

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPA No. 1558 of 2007
+
CAN 1 of 2019(Old CAN 2886 of 2019)
+
CAN 3 of 2021
+
CAN 4 of 2021
+
CAN 5 of 2021**

**The Peerless General Finance &
Investment Company Limited and others
Vs.
The Deputy Registrar of Companies,
West Bengal and others**

With

WPA No.14267 of 2012

**The Peerless General Finance &
Investment Company Limited and others
Vs.
Union of India and another**

For the petitioners	:	Mr. S. N. Mookherjee, Mr. Ratnanko Banerjee, Mr. Arunabha Deb Mr. Deepan Kr. Sarkar, Ms. Ashika Daga, Ms. Shruti Agarwal, Mr. Subhrojyoti Mukherjee, Mr. Bikram Sarkar, Ms. Sayani Bose, Mr. Samriddha Sen
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For the Reserve Bank of India :	Mr. Lakshmi Gupta, Mr. Debdatta Sen
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For the Union of India in WPA 1558 of 2007	:	Mr. Billwadal Bhattacharyya, Mr. Tarunjyoti Tewari
For the respondent nos. 1 and 2 in WPA 1558 of 2007	:	Mr. N. L. Singhanian
Hearing concluded on	:	29.03.2023
Judgment on	:	26.06.2023

Sabyasachi Bhattacharyya, J:-

1. The writ petitioners had originally challenged the liability of the petitioners to deposit to the Investor Education Protection Fund (IEPF) under Section 125 of the Companies Act, 2013 (hereinafter referred to as, “the 2013 Act”), the amount which was kept deposited with the petitioner no.1-Company after the statutory period of seven years. Orders were passed on June 12, 2019, July 10, 2019 and September 23, 2019, by virtue of which the principal amount of matured deposits lying in the Escrow Account opened with the United Bank of India (UBI) with accrued interest thereon was transferred to the IEPF. The limited question which subsists now is whether the petitioner no.1-Company is liable to transfer the interest earned on the aggregate escrowed amount (including the principal and the accrued interest thereon) also to the IEPF.
2. Learned senior counsel for the petitioners contends that the petitioner is governed by chapter IIIB of the Reserve Bank of India Act, 1934 (for short, “the RBI Act”), including Section 45H to Section 45Q which contains provisions relating to acceptance of deposits by Non-Banking

Financial Companies (NBFCs). Chapter IIIB was introduced with effect from February 1, 1964, that is, after the enactment of the Companies Act, 1956. The statutory scheme of the said Chapter, it is argued, contemplates exclusive jurisdiction of the Reserve Bank of India (RBI) insofar as the regulation of acceptance of deposits by NBFCs generally, and the petitioner no.1 specifically, is concerned. Hence, the petitioner no.1 is bound to comply with the directions of the RBI under Chapter IIIB of the RBI Act.

3. In such context, learned senior counsel places reliance on the *non-obstante* clause in Section 45IA which requires NBFCs to obtain a certificate of registration from RBI or be notified by the RBI in the Official Gazette prior to commencement or carrying on business. Sections 45ID and 45IE authorize the RBI to control the management of NBFCs by directing the removal of Directors and/or superseding the Board of Directors of those Companies.
4. Section 45JA confers the RBI with the power to determine policy relating to deployment of funds by NBFCs and issue directions to DBFCs in respect thereof. Section 45K permits the RBI to collect information from NBFCs as to deposits and issue directions on matters pertaining to the receipts of deposits, including rates of interest payable on such deposits. Section 45L further empowers the RBI to call for information generally from NBFCs and issue directions relating to conduct of business.
5. Again, it is contended that Section 45M casts a binding obligation upon NBFCs to comply with any directions issued by the RBI under

Chapter IIIB. On the other hand, Section 45MB grants the RBI the authority to prohibit NBFCs from accepting any deposit for non-compliance of any direction issued by it under Chapter IIIB. Section 45MC(1)(c) enables the RBI to file winding up petitions of NBFCs which have been prohibited by the RBI from receiving deposits. The *non-obstante* clause in Section 45Q confers overriding effect on any direction issued by the RBI under Chapter IIIB in respect of NBFCs over any other law for the time being in force.

6. It is argued that 45QA(2), introduced by amendment with effect from January 9, 1997, vests upon the erstwhile Company Law Board (CLB) the exclusive authority to, either *suo motu* or upon application by the depositor, direct NBFCs to repay deposits remaining unclaimed for seven years. Under the Explanation to the proviso to sub-section (2) of Section 205C of the Companies Act, 1956, no claim is to lie against the IEPF in respect of deposits transferred to it and lying unclaimed and unpaid for seven years. The same is inconsistent with the provisions of Section 45QA of the RBI Act to frame *suo motu* a scheme for repayment of such deposits in the interest of the depositors.
7. As held in *Nedumpilli Finance Company Ltd. Vs. State of Kerala and others*, reported at (2022) 7 SCC 394, it is argued, after the 1997 amendment, Chapter IIIB has become a complete code in respect of NBFCs and governs those from the cradle to the grave.
8. The RBI, *vide* letter dated October 31, 2014 issued under Section 45N of the RBI Act, had advised the petitioner no.1 to escrow the aggregate deposit liability not later than three months therefrom. The

same is required to be treated as a direction of the RBI under Chapter IIIB since it was to be placed by the petitioner no.1 before its Board of Directors and furnish a compliance report to the RBI within 30 days, with a Board Resolution.

9. The RBI issued a clarificatory letter on February 3, 2015. By a subsequent letter dated June 29, 2015, the RBI advised the petitioner that it was permitted to receive interests on investments in fixed deposits/government securities/other securities/bonds, subject to maintaining the amount in the Escrow Account till the date of transfer of the same to the IEPF, in respect of which the petitioner no.1 had been taxed on account of accrued income interest.
10. It has been broadly contended that the above letters cannot be treated as directions under the RBI Act since the letters do not cited any particular provision and those were issued pursuant to the interim orders dated March 6, 2007 of this Court in WP No.1558 (W) of 2007.
11. However, it is not necessary for the RBI to mention the specific provision of the Act under which a direction is issued, as long as the power vests with the RBI. Such power to issue directions by the RBI under the RBI Act is of the widest amplitude. In support of such proposition, learned senior counsel for the petitioners cites *Small Industries Development Bank of India Vs. SIBCO Investment Pvt. Ltd.*, reported at (2022) 3 SCC 56.
12. The clarification contained in Annexure B to the direction of February 3, 2015 entitled the petitioner no.1 to make use of such interest conditionally, subject to maintaining the minimum amount in the

Escrow Account as specified in the clarification. The clarification as to interest was not subject to the interim order of March 6, 2007 passed by this Court but only covered the aspect of unclaimed unpaid deposits as per Clarification A3 therein.

13. The directions issued by the RBI have statutory force, it is next argued, for which, apart from the judgments cited above, the petitioners rely on *Peerless General Finance and Investment Co. Ltd. and another Vs. Reserve Bank of India*, reported at (1992) 2 SCC 343. The *non obstante* clause contained in Section 45Q, it is argued, overrides all subsequent statutory developments including both Section 205C of the Companies Act, 1956 and Section 125 of the Companies Act, 2013. The same also has overriding effect not only in respect of the statutes already existing at the time of the introduction of Section 45Q in the RBI Act but also enactments made subsequent thereto during the life of the RBI Act. As long as the statute having *non obstante* clause is in force, any enactment made even subsequent thereto will be overridden. For such proposition, the petitioners cite *Yakub Abdul Razak Memon Vs. State of Maharashtra*, reported at (2013) 13 SCC 1.
14. The RBI Act being a special legislation, Chapter IIIB and directions thereunder prevail over the general provisions of the Companies Acts of 1956 and 2013. In support of the said argument, learned senior counsel for the petitioners cites *Damji Valji Shah and another Vs. LIC and others*, reported at AIR 1966 SC 135.

15. Furthermore, neither of the Companies Acts contains a *non obstante* clause.
16. In any event, it is argued that the petitioner no.1 is entitled to utilize the interest earned on the fixed deposits and the investments made in the Escrow Account because the petitioner no.1 has not been using the amounts deposited therein from the deposit of the unclaimed amount to the Escrow Account and is therefore not doing any business by using such sums and as such, the petitioner cannot be denied the interest accruing on the aggregate escrowed amount, since the petitioners did not have the benefit of using such sums.
17. Moreover, the petitioner no.1 has been assessed for Income Tax on the interest accrued on the aggregate escrowed amount and has utilized the same for defraying wages, staff salaries and managerial expenses, therefore, now the RBI cannot be permitted to claim that the said interest should also be deposited with the IEPF as the petitioner no.1 has acted in accordance with law by complying with the directions of the RBI having the force of law. There cannot be any issue of estoppel or waiver as such.
18. Learned counsel for the IEPF submits that a plain reading of Section 205C (2)(c) of the 1956 Act makes it clear that the amount has been referred to as “matured deposits with Companies”. The definition of Company as per Section 2(10) of the Act refers to Section 3, according to which “Company” means a Company formed and registered under the said Act or an existing Company as defined in Clause (ii). The Company was registered in the year 1932 and was an existing

Company. A fresh certificate of incorporation was issued on change of name under the 1956 Act on October 22, 1974.

- 19.** In addition to the Act, the rules made under Section 205C were also applicable to NBFCs. The IEPF Rules of 2012 notified *vide* Notification dated May 10, 2012 that every Company, including NBFCs and Residuary Non-Banking Companies shall, within a period of 90 days after the holding of Annual General Meeting or the date on which it should have been held as per Section 166 of the Act and every year thereafter till completion of the seven year period, identify the unclaimed amounts as referred to in Section 205C (2). The same position is maintained in Section 125 (2)(i) of the 2013 Act.
- 20.** The Banking Companies were specifically excluded by the Banking Laws (Amendment) Act, 2012. Section 26A was inserted in the Banking Regulation Act, 1949, which provides for establishment of Depositor Education and Awareness Fund under the RBI for Banking Companies.
- 21.** Section 205C (2)(e) of 1956 Act and Section 125 (2)(k) of the 2013 Act make it clear, it is argued, that the interest is “interest accrued on the amount”. The proviso to the respective Sections clearly states that the amount (deposits) become due to be transferred only after remaining unclaimed and unpaid for a period of seven years.
- 22.** The matured value is inclusive of interest; therefore, interest earned on the amount lying with the petitioner-Company is also to be deposited as this money is not petitioners’ money but public money.

- 23.** In this case, the respondents' specific case is that the company, in the garb of the pending challenge to the provisions of the Act, have enjoyed the interest on the amount which was not due to it. The amount in the Escrow Account which was unclaimed and unpaid for more than seven years was not the property of the Company as it was due to the IEPF. Had the amount been transferred in time to the IEPF, the Company would not have any occasion earn any interest and hence, the Company enjoyed undue gains at the cost of the public exchequer.
- 24.** As far as refund due to the claimant is concerned, Section 125(3) of the 2013 Act provides for refund in respect of the unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon, which takes care of the refund of unclaimed deposits to the claimant (depositor) from IEPF.
- 25.** According to Rule 3(4) of IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016, all the amount under IEPF is maintained in a non interest-bearing public account maintained under the Consolidated Fund of India. Hence, notwithstanding the rights of the claimant, the undue gain earned by the Company is at the cost of the Consolidated Fund of India held under the Union of India.
- 26.** The RBI, it is argued, has no jurisdiction to give any clarification or instructions under the Companies Acts, 1956 or 2013, which has been accepted by the RBI Central Officer in its letter date April 23, 2013 (Annexure R10, Page 40 of the affidavit-in-opposition of RBI). The purported instructions of RBI given in earlier letters are *void ab*

initio as far as the present case under the Companies Act, 1956 or 2013 is concerned. It is a settled principle of law that there cannot be any estoppel against the statute. It is only the IEPF authority and not the RBI which has the right over the said amount, it is contended.

- 27.** Under Section 205C of the 1956 Act and Section 125 of the 2013 Act, the petitioner is bound to transfer the entire matured amount and interest thereon to the IEPF.
- 28.** It is submitted by learned counsel for the IEPF that the amount involved in the case is of a sum more than 2000 Crore along with interest thereon. It is possible that there may have been misappropriation and alienation of this fund, especially the interest, belonging to the investors/depositors by the Company. The Company has refused to deposit the huge sum of money in IEPF as per the Companies Act for a long time.
- 29.** As such, the IEPF contends that the interest earned on the Escrow Account to the tune of Rs.504.90 Crore be deposited with the IEPF, to quantify the interest received by it on matured deposit before opening of the Escrow Account, a disclosure of the detailed information which was used to collect the deposit from the public and the interest rate offered on those deposits by the Company. The IEPF also claims the statement of interest and principal as provided to the IEPF Authority, certified by the statutory auditors with a certificate that all interest due to the maturity of deposits and liable to be transferred to IEPF and which accrued to the Company due to delay in transfer to the IEPF have been transferred to it.

30. Learned senior counsel appearing for the RBI contends that the RBI's letter dated February 3, 2015 has to be construed in the context of the relevant statutory provision, that is, Section 205C of the 1956 Act (also Section 125 of the 2013 Act).
31. The instruction contained in the letter dated February 3, 2015 of the RBI regarding availability of interest earned on unclaimed deposits of seven years or above was issued at a point of time when an interim order was operative in WP 1558 (W) of 2007 and no direction was given by this Court regarding transfer of any interest component.
32. The plea of Peerless on the said letter is one of estoppel. However, it is settled law that there cannot be any estoppel against the statute. In such context, learned senior counsel for the RBI places reliance on *(2022) 6 SCC 626 [Augustan Textile Colours Limited (Now Augustan Textile Colours Private Limited) Vs. Director of Industries and another]*, and *2022 SCC OnLine DEL (DB) 1617 [Delhi and District Cricket Association Vs. Assistant Commissioner of Central Tax]*.
33. No plea of waiver is also available against RBI as the right to claim such interest is not a right of the RBI, but a right of the IEPF, which is a fund constituted by the Government of India. It is well-settled that one can only waive one's own right. Reliance is placed in this context on *AIR 1979 SC 621 [Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and others]*.
34. Peerless is governed by Chapter IIIB of the RBI Act, which is a complete Code in respect of the business of NBFCs. The RBI Act is a Parliamentary law on the Field of Legislation provided in Entries 38,

43 and 45 of List I of the Seventh Schedule to the Constitution of India and Chapter IIIB is in the nature of special statutory provision. There can be no State legislation on those heads of entries. However, there is no constitutional bar to another Parliamentary general law being applicable to NBFCs in respect of matters not covered by Chapter IIIB.

35. The *non obstante* provision of Section 45Q of the RBI Act, it is argued, is relevant only when any provision in any other law is shown to be inconsistent with the provisions of Chapter IIIB of the RBI Act. Peerless is a limited company incorporated under the Companies Act, 1956 and is therefore bound by the provisions of the 1956 Act and now by the 2013 Act. Similarly, NBFCs are also governed by industrial legislations, Income Tax Act, etc., notwithstanding the *non obstante* provision in Section 45Q of the RBI Act.
36. Again, Section 45QA under Chapter IIIB of the RBI Act came into existence from January 9, 1997, providing for recovery of deposits made by an investor in a company like Peerless when the company has failed to repay as per the terms and conditions of such deposit. The said Section is for recovery of deposits and has no manner of application to unclaimed deposits of seven years or above to be transferred to IEPF, which is a provision in Section 205C of the 1956 Act and sub-sections (2)(c) and (e) thereof as well as Section 125 of the 2013 Act.
37. It is next contended that there is no inconsistency between Section 45QA of the RBI Act and Section 205C of the 1956 Act or Section 125

of the 2013 Act. All such provisions can co-exist. When two provisions can co-exist, the plea of inconsistency vanishes. In this context, reliance is placed by the RBI on *(2009) 4 SCC 94 [Central Bank of India Vs. State of Kerala and others]* and *1939 SCC OnLine FC 3 [Shyamakant lal Vs. Rambhajan Singh and others]*.

- 38.** While adjudicating Peerless's contention in the earlier petition bearing WP No.1558 (W) of 2007, which is also pending, as also in the instant writ petition, that the Peerless has a right to retain the deposits which remained unclaimed for seven years, this Court has to apply the law as it exists today, namely, the 2013 Act and Section 125 thereof in particular. In support of such proposition, learned senior counsel appearing for the RBI cites *(1977) 1 SCC 340 [State of Haryana and another Vs. Chanan Mal and others]*.
- 39.** In view of the specific provisions of sub-sections (2)(i) and (1)(k) of Section 125 of the 2013 Act, the petitioners' contention to the contrary is liable to be rejected and the interim order passed in WP No.1558 (W) of 2007 (which is subsisting) passed before the 2013 Act came into effect, is liable to be vacated.
- 40.** The consequence of such interim order being vacated is that the Peerless has no right to retain the unclaimed deposits and interest accrued on such deposit. It has enjoyed the benefits of retaining such deposits with interest earned thereon by virtue of the interim order passed in WP No. 1558(W) of 2007. If the said writ petition is dismissed because of the reasons indicated above and the subsisting interim order is vacated, it is argued by the RBI that the Peerless is to

be directed to transfer to IEPF the whole amount of unclaimed deposit together with interest accrued on it as required under Section 125(2)(i) and (k) of the 2013 Act.

41. Learned senior counsel for the RBI, in such context, places reliance on *(2011) 12 SCC 518 [State of Rajasthan and another Vs. J.K. Synthetics Limited and another]*.
42. Learned senior counsel distinguishes *Nedumpilli Finance Company Ltd. (supra)* by arguing that in the case of Peerless, the question is one of applicability of a provision of the 1956 Act introduced in 1998, subsequent to insertion of Chapter IIIB in the RBI Act and even after its 1997 amendment bringing in Section 45Q and Section 45QA.
43. The 1956 and 2013 Acts apply to all companies registered under such Acts and the Peerless, being an NBFC, is not an exception. Like the RBI Act, the 1956 and 2013 Acts are also Parliamentary legislations covering the legislative field of Entry 43 of List I. The latter also covers the field in Entry 44 of List I. The 1956/2013 Acts are general legislations covering all types of companies like trading, non-trading, banking, non-banking, insurance, financial corporations, etc. The choice of the Parliament to make some provision in the general law to cover authorities under different enactments instead of bringing in amendment in various laws on the field is its prerogative. Thus, the ratio in *Nedumpilli Finance Company Ltd. (supra)* in the context of State Act is not applicable here.
44. Learned senior counsel also distinguishes *(1992) 2 SCC 343 [Peerless General Finance and Investment Co. Ltd. and another Vs. Reserve Bank*

of India], which deals with statutory directions of RBI in 1987, which the RBI was empowered to issue as per Section 45(j) and 45(k) of the RBI Act. Such directions are not an issue in the present case. The clarification in the letter of the RBI in issue was relating to interest on the unclaimed deposits in the context of a Court proceeding being WP No.1558 (W) of 2007. Such clarification is not a direction, far less under Sections 45(j) and 45(k) of the RBI Act.

45. Insofar as the 2001 SCC OnLine All 169 [*Rama Shankar Mishra Vs. Joint Director of Education, Varanasi Region, Varanasi and others*] is concerned, the same relied on the principle of '*Quod fieri non debet factum valet*', which means, what ought not to be done avails if it is done. This principle does not apply where third party rights get affected, as in the present case.
46. The RBI places reliance in this context on *Trayner's Latin Maxims*, 4th edition, page 529.
47. The principle laid down in *Desh Bandhu Gupta and Co. and others Vs. Delhi Stock Exchange Association Ltd.*, reported at (1979) 4 SCC 565, it is argued, cannot help the petitioner's case, which should be evident from the passages quoted by the Supreme Court in paragraph 9 itself, which make it clear that the courts are not bound by administrative instructions, though administrative authorities are.
48. It is argued by the RBI that the reliance on the principle laid down in *Central Coal Fields Limited and another Vs. SLL-SML (Joint Venture Consortium) and others*, reported at (2016) 8 SCC 622 is misplaced in the present case. There is statutory compulsion in sub-section (2)(c)

and (e) of Section 205C of the 1956 Act and Section 125 of the 2013 Act regarding transfer of unclaimed deposits and interest to the IEPF. The present case is not one of tender or any administrative dealing, it is pointed out.

49. Hence, the respondents argue that the writ petition ought to be dismissed on merits.
50. The dispute, at present, has boiled down to the entitlement regarding the interest on the deposits made by the petitioner in the Escrow Account, pursuant to the order of this Court. The liability to pay the principal dues with regard to the unclaimed accounts, accumulated after the expiry of seven years, is no longer disputed.
51. It has been contended by the petitioner that the directions given by the RBI by its letter to the petitioner are comprised of directions within the contemplation of Chapter IIIB of the RBI Act and, thus, are binding on the petitioner. *Vide* communication dated February 3, 2015, it was indicated by the RBI, *inter alia*, that any interest received by the Company on investments in FDs/Government securities would be available to the Company.
52. However, the RBI as well as the IEPF disputes such proposition on the ground that there cannot be any *estoppel* against the statute. Secondly, it has been sought to be made out that there is no inconsistency between Chapter IIIB of the RBI Act on the one hand and Section 205C of the 1956 Act and Section 125 of the 2013 Act on the other.

- 53.** The RBI Act, 1934 is a central statute. Chapter IIIB thereof and the Sections thereunder stipulate provisions relating to NBFCs.
- 54.** Section 45Q confers overriding effect on Chapter IIIB notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.
- 55.** Although the 1956 Act as well as the 2013 Act has come in subsequently, the said statutes, being consolidating and codifying statutes, compile the law regarding Companies, including NBFCs. There can be no doubt, as settled in *Nedumpilli Finance Company Ltd. (supra)*, that Section 45Q confers such overriding effect over other laws. In *Yakub Abdul Razak Memon (supra)*, it was held that as long as the statute having *non obstante* clause is in force, statutes enacted subsequent to such enactment are also to be overridden. Following such principle, it cannot but be said that, in case of inconsistency, the provisions of Chapter IIIB of the RBI Act would override the provisions of the Companies Act.
- 56.** However, the question arises only when there is an apparent inconsistency between the provisions of two laws, both Parliamentary and both covering the general field of Companies and the transactions of the RBI respectively.
- 57.** A close examination of Section 205C and Section 125 of the 1956 and 2013 Acts shows that the said provisions do not have any direct conflict with Chapter IIIB of the RBI Act. Whereas the provisions of the said two Companies Acts govern all companies generally, Chapter IIIB

of the RBI Act pertains to certain provisions specifically relating to non-banking institutions receiving deposits and to financial institutions, insofar as such disputes are concerned.

- 58.** “Non-banking Financial Company”, as per Section 45I(f) of the RBI Act, includes a financial institution which is a company. On the other hand, a “financial institution” means any non-banking institution which carries on as its business financing, whether by way of making loans or advances or otherwise of any activity other than its own.
- 59.** The Peerless, that is, the petitioner, is squarely covered under the said definition and, as such, Chapter IIIB governs the functioning of the petitioner’s company as well.
- 60.** However, Chapter IIIB operates in particular spheres. Whereas a variety of functioning of NBFCs is covered by the directions contemplated in Chapter IIIB, very few of the same are pertinent in the present context. As for example, Section 45 IA pertains primarily to requirement of registration and net owned fund, Section 45 IB to maintenance of percentage of assets and 45 IC to reserve fund. Section 45 ID deals with the power of the bank to remove directors from office and Section 45 IE with supersession of Board of Directors of NBFCs other than Government Companies. Section 45 J pertains to regulation or prohibition of issue of prospectus of advertisement soliciting deposits of money.
- 61.** Section 45 K merely relates to power of the bank to collect information from non-banking institutions as to deposit and to give directions. Under the said provision, the RBI may direct NBFCs to furnish to the

bank information or particulars relating to or connected with deposits received by the NBFCs. The entire gamut of the said Section revolves around deposits received by the NBFCs and does not speak about interest on escrow accounts as in the present case, nor do they relate to interest accrued on deposits made by dint of orders of court or on deposits which the NBFC is liable to pay to some other authority.

- 62.** Section 45 JA is a general power of the RBI to determine policy and issue directions. The argument of the petitioner-Company that the directions given with regard to availability of the interest on the Escrow Account are covered by the said Section cannot be accepted, simply because the said stray direction cannot be elevated to the plane of a policy decision.
- 63.** Section 45 JA clearly mentions the scope of determination of policy and giving directions in that regard, which covers income recognition, accounting standards, making proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets, etc., and do not, in any manner, touch the interest which is in dispute in the present case.
- 64.** Insofar as Section 45 L is concerned, the same confers general power on the RBI to regulate the credit system of the country and, for such purpose, to issue general directions regarding conduct of business to financial institutions. Section 45 M speaks about the duty of non-banking institutions to furnish statements required by the RBI and Section 45 MA deals with powers and duties of auditors. Section 45 MAA is also regarding power to take actions against auditors.

- 65.** If we proceed in this manner, most of the provisions under Chapter IIIB do not have any bearing in the present context. Section 45 MB, for example, deals with the powers of the bank to prohibit acceptance of deposit and alienation of assets and Section 45 MBA with resolution of non-banking financial company.
- 66.** As such, on a composite reading of Chapter IIIB, none of the Sections thereunder are seen to deal with interest on the amounts deposited in Escrow Accounts or accounts of like nature, by an NBFC, the principle of which it is liable under law to pay to some other authority.
- 67.** Looking from such perspective, the communications made by the RBI, which are relied on by the petitioner, are not directions within the contemplation of Chapter IIIB at all. Hence, there is no question of any applicability of the said provision in the instant case.
- 68.** That apart, *per se*, there is no conflict or militancy between Chapter IIIB of the RBI Act and Section 125 of the 2013 Act as well as Section 205C of the 1956 Act.
- 69.** Moreover, the communication dated February 3, 2015, which was indicated to be a part of the letter dated October 31, 2014, could not be on a higher footing than the communication dated October 31, 2014.
- 70.** The said communication dated October 31, 2014 was in the context of an inspection held under Section 45 N of the RBI Act with reference to financial position as on March 31, 2014. In such background, an inspection under Section 45 N was carried out and certain shortcomings in the operations and supervision of the company were

detected by the RBI. Hence, the RBI required certain compliances by the petitioner-Company as furnished in Annexure I thereof.

- 71.** Nothing is revealed from any of the items mentioned in Annexure I regarding the deposit made in the Escrow Account, let alone the interest accrued thereon.
- 72.** The direction dated March 6, 2007 passed by a co-ordinate Bench directing the petitioner to keep the sum of Rs.35.5 lakh, being the alleged unclaimed/unpaid deposit of the Company, was passed much prior to the October 31, 2014 communication, which was a result of an inspection held by the RBI under Section 45 N of the RBI Act from June 30 to July 22, 2014.
- 73.** Section 45 N of the RBI Act, if scrutinized, shows that it is with regard to inspection being made of any non-banking institution, including a financial institution, for verifying the correctness or completeness of any statement, information or particulars furnished to the RBI or for the purpose of obtaining any information or particulars which the non-banking institution has failed to furnish on being called upon to do so or if the RBI considers it necessary or expedient.
- 74.** The said provision, however, is of a general nature, endorsing the supervisory power of the RBI as the regulator of the banking system of the country. However, the directions given under the said provision were at best related to the said inspection and corrective measures for the petitioners to comply. Nothing in Annexure I or Annexure II pertained to the interest on the Escrow Accounts. Annexure II, Item (i) stipulates one of the operational guidelines for operation of Escrow

Account and suggested that the Company shall keep an amount equivalent to the amount of outstanding public deposit together with the present value of future interest differential in Escrow Account in FDRs or invest the amount in government securities. However, nothing in the said Annexure spoke about the interest accrued on such account.

- 75.** The communication dated December 2, 2014 by the petitioner, *inter alia*, requested advice on whether the interest on the FDRs in Escrow Account equivalent to entire ALD would be accrued to the Company or not. As a reply thereto, the RBI issued the communication dated February 3, 2015. Hence, the February 3, 2015 communication, although mentioned to be a part of the letter dated October 31, 2004, merely contained answers to the queries of the petitioner-Company by the RBI and could not attain the character of directions under Chapter IIIB of the RBI Act.
- 76.** In one of the clauses thereof, against the query as to whether the interest on FDRs in Escrow Account would be accrued to the Company or not, a clarification was given by the RBI to the effect that subject to the rider, any interest “received by the Company” on investments in FDs/government securities would be available to the Company.
- 77.** However, it is relevant to mention here that the Escrow Account was created in terms of the order of Court and specifically to deposit the amount which was the subject-matter of the present *lis*. Hence, the said deposits were sub judice and it was *de hors* the authority of the

RBI to dictate the fate of the same. Moreover, as discussed above, nothing in Chapter IIIB pertains to interest on Escrow Accounts in cases such as the present one. Even if the RBI advised the petitioner that any interest received by the Company on investment in FDs/government securities would be available to the company, the same pertained only to interest “received by the company”. However, the interest which accumulated on the deposits in the Escrow Account in the present case, under no stretch of imagination, could be said to be received by the Company. The said amounts were sub judice and were subject to the outcome of the present writ petition. Hence, the argument that the directives of the RBI prompted the petitioner to use such interest is neither here nor there.

- 78.** In any event, the advice of the RBI, at best, was that any interest received by the Company would be “available” to the Company. It is evident that the interest accumulated on the Account-in-question was neither received by the Company nor dealt with by the Company in any manner. Hence, it cannot be said that the petitioner-Company acted upon the advice of the RBI by utilizing the said interest in any manner whatsoever. Even if the said interests were ‘available’, the petitioner-Company itself considered such direction of the RBI in the light that such interest was subject to the result of the litigation and final orders passed by the Court. The same is clearly demonstrated by the conduct of the RBI in not dealing with the said interest, even if the same was observed to be “available” to the Company.

- 79.** On the other hand, there is no dispute as to the legal proposition that Section 205C of the 1956 Act as well as Section 125 of the 2013 Act are clearly binding on the petitioner, which is a “company” under the definition of the said statutes. In Section 205C (c), matured deposits with companies are mentioned, whereas sub-clause (e) of Clause 205 (2) refers to the interest accrued on the amounts referred to in Clauses (a) to (d), including Clause (c).
- 80.** Again, Section 125 of the 2013 Act speaks about the IEPF. Sub-section (2) (i) speaks about matured deposits with companies other than banking companies and 2 (k) about interest accrued on the amounts referred to in Clauses (h) to (j), including Clause (i).
- 81.** Hence, it is clear that the interest accrued on the Escrow Account is also covered by the said provisions. Sub-section (3) of Section 125 of the 2013 Act provides that the fund (IEPF) shall be utilized *inter alia* for the refund of unclaimed dividends, matured deposits, etc., promotion of investors’ education, awareness and protection, distribution of any disgorged amount among the candidates eligible thereunder, reimbursement of legal expenses incurred in pursuing class action suits and any other purpose incidental thereto. Sub-section (4) of Section 125 provides that any person claiming to be entitled to the amount referred to in sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed. Sub-section (9) of Section 125 stipulates that it shall be competent for the authority constituted under sub-section (5) to spend money out of the fund for carrying out the object specified in

sub-section (3). As such, the entire entitlement of the deposits in the Escrow Account, on which the interest was accrued, belongs to the IEPF.

82. The petitioner-Company did not lose anything due to the amount being parked in the said Account, since, in the first place, the petitioner was never entitled to the principal deposit in the Escrow Account. By the same logic, the interest accrued thereon, if repaid to the IEPF by the petitioner-Company in due time, would have accrued in favour of the IEPF and would be utilized for the specific purposes stipulated in Section 125 of the 2013 Act. Thus, there is no scope of the petitioner claiming any right to such interest in any manner whatsoever. In fact, if the petitioner is permitted to take the said interest, it would be allowing the petitioner to take advantage of its own wrong by withholding the amount from the IEPF.
83. The ratio laid down in *Nedumpilli Finance Company Ltd. (supra)* and other cases cited by the parties undoubtedly holds that NBFCs are governed by the RBI from cradle to the grave.
84. However, the interest accrued in the Escrow Account in the present case was not a component of the usufructs of the petitioner's functions in any manner but, all along, belonged to the IEPF, which is an entity constituted statutorily for specified purposes. The purpose of the creation of the IEPF would itself be defeated if the petitioner is permitted to usurp the said interest. Hence, it cannot be said that the petitioner is entitled to such interest in any manner.

- 85.** Insofar as the doctrine of *estoppel* against statute is concerned, the same need not be invoked in the present case since, as held above, the RBI did not give any specific direction to the petitioner, nor did the petitioner construe any such direction so as to defeat the right of the IEPF conferred under a different statute that is the 2013 Act and, thereinbefore, by the 1956 Act.
- 86.** That apart, the argument of the RBI that no plea of waiver is available against the RBI, since the RBI did not have a right to relinquish the interest (to which the IEPF was entitled) in the first place, is also justified.
- 87.** The ratio laid down in the judgments cited by the RBI with regard to two provisions of different parliamentary statutes co-existing is, in fact, applicable to the present case.
- 88.** In such view of the matter, the writ petitions cannot succeed.
- 89.** Accordingly, WPA No.1558 of 2007 and WPA No.14267 of 2012, along with the connected pending applications, if any, are disposed of by directing the amount invested in the Escrow Account pursuant to the direction of this Court, for the sums lying originally with the petitioner-Company after the expiry of seven years of remaining unclaimed, along with the entire interest accrued thereon, shall be disbursed in favour of the IEPF, subject to deduction of the statutory charges and/or expenses deductible by the office of the Registrar General of this Court for investing and maintaining the said accounts, if any. Such disbursement shall be made within August 31, 2023.
- 90.** There will be no order as to costs.

- 91.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)