2023:DHC:4017

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **W.P.(C)1547/2023 & CM APPL. 5855/2023**

Between: -

THE NAINITAL BANK OFFICERS ASSOCIATION
CENTRAL OFFICE:
C/o THE NAINITAL BANK LTD.,
G.B. PANT MARG,
NAINITAL-263001 ..... PETITIONER

(Through: Mr. Prashant Bhushan, Ms. Cheryl D'Souza & Ms. Alice Raj, Advocates)

Versus

UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF FINANCE
DEPARTMENT OF FINANCIAL SERVICES
3rd FLOOR, JEEV AN DEEP BUILDING
SANSAD MARG, NEW DELHI-110001
.... RESPONDENT NO.1

BANK OF BARODA
THROUGH ITS MANAGING
DIRECTOR & CEO BARODA HOUSE,
MANDVI, BARODA,
GUJARAT- 39000 .... RESPONDENT NO.2

RESERVE BANK OF INDIA,
THROUGH ITS DIRECTOR,
RESERVE BANK OF INDIA
16th FLOOR, CENTRAL OFFICE BUILDING

SHAHIDBHAGA T SINGH MARG
MUMBAI, MAHARASHTRA
PIN- 400001 .... RESPONDENT NO. 3

NAINITAL BANK LIMITED
G.B. PANT MARG, NAINITAL,
UTTARAKHAND-263001 ....RESPONDENT NO.4

Through: Mr.Tushar Mehta, Solicitor General of India with Mr.Raunak Dhillon, Ms.Ananya Dhar Chadhury and Ms.Isha Malik, Advocates for R-2.
Ms.Arunima Dwivedi, CGSC with Ms.Pinky Pawar and Mr.Aakash Pathak, Advocates for R-1.
Mr.Atul Sharma and Mr.Abhinav Sharma, Advocates for R-3.
Mr.Alok Mohan, Mr.Mursleen Khan and Ms.Shyamwati, Advocates for R-4.

% Pronounced on: 02.06.2023

J U D G M E N T

1. The petitioner in this petition under Article 226 of the Constitution of India seeks to challenge the Expression of Interest (hereinafter referred to as 'EoI') invited by the respondent no.2-Bank of Baroda (hereinafter referred to as 'BoB') dated 14.12.2022 for the purposes of acquisition of stake holding of the BoB in respondent no.4-Nainital Bank Limited (hereinafter referred to as 'NBL').

2. Mr. Prashant Bhushan assisted by Ms. Cheryl D'Souza and Ms. Alice Raj, learned counsel appearing on behalf of the petitioner states that the decision of inviting EoI is arbitrary, illegal and the same is in violation of the recommendations made by the Parliamentary Committee as well as by the Ministry of Finance (hereinafter referred to as 'MoF'). He submits that the BoB in the year 2006 had also shown interest in merging the NBL into the BoB. Learned counsel for

the petitioner further submits that if the communication dated 15.09.2005 issued by the Reserve Bank of India (hereinafter referred to as 'RBI') to the BoB is perused carefully, the same would indicate that the permission was granted by the RBI to the BoB to retain its existing holding in the NBL, subject to the condition that the BoB cannot reduce or transfer its shareholding in the NBL without prior approval from the RBI.

3. According to the learned counsel for the petitioner, if the material available on record is considered, the same would indicate that in violation of the RBI guidelines, the BoB, without awaiting the decision on its request for allowing the BoB to dilute its stake in the NBL, had selected two private players, namely, *Gaja Capital* and *Capital Float Financial Services Pvt. Ltd.* While placing reliance on the communication dated 30.07.2022 *(Annexure R3-12)* of the reply, on behalf of the RBI, he also indicated that the BoB, before issuing an advertisement calling for the EoI in unequivocal terms, has intimated the RBI that after discussion with several institutions and investors, the BoB had received two letters of intent for purchasing shares of the BoB in the NBL.

4. The details of these two investors were outlined in the said communication. He, therefore, states that under the facts of the present case, the EoI is merely a formality. However, the facts indicate that some of the officials of the BoB in connivance with some private players are trying to dilute the stake of the BoB in the NBL.

5. He further states that there is no proper explanation given by the BoB as to why the repeated advice of the RBI, the Parliamentary Committee and the MoF is not being adhered to. He specifically indicates the communication dated 10.06.2022 made by the RBI,

wherein, the RBI in unequivocal terms, citing various reasons in paragraph no.6, has reiterated that any further delay in merging the NBL with its parent bank, i.e., the BoB or any other bank, may be detrimental to the interest of the depositors as the continuation of the NBL appears to be untenable. According to him, despite the RBI's latest communication, the BoB is bent on diluting its stake in the NBL.

6. Mr. Tushar Mehta, learned Solicitor General of India, assisted by Mr. Raunak Dhillon, Ms. Ananya Dhar Choudhary and Ms. Isha Malik, learned counsel appearing on behalf of the BoB opposes the submissions made by the petitioner. He primarily submits that the present writ petition is not only misconceived but the same is presumptuous and premature. According to him, there is no reason to pre-empt that in the process of divestment, the applicable law would not be followed. In addition to the aforesaid preliminary submission, he also submits that at the instance of the employees, the instant writ petition is not maintainable, more importantly when the petitioner has not been able to indicate any imminent prejudice to be caused to the employees.

7. Learned Solicitor General also submits that the proposed transaction is being undertaken taking into account the interest of various stakeholders in accordance with law. The interest of employees of the NBL has also been taken care of. He submits that the proposed transaction being a policy decision is not amenable to judicial review. According to him, the Preliminary Information Memorandum (hereinafter referred to as 'PIM') explicitly states that the proposed transaction is subject to requisite approval from the RBI.

8. According to him, the proposed transaction would enable the BoB to fall within the permissible limits of Section 19(2) of **The**

Banking Regulations Act of 1949 (hereinafter referred to as **'Act of 1949'**) without requiring any exemption. He submits that, owing to the financially precarious condition of the NBL, the RBI in the year 1973 had directed the BoB to manage the affairs of the NBL and accordingly, the BoB acquired the shareholding in the NBL beyond 30% threshold as specified under Section 19(2) of the Act of 1949. He submits that the exemption granted by the RBI is an exception to the scheme of Section 19(2) of the Act of 1949 and such an exemption cannot remain in force in perpetuity and therefore, the proposed transaction is required to take place.

9. He also submits that the proposed transaction does not suffer from any illegality and no action has been taken which is prejudicial to the petitioner. While taking this court through various documents, he submits that the reliance placed by the petitioner on the reports of the Parliamentary Committee or to communications issued by the Government of India (hereinafter referred to as 'GoI') or for that matter, by the RBI is misplaced as the same are not final and binding decisions. All such communications may only have some relevance in taking a policy decision by the BoB to take a pragmatic approach in arriving at any policy decision.

10. He further states that there were communications from the RBI advising the BoB to either merge the NBL with the BoB or to divest its share. If the BoB on the basis of the attendant circumstances has taken a policy decision to go for divestment, the same cannot be interfered with. He submits that neither on facts nor on law, does the petitioner have any case and therefore, the instant petition deserves to be dismissed. He has placed reliance on a decision of the Hon'ble Supreme Court in the case of ***BALCO Employees' Union (Regd.) v.***

Union of India*[1]*, a decision of Madras High Court in ***Air Corporation. Employees Union v. Union of India***[2] and a decision of this court in the case of ***All India IDBI Officers Association through its Gen Secretary v. Union of India,***[3] which has been affirmed by the Hon'ble Division Bench of this court in the case of ***All India IDBI Officers Association through its Gen Secretary* v. *Union of India,*[4].**

11. Mr. Atul Sharma, learned counsel appearing for the RBI submits that Section 19(2) of Act of 1949 provides that a banking company shall not hold more than 30% of the paid up share capital of any company. The only exception to Section 19(2) of Act of 1949 is provided under Section 53 of the Act of 1949, wherein, the Central Government on the recommendations of the RBI, by notification in the Official Gazette, has the power to declare that any or all the provisions of the Act of 1949 shall not apply to any banking company or institution or to any class of the banking companies, either generally or for such period as has been specified.

12. He, therefore, states that in the instant case, the RBI *vide* recommendation dated 21.11.2005 recommended GoI, MoF to grant exemption under Section 19(2) of the Act of 1949 while exercising the power under Section 53 of the Act of 1949, exempting the BoB from the applicability of Section 19(2) of the Act of 1949 and thereafter the said exemption was granted. According to him, no approval is required from RBI for publishing PIM inviting EoI as that in itself does not amount to transfer of shares of the banking company by the BoB. Once, the divestment process is taken forward, the shortlisted entity shall approach the RBI in terms of Section 12B(1) of the Act of

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[1] (2002) 2 SCC 333
[2] 2022 SCC OnLine Mad 1121
[3]2018 SCC OnLine Del 13002
[4]2018 SCC Online Del 13248

1949 which shall take a decision on the suitability of the entity as per extent law and regulations and will arrive at a reasoned decision keeping the interest of all the stakeholders into account.

13. He further states that mere inviting EoI does not violate the provisions of the Act of 1949, any RBI regulations or RBI's letter dated 15th September, 2005 and divestment of the NBL by the BoB will have to pass the muster of regulatory scrutiny of RBI. He submits that in exercise of powers conferred by Section 21 and Section 35A of the Act of 1949 and pursuant to the powers under Section 12B of the Act of 1949, as amended by The Banking Amended Act, 2012, the RBI issued directions with respect to prior approval for acquisition of shares or voting rights in private sector banks on 19.11.2015. He then submits that for determination of fit and proper status, the provisions of Chapter IV of the master direction dated 19.11.2015 will have application. He submits that the provisions under master circular take care of apprehensions raised by the petitioner.

14. Ms. Arunima Dwivedi, learned counsel appearing for Union of India while placing reliance on her counter-affidavit submits that the decision in question of the BoB is essentially in the realm of economic policy decision and in view of the law laid down by the Hon'ble Supreme Court in the case of ***Balco*** (supra) and ***Shri Sitaram Sugar Co. Ltd. v. Union of India,***[5] under the limited scope of judicial review, such a decision cannot be interfered with.

15. In rejoinder submissions, Mr. Prashan Bhushan, learned counsel for petitioner, while placing reliance on supplementary affidavit filed by the petitioner dated 16.05.2023, submits that the BoB is not working in the interest of NBL and its depositors. He again highlights

[5] (1990) 3 SCC 223

the RBI letter dated 10.06.2022 to indicate that the dependency of NBL on BoB is significantly high, as most of the vertical heads of NBL have very little exposure to changing financial landscape and technological developments. According to him, BoB was directed to take a decision of merger of NBL without any delay. He further reiterates that the decision of BoB in letter dated 30.07.2021 is without considering the issue raised by RBI and the decision to sell the shares does not solve the problem of NBL as the NBL is highly dependent on BoB.

16. He also submits that the BoB, without any authority, chose *Gaja Capital* and *Capital Float Financial Services Pvt. Ltd.* and both the companies were not competent to acquire the shares of NBL due to various serious financial irregularities as have been highlighted in paragraph no.6 of the supplementary affidavit.

17. He, therefore, states that it is not only the approval under Section 12(B) of the Act of 1949 required at the stage of finally allowing divestment but even at the stage of issuing EoI, the approval of RBI is necessary. According to him, the entire exercise by RBI is against the public interest at large and the same suffers with *mala fide* intent.

18. I have heard learned counsel for the parties and perused the record.

19. RBI has been constituted under the provisions of **Reserve Bank of India Act, 1939** (hereinafter referred to as '**RBI Act**'), *inter alia* to take over the management of currency from Government, for regulating the issuance of bank notes, foreign exchange and keeping of reserves in order to secure monetary stability in the country and further to operate the currency and credit system of the country to its

advantage.

20. The RBI exercises powers *inter alia* as contemplated under the RBI Act as well as Act of 1949. The RBI has been invested with the powers to determine banking policy as defined in Section 5(ca) of the Act of 1949 in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interest of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources. The RBI has been vested with the powers to grant license to commerce and carry on the banking business in India and issue directions/guidelines to the banks under the provisions of Act of 1949.

21. In the instant case, the provisions of Section 19(2) and the provisions of Section 53(1) will have direct application. Section 19(2) of the Act of 1949 provides that a banking company shall not hold more than 30% of the paid up share capital of any company. Section 19(2) of the Act of 1949 reads as under:-

> *"(2) Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent. of the paid-up share capital of that company or thirty per cent. of its own paid-up share capital and reserves, whichever is less: Provided that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefore if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow."*

22. Section 53(1) of the Act of 1949 empowers the Central Government to exempt in certain cases with respect to any or all the provisions of the Act of 1949. Section 53(1) of the Act of 1949 reads as under:-

> *"53. Power to exempt in certain cases.—1[1] The Central Government may, on the recommendation of the Reserve Bank, declare, by notification in the Official Gazette, that any or all of the provisions of this Act shall not apply to any 2[banking company or institution or to any class of banking companies 3[***]] either generally or for such period as may be specified. 4[(2) 5[A copy of every notification proposed to be issued under sub-section*
>
> *(1) relating to any banking company or institution or any class of banking companies or any branch of a banking company or an institution, as the case may be, functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005 (28 of 2005) shall be laid in draft before each House of Parliament], while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.]"*

23. The RBI has stated in its counter-affidavit that in the year 1973, in the wake of accumulated losses faced by NBL, RBI directed BoB to manage the affairs of NBL and the MoF, GoI *vide* notification dated 19.04.2005, in exercise of power conferred by Section 53 of the Act of 1949, exempted BoB from the applicability of Section 19(2) of the Act of 1949 for a period up to 15.08.2005, in so far as they relate to holding of its shares in NBL.

24. *Vide* letter dated 11.07.2005, the RBI requested the GoI again to exempt BoB from applicability of Section 19(2) of the Act of 1949 for a period upto 15.08.2006. The said communication, *inter alia* stated that the level of shareholding in NBL calls for merger of the two banks.

25. The letter dated 11.07.2005 reads as under:-

> *"DBOD. Log. No. /09.11.006/3003-04*
> *July 11, 2005*
>
> *The Under Secretary*
> *Government of India*

Ministry of Finance
Department of Economic Affairs
(Banking Division)
New Delhi-110001

Dear Sir,

Exempting under Section 19(2) of Banking Regulation Act, 1949- Bank of Baroda - A/c Nainital Bank Ltd. (NBL)

Please refer to Government Notification F. No. 13/4/2005 - BOA dated 19th April, 2005 exempting Bank of Baroda from the provisions of Section 19(2) of Banking Regulation Act, 1949 upto the period 15th August, 2005 in respect of its holding shares in Nainital Bank Ltd. (NBL) in excess of 30% of the share capital of NBL.

2. In this connection if is submitted that with our approval on April 25, 2005 to BOB for subscribing to the rights issue of NBL., BOB's shareholding in NBL has Increased to 98.2% . This level of holding in NBL calls for merger of the two banks. While this aspect is being looked into in the context of bank by bank approach being adopted for implementation of the ownership and governance guidelines and as the issue requires time to receive, we recommend that in view of the circumstances narrated above, the Government in tens of Section 53 of the Act bid, may consider exempting Bank of Baroda from applicability of Section 19(2) for further period of one year i.e. upto 15.08.2006 so fas as its holding shares in excess Of 309 in Nainital Bank Lid. (NBL) b concerned.

3. Draft of the Notification which the Government may issue, I they agree with our recommendation is enclosed. A copy of the Notification may please be forward to us for our record."

26. *Vide* letter dated 12.08.2005, the BoB stated that any move to merge the two banks may have adverse repercussions due to local identity of NBL and emotional attachment of the local people with its founders and requested permission to retain its shareholding in NBL. The BoB, therefore, requested for treatment of NBL as a subsidiary of BoB for the purpose of Section 19(2) and to permit them as a special case to retain its holding in NBL. Paragraph nos.7 and 8 of the said communication dated 12.08.2005 by the BoB to RBI, are reproduced as under:-

"7. Any move for the merger of the NBL with Bank of Baroda may have repercussions due to the emotional attachment of

> *the local people with its founders and as such with the NBL. There is a very strong local preference to preserve its separate identity. Further, looking to the regional presence of the NBL, diluting our holdings to the permitted level of 30% through IPO will be a difficult proposition as it would not ca easy to divest of NBL shares at premium, which can match the present book value of shares.*
>
> *8. I therefore request that RBI may examine afresh to treat, the NBL as Subsidiary of the Bank of Baroda for the purpose of Section 19 and other relevant provisions of the Banking Regulation Act, 1949 and the Bank as such can be permitted by Reserve Bank of India, as a special case, to retain its existing holding in NBL. A parallel can be drawn here with that of the position of SBI vis-a-vis its Subsidiaries. Enclosed print out downloaded from SBI's website indicates that SBI too is having domestic subsidiaries for doing banking business, wherein their shareholding ranges between 75% to 100%.*
>
> *In such an eventuality the merger/dilution/disinvestments of our holdings in NBL may not be necessary and so the need to seek exemption under section 19(2) of the BR Act, 1949 would be eliminated."*

27. On 15.09.2005, the RBI advised the BoB to retain its existing shareholding in NBL subject to the condition that BoB will neither transfer its shareholding without the prior approval of the RBI, nor will its shareholding in NBL be reduced, in any manner, without the prior approval of the RBI. In light of the request made by the BoB *vide* letter dated 12.08.2005, the RBI *vide* letter dated 21.11.2005 requested the Government to grant permanent exemption to BoB from applicability of Section 19 (2) of the Act of 1949.

28. It is seen that, thereafter, there are various correspondences of RBI with BoB and GoI regarding merger of NBL with BoB. Some of the correspondences are dated 06.12.2013, 01.01.2014, 28.10.2014 and 04.02.2015.

29. The recent communication which deserves to be taken note of is dated 09.05.2022. A reading of the said communication would indicate that the RBI referred to the meeting held on 28.04.2022 with

the officials of the bank. The said communication also notes that the major concerns in the functioning of the NBL, including weaknesses in the assurance functions resulting in compliance failures and non-sustenance of compliance, weak systems and procedures, continued lack of skill-sets in senior and middle management were considered. All those concerns were suggested to have higher dependency on the BoB for key managerial positions. It was, therefore, suggested that the BoB may expedite the proposal of crystallisation of the merger of the NBL / possibility of divestment plan by July 31, 2022.

30. The said communication dated 09.05.2022 is reproduced as under:-

> *"Ref.CO DOS.SED. No.S653/13-36-00S/2022-23*
> *May 09, 2022*
>
> *CONFIDENTIAL*
> *The Managing Director & Chief Executive Officer*
> *Bank of Baroda*
> *Baroda Corporate Centre*
> *C-26, G-Block, Bandra-Kurla Complex*
> *Bandra (East)*
> *Mumbai – 400051*
>
> *Dear Sir,*
>
> ***Meeting on the Supervisory concerns related to The Nainital Bank Limited***
>
> *A reference is invited to the meeting on the captioned matter held on April 28, 2022, with the Chief General Manager, Department of Supervision, wherein, the major concerns in the functioning of The Nainital Bank Limited (NBL), including weaknesses in the assurance functions resulting in compliance failures and non-sustenance of compliance, weak systems and procedures, continued lack of skill-sets in senior and middle management necessitating higher dependency on Bank of Baroda for key managerial positions were highlighted. Given the continued supervisory concerns and inability of NBL to scale up its business and network, Bank of Baroda may expedite the proposal of crystallisation of the merger of NBL / possibility of divestment plan by July 31,2022.*
>
> *2. Keeping in view of the above, the bank is advised to submit a fortnightly update on the progress starting from May 13, 2022.*

3. This advice may be placed before the Board in the next meeting.

4. Please acknowledge receipt of the letter."

31. The RBI in its communication dated 10.06.2022 reiterated that the delay in merging NBL with its parent bank viz. BoB or any other bank, may be detrimental to the interest of the depositors as the continuation of the NBL appears to be untenable. Paragraphs nos. 6 to 8 of the said communication dated 10.06.2022, are reproduced as under:-

"6. However, the continued supervisory concerns including high levels of NPAs and inability of NBL to scale up its business and network coupled with continued deficiencies in bank's operations, have a serious potential of putting the depositors' money at risk. The supervisory assessment of NBL with reference to its financial position as on March 31, 2021 conducted recently, has also highlighted critical gaps in Governance & Oversight, Credit and Operational Risks and Internal Controls. In this regard , a meeting with MD & CEO of Bank of Baroda was held on April 28, 2022 wherein the major concerns in NBL were highlighted and Bank of Baroda was advised to expedite the proposal of crystallisation of the merger of NBL/possibility of divestment plan by July 31,2022. Bank of Baroda was specifically advised to consider merger of NBL with itself particularly as (a) being the largest shareholder since 1977, it has in-depth understanding of the major issues faced by NBL; (b) there would be synergies due to similar CBS platform of Bank of Baroda and NBL; (c) NBL being relatively smaller size in terms of operations and number of personnel. the impact of merger on the Capital of Bank of Baroda would be insignificant; (d) key managerial positions in NBL are being held by Bank of Baroda Officials; and (e) given the Bank of Baroda experience as an anchor PSB in the merger of large banks like e-Vijaya Bank and e-Dena Bank, the potential merger with NBL could be expected to be smooth without any adverse impact on customer service.

7. Based on the above-mentioned observations, I would like to reiterate that any further delay in merging NBL with its parent bank viz. Bank of Baroda or any other bank, may be detrimental to the interest of the depositors as the continuation of NBL appears to be untenable.

8. I, therefore, request you to consider the merger of NBL with the parent, Bank of Baroda at the earliest as indicated in our earlier references."

32. It is thereafter, on 30.07.2022, the BoB informed the RBI that after discussions with several institutional investors, the bank has received two letters of intent for purchasing BOB's stake in NBL. The details of those two investors i.e. *Gaja Capital and Capital Float Financial Services Pvt. Ltd.* were mentioned therein. It was also stated in the said communication that the observations of the Board of Directors of the BoB were also communicated by the said letter. The said observations read as under:-

> *"(i) To forward the names of the two shortlisted investors who have shown inclination in taking a stake in NBL to RBI for their consideration and taking the process ahead with anyone of them as the Reserve Bank of India may direct.*
> *(ii) The option of merger of NBL with BOB may result in the loss of value that may be gained through divestment of BOB's stake in NBL. Hence amalgamation of NBL with BOB may not be in the interest of BOB's shareholders.*
> *(iii) The Bank can also consider engagement with additional institutional investors in order to maximize the value that could be garnered 'by BOB for divestment of it's stake in NBL, with due permission of the RBI for an extension of the timeline beyond July 31, 2022."*

33. On 12.12.2022, the Board of Directors of BoB considered the proposal with respect to the NBL and while considering the overall circumstances, approved the proposal to divest majority shareholding of the BoB in the NBL. It has also been decided to issue an advertisement inviting EoI from interested parties to acquire majority shareholding of BoB in NBL. On the basis of the decision taken on 12.12.2022, a communication was made to RBI on 13.12.2022 by BoB which *inter alia* stated that the bank may go for the EoI route to find out potential investors for bank's plan for divestment in NBL. It is indicated that such a route would be similar to the one adopted by the GoI in the case of ***All India IDBI Officers Association*** *(supra)* as the same will also be more transparent and explore the possibility of inviting a wider participation in the divestment of banks shareholding.

34. The communication dated 13.12.2022 is reproduced as under:-

"Ref. No. BCC: DOMSUB:114:198(M)

December 13, 2022

The Chief General Manager
Reserve Bank of India
Department of Supervision
Central Office, World Trade centre
Cuffe Parade, Colaba
Mumbai - 400 005

Dear Sir,

Sub: Plan for divestment of Bank of Baroda's stake in Nainital Bank Limited

Nainital Bank Limited ("NBL") was established in 19224 promoted by Late Bharat Ratna Pt. Govind Ballabh Pant. In 1973, the Reserve Bank of India ("RBI") directed BoB to manage the affairs of NBL. The current shareholding of BoB in NBL is 98.57%, with the remaining 1.43% held by a few corporates/individuals. As per RBI's letter dated April 26, 2012, NBL currently operates in five states, namely, Uttarakhand, Uttar Pradesh, Delhi & NCR, Haryana and Rajasthan. Presently, NBL has 166 branches in these states and 941 employees. The current shareholding pattern of NBL is provided as Annexure - I.

The RBI, vide letters dated May 12, 2020, October 05, 2020 and June 10, 2022, requested the Ministry of Finance, Government of India ("MoF") to explore a possible corporate restructuring of BoB's shareholding in Nainital Bank Limited (NBL). Subsequently, vide letter dated June 17, 2022, the MoF requested BoB to expedite the proposal concerning the corporate restructuring of NBL.

In its Meeting held on July 14, 2022, the Board deliberated on the feasibility of either; (i) exploring a merger between BoB and NBL; and (ii) a proposed divestment of its majority stake in NBL. The Board noted that the option of divestment might better serve the interest of BoB's shareholders. BoB had accordingly communicated to the RBI, vide letters dated July 18, 2022 and July 30, 2022, that a merger may not be a feasible option, for the reasons stated above, and highlighted the preliminary market interest received for a possible divestment of the shareholding of BoB in NBL. Presently Bank of Baroda holds 98.57% stake in the NBL, whereas 1.43% is held by the Corporate/Individual investors.

For the divestment, Bank had also initiated the process of inviting the strategic investors & the details were conveyed to your good office, vide our letter No.BCC:MD&CEO:114:18 dated 30.07.2022. During the informal consultations with

RBI recently in this regard, it was felt that the Bank may go in for the "expression of interest" route to find out potential investors for Banks's plans for divestment in NBL, on similar lines, as adopted by the Govt. of India in the case of IDBI, as it will be more transparent and also explore the possibility of inviting a wider participation in the divestment of the Bank's shareholding.

On December 12, 2022, our Board has approved the proposal to divest majority shareholding of BOB in NBL ("Proposed Transaction") and issue an advertisement inviting Expressions of Interest (EOI) from interested parties ("IPs") to acquire majority shareholding or BoB in NBL. A copy of the Board resolution passed in this regard is enclosed as Annexure-H. In view of the shareholding requirements prescribed in the Prior Approval for Acquisition of Shares or Voting Rights in Private Sector Banks: Directions, 2015 and Master Direction - Ownership in Private Sector Banks, Directions, 2016, the parties shall approach the RBI for its prior approval in relation to the Proposed Transaction.

The expression of Interests received from probable IPs through this EOI advertisement process will be scrutinised by Bank of Baroda & the shortlisted investors will be referred to RBI at the relevant stage for assessment of " Fit & Proper" & for obtaining fu1·ther guidance and approval from RBI in the matter.

We shall be happy to provide any further information or clarification, should you so require.

Thanking you."

35. The relevant agenda, whereby, such a decision was taken, was discussed on 12.12.2022 and the resolution passed by the Board of Directors reads as under:-

"RESOLUTION No.51 (2022-23) DATIED 9th DECEMBER, 2022
APPROVED BY THE BOARD OF DIRECTORS THROUGH CIRCULATION ON 12th DECEMBER, 2022

Agenda Item requesting for approval for divestment of Bank's shareholding in The Nainital Bank Limited, through expression of interest to find out potential investors for taking a stake in the Nainital Bank Limited by publishing the advertisement inviting EOIs in at least one leading national and in one leading local vernacular newspaper and inform the Reserve Bank of India in this regard, was considered and it was:

RESOLVED that divestment of the Bank's shareholding in The Nainital Bank Limited, by inviting expression of interest by way

> *of publishing a newspaper advertisement inviting EOIs in at least one leading national and in one leading local vernacular newspaper and to inform the Reserve Bank of India in this regard, as detailed in the agenda note, be and is hereby approved."*

36. It is, thereafter, the impugned advertisement inviting EoI in acquisition of stake holding of the BoB in the NBL has been issued, which is under challenge in the instant writ petition.

37. On the basis of the aforesaid communications and the documents, following conclusions are discernable:-

(i) There was no final and binding decision taken by any of the authorities to merge the NBL in the BoB;

(ii) Whether it is the Parliamentary Committee, RBI or the GoI, Ministry of Finance, all have left it to the discretion of the BoB either to merge the NBL with itself or to go for divestment;

(iii) The divestment route has been decided to be followed by the BoB and the same has not attained its finality yet;

(iv) The invitation of EoI is the second step after taking a principal decision to go ahead for divestment;

(v) The PIM inviting EoI includes various steps to finalize the same, such as, assessment of EoI to the satisfaction of the BoB as per extent guidelines and requirements issued by the RBI, short listing of qualified interested parties and their evaluation on the touchstone of the eligibility criteria, issuance of requests for proposal only to qualified interested parties, assessment and due diligence (legal and finance) setting up of reserve price, bid evaluation and Government approval, execution of definitive agreement and approval of statutory authorities etc.

38. The mode suggested by communication dated 20.07.2022, whereby, two investors were outlined, has been discarded. As per counter affidavit filed by BoB, it has been highlighted that the merger with the NBL is not a viable option considering the following aspects:-

> *"(a) BoB will not get considerable economic benefit from the merger as NBL has a meager business, with only 139 branches;*
>
> *(b) NBL is a local institution focusing on serving the banking needs of masses of the local region and people in the area have sentimental attachment to NBL, so by way of the merger NBL may lose its local identity as well as its focus on catering to local needs; and*
>
> *(c) Only a section of the employees is advocating for the merger, and hence a merger without internal staff support may cause complications."*

39. The RBI through its counter affidavit *vide* paragraph nos. 7 to 13 has stated as under:-

> *"7. It is submitted that Section 12B (1) of BR Act states that, "No person (applicant) shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold jive per cent. or more of the paid-up share capital of such banking company or entitles him to exercise five per cent or more of the voting rights in such banking company. "*
>
> *8. It is submitted that no person (applicant), in the proposed disinvestment process of BoB, has applied to the Reserve Bank to hold five per cent or more of the paid-up share capital or voting rights in NBL as required under Section 12B (1) of BR Act and as per the directions/guidelines issued by the Reserve Bank on the matter.*
>
> *9. Section 12B (2) of the BR Act empowers Reserve Bank to provide approval for holding 5% or more of the paid up share capital or voting rights of a banking company if the Reserve Bank is satisfied that the approval is in the public interest.*

> *10. It is stated that BoB has only issued a PIM EoI but continues to retain its existing shareholding in NBL and has neither transferred nor reduced its shareholding in NBL. Further, as stated above, the consummation of the proposed transaction shall be subject to RBI approval which shall only be granted if the Reserve Bank is satisfied that the acquirer meets the requirements (including fit and proper criteria) prescribed in RBI directions/guidelines.*
>
> *11. It is clarified that no approval is required from Reserve Bank for publishing PIM inviting EoI as that in itself does not amount to transfer of shares of the banking company by BoB. Once the divestment process is taken forward, the shortlisted entity shall approach the Reserve Bank in terms of Section 12B (1) of BR Act which shall take a decision on the suitability of the entity as per extant law and regulations and will arrive at a reasoned decision keeping the interest of all stakeholders into account. Therefore, mere inviting EoI does not violate the provisions of the BR Act, any RBI regulations or RBI's letter of 15 September 2005 and the divestment of NBL by BoB will have to pass muster of regulatory scrutiny by RBI.*
>
> *12. BoB in its counter affidavit has also stated that as per PIM, NBL and the successful bidder shall apply for and obtain all legal and regulatory approvals as required under the applicable law, including from RBI.*
>
> *13. The petition is therefore premature and not maintainable. No writ or direction of this Hon 'ble Court is warranted as the Reserve Bank is statutorily empowered to do the needful on such matters in public interest and the matter ought to be dismissed as against the Answering Respondent."*

40. It is thus unambiguously clear that no approval is required from RBI for publishing PIM inviting EoI as that in itself does not amount to transfer of shares of the banking company by the BoB.

41. It has been stated unequivocally that once the divestment process is taken forward, the shortlisted entity shall approach the RBI in terms of Section 12B (1) of the Act of 1949 which shall take a decision on the suitability of the entity as per extant law and regulations and will arrive at a reasoned decision keeping the interest of all stakeholders into account. It has also been stated that mere inviting EoI does not violate the provisions of the Act of 1949, any RBI Regulations or RBI's letter etc.

42. Even a plain reading of Section 12B of the Act of 1949 would indicate that the approval of the RBI is required in acquiring or agreeing to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent or more of the paid-up share capital of such banking company or entitles him to exercise five per cent or more of the voting rights in such banking company.

43. It is thus seen that unless the qualified bidder is ascertained, there is no question of making an application to RBI. An argument that even for the issuance of EoI, the approval from RBI should have been obtained, is not based on any statutory support. The same is not the requirement under any of the provisions of the Act of 1949 or rules made thereunder.

44. It is also to be considered that the provisions of Section 12B(2) of the Act of 1949 will have to be adhered to before granting any approval. Section 12B(2) of the Act of 1949, reads as under:-

> ***"[12B. Regulation of acquisition of shares or voting rights.***
> *...*
> *.....*
> *(2) An approval under sub-section (1) may be granted by the Reserve Bank if it is satisfied that—*
> *(a) in the public interest; or*
> *(b) in the interest of banking policy; or*
> *(c) to prevent the affairs of any banking company being conducted in a manner detrimental or prejudicial to the interests of the banking company; or*
> *(d) in view of the emerging trends in banking and international best practices; or*
> *(e) in the interest of the banking and financial system in India, the applicant is a fit and proper person to acquire shares or voting rights:*

Provided that the Reserve Bank may call for such information from the applicant as it may deem necessary for considering the application referred to in sub-section (1):

Provided further that the Reserve Bank may specify different criteria for acquisition of shares or voting rights in different percentages."

45. It is thus understood that while granting approval under Section 12B(1) of the Act of 1949, the RBI has to record its satisfaction that the concerned applicant is a fit and proper person or entity to acquire shares or voting rights. There is proper check and balance under Section 12B of the Act of 1949 to ensure that the decision of acquisition of shares or voting rights in favour of any person is in public interest and fulfils the criteria mentioned in Section 12B(2) of the Act of 1949.

46. Since such a stage has not yet arrived, therefore, it is pre-mature at this stage, to assume that the legal regime applicable in the divestment of its shares by the BoB in NBL will not be followed.

47. The facts of the instant case clearly revealed that the decision of divestment of BoB is in the realm of a policy decision. It is to be seen that as per Section 19 of the Act of 1949, there is a restriction for a banking company in holding shares in any company, whether as a pledge, mortgagee or absolute owner, of an amount exceeding 30 per cent of the paid-up share capital of that company or thirty percent of its own paid-up share capital and reserves, whichever is less.

48. Admittedly, as on date, the BoB is holding the share capital in NBL in breach of the provisions of Section 19(2) of the Act of 1949. Since, an exemption has been granted under Section 53 of the Act of 1949, therefore, such a breach has no adverse consequence.

49. Under the facts of the instant case, if BoB decides to go for divestment by fair and transparent process, no fault can be found in adopting such an approach, unless the action of BoB is shown to be

patently illegal or arbitrary or in defiance of the applicable provisions of law. In the instant case, as of now, no such violation is found to have been committed by the BoB.

50. The allegations with respect to two proposed investors who are allegedly involved in various serious financial frauds are irrelevant since the BoB has dropped this process. A transparent route of inviting EoI from all interested entities has now been adopted instead of allowing any individual without being identified by the bidding process to stake the claim on the shares of NBL.

51. The Hon'ble Supreme Court in the case of ***Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others v. Union of India and Others***[6] has held that if the Directorate of a Government Company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the dent of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.

52. In the case of ***Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India***[7], the Hon'ble Supreme Court has held that the function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It has been held that a public body invested with statutory powers, must take care not to exceed or abuse its powers. It must act in good faith and it must act reasonably. The courts are not to interfere with the economic policy which is the function of experts. It is not the function of the court to sit in judgment over matters of economic

[6](1981) 1 SCC 568
[7] (1992) 2 SCC 343

policy and it must necessarily be lapsed to the expert bodies. Paragraph no.31 of the said judgment reads as under:-

> *"31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."*

53. The same principle has been laid down in the case of ***Bhavesh D. Parish and Others v. Union of India and another***[8].

54. In the case of ***BALCO Employees' Union (Regd.)*** *(supra)* in paragraph nos. 46 to 48, it has been held as under:-

> *"46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.*
>
> *47. Process of disinvestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the*

[8] (2000) 5 SCC 471

workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz. Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana v. Des Raj Sangar [(1976) 2 SCC 844 : 1976 SCC (L&S) 336] on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow."

55. It is thus clear that a process of divestment is a policy decision involving complex economic factors. The courts have consistently refrained from interfering with economic decisions as it has been recognized that economic expediencies lack adjudicative disposition

and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere.

56. Relying on the same principle, the High Court of Madras in the case of ***Air Corpn. Employees Union*** *(supra)* in paragraph no. 79 has held as under:-

> *"79. In order to round-off and consummate the judicial discourse, it is imperative to draw reference to a few pithy observations of the Hon'ble Supreme Court as clincher, hereunder:*
>
> *"(i) Process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition.*
>
> *(ii) In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.*
>
> *(iii) There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government.*
>
> *(iv) The policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest.*
>
> *(v) If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow.*
>
> *(vi) The employees have no vested right in the employer company continuing to be a government company or "other authority" for the purpose of Article 12 of the Constitution of India. Apart from the fact that the very status claimed by the employees in this case is a fortuitous occurrence with the employees having commenced work under a private employer and while on the verge of losing employment, being rescued*

by the State taking over the company, the employees cannot claim any right to decide as to who should own the shares of the company. The State which invested of its own volition, can equally well disinvest. So long as the State holds the controlling interest or the whole of the shareholding, employees may claim the status of employees of a government company or "other authority" under Article 12 of the Constitution. The status so conferred on the employees does not prevent the Government from disinvesting; nor does it make the consent of the employees a necessary precondition for disinvestment.

(vii) Public interest is the paramount consideration, and if in the public interest the Government thought it fit to take over a sick company to preserve the productive unit and the jobs of those employed therein, the government can, in the public interest, with a view to reducing the continuing drain on its limited resources, or with a view to raising funds for its priority welfare or developmental projects, or even as a measure of mobilising the funds needed for running the government, disinvest from the public sector companies. Article 12 of the Constitution does not place any embargo on an instrumentality of the State or "other authority" from changing its character".

(viii) From the aforesaid recital of facts, it is clear that safeguarding the interests of the workers was one of the concerns of the Government. Representations had been received from the Trade Union leaders and effort was made to try and ensure that the process of disinvestment did not adversely affect the workers.

(ix) Even though the employees of the company may have an interest in seeing as to how the company is managed, it will not be possible to accept the contentions that in the process of disinvestment, the principles of natural justice would be applicable and that the workers, or for that matter any other party having an interest therein, would have a right of being heard.

(x) Not giving the workmen an opportunity of being heard cannot per se be a ground of vitiating the decision. If the decision is otherwise illegal as being contrary to law or any constitutional provision, the persons affected like the workmen, can impugn the same, but not giving a predecisional hearing cannot be a ground for quashing the decision.

(xi) While it may be fair and sensible to consult the workers in a situation of change of management, there is, however, in law no such obligation to consult in the process of sale of majority shares in a company.

> *(xii) As a result of disinvestment of 51% of the shares of the company, the management and control, no doubt, has gone into private hands. Nevertheless, it cannot, in law, be said that the employer of the workmen has changed. The employees continue to be under the company and change of management does not in law amount to a change in employment.*
>
> *(xiii) Transparency does not mean the conducting of the Government business while sitting on the cross roads in public. Transparency would require that the manner in which decision is taken is made known."*

57. A similar view was taken by the Co-ordinate Bench of this court in the case of ***All India IDBI Officers Association*** *(supra)* and in paragraph nos. 64 and 65, it has been held as under:-

> *"64. The decision of LIC's Board is a commercial decision and, therefore, it is not open for this Court to examine the merits of the said decision. Mr. Bhushan has, undoubtedly, made a compelling case to establish that LIC's decision was erroneous. He had also contended that the said decision had been thrusted upon LIC by the Government of India. Mr. Bhushan may be correct is his submissions; investment in IDBI Ltd. may or may not be beneficial for LIC and its stakeholders; but that is not a controversy that this Court is required to enter into. Even if Mr. Bhushan's contention in this regard is accepted, this Court cannot supplant its opinion over that of the Board of LIC. This Court is also unable to accept that the decision to invest in IDBI Ltd. is so perverse and unreasonable that no sensible person would take the same. LIC believes that acquiring a bank would be of strategic importance and this Court has no reason to question the same.*
>
> *65. Once it is established that the Board of LIC was aware of the state of affairs of the IDBI Ltd. and yet had approved the investment in their commercial wisdom, no further examination is necessary. It is also relevant to note that LIC's Board had once again discussed the matter at a meeting held on 20.08.2018 and had taken decisions to take further steps to implement the decision to make investment in IDBI. This also establishes that the LIC's Board has been apprised from time to time as to the progress of the transaction and has consciously approved the same."*

58. The decision of the Co-ordinate Bench of this court was upheld by the Division Bench of this court in the case of ***All India IDBI Officers Association*** *(supra)*.

59. It is thus seen that in the instant case, in the absence of there being a clear violation of any statutory provision, no interference is called for. More so, the decision of the BoB for divestment cannot be said to be arbitrary or illegal so as to warrant interference of this court under its power of judicial review.

60. This court, therefore, at this stage, is not inclined to interfere with the impugned advertisement of EoI. However, it would be open to the petitioner to raise any grievance at an appropriate stage in accordance with the law, if so necessitated.

61. With the aforesaid observations, the petition stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

JUNE 02, 2023
MJ/*nc*