3

BANKING LAW

*Vijay Kumar Singh**

I INTRODUCTION

THE YEAR 2023 has witnessed some landmark judgments in the banking sector, including the *Demonetization Scheme* case (*Vivek Narayan Sharma* v. *Union of India*[1]) in which the Supreme Court of India by a majority of 4:1 upheld the demonetisation scheme. A detailed review of this case has been done in this survey under the category Central Banking Functions. This case discusses the powers of RBI *vis-à-vis* Central Government in promulgating a scheme of demonetization. In 2023, on the global front, United States saw the most severe financial crisis since the 2008 Great Financial Crisis, both in terms of its scale and systemic impact (The banking turmoil of March-May 2023). Within just 11 days (March 8–19, 2023), four major banks, collectively holding assets worth approximately 900 billion, either collapsed, were placed under receivership, or required emergency bailouts to prevent further contagion.[2]

This survey on banking law categorizes the cases into the following heads for ease of understanding: (i) Central Banking Functions[3] and Regulation of Scheduled Banks[4] (ii) Non-Performing Assets (NPAs) and its recovery[5] (iii) Supremacy of Recovery Laws over other Laws (iv) Banking Frauds (v) Consumer Protection[6] (vi) Cheque Bounce Cases[7] (vii) Non-Banking Financial Companies

* Professor and Dean, Faculty of Law, SRM University, Delhi-NCR Sonepat, Haryana.

1 [2023] 1 S.C.R. 1 [Coram: S. Abdul Nazeer, B.R. Gavai*, A.S. Bopanna, V. Ramasubramanian and B. V. Nagarathna*, JJ.] Majority decision was authored by HMJ B.R. Gavai and dissenting opinion was given by HMJ B.V. Nagarathna.

2 Bank for International Settlements (BIS), *Basel Committee on Banking Supervision Report on the 2023 banking turmoil* (October 2023), available at https://www.bis.org/bcbs/publ/d555.pdf (Last visited on Jan.20, 2024).

3 Reserve Bank of India Act, 1934 ('RBI Act')

4 Banking Regulation Act, 1949 ('BR Act') and Payments and Settlement Systems Act, 2007

5 Recovery of Debs and Bankruptcy Act, 1993 ('RDB Act'); Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 ('SARFAESI Act'); and Insolvency and Bankruptcy Code, 2016 ('IBC').

6 Consumer Protection Act, 2019 and Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016.

7 Negotiable Instruments Act, 1881('NI Act')

(NBFCs) and Cooperatives and (viii) International Banking. However, one case may be covered under more than one category during analysis, based on the law points discussed.

As a general overview,[8] the public sector banks have been reported do very well in 2023, that is evident from the PSU bank profits, which rose by 62% in full year FY23, bad loans continued to decline rapidly in 2023 from 5.8% of total assets in FY22 to 3.96% as of March 2023 to 3.33% as of September 2023. Net non-performing assets (NPAs) also fell from 1.7% of total assets in FY22 to 0.97% as of March 2023 and further to 0.78% as of September 2023. The above growth is attributed to several reforms introduced in the banking sector including consolidation of public sector banks and the change in culture of repayment of loans after introduction of the Insolvency and Bankruptcy Code (IBC). RBI in its report states: [9]

> The Indian banking system and non-banking financial companies (NBFCs) remain sound and resilient, backed by high capital ratios, improved asset quality and robust earnings growth. This is supporting a double-digit credit growth and domestic economic activity. Sustaining this improvement requires further strengthening of governance and risk management practices and building up of additional buffers.

II CENTRAL BANK AND ITS POWERS

The Reserve Bank of India (RBI) is a statutory body established under Section 3 of the Reserve Bank of India Act, 1934. It was created to assume responsibility for managing the currency from the Central Government, regulating the issuance of banknotes, maintaining reserves to ensure monetary stability, and overseeing India's currency and credit system. The RBI is also statutorily mandated to administer the provisions of the Banking Regulation Act, 1949. Under this Act, the RBI is vested with various powers concerning banking companies, including granting licenses, conducting inspections, and issuing directives. Additionally, Section 35A of the Banking Regulation Act empowers the RBI to issue directions to banking companies. RBI has been issuing 'master directions' on diverse issues since 2016. These directions encompass the instructions on that particular subject. The master directions are updated whenever there is a change in policy, and such changes get reflected on RBI's website. In the year 2023, the RBI website shows that RBI has issued about 19 such master circulars.[10]

8 Latha Venkatesh, *Major changes in India's banks in 2023: All you need to know*, CNBC, Dec. 26, 2023.

9 RBI, *Report on Trend and Progress of Banking in India* (2022-23), page 1, *available at:* https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/0RTP27122023D9394304B3D149428EB730022B3BB232.PDF (Last visited on Feb.20, 2024).

10 RBI, Master Circulars, *available at*: https://www.rbi.org.in/scripts/bs_viewmastercirculars.aspx (Last visited on Feb.20, 2024).

RBI's directions[11] on Frauds Classification and Reporting by Commercial Banks and Select FIs (2016) was under question before the Supreme Court of India in the case of *State Bank of India (SBI)* v. *Rajesh Agarwa*l[12], primarily on the ground that no opportunity of being heard is envisaged to borrowers before classifying their accounts as fraudulent. The High Court of Telangana has held in the impugned judgment (against which the appeal has been preferred before the Supreme Court) that the principles of natural justice must be read into the provisions of the Master Directions on Frauds. The decision was assailed by the RBI and lender banks through civil appeals before Supreme Court, which had to consider whether the principles of natural justice should be read into the provisions of the Master Directions on Frauds. The court dealt with the issue at length and concluded that:

> "The principles of natural justice, particularly the rule of *audi alteram partem*, has to be necessarily read into the Master Directions on Frauds to save it from the vice of arbitrariness. Since the classification of an account as fraud entails serious civil consequences[13] for the borrower, the directions must be construed reasonably by reading into them the requirement of observing the principles of natural justice."[14]

However, the court in this case declined to entertain the question of competence of the RBI to issue the Master Directions on Frauds, but the court was concerned with the implementation of a decision to secure the health of banking companies vis-a-vis comport with the due process of law. It was held that "the civil consequences which follow upon a classification of a borrower's account as fraud are serious and prejudicial to the interests of a borrower. Principles of fair play require that borrower ought to be given an opportunity of being heard before

11 The Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions 2016.

12 (2023) 6 SCC 1 – Coram: D.Y. Chandrachud, CJI and Hima Kohli J. decided on Mar. 27, 2023.

13 *Ibid.* Classification of the borrower's account as fraud under the Master Directions on Frauds virtually leads to a credit freeze for the borrower, who is debarred from raising finance from financial markets and capital markets. The bar from raising finances could be fatal for the borrower leading to its 'civil death' in addition to the infraction of their rights under Article 19(1)(g) of the Constitution. Since debarring disentitles a person or entity from exercising their rights and/or privileges, it is elementary that the principles of natural justice should be made applicable and the person against whom an action of debarment is sought should be given an opportunity of being heard. [para 42]

Classification of a borrower's account as fraud has the effect of preventing the borrower from accessing institutional finance for the purpose of business. It also entails significant civil consequences as it jeopardizes the future of the business of the borrower. Therefore, the principles of natural justice necessitate giving an opportunity of a hearing before debarring the borrower from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds. The action of classifying an account as fraud not only affects the business and goodwill of the borrower, but also the right to reputation [para 48].

14 *Ibid*.

classifying the account as fraud in accordance with the procedure laid down under the Master Directions on Frauds.[15]

Demonetisation Case – (*Vivek Narayan Sharma* v. *Union of India*[16]) – Government of India took the decision of demonetizing the bank notes of denominations of the existing series of the value of five hundred rupees and one thousand rupees.[17] The decision of demonetisation got challenged in various high courts and on a transfer petition by the Union of India, a three-judge bench of the Supreme Court referred the matter to the Constitution Bench.[18] After hearing the parties (petitioners, Central Government and RBI) in the case, court formulated six questions (reducing it from the original nine questions which was framed by the three-judge bench referring the matter to the Constitutional Bench).The two main questions which emerged out of these questions[19]were as follows:

i. Can the Union demonetise 'all' currency notes of a denomination through a notification under S. 26(2) of the RBI Act?

ii. Was the implementation of the 2016 demonetisation scheme flawed?

Both these questions were answered in positive by the majority,[20] whereas in her dissenting opinion *Justice B.V. Nagarathna*, held otherwise.[21] While elaborating on the question of the scope of judicial review, the majority opined that:[22]

15 *Supra* note 12, para 51.

16 *Vivek Narayan Sharma* v. *Union of India* [2023] 1 S.C.R. 1.

17 *W.e.f* from Nov. 9, 2016, *Vide* Notification No. 3407(E) dated Nov. 8, 2016 issued by the Central Government in exercise of the powers conferred by sub-section (2) of s. 26 of the Reserve Bank of India Act, 1934. Subsequently, an Ordinance called "The Specified Bank Notes (Cessation of Liabilities) Ordinance, 2016" was promulgated by the President of India, which was later made an Act of the Parliament, namely, "The Specified Bank Notes (Cessation of Liabilities) Act, 2017" and was notified on Mar. 1, 2017, replacing the Ordinance.

18 Order dated Dec. 16, 2016 in Writ Petition (Civil) No.906 of 2016. Nine questions were framed by the Court for further consideration of the Constitutional Bench of the Supreme Court.

19 See Supreme Court Observer, Demonetisation: Judgement Matrix, *available at* :https://www.scobserver.in/reports/demonetisation-judgment-matrix/ (Last visited on Jan.20, 2024).

20 i) The power available to the Central Government under sub-section (2) of Section 26 of the RBI Act cannot be restricted to mean that it can be exercised only for one or some series of bank notes and not to all series of bank notes. ii) The power can be exercised for all series of bank notes. iii) Merely because on two earlier occasions, the demonetization exercise had done by plenary legislation, it cannot be held that such a power could not be available under sub-section (2) of Section 26 of the RBI Act." "The impugned Notification dated 8th November, 2016, does not suffer from any flaws in the decision-making process."

21 The Union cannot demonetise all notes under S. 26(2) of the RBI Act. The Union can only do so through a legislation or an Ordinance and the RBI must initiate the proposal for demonetisation. That the decision-making process was also tainted with elements of "non-exercise discretion" by the Central Board of the Bank in rendering its advise on the impugned measure. That the Bank acted at the behest of the Central Government and did not render an independent opinion to the Central Government [para 5 of dissenting opinion].

22 *Supra* note 16 at 252.

> We are, therefore, of the considered view that the Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere unless the exercise of executive power appears to be palpably arbitrary. The Court does not have necessary competence and expertise to adjudicate upon such economic issues. It is also not possible for the Court to assess or evaluate what would be the impact of a particular action and it is best left to the wisdom of the experts. In such matters, it will not be possible for the Court to assess or evaluate what would be the impact of the impugned action of demonetization. The Court does not possess the expertise to do so [para 252].

Court further noted that the consultation between RBI and Central Government was sufficient enough in this case, and also emphasised the status of RBI by stating, "It can thus be seen that the RBI, which is a bankers' bank, is a creature of statute. It has large contingent of expert advice relating to matters affecting the economy of the entire country. It has been held that the RBI plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It has been held that it is the duty of the RBI to safeguard the economy and financial stability of the country[23]". In this case, the Supreme Court has also charted the history of demonetization and upheld the secrecy and swiftness of the action. The time period of 52 days to exchange the demonetised notes was also held to be reasonable. The court referred to earlier demonetisation wherein only 8 days were provided to exchange the demonetised currency notes.[24] Further, also on the test of proportionality,[25] the demonetisation scheme was held not have any constitutional impediment.

23 *Supra* note 16, para 198.

24 *Id*., para 286

The Constitution Bench found that if the time for such exchange was not limited, the high denomination bank notes could be circulated and transferred without the knowledge of the authorities concerned, from one person to another and any such transferee could walk into the Bank on any day thereafter and demand exchange of his notes. It was held that, in such an eventuality, the very object which the Demonetization Act sought to achieve would have been defeated. The Court found that between 16th January 1978 and 19th January 1978, the holder was entitled to get the exchange value of his notes from the Bank without any limit or hindrance. The challenge that the period of three days was unreasonable, unjust and violative of the petitioners' fundamental rights, stood specifically rejected. (referring to *Jayantilal Ratanchand Shah* v. *Reserve Bank of India* (1996) 9 SCC 650).

25 Applying the four-pronged test – quoting Aharon Barak,*Proportionality: Constitutional Rights and Their Limitation*(Cambridge University Press 2012): "a limitation of a constitutional right will be constitutionally permissible if: (i) it is designated for a proper purpose; (ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose; (iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally, (iv) there needs to be a proper relation ("proportionality stricto sensu" or "balancing") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right." [para 266]

Bank Officials as 'public servant': In the case of *A. Sreenivasa Reddy vs Rakesh Sharma,*[26] a bank official, claiming to be a 'public servant', was prosecuted under the provisions of Prevention of Corruption Act (PC Act), 1988 and Indian Penal Code (IPC) simultaneously for allegedly conspiring to cheat the bank by sanctioning a corporate loan of Rs. 22.50 crores in favour of a corporate entity. There was a requirement of sanction from the senior of the bank official to prosecute him under the PC Act, which was denied. However, the CBI went ahead with the prosecution under the IPC. The CBI consistently argued in this case that there was no requirement of sanction under Section 197 of Cr PC with regard to the offences punishable under IPC.[27] Supreme Court, in this case observed:

> It is important to note that the banking sector, being regulated by the Reserve Bank of India and recognized as a limb of the State under Article 12 of the Constitution, as well as under Section 46A of the Banking Regulation Act, 1949, deems the appellant to be a "public servant" for the purposes of the Prevention of Corruption Act, 1988. However, this designation does not automatically extend to the Indian Penal Code (IPC). Even if the appellant were to be considered a "public servant" under the IPC, the protection under Section 197 of the CrPC would not apply[28], as the requisite conditions under this provision are not met.[29]

26 [2023] 12 S.C.R. 932.

27 when any person who is or was a public servant, not removable from his office save by or with the sanction of the Central Government or State Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties, no court shall take cognizance of such offence, except with the previous sanction of the appropriate Government. As the Bank Officials are not the holding a post where they could not be removed from service except by or with the sanction of the Central Government, s. 197 of Cr.P.C. does not provide any benefit to them.

28 S.197 of the Criminal Procedure Code (CrPC), 1973 provides protection to public servants from vexatious criminal prosecution for acts done in the discharge of their official duties. It mandates prior sanction from the competent authority before prosecuting certain categories of public officials.

29 *Id.,* Para 41. An open question left by the court to be decided at appropriate time:

Para 60. Before, we close this matter, we would like to observe something which, this Court may have to consider sooner or later. The object behind the enactment of Section 19 of the PC Act, 1988 is to protect the public servants from frivolous prosecutions. Take a case wherein, the sanctioning authority at the time of declining to accord sanction under Section 19 of the PC Act, 1988 observes that sanction is being declined because the prosecution against the accused could be termed as frivolous or vexatious. Then, in such circumstances what would be its effect on the trial so far as the IPC offences are concerned? Could it be said that the prosecution for the offences under the PC Act, 1988 is frivolous but the same would not be for the offences under the IPC? We are not going into this question in the present matter as sanction initially was not declined on the ground that the prosecution against the appellant herein is frivolous or vexatious but the same was declined essentially on the ground that what has been alleged is mere procedural irregularities in discharge of essential duties. Whether such procedural irregularities constitute any offence under the IPC or not will be looked into by the trial court. What we have highlighted may be examined by this Court in some other litigation at an appropriate time.

It may be noted here that Supreme Court has already held in *Ramesh Gelli* case[30] in 2016 that the Chairman/Managing Director and Executive Director of all banks (including private banks) have to be considered public servants within the meaning of PC Act.

Nomination Facility – Nomination process does not override the succession laws.In *Shakti Yezdani v. Jayanand Jayant Salgaonkar,*[31] Supreme Court dealt with the concept of 'nomination' in various legislations[32] including the banking laws *vis-à-vis* Section 109A of the Companies Act, 1956. The Court was of the view that the legislative intent behind the nomination scheme under the Companies Act, 1956 is not to confer absolute ownership rights upon the nominee. The presence of the terms "vest," a non-obstante clause, and the phrase "to the exclusion of others", although absent in other nomination-related legislations, does not inherently imply complete ownership for the nominee.[33]The court concluded that, "consistent interpretation is given by courts on the question of nomination, *i.e.,* upon the holder's death, the nominee would not get an absolute title to the subject matter of nomination, and those would apply to theCompanies Act, 1956(*pari materia* provisions inSection 72 of the Companies Act, 2013) and the Depositories Act, 1996as well."[34] Explaining the objective of 'nomination' facility under the corporate and securities laws, the court observed: [35]

> The object behind the introduction of a nomination facility as can be appreciated was to provide an impetus to the corporate sector in light of the slow investment during those times. In order to overcome such conditions, boosting investors' confidence was deemed necessary along with ensuring that company law remained in consonance with contemporary economic policies of liberalisation. In fact, the provision of nomination facility was made in order to ease the erstwhile cumbersome process of obtaining multiple letters of succession from various authorities and also to promote a better climate for corporate investments within the country. In contrast, one must note that ownership of the securities is not granted to the nominee nor there is any distinct legislative move to revamp the extant position of law, with respect to the same.

30 See *C.B.I., Bank Securities and Fraud Cell* v. *Ramesh Gelli*, (2016) 3 SCC 788.

31 2023 INSC 1076.

32 Different legislations with provisions pertaining to nomination that have been a subject of adjudication earlier before courts, have little or no similarity with respect to the language used or the provisions contained therein. While the Government Savings Certificates Act, 1959, Banking Regulation Act, 1949 and Public Debts Act, 1944 contain a non-obstante clause, the Insurance Act, 1939 and Cooperative Societies Act, 1912 do not [para 27]

33 *Id*., para 29.

34 *Id*., para 43.

35 *Id*., para 21.

III NPAS AND ITS RECOVERY

The credit culture has undergone a transformation with the implementation of the Insolvency and Bankruptcy Code, 2016 (IBC), which has fundamentally reshaped the creditor-borrower dynamic. It has removed control of defaulting companies from promoters/owners and disqualifies wilful defaulters from participating in the resolution process. Additionally, to enhance the stringency of the framework, personal guarantors to corporate debtors have also been brought under the purview of the IBC.[36] Public Sector Banks in India have made remarkable strides in recent years, achieving unprecedented financial milestones and contributing significantly to the nation's economic stability and growth. The decline in Gross Non-Performing Assets (GNPA) and improved Capital to Risk (Weighted) Assets Ratio (CRAR) reflect the sector's resilience and sound risk management practices. The cases under this head emanate from three legislations primarily, *i.e.* Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("RDB Act"), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 ("SARFAESI") and the Insolvency and Bankruptcy Code, 2016 ("IBC").

In the case of *CELIR LLP* v. *Bafna Motors (Mumbai) Pvt. Ltd.,*[37] Supreme Court dealt with the issue of right of redemption of the borrower under the Transfer of Property Act, 1882 after the conclusion of the auction under SARFAESI. The Supreme Court held that a borrower's failure to pay the entire dues, including charges, interest, and costs, before the publication of the auction notice under Section 13(8) of the SARFAESI Act results in the extinguishment of the right of redemption as per Section 60 of the Transfer of Property Act, 1882. In this case, the borrower did not assert the right of redemption before or after the auction notice but only objected after the auction was confirmed. Since the auction had concluded and the highest bid was accepted, the borrower's right of redemption was held to have been intentionally relinquished under section 13(8), and the bank's declaration that the appellant was the successful auction purchaser was held valid.[38] Court further held that:

> Bank is duty bound to follow the provisions of the law as any other litigant. It is to be noted that the Bank i.e., the secured creditor acts under the SARFAESI Act through the authorised officer who is appointed under Section 13(2). Thus, the authorised officer and the Bank cannot act in a manner so as to keep the sword hanging on the neck of the auction purchaser. The law treats everyone equally and that includes the Bank and its officers. The said enactments were enacted for speedy recovery and for benefitting the public at large

36 *Available at:* https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1942704 (last visited on Feb. 20, 2024).

37 2023 INSC 838.

38 *Id.*, para 63.

> and does not give any license to the Bank officers to act *de hors* the scheme of the law or the binding verdicts [para 100].

Supreme Court while holding that "The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act"[39], ruled that the two decisions of the High Court of Telangana in the case of *Concern Readymix*[40] and *Amme Srisailam*[41] do not lay down the correct position of law. In the same way, the decision of the High Court of Punjab and Haryana in the case of *Pal Alloys*[42] also does not lay down the correction position of law. The decision of the High Court of Andhra Pradesh in *Sri Sai Annadhatha Polymers*[43] and the decision of the High Court of Telangana in the case of *K.V.V. Prasad Rao Gupta*[44] lay down the correct position of law while interpreting the amended Section 13(8) of the SARFAESI Act.

In *Sidha Neelkanth Paper Industries Pvt. Ltd.* v. *Prudent ARC Ltd*.,[45] the Supreme Court addressed two key issues under Section 18 of the SARFAESI Act: (i) Whether the amount deposited by an auction purchaser on purchasing secured assets should be adjusted toward the pre-deposit amount required from the borrower. (ii) Whether the "debt due" under Section 18 includes both the principal liability and interest. The court ruled that the borrower must deposit 50% of the "debt due" as claimed by the bank/financial institution/assignee, including interest as specified in the Section 13(2) notice. It further held that the borrower cannot seek adjustment of the amount realized from the auction sale, especially when the auction itself is under challenge.

In the case of *K. Sreedhar* v. *Raus Constructions Private Ltd*.,[46] the Supreme Court held that for a property to be exempt from the SARFAESI Act under Section 31(i), it must be actually used as agricultural land, not merely classified as such in revenue records. If a borrower has mortgaged the property, it implies that the land was not treated as agricultural.In this case, the borrowers failed to provide evidence that the secured properties were actively used for agriculture. The high court erred by applying Section 31(i) to set aside the possession and auction notices. It also wrongly shifted the burden of proof to the secured creditor, whereas the onus was

39 *Id.*, para 105.

40 *Concern Readymix, rep. by its Proprietor, Smt. Y. Sunitha* v. *Authorised Officer, Corporation Bank*, 2018 SCC OnLine Hyd 783

41 *Amme Srisailam* v. *Union Bank of India, Regional Office, Guntur, rep. by its Region Head and Deputy General Manager, Andhra Pradesh*, W.P. No. 11435 of 2021 decided on Aug17, 2022.

42 *Pal Alloys and Metal India Private Limited* v. *Allahabad Bank*, 2021 SCC OnLine P&H 2733

43 *Sri. Sai Annadhatha Polymers* v. *Canara Bank rep. by its Branch Manager, Mandanapalle*, 2018 SCC OnLine Hyd 178.

44 *K.V.V. Prasad Rao Gupta* v. *State Bank of India*, 2021 SCC OnLine TS 328.

45 2023 LiveLaw (SC) 11.

46 2023 LiveLaw (SC) 1.

on the borrower to prove that the land was agricultural and in use for agricultural purposes.

In the case of *Tottempudi Salalith* v. *State Bank of India,*[47] Supreme Court held that the Insolvency and Bankruptcy Code (IBC) is primarily a mechanism for the revival of companies in debt rather than a debt recovery tool. However, debt recovery is an inherent part of the process. The question of choosing between debt enforcement under the Recovery of Debts and Bankruptcy Act, 1993 (1993 Act) and initiating the Corporate Insolvency Resolution Process (CIRP) under the IBC arises only after a recovery certificate is issued. Since the reliefs under these statutes differ, once a moratorium is declared under CIRP, enforcement under the 1993 Act or the SARFAESI Act is suspended. Financial creditors should have the option to seek recovery through a new forum rather than being confined to the one that issued the recovery certificate. The Supreme Court referred to *Transcore v. Union of India*[48] wherein it was permitted to use SARFAESI proceedings despite prior initiation under the 1993 Act, reinforcing that the doctrine of election does not bar financial creditors from approaching the NCLT for CIRP. The court in this case also held that life of a decree (recovery certificate included) is 12 years for enforcement as per Article 136 of the Limitation Act. Thus, in the event a financial creditor wants to pursue a recovery certificate obtained under Article 136 of the Limitation Act, a period of 12 years will be available and not just three years.[49]

In the case of *South Indian Bank Ltd.* v. *Naveen Mathew Philip,*[50] the situation involved exercise of powers by high courts in view of non functioning of the debt recovery tribunals. Supreme Court noticed that "certain High Courts continue to interfere in such matters, leading to a regular supply of cases before this Court. One such High Court is that of Punjab & Haryana[51]." Discussing the precedents already laid down on this issue, the court concluded:[52]

> …we are conscious of the fact that the powers conferred under Article226of theConstitution of Indiaare rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme *qua*a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal [para 18].

IV SUPREMACY OF RECOVERY LAWS OVER OTHER LAWS

In a civil appeal[53] filed by the Industrial Development Bank of India (IDBI) challenging the judgment of the High Court of Andhra Pradesh, which held that in

47 2023 SCC OnLine SC 1357: 2023 INSC 923.

48 *Transcorevs. Union of India*, (2008) 1 SCC 125.

49 Discussed *Kotak Mahindra Bank Ltd.* v. *A. Balakrishna*, (2022) 9 SCC 186.

50 2023 SCC OnLine SC 435.

51 *Id*., para 13.

52 *Id*., para 18.

53 *IDBI* v. *CCE & Customs* (2023) 10 SCC 107 – Coram: Sanjiv Khanna* and Sudhanshu Dhulia, JJ.

the event of winding up, customs authorities have the primary right to sell imported goods under the Customs Act, 1962 and utilize the proceeds solely for customs dues, the Supreme Court ruled that the Customs Act does not create a first charge that overrides the rights of secured creditors with reference to Section 529A of the Companies Act, 2013. The Court reiterated the principles laid down in *Dena Bank*[54] and *Builder Supply Corporation*[55] Case as follows:

> while examining the issue of priority of government dues or Crown debts over the dues of other creditors, opined that the Crown's preferential right to recovery of debts over other creditors is confined to ordinary or unsecured creditors. The common law principles of equity and good conscience, as applicable in India and the common law of England, do not accord the government or Crown dues a preferential right for recovery of dues or debts over a mortgagee, pledgee of goods or a secured creditor. The common law doctrine giving preferential rights to the Crown debts confined to ordinary or unsecured creditors constitutes 'law in force' within the meaning ofArticle 372(1)of the Constitution of India, and accordingly, this law continues to be in force.[56]

In the case of *Varimadugu Obi Reddy* v. *B. Sreenivasulu*[57]Supreme Court deprecated the practice of high court in entertaining writ application from borrowers under Article 226 of the Constitution of India without exhausting the statutory remedy of appeal under Section 18 of SARFAESI Act by the borrowers.The court reiterated the principle of exhausting alternate remedy as laid down in the case of *Satyawati Tandon*.[58]

In the *Case of Union Bank of India* v. *Rajat Infrastructure Pvt. Ltd.*[59], there was an undue delay in paying the auction sale amount under the SARFAESI Law. Though Supreme Court had initially granted some relaxation in view of the COVID 19 situation, but the same cannot be kept extending by the auction purchaser. Supreme Court declined to exercise plenary powers under Article 142 of the Constitution of India stating that:

the court in exercise of powers under Article 142 cannot ignore any substantive statutory provision dealing with the subject. The plenary powers of the Supreme Court under Article 142 are inherent in nature and are complementary to those powers which are specifically conferred on the court by various statutes.

54 *Dena Bank* v. *Bhikhabhai Prabhudas Parekh and Co.*,(2000) 5 SCC 694.

55 *Builders Supply Corporation v. Union of India and Others*, (1965) 2 SCR 289.

56 *IDBI* v. *CCE & Customs*, (2023) 10 SCC 107 para 20.

57 (2023) 2 SCC 168.

58 *United Bank of India* v. *Satyawati Tondon* (2010) 8 SCC 110(where an effective remedy is available to an aggrieved person, the high court ordinarily must insist that before availing the remedy under art. 226 of the Constitution, the alternative remedy available under the relevant statute must be exhausted).

59 (2023) 10 SCC 232.

These powers though are of a very wide amplitude to do complete justice between the parties, cannot be used to supplant the substantive law applicable to the case or to the cause under consideration of the court[60] EvenSection 148of CPC does not permit the court to extend the time limit beyond 30 days of the time limit fixed by the court earlier.

In the case of *Kotak Mahindra Bank Limited* v. *Girnar Corrugators Pvt. Ltd*.[61], the issue was whether the recoveries under the SARFAESI Act with respect to the secured assets would prevail over the recoveries under the Micro, Small and Medium Enterprises Development Act, 2006 ("MSMED Act") to recover the amount under the award / decree passed by the Facilitation Council.[62] Supreme Court held that the there is no repugnancy between the provisions of the two legislations: [63]

> …Sections 15 to 23of the MSMED Act are providing a special mechanism for adjudication of the disputes and to adjudicate and resolve the disputes between the supplier and buyer – micro or small enterprise. At the cost of repetition, it is observed thatMSMED Actdoes not provide any priority over the debt dues of the secured creditor akin toSection 26Eof the SARFAESI Act. At the most, the decree / order / award passed by the Facilitation Council shall be executed as such and the micro or small enterprise in whose favour the award or decree has been passed by the Facilitation Council shall be entitled to execute the same like other debts / creditors. Therefore, considering the provisions of Sections 15to23read with Section 24 of the MSMED Act and the provisions of the SARFAESI Act, as such, there is no repugnancy between two enactments viz. SARFAESI Act and MSMED Act. As such,there is no conflict between two schemes, i.e. MSMED Act and SARFAESI Act as far as the specific subject of 'priority' is concerned.

In *Axis Trustee Services Limited* v. *Union of India Through the Ministry of Finance Department of Financial Services,*[64] the High Court of Bombay was dealing with the challenge to the information issued to BSE Limited and National Stock exchange about writing off of the Additional Tier 1 Debenture bondsby the Administrator of the Yes Bank Ltd. It is this action of the administrator of the Yes

60 *Id*., para 17. Citing *Bar Association* v. *Union of India* (1998) 4 SCC 409 – "even with the width of its amplitude cannot be used to build a new edifice where none existed earlier, by ignoring the express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly (*Quando aliquid prohibetur ex directo, prohibetur et per obliquum*)".

61 (2023) 3 SCC 210

62 *Ibid*. The order of Naib Tehsildar and single judge of the high court were revered by the Division Bench holding thatMSMED Actbeing the later enactment, the same shall prevail over theSARFAESI Act.

63 *Id.* ,para 8 (SARFAESI Act has been enacted providing specific mechanism / provision for the financial assets and security interest. It is a special legislation for enforcement of security interest which is created in favour of the secured creditor – financial institution.)

64 2023 SCC OnLine Bom 700.

Bank in writing down the AT-1 bonds was assailed in the present petition. Given the fiscal nature of the matter, the court declined to examine whether the write-off of AT-1 bonds was necessary, nor did it engage in a debate on whether these bonds could have been converted into shares or proportionately written down. Lacking the requisite expertise in such financial decisions, the court only choose to assess whether the decision-making process was properly followed and whether the Administrator had the authority to write down the AT-1 bonds in the given circumstances.[65] Court held that the Administrator could not have exercised the power after the bank was reconstituted. One important question which came before the court was whether it could have gone into a matter involving a private bank under writ jurisdiction. The court held that:

> The clauses in the Information Memorandum which according to the respondents is a contract between two private parties, is based on the Master Circular. The Master Circular is issued by the Reserve Bank under its statutory powers. The covenant and the terms in the Information Brochure *i.e.*, between the parties is based on statutory Master Circular. Information Memorandum and its clauses refer to Master Circular. The said Information Brochure has a statutory flavour. It is based on the statutory Master Circular. In that event, the agreement would have a statutory base and such an agreement can certainly be enforceable.[66] Clause 57 of the Information Memorandum binding the parties and relevant for our consideration is extracted from the Master Circular based on Basel III Norms. Clause 57 also suggests that the writing off or conversion to shares would be in accordance with these rules. In view of that, writ petition would be tenable before this court.

In *Kotak Mahindra Bank Ltd.* v. *Commissioner of Income Tax,*[67] the question before the court was whether the quashing of settlement commission order by the Division Bench of the high court was correct. The court held that the judgment in *Express Newspapers Ltd.,*[68] was not applicable to the present case, as it was based on distinct facts involving extensive investigations that revealed large-scale income concealment. Unlike that case, the assessee here had voluntarily offered additional income for tax, demonstrating bona fide conduct. While the court acknowledged that Chapter XIX-A of the Income Tax Act should not serve as a shelter for tax evaders, it upheld the Settlement Commission's discretion under Section 245H to grant relief. Additionally, the court emphasized that judicial interference with the settlement commission's decisions should be limited, as excessive scrutiny could undermine confidence in the settlement process and lead to unnecessary litigation.[69]

65 *Id.*, para 76.

66 *India Thermal Power Ltd.* v. *State of Madhya Pradesh and others* (2000) 3 SCC 379 – the Apex Court observed that if entering into a contract containing the prescribed terms and conditions is a must under the statute then the contract becomes a statutory contract. If a contract incorporates certain terms and conditions in it, which are statutory then the said contract to that extent is statutory.

67 2023 SCC OnLine SC 1215.

68 *Commissioner of Income Tax* v. *Express Newspapers Ltd.*, (1994) 2 SCC 374.

V BANKING FRAUDS

The case of *SBI* v. *Rajesh Agarwal,*[70] involved a company which was a manufacturer of edible oils, fats, rice and semolina products in the State of Telangana. From 2003 to 2015, the said company availed of credit facilities to the tune of Rs. 675 crores from a consortium of banks led by the Andhra Bank (now merged with the Union Bank of India). The banks classified the loan account as fraud on the basis of forensic audit report, however, without affording an opportunity of hearing to the company or its directors. While appreciating the objectives and rationale of the Directions of Frauds by RBI, Supreme Court emphasised the necessity of following principles of natural justice in following words:[71]

> We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) *nemo judex in causa sua*, which means that no person should be a judge in their own cause; and (ii) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi- judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power [para 21].

The court further held that the process of forming an informed opinion under the Master Directions on Frauds is administrative in nature, as acknowledged by both the RBI and lender banks. It is a well-established legal principle that the rule of *audi alteram partem* applies to administrative actions, not just judicial or quasi-judicial functions. Additionally, administrative law mandates that an opportunity to be heard must be provided whenever an administrative action leads to civil consequences for an individual or entity [para 32]. Court held that the consequences flowing from the Circular on Wilful Defaulter and Master Directions on Frauds were similar, and thus the findings in case of *Jah Developers*[72] were

69 Relied upon *Jyotendrasinhji* v. *S.I. Tripathi*, 1993 Supp (3) SCC 389.

70 2023 SCC OnLine SC 342.

71 *Id*., para 21.

72 *State Bank of India* v. *Jah Developers* (2019) 6 SCC 787.

applicable to this case as well. Finally, the court concluded the case and summarised as follows [para 81]:

i. No opportunity of being heard is required before an FIR is lodged and registered;

ii. Classification of an account as fraud not only results in reporting the crime to investigating agencies, but also has other penal and civil consequences against the borrowers;

iii. Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the Master Directions[73] on Frauds results in serious civil consequences for the borrower;

iv. Such a debarment under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. This Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted;

v. The application of audi alteram partem cannot be impliedly excluded under the Master Directions on Frauds. In view of the time frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonablypracticable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud;

vi. The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/ JLF before their account is classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order; and vii. Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, audi alteram partem has to be read into the provisions of the directions to save them from the vice of arbitrariness."

73 8.12 Penal measures for fraudulent borrowers

8.12.1 In general, the penal provisions as applicable to wilful defaulters would apply to the fraudulent borrowers including the promoter director(s) and other whole-time directors of the company insofar as raising of funds from the banking system or from capital markets by companies with which they are associated is concerned, etc. In particular, borrowers who have defaulted and have also committed a fraud in the account would be debarred from availing bank finance from Scheduled Commercial Banks, Development Financial Institutions, Government owned NBFCs, Investment Institutions, *etc.,* for a period of five years from the date of full payment of the defrauded amount. After this period, it is for individual institutions to take a call on whether to lend to such a borrower. The penal provisions would apply to non-whole-time directors (like nominee directors and independent directors) only in rarest of cases based on conclusive proof of their complicity.

In the case of *Religare Finvest Ltd.* v. *State (NCT of Delhi)*[74] the question before the Supreme Court was that "whether a transferee entity (here, a successor bank) can be fastened with corporate criminal liability for the offences which the amalgamating entity- the erstwhile LVB is accused of." The matter involved a criminal proceeding against the Laxmi Vilas Bank (LVB) Bank by the Religare Finvest Ltd. (RFL), involving misappropriation of four FDs of a value of approximately Rs. 750 crores. While the criminal case was going on, RBI imposed a moratorium on LVB in terms of Section 45(2) of the Banking Regulation Act, 1949, directing a non-voluntary amalgamation of LVB into DBS Bank India Ltd. However, as the criminal case was going on summons were issued against DBS, which was challenged to be quashed before the High Court of Delhi. The high court refused to quash the summoning order and instead directed the involved parties to seek clarification regarding the interpretation of Clause 3(3) of the scheme in respect of criminal proceedings constituted against transferor bank if be carried forward to transferee bank or not after the amalgamation from RBI.[75]

Supreme Court observed in this case that every scheme of amalgamation in banking sector is statutory and sanctioned under the Banking Regulation Act to protect depositors, creditors, investors, and the public while ensuring the stability of the banking sector. Delayed intervention may cause a financial crisis and loss of confidence in the system. The primary objective is to recover the bank's dues and safeguard creditors. Thus, Clause 3(3) of the scheme must be understood in this context, allowing prosecutions only against specific individuals mentioned in the proviso. Criminal liability does not extend to DBS or its directors appointed post-amalgamation with RBI approval.[76] Further, the Supreme Court made an observation that literal following of rules shall not result in travesty of justice. The courts shall view the situations holistically to do justice, and stated as follows: [77]

> There is no gainsaying that the power to quash a criminal investigation or proceedings should not be lightly exercised. Yet, to refuse recourse to that power, in cases that require or may demand it, is being blind to justice, which the courts can scant afford to be. In the present context, the public's confidence in the banking industry was at stake, when RBI stepped in, imposed the moratorium and asked DBS to take over the entire functioning, management assets and liabilities of the erstwhile LVB. To permit prosecution of DBS for the acts of LVB officials (who are in fact, facing criminal charges) would result in travesty of justice.

In the case of *Ajay Kumar Radheshyam Goenka* v. *Tourism Finance Corporation of India Ltd*.[78] Supreme Court dealt with the question "whether during

74 2023 SCC OnLine SC 1148 – Coram: S. Ravindra Bhat* and Aravind Kumar, JJ.

75 *Id*., para 10.

76 *Id.*, para 32.

77 *Id*., para 35.

78 (2023) 10 SCC 545.

the pendency of the proceedings under the IBC, which have been admitted, the present proceedings under the Negotiable Instruments Act, 1988 (NI Act) can continue simultaneously or not." The Supreme Court held that proceedings under the Insolvency and Bankruptcy Code (IBC) and Section 138 of the NI Act are distinct and do not overlap. While Section 14 of the IBC imposes a moratorium on civil proceedings, it does not extend to criminal proceedings under the NI Act, which are penal in nature rather than debt recovery mechanisms. The court rejected the argument that section 138 proceedings should be treated as civil in nature, emphasizing that insolvency resolution under the IBC does not extinguish criminal liability arising from cheque dishonour. The appellant, being a signatory to the cheque and a key figure in the accused company, could not evade criminal responsibility despite the financial default and closure of the loan account.[79] *Justice J.B. Pardiwala* gave a concurring and separate opinion in this case further elaborating different situations during the corporate insolvency resolution process *vis-à-vis* the liability of the corporate debtor.

> (a) After passing of the resolution plan under Section 31 of the IBC by the adjudicating authority & in the light of the provisions of Section 32A of the IBC, the criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management. (b) Section 138 proceedings in relation to the signatories/directors who are liable/ covered by the two provisos to Section 32A (1) will continue in accordance with law.[80]

In the case of *Ashok Shewakramani vs. State of A.P.*[81], Supreme Court dealt with the scope of Section 141 of the NI Act and the court held that averments have to be specific to sustain a case against the company and its officials.[82] A general averment that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act.

VI CONSUMER PROTECTION

The Consumer Protection Act, 2019, along with RBI regulations, enhances consumer rights in the banking sector. Consumers now have multiple avenues to seek redressal for banking-related grievances, *i.e.,* Banking Ombudsman, Consumer Commissions, and Central Consumer Protection Authority (CCPA).[83] The rulings on consumer disputes in banking sector are fairly settled and revolves around the banker-customer interactions. The legal issues emerge on the point of definition

79 *Id.*, para 16 and 17.

80 *Id.*, para 86.

81 (2023) 8 SCC 473.

82 *S.P. Mani and Mohan Diary* v. *Snehalatha Elangovan*, (2023) 10 SCC 685 (distinguished).

83 The Central Consumer Protection Authority (CCPA) regulates matters relating to violation of consumer rights, misleading advertisement and unfair trade practice which are prejudicial to the interest of consumers as a class and public at large. See https:// doca.gov.in/ccpa/about-us.php(last visited on Feb. 20, 2024).

of 'consumer' and 'deficiency of service'. Based on the facts of the case, the Consumer Forums decide the matter on already laid jurisprudence in this matter. CCPA is a new authority, which has further enhanced the consumer protection framework by picking up issues of unfair trade practice and other consumer violations on behalf of consumers and issuing directions. In the case of *Google Pay,*[84] CCPA examined the grievance redressal mechanism and found it to be unsatisfactory:

> It can be seen from the aforementioned URL that neither the Company has provided any contact number of Nodal officer on their websites nor the relevant email ID of any Grievance officer. The website does not depict the clear status of redressing the grievances of consumers. It clearly depicts the deficiency in services and unfair trade practices being followed up by the Company as per Section 2(11) and section 2(47) of the Consumer Protection Act, 2019.

CCPA passed certain directions in this case to provide an active redressal mechanism through the National Consumer Helpline (NCH) and follow through the unresolved grievances of the consumer on NCH. In subsequent orders,[85] CCPA further held that the company shall take proactive steps to reach out to the remaining 47 customers whose issue remains unresolved. A review of this case is a welcome step for the consumers, however, provides a caution to the online banking service providers to be proactive in consumer grievance redressal.

In the year 2023, several cases were reported at various District and State Consumer Commissions for deficiency of services in banking sector. In one case, the National Consumer Dispute Redressal Commission held IDBI Bank guilty of deficiency in service in losing/destroying the original title documents of customer's residential flat.[86] The documents were deposited with the Bank for securing a home loan taken from the Bank. In HSBC Case,[87] the matter involved wrongly classifying a loan account which was already settled as unsettled and freezing of linked savings account of the complainant. This affected the CIBIL rating of the complainant as well. HSBC was ordered to pay Rs. 15 Lakhs as compensation for

84 Ref. F. No. CCPA-2/55/2023-CCPA In the matter of: *Suo Moto case against Google India Digital Services Private Limited (G-Pay)* order dated Nov. 11, 2023

85 *Ibid*. Order dated Nov. 25, 2023 and Dec. 29, 2023.

86 *Binod Dokania* v. *IDBI Bank Limited,* order dated Feb.20, 2023 in Complaint Case No.2218 of 2018. The NCDRC had found that there had been a deficiency in service and the loss to the complainant is therefore manifest, and that the absence of these documents would make it difficult for the complainant to sell his property. It had directed the bank to pay Rs. 20 Lakhs as financial damage along with Rs. 1 Lakh for harassment and Rs. 50,000 on account of litigation expense. However, in appeal against this Order Supreme Court had granted a stay, specially making an observation on the quantum of the penalty in the case. *IDBI Bank Limited V. Binod Dokania* [Civil Appeal No(s). 3123/2023].

87 *Anil Milkhiram Goyel* v. *HSBC Limited*, Consumer Case No. 507 OF 2016, *available at* :https://www.livelaw.in/pdf_upload/case-3anil-goyel-v-hsbc-478418.pdf(last visited on Mar. 20, 2024).

the mental agony, harassment, and damage to the complainants' reputation and an additional Rs. 1 Lakh to cover the litigation costs. Moreover, it was also required to provide a 'No Dues Certificate' and appropriately update the complainants' CIBIL records, indicating that the loans have been settled and there are no outstanding amounts to be paid.

Banker and customer relationship is that of a trust and fiduciary and sometimes the bank has to also be sensitive in their customer service. In one case against ICICI Bank, a senior citizen's account was not closed because of a 35 paise credit card debt which was further inflated to rupees 595. The bank was ordered to pay Rs. 5000/- against the financial hardships, mental agony and inconveniences endured by the complainant in this case.[88] In view of the increasing cases of ATM Frauds, the New Delhi District Consumer Disputes Redressal Commission[89] held Punjab National Bank liable for deficiency in service for not ensuring security measures in their ATM which subsequently led to a loss of Rs 40,000/- to the complainant. While recognising that the bank's customers shall take care of their ATMs and passwords, but held that banks cannot be absolved from its responsibility to "provide due securityand smooth operation of the ATM machine without any hassle and fear at the booth."

In the case of *C.M.D., City Union Bank Limited* v. *R. Chandramohan,*[90] Supreme Court reiterated the summary nature of consumer cases as follows: [91]

> The proceedings before the Commission being summary in nature, the complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, could not be decided by the Forum/Commission under the said Act. The "deficiency in service", as well settled, has to be distinguished from the criminal acts or tortious acts. There could not be any presumption with regard to the wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in service, as contemplated in Section 2(1)(g) of the Act. The burden of proving the deficiency in service would always be upon the person alleging it.

In this case, an NRI from Malaysia issued three drafts for purchasing three flats—one for 5 lakhs on June 28, 1996 and two for 3 lakhs and 6 lakhs on November 18, 1996. However, the two latter drafts were issued in the name of "D-Cube Construction" instead of "D-Cube Constructions (P) Ltd." The company's Current Account No. 3600 was under "D-Cube Constructions (P) Ltd.," whereas Current Account No. 4160 was opened on February 15, 1997 under "D-Cube Construction" by *Shri R. Thulasiram*, a director of the company, as the proprietor of his own firm.

88 *P.V. Ramesh Kumar Son of Late P.V. Jayaram* v. *The Officer Concerned, ICICI Credit Card Care Officer, Consumer Complaint 74/2022 decided by DCDRC Bengaluru.*

89 *Mahesh Singh Rana* v. *Punjab National Bank CC/777/2014.*

90 2023 LiveLaw (SC) 251.

91 *Id.*, para 18.

The bank had also received a "no objection" letter from "D-Cube Constructions (P) Ltd." for opening this account. Additionally, there were ongoing disputes among the company's directors.The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it.[92]

VII CHEQUE BOUNCE CASES

An interesting case[93] emerged wherein an amount issued under a pay order remained with the bank for eleven years (2005-2016) under the head 'unclaimed sundry amount' and earned no interest either for the complainant or the defendant. The developer had cancelled the allotment of the complainant and a 'pay order' was issued and received by the complainant. The said '*original* pay order' in this case was tagged in the case of unfair trade practice filed before the MRTP Commission[94] which remained there for eleven years without any order (as no direction was sought on that by the complainant). The defendant developer was found to have complied with his part; as unlike cheque, in case of 'pay order' or 'demand draft', the amount gets deducted from the issuers account. Extending the policy principle emerging out of Order XXI of Code of Civil Procedure (CPC), the court held that "if the amount is deposited, or paid to the decree holder or person entitled to it, the person entitled to the amount cannot later seek interest on it. This is a rule of prudence, inasmuch as the debtor, or person required to pay or refund the amount, is under an obligation to ensure that the amount payable is placed at the disposal of the person entitled to receive it. Once that is complete (in the form of payment, through different modes, including tendering a Banker's Cheque, or Pay Order or Demand Draft, all of which require the account holder / debtor to pay the bank, which would then issue the instrument) the tender, or 'payment' is complete."[95] Court further opined that steps shall be taken to ward off this kind of situation in future: [96]

> Before parting with this case, this court is of the opinion that all courts and judicial forums should frame guidelines in cases where amounts are deposited with the office / registry of the court / tribunal, that such amounts should mandatorily be deposited in a bank or some financial institution, to ensure that no loss is caused in the future. Such guidelines should also cover situations where the concerned litigant merely files the instrument (Pay Order, Demand Draft, Banker's Cheque, etc.) without seeking any order, so as to

92 Relying upon *Ravneet Singh Bagga* v. *KLM Royal Dutch Airlines* (2000) 1 SCC 66.

93 *K. L. Suneja* v. *(Mrs.) Manjeet Kaur Monga (D) through her LR* [2023] 1 S.C.R. 1079.

94 The MRTP Commission ceased to be in existence with the enactment of the Competition Act, 2002, however, the pending cases were transferred to Competition Appellate Tribunal for final adjudication.

95 *K. L. Suneja* v. *Manjeet Kaur Monga (D) through her LR* [2023] 1 S.C.R. 1079, para 31.

96 *Id.,* para 35.

> avoid situations like the present case. These guidelines should be embodied in the form of appropriate rules, or regulations of each court, tribunal, commission, authority, agency, etc. exercising adjudicatory power.

In *BLS Infrastructure Ltd.* v. *Rajwant Singh,*[97] Supreme Court was of the view that "the learned Magistrate was not justified in straight away dismissing the complaint(s) and ordering acquittal of the accused on mere non- appearance of the complainant. The high court too failed to take notice of the aforesaid aspects." This case involved eight cheque bounce complaints in which the complainant's evidence has already been closed and his presence was not necessary. Just because the complainant was not present to press Section 311 Cr PC. Application,[98] could not lead to straight away dismissing the complaint(s) and ordering acquittal of the accused.[99]

In a specific relief case,[100] the order of the high court which found that "the plaintiff has not proved that he had the cash and/or amount and/or sufficient funds/means to pay the balance sale consideration, as no passbook and/or bank accounts was produced", was held by Supreme Court to be untenable in view of the cases already decided on this issue.[101] Supreme Court reiterated that no adverse inference can be drawn unless the plaintiff was called upon to produce the passbook either by the defendant or, the court orders him to do so. In the case of *Dashrathbhai Trikambhai Patel* v. *Hitesh Mahendrabhai Patel*,[102] dealt with an issue of cheque bounce of a post-dated cheque for an amount out of which some amount was already paid. The court reiterated the principles applicable to cheque dishonour in cases of part payment of the underlying debt or amount. It was held for commission of an offence under section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

In the case of *Rajesh Jain* v. *Ajay Singh,*[103] the Supreme Court was dealing with a situation of burden of proof in case of dishonour of cheque. The court

97 (2023) 4 SCC 326.

98 Court opined that maximum the S. 311 application could have been rejected. Application of sub-section (1) of S. 256 of the Cr. PC, which deals with non-appearance or death of the complainant, was distinguished in this matter. The court reiterated the objective of S. 256 of Cr.PC. "It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary." (relying upon *Associated Cement Co. Ltd.* v. *Keshvanand*, (1998) 1 SCC 687. was to stating that

99 *Id*, para 13.

100 *Basavaraj* v. *Padmavathi*, 2023 LiveLaw (SC) 17.

101 *Indira Kaur* v. *Sheo Lal Kapoor*; (1988) 2 SCC 488 (para 8, 9 and 10), *Beemaneni Maha Lakshmi* v. *Gangumalla Appa Rao*; (2019) 6 SCC 233 (para 14) and *Ramrati Kuer* v. *Dwarika Prasad Singh*; (1967) 1 SCR 153 (para 9).

102 (2023) 1 SCC 578.

103 (2023) 10 SCC 148.

found that Section 139 of the Negotiable Instruments Act (NI Act) creates a reverse onus, shifting the burden of proof from the complainant to the accused. The accused must prove that the cheque was not issued in discharge of a debt or liability, overriding the general rule under Section 102 of the Evidence Act.[104] Interestingly, Supreme Court quoted *Einstein* to highlight the relevance of well formulated issues/questions by the trial court:[105]

Einstein had famously said: "If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about solutions". Exaggerated as it may sound, he is believed to have suggested that quality of the solution one generates is directly proportionate to one's ability to identify the problem. A well-defined problem often contains its own solution within it. Drawing from Einstein's quote, if the issue had been properly framed after careful thought and application of judicial mind, and the onus correctly fixed, perhaps, the outcome at trial would have been very different and this litigation might not have travelled all the way up to this court.

VIII NBFCS AND COOPERATIVES

RBI in its report on National Strategy for Financial Inclusion[106] has observed that "Microfinance institutions: facilitating financial inclusion 'Access to formal finance can boost job creation, reduce vulnerability to economic shocks and increase investment in human capital. With adequate access to financial services, individuals and firms can rely on costly informal sources of finance to meet their financial needs and pursue growth opportunities. At a macro level, greater financial inclusion can support sustainable and inclusive socio-economic growth for all." Financial inclusion remains a priority, with schemes like *PMJDY*, *Jeevan Jyoti Bima, Suraksha Bima*, *MUDRA*, *Stand Up India*, and *Atal Pension Yojana* expanding access to banking, insurance, and pensions.[107] A total of 67 cooperatives banks are registered under the Multi-state Cooperative Societies Act (2002).[108]

In the case of *Babasaheb Naik Kapus Utpadak Sahakari Soot Girni* v. *Reserve Bank of India,*[109] the High Court of Bombay was dealing with the challenge

104 Relied upon *K. Bhaskaran* v. *Sankaran Vaidhyan Balan*, (1999) 7 SCC 510 – ("14. The offence Under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (3) failure of the drawer to make payment within 15 days of the receipt of the notice."). Also see *Gimpex Private Limited* v. *Manoj Goel*, (2022) 11 SCC 705.

105 *Supra* note 103, para 58 and 59.

106 RBI, National Strategy for Financial Inclusion 2019-24, *available at* : https://www.sebi.gov.in/National_Strategy_for_Financial_Inclusion.html (last visited on Mar. 10, 2024).

107 PIB, Ministry of Finance Year Ender 2023: Department of Financial Services, *available at* : https://pib.gov.in/PressReleasePage.aspx?PRID=1990752 (last visited on Mar. 10, 2024).

108 *Available at* : https://crcs.gov.in/bankList (last visited on Mar. 10, 2024).

109 Civil Writ Petition No. 4526 of 2022 Decided on Mar. 23, 2023.

to orders of RBI restricting the operations of a cooperative bank. While examining the directions, court was of the view that there is a duty cast on RBI under section 35A which envisages application of mind by it to all the issues raised in the representation. However, court found that in rejecting the representation of the petitioner by its communication dated September 26, 2022, appropriate consideration of all issues raised in the representation has been missing. Accordingly, court issued the directions to reconsider the representation without quashing the communication.

In *Kerala State Cooperative Agricultural and Rural Development Bank Ltd.* v. *Assessing Officer (and other appeals),*[110] the question before the court was whether the appellant assesse, a cooperative society, is entitled to claim deduction of the whole of its profits and gains in business attributable to the business of banking or providing credit facilities to its members who are all cooperative societies under section 80P of the Income Tax Act, 1961. The court ruled in this case that "although the appellant society is an apex cooperative society within the meaning of the State Act, 1984, it is not a cooperative bank within the meaning of section 5(b) of the Banking Regulation Act, 1949, and was held entitled to the benefit of deduction under section 80P of the Income Tax Act. This case also discusses the nature of the State Cooperatives and how it is different than the NBFCs recognised by RBI. In the case of *A.P Mahesh Cooperative Urban Bank Shareholder Welfare Association* v. *Shaktikanta Das,*[111] High Court of Telangana issued notice against the RBI Governor for contemptfor alleged non-compliance of the direction to appoint an officer to run the administration and day-to-day affairs of Andhra Pradesh Mahesh Cooperative Bank. Further details of this case could not be traced.

Muthoot Leasing and Finance Limited v. *Commissioner of Income Tax,*[112] dealt with the applicability of the Interest Tax Act, 1974 to the non-banking finance and leasing companies. The Supreme Court has held that non-banking finance and leasing companies are not liable to pay tax on the interest component included in the hire-purchase instalment paid under the hire purchase agreement.Court further observed that "non-banking financial companies are essentially loan companies, but they could, in addition thereto, be in the business of equipment leasing, hire- purchase finance and investment. In case of bailment termed as "hire", the bailee receives both possession of the chattel and the right to use it in return for remuneration. On the other hand, equipment leasing is long-term financing which helps the borrower to raise funds without outright payment in the first instance. Here, the "interest" element cannot be compared to consideration for lease/hire, which is in the nature of remuneration (consideration) for hire."

110 2023 SCC OnLine SC 1164.

111 *Available at*: https://www.livelaw.in/high-court/telangana-high-court/telangana-high-court-rbi-governor-contempt-case-ap-mahesh-cooperative-bank-231008 (last visited on Mar. 15, 2024).

112 2023 LiveLaw (SC) 7.

IX INTERNATIONAL BANKING

A case against State Bank of India came up before the Supreme Court of United States in the matter of *Arun Kumar Bhattacharya* v. *State Bank of India.*[113] The question presented before the court was "Whether the Seventh Circuit Court of Appeals correctly held that State Bank of India was immune from jurisdiction under the Foreign Sovereign Immunities Act (FSIA)[114] because State Bank of India's alleged debiting of and failure to deposit additional Indian Rupees into an account held in India did not cause a direct effect in the United States, especially where no agreement requiring payment to be made in the United States existed between the parties with respect to the account at issue." The judgment notes that State Bank of India has more than 20,000 branches throughout the world.Three of those branches are located in California, Illinois, and New York, with a representative office in Washington, D.C., however, the petitioner's account was not in any of these branches but in India. After a detailed discussion the Supreme Court denied the petition. However, this case brings forward the exposure of banks to United States Laws and its citizens.

On July 7, 2023, the International Financial Services Centres Authority ('IFSCA') notified the International Financial Services Centres Authority (Banking) (Amendment) Regulations, 2023 to amend the International Financial Services Centres Authority (Banking) Regulations, 2020. IFSCA is emerging as a destination for foreign banks and will an important area to track for latest developments in coming years.

X CONCLUSION

The survey on banking laws for 2023 highlights significant developments and challenges in the regulatory landscape. In particular with evolving financial technologies, increased compliance requirements, and a stronger emphasis on consumer protection, banking laws have undergone substantial reforms to ensure stability and transparency in the sector. Neobanks, also known as digital-only banks, are financial technology (fintech) entities that provide banking services exclusively through online platforms without physical branchesare redefining banking by prioritizing digital-first solutions, and their future in India depends on regulatory developments and market adoption.[115] With the implementation of the Digital Personal Data Protection Act, 2023, banks will be required to safeguard customer data more rigorously and jurisprudence in this area would also be important to track in future volumes of the survey. It was a proud moment for India to host the G-20 meeting in the year 2023 in which finance track emphasised

113 *Available at:* No. 23-390 (decided on Dec. 12, 2023), *available at* :https://www.supremecourt.gov/DocketPDF/23/23-390/293108/20231212122440821_23-390%20Brief%20In%20Opposition.pdf(last visited on Mar. 10, 2024).

114 28 U.S.C. §§ 1602.

115 World Bank, G20 Policy Recommendations For Advancing Financial Inclusion And Productivity Gains Through Digital Public Infrastructure, Global Partnership for Financial Inclusion 2023.

"international cooperation and innovative solutions for a more secure and prosperous global economy. Key achievements included strengthening multilateral development banks, shaping global policies for crypto assets, addressing debt in lower and middle-income nations, supporting sustainable urban financing, and promoting sustainable finance."[116] Three priority areas identified by the Sustainable Finance Working Group (SFWG) were:[117] Priority 1 – Mechanisms for mobilisation of timely and adequate resources for climate finance, Priority 2 – Enabling finance for the Sustainable Development Goals, Priority 3 – Capacity building of the ecosystem for financing toward sustainable development. Again, green banking is the trend to watch for.