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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 02.02.2021

\+ W.P.(C) 6832/2019 & CM APPL. 28528/2019 & CM APPL. 43545/2019

DELHI URBAN COOPERATIVE BANK FEDERATION AND ORS. ..... Petitioners

Through: Mr. Rakesh K. Khanna, Sr. Adv. with Mr. Anil Kumar, Adv.

versus

REGISTRAR, COOPERATIVE SOCIETIES, DELHI AND ORS. ..... Respondents

Through: Mr. Rishikesh Kumar, ASC with Mr. Premsagar Pal, Adv. for R-1
Mr. Gopal Jain, Sr. Adv. with Mr. Ramesh Babu M.R. & Ms. Nisha Sharma, Advs. for R-2/RBI.
Mr. Rajesh Srivastava, Adv. for R-3.
Mr. Siddharth Mittal, Adv. for R-4.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. We have heard Mr. Rakesh Kumar Khanna, learned senior counsel for the petitioners as well as Mr. Gopal Jain, learned senior counsel for respondent no. 2/ Reserve Bank of India ("RBI") and the learned counsel for respondent nos. 3 & 4 *i.e.*, The Vaish Cooperative Commercial Bank Ltd and The Panipat Urban Cooperative Bank Ltd., respectively, and proceed to

dispose of the present petition and pending applications.

2. The present writ petition has been preferred by the Delhi Urban Cooperative Bank Federation, claiming to be a federation of co-operative banks in Delhi, registered under the Delhi Co-operative Societies Act, 2003 ('the Act' for short). The name and address of petitioner No.1 reads as follows:

> *"Delhi Urban Cooperative Banks Federation,*
> *C/o Janata Cooperative Bank Ltd.,*
> *32, Netaji Subhash Marg,*
> *Darya Ganj,*
> *New Delhi – 110 002*
> *Through its General Secretary."*

3. When the writ petition was initially filed, two individuals namely Shri Pradeep Kumar and Shri Satya Dev, were also impleaded as petitioners. However, during the pendency of the writ petition, these petitioners- being petitioner nos. 2 & 3, chose to withdraw their names from the writ petition and therefore, the writ petition is being pursued by the surviving petitioner *i.e.* Delhi Urban Cooperative Bank Federation.

4. The petitioner seeks setting aside of letter dated 18.04.2018 issued by the respondent No. 2/ RBI, whereby the proposed merger of respondent No.3/ Vaish Cooperative Commercial Bank Ltd., a co-operative bank registered under the Delhi Co-operative Societies Act, with respondent No. 4/ Panipat Urban Cooperative Bank Ltd., a multi-state co-operative society has been sanctioned by the RBI. It is claimed by the petitioner that this proposed merger is in violation of the provisions of the Banking Regulations Act, 1949 and the guidelines issued by the RBI on 02.02.2005 for merger of cooperative banks. The petitioner also seeks a direction for declaration of

the letter dated 28.06.2018 issued by the Registrar, Co-operative Societies, Delhi granting its' no objection to the proposed merger of respondent Nos. 3 with 4 as being illegal and *void-ab-initio*, being against the provisions of Delhi Cooperative Societies Act, 2003 and Delhi Cooperative Societies Rules, 2007.

5. On 19.06.2019, this Court, while issuing notice in the writ petition, restrained the respondents from taking any step pursuant to the letter dated 31.05.2019, which is a communication of respondent No. 4 to the Registrar, Co-operative Societies, Delhi, requesting it to issue an order for merger of respondent No.3 with respondent No.4, by accepting the cut off date 01.07.2019 to enable it to get the RBI license transferred in its name, so as to start the banking operations with effect from 01.07.2019. The result of this interim order dated 19.06.2019 has been that the process of merger of respondent No. 3 with respondent No. 4 has been stalled ever since. In this light, two applications being CM APPL. 28528/2019 & CM APPL. 43545/2019 filed by respondent no. 3, seeking vacation of the interim orders are also pending consideration. We have, therefore, taken up the writ petition itself for hearing today.

6. The submission of Mr. Khanna, learned senior counsel for the petitioner, is that the petitioner is a federation of co-operative banks in Delhi and is recognized both by the Registrar, Co-operative Societies Delhi and the RBI. It is submitted that the petitioner federation was essentially constituted to assist the RBI in taking decisions with regard to merger of one co-operative bank with another in Delhi. In this regard, the petitioner has submitted in Para 8 of its additional affidavit dated 18.11.2020, to the following effect:

"8. That the Delhi Urban Cooperative Banks Federation has been constituted with one of its object to provide a common forum for discussing technical and practical problems relating to Urban Cooperative Banks in Delhi and allied problems of its members and to advise way and means to solve these problems, and appraised them with all the illegalities and irregularities. A copy of the Bye Laws of the Delhi Urban Cooperative Banks Federation is attached herewith as ***ANNEXURE-I.***

It is to submit here that for deciding the future set up of Urban Cooperative Banks and facilitating proper measures for theirdevelopment into strong and vibrant entities the NCI of Delhi and the Reserve Bank of India on 6th August, 2007 have entered into a Memorandum of Understanding whereby it was decided that a State Level Task Force for Urban Cooperative Banks comprising of the Regional Director of the RBI, RCS, Delhi, representative of the local office of the Urban Banks Department of the RBI, representative of the Govt. and representative each from the State and National Federation of UCBs be formed for identification and drawing up of a time bound action plan for revival of potentially viable UCBs and non disruptive exit for non-viable UCBs. A copy of the MOU dated 6th August, 2007 as was executed between the Govt. of NCT of Delhi & the RBI is attached herewith as ***ANNEXURE-II.***

It is further to submit here that as in the MOU the State Federation of Urban Cooperative Banks has been recognized and has been impleaded as member of the TAFCUB (Task Force for Urban Cooperative Banks), hence, the office of the RBI issued a letter dated 16.08.2017 whereby it was informed to the Delhi Urban Cooperative Banks Federation that besides other members the Delhi Urban Cooperative Bank Federation is also a member of

the State Level Task Force (TAFCUB). A copy of the letter dated 16.08.2017 is attached herewith as ***ANNEXURE- III.*** *The deponent further wants to submit here that the Delhi Urban Cooperative Bank Federation had also been invited by the Reserve Bank vide its letter dated 18.09.2007 in its inaugural meeting of the TAFCUB which was held on 24th September, 2007. A copy of the letter dated 18.09.2007 as was issued by the Reserve Bank of India to the Delhi Urban Cooperative Banks Federation is attached herewith as* ***ANNEXURE IV.***
The above documents clearly shows that the Delhi Urban Cooperative Bank Federation has been recognized by the Reserve Bank of India as well as by the Govt. of NCT of Delhi. Hence, the petitioner Federation is having the locus standi to file the present writ petition before this Hon'ble Court ."

7. Though the following narrated aspects have not been specifically pleaded or raised in the writ petition, Mr. Khanna submits that the merger of respondent No. 3 - a cooperative bank registered under the Cooperative Societies Act, 2003, with respondent No. 4 - another cooperative bank is governed by Sections 16 & 17 of the Delhi Cooperative Societies Act, 2003 (DCS Act for short) and Rule 17 of the Delhi Cooperative Societies Rules, 2007(DCS Rules for short). By drawing our attention to section 2(h) of the DCS Act - which defines a co-operative society to mean a society registered under the said Act, Mr. Khanna submits that respondent No. 4 is, admittedly, not a co-operative bank or a co-operative society registered under the DCS Act. That being the position, his submission is that no merger of respondent No. 3 with respondent No. 4 is permissible under Section 16 of the DCS Act. Mr. Khanna has also drawn our attention to the averments made by the

RBI in its Counter Affidavit to buttress his submission that provisions DSC Act, 2003, and in particular Sections 16 & 17 of the DCS Act, are attracted for merger of respondent No.3 with respondent No.4. He, thus, contends that once respondent No.4 does not fall within the meaning of a co-operative society as defined under the DCS Act, the said merger was not permissible. No other submission has been advanced by Mr. Khanna to show as to how the proposed merger of respondent No. 3 with respondent No. 4 is violative of any other provision of law, including the provisions of the Banking Regulation Act

8. On the other hand, Mr. Jain, learned senior counsel who appears for respondent No. 2/ RBI has firstly drawn our attention to the guidelines dated 02.02.2005, which lay down the regulatory framework for merger of co-operative banks. The said guidelines *inter alia* deal with the aspect as to "*who can merge*?". The same read as under:

> *"**A cooperative bank can merge** only with another cooperative bank situated in the same state or **with a cooperative bank registered under Multi State Cooperative Societies Act.***
>
> ***Procedure for Merger***
>
> *An application for merger giving the proposed scheme will have to be submitted by the banks concerned to the Registrar of Cooperative Societies/Central Registrar of Cooperative Societies (RCS/CRCS). The acquirer bank will also forward a copy of the scheme to the Reserve Bank along with the draft scheme, valuation report and other Information relevant for consideration of the scheme of merger. The Reserve Bank will examine the scheme with reference to the financial aspects and the interests of depositors based on the criteria/factors and convey its decision to the concerned State RCS and in case the acquirer is a multi-state cooperative bank, to the CRCS and the RCS of the State in which the acquired bank is situated.*

The registrars, being the authorities vested with the responsibility of administering the Acts, would ensure that the due process prescribed in the Statues has been complied with before they seek the approval of the Reserve Bank. They would also ensure compliance with the statutory procedures for notifying the amalgamation after obtaining the sanction of the Reserve Bank." (emphasis supplied)

9. Thus, merger of a corporate bank with a Multi state cooperative society is envisaged under the guidelines. Mr. Jain further points out that these guidelines clearly lay down that while considering such proposals, the RBI's role is confined to the financial aspects of the merger and the interest of depositors, as well as the stability of the financial system which will emerge after the merger. He submits that the proposed merger has been considered by the RBI keeping in view the aforesaid aspect and the interest of the depositors of respondent no.3.

10. Mr. Jain further submits that on 18.04.2018, the RBI granted its approval to the proposed merger of respondent no. 3 with respondent no. 4. The said communication *inter alia* stated that the RBI advises *"that the merger proposal has been examined by us with regard to financial aspects, as per the guidelines on merger/amalgamation of Urban Cooperative Banks and we sanction the proposed merger of The Vaish Cooperative Commercial Bank Delhi, with the Panipat Urban Cooperative Bank Ltd. Haryana subject to the following conditions/observations"*.

11. This approval was subject to various conditions which *inter alia* included Clause 3(i), which reads as under:

"3. In addition to the above, the following conditions will be applicable:

(i) *Where the scheme contains provisions requiring approval from other authorities like Revenue Authorities, Registrar of Co-operative Societies, Central Registrar of Co-operative Societies etc., the sanction from the Reserve Bank should not be construed as approval of all such provisions of the schemes. The sanction would mean that the Reserve Bank has looked into financial aspects of the proposal from the point of view of protection of depositors' interest of the TB and AB and the AB's compliance with the prudential financial parameters post-merger. The AB needs to pursue approval from concerned, authorities for other provisions, wherever necessary."*

12. Mr. Jain opposes the petition by pointing out that the petitioner is a busy body and the very institution of the present petition itself is mala fide. According to Mr. Jain, the petitioner federation is, in fact, being managed by the management of the Janta Cooperative Bank Limited, which is another cooperative bank registered under the Delhi Cooperative Societies Act. He points out that the proposal for merger of respondent no. 3 was considered in the meeting held by the Task Force on Cooperative Urban Bank (TAFCUB) on 01.11.2017, on which date, the proposal for merger of respondent no. 3 with respondent no. 4 was approved. The Janta Cooperative Bank Limited was also interested in seeking merger of respondent No. 3 with itself. The petitioner federation is also a part of the said body, i.e., TAFCUB and was, therefore, a party to this decision of merger of respondent No. 3 with respondent No. 4. Yet, this present petition has been preferred out of spite, since the proposal for merger of respondent No.3 with Janta Cooperative Bank Limited did not materialize. In this regard, Mr. Jain has drawn our attention to order passed by this Court on 05.02.2020 when the aspect of the petitioner being a busy body was placed before the Court and taken note of. The said order passed on 05.02.2020 in the writ petition, as also the two

applications for vacation of stay, reads as follows:

> "*W.P.(C) 6832/2019, CM APPL. 28528/2019 (for grant of ex parte ad interim order) and CM APPL. 43545/2019 (for vacation of interim order dated 19.06.2019)*
>
> *5. **The very locus standi of the sole Petitioner, i.e. the Delhi Urban Cooperative Banks Federation has been questioned by Respondent No. 3, which is supposed to be a member of the said federation.***
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> *6. Mr. Sudhir Nandrajog, learned Senior Counsel appearing for the Federation states that it is only to protect the interest of its members, including Respondent No. 3, that the Federation has filed the present petition.*
>
> *7. **On the other hand, learned counsel for Respondent No.3 points out that the memo of parties shows the address of the Federation as "c/o The Janata Cooperative Bank Limited' whose proposal of merger with Respondent No.3 fell through and that this is a proxy litigation on its behalf.***
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> *8. In response to his present query, as to whether Respondent No.3 wishes to continue as a member of the Petitioner Federation, learned counsel states that he will have to seek instructions.*
>
> *9. At his request, list on 17th February, 2020."* (emphasis supplied)

13. Mr. Jain submits the petitioner has no locus standi in the matter as there has been no violation of its rights, or of any of its members. However, while approaching this Court, the petitioner misled the Court into passing the interim order dated 19.06.2019, which has caused serious prejudice to the members and depositors of the respondent no.3/ Vaish Cooperative Commercial Bank Limited. He submits that the petitioner's conduct is clearly 'anti depositor' and therefore, the petition deserves to be dismissed

with exemplary costs.

14. Learned counsel for respondent no. 3/ Vaish Cooperative Commercial Bank Limited also vehemently opposes the writ petition. He points out, as already noted hereinabove, that the petitioner federation was a party to the decision of the proposed merger of respondent no. 3 with respondent no. 4. He also submits that the Registrar, Delhi Cooperative Societies, the Central Registrar working under the aegis of Ministry of Agriculture, and the Reserve Bank of India, have all granted their approval and it is the interim order passed by this Court, which is the only stumbling block for the said merger between respondent no. 3 and respondent no. 4, which is in accordance with the prevailing law.

15. We have considered the submissions of the learned counsel(s) and with their assistance, perused the record.

16. In our view, the reliance placed by Mr. Khanna on Sections 16 & 17 of DCS Act and Rule 17 of the DCS Rules to assail the proposed merger is completely misplaced. The DCS Act governs the cooperative societies which are registered under the said Act itself. This is evident from the definition of the expression 'co-operative society' as contained in Section 2 (h) of the said Act. Section 16 thereof concerns the aspect of amalgamation, transfer of assets and liabilities and division of co-operative societies registered under the said Act. Only when the two cooperative societies concerned are both registered under the said Act, the provisions contained in Sections 16 & 17 of the DCS Act and Rule 17 of the DCS Rules would be attracted. Thus, in a case like the present, when a cooperative society registered under the DCS Act, is proposed to be amalgamated or merged with a Multi State co-operative society, not registered under the DCS Act,

the provisions of Sections 16 & 17 of the said Act, and Rule 17 of the DCS Rules are not attracted *per se.* If the submission of Mr. Khanna were to be accepted, it would mean that a cooperative society registered under the DCS Act can never be merged with any other society – even if it is a Multi-state co-operative society. There is no basis in law to support this submission.

17. Despite our repeatedly querying Mr. Khanna as to how these provisions would be attracted and apply to the proposed merger, he has no answer. His only submission is that the RBI has itself stated in its counter affidavit that the provisions of Sections 16 & 17 of the DCS Act and Rule 17 of DCS Rules would be attracted to the proposed merger.

18. We have carefully perused the said counter affidavit and find that the averments made by the RBI are in general terms and do not refer to the facts of the present case which relates to merger of respondent no. 3–a cooperative bank registered under the DCS Act, with another cooperative bank which is a Multi-state cooperative society. As noticed earlier, the petitioner has not even articulated or specifically pleaded this submission in the writ petition. In that light, it cannot be said that the respondent no.2/RBI has conceded that Sections 16 and 17 of the DCS Act are attracted to the facts of this case. In any event, irrespective of the stand which the RBI may take with regard to the applicability of these provisions of the DCS Act, 2003 and the DCS Rules, the aspects of the applicability of these provisions are required to be determined by the Court upon interpretation of the statutory provisions. There can be no estoppel against the law. In the light of the fact that respondent no. 4 is not a cooperative society within the meaning of section 2(h) of the DCS Act, we are clearly of the view that neither Sections 16 & 17 of the said Act, nor Rule 17 of DCS Rules would be

attracted and would, therefore, not be applicable to the proposed merger of respondent no. 3 with respondent no. 4.

19. We also find merit in the submissions of both Mr. Jain and Mr. Srivastava, the learned counsel representing respondent nos. 2 & 3 respectively, that the present petition is an abuse of the process of law. We have no doubt in our mind that the petitioner has preferred this writ petition only out of spite, due to the fact that the proposal of Janta Cooperative Bank Limited, for merger of respondent No.3 with itself did not go through. The petitioner is evidently acting, and with a view to somehow block the proposed merger of respondent no.3 with respondent no. 4, since its proposal for merger respondent no. 3 with itself did not materialize. The conduct of the petitioner is undoubtedly 'anti depositor'. It is evident that the petitioner has sought to raise a baseless challenge to the merger, which decision primarily falls within the realm of the RBI's functioning and the consequence of the interim order obtained by the petitioner from this Court is that it has succeeded in stalling the merger for more than one and a half years. Pertinently, no member of respondent No.3 has any objection to the proposed merger, and the petitioner has not shown how it, or any of its members are adversely affected by the proposed merger.

20. We are, therefore, of the view that the petition is liable to be dismissed with exemplary costs. We, accordingly, dismiss the petition with costs quantified at Rs.10 lacs. 50% of the costs be deposited with the Delhi State Legal Services Authority, and the remaining 50% be deposited with the Delhi High Court (Middle Income Group) Legal Aid Society. Costs be deposited within four weeks and receipts thereof be placed on record. In case of non-deposit of the costs, the matter be placed before this Court by

the registry for taking further action.

21. Needless to state, the interim orders stand vacated.

VIPIN SANGHI, J

REKHA PALLI, J

FEBRUARY 02, 2021
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