

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2015

DATED : 26.11.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION NOS.25256 to 25258 of 2013 &

M.P.Nos.1, 1, 1 of 2013 & 1, 1 and 1 of 2014

and M.P.Nos .1 of 2011 and 1 of 2013 in W.P.No.11159 of 2011

& M.P.(MD).Nos.1 & 2 of 2013 and 1 of 2014 in W.P.(MD) No.12543

of 2013

W.P.Nos. 25256 to 25258 of 2013:

M.Sundararaj

Shareholder-Tamil Nadu Mercantile Bank Ltd.,

(Certificate Nos.38507 to 38509)

S/o Mookan, New No.57, L.B. Road,

Thiruvannamipur, Chennai-600 041.

... Petitioner in all
Writ Petitions

Vs.

- 1.Reserve Bank of India,
Rep., by Deputy Governor,
Department of Banking Operations &
Development, Central Office Building,
Shahid Bhagat Singh Marg,
Mumbai-400 001 and also having office at
Fort Glacis, Rajaji Salai, Chennai-600 001.
- 2.The Joint Director, FEMA & PMLA,
Directorate of Enforcement, Government of India,
Bangalore Zonal Office,
9/1, State Bank Road,
Bangalore-560 001.
- 3.The Assistant Director,
FEMA & PMLA, Directorate of Enforcement,
Government of India,
Bangalore Zonal Office,
9/1, State Bank Road,
Bangalore-560 001.

4.The Tamil Nadu Mercantile Bank Ltd.,
Rep., by its Managing Director & C.E.O.,
57, V.E. Road, Tuticorin-628 002.

5.The Standard and Chartered Bank,
3rd Floor, CRESCENZO,
Plot No.C-38 & 39, G Block,
Bandra Kurla Complex, Bandra-East,
Mumabi-400 051.

6.Sterling Group, Rep., by A. Subramaniam,
S/o Arunajataiah, Sterling Tower,
327, Anna Salai, Tenampet,
Chennai-600 018.

7.B.Ramachandra Adityan

8.M.G.M.Maran

9.R.Pankajam

10.Kannan Adityan

11.Geetha Prem Vetti

12.K.P.K.Kumaran

13.P.Rajan

14.K.Lingakumar

15.S.Vijayaragavan

16.M.Selvaraj

17.N.C.Pandian

18.K.Ganesan

19.Katra Holdings Limited,
608, St. James Court,
St. Dennis Street, Port Louis,
Mauritius.

20.Swiss Reinvestment (Mauritius) Ltd.,
608, St. James Court,
St. Dennis Street, Port Louis,
Mauritius.

21.Kamehameha Mauritius Limited,
608, St. James Court,
St. Dennis Street, Port Louis,
Mauritius.

22.Cuna Group Mauritius Limited,
608, St. James Court,

St. Dennis Street, Port Louis,
Mauritius.

23 FI Investments (Mauritius) Ltd.,
608, St. James Court,
St. Dennis Street, Port Louis,
Mauritius.

24.RST Limited,
C/o Walkers SPV Limited,
Walker House, 87, Mary Street,
George Town Grand,
Cayman KYI-9002.
Cayman Islands.

25.GHI I Ltd.,
Ugland House,
South Church Street,
Grand Cayman, KYI-1104
Gand Cayman Islands.

26.Gokul Patnaik,
T9 (FF) Green Park Extension,
Delhi-NCR, Delhi-110 016.

27.Vector Program Private Limited,
313-314, Richmond Towers,
Richmond Road, Bangalore-560 025.

28.Robert and Ardis James Company Ltd.,
Les Cascades, Edith Cavell Street,
Port Louis, Mauritius.

29.Sub Continental Equities Limited,
C/o Fidelity Trust Limited,
608, St. James Court, St. Dennis Street,
Port Louis, Mauritius.

30.East River Holdings Limited,
608, St. James Court, St. Dennis Street,
Port Louis, Mauritius.

31.Chinna Kannan

32.Chandrammal

33.P.S.Sathiyaseelan

34.M.G.Muthu

35.Hemangini Finance and Leasing Private Limited,
Sterling Tower, 327, Anna Salai,
Teynampet, Chennai-600 006.

36.Shanmuga Financial Services Private Limited,
2-F, Apex Plaza, II Floor,
3, Nungambakkam High Road,
Chennai-600 034.

37.L.Sridharan

38.P.Prem Vetti

..Respondents in all Writ Petitions

M.P.No.1 of 2011 in W.P.No.11159 of 2011:

M.Sundararaj

Shareholder-Tamil Nadu Mercantile Bank Ltd.,
(Certificate Nos.38507 to 38509)

S/o Mookan, New No.57, L.B. Road,
Thiruvanmiyur, Chennai-600 041.

... Petitioner

Vs.

1. Reserve Bank of India,
rep.by Deputy Governor,
Department of Banking Operations & Development,
Central Office Building,
Shahid Bhagat Singh Marg,
Mumbai - 400 001 and also
having office at Fort Glacis,
Rajaji Salai, Chennai - 600 001.

2. The Tamil Nadu Mercantile Bank Ltd.,
rep.by its Chairman of the Board of
Director, 57, V.E.Road,
Tuticorin - 628 002.

3. B.Ramachandra Adityan

4. R.Pankajam

5. Kannan Adityan

6. Geetha Prem Vetti

7. K.P.Kumaran

8. R.Rajan

9. K.Lingakumar

10. S.Vijayaaragavan

11. M.Selvaraj

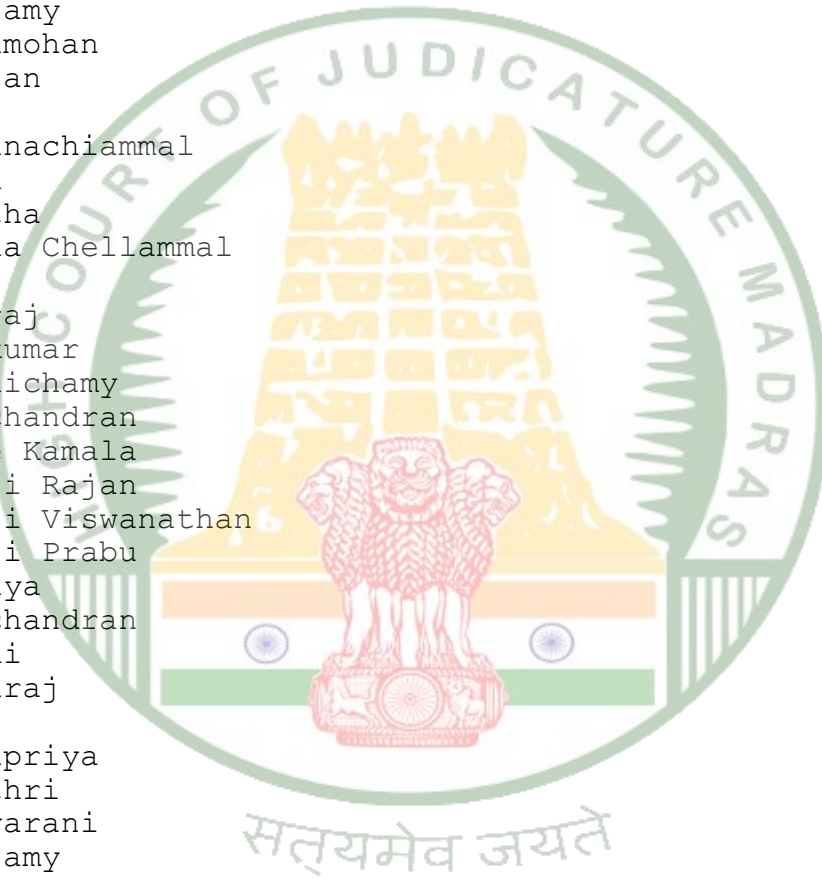
12. N.C.Pandian

13. K.Ganesan
14. S.Lakshmi
15. G.Jegasesan
16. R.Chandrasekar
17. C.Malarkodi
18. C.Megala
19. C.Balasundari
20. A.Aravind Kumar
21. G.R.Ravi
22. R.Navaneetha Krishnan
23. P.Ramalingam
24. K.Vasudevan
25. J.Rathi Devi
26. M.Sivakumar Adithyan
27. N.S.Raja Pandian
28. N.Siva Rama,
29. P.Kanagarajan
30. R.S.Kani Ammal
31. P.Rajarathinam
32. G.Chelladurai
33. D.J.Balan
34. B.Selvaraj
35. R.Selvasekar
36. A.M.Vijaya Lakshmi
37. S.Ganesan
38. V.Senthil Kumar
39. R.Baskar
40. S.Senthilkumar
41. K.Elaiyappan
42. N.Gomathinayagam
43. G.Murugesan
44. T.Kanagaraj
45. E.Jawahar
46. R.Dhayalam
47. A.Selva Krishna Ravi
48. V.Sivamurugan
49. J.Thomas Jeyasingh
50. Juno Thomas
51. P.Gandhi Rajan
52. Augustin Nesaraj
53. C.Palsamy Nadar
54. I.Edwardraj
55. Ruby Edwardraj
56. R.Paul Pandi
57. V.Panneer Selvam
58. S.V.Palchaiappa Nadar



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59. K.Ravikumar
60. N.Sathiyar
61. P.Roose Weld Liege
62. R.Udhiyan Cheralathan
63. P.Ponnusamy Nadar
64. C.Rajavarshini
65. P.Diravidamani
66. A.Chendur Meenakshi
67. R.Kannan
68. A.Rajathi Sivakumar
69. B.Nelson Durairaj
70. A.Thanga Mani
71. K.Ramasamy
72. G.Selvamohan
73. M.Ganesan
74. M.Bose
75. R.Pethanachiammal
76. S.Raman
77. C.Saratha
78. S.Rejina Chellammal
79. C.Mani
80. A.Jeyaraj
81. T.Jayakumar
82. D.Palanichamy
83. S.Ramachandran
84. S.Yoyce Kamala
85. K.N.Kasi Rajan
86. K.N.Kasi Viswanathan
87. K.S.Kasi Prabu
88. A.Lavanya
89. B.Ramachandran
90. P.Santhi
91. M.Selvaraj
92. M.Arun
93. Krishnapriya
94. S.Gayathri
95. P.Vijayarani
96. P.Ramasamy
97. V.Paulraj
98. P.Krishnasamy
99. S.Kaladevi
100. C.Jeyaguru
101. K.Vanagamudi
102. S.Kasirajan
103. W.Wilsto Dhanspin
104. W.Salon Deeson



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105. D.S.Wilson
106. W.Selvam Dispon
107. D.S.Ramesh
108. V.S.Saravana
109. K.Mangaiyarkarasi
110. G.Renga Devi
111. G.Thilagavathi
112. C.Chinna Thanagam
113. B.Kamala Saraswathy
114. P.Usha Rani
115. L.Sathyabama
116. M.Ponkodi
117. V.Shanthi
118. T.Amutha
119. D.Johnson Sunder Raj
120. D.Vasanthi
121. S.Raja Mani
122. P.Vasanthi
123. K.Chandra Prabha
124. K.Subathira Devi
125. Dinesh N.Shah
126. G.Ramasamy
127. R.Jeganathan
128. J.Sivaraaghavan
129. K.Shanmuganathan
130. M.Balasundaram
131. V.Chelladurai
132. D.Ramesh Babu
133. Dr.K.Chandran
134. M.Panki Raj
135. M.Mohamed Khan
136. M.Aravind
137. J.Jeya Gowdam
138. M.Ramanan
139. C.Subramaniam
140. K.Gnanaguru
141. P.Shivarohini
142. S.Nalini
143. J.Jeyathilagar
144. M.Ganesan
145. S.Ganesan
146. A.Ashok
147. R.Ramadoss
148. S.Purushothaman
149. P.Ciju Raj
150. T.Pushpa Leela



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151. M.Kanagaraj
152. T.Devaraj
153. R.S.Ramathilagam
154. K.Baskaran
155. G.Bharathi Pandian
156. S.Alagarsamy Nadar
157. A.Velumurugan
158. P.Kala
159. S.Muruganandham
160. Y.Thangammal
161. T.Kasi Mani Nadar
162. M.P.Rajendran
163. M.Nirmal Kumar
164. Dr.V.Jeyaraj
165. S.Delphin Marget Mary
166. S.Eliabeth Mary
167. A.T.Sebastian
168. R.Rajasekaran
169. R.Manjula
170. S.Rajamanickam
171. M.Baskara Paulraj
172. M.Gnanasekaran
173. B.Arul Yogaraj
174. D.Stephen Jebaraj
175. G.Kani Pandian
176. K.Vijayakumar
177. L.Krishnan
178. C.S.Usha Rani
179. Radha Shyam Bisam Ban Pvt.Ltd.,
Art Silk Cloth, Ashoka Tower Ring Road,
Surat - 395 002, Gujarat
180. Meena Bisam Ban Pvt.Ltd.,
Art Silk Cloth, Ashoka Tower Ring Road,
Surat - 395 002, Gujarat
181. R.Santham Krishna Selvi
182. S.Jeeva Selvi
183. S.Arumugapandian
184. K.Sellappan
185. S.Ashokan
186. T.Vairamani
187. T.Rajendran
188. P.Mani
189. K.Ramasamy Nadar
190. C.Vijaya Selvan



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191. A.Chithiraj Pandiayan
192. B.Xavior Seldan
193. S.V.Rana Singh
194. S.Kalugasalam
195. T.Anbarasu
196. G.Senthoor Pandian
197. T.Thirumani
198. K.P.Karunsasamy Nadar
199. C.Kathirvely Nadar
200. K.S.Raj
201. P.Suriya Prabha
202. J.Malar Vizhi
203. K.Palaniammal

... Respondents

Respondents No.3 to 203 are impleaded as parties as per Order dated 11.02.2013 in M.P.No.2 of 2011 in W.P.No.11159 of 2011.

M.P.No.1 of 2013 in W.P.No.11159 of 2011:

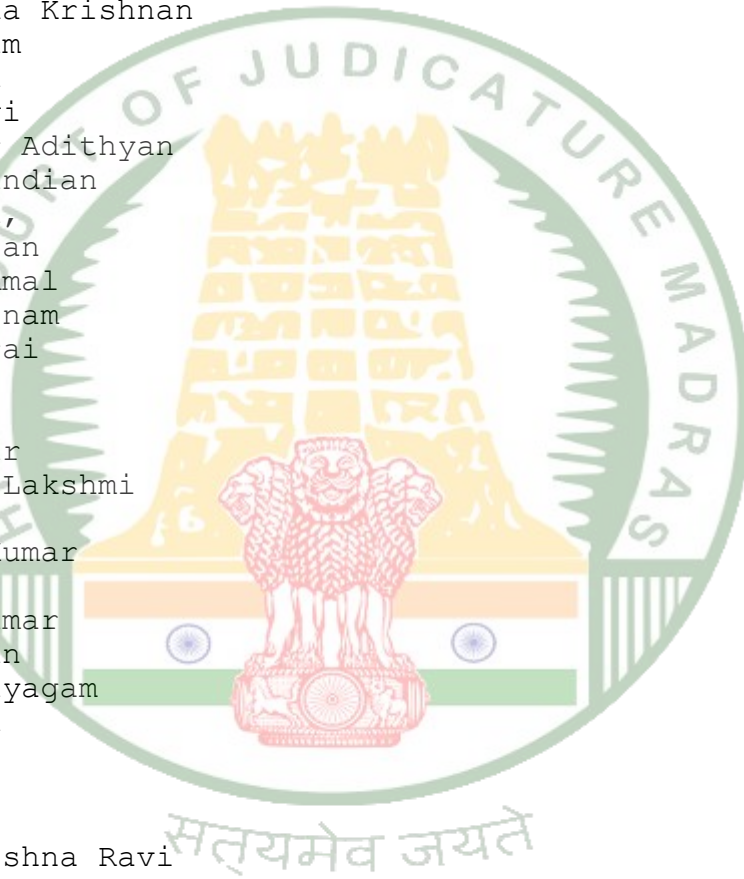
Tamilnad Mercantile Bank Limited,
represented by its Chairman of
The Board of Directors
57, V.E.Road,
Thuthookudi.

... Petitioner

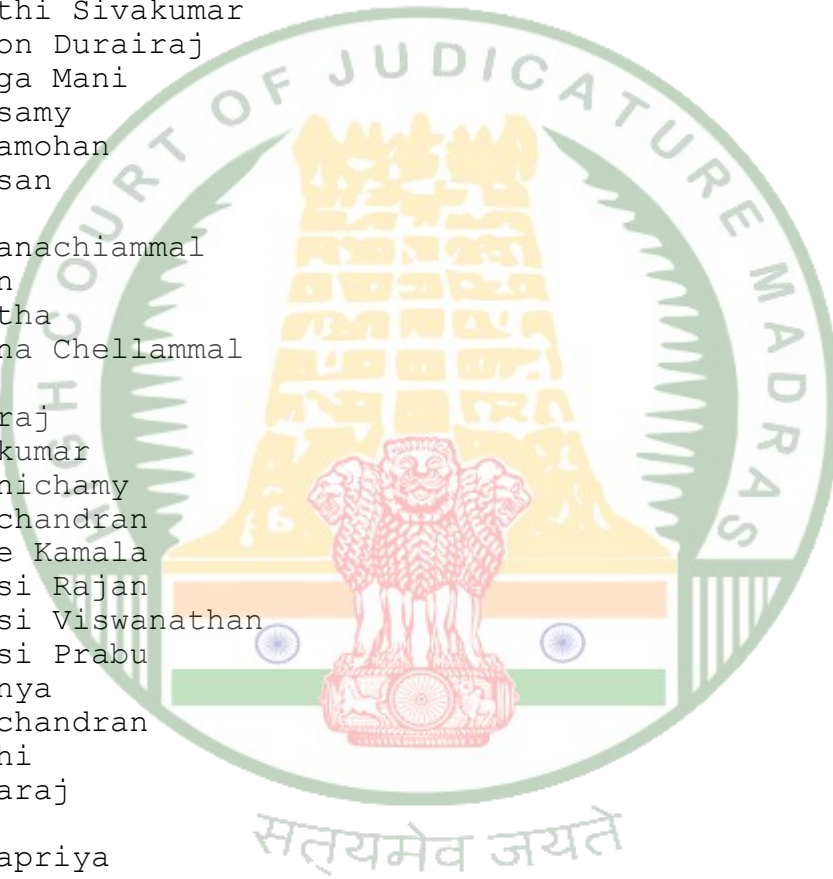
Vs.

1. M.Sundararaj
Shareholder-Tamil Nadu Mercantile Bank Ltd.,
New No.57, L.B. Road,
Thiruvannamiyur, Chennai-41
2. Reserve Bank of India,
rep.by Deputy Governor,
Department of Banking Operations & Development,
Shahid Bhagat Singh Marg,
Mumbai - 400 001
3. B.Ramachandra Adityan
4. R.Pankajam
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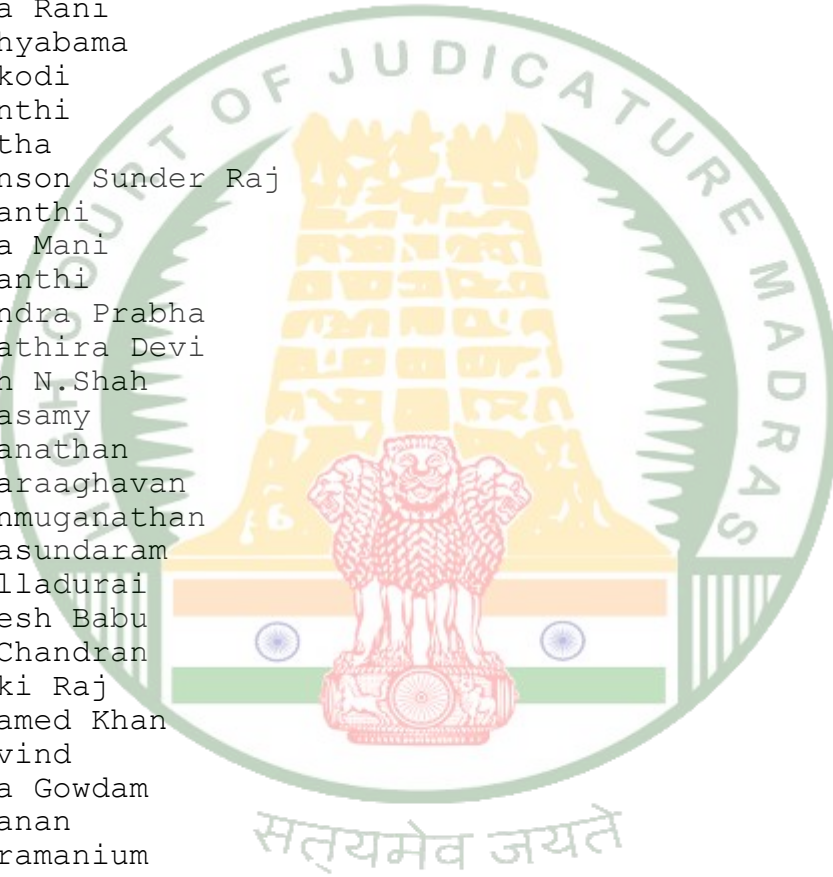


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97. V.Paulraj
98. P.Krishnasamy
99. S.Kaladevi
100. C.Jeyaguru
101. K.Vanagamudi



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102. S.Kasirajan
103. W.Wilsto Dhanspin
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106. W.Selvam Dispon
107. D.S.Ramesh
108. V.S.Saravana
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118. T.Amutha
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124. K.Subathira Devi
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130. M.Balasundaram
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134. M.Panki Raj
135. M.Mohamed Khan
136. M.Aravind
137. J.Jeya Gowdam
138. M.Ramanan
139. C.Subramanium
140. K.Gnanaguru
141. P.Shivarohini
142. S.Nalini
143. J.Jeyathilagar
144. M.Ganesan
145. S.Ganesan
146. A.Ashok
147. R.Ramadoss



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148. S.Purushothaman
149. P.Ciju Raj
150. T.Pushpa Leela
151. M.Kanagaraj
152. T.Devaraj
153. R.S.Ramathilagam
154. K.Baskaran
155. G.Bharathi Pandian
156. S.Alagarsamy Nadar
157. A.Velumurugan
158. P.Kala
159. S.Muruganandham
160. Y.Thangammal
161. T.Kasi Mani Nadar
162. M.P.Rajendran
163. M.Nirmal Kumar
164. Dr.V.Jeyaraj
165. S.Delphin Marget Mary
166. S.Eliabeth Mary
167. A.T.Sebastian
168. R.Rajasekaran
169. R.Manjula
170. S.Rajamanickam
171. M.Baskara Paulraj
172. M.Gnanasekaran
173. B.Arul Yogaraj
174. D.Stephen Jebaraj
175. G.Kani Pandian
176. K.Vijayakumar
177. L.Krishnan
178. C.S.Usha Rani
179. Radha Shyam Bisam Ban Pvt.Ltd.,
Art Silk Cloth, Ashoka Tower Ring Road,
Surat - 395 002, Gujarat
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183. S.Arumugapandian
184. K.Sellappan
185. S.Ashokan
186. T.Vairamani
187. T.Rajendran
188. P.Mani

189. K.Ramasamy Nadar
190. C.Vijaya Selvan
191. A.Chithiraj Pandiayan
192. B.Xavior Seldan
193. S.V.Rana Singh
194. S.Kalugasalam
195. T.Anbarasu
196. G.Senthoor Pandian
197. T.Thirumani
198. K.P.Karunsasamy Nadar
199. C.Kathirvely Nadar
200. K.S.Raj
201. P.Suriya Prabha
202. J.Malar Vizhi
203. K.Palaniammal

... Respondents

Respondents No.3 to 203 are impleaded as parties as per Order dated 11.02.2013 in M.P.No.2 of 2011 in W.P.No.11159 of 2011.

M.P.(MD) Nos.1 and 2 of 2013 in
W.P.(MD) No.12543 of 2013:

P.S.P.K.Maragathrajaapandian

... Petitioner

Vs.

1. Reserve Bank of India,
constituted under the Reserve
Bank of India Act, 1934
having its Head Office at
Reserve Bank of India Building,
Fort, Mumbai - 400 001,
through its Governor
2. The Deputy Governor,
Reserve Bank of India,
Central Office Building,
Shahid Bhagad Singh Marg,
Mumbai - 400 001,
3. Tamilnadu Mercantile Bank Ltd.,
a Banking Company incorporated
under the Companies Act, 1913,
having its registered office at 57,

V.E.Road, Tuticorin - 628 002,
State of Tamilnadu, through its
Managing Director & CEO,

4. M/s.R.S.T.Ltd.,
C/o.Walkers S.P.V.Ltd.,
Wakers House,
No.87, Marry Street,
George Town,
Grand Cayman Kyl - 9002,
Cayman Islands,
5. M/s.G.H.I.Ltd.,
No.59, Beachside Avenue,
West Port,
Connecticut 06880
Connecticut
United States of America
6. M/s.Katra Holdings Ltd.,
608 ST. James Court,
St.Dennis Street,
Port Louis, Maritius
7. M/s.Gokul Patnaik,
T-9 (FF), Green Park Extn.,
Delhi,
8. M/s.Vector Program Pvt.Ltd.,
313-314, Richmond Towers,
Richmond Road,
Bangalore - 560 025,
9. Hemangini Finance and Leasing Private Limited,
Sterling Tower,
327, Anna Salai,
Teynampet,
Chennai - 600 006,
10. M/s.Shanmuga Financial Services P.Ltd.,
2F, Apex Plaza,
II Floor,
3, Nungambakkam High Road,
Chennai - 600 034,

11. R.Chinnakannan
12. C.Chandrammal
13. M.G.M.Maran
14. M.G.Muthu
15. L.Sridhar
16. N.Ganesan
17. P.S.Sathiya Seelan

18. M/s.Kamehameha Mauritius Ltd.,
608, St.James Court,
St.Denis Street,
Port Louis, Mauritius

19. M/s.FI Investments (Mauritius) Limited,
608, St.James Court,
St.Denis Street,
Port Louis, Mauritius,

20. M/s.Cuna Group (Mauritius) Ltd.,
608, St.James Court,
St.Denis Street,
Port Louis, Mauritius,

21. M/s.Swiss RE Investors (Mauritius) Limited,
608, St.James Court,
St.Denis Street,
Port Louis, Mauritius.

... Respondents

M.P.(MD) No.1 of 2014 in
W.P.(MD) No.12543 of 2013:

M/s.FI Investments (Mauritius) Limited,
608, St.James Court,
St.Denis Street,
Port Louis, Mauritius,

... Petitioner

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Vs.

1. P.S.P.K.Maragathrajaapandian

2. Reserve Bank of India,
constituted under the Reserve
Bank of India Act, 1934
having its Head Office at
Reserve Bank of India Building,
Fort, Mumbai - 400 001,
through its Governor
3. The Deputy Governor,
Reserve Bank of India,
Central Office Building,
Shahid Bhagad Singh Marg,
Mumbai - 400 001,
4. Tamilnadu Mercantile Bank Ltd.,
a Banking Company incorporated
under the Companies Act, 1913,
having its registered office at 57,
V.E.Road, Tuticorin - 628 002,
State of Tamilnadu, through its
Managing Director & CEO,
5. M/s.R.S.T.Ltd.,
C/o.Walkers S.P.V.Ltd.,
Wakers House,
No.87, Marry Street,
George Town,
Grand Cayman Kyl - 9002,
Cayman Islands,
6. M/s.G.H.I.Ltd.,
No.59, Beachside Avenue,
West Port,
Connecticut 06880
Connecticut
United States of America
7. M/s.Katra Holdings Ltd.,
608 ST. James Court,
St.Dennis Street,
Port Louis
Maritius
8. M/s.Gokul Patnaik,
T-9 (FF), Green Park Extn.,
Delhi,

9. M/s.Vector Program Pvt.Ltd.,
313-314, Richmond Towers,
Richmond Road,
Bangalore - 560 025,
- 10.Hemangini Finance and Leasing Private Limited,
Sterling Tower,
327, Anna Salai,
Teynampet,
Chennai - 600 006,
11. M/s.Shanmuga Financial Services P.Ltd.,
2F, Apex Plaza,
II Floor,
3, Nungambakkam High Road,
Chennai - 600 034,
12. R.Chinnakannan
13. C.Chandrammal
14. M.G.M.Maran
15. M.G.Muthu
16. L.Sridhar
17. N.Ganesan
18. P.S.Sathiya Seelan
19. M/s.Kamehameha Mauritius Ltd.,
608, St.James Court,
St.Denis Street,
Port Louis,
Mauritius
20. M/s.Cuna Group (Mauritius) Ltd.,
608, St.James Court,
St.Denis Street,
Port Louis, Mauritus,
21. M/s.Swiss RE Investors (Mauritius) Limited,
608, St.James Court,
St.Denis Street,
Port Louis, Mauritius. ... Respondents

Prayer: W.P.No.25256 of 2013 is filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus directing the respondents 1 to 3 to take appropriate penal action as contemplated under law against the respondents 4

to 38 for their deliberate act of failure to get RBI acknowledgment violating the RBI regulations and transferring the 94818 shares (declared as disputed shares by the 1st respondent) of TMBL - 4th respondent to foreign investors and other respondents and thereafter prevent compounding of offences besides the violation of FEMA (Foreign Exchange Management Act) & PMLA (Prevention of Money Laundering Act).

W.P.No.25257 of 2013 is filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus directing the respondents 1 and 4 to nullify the transaction/transfer of (disputed) shares 94818 of TMBL - 4th respondent effected under the Board Resolution dt 13.5.2007 of the 4th respondent and consequently to rescind entries in the Register of Members of shareholders of the 4th respondent with respect to (disputed) shares 94818.

W.P.No.25258 of 2013 is filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus directing the 1st respondent not to acknowledge or approve the transfer of shares of 4th respondent - TMBL effected during the meeting held on 13.5.2007 and subsequent transfers effected pertaining to the 94818 (disputed) shares transferred between the respondents 6 to 38.

M.P.No.1 of 2011 in W.P.No.11159 of 2011 is filed praying to pass an order of injunction restraining the second respondent from convening the 88th and 89th Annual General Body Meeting till 1st respondent clarify and passes the order afresh.

M.P.No.1 of 2013 in W.P.No.11159 of 2011 is filed praying to vacate the order of injunction granted on 28.04.2011 in M.P.No.1 of 2011 in W.P.No.11159 of 2011.

M.P.(MD) No.1 of 2013 in W.P.(MD) No.12543 of 2013 is filed for a direction directing the 1st and 2nd respondents to direct the 3rd respondent not to permit any voting right to the unacknowledged share holders whose shares are transferred in contravention to Section 12B (3) of the Banking Regulation Act as declared by the order of the 2nd respondent dated 31.03.2011.

M.P.(MD) No.2 of 2013 in W.P.(MD) No.12543 of 2013 is filed for an order of injunction restraining the 3rd respondent, his men or agents from permitting any voting rights based on the

acknowledged shares transferred in contravention to Section 12B (3) of the Banking Regulation Act as declared by the order of the 2nd respondent dated 31.03.2011 pending disposal of the writ petition.

M.P.(MD) No.1 of 2014 in W.P.(MD) No.12543 of 2013 is filed praying to vacate the interim injunction granted on 29.07.2013 in M.P.No.2 of 2013 in W.P.(MD) No.12543 of 2013.

For Petitioner : Mr.Yashod Vardhan,
in W.Ps.25256 to Senior Counsel for
25258 of 2013 Mr.S.Subramanian

For Petitioner in : Mr.N.Manokaran
M.P.(MD) Nos.1 and 2
of 2013 in W.P.(MD)
No.12543 of 2013 and
respondent No.1 in
M.P(MD) No.1 of 2014
in W.P.(MD) No.12543
of 2013

For Petitioner in : Mr.R.Thiagarajan, Sr.Counsel
M.P.No.1 of 2011 in for M/s.Meenakshi Sundaram
in W.P.No.11159
of 2011 and respondent
No.1 in M.P.No.1 of 2013
in W.P.No.11159 of 2011

For Respondent No.1 : Mr.C.Mohan for
in W.P.Nos.25256 to M/s King & Patridge
25258 of 2013, for Reserve Bank of India
Respondent No.1
in M.P.No.1 of 2011 in
W.P.No.11159 of 2011
and M.P(MD)Nos.1 and 2
of 2013 in W.P(MD) No.
12543 of 2013,
for respondent No.2
in M.P.No.1 of 2013
in W.P.No.11159 of 2011

and M.P.(MD) Nos.1 and 2
in W.P.(MD) No.12543 of
2013 and for respondent
Nos.1 and 2 in M.P.(MD)
No.1 of 2014 in W.P(MD)
No.12543 of 2011

For respondents 22 and : Mr.M.S.Krishnan, Sr.Counsel
23 in W.P.Nos.25256 to for M/s.P.T.Asha for
25258 of 2013, Sarvabhauman Associates
for respondents No. Mr.V.Lakshminarayanan
19 and 20 in M.P.(MD)
Nos.1 and 2 of 2013
and 1 of 2014 in W.P
(MD) No.12543 of 2013

For Respondents No.2 : Mr.M.Dhandapani
and 3 in W.P.Nos.
25256 to 25258
of 2013

For Respondents No. : Mr.Karthik Seshadri
9 to 11 in W.P.Nos. For M/s.Iyer & Thomas
25256 to 25258 of
2013 and for
respondent Nos.5 and
6 in M.P.Nos.1 of 2011
and 1 of 2013 in W.P.
No.11159 of 2011

For Respondent No. : Mr.R.Sankaranarayanan
4 in W.P.Nos.25256 to 25258
of 2013, for respondent No.2
in M.P.No.1 of 2011 in W.P.No.
11159 of 2011, for petitioner
in M.P.No.1 of 2013 in W.P.
No.11159 of 2011, for
respondent No.3 in M.P.(MD)
Nos.1 and 2 of 2013 and
M.P.(MD) No.1 of 2014 in
W.P.No.12543 of 2013

For Respondent No.20:
in W.P.Nos.25256 to
25258 of 2013, for
respondent No.21 in
M.P.(MD) Nos.1 and 2
of 2013 and 1 of 2014
in W.P.No.12543 of
2011.

Mr.Sathish Parasaran
for Mr.Anirudh Krishnan
for M/s.A.K.Law Chamber

For Respondent No.29:
in W.P.Nos.25256 to
25258 of 2013

Mr.Anand Venkatesh

For Respondent No.8:
in W.P.Nos.25256 to 25258
of 2013 and for respondent
No.13 in M.P.(MD) Nos.1
and 2 of 2013 and 1 of
2014 in M.P.(MD) No.1 of 2014
in W.P.No.12543 of 2013

Mr.AR.L.Sundaresan,
Sr.Counsel
for Mr.V.Babu

For Respondent No.5:
in W.P.Nos.25256 to 25258
of 2013.

Mr.Karthik Raja

For Respondent No.21:
in W.P.Nos.25256 to 25258
of 2013 and for respondent
No.18 in M.P.(MD) Nos.1
and 2 of 2013 and 1 of 2014
in W.P.(MD) No.12543 of 2013

Mr.V.Lakshminarayanan

For Respondent No.27:
in M.P.Nos.1 of 2011 and
1 of 2013 in W.P.No.11159
of 2011

Mr.P.Subramani

For Respondent No.34:
in M.P.Nos.1 of 2011 and
1 of 2013 in W.P.No.11159
of 2011

Mr.B.Neduchezhiyan

For Respondent No.45:

Mr.P.C.N.Raghupathy

in M.P.Nos.1 of 2011 and
1 of 2013 in W.P.No.11159
of 2011

For Respondent Nos.64,: Mr.N.Naganathan
74, 76, 78, 80 to 84, 86,
88, 94, 98 to 100, 173,
174, 177 and 178
in M.P.Nos.1 of 2011 and
1 of 2013 in W.P.No.11159
of 2011

For Respondent No.28: Mr.P.S.Raman,Sr.Counsel
in W.P.Nos.25256 to 25258 for Mr.Anirudh Krishnan
of 2013

COMMON ORDER

The legal battle started way back in the year 1995 continues with more vigour till now as no one knows when the war would be over ultimately. It has spread to several Courts crossing this State to others such as Bombay and Delhi. The entire dispute revolves around 95,418 shares. In some cases, the attack was direct and in others, ostensibly through others. However, what appears to the eyes of this Court is that there is a constant attempt by few of the shareholders qua the purchase of 95,418 shares. The possible reason could be the alienation suffered by the gullible transferors unable to fathom the astronomical explosion of share price, much to their dismay and chagrin. It may also be the handiwork of a few Directors holding on even after the expiry of their term fearing the inevitable if an election is held now. The intensity of the battle was taken note of by the Division Bench of this Court, which went to the extent of stating that any dispute pertaining will have to be posted before it and no other Court shall entertain any other challenge, either direct or indirect.

2. As there is no dispute atleast on the background facts, which have been repeated time and again in various proceedings including the orders passed by this Court, the recordings effected in application No.2954 of 2008 in C.S.No.481 of 2008 are re-produced for the sake of brevity:

'The Tamilnad Mercantile Bank Limited is a Banking Company incorporated originally in the year 1921, under the name Nadar

Bank Limited, under the Indian Companies Act 1913. It was re-christened to its present name, in the year 1962. The paid up share capital of the Company is Rs.28,44,540/- divided into 2,84,454 equity shares of Rs.10/- each. As per the Memorandum and Articles of Association of the Company, it was formed for the purpose of fostering and developing the resources of the Nadar Community and hence the majority of the shares were held by the members of the community from Tuticorin, Sivakasi and Virudhunagar.

2. In the year 1994, seven different Companies constituting a group known as ESSAR Group of Companies, purchased 1,91,455 shares from about 229 individual shareholders. The shares purchased by this group, worked out to about 67% of the total paid up capital of the Bank. When the transferees filed applications for effecting the transfers in the Register of Members, the Board of Directors rejected them, by a resolution dated 6-2-1995.

3. Aggrieved by the resolution of the Board, the transferee Companies filed company petitions in C.P.No. 7 to 13 of 1995 on the file of the Southern Regional Bench of the Company Law Board. The Bank also filed petitions in C.P.No.30 and 31 of 1995, under section 250 of the Companies Act, 1956 for an investigation into the ownership of the shares sought to be transferred. Another petition was filed by some of the Directors in C.P.No.39 of 1995 under section 409 of the Act.

4. All these petitions were disposed of by the Company Law Board by various orders, the effect of which was, that the refusal to effect the transfers was held to be illegal. Consequently, a direction was issued to the Bank to accept the transfers and then seek acknowledgement from the Reserve Bank of India.

5. In the meantime, some of the transferors attempted to revoke the power of attorney, by which the share transfer was sought to be effected. This led to the Transferee Companies filing a suit in C.S.No.291 of 1995 on the file of this Court. A similar suit was also filed on the file of the Principal District Munsif Court, Tuticorin.

6. Pursuant to the order of the Company Law Board, the Board of Directors decided to seek acknowledgment from the Reserve Bank of India, for the transfer of the shares in favour

of the ESSAR Group of Companies. Accordingly, the Bank sent a letter to the RBI dated 2-7-1996. But the Reserve Bank of India, by letter dated 14-10-1996 refused to grant acknowledgment on the ground that it is their policy to avoid a close link between Banking Companies and Industrial houses. Consequently the Board of Directors passed a resolution on 25.10.1996 rejecting the request for transfer of shares.

7. In the meantime, the shareholding in six Transferee Companies constituting the ESSAR Group, changed hands and another Group of Companies known as Sterling Group of Companies claimed to have gained control over those Companies. Since the question of grant of acknowledgment by the Reserve Bank of India in favour of Sterling Group of Companies was also a moot question and also since the members of the community decided to retrieve the shares, a Society of Nadars was floated under the name Nadar Mahajana Bank Share Investors Forum. This forum entered into a Memorandum of Understanding on 24.06.1999 with those seven Transferee Companies, for the repurchase of the entire set of shares sold to them.

8. Due to the legal imbroglio created by the transfer of shares and the events that followed, no Annual General Meeting of the Tamilnad Mercantile Bank Ltd., could be held for several years, leading to an impasse. Therefore the Central Government itself filed a Company Petition in C.P.No.15 of 2003 on the file of the Company Law Board under Section 408 of the Companies Act. In the meantime, a compromise was reached between different groups on 31-7-2003 for the transfer of about 96,000 shares (out of the 1,91,455 disputed shares) in favour of individual investors belonging to the Nadar community. Therefore, the Bank decided to seek acknowledgement from the RBI for the transfer of the balance of shares and to convene all the Annual General Meetings for the years 1996-96 to 2002-03.

9. However, a new problem cropped up, with the Board of Directors suspending the Chairman of the Bank. On being informed of the same, the Company Law Board passed orders on 19-12-2003 reinstating the Chairman and suspending all the other Directors. The Company Law Board also directed that the Bank would function under the supervision of a committee comprising of 2 nominees of the RBI and 2 nominees of the Central Government. The decision of the Company Law Board was to a great extent upheld by this Court in an appeal in C.M.A.No.3379 of 2003.

10. Subsequently seven Annual General Meetings were held en bloc on 12.03.2004 under the chairmanship of a retired Judge of this Court Mr. Justice S.Ramalingam. The right of the Power of Attorney agents to appoint proxies was questioned in that Meeting, but the Chairman allowed the proxies.

11. Thereafter, the 82nd Annual General Meeting was convened to be held on 24.12.2004. After the notice for the Annual General Meeting was circulated, an outfit known as Tamilnadu Mercantile Bank Shareholders' Association filed a suit in C.S.No.981 of 2004 on the file of this Court, on 21.12.2004 praying for a permanent injunction restraining the defendants from preventing the members whose names are registered in the Register of Members of Tamil Nadu Mercantile Bank Limited or their duly authorised proxies from participating and exercising their voting rights in the forthcoming Annual General Meeting on 24.12.2004 or any subsequent date. The main contention of the Plaintiff in the suit was that the deeds of Power of Attorney executed by the shareholders in favour of the nominees of the purchasers were invalid. Pending suit, the Plaintiff sought an interim injunction. On 23.12.2004, an interim order was passed in the application for injunction, directing the Chairman of the Meeting to act in terms of Article 85 of the Articles of Association of the Company, whenever the proxies executed by the Power Agents were filed.

12. On 24.12.2004 the 82nd Annual General Meeting was held. The proxies submitted by the Power of Attorney holders in respect of the disputed shares, were accepted and they were permitted to vote. Therefore, a Contempt Petition was filed in Contempt Petition No.28 of 2005 alleging violation of the interim order dated 23.12.2004 and seeking to set aside the resolutions passed and the elections held at the 82nd Annual General Meeting. Though the Single Judge held that there was a violation of the previous order and consequently declared the elections held on 24.12.2004 to be invalid, the Division Bench reversed the said decision on 20.03.2006, forcing the Plaintiff in C.S.No.981 of 2004 to file a Special Leave Petition before the Supreme Court. By an order dated 12.07.2006, the Supreme Court upheld the order of the Division Bench, but directed the suit to be disposed of at an early date.

13. By the time the Civil Appeal was disposed of by the Supreme Court on 12.07.2006, the 83rd Annual General Meeting was already overdue. Therefore the Board of Directors resolved to hold the Meeting on 27.07.2006 and issued notices containing 6

items in the Agenda. Items 3 to 5 of the Agenda related to retirement of the Directors, Re-election and Election.

14. The moment notices were issued convening the 83rd Annual General Meeting on 27.07.1006, Applications in O.A.Nos.597 to 599 of 2006 were moved by the plaintiff in C.S.No.981 of 2004 seeking interim orders of injunction. On 26.07.2006 S.R.Singaravelu,J.(as he then was) passed an order in those applications, permitting the 83rd Annual General Meeting to go on, in respect of Agenda items 1, 2 and 6, but directing the postponement of Agenda items 3 to 5, which related to election of Directors.

15. In the meantime, two Directors by name M.G.M.Maran and B. Ramachandra Adityan (who are defendants 20 and 19 respectively in C.S.No.481 of 2008), entered into agreements with the Sterling Group. By that Agreement dated 10.03.2006, these two Directors were authorised to identify buyers, to whom shares could be sold in consonance with the guidelines issued by the Reserve Bank of India and other applicable Laws. In accordance with the said agreement, these 2 Directors (of whom one is the applicant herein) identified Resident Indian Investors, who agreed buy small percentage of shares, aggregating to 10%. They also identified 9 Non Resident Indians and Foreign Institutional buyers, each of whom agreed to buy less than 5% shares, aggregating to 23.6% of the shares.

16. After identification of the buyers, these two Directors wrote a letter dated 04.12.2006 to the Executive Director of the Reserve Bank of India seeking permission for the acquisition of shares by NRIs and Foreign Institutional Investors(FIIs). In response to the said letter, the Foreign Exchange Department of the Reserve Bank of India sent a communication dated 30.03.2007 to the Chairman of the Tamilnadu Mercantile Bank communicating their no objection for the transfer of 53,611 shares to 8 NRI/FIIs, named in the communication itself. It was stated in the said letter dated 30.03.2007 of the Reserve Bank of India that the Reserve Bank of India had no objection for the sale of those shares "from FEMA angle".

17. After the receipt of the said letter dated 30.03.2007 from the Foreign Exchange Department of the Reserve Bank of India, the Board of Directors of Tamilnad Mercantile Bank passed a resolution on 13.05.2007 approving the transfer of 95,418 shares in favour of persons identified by these 2 Directors,

including the applicant herein. Interestingly, the applicant was a member of the Board which passed the said resolution.

18. The moment the share transfers were approved by the Board, a fresh suit in C.S.No.491 of 2007 came to be filed on the file of this Court by 2 self styled entities by name-

- (i)Nadar Mahajana Sangam and
- (ii)Nadar Mahajana Share Investors Forum.

While the first Plaintiff was stated to be a Society, the second Plaintiff was stated to be a Trust. The prayer in C.S.No.491 of 2007 was (i) to declare the shares transferred by the defendants 1, 5 to 7 and 20 to 22 in favour of the defendants 2, 3, 8 to 19 and 23 to 29 as null and void and not binding on the plaintiffs; (ii) to restrain the defendants by a decree of permanent injunction from transferring the shares of the fourth defendant namely Tamil Nadu Mercantile Bank to any third parties; and (iii) to restrain the defendants 2, 3, 8 to 19 and 23 to 29 by a decree of permanent injunction from claiming any rights under the shares transferred to them by the defendants 1, 5 to 7 and 20 to 22. Pending suit, the Plaintiffs obtained an interim order of injunction, but the same was suspended on appeal.

19. However the Plaintiffs in C.S.No.491 of 2007 subsequently entered into a compromise with some of the Defendants on 04.02.2008 and attempted to get the compromise recorded. But it was opposed by the applicant herein, who was the second defendant in that suit and hence the Plaintiffs made an endorsement abandoning their claim as against Defendants 12 to 19. Consequently, C.S.No.491 of 2007 was dismissed as against defendants 12 to 19 therein.

20. At this stage, taking a sudden U-turn, the Board of Directors of TMB passed a resolution on 17-3-2008 restricting the voting rights of the Foreign Investors to 10%, in terms of Section 12(2) of the Banking Regulation Act. The Resolution was forwarded to the Reserve Bank of India on 20.03.2008. This resolution ran contrary to the earlier resolution dated 13-5-2007.

21. In the meantime, the Bank took out an application in A.No.23 of 2007 seeking suitable directions for holding the 84th Annual General Meeting. In that application, an order was passed by me on 27.03.2008 appointing Justice R. Balasubramaniam (Retired) as the Chairman for holding the 83rd, 84th and 85th Annual General Meetings and also extending the time for holding

the meetings upto 06.06.2008. Immediately after the said order, the TMB also communicated to the Foreign Investors by a letter dated 23.04.2008 that their voting rights will be restricted to 10%, by virtue of the resolution of the Board of Directors dated 17.03.2008

22. On coming to know of these developments and of the proposal to convene the meetings on 5-6-2008, another Association of shareholders by name Tamilnadu Mercantile Bank Shareholders Welfare Association along with a person by name G.K.Chezhian jumped into the fray and filed a fresh suit in C.S.No.481 of 2008. The suit was actually filed on 28.04.2008 on the file of this Court. The prayer in the suit was for a declaration that the transfer of 95,418 shares approved by the Board of Directors in the Meeting held on 13.05.2007 was null and void and for various consequential reliefs of permanent and mandatory injunction. Along with the suit, the Plaintiffs in C.S.No.481 of 2008 also moved several applications for interim injunction in O.S.Nos.534 to 536 of 2008. These applications were moved on 29.04.2008, which happened to be the date immediately preceding the date of closure of this Court for Summer recess. When these applications were moved for ad interim ex parte orders, it was brought to my notice by the learned counsel appearing for the Bank that the Chairman appointed by the order dated 27.03.2008 in A.No.23 of 2007 in C.S.No.981 of 2004 had fixed 05.06.2008 as the date for holding 83rd, 84th and 85th AGMs. Therefore I passed an order on 29.04.2008 in those applications permitting the Annual General Meetings as well as the proposed Elections to go on, as scheduled on 05.06.2008. However it was made clear that any resolution passed in the Annual General Meetings will not be implemented until further orders of this Court.

23. Since the Plaintiffs could not achieve their objective of stalling the meetings, they moved appeals in O.S.A.Nos.192 to 194 of 2008 before the Division Bench in the First Vacation Court, on 06.05.2008. But the Division Bench refused to entertain the appeals. The Special Leave Petitions filed by the plaintiffs in S.L.P.(C).Nos.13064-13066 of 2008 were also subsequently dismissed by the Supreme Court on 14.07.2008, as having become infructuous.

24. Therefore the 83rd, 84th and 85th AGMs were held together on 05.06.2008 under the Chairmanship of Justice Mr.R. Balasubramanian (Retired). Several disputes were raised in the Meeting with regard to the voting rights of the purchasers of

the shares. There were also disputes with regard to the proxies. Interestingly some of the disputes were between the shareholders and proxies and the others were between the proxies appointed by the same set of shareholders, in favour of different persons. The Chairman therefore evolved a set of formula, with the assistance of two Experts appointed by him and submitted sealed covers containing the results of the Election.

25. After the Court re-opened after summer recess on 06.06.2008, the Applications in O.A.Nos.534 to 536 of 2008 in C.S.No.481 of 2008 were listed and the learned counsel appearing for the TMB submitted the sealed covers containing the Report of the Chairman of the Meeting. The sealed covers were then opened by me in the open Court, in the presence of all the learned counsel, on the same day viz., 09.06.2008. The Report of the Chairman contained three different sets of results that were possible of production. The projection of the results under three different possibilities were,

(i) the possible outcome if the holders of all the disputed shares or their proxies, were permitted to vote fully.

(ii) the possible outcome if the voting rights of the holders of the disputed shares were restricted to 10%

(iii) the possible outcome if the holders of the disputed shares were denied voting rights in full I read out in open Court on 09.06.2008, the results of the Elections held in the 83rd, 84th and 85th AGMs, under all the above three possibilities and directed the learned counsel appearing for the Bank to distribute copies of the Chairman's Report to the learned counsel appearing for all the parties. Since the results were declared in the Open Court and the parties required time to go through the Report of the Chairman and make their submissions, the hearings of the Applications O.A.Nos.534 to 536 of 2008 were adjourned. At that time, the learned counsel for the Bank brought to my notice that a veiled threat was made by one of the Plaintiffs, in the Meeting held on 05.06.2008 that the very convening of the Meeting was contemptuous, in view of the earlier orders dated 26.07.2006. Therefore the learned counsel for the Bank expressed an apprehension that there was a possibility of the Plaintiffs moving a Contempt Petition, so as to ensure that the further progress in these proceedings are stalled. But the learned senior counsel who appeared for the Plaintiffs in C.S.No.481 of 2008 gave an assurance that the Plaintiffs would not resort to any such tactics.

26. But unfortunately when the Applications for injunction again came up for hearing on 23.06.2008, I was informed that

contrary to the assurance made by the learned senior counsel for the Plaintiffs on 9.6.2008, a Contempt Application was moved by the first Plaintiff and an interim order of injunction was also obtained on 12.06.2008 in a sub application, from another learned Judge of this Court. In view of this revelation, the learned counsel on record as well as the learned senior counsel appearing for the Plaintiffs withdrew their appearance at the time of hearing on 23.06.2008. However the President of the first Plaintiff Association was present in Court on 23.06.2008. Therefore I questioned him and found that the Contempt Petition was not only moved contrary to the assurance given to this Court, but also suppressing several orders of this Court. Therefore I passed an order on 23.06.2008 dismissing all the applications for interim injunction in O.A.Nos.534 to 536 of 2008 in C.S.No.481 of 2008. But it was made clear that since the erstwhile Board had undergone a change in the AGM held on 5.6.2008, the Managing Director and the two Nominee Directors of the Reserve Bank of India alone should continue on the Board till the sub application in the contempt application filed by the plaintiff in C.S.No.481/2008 was disposed of.

27. As against the order passed on 23.6.2008, dismissing their injunction applications, the plaintiffs filed appeals in O.S.A.Nos.274 to 277 of 2008. These appeals were dismissed by the Division Bench with costs of Rs.25,000/-, by an order dated 4.9.2008. The Special Leave Petitions arising out of the judgment of the Division Bench, were also dismissed by the Supreme Court in S.L.P.(C) Nos.26996-26999 of 2008 by order dated 21.11.2008.

28. As against the initiation of contempt proceedings by the plaintiffs against the Managing Director of the Bank, two third parties, who had secured sufficient votes in the elections held on 5.6.2008 to be declared elected, filed contempt appeals. Since the very maintainability of these appeals were questioned, a Division Bench of this Court considered the issue in detail and passed an order dated 29.7.2008, holding the appeals to be maintainable. The plaintiffs filed Special Leave Petitions against these orders of the Division Bench, but the Supreme Court dismissed the same with heavy costs {reported in 2009(2) SCC 784}. Ultimately left with no alternative, the first plaintiff withdrew the contempt petition.'

3. The development after the Order dated 26.11.2009 in application No.2954 of 2008 in C.S.No.481 of 2008 is as follows:

Date	Event
27.11.2009	The newly elected board of directors assumed office and decided to hold the 86 th Annual General Meeting on 06.01.2010.
06.01.2010	The 86 th and 87 th Annual General Meeting was held and business was transacted.
14.10.2010	Order of Bombay High Court passed an Order in W.P.No.2319 of 2009 and connected Writ Petitions restraining the conduct of the General Meetings of the Applicant Bank till the Reserve Bank of India passed an order on transfer of certain shares held by a group of 18 investors referred to in the RBI, Executive Director's Order dated 14.10.2009. The Bombay High Court observed that the RBI may take an objective decision as per material available on record and may not be solely guided by whatever prima facie observations made in the Order dated October 12, 2009.
31.03.2011	RBI passed an order holding that the purchasers constituted a group and directed them to disinvest in consonance with group theory.
16.04.2011	The Bank decided to convene the 88 th and 89 th Annual General Meeting on 15.06.2011. Four persons who ought to have retired but who did not retire on account of the injunction order of the Bombay High Court relating to the conduct of the AGM retired. Those who retired were appointed as Additional Directors.

सत्यमेव जयते

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Date	Event
28.04.2011	This Honourable Court admitted W.P.No.11159 filed by one Sundararaj on 26.04.2011 for directing Reserve Bank of India to reconsider the order dated 31.03.2011 by including the names of Mr.B.Ramachandra Adityan, his family members, friends and other 194 individuals as forming part of a group. An interim order was passed restraining the Bank from holding the meetings. The Writ Petition is still pending. Consequently the 88 th Annual General Meeting, 89 th Annual General Meeting and now later the AGMs till 2015 could not be held.
April 2011	W.P.No.823 of 2011 filed by Kanagaraj against all the shares classified by the DG, RBI (group of 18 entities in Bombay High Court).
4.11.2011	The RBI Circular dated 4 th November, 2011 relaxing the requirement of obtaining prior RBI approval for transfer of shares from resident to non-resident where the Indian Company whose shares are being transferred is engaged in financial services. No Objection Certificate (NOC) to be obtained from the financial sector regulator i.e., RBI.
2.12.2011	Shares transferred by Katra & RST to sub-continental equities pursuant to the order of the RBI.
11.6.2012	Shares of GHI Ltd sold to Robert and James Ardis Co.Ltd., Mauritius.

सत्यमेव जयते

WEB COPY

Date	Event
10.8.2012	One S.Murugesan holding 1 share filed suit seeking injunction restraining about 7 directors and interim injunction was granted by sub-court Thoothukudi. O.S. 233 of 2012 and the I.A.No.991 of 2012. Advocates were on boycott and Murugesan appeared as party in person. The suit was based on the law that by not holding the meeting Directors cannot continue to occupy the office. The pending injunction restraining the holding of the AGM was not brought to the notice of the Court.
14.08.2012	The Bank filed C.R.P.No.1715 of 2012 against order in the above suit before Honourable Madurai Bench challenging the exparte interim injunction granted by the Thoothukudi Sub-Court.
09.10.2012	Honourable High Court of Madras, Madurai Bench, dismissed CRP.No.1715 of 2012.
05.09.2012	RBI asks Banks to apply for compounding of alleged violation of FEMA regulations in respect of 46862 shares transferred to 7 foreign investors on 13.05.2007 (part of 95418 shares)
18.09.2012	TMB applies for compounding as advised by RBI
19.10.2012	The Appellant filed its Reply before Sub-Court, Thoothukudi in I.A.No.991 of 2012 and the case was not taken up on account of advocate's boycott
19.10.2012	R.Sellaprasad filed O.S.No.302/2012 before Sub Court Thuthookudi seeking declaration that two Directors namely P.Mahendrael and S.Sundar had vacated office. These two Directors filed C.S 1 and 2 of 2012 and both suits were decreed.

Date	Event
09.01.2013	Bank had filed transfer petition in TP - 481/2012 in District Court seeking transfer of the O.S.233/2012 to the District Court in view of pendency of similar matters CS 1 and CS 2 of 2012 filed by Shri P.Mahendrael and Shri S.Sundar respectively praying for (i) allowing them to continue as Directors till the AGM is actually held and (ii) for restraining the bank from preventing them from functioning as directors. The District Court had stayed the proceedings in O.S.233/2012 on 03.12.2012. In view of the stay order the interim injunction passed and extended from time to time by the Sub-Court was not extended on 09.01.2013, resulting in directors re-assuming the office. The suit was later withdrawn.
29.11.2013	An SLP No.34473/2012 filed by the Bank against order in CRP 1715/2012 was disposed of on 29.11.2013 as the subject had become infructuous.
26.04.2013	CS 1 of 2012 filed by Shri P.Mahendrael praying for (i) allowing him to continue as director till the AGM is actually held and (ii) for restraining the Bank from preventing him from functioning as director is decreed as prayed for.
29.07.2013	In W.P. 12543 of 2013 filed by P.S.P.K. Maragatharajapandian against the 93563 shares clubbed in the RBI DG order as a group (18 entities), the court orders that the entire group shall not exercise any voting rights in view of the provisions of Section 12 B of Banking Regulation Act, 1949.

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Date	Event
20.08.2013	RBI, DG issues an order directing TMB to not allow any voting rights to the above unacknowledged shares, in compliance with the High Court order.
24.8.2013	W.P.No.25256 of 2013 filed by M.Sundararajan against RBI and others for a mandamus directing respondents 1 to 3 namely RBI & Enforcement Directorate to take action against all other respondents for their failure to get RBI acknowledgment violating RBI regulations and transferring 94,818 shares (declared as the disputed shares by the 1 st respondent) to foreign investors and other respondents and prevent compounding of offences besides violation of FEMA and PMLA (Prevention of Money Laundering Act).
24.8.2013	W.P.No.25257 of 2013 filed by M.Sundararajan against RBI and others for a Mandamus directing respondents 1 and 4 (i.e., RBI and TMB) to nullify the transactions/transfer of the 94,818 shares by board resolution dated 13.05.2007 and consequently rescind entries in the register of members of share holders of TMB with reference to 94,818 shares.
10.09.2013	In writ petition Nos.25256-25258 of 2013 filed by M.Sundararaj, Madras High Court orders that the 94818 (all the shares transferred to 13.05.2007 except the 600 shares transferred to 194 retail investors) shall not be transferred.
15.04.2014	CS 2 of 2012 filed by Shri S.Sundar praying for (i) allowing him to continue as director till the AGM is actually held and (ii) for restraining the Bank from preventing him from functioning as director is decreed as prayed for .
10.07.2014	Order passed by the High Court, Madurai Bench dismissing a Writ Petition No.655/2014 filed by one R.Sellaprasad against continuation of all the elected directors of the bank citing Section 16 of Companies Act, 2013, on technical grounds.

Date	Event
24.07.2014	The RBI Affidavit filed in Kanakaraj Writ Petition No.1317 of 2013 states that shares purchased by the 'group, if brought under 5% would be valid and divestment of the said shares would be in compliance with the RBI Order of 31 st March, 2011.
25.08.2014	Writ petition No.14110 of 2014 filed by one G.Vettivel, shareholder praying for issuing directions for vacation of directorship of elected directors of the Bank. The case at last heard on 14.09.2015 and is posted to 30.09.2015.
17.12.2014	Following a series of letters and replies by the Zonal Office, Bangalore of Directorate of Enforcement, finally the Special Director, DoE issues show cause notice to 26 entities including TMB, its Directors and Secretaries regarding alleged violation of FEMA regulations in respect of 46862 shares transferred to 7 foreign investors on 13.05.2007 (part of 95418 shares)
06.05.2015	TMB and its directors and Secretary filed their respective replies.
21.06.2015	W.P.No.12726 of 2015 filed by Ocean Textiles (P) Ltd. rep by Director A.Rajendran against Union of India and others for Mandamus directing respondents 1 to 5 to initiate appropriate action under the provision of FEMA and PMLA by investigating into the source of funds employed in the transfer and acquisition of 1,12,151 of shares of TMB held under one vault by Standard Chartered Bank and freeze all the rights retained to 1,12,151 numbers shares whose acknowledgments were refused by the 2 nd respondent in its report dated 31.03.2011 and by issuing notice to the respondents 7 to 13 and initiate appropriate action in accordance with law within a time frame fixed by this Court.
21.07.2015	Writ petition No.12726 of 2015 filed by Ocean Textile Pvt.Ltd., shareholder praying for issuing directions to directorate of enforcement not to continue with the proceedings under its show cause notice without including the seven non resident investors as parties.

Date	Event
24.07.2015	Writ petition No.13049 of 2015 filed by one R.Sellaprasad, shareholder praying for issuing directions for vacation of directorship of elected directors of the Bank (except Shri Shidambaranathan). The case was last heard on 14.09.2015 and is posted to 30.09.2015.

4. The Bank has filed Transfer Petitions before the Apex Court seeking transfer of all the matters before this Court. The Transfer Petitions are pending with interim orders and it was informed that in view of the number of respondents arrayed as parties, the service could not be completed leading to the early disposal of those cases.

5. On 28.4.2011, the petitioner in W.P.No.11159 of 2011 has obtained an interim order in M.P.No.1 of 2011 being the holder of 25 shares prohibiting the respondents from convening the Annual General Body meeting. This was on the ground that the share holding of Mr.B.Ramachandra Adityan has not been added as a part of the group and having acted in concert with the Order passed on 31.3.2011 by the Reserve Bank of India. Similarly, an interim order has been obtained in W.P.(MD) No.12543 of 2013 by the petitioner therein, who is the holder of 13 shares praying for a writ of mandamus not to deal or transfer the unacknowledged shares. An interim order was obtained on 29.7.2013 in M.P.No.2 of 2013 in effect preventing the transferees from exercising their voting rights and the right to alienate. A subsequent order was also passed by the Reserve Bank of India on the voting rights in purported compliance of the Order passed in W.P.(MD) No.12543 of 2013 directing the Bank not to permit any voting rights to the unacknowledged shareholders. Resultantly, the administration of the petitioner has come to a grinding halt as no annual general body meeting could be held by convening the meeting. These are the background facts governing these cases.

6. At the time of hearing, this Court has made it clear that final orders would be passed in W.P.Nos.25256 to 25256 of 2013, while dealing with the interim orders granted in W.P.No.11159 of 2011 and W.P.(MD) No.12543 of 2013. Accordingly, this Court heard the learned counsels at length.

Submissions:-

7. Learned Senior Counsel appearing for the petitioner in W.P.No.11159 of 2011 submitted that objections have been given with respect to the shares acquired by Mr.B.Ramachandra Adityan. However, the same has not been considered. There is no finding given against the shares held by Mr.B.Ramachandra Adityan. As there are serious allegations made, the Reserve Bank of India will have to conduct enquiry and then add Mr.B.Ramachandra Aditan in the Group. While there is no objection to convene the annual general body meeting, it can only be done after the said exercise is done.

8. The learned counsel appearing for the petitioner in W.P.No.25256 of 2013 submitted that the allegations are very serious in nature. When there is a cloud over the shares and the nature of the transfer, the consequences will have to follow. Though the Order dated 31.3.2011 passed by the Reserve Bank of India has not been challenged, the same cannot be construed to benefit the transferees. What is to be seen is the findings given. Therefore, unless and until a complete enquiry is done by the Reserve Bank of India and the Enforcement Directorate, no further action should be done.

9. Learned counsel appearing for the petitioner in W.P.No.12543 of 2013 submitted that in all these cases, a common address has been given on behalf of the transferees. There is only one Banker for all the purchases. The Order dated 31.3.2011 passed by the Reserve Bank of India clearly states about the same. Having questioned the transfer, it is not open to the Reserve Bank of India to change its stand. The private respondents also have questioned the Order passed by the Reserve Bank of India and therefore they cannot be allowed to contend to the contrary. The number of shares is not important but the smooth and proper running of the bank is. Therefore, there is no necessity to vacate the interim order granted.

10. Learned counsel appearing for the private respondents submitted that there is total lack of bonafides in the writ petitions filed. They have been filed by the petitioners at the instance of the some one who does not want the transferees to exercise their rights. As the Order dated 31.3.2011 has not been put under challenge, the same will have to be given effect to. An Interim order has been obtained in W.P.(MD) No.12543 of 2013 without impleading the necessary parties. A private dispute, if

any, cannot be sought to be adjudicated in a different way. The order passed in Application No.2954 of 2008 in C.S.No.481 of 2008 would govern the parties. There is a difference between the transfer of shares and the rights flow from it. Section 12-B of the Banking Regulation Act, 1949, as amended, can only be prospective. Therefore, the order passed in the earlier occasion by this Court would govern the case. The petitioners are not the owners of the shares. The proceedings under the Foreign Exchange Management Act, (in short, 'FEMA') are totally different and even assuming there is violation, the same would not nullify the transfer. Without challenging the order of Reserve Bank of India, there cannot be an indirect way of preventing the parties from exercising a right flowing from it. The Reserve Bank of India itself having filed a counter in paragraph No.21 in W.P.(MD) No.12543 of 2013 cannot take a different stand. The private respondents are inclined to either sell their shares or to exercise their voting rights. Therefore, the interim orders will have to be vacated.

11. Learned counsel appearing for the Bank submitted that in view of the constant attack towards the convening of the meetings, which requires seven annual general body meetings to be held, the functioning of the Bank has been seriously jeopardised. Therefore, serious business transactions involved. Mandatorily the share capital has to be increased. Learned counsel also has filed a memo delineating the work to be done by the Bank after the convening of the meeting, which are as under:

'The following is a list of agenda items that are pending to be transacted at various AGMs that have not been held 88th Annual General Meeting (for the year 2010, due on or before December 31, 2010 as ROC had extended the time)

1. Adoption of annual accounts for the year ended March 31, 2010 - Ordinary Resolution, Ordinary Business
2. Declaration of final dividend - Ordinary Resolution, Ordinary Business (@ 750 per share (7500%) was recommended by the Board)
3. Regularisation of the additional Directors appointed on April 16, 2011, i.e., Shri P.Yesuthasen, Shri T.Rajakumar, Shri B.Prabaharan and Shri T.Vethanayagam and Shri A.Shidambaranathan appointed on October 21, 2011 - Ordinary Resolution, Ordinary Business, separate resolutions (Either the same directors could be re-appointed or some other person could be appointed in their place. All the directors due to retire by rotation at the above AGM were co-opted on April 16, 2011 and hence there is no case of retirement by

rotation at this AGM)

4. Appointment of Suri & Co. as the Central Statutory Auditors for the financial year 2010-11 - Ordinary Resolution, Ordinary Business (usually when the auditors are appointed no financial year is specified. However, the auditors are appointed to hold office from the conclusion of a particular annual general meeting till the conclusion of the succeeding annual general meeting and usually only one particular financial year falls in between which is deemed to be the year of audit)
5. Appointment of branch statutory auditors for the financial year 2010-11 Ordinary Resolution, Special Business
6. Increase in remuneration of Shri G.Nagamal Reddy, MD & CEO from 1.25 lakh to 2.50 lakh with corresponding increase in other allowance w.e.f. 01.01.2010, RBI vide its letter No.DBOD. No.12397/08.55.001/2009-10 dated 14.01.2010 - Ordinary Resolution, Special Business
7. Appointment and payment of remuneration of Shri A.K.Jagannathan, MD & CEO under Section 35 B of the BR Act for a period of two years with effect from the date of his taking charge (23.09.2010) at a remuneration of 2.50 lakh per month and other allowances and perquisites, approved by RBI vide letter No.DBOD 3592/08.55.001/2010-11 dated 02.09.2010 Ordinary Resolution, Special Business.
8. Increase in the boarding and lodging allowances of Shri A.K.Jagannathan, MD & CEO from 'reimbursement of actual expenses plus 500 as halting allowance' to 'reimbursement of actual expenses plus 1000 as halting allowance' with retrospective effect from the date of his appointment, 23.09.2010, approved by RBI vide letter No.DBOD.8380/08.55.001/2010-11 dated 26.11.2010 - Ordinary Resolution, Special Business.

89th Annual General Meeting (for the year 2011, due on or before December 31, 2011 as ROC had extended the time)

1. Adoption of annual accounts for the year ended March 31, 2011 - Ordinary Resolution, Ordinary Business
2. Declaration of final dividend - Ordinary Resolution, Ordinary Business (@ 1000 per share (10000%) was recommended by the Board)
3. Retirement of Shri V.V.D.N.Vikaraman, Shri S.C.Sekar and Shri S.R.Aravind Kumar appointed in the 86th AGM held on January 6, 2010 - Ordinary Resolution, Ordinary Business, separate resolutions (Either the same directors could be re-appointed or some other person could be appointed in

their place.)

4. Appointment of Suri & Co. as the Central Statutory Auditors for the financial year 2011-12 - Ordinary Resolution, Ordinary Business
5. Appointment of branch statutory auditors for the financial year 2011-12 - Ordinary Resolution, Special Business

90th Annual General Meeting (for the year 2012, due on or before September 30, 2012)

1. Adoption of annual accounts for the year ended March 31, 2012 - Ordinary Resolution, Ordinary Business
2. Declaration of final dividend - Ordinary Resolution, Ordinary Business (@ 450 per share (4500%) was recommended by the Board)
3. Retirement of Shri P.Mahendavel and Shri S.Sundar appointed in the 87th AGM held on January 6, 2010 - Ordinary Resolution, Ordinary Business, separate resolutions (Either the same directors could be re-appointed or some other person could be appointed in their place.)
4. Appointment of Suri & Co. as the Central Statutory Auditors for the financial year 2012-13 - Ordinary Resolution, Ordinary Business
5. Appointment of branch statutory auditors for the financial year 2012-13 - Ordinary Resolution, Special Business
6. Increase in remuneration of Shri A.K.Jagannathan, MD & CEO from 2.50 lakh to 3.00 lakh with corresponding increase in other allowances and perquisites w.e.f. 01.01.2012, approved by RBI vide its letter No.DBOD.No.16256/08.55.001/2011-12 dated 30.04.2012 - Ordinary Resolution, Special Business
7. Appointment and payment of remuneration of Shri K.B.Nagendra Murthy, MD & CEO RBI, under Section 35B of the BR Act for a period of two years with effect from the date of his taking charge (03.07.2012) at a remuneration of 3.00 lakh per month and other allowances and perquisites. The approval was conveyed by RBI vide letter No. DBOD.19205/08.55.001/2011-12 dated 26.06.2012 - Ordinary Resolution, Special Business

91st Annual General Meeting (for the year 2013, due on or before September 30, 2013)

1. Adoption of annual accounts for the year ended March 31, 2013 - Ordinary Resolution, Ordinary Business
2. Declaration of final dividend - Ordinary Resolution, Ordinary Business (@ 250 per share (2500%) was recommended by the Board)
3. Appointment of Suri & Co. as the Central Statutory Auditors

for the financial year 2013-14 - Ordinary Resolution, Ordinary Business

4. Appointment of branch statutory auditors for the financial year 2013-14 - Ordinary Resolution, Special Business

92nd Annual General Meeting (for the year 2014, due on or before September 30, 2014)

1. Adoption of annual accounts for the year ended March 31, 2014 - Ordinary Resolution, Ordinary Business
2. Appointment of Maharaj N.R. Suresh & Co. as the Central Statutory Auditors for the financial year 2014-15 - Ordinary Resolution, Ordinary Business
3. Appointment of branch statutory auditors for the financial year 2014-15 - Ordinary Resolution, Special Business
4. Increase in remuneration of Shri K.B.Nagendra Murthy, MD & CEO from 3.00 lakh to 3.50 lakh with corresponding increase in other allowance w.e.f. 01.01.2014, approved by RBI vide its letter No.DBOD.17685/08.55.001/2013-2014 dated 25.04.2014 - Ordinary Resolution, Special Business
5. Appointment and payment of remuneration of Shri H.S.Upendra Kamath, MD & CEO RBI under Section 35B of the BR Act for a period of three years with effect from the date of his taking charge (09.07.2014) at a remuneration of 3.50 lakh per month and other allowances and perquisites. The approval was conveyed by RBI vide letter No.DBOD.19563/08.55.001/ 2013-2014 dated 04.06.2014 - Ordinary Resolution, Special Business

93rd Annual General Meeting (for the year 2015, due on or before September 30, 2015):

1. Adoption of annual accounts for the year ended March 31, 2015 - Ordinary Resolution, Ordinary Business
2. Appointment of Central Statutory Auditors for the financial year 2015-16 (yet to be approved by RBI) - Ordinary Resolution, Ordinary Business
3. Appointment of branch statutory auditors for the financial year 2015-16 - Ordinary Resolution, Special Business
4. Regularisation of independent directors: Shri A.Shidambaranathan and Shri P.Yesuthasen - Ordinary Resolution, Special Business
5. Amendment in capital clause of Memorandum of Association for increasing the authorised share capital - Ordinary Resolution, Special Business
6. General amendment in Articles of Association of the Bank in consonance with the provisions of Companies Act, 2013 - Special Resolution, Special Business

7. Amendment in Articles of Association to give effect to the increase in authorised share capital - Special Resolution, Special Business (This may also be made part of the general amendments suggested at Item No.6).
8. Amendment in Articles of Association to give effect to make enabling provisions for dematerialisation of shares - Special Resolution, Special Business (This may also be made part of the general amendments suggested at Item No.6)
9. Capitalisation of reserves and issue of bonus shares, if any - Ordinary Resolution, Special Business
10. Issue of right shares, if any - Special Resolution, Special Business
11. Initial public offer of shares, if any - Special Resolution, Special Business
12. Increase in remuneration of Shri H.S.Upendra Kamath, MD & CEO: change in medical facilities as 'full reimbursement of the actual medical expenses incurred by the MD & CEO and his spouse, irrespective of whether the expenses were casual medical expenses or expenses for domiciliary treatment or hospitalization, approved by RBI vide letter No.DBR. Appt. No.9303/08.55.001/2014-15 dated 24.12.2014 - Ordinary Resolution, Special Business.'

12. Learned counsel appearing for the Reserve Bank of India submitted that the power of the Reserve Bank of India has already been upheld by the Apex Court in Peerless General Finance and Investment Co.Limited Vs. Reserve Bank of India, ((1992) 2 SCC 343). The Order dated 31.3.2011 has become final. Therefore, it is not open to the parties to contend to the contra. As there is no challenge to the said order, any attempt to nullify the same cannot be accepted. The case of Mr.B.Ramachandra Adityan has been considered. There is no material to bring him under the Group as of now. He is also no more. The issues pertaining to the regularisation is a matter for consideration. The order passed by this Court actually prevents Reserve Bank of India from exercising its statutory power. There is no bar for the Reserve Bank of India to go on for further investment based upon subsequent material, if any. Insofar as the convening of the meeting and conduct of Annual General meeting is concerned, the following memo has been filed by the Reserve Bank of India.

'MEMO FILED ON BEHALF OF RESPONDENTS 1 & 2 - RBI'

The above named Respondents 1 & 2 most respectfully submit as follows:

1. The above writ petition has been filed for the reliefs contained therein and pending disposal of the writ petition, vide order dated 29.07.2013, this Hon'ble Court was pleased to pass interim orders on the voting rights of respondents 4 to 21. Accordingly, in compliance with the orders passed by this Hon'ble Court, the 2nd respondent herein had passed an order directing the 3rd Respondent herein - Tamilnad Mercantile Bank Ltd (herein after referred to as "TMBL") not to permit any voting rights to the unacknowledged share holders whose shares were transferred in contravention of Section 12B(3) of the Banking Regulation Act, 1949 as declared by the order of the RBI dated 31.3.2011, pending disposal of the writ petition. Thereafter on behalf of respondents 1 and 2 counter affidavit has been filed before this Hon'ble Court on 30.9.2015 on the reliefs and pleadings in this writ petition.

2. It is respectfully submitted that in the counter affidavit filed by RBI in the subject writ petition, in paragraph 16, the sale of shares by Katra Holdings Limited, RST Limited and GHI Limited (Respondents 6, 4 and 5 respectively) to Sub Continental Equities Limited and Robert & Ardis James Company Limited, as reported by the 3rd Respondent TMBL, has been averred. Similarly the voting rights have also been clearly stated in paragraph 20 of the above mentioned counter affidavit.

3. It is respectfully submitted with regard to the voting rights of Sub Continental Equities and Robert & Ardis James Company, who had purchased the shares from Respondents 4 & 6 and 5 respectively, that based on the information and material as furnished by the 3rd Respondent TMBL or otherwise available with RBI, at this stage RBI has not formed any view on whether or not these two entities are part of the group of 18 investors (respondents 4 to 21). In the circumstance, in order to facilitate the holding of AGM by TMBL, it is submitted that RBI may not have any objection to these two entities namely Sub Continent Equities and Robert & Ardis James Company, who according to TMBL hold 4.62% and 4.95% shares, from exercising voting rights in respect of their holdings in the AGM as a onetime measure. It shall not be treated as a concession or precedent for other election/s or on any other issue. This No Objection shall also not be construed as any permission/approval by RBI under the Foreign Exchange Management Act, 1999 for the original transfer of shares in favour of RST Limited, GHI Limited and Katra Holdings Limited (respondents 4, 5 & 6 respectively) or waiver of any right to take action, as RBI

deems fit, for any contravention.

4. In so far as the voting rights of respondents 7 to 21, averments have been made in the counter affidavit filed by RBI on the subject matter including in paragraph 20. As submitted therein, as a consequence of the order dated 31.03.2011 to the effect that group holding in the aggregate should be below 5% of the paid up capital of TMBL, it would neither be appropriate nor in the interest of TMBL and its depositors if respondents 7 to 21, in the aggregate, exercise voting rights on poll 5% or more of the total voting rights of all the shareholders of TMBL. Accordingly, RBI may not have objection if respondents 7 to 21, in the aggregate, are permitted to exercise voting rights in the AGM upto 4.99% only of the total voting rights of all shareholders. The 3rd Respondent TMBL shall ensure so in the ensuing AGM to be conducted pursuant to any orders passed by this Hon'ble Court.

For the reasons stated herein above, this Hon'ble Court may be pleased to record this memo of RBI and pass such or other orders as this Hon'ble Court may deem fit and necessary in terms of the above Memo and thus render justice.''

13. Learned counsel appearing for the Enforcement Directorate submitted that the adjudication process has begun. Therefore, appropriate orders would be passed by the said authority based upon the available materials.

Discussion:-

14. W.P.Nos.25256 to 25258 of 2013:- Insofar as W.P.No.25256 of 2013 is concerned, the petitioner, who also happens to be petitioner in W.P.No.11159 of 2011, has sought for action to be taken by the Enforcement Directorate. In the counter affidavit filed by respondents 2 and 3 therein, viz., the Directorate of Enforcement, it has been stated as follows:-

''6. I humbly submit that the Special Director of Enforcement, the Adjudicating Authority under FEMA has taken cognizance of the said complaint and issued Show Cause Notice in F.No.T-4/10/BGZO/SRO/2014 dated 17.12.2014 for the following contraventions under FEMA to the respondents 4, 5, 7, 8, 10, 11 & 38 (for the respective contraventions under FEMA).''

Thus, the prayer sought for in the said writ petition no longer survives for consideration. Therefore, Writ Petition

No.25256 of 2013 is disposed of accordingly giving liberty to the Special Director of Enforcement, Adjudicating authority to proceed further in accordance with law.

15. Coming to W.P.No.25257 of 2013, the petitioner has sought for a direction to nullify the transactions/transfer of the disputed shares. This prayer cannot be granted for the reason that for the very same relief, civil suits are pending in C.S.No.491 of 2007, 1099 of 2007 and 481 of 2008 respectively, which are pending disposal in the Original Side of this Court. Furthermore, though the Reserve Bank of India is an authority under Article 12 of the Constitution of India, the power available to it under Section 12-B of the Banking Regulation Act, 1949 does not extend to nullify or rescind the transfers. To put it differently, it deals with the effect of a wrong transfer and not nullifying or cancelling it. In view of the same, and as the matters are subjudice before this Court, atleast from the year 2007 onwards, a subsequent writ petition filed in the year 2013 on behalf of a shareholders of 25 shares to deal with the private dispute in a different methodology cannot be accepted. Accordingly, the said Writ Petition stands dismissed accepting the stand of the Reserve Bank of India as well as the other respondents. Similarly the power under Section 35-A of the Banking Regulation Act, 1949 also cannot be extended for the above said purpose.

16. Coming to the other Writ Petition viz., W.P.No.25258 of 2013, the Reserve bank of India by the order dated 30.3.2011 merely dealt with the issue of acknowledgement of the holding of 5% or more of the paid up capital. Therefore, in respect of the shares there was no administrative approval for regularisation from the FEMA angle. These are the matters, which can be looked into by the Reserve Bank of India, including the question as to whether such transfers require acknowledgement or not and apart from approval required under FEMA. In this connection, it is apposite to place on record the stand taken by the Reserve Bank of India in the counter affidavit filed, the relevant portion of which, reads as under:

''8. It is submitted that, with reference to Writ Petition.No.25257 of 2013, the petitioner himself has stated in paragraphs 6 and 7 of the writ petition that the question whether the transfer of shares that took place on 13.05.2007 is valid, binding and enforceable is a matter pending consideration of this Hon'ble Court in civil suits filed by various parties.

As the matter is sub-judice, the relief as sought by the petitioner to direct Reserve Bank to nullify and rescind those transfers is unsustainable in law. Even otherwise, the powers available to Reserve Bank under section 12B of the Banking Regulation Act, 1949 does not extend to nullifying or rescinding the transfers.

9. It is submitted that, with reference to Writ Petition No.25258 of 2013, RBI had earlier refused to acknowledge the transfer of shares in favour of Sterling Group (arrayed as Respondent No.6). As regards transfers effected on 13.05.2007 in favour of Respondent Nos.8, 18 to 27 and 31 to 37 (18 persons named in the order dated 31.03.2011), RBI has declined to acknowledge the holding of 5% or more of the paid up capital of TMBL by them. With respect to other respondents, RBI has not passed any order either acknowledging or refusing to acknowledge the transfer of shares. With respect to transfers effected in favour of non-resident Respondents, RBI has so far not granted any administrative approvals for regularizing those transfers from FEMA angle and has advised TMBL vide letter dated 16.10.2014 that the decision regarding regularization of the transfer of shares of TMBL to non-resident entities done on 13.05.2007 will be taken only on conclusion of the proceedings in that regard by the Directorate of Enforcement. In any event, questions such as whether any transfer of share requires acknowledgement and if so, whether to acknowledge or not and whether such transfers needs approval under FEMA and if so, whether to approve or not etc., are matters to be considered by RBI in accordance with law based on the facts, circumstances and material available. It is legally impermissible to direct a statutory authority vested with discretionary powers, to exercise that discretion in a particular manner. Therefore, the petitioner is not entitled to seek for a direction to direct Reserve Bank to exercise its discretion in a particular manner and accordingly, the relief sought by the petitioner is unsustainable in law." सत्यमेव जयते

Thus, in view of the same, this writ petition is also dismissed keeping the power of the Reserve Bank of India in tact to take appropriate action, when a situation warrants.

17. Coming to the interim orders granted in W.P.No.11159 of 2011 and W.P.(MD) No.12543 of 2013 are concerned, this Court finds unanimity with all the parties i.e., there is no difficulty in the meetings to be convened for the purpose of

conducting the annual general meetings. In other words, the objection is with reference to the voting rights. All the parties have also agreed that the order passed by the Reserve Bank dated 31.03.2011 would govern the cases. Therefore, it is imperative to go into the said order. What is important is the observations made and the conclusions arrived at thereafter. It is apposite to extract the relevant portion of the said order for the sake of convenience:

'24. My observations

(i) Banks are 'special' as they not only accept and deploy large amount of uncollateralized public funds in fiduciary capacity, but they also leverage such funds through credit creation. The banks are also important for smooth functioning of the payment system. In view of the above, legal prescriptions for ownership and governance of banks laid down in Banking Regulation Act, 1949 have been often supplemented by regulatory prescriptions issued by RBI from time to time. It is well settled that diversified ownership minimises the risk of misuse or imprudent use of leveraged funds, Banking is a business which thrives on confidence. The regulator of the banking system of the country cannot remain passive to the developments in a bank, which has the potential to result in indiscriminate concentration of shareholdings in the hands of a few, whose integrity and fitness are not beyond the shadow of doubt. Any such development can erode the depositor confidence which, as a regulator, RBI is expected to protect.

(ii) The documents submitted before me and the information gathered from other sources explained above do not point to a different state of affairs regarding the 'Group Nature' of the entities/individuals involved, than what was decided in the order dated October 12, 2009. Therefore, I am compelled to proceed as if the 'Group' remains intact, thereby attracting the Guidelines on acknowledgement issued by the Reserve Bank of India.

(iii) It is true that subsequent to the order of the High Court, most of the investors, TMBL and certain outsiders have provided some information for facilitating the acknowledgement process. A substantial summary of the information and submissions provided by them have been indicated in the earlier part of this order.

(iv) While some of the investors were more forthcoming with

information required for acknowledgement process, others have chosen either not to respond at all or to respond with minimal information. Essentially, the acknowledgement process is an activity aimed at ascertaining the fitness of the group of persons to hold shares beyond the threshold limit of 5%. A number of factors are taken into account for this purpose, including integrity, reputation and track record in financial matters. It goes without saying that when a conclusion has been arrived at that a set of persons form a group or they are acting in concert, what is required to be seen is the fitness of the group as a whole. It may not serve any useful purpose to find that one member of the group is fit or that a few other members do not qualify. The integrity and reputation of the shareholders in a group, which form two essential ingredients in the acknowledgement process, cannot be tested in isolation. In other words, the company they keep in the Group decide to a great extent their integrity and reputation. When some of the entities forming part of the Group make inadequate and unreliable disclosures concerning them as sought by the Regulator, a veil of suspicion shrouds the entire Group, even if there exist members with clean and unblemished antecedents.

(v) The process of due diligence of shareholders involves reference to the relevant regulator and other authorities. Unless, the essential materials for the same are made available, it would not be possible to carry out this exercise in a meaningful way. By virtue of the Investors being incorporated as investment vehicles in other jurisdictions viz., Mauritius, Cayman Islands and USA, no substantial information could be obtained on these entities. The entities from Caymen Islands and USA had not provided any information to either the bank or the RBI and hence no due diligence exercise could be initiated. Further, the 4 investors from Mauritius were incorporated as investment vehicles in 2007 i.e., the year in which the transfer of TMBL shares had taken place and information on the entities in respect of integrity, reputation, business, track record in financial matters and compliance with tax laws could not be obtained and the sources of funds in respect of these entities also could not be established. However, on the whole, seven foreign entities forming part of the Group had acquired shares in violation of the permission given by FED under FEMA and further, in respect of two foreign investors, the charges of insider trading by a foreign regulator and past litigation in respect of settlement of dues raise concerns in respect of the investors 'fit and proper' status.

(vi) Three resident investors, namely, Shri Gokul Patnaik, Vector Program Private Limited and Shri Sathiyaseelan, have received foreign inward remittances towards purchase of shares in 2007. Further, another foreign inward remittance was received by Shri Gokul Patnaik in June 2008 and was transferred to an associate entity of an investor in the group. Since foreign inward remittances have been received by resident persons/entity, examination of the matter under FEMA provisions and resolution of the disputes among the investors and the purchasers may be required. Further, Shri Sathiyaseelan has misrepresented to RBI about the foreign inward remittance of Rs.3.00 crore received from M/s.Katra Holdings Limited, Mauritius. The matter relating to transactions by Shri Gokul Patnaik are under examination.

(vii) In respect of four resident individuals, namely, Shri L.Sridharan, Shri N.Ganesan, Shri MGM Maran and Shri M.G.Muthu, who are part of the group, sources of funds and funds trail to trace the payment of consideration to the sellers could not be established. Further, inspite of specific information being sought in this regard, the investors have chosen not to provide details of the same. Also, as per Shri Adityan's submissions to the Court, it appears that Shri L.Sridharan and Shri N.Ganesan were holding the shares temporarily for further distribution to other persons.

(viii) In respect of 4 resident entities/ individuals, namely, Hemangini Finance and Leasing Private Limited, Shri R.Chinnakannan and Smt.C.Chandrammal, although they continue to be the shareholders in the bank's books, the shares have been reportedly sold to M/s.Katra Holdings Private Limited.

(ix) TMBL is an old private sector bank with a small share capital base of Rs.28.44 lakh and total number of shares at 2,84,454. Out of the total 2,84,454 shares of the bank, 1,12,151 shares (i.e., 42.59% of the total shares of the bank) are held in the 'Project Windmill Escrow Account' with SCB and out of the 1,12,151 shares, 51,293 shares are under dispute where the investors have claimed that they have not sold the shares while 3 of the foreign investors have reportedly been able to produce certain documentary evidence of payment of consideration and that they are in possession of original documents relating to sale. That is shares of 12 out of 18 investors in the group are part of the 'Project Windmill Escrow Account' and shares of 5 other investors have reportedly been sold to an associate of an investor whose shares are already in the above Escrow account.

Further, the arrangements under which such substantial portion of the shareholding is held under the Escrow arrangement is not clear and lacks transparency. However from the available material it appears that Corsair, a foreign Private Equity firm has the discretion to operate the Escrow account and source purchasers for substantial portion of TMBL shares.

25. Order

As noticed above, substantial portion of the shares of TMBL are held in the 'Project Windmill Escrow Account' at SCB. The arrangement under which the shares are kept in the above Escrow account is not clear and lacks transparency. However, the available material indicates that a little below half of TMBL's shares are under Escrow account with a foreign private equity firm, against which there are allegations of trying to wrest control over TMBL shares, having the discretion to source purchasers for the TMBL shares. Some of the sale transactions purportedly entered into by 3 foreign entities, 7 resident individuals/ entities and submission made by a shareholder to a High Court in respect of 2 individuals indicate a possibility that the shares held in 'Project Windmill Escrow Account' are temporary holdings awaiting transfers to third parties. Under the circumstances, conducting due diligence exercise on the temporary shareholders would have no meaning. Further, the information available in respect of the foreign investors is either bare minimum or not satisfactory. In any case, the share transfers in favour of 7 foreign investors were in violation of FEMA provisions. Shareholding in respect of few of the resident investors would also require FED clearance due to receipt of foreign inward remittance towards advance consideration for purchase of TMBL shares. Further, some of the investors have either not provided any information towards the acknowledgement process or have not responded to the specific information sought by RBI. A few investors have also not been forthcoming in declaring details in respect of their transactions and made inconsistent statements to RBI regarding the source of funds and purchase of shares making it difficult to establish the source of funds for the transfer of shares.

Further, holding of shares by certain persons for further distribution to others, receipt of foreign inward remittances from third parties towards transfer of TMBL shares even in 2008 i.e. after the original transfers in May 2007 and transfer of such funds to an associate of another investor in the group,

disputes relating to share transfers inspite of receiving consideration and yet not availing legal remedy to resolve the disputes and complaints and allegations of lodging of shares of a resident by a foreign investor before transfers have been effected by the bank, acquisition of shares by an associate of a foreign investor that is a shareholder as per the books of the bank, indicate that the matter is indeed very complex and that the investors have non-transparent dealings and agreements/understanding. The existence of allegations and counter allegations relating to subsequent transfer of shares and the transactions being declared only recently, in 2010, i.e., after 3 years from the date of foreign inward remittance in 2007, leaves a credibility gap in their submissions. On the whole, the transactions and the shareholding by these 18 investors is not inspiring confidence to the Regulator for granting acknowledgement.

In the circumstances, I do not consider that the investors mentioned in the order dated October 12, 2009 have satisfied the criteria fixed by RBI for acknowledgement purpose. Therefore, I have no other choice but to decline to acknowledge the holding of 5% or more of the paid up capital of TMBL by the group consisting of M/s RST Limited, Katra Holdings Limited, GHI Limited, Kamehameha Mauritius Limited, FI Investments (Mauritius) Limited, Cuna Group (Mauritius) Limited, Swiss Re-investors (Mauritius) Limited, Shri Gokul Patnaik, Vector Programme Private Limited, Shri P.S.Sathiyaseelan, Hemangini Finance and Leasing P Limited, Shanmuga Financial Services P Limited, Shri L Sridharan, Shri N Ganesan, Shri R.Chinnakannan, Smt C.Chandrammal, Shri M G M Maran and Shri M G Muthu. The Group holding in the aggregate should be below 5% of the paid up capital of TMBL."

18. Earlier, an order was passed by the Reserve Bank of India on 12.10.2009. The said Order was passed in pursuant to the direction issued by the High Court of Bombay in the Order dated 8.4.2009 in W.P.No.2684 of 2008. Accordingly, it was held by the Reserve Bank of India in the Order dated 12.10.2009 in the following manner:

"Order

21. In view of the conclusion reached above, I direct TMBL to approach RBI along with full details in the enclosed format for acknowledgement of transfer of shares in favour of RST Ltd, Katra Holding Ltd., GHI Ltd., Kamehemaha Mauritius Ltd., FI

Investments (Mauritius) Ltd., Cuna Group (Mauritius) Ltd., Swiss Re-investors (Mauritius) Ltd., Shri Gokul Patnaik, Vector Programme Pvt.Ltd., Shri P.S.Sathiyaseelan, Hemangini Finance and Leasing P.Ltd., Shanmuga Financial Services P Ltd., Shri L.Sridhar, Shri N.Ganeshan, Shri R.Chinnakannan, Shri C.Chandarmmal, Shri M G M Maran and Shri M G Muthu, in terms of circular on acknowledgement of Transfer/Allotment of shares in Private Sector Banks issued on February 3, 2004.

22. I direct that a copy of this order be forwarded to Tamilnad Mercantile Bank Ltd., Shri C.Kanagaraj, RST Ltd., Katra Holding Ltd., GHI Ltd., Kamehemaha Mauritius Ltd., FI Investments (Mauritius) Ltd., Cuna Group (Mauritius) Ltd., Swiss Re-Investors (Mauritius) Ltd., Shri Gokul Patnaik, Vector Programme Pvt.Ltd., Shri P.S.Sathiyaseelan Hemangini Finance and Leasing P.Ltd., Shanmuga Financial Services P. Ltd., Shri L.Sridhar, Shri N.Ganeshan, Shri R.Chinnakannan, Shri C.Chandrammal, Shri M G M Maran and Shri M G Muthu.'

19. As this was not found to be sufficient, another writ petition was filed before the Bombay High Court in pursuant to the order dated 14.10.2010 made in W.P.Nos.2319 of 2009 and 160, 1821, 1842 and 1843 of 2010. The subsequent order was passed by the Reserve Bank of India on 31.3.2011, which was extracted above:

20. Annexure- C of the Order dated 12.10.2009 passed by the Executive Director of Reserve Bank of India deals with the 32.92% of the share holdings of the group. With respect to Sl.Nos.1 and 2, there was an alienation in favour of Sub continental equities for about 4.62%. Similarly, M/s.GHI Limited has sold the share in favour of M/s.Robert and Ardis James Company Limited. By the above said order, followed by the subsequent order dated 31.3.2011, the Reserve bank of India has taken a specific stand based upon available material that ***18.34%** of share holders cannot be allowed to vote forming part of the group. This is the import of the Order dated 31.3.2011. The memo dated 27.10.2015 filed before this Court is exactly in consonance with the said order. Thus, as on today, there cannot be any valid objection to give effect to the memo filed by the Reserve Bank of India - respondents 1 and 2 in W.P.(MD) No.12543 of 2013 in pursuant to its order dated 31.3.2011. At the cost of repetition, it can be said that the said order dated 31.3.2011 has never been come into challenge nor it could be contended legally that de hors the said order, there is no legal right

available to the petitioners corresponding to the legal duties on behalf of the statutory authorities from preventing the others in participating in the voting process. Therefore, except the share holders of 18.34%, which is the subject matter of the memo, as well as the order dated 31.3.2011, there cannot be any bar in the eye of law from allowing others to vote. Though the learned counsels appearing for the parties made substantial reliance upon Section 12-B of the Banking Regulation Act as well as the order passed in Application No.2954 of 2008 in C.S.No.481 of 2008, this Court is not willing to go into the same at this stage, since as of now, the parties are governed by the Order dated 31.3.2011. The endeavour of this Court at this stage is to allow the meeting to go on so that the unfinished agendas can be proceeded. This Court is of the view that a beginning has to be made. Precisely for this reason this Court has informed the parties to confine the arguments to the interlocutory applications. In other words, the rights of the parties on a construction of Section 12-B with reference to the voting rights notwithstanding the order passed by the Reserve Bank of India dated 31.3.2011 armed with the order passed by this Court on the earlier occasion are the matters to be decided in future. The issue with respect to the regularisation of the transfer of shares and further sale are not gone into, as they are the matters between the respective parties and the Reserve Bank of India. However, it is expected that such transferees and the Bank would make such applications for the said purpose at the earliest.

21. This Court is of the considered view that the interim orders cannot be allowed to continue for the reasons aforesaid. The petitioners cannot agitate a private dispute in a different form. There is no legal right in favour of the petitioners as of now and there is no failure on the part of the Reserve Bank of India to perform its statutory duty. Merely because proceedings are pending with the Enforcement Directorate the same cannot be a ground to deny the voting rights to the unacknowledged shareholders. As of now, the order dated 31.3.2011 governs the parties. The rights of the parties, who suffered an adverse order on acknowledgement from the hands of the Reserve Bank of India, cannot be decided now. This is only an interim measure. This Court is merely concerned with the role of an authority under Article 12 qua the writ petitions filed. Therefore, this Court is of the view that the memo filed by the Reserve bank of India merits acceptance, as it is filed in compliance with its own order dated 31.3.2011. The objection made by the petitioner in W.P.(MD) No.12543 of 2013 cannot be

accepted. The petitioners are neither transferors nor transferees. Their shares are not interfered with as of now. Section 12-B of the Banking Regulation Act does not come in conflict with the Memo. Accordingly, the interim orders passed in M.P.No.1 of 2011 in W.P.No.11159 of 2011 dated 28.4.2011 and M.P.(MD) No.2 of 2013 in W.P.(MD) No.12543 of 2013 dated 29.7.2013 are hereby vacated. It is also to be seen that in W.P.(MD) No.12543 of 2013 the affected parties are also not made as parties. The petitioner cannot prevent the parties from getting the benefit of the Order dated 31.3.2011 without challenging the same. As there is no objection to the memo filed by the Reserve Bank of India, it is accordingly accepted. Even otherwise there is no contra material to dispute the same. The pendency of the Transfer Petitions filed at the instance of the Bank cannot be a bar for passing these orders. They were only filed to transfer the cases from other High Courts to this Court. Being the holders of negligible shares, the petitioners cannot hold the Bank to ransom. The damage caused by the interim orders is far more greater than a possible benefit, if any.

22. As all the parties are otherwise willing to convene the meetings for the purpose of conducting the annual general body meetings and on the earlier occasion this Court has also appointed Hon'ble Mr.Justice R.Balasubramanian, (Retd.) to act as a Chairman, this Court appoints the learned Judge to act as the Chairman for the purpose of convening and conducting the annual general body meetings on the same day. The learned Judge is requested to undertake the said process of convening and conducting the meetings of the seven annual general body meetings with the active cooperation of the Bank. The learned counsel appearing for the Bank submitted that 70 clear days from the date of receipt of copy of the order is required for the above said purpose. Accordingly, the same is granted. It is made clear that all the objections towards the conduct of the meeting followed by the seven annual general body meetings can be given to the Chairman, who shall deal with the same as per law. The learned Chairman of the Bank has to fix voting rights by giving effect to the memo filed by the Reserve Bank of India before this Court.

23. Considering the past history of the disputes involved, this Court is of the view that it would be appropriate to post the matters for further hearing before the Division Bench of this Court, after obtaining orders from My Lord the Hon'ble The Chief Justice. This Court passes this order also for the reason that it would be better to have a finality over these matters,

considering the issues involved. The Tamil Nadu Mercantile Bank Limited is directed to pay initial remuneration of Rs.3,00,000/- (Rupees three lakhs only) to the Chairman appointed.

23. For the foregoing reasons, W.P.Nos. 25256 to 25258 of 2013 are dismissed and consequently, the connected miscellaneous petitions in the said writ petitions are closed and the interim Injunction granted on 10.9.2013 is vacated. M.P.No.1 of 2013 in W.P.No.11159 of 2011 is allowed and M.P.No.1 of 2011 in W.P.No.11159 of 2011 is dismissed and the interim order granted on 28.4.2011 is vacated. M.P.(MD) No.1 of 2014 in W.P.(MD) No.12543 of 2013 is allowed and M.P.No.2 of 2013 in W.P(MD) No.12543 of 2013 is dismissed and the interim order granted on 29.7.2013 is vacated. In view of the Order passed today, M.P. (MD) No.1 of 2013 in W.P.(MD) No.12543 of 2013 is also dismissed. However, there is no order as to costs.

sd/
ASSISTANT REGISTRAR(CO)
Dated:27/11/2015

***(Paragraph 20 amended as per
Order dated 7/12/2015)**

Assistant Registrar(Cs-IV)
Dated:8/12/2015

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

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To

- 1.The Hon'ble Mr.Justice R.Balasubramanian (Retd.)
High Court,
Madras.
2. The Deputy Governor,
Reserve Bank of India,
Department of Banking Operations &
Development, Central Office Building,
Shahid Bhagat Singh Marg,
Mumbai-400 001 and also having office at
Fort Glacis, Rajaji Salai, Chennai-600 001.

3.The Joint Director, FEMA & PMLA,
Directorate of Enforcement, Government of India,
Bangalore Zonal Office,
9/1, State Bank Road,
Bangalore-560 001.

4.The Assistant Director,
FEMA & PMLA, Directorate of Enforcement,
Government of India,
Bangalore Zonal Office,
9/1, State Bank Road,
Bangalore-560 001.

To be
substituted

the Order
already
despatched on
27.11.2015

5.The Tamil Nadu Mercantile Bank Ltd.,
Rep., by its Managing Director & C.E.O.,
57, V.E. Road, Tuticorin-628 002.

6.The Standard and Chartered Bank,
3rd Floor, CRESCENZO,
Plot No.C-38 & 39, G Block,
Bandra Kurla Complex, Bandra-East,
Mumabi-400 051.

7. The Record Keeper,
ER(Writ Records), High court, Madras.

+1 CC to MR.R.Sankaranarayanan Advocate. SR.NO. 64296
+1 CC to MR.K.S.Karthik Raja Advocate. SR.NO. 64266
+3 CC to MR.S.Subramanian Advocate. SR.NO.64206
+1 CC to MR.S.Meenakshi Sundaram Advocate. SR.NO.64207
+2 CC to MR.Karthik Seshadri Advocate. SR.NO.64157
+1 CC to MR.T.S.Baskaran Advocate. SR.NO. 64086
+1 CC to MR.N.Manokaran Advocate. SR.NO.64399
+5 CC to MR.King & Partridge Advocate. SR.NO.64337
+1cc to M/S.Venkataswamy Babu, Advocate Sr.64463[11/12/2015]

Pre-Delivery Common Order
in W.P.Nos.25256 to 25258
of 2013 and
M.P.Nos.1 of 2011 and 1/13
in W.P.No.11159 of 2011 and
M.P.(MD) Nos.1 and 2 of 2013
and M.P(MD) No.1 of 2014 in
W.P.(MD) No.12543 of 2013

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srg 08/12/2015



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