory cooling of three years and allotment of vacancies in the ratio of 60:40 between 'Experienced' and 'New' audit firms has been done away with from FY 2021-22. The firms in said list would not be ranked in any order and all firms would be eligible for selection by all PSBs.



their Board and verifying their compliance with the eligibility norms prescribed by RBI, the UCBs shall seek RBI's prior approval for appointment of SCAs/SAs.

5. The Entities shall obtain a certificate, along with relevant information as per **Form B**, from the audit firm(s) proposed to be appointed as SCAs/SAs by the Entity to the effect that the audit firm(s) complies with all the eligibility norms prescribed by RBI for the purpose. Such certificate should be signed by the main partner/s of the audit firm proposed for appointment of SCAs/SAs of the Entities, under the seal of the said audit firm.

6. The Commercial Banks (excluding RRBs)/UCBs shall verify the compliance of audit firm(s) to the eligibility norms prescribed by RBI for the purpose and after being satisfied of their eligibility, recommend the names along with a certificate, in the format as per **Form C**, stating that the audit firm(s) proposed to be appointed as SCA/SA by them comply with all eligibility norms prescribed by RBI for the purpose.

7. While approaching the RBI for its prior approval for appointment of SCAs/SAs, Commercial Banks (excluding RRBs)/UCBs shall indicate their total asset size as on March 31st of the previous year (audited figures), forward a copy of Board/ACB Resolution (resolution not needed for foreign banks operating under branch mode) recommending names of audit firms for appointment as SCAs/SAs in the order of preference and also furnish information as per **Form B** and **Form C** as mentioned above, to facilitate expeditious approval of appointment/re-appointment of the concerned audit firm.

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FORM A

Information to be submitted by the NBFCs regarding appointment of SCA/SA

The company has appointed M/s _____, Chartered Accountants (Firm Registration Number _____) as Statutory Central Auditor (SCA)/Statutory Auditor (SA) for the financial year ____ for their 1st/2nd/3rd term.

2. The company has obtained eligibility certificate from (name and Firm Registration Number of the audit firm) appointed as SCA/SA of the company for FY ____ along with relevant information in the format as prescribed by RBI.

3. The firm has no past association/association for ____ years with the company as SCA/SA/SBA.

4. The company has verified the said firm's compliance with all eligibility norms prescribed by RBI for appointment of SCAs/SAs of NBFCs.

Signature

(Name and Designation)

Date:



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FORM B

Eligibility Certificate from (Name and Firm Registration Number of the firm)**A. Particulars of the firm:**

Asset Size of Entity as on 31st March of Previous Year	Number of Full-Time partners (FTPs) associated* with the firm for a period of three (3) years	Out of total FTPs, Number of FCA Partners associated with the firm for a period of three (3) years	Number of Full Time Partners/ Paid CAs with CISA/ISA Qualification	Number of Years of Audit Experience#	Number of Professional staff

*Exclusively associated in case of all Commercial Banks (excluding RRBs), and UCBs/NBFCs with asset size of more than ₹ 1,000 crore

#Details may be furnished separately for experience as SCAs/SAs and SBAs

B. Additional Information:

- (i) Copy of Constitution Certificate.
- (ii) Whether the firm is a member of any network of audit firms or any partner of the firm is a partner in any other audit firm? If yes, details thereof.
- (iii) Whether the firm has been appointed as SCA/SA by any other Commercial Bank (excluding RRBs) and/or All India Financial Institution (AIFI)/RBI/NBFC/UCB in the present financial year? If yes, details thereof.
- (iv) Whether the firm has been debarred from taking up audit assignments by any regulator/Government agency? If yes, details thereof.
- (v) Details of disciplinary proceedings etc. against firm by any Financial Regulator/Government agency during last three years, both closed and pending.

C. Declaration from the firm

The firm complies with all eligibility norms prescribed by RBI regarding appointment of SCAs/SAs of Commercial Banks (excluding RRBs)/UCBs/NBFCs (as applicable). It is certified that neither I nor any of our partners / members of my / their families (family will include besides spouse, only children, parents, brothers, sisters or any of them who are wholly or

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mainly dependent on the Chartered Accountants) or the firm / company in which I am / they are partners / directors¹⁵ have been declared as wilful defaulter by any bank / financial institution.

It is confirmed that the information provided above is true and correct.

Signature of the Partner

(Name of the Partner)

Date:

¹⁵ For the purpose of this declaration, the credit facilities availed by companies where the partner of a firm has been appointed as non-executive director in a professional capacity having no financial interest shall not be included.



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FORM C

Certificate to be submitted by the Commercial Banks (excluding RRBs) and UCBs regarding eligibility of audit firm proposed to be appointed as SCA/SA

The bank/UCB is desirous of appointing M/s _____, Chartered Accountants (Firm Registration Number _____) as Statutory Central Auditor (SCA)/ Statutory Auditor (SA) for the financial year _____ for their 1st/2nd/3rd term and therefore has sought the prior approval of RBI as per the section 30(1A) of the Banking Regulation Act, 1949/ Section 10 (1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980/ Section 41(1) of SBI Act, 1955.

2. The bank/UCB has obtained eligibility certificate (copy enclosed) from (name and Firm Registration Number of the audit firm) proposed to be appointed as Statutory Central Auditor (SCA)/Statutory Auditor of the bank/UCB for FY _____ along with relevant information (copy enclosed), in the format as prescribed by RBI.

3. The firm has no past association/association for _____ years with the bank/UCB as SCA/SA/SBA.

4. The bank/UCB has verified the said firm's compliance with all eligibility norms prescribed by RBI for appointment of SCAs/SAs of Commercial Banks (excluding RRBs)/UCBs.

Signature

(Name and Designation)

Date:

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Table 1 – List of Circulars/Instructions superseded by this Circular

Sl. No.	Circular/Instruction No.	Date	Subject
1	DBOD.No.App.BC.57/C.452(K)-83	July 07, 1983	Appointment of Statutory Auditors as Internal Auditors of Banks
2	DBOD.No.APP.BC.101/C.452(K)-83	December 15, 1983	Statutory Audit by External Auditors
3	DBOD.No.App.BC.107/C.452(K)-84	November 13, 1984	Appointment of Statutory Auditors as Internal Auditors of Banks
4	DBOD.No.App.BC.28/C.452(K)-85	March 12, 1985	Appointment of Statutory Auditors as Internal Auditors of Banks
5	DOS.No.BC.9/08.91.001/94	August 17, 1994	Section 30(1A) of The Banking Regulation Act, 1949 - Appointment of Statutory Auditors
6	DOS.No.BC.10/08.91.002/94	August 17, 1994	Section 30(1A) of The Banking Regulation Act, 1949 - Appointment of Statutory Auditors
7	DBS.No.ARS.BC.8/08.91.001/2000-2001	January 30, 2001	Appointment of Statutory Central Auditors for Indian Private Sector Banks
8	DBS.No.ARS.BC.12/08.91.001/2000-2001	May 8, 2001	Appointment of Statutory Central Auditors for Indian Private Sector Banks
9	<u>DBS.ARS.No.BC.08/08:91:001/2003-04</u>	March 26, 2004	Assessment of Performance of Statutory Auditors
10	DBS.ARS.No.B.C.15/08.91.001/2004-05	January 6, 2005	Appointment of Statutory Auditors - Obtention of Declaration of Indebtedness
11	DBS.ARS.No.BC.7/08.91.001/2006-07	April 24, 2007	Special Assignments other than Statutory Audit to Audit Firms by Banks



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12	<u>DBS.ARS.No.BC.02/08.91.001/2008-09</u>	December 31, 2008	Internal Assignments in Banks by Statutory Auditors
13	DBS.ARS.BC No.02/08.91:001/2014-15	September 11, 2014	Appointment of Auditors
14	DBS.ARS.BC No.03/08.91.001/2014-15	September 11, 2014	Appointment of Auditors
15	<u>DBS.ARS.BC.04/08.91.001/2017-18</u>	July 27, 2017	Appointment of Statutory Central Auditors (SCAs) - Modification of Rest Period
16	Not Applicable	Not Applicable	Norms on eligibility, empanelment and selection of Statutory Central Auditors in Public Sector Banks from the year 2018-19 and onwards

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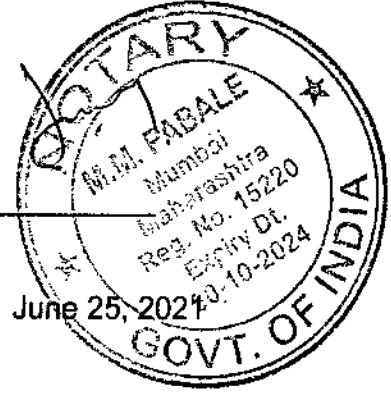
Advocate

Exhibit:- 'E'

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RESERVE BANK OF INDIA
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RBI/2021-22/60
DOR.GOV.REC.25/12.10.000/2021-22

The Chairman / Managing Director / Chief Executive Officer
All Primary (Urban) Co-operative Banks

Madam / Dear Sir,

Appointment of Managing Director (MD) / Whole-Time Director (WTD) in Primary (Urban) Co-operative Banks

In terms of powers conferred under Sections 10, 10B, 10BB, 35A, 35B, 36AA and 53A (read with Section 56) of the Banking Regulation Act, 1949 (as amended), hereinafter called as "Act", relating to appointment, re-appointment, termination and removal of Managing Director (MD) and Whole-Time Director (WTD), the Reserve Bank, hereby, issues the following directions.

2. Applicability

2.1 These directions are applicable to all Primary (Urban) Co-operative Banks (UCBs). However, in exercise of the powers conferred under the section 53A read with section 56 of the Act, a notification No. DoR.HGG.GOV.668/12.10.000/2020-21 dated March 23, 2021 was published in the Part III -Section 4 of the Gazette of India dated June 12, 2021 by the Reserve Bank of India exempting UCBs with a deposit size of less than ₹100 crore as per preceding year's audited balance sheet and all Salary Earners' Banks, inter-alia, from the requirement of seeking prior approval of the Reserve Bank under section 35B(1)(b) read with section 56 of the BR Act, 1949, for appointment / re-appointment / termination of appointment of MD or WTD. While the exempted UCBs are not required to obtain prior approval, they are required to formulate a Board approved policy based on all the other provisions of these directions for appointment / re-appointment / termination of appointment of MD or WTD. These banks shall immediately report the appointment /

वित्तियमन विभाग, केंद्रीय कार्यालय, केंद्रीय कार्यालय भवन, 12वीं/ 13वीं मंजिल, शहीद भगत सिंह मार्ग, फोर्ट, मुंबई - 400001
टेलीफोन/ Tel No: 22661602, 22601000 फैक्स/ Fax No: 022-2270 5691

Department of Regulation, Central Office, Central Office Building, 12th/ 13th Floor, Shahid Bhagat Singh Marg, Fort, Mumbai - 400001

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re-appointment / termination of appointment of MD or WTD to respective Regional Offices (Department of Supervision, Central Office, in case of UCBs under jurisdiction of Mumbai office) of the Reserve Bank.

2.2 UCBs which have appointed CEO with the prior approval of the Reserve Bank in terms of the guidelines contained in the circular DoR (PCB). BPD.Cir.No.8/12.05.002/2019-20 dated December 31, 2019 on *Constitution of Board of Management in Primary (Urban) Co-operative Banks*, may continue with the CEO so appointed till completion of his / her tenure or for a period of three years from the date of initial appointment, whichever is earlier. After the aforesaid period, UCBs shall follow the directions issued herein for appointment / re-appointment of MD.

2.3 UCBs, other than those stated in para 2.2 above, shall review the 'Fit and Proper' status of the existing MD in terms of these directions and confirm the same, with the approval of BoD, to the concerned Regional Office (Department of Supervision, Central Office, in case of UCBs under jurisdiction of Mumbai office) of Reserve Bank within a period of two months from the date of issue of this circular. In case, the present MD does not satisfy the prescribed 'Fit and Proper' criteria, the UCB shall initiate the process for appointment of new MD immediately. If a UCB had appointed WTD, the bank shall follow the same procedure to comply with these directions.

2.4 All UCBs shall obtain a deed of covenants in the format annexed (Annex I) from the present MD/ WTD who is found to be complying with these directions.

3. Appointment of Managing Director / Whole-Time Director

3.1 Managing Director, who may also be designated as Chief Executive Officer or by any other name, is a person who is entrusted with the management of the whole, or substantially the whole of the affairs of a UCB, subject to the regulations or directions issued by the Reserve Bank from time to time. MD shall function under the overall general superintendence, direction and control of the Board of Directors (BoD).

3.2 If a UCB decides to appoint Whole-Time Director (WTD), who may also be designated as Executive Director or by any other name, the need for such an appointment may be decided by the bank keeping in view the growth in business, expansion of activities, geographical footprints and organisational vision for growth in the medium and long term. The creation of the post of WTD and the functions that can be performed may be decided by the BoD and approved by the General Body of the bank. The WTD shall report to the Managing Director.

3.3 The UCBs shall ensure that the following 'fit and proper' criteria is fulfilled by the person being appointed as MD/ WTD.

3.4 Eligibility

3.4.1 The person shall be a graduate, preferably, with

- (a) Qualification in banking/ co-operative banking such as CAIIB / Diploma in Banking and Finance / Diploma in Co-operative Business Management or equivalent qualification; or
- (b) Chartered / Cost Accountant / MBA (Finance); or
- (c) Post graduation in any discipline.

3.4.2 The person shall not be below the age of 35 years and above the age of 70 years at any time during his/ her term in office. However, within the overall limit of 70 years, as part of their internal policy, individual bank's Boards are free to prescribe a lower retirement age.

3.4.3 The person shall have a combined experience of at least eight years at the middle / senior management level in the banking sector (including the experience gained in the concerned UCB) or non-banking finance companies engaged in lending (loan companies) and asset financing.

3.4.4 Knowledge of regional language may be considered as an advantage.

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3.5 Propriety Criteria

3.5.1 The person shall **not**

- (i) be engaged in any other business or vocation;
- (ii) be holding the position of a Member of Parliament or State Legislature or Municipal Corporation or Municipality or other local bodies;
- (iii) be a director of any company other than a company registered under section 8 of the Companies Act, 2013;
- (iv) be a partner of any firm which carries on any trade, business or industry;
- (v) have substantial interest in any company or firm as defined in Section 5(ne) read with section 56 of the Banking Regulations Act, 1949;
- (vi) be a Director, Manager, Managing Agent, partner or proprietor of any trading, commercial or industrial concern;
- (vii) be of unsound mind and stands so declared by a competent court;
- (viii) be an undischarged insolvent;
- (ix) be convicted by a criminal court of an offence involving moral turpitude;
- (x) be a director of any other co-operative bank or a co-operative credit society.

3.5.2. The person shall submit a self-declaration on personal integrity as per Annex II.

4. Tenure of MD/ WTD

4.1 The tenure of MD/ WTD shall not be for a period more than five years at a time subject to a minimum period of three years at the time of first appointment, unless terminated or removed earlier, and shall be eligible for re-appointment. The performance of MD/WTD shall be reviewed by the Board annually.

4.2 However, the post of the MD or WTD cannot be held by the same incumbent for more than 15 years. Thereafter, the individual will be eligible for re-appointment as MD / WTD in the same bank, if considered necessary and desirable by the board, after a minimum gap of three years, subject to meeting other conditions. During this three-year cooling

period, the individual shall not be appointed or associated with the bank in any capacity, either directly or indirectly.

4.3 UCBs whose existing MD/CEO has completed a tenure of five years at the time of issue of this circular or subsequently, shall approach RBI either to seek re-appointment of the incumbent, if he/she is eligible, or for appointment of a new MD/CEO, within a period of two months from the date of issue of this circular.

5. Procedure for obtaining approval from the Reserve Bank by the UCBs for appointment / re-appointment / termination of MD/ WTD and remuneration

5.1 UCBs, not covered under notification No. DoR.HGG.GOV.668/12.10.000/2020-21 dated March 23, 2021 published in the Part III -Section 4 of the Gazette of India dated June 12, 2021, shall follow the procedure as prescribed hereinafter for appointment of MD/ WTD and for seeking prior approval from the Reserve Bank.

5.1.1 Nomination and Remuneration Committee (NRC)

UCBs shall constitute a "Nomination and Remuneration Committee (NRC)" consisting of three directors from amongst the Board of Directors (BoD) and nominate one among them as Chairman of the NRC. All three members of the NRC are required to be present in each meeting. In case of absence of any member nominated to the NRC, the BoD shall nominate any other director in his place to ensure the quorum. At the time of constituting the NRC, the BoD shall also decide its tenure.

5.1.2 Process of making an application to RBI

(i) Subject to any regulations or directions or guidelines issued by the Reserve Bank from time to time, the NRC shall undertake a process of due diligence to determine the 'fit and proper' status of a person being considered for appointment as MD/ WTD. For this purpose, UCBs shall obtain necessary 'Declaration and Undertaking' as per Annex III from the shortlisted candidates. On completion of the process of due diligence, the NRC shall identify the persons from among the shortlisted candidates and recommend to the BoD for appointment as MD/ WTD.

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(ii) NRC shall also recommend the remuneration which shall be payable to the MD/ WTD. While recommending the remuneration, the NRC shall ensure that the cost / income ratio of the bank supports the compensation package and it is consistent with the maintenance of a sound capital adequacy ratio.

(iii) The BoD may pass an appropriate resolution for forwarding the name(s) of the person/s from the panel recommended by the NRC for appointment as MD/ WTD, if it is satisfied that the NRC's recommendations on the proposed appointment and remuneration are in order.

(iv) In order to expedite the process of appointment, UCBs may submit a panel of at least two names in the order of preference for appointment of new MD/ WTD, to the Reserve Bank, four months before the expiry of the term of office of the present incumbent.

5.2 Non-Scheduled UCBs with a deposit size of ₹1000 crore and above as per preceding year's audited balance sheet and all scheduled UCBs shall submit the proposal for appointment of MD/ WTD, along with the supporting documents listed in Annex IV, to the Reserve Bank, Department of Regulation, Central Office, Mumbai. Non-Scheduled UCBs with a deposit size of ₹100 crore or above but below ₹1000 crore as per preceding year's audited balance sheet shall approach the Regional Office/Central Office (in case of UCBs under jurisdiction of Mumbai office) of the Department of Supervision, Reserve Bank of India, under whose jurisdiction the Registered Office of the UCB is situated, for the requisite approval. The Reserve Bank reserves the right to seek any additional information/documents as it considers necessary.

5.3 Re-appointment

In the case of a proposal for re-appointment of the incumbent MD/ WTD, the UCBs shall follow the same procedure as prescribed in Para 5.1 above by submitting the complete application in the prescribed form, i.e., 'Form A' along with 'Declaration and Undertaking' from the candidate, supported by the recommendation of NRC, resolution of the Board approving the recommendation of NRC for re-appointment and a declaration from the

UCB that the information is true and complete, to the Reserve Bank six months before the expiry of the term of office of the incumbent.

5.4 Termination of MD/ WTD by UCB

In case a UCB decides to terminate the services of MD/ WTD before the expiry of tenure, it shall seek prior approval of the Reserve Bank, by submitting detailed reasons thereof along with the relevant documents and a Board resolution to that effect.

6. Temporary appointment of MD/ WTD

Appointment of MD/WTD on temporary basis in UCBs shall be made as per the provisions of Section 10B(9) read with section 56 of the Act. Accordingly, the bank may, with the approval of the Reserve Bank, make suitable arrangements for carrying out the duties of MD/ WTD for a period of not exceeding four months. The bank shall complete the process of regular appointment within the period of the aforesaid four months.

7. Miscellaneous

7.1 MD/WTD shall be an ex-officio member of the BoD and may have voting rights in board meetings, if it is permissible under the provisions of the co-operative societies act.

7.2 MD shall be an ex-officio member of the Board of Management (BoM) constituted in terms of circular DoR (PCB).BPD.Cir.No.8/12.05.002/2019-20 dated December 31, 2019.

7.3 In public interest, the MD/ WTD shall execute the deed of covenants in the format annexed (Annex I).

7.4 The appointment/ re-appointment/ termination of MD/ WTD shall be informed to the General Body in the ensuing Annual General Meeting.

8. Repeal of existing guidelines

The circular, DoR (PCB).BPD.Cir.No.8/12.05.002/2019-20 dated December 31, 2019, issued on the constitution of Board of Management in Primary (Urban) Co-operative Banks, to the extent it deals with the appointment of CEO stands repealed. However,

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other guidelines issued on the constitution of BoM in the Circular shall continue to apply mutatis mutandis.

9. These directions shall come into force with immediate effect.

Yours faithfully

(Neeraj Nigam)
Chief General Manager-in-Charge

FORM OF DEED OF COVENANTS WITH MD/WTD

(Refer circular DOR.GOV.REC.25/12.10.000/2021-22 dated June 25, 2021)

THIS DEED OF COVENANTS is made this _____ day of _____ Two thousand _____
 BETWEEN _____, having its registered office at _____ (hereinafter
 called the 'Bank') of the one part and Mr. / Ms. _____ of _____
 (hereinafter called the 'MD/WTD') of the other part.

WHEREAS

A. As a term of his / her appointment as MD/WTD of the Bank, Mr/Ms. _____ is required to enter into a Deed of Covenants with the Bank.

B. Mr/Ms. _____ has agreed to enter into this Deed of Covenants, which has been approved by the Board, pursuant to his said terms of appointment.

NOW IT IS HEREBY AGREED AND THIS DEED OF COVENANTS WITNESSETH AS FOLLOWS:

1. Mr/Ms. _____ acknowledges that his / her appointment as MD/WTD is subject to applicable laws and regulations including the bye laws of the Bank and the provisions of this Deed of Covenants.

2. Mr/Ms. _____ covenants with the bank that:

(i) he/she shall disclose to the Board the nature of his / her interest, direct or indirect, if he / she has any interest in or is concerned with a contract or arrangement or any proposed contract or arrangement entered into or to be entered into between the Bank and any other person, immediately upon becoming aware of the same or at meeting of the Board at which the question of entering into such contract or arrangement is taken into consideration or if he/she was not at the date of that meeting concerned or interested in such proposed contract or

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arrangement, then at the first meeting of the Board held after he / she becomes so concerned or interested and in case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the he/she becomes concerned or interested in the contract or arrangement.

(ii) he/she shall disclose by general notice to the Board his / her memberships of bodies corporate, his / her interest in other entities and his / her interest as a partner or proprietor of firms and shall keep the Board apprised of all changes therein.

(iii) he/she shall provide to the Bank a list of his / her relatives as defined in RBI guidelines and to the extent he/she is aware directorships and interests of such relatives in other bodies corporate, firms and other entities.

(iv) he/she shall in carrying on his / her duties as MD/WTD of the Bank:

(a) use such degree of skill as may be reasonable to expect from a person with his / her knowledge or experience;

(b) in the performance of his / her duties take such care as he / she might be reasonably expected to take on his / her own behalf and exercise any power vested in him / her in good faith and in the interests of the Bank;

(c) shall keep himself / herself informed about the business, activities and financial status of the Bank to the extent disclosed to him / her;

(d) attend meetings of the Board and Committees (of which he/she is part of) thereof (collectively for the sake of brevity hereinafter referred to as 'Board ') with fair regularity and conscientiously fulfil his / her obligations as MD/WTD of the Bank;

(e) shall not seek to influence any decision of the Board for any consideration other than in the interests of the Bank;

(f) shall bring independent judgment to bear on all matters affecting the Bank brought before the Board including but not limited to statutory compliances, performance reviews, compliances with internal control

systems and procedures, key executive appointments and standards of conduct;

(g) shall in exercise of his / her judgment in matters brought before the Board or entrusted to him / her by the Board be free from any business or other relationship which could materially interfere with the exercise of his / her independent judgment; and

(h) shall express his / her views and opinions at Board meetings without any fear or favour and without any influence on exercise of his / her independent judgment;

(v) he/she shall have:

(a) fiduciary duty to act in good faith and in the interests of the Bank and not for any collateral purpose;

(b) duty to act only within the powers as laid down by the Bank's bye laws and by applicable laws and regulations; and

(c) duty to acquire proper understanding of the business of the Bank.

(vi) he/she shall:

(a) not evade responsibility in regard to matters entrusted to him / her by the Board;

(b) not interfere in the performance of their duties by the other officers of the Bank and wherever the MD/WTD has reasons to believe otherwise, he / she shall forthwith disclose his / her concerns to the Board; and

(c) not make improper use of information disclosed to him / her as MD/WTD of the Bank for his / her or someone else's advantage or benefit and shall use the information disclosed to him / her by the Bank in his / her capacity as MD/WTD of the Bank only for the purposes of performance of his / her duties as a MD/WTD and not for any other purpose.

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3. The Bank covenants with Mr/Ms-----that:

(i) the bank shall apprise Mr/Ms-----about the:

(a) Board procedures including identification of legal and other duties of MD/WTD and required compliances with statutory obligations;

(b) control systems and procedures;

(c) matters in which MD/WTD should not participate because of his / her interest, direct or indirect therein;

(d) qualification requirements and provide copies of bye laws;

(e) constitution of, delegation of authority to and terms of reference of various committees constituted by the Board;

(f) appointments of Senior Executives and their authority;

(g) deliberations of committees of the Board, and

(h) communicate any changes in policies, procedures, control systems, applicable regulations including bye laws of the Bank, delegation of authority, Senior Executives, etc.

(ii) the Bank shall disclose and provide to Mr/Ms----- all information which is reasonably required for him/her to carry out his/her functions and duties as the MD/WTD of the Bank and to take informed decisions in respect of matters brought before the Board for its consideration or entrusted to the MD/WTD by the Board or any committee thereof;

(iii) the disclosures to be made by the Bank to Mr/Ms----- shall include but not be limited to the following:

(a) all relevant information for taking informed decisions in respect of matters brought before the Board;

(b) Bank's strategic and business plans and forecasts;

(c) organisational structure of the Bank and delegation of authority,

- (d) corporate and management controls and systems including procedures;
 - (e) economic features and marketing environment,
 - (f) information and updates as appropriate on Bank's products;
 - (g) information and updates on major expenditure;
 - (h) periodic reviews of performance of the Bank; and
 - (i) report periodically about implementation of strategic initiatives and plans;
- (iv) the bank shall communicate the outcome of Board deliberations to MD/WTD and concerned personnel and prepare and circulate minutes of the meeting of Board to MD/WTD and directors in a timely manner and to the extent possible within two business days of the date of conclusion of the Board meeting; and
- (v) advise the MD/WTD about the levels of authority delegated in matters placed before the Board.

4. The Bank shall provide to the MD/WTD periodic reports on the functioning of internal control system including effectiveness thereof.

5. Mr/Ms-----shall not assign, transfer, sublet or encumber his / her office and his / her rights and obligations as MD/WTD of the Bank to any third party provided that nothing herein contained shall be construed to prohibit delegation of any authority, power, function or delegation by the Board or any committee thereof subject to applicable laws and regulations including bye laws of the Bank.

6. The failure on the part of either party hereto to perform, discharge, observe or comply with any obligation or duty shall not be deemed to be a waiver thereof nor shall it operate as a bar to the performance, observance, discharge or compliance thereof at any time or times thereafter.

7. Any and all amendments and / or supplements and / or alterations to this Deed of Covenants shall be valid and effectual only if in writing and signed by Mr/Ms.----- and the duly authorized representative of the Bank.

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8. This Deed of Covenants has been executed in duplicate and both the copies shall be deemed to be originals.

IN WITNESS WHEREOF THE PARTIES HAVE DULY EXECUTED THIS AGREEMENT ON THE DAY, MONTH AND YEAR MENTIONED ABOVE.

For the Bank	MD/WTD
By
Name:	Name:
Title:	
In the presence of:	
1.....	2.....

Self-declaration on personal integrity

(Refer circular DOR.GOV.REC.25/12.10.000/2021-22 dated June 25, 2021)

I understand that trust is the foundation of my profession. I, therefore, pledge:

- To act with utmost integrity and pursue my work in an honest and ethical manner;
- To lead by example exhibiting integrity in personal behaviour;
- To obey the letter and spirit of the law and to pursue my ends with ethical restraint;
- To neither take nor offer bribe;
- To perform all tasks in an honest and transparent manner and to always act in public interest;
- To report any incident of corruption to the appropriate agency and to speak out against wrongdoing and support others who do the same;
- To take responsibility for my actions and consider the effects on others.

Signature of MD/WTD

Date:

Place and address:

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Annex III

Name of UCB: _____

'Declaration and Undertaking' by a proposed MD/WTD'**(with appropriate enclosures)**

(Refer circular DOR.GOV.REC.25/12.10.000/2021-22 dated June 25, 2021)

Sr.No.	Particulars	Information Disclosed		
I. Personal details				
1.	Name in full	First Name	Middle Name	Last Name
2.	Father's name			
3.	Gender (M/F/others)			
4.	Present address			
5.	E-mail address & alternate e-mail address: Telephone Number with STD code: Mobile Number:			
6.	Nationality			
7.	Date of Birth (dd/mm/yyyy) and Age	-- / -- / ---- Age: -- years -- months		
8.	Educational qualifications			
9.	Aadhaar Number			
10.	(a) Permanent Account Number (PAN) (b) Place where the MD/ WTD is assessed to tax (Income Tax jurisdiction)/name and address of Income Tax Circle/Ward (c) Details of filing of return(s) and payment of taxes for past 3 years	Date of filing	Amount of tax paid (INR)	

11.	Permanent address .				
12.	Present occupation (designation, name of the organisation and brief write-up on experience)				
13.	Previous occupation covering minimum of past ten years, with complete address of the organisation(s) worked in, date of joining, date of relieving (including reasons), designation, etc.				
14.	Details regarding work experience in banking sector/ RBI regulated entity (name of the bank/ entity, number of years at different designations, functional areas, etc.)				
15.	<p>In case a Chartered Accountant, indicate the following:</p> <p>(a) Membership Number of Institute of Chartered Accountants of India (ICAI):</p> <p>(b) Date of registration with the ICAI:</p> <p>(c) Name and Address of the registered firm/s:</p> <p>(d) Details of the Audit(s) presently undertaken by the firm(s) or by you:</p>				
16.	Name of the banker(s) with Branch and Account Numbers (savings/current/loan accounts) where you are a primary account holder:	Bank Name	Branch	Type of A/c	A/c Number

17.	Details of shareholding, if held in any entity, either in physical or dematerialized form, by you, spouse, and your minor child. (attach demat/shareholding certificate)	
18.	Any other information relevant for appointment as MD/WTD of the bank:	
II. Relevant Relationships of proposed MD/WTD		
19.	List of relatives, if any, who are connected with the bank:	
20.	List of entities in which: (a) interested (b) beneficial ownership (c) Trustee	
21.	List of entities, existing and proposed, in which holding substantial interest within the meaning of Section 5(ne) ¹ of the Banking Regulation Act, 1949 (as applicable to UCBs)	<i>Name of the company / firm</i>
		<i>Country of incorporation</i>
		<i>Number of shares</i>
		<i>Face Value of each share</i>
		<i>Total face value of share holding</i>
		<i>Shareholding as % of total Paid up Capital</i>
		<i>Beneficial interest (in value as well as % terms)</i>

¹ substantial interest" (i) in relation to a company, means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together, in the shares thereof, the amount paid up on which exceeds five lakhs of rupees or ten percent of the paid-up capital of the company, whichever is less; (ii) in relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent of the total capital subscribed by all the partners of the said firm.

		Whether the entity is a Section 8 Company under Companies Act, 2013	
22.	Details of holdings in entities incorporated abroad and having a place of business in India.		
23.	Name of Bank/NBFC/any other company in which currently or in the past a member of the Board/ Advisor etc. (giving details of period during which such office is being/was held).		
24.	If connected with any entity undertaking hire purchase, financing, investment, leasing and other para banking activities (nature of association to be mentioned), details thereof.		
25.	If a stock broker or connected with any entity engaged in share broking activities, details thereof.		
26.	Details of fund and non-fund-based facilities, if any, presently availed in person and/or by entities listed in (20) to (25) above.		
27.	Cases, if any, where as an individual or the entities listed at (20) to (25) above have defaulted or declared as willful defaulter in the past in respect of credit facilities obtained from a bank/NBFC/any other lending institution.		

III. Records of professional achievements	
28.	Professional achievements relevant for the post of MD/WTD.
IV. Proceedings, if any, against the proposed MD/WTD	
29.	(a) As a member of a professional association/body, details of disciplinary action, if any, pending or commenced or resulting in conviction in the past or whether been banned from entry at any profession/ occupation at any time, details thereof.
	(b) If subject of any written complaint or accusation regarding individual professional conduct or activities, details thereof.
30.	Details of prosecution, if any, pending or commenced or resulting in conviction of self or the entities listed at (20) to (25) above for violation of economic laws and regulations.
31.	Details of criminal prosecution, if any, pending or commenced or resulting in conviction.
32.	Whether he/she has indulged in or penalised for any breach of AML/CFT guidelines, if so, details thereof.
33.	If adjudicated insolvent or has suspended payment or has compounded with creditors, details thereof.

34.	If found to be of unsound mind and stands so declared by a competent Court, details thereof.	
35.	(a) If convicted by a Criminal Court of an offence which involves moral turpitude or otherwise, details thereof.	
	(b) If convicted by any Court of law, details thereof?	
36.	If as an individual or any of the entities at (20) to (25) above have been subject to any investigation/ vigilance/matters of enquiry from any of the previous employers or government departments or agency, details thereof.	
37.	If found guilty of violation of rules/regulations/legislative requirements by customs/ excise/ income tax/ foreign exchange/ other revenue authorities, details thereof.	
38.	<p>If reprimanded, censured, restricted, suspended, barred, enjoined, or otherwise sanctioned by any other regulator such as SEBI, IRDAI, PFRDA etc., professional organisation, government agency, or court because of professional conduct or activities, details thereof.</p> <p><i>(Though it shall not be necessary for a candidate to mention in the column about orders and findings which have been later on reversed/ set aside in toto, it would be</i></p>	

	<i>necessary to make a mention of the same, in case the reversal/ setting aside is on technical reasons like limitation or lack of jurisdiction, and not on merit. If the order is temporarily stayed and the appellate/ court proceedings are pending, the same also should be mentioned).</i>	
V. General Information		
39.	If a professional like Chartered Accountant, Advocate etc. and presently undertaking/undertaken any professional work in any bank or RBI regulated entity, provide details thereof including the name and period of association.	
40.	If a sitting MP/MLA/MLC or holding political position in Municipal Corporation or Municipality or other local bodies, provide details thereof.	
VI. In the interest of disclosure and transparency, should there be any other information relevant for assessing 'fit and proper' status, provide details thereof.		
	<u>Undertaking</u>	
I confirm that the above information is to the best of my knowledge and belief, true and complete. I undertake to keep the bank fully informed, as soon as possible, of all events which take place after my appointment which are relevant to the information provided above.		

I also undertake to execute a 'Deed of Covenant' as required to be executed with the bank.	
	Signature of proposed MD / WTD
Remarks of Nomination and Remuneration Committee (NRC) of having satisfied itself that the above information is true and complete.	
	Signature of the Chair of the NRC

List of Documents

(Refer circular DOR.GOV.REC.25/12.10.000/2021-22 dated June 25, 2021)

1. Covering Letter by UCB submitting the application for approval for appointment / re-appointment of MD/WTD duly signed by the authorised signatory with bank's seal.
2. Declaration and Undertaking by MD/WTD in the format as prescribed in Annex III.
3. Board Resolution recommending the appointment / re-appointment of MD/WTD subject to approval from RBI
4. Identity document (any one) – PAN Card / Election Card / Driving License / Passport/ Aadhaar
5. Educational Qualification - HSC Passing Certificate, Graduation and Post-Graduation Certificate, any other document evidencing the educational qualification/Professional qualification of the MD/WTD designate
6. Experience Certificate/s from previous employer/s
7. Credit Information Report (Score + complete report) (not older than 6 months)
8. Banker's Report for all accounts (both deposit and loan accounts) where the candidate is a primary account holder
9. Form A
10. Demat / Shareholding certificate showing the shareholding of MD/WTD held in any entity
11. Details regarding remuneration to be paid to MD/WTD

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Form - A

Application for approval of Reserve Bank of India for appointment / re-appointment of Managing Director/ Whole-Time Directors (MD /WTD)

(Refer circular DOR.GOV.REC.25/12.10.000/2021-22 dated June 25, 2021)

Name of UCB: _____

Address:

Date: _____

Address of concerned office of Reserve Bank

Madam/Dear Sir,

Section 35B(1)(b) read with Section 56 of the Banking Regulation Act, 1949

We hereby apply for the approval of the Reserve Bank in terms of Section 35B(1)(b) read with Section 56 of the Banking Regulation Act, 1949 to the following appointment / re-appointment* and give below the relevant particulars. We shall be glad to furnish any further information that you may deem necessary in this connection.

Yours faithfully,

(Signature)

(Designation)

*Strike out the word that is not applicable.

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Particulars to be attached with Form - A

Sr No	Particulars	Information Disclosed
(1)	A certified copy of the resolution (also mentioning the date thereof) of the Board of Directors, authorising the appointment / re-appointment should be furnished along with the application. If the resolution is in vernacular, a certified copy thereof as translated into English may preferably be supplied.	
(2)	Full name of the person to be appointed / re-appointed:	
(3)	His present designation:	
(4)	His-	
	(a) Age:	
	(b) Academic qualifications:	
	(c) Banking and/or other professional experience stating the name/s of the institution/s, the position/s held therein and the approximate period of such experience:	
(5)	Terms of appointment/ re-appointment:	
	(a) Whether the appointment/ re-appointment will be under a contract or agreement: (If so, a copy of the draft contract or agreement should be furnished, together with a copy of existing contract or agreement, if any)	

	(b) Period of appointment/ re-appointment fixed:	
	(c) Details of remuneration:	
(6)	(a) State whether the UCB complies with the provisions of Section 10(1)(b)(i) and (ii) and Section 10(1)(c) of the Banking Regulation Act, 1949 (as applicable to UCBs) in respect of the person proposed to be appointed/ re-appointed:	
	(b) State whether the person to be appointed as the Managing Director/ Whole-Time Director (MD/WTD) is subject to any of the disqualifications mentioned in Section 10B(4) (as applicable to UCBs) read with Section 5(ne) of the Banking Regulation Act, 1949 (as applicable to UCBs):	
(7)	Any additional facts, which the UCB may like to state in support of the application or otherwise:	

For _____

(Name of the UCB)

(Signature)

(Designation)

TRUE COPY
[Signature]
 T. C.
 Advocate

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

WRIT PETITION NO. _____ OF 2022

Dapoli Urban Co-Operative Bank Ltd.

and another

PETITIONERS

VERSUS

The Union of India

and another

RESPONDENTS

AFFIDAVIT

1. I, Sayali Bhoir, Chief Executive & Secretary, The Maharashtra Urban Cooperative, Banks Federation Ltd., Having Head Office at: Bharati Krida Mandir, 4th Floor, Vadala, Mumbai 400031, being the Power of Attorney holder of Petitioner, do hereby solemnly state as under:-

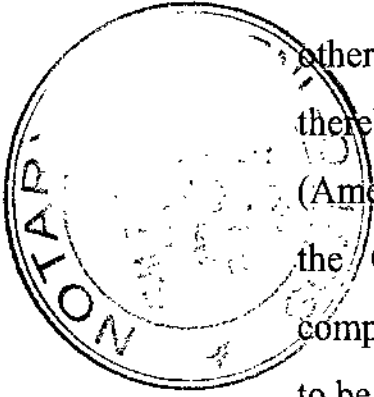
2. I say that I am the Petitioner above I am fully conversant with the facts of the case. I repeat, reiterate and confirm each and every statement, averment and contention made in the Petition. I say that this affidavit is a part and parcel of the above Writ Petition.

3. I say that I have filed the aforesaid Writ Petition inter alia praying that the necessary direction in the nature of mandamus may be issue under Article 226 of the Constitution of India 1950:

[A] That this Honourable Court be pleased to issue a writ Certiorari or writ in the nature of Certiorari or any

[Signature]

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other writ order direction in the nature of Certiorari thereby declaring that the Banking Regulation (Amendment Act) 2020 as violative of Article 14,19 of the Constitution of India, 1950 and for want of competence be declared unconstitutional and the same to be quash and set aside.



[B] That this Honourable Court be pleased to issue writ mandamus or writ in the nature of mandamus or any other writ order direction in the nature of mandamus thereby permanently restraining the Respondent from implementing executing enforcing and giving effect to the Banking Regulation (Amendment) Act, 2020.

[C] That this Honourable Court be pleased to issue writ certiorari or writ in the nature of certiorari or any other writ order direction thereby quashing and setting aside the circular dated 31st December 2019 issued by the Respondent No.2 (Exhibit-C hereto) as also impugned circular dated 27th April 2021 issued by the Respondent No.2 (Exhibit-D hereto) and 25th June 2021 issued by the Respondent No.2 (Exhibit- E hereto) as the same being ultravires and unconstitutional and the same deserves to be quash and set aside.

[D] That pending final disposal of this Writ Petition the Respondent be restrain by suitable order injunction or direction from implementing executing enforcing or

giving into effect to the Banking Regulation (Amendment) Act, 2020.

[E] That pending the hearing and final disposal of the present Petition the Respondent be restrain the suitable order injunction or direction from implementing, executing, enforcing or giving effect to the impugned circular the circular dated 31st December 2019 issued by the Respondent No.2 (Exhibit-C hereto) as also impugned circular dated 27th April 2021 issued by the Respondent No.2 (Exhibit- D hereto) and 25th June 2021 issued by the Respondent No.2 (Exhibit-E hereto)

[F] Ad interim relief in terms of prayer Clause (D), (E) above be granted in favour of the Petitioner.

[G] That, the costs of this Writ petition be awarded in favour of Petitioner against Respondent, by this Honourable Court.

[H] For such other orders as justice and convenience may demand from time to time be passed in favour of the Petitioner by this Honourable Court.

4. I say that the reliefs a prayed for by the Petitioner is not granted, irreparable harm, injury and loss caused to the Petitioner the balance of convenience is in favour of the Petitioner. I therefore pray that the reliefs as prayed for be

OP

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granted to the Petitioner and the Petition be made absolute with costs.

Solemnly affirmed at Mumbai For The Maharashtra Urban Co-op. Banks' Federation Ltd. on this 28 FEB 2022 day of February 2022.]



I KNOW AFFIANT

ADVOCATE

[Handwritten signature]

C.E. & Secretary

The Dapoli Urban Co-Operative Bank Ltd.
Through Sayali Bhoir

BEFORE ME

[Handwritten signature]

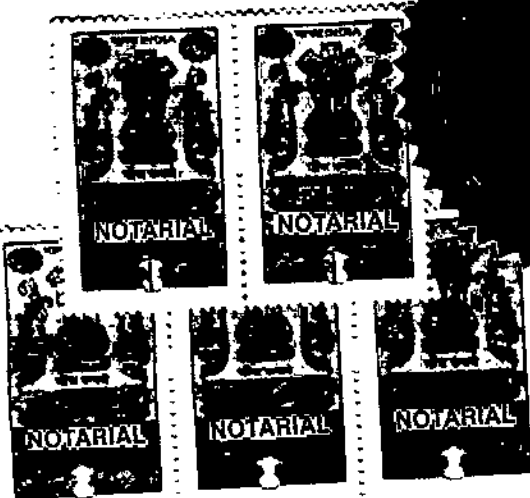
MANISH K. PABALE
B.Sc. LL.M.

ADVOCATE & NOTARY (GOVT. OF INDIA)
104, New Chambers,
94 Naglindas Master Road,
Fort Mumbai - 400 001.

NOTED & REGISTERED

Page No. 17/32 of 122

Date 28 FEB 2022



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

WRIT PETITION NO. _____ OF 2022

Dapoli Urban Co-Operative Bank Ltd.
and another

PETITIONERS

VERSUS

The Union of India
and another

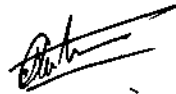
RESPONDENTS

To,

The Prothonotary & Senior Master,
O.O.C.J., High Court
Bombay.

ADVOCATE'S CERTIFICATE

I, Amol Gatne, Advocate for the Petitioner do hereby Certify and state that the issues involved in the present Writ Petition is required to be entertained by the Hon'ble Division Bench mainly because in the aforesaid Writ Petition the Petitioners are seeking to issue certain directions under Article 226 of the Constitution of India, 1950, on several grounds and more particularly described in the Writ Petition and as such, contemplated under the amended Rule 636(I)(B) of the Bombay High Court Original Side Rules, the aforesaid Writ Petition is required to be placed before the Division Bench as the issues involved in this Writ Petition can be adjudicated by the Division Bench.



ADVOCATE FOR THE PETITIONERS

PLACE: BOMBAY

DATE: 28/02/2022

96/12137

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

WRIT PETITION NO. _____ OF 2022

Dapoli Urban Co-Operative Bank Ltd.
and another

PETITIONERS

VERSUS

The Union of India
and another

RESPONDENTS

WRIT PETITION

Filed on 28th Day of the February 2022

Amol Gatne
Advocate, High Court,

93, Engineering Premises Co-op., Soc.,
Ground Floor, Mumbai Samachar Marg,
Near Bombay Stock Exchange,

Fort, Mumbai: 400 023

Tele-[022]-22626433

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Email: gatnea@gmail.com

Advocate Code: I 2926

**IN THE HIGH COURT OF JUDICATURE
OF BOMBAY,
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
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ADVOCATE FOR THE PETITIONERS

PLACE: BOMBAY

DATE: 26/02/2022

96/12137

I

PRAFORMA

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

WRIT PETITION NO. _____ OF 2022

Dapoli Urban Co-Operative Bank Ltd.
and another

PETITIONERS

VERSUS

The Union of India
and another

RESPONDENTS

Office Notes. Office Memorandum of Coram appearance. Court's Orders or direction and Prothonotary Orders	Court's or Judge's Orders.
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II

Office Notes. Office Memorandum of Coram appearance. Court's Orders or direction and Prothonotary Orders	Court's or Judge's Orders.
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III

Office Notes. Office Memorandum of Coram appearance. Court's Orders or direction and Prothonotary Orders	Court's or Judge's Orders.
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IV

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

WRIT PETITION NO. _____ OF 2022

Dapoli Urban Co-Operative Bank Ltd.
and another

PETITIONERS

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The Union of India
and another

RESPONDENTS

[I] CHALLENGE IN BRIEF :-

Petitioner vide the present Petition, the Petitioner seeks to challenge the constitutional validity of the Banking regulation (Amendment) Act 2020 as well as a Circulars issued by Respondent No. 2 dated 27th April, 2021 and 25th June 2021, on the ground the Parliament lack the competence to pass the same as the issue pertaining to Co-operative Societies falls within the State List of Art.246 of the Constitution of India, 1950.

[II] LIST OF DATES :-

Sr. No.	Date	Events and Particulars
1.	29/9/2020	The impugned Act i.e the Banking regulation (Amendment) Act 2020 was published in the official gazette on 29 th September, 2020 and was brought into force with effect from 26 th June 2020 except Section 4 which was brought into force from 1 st April, 2021 vide

B

		a separate notification published in the official Gazette on 23 rd December 2020.
2.	27/4/2021	The Respondent No. 2-RBI issued the Circulars dated 27 th April, 2021 and 25 th June 2021, thereby issuing Guidelines for Appointments of Statutory Central Auditors of Commercial Banks, Urban Co-operative banks, as well as Guidelines for Appointments of Managing Director/whole Time Director in Primary Urban Co-operative Banks.
3.		The Petitioner states that vide the present Petition, the Petitioner seeks to challenge the constitutional validity of the Banking regulation (Amendment) Act 2020 as well as a Circulars issued by Respondent No. 2 dated 27 th April, 2021 and 25 th June 2021.
4.		Petitioners submit that with regards to the controversy at hand, since the Banking Regulation Amendment Act, 2020 (for short "said Act",) has been enacted by the Parliament thereby empowering the Respondent No. 2 to issue circular in respect of subjects which are other than the "Banking" as a business. Therefore, these issues became relevant and in the humble submissions of the Petitioner are ultra vires to the provisions of the Constitution of India, 1950. The Petitioner however, makes it clear that with regards to the present case we are not concerned with the concurrent list at all. The Petitioners submit that the

		real dispute is between the provisions of entry 45 of the union list as opposed to entry 32 of the State List.
5.		The Petitioner states, that, Respondent Union of India, by legislating the said Act, has essentially encroached upon the domain which is within the exclusive spear of <i>State List</i> , thereby affecting the day to day management of the Cooperative Societies. The certain aspects of the managing and running of the Cooperative societies, such as the contribution of Share capital, Elections to the Board of Directors and their eligibility criteria, Tenure which are not pertaining to the aspect of "Banking as Business" are also being affected as a result of the Amending Act. It is stated, that, by virtue of the Amending Act, the Resp.No.2 has been empowered to regulate or even the power to amend the Byelaws of the Society to name the few, having been subject to its prior approval. It is stated that, Resp.No.2, has issued the Circulars dt:-27/4/2021 and dt:-25/6/2021, issuing certain guidelines, thereby severally affecting the management of the Co-operative Societies across the state.
6.		Hence, this Writ Petition.

[III] POINTS TO BE URGED :-

1. That Constitution U/Art.246 has clearly laid down the separation of powers between the Parliament and the State

D

Legislature, thereby marking the subjects on which the respective Legislative bodies would have *exclusive jurisdiction*, which is not to be encroached upon by the other. In the submission of the Petitioner, as per the list II viz. the State List includes incorporation, regulation and winding up of Co-operative societies as a subject under the State List under Entry 32 and therefore, the day to day management of the Societies would be subject to the Regulations as framed by the State Legislature alone.

2. That vide the impugned Act, the Respondent No.1 has encroached upon the functioning of Co-operative Bank which has given rise to several problems. In the submission of the Petitioner under the Cover of Entry 45 of Union List, which essentially deals with "Banking", the Resp.No.1 passed the impugned Act, thereby regulating the appointment to Board of Directors of the Societies, which amounts to the colorable exercise of the Power and on that ground alone is liable to be quashed and set aside.

[IV] RELEVANT STATUTORY PROVISION

1. Article 226 of the Constitution of India 1950.
2. Banking Regulation Act.
3. Maharashtra Co-operative Societies Act, 1960

[V] CASE LAW


ADVOCATE FOR THE PETITIONERS

BOMBAY
DATED
9612137