Peerless General Finance and Investment Co. Ltd., and another

Vs

Reserve Bank of India

Writ Petn. (Civil) No.677 of 1991 with Civil Appeals Nos.400-403 of 1992

(N. M. Kasliwal, K. Ramaswamy JJ)

19.02.1992

JUDGEMENT

KASLIWAL, J.:-

1. Special leave granted in all the petitions.

2. This litigation is an upshot of the earlier case Reserve Bank of India v. Peerless General Finance and Investment Company Ltd. ((1 987) 1 SCC 424: (AIR 1987 SC 1023)) decided on January 22, 1987. In 1978 the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (in short 'the Banning Act') was enacted to ' ban the promotion or conduct of prize chits or money circulation schemes and for matters connected therewith or incidental thereto.' The question which arose in the above case was whether the Endowment Scheme piloted by the Peerless General Finance and Investment Company Ltd., (hereinafter in short 'the Peerless') fell within the definition of 'Prize Chits' within the meaning of S. 2(e) of the above Banning Act. By a letter dated July 23, 1979, the Reserve Bank of India pointed out to, the Peerless that the schemes conducted by it were covered by the provisions of the Banning Act which had come into force w.e.f. December 12, 1978. On September 3, 1979 the Peerless filed a writ petition in the Calcutta High Court for a declaration that the Prize Chits Banning Act did not apply to the business carried on by the Peerless. A similar writ petition was filed questioning a notice issued by the Madhya Pradesh Government on the same lines as that issued by the West Bengal Government. A learned single Judge of the High Court dismissed both the writ petitions but appeals preferred by the Peerless under the Letters Patent were allowed by a Division Bench of the Calcutta High Court. It was declared that the business carried on by the Peerless did not come within the mischief of the Prize Chits Banning lact. Against the judgment of the Division Bench of the Calcutta High Court, the Reserve Bank of India, the Union of India and the State of West Bengal preferred appeals before this Court. The question considered in the above case was "Is the endowment scheme of the Peerless Company a Prize Chit within the meaning of S. 2(e) of the Prize Chits and Monev Circulation Schemes (Banning) Act?" This court held that S. 2(e) does not contemplate a scheme without a prize and, therefore, the Endowment Certificate Scheme of the Peerless Company was outside the Prize Chits Banning Act. Appeals filed by the Reserve Bank of India, the Union of India and the State of West Bengal were accordingly dismissed. Chinnappa Reddy, observed (at pp. 1043-44 of AIR):

> "It is open to them to take such steps as are open to them in law to regulate schemes such as those run by the Peerless Company to prevent exploitation of ignorant subscribers. Care must also be taken to protect the thousands of employees. We must also record our dissatisfaction with some of the schemes of the Life Insurance Corporation which appear to us to be even less advantageous to the subscribers than

> the Peerless Scheme. We suggest that there should be a complete ban on forfeiture clauses in all savings schemes, including Life Insurance Policies, since these clauses hit hardest the classes of people who need security and protection most. We have explained this earlier and we do wonder whether the weaker sections of the people are not being made to pay the more affluent sections ! Robbing Peter to pay Paul? It was further observed "We would also like to query what action the Reserve Bank of India and the Union of India are taking or proposing to take against the mushroom growth of finance and investment companies' offering staggeringly high rates of interest to depositors leading us to suspect whether these companies are not speculative ventures floated to attract unwary and credulous investors and capture their savings. One has only to look at the morning's newspaper to be greeted by advertisements inviting deposits and offering interest at astronomic rates. On January 1, 1987 one of the national newspapers published from Hyderabad, where one of us happened to be spending the vacation, carried as many as ten advertisements with 'banner headlines' covering the whole of the last page, a quarter of the first page and conspicuous spaces in other pages offering fabul us sates of interest. At least two of the advertisers offered to double the deposit in 30 months, 2000 for 1000, 10,000 for 5,000, they said..Another advertiser offered interest ranging between 30 per cent to 38 per cent for periods ranging between six months to five years. Almost all the advertisers offered extra interest ranging between 3 per cent to 6 per cent if deposits were made during the Christmas-Pongal season. Several of them offered gifts and prizes. If the Reserve Bank of India considers the Peerless Company with eight hundred crores invested in Government securities, fixed deposits with National Banks etc. unsafe for depositors, one wonders what they have to say about the mushroom nonbanking companies which are accepting deposits, promising most unlikely returns and what action is proposed to be taken to protect the investors. It does not require much imagination to realise the adventurous and precarious character of these businesses. Urgent action appears to be called for to protect the public. While on the one hand these schemes encourage two vices affecting public economy, the desire to make quick and easy money and the habit of excessive and wasteful consumer spending, on the other hand the investors who generally belong to the gullible and less affluent classes have no security whatsoever. Action appears imperative. "

3. Khalid, J., another learned Judge agreeing with the judgment of Chinnappa Reddy, J., further added his short but important concluding paragraph as under (AIR 1987 SC 1023, Para 42):

> "I share my brother's concern about the mushroom growth of financial companies all over the country. Such companies have proliferated. The victims of the schemes, that are attractively put forward in public media, are mostly middle class and lower middle class people. Instances are legion where such needy people have been reduced penniless because of the fraud played by such financial vultures. It is necessary for the authorities to evolve fool-proof schemes to see that fraud is not allowed to be played upon persons who are not conversant with the practice of such financial enterprises who pose themselves as benefactors of people."

4. Taking note of the weighty observations made by this Court, the Reserve Bank of India in exercise of the owers conferred by Ss. 45-J and 45-K of the Reserve Bank of India Act, 1934 (hereinafter referred to as the Act) and of all the powers enabling it in this behalf and considering it

necessary in the public interest issued certain directions by notification No.DFC.55/DG (O)-87 dated the 15th May, 1987 (hereinafter referred to as the directions of 1987). The constitutional validity of these directions of 1987 was challenged by Timex Finance and Investment Company Ltd. (hereinafter referred to as 'Timex Company') by filing a writ petition in the Calcutta High Court before the learned single Judge. The learned single Judge granted an interim order in terms of prayers (g) and (h) of the writ petition. The Reserve Bank of India aggrieved against the interim order filed an appeal before the Division Bench. A stay petition was also moved on behalf of the Reserve Bank of India for staying the operation of the order dated 7th October, 1988 passed by the learned single Judge. After hearing the stay petition for sometime, the Division Bench of the High Court listed the a peal as well as the stay petition for final disposal. The Division bench of the High Court disposed of the appeal as well as the writ petition by an order dated, March 23, 1990, and arrived to the following findings and conclusions.

> "(a) Reserve Bank of India is empowered to issue directions to the residuary non-banking companies under the provisions of Ss. 45J and 45K of the Reserve Bank of India Act, 1934 for the interest of thousands of depositors.
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> (b) However, to the extent such directions are found to be prohibitory or not workable and as such unreasonable must be held to be beyond the powers of the Reserve Bank of India.
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> (c) The impugned directions providing that they represent irreducible minimum for safeguarding the interest of and for preventing exploitation of small and unwary depositors cannot be implemented without suitable modification. It is not reasonably practicable to comply strictly with the directions as they stand by the writ petitioners and the similarly situated companies. The Supreme Court in Peerless case (AIR 1987 SC 1023) (supra) reserved the liberty to the Reserve Bank of India to take such steps as are open to them in law to regulate the schemes such as those granted by the Peerless to prevent exploitation of subscribers and to protect thousands of employees. The impugned directions without modifications will run counter to the aforesaid directions of the Supreme Court.
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> (d) The business of savings and investments carried on by the company and similarly situated companies having not been declared unlawful or banned, power of the Reserve Bank of India to regulate such business cannot be permitted to be prohibitory resulting in the ultimate closure of the business carried on by the writ petitioner company and other similarly situated companies. If the modifications as suggested by us are not implemented and if . ultimately by the business is closed down and the company goes into liquidation, the hard earned money of thousands of depositors will be lost and the employees would also lose their job. If even after modifications are made to the impugned directions in terms of this order, any company fails to comply with such directions, the Government may take such steps as are open to them to protect the interests of the thousands of small depositors and numerous employees.
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> (e) The reasons why the impugned directions cannot be complied with and are held to be unworkable and unreasonable are mainly because of the definition of liability assigned in the impugned directions. The impugned directions, as they stand now, cannot be implemented by the residuary nonbanking companies without incurring

loss irrespective of their net worth. According to the impugned directions, the liability is the amount of money deposited by the depositors plus the amount of interest whether or not due to them according to the terms of the respective contracts at the given point of them. In other words, the entire collection with the interest, bonus etc. whether payable or not would be the liability of the Company. This leaves no fund for working. If the definition of liability is amended as suggested by us, it will be possible for the companies to generate working capital. In our view, liability in Cl. 6 and in other clauses of the impugned directions should be construed to mean total amount of contractual dues of the depositors including interest, premium, bonus or other advantages by whatever name called, accrued on the amount according to the terms of contract. Ss. 45J and 45K of the Act do not authorise the Reserve Bank of India to introduce aconcept of liability which is contrary to the accepted commercial practice and trading principles. The impugned directions have failed to make distinction between the actual liability in praesenti and a liability de futuro. Liberty must be reserved to the companies to adopt normal accountancy practice recognised and accepted in the trading circles so long as such accounting practice provides for payment of the liability to the depositors in accordance with the contractual obligations. However, the Reserve Bank of India may, having regard so that acts and circumstances of each case issue Directions regulating the administrative and management expenses and expenditure on commission and publicity. In the impugned directions no restriction has been imposed on the expenditure by a residuary non-banking company on any of these heads.

In our view, the impugned directions without modifications, instead of suppressing the mischief, will only lead to adverse unworkable and/or impracticable results inasmuch as if the residuary non-banking companies cannot comply with such directions in toto, such companies have to go out of existence. This cannot be the object of the impugned directions. If the liability in terms of the contractual obligations is provided not only in the accounts but also by suitable investments in terms of Cl. 6 of the directions, in our view, all the residuary non-banking .companies, irrespective of their net worth, will be able to carry on the business.

(f) Every residuary non-banking company shall disclose its liability in its Books of Accounts and balance sheet the aggregate amount of liability accrued and payable to the depositors in accordance with the terms of the contract.

(g) The directions contained in clause 6 for deposit or investment and the liability shall be read subject to the modification of the definition of the liability as aforesaid.

(h) The directions are prospective. The period of deposit and the date of return with respect to all certificates issued prior to 15th May 1987 have been excluded from the purview of the directions as per clause 18(1). This exemption should include all contractual obligations on those certificates.

(i) All funds prior to the issue of the directions should be allowed to be kept in the manner as was being done by the respective residuary non-banking company. the direction with regard to the investment shall be applicable from the moneys collected and/ or received on and after 15th May 1987. The companies shall be allowed reasonable time to make good the deficiency in the investment . required to be made

in terms of the directions 1 after 15th May 1987.

(j) We are not unmindful of the fact that exercise of power by legislature and executive is subject to judicial restraint. The only check on judicial exercise of power is the selfimposed discipline of judicial restraint. But although the courts in exercise of judicial power are not competent to direct the enactment of a particular provision of law, if the statutory directions suffer from arbitrariness, the court is competent to issue necessary directions so that the statutory directios may be brought in conformity with law. As we have held that the Reserve Bank of India has transgressed the statutory power to the extent indicated elsewhere in the judgment, we are of the view that the Reserve Bank of India shall modify the directions and make them reasonable and workable to safeguard the interest of depositors and protect employees".

5. The Division Bench also considered an application filed by Favourite Small Investment Company and by order dated 20th December, 1990 directed that the Reserve Bank of India should revoke the prohibitory order and permit Favourite Small Investment Corupany to accept fresh deposits and carry on new business.

6. It may be noted that the Peerless filed a petition before the High Court for becoming a party-respondent. The High Court by order dated 31st August, 1990 allowed the said Application and further ordered that the cause title and the records proceedings of appeal, memorandum of appeal and the paper book filed be amended accordingly. The Peerless also moved an application for clarification of the judgment and order dated 23rd March, 1990. It prayed that suitable provision should be made for a depositor who wants back the money before maturity. If the depositor intends to get refund of the money invested before the expiry of actual. contract period, he should be required to keep the funds for a minimum period in accordance with the contract. Before maturity he can only take loan but not the principal amount with nterest. The amounts of returns should also be less than 5 per cent to provide for the collection and other expenses of the nonbanking companies. The Division Bench of the High Court took the view that the order dated 23rd March, 1990 required clarification as it was not made clear as to whether non residuary banking companies are under an obligation to pay discontinued certificates before the stipulated period in the contract, if so that would be the rate of interest. The iiivision Bench by order dated December 24, 1990 clarified its earlier order dated 23 March, 1990 as under:

"(a) If the contract by and between the company and the depositor provides that no payment on discontinued certificate will be made before the expiry of the term stipulated in the contract, in such cases, if the certificate is discontinued any time before such stipulated term and payment is made to the depositors according to the terms and conditions of the contract, in other words, on the expiry of the term stipulated in the contract, such depositor shall be paid interest at the rate of 8% compound per annum, but in such a case the company will be at liberty to deduc an amount not exceeding 5% from the tota return in or to provide for collection and other expenses incurred in connection with these discontinued certificates.

(b) In cases where certificates are discontinued before or after the stipulated term but the depositors obtain refund only upon maturity of the certificates, such refund shall be made to the depositors with compound interest at the rate of 8% per annum without any deduction whatsoever.

(c) Since no payment will be made against the discontinued certificates to the depositors in such cases shall be permitted to take loan , if they so intend, against the payment made till discontinuance of such terms and conditions as the company may stipulate."

7. The Reserve Bank of India aggrieved against all the above orders of the Calcutta High Court has filed appeals against the orders dated 23rd March, 1990, 31 st August, 1990, 20th December, 1990 and 24th December, 1990. the Peerless General Finance and Investment Company Ltd., has also filed a writ petition No. 677 of 1991 directly before this Court under Art. 32 of the Constitution of India.

8. In view of the fact that the questions raised in the appeals filed by the Reserve Bank of India against the orders of the High Court and in the civil writ petition filed by the Peerless Company are common, the same were heard together and are disposed of by a single order. Interlocutory applications were also filed on behalf of the employees of the Peerless Company, agents of Peerless Company working in the field, and some of the depositors in the Peerless company. We have heard them also.

9. The main controversy centres round paragraphs (6) and (12) of the directions of 1987 and as such the same are reproduced in full.

Paragraph (6) Security for depositors on and from 15th May 1987-

(1) Every residuary non-banking company shall deposit and keep deposited in fixed deposits with public sector banks or invest and keep invested in uneneumbered approved securities (such securities being valued at their market value for the time being), or in other investments, which in the opinion of the company are safe, a sum which shall not, at the close of business on 31st December 1987 and thereafter at the end of each half year that is, 30th June and 31 st December be less than the aggregate amounts of the liabilities to the depositors whether or not such amounts have become payable:

Provided that of the sum so deposited or invested

(a) not less than 10 per cent shall be in fixed deposits with any of the public sector banks;

(b) not less than 70 per cent shall be in approved securities;

(c) not more than 20 per cent or ten times the net owned funds of the company, whichever amount is less, shall be in other investments, provided that such investments shall be with the approval of the Board of Directors of the Company.

Explanation:

"Net owned funds" shall mean the aggregate of the paid-up capital and free reserves as appearing in the latest audited balance-sheet of the company as reduced by the amount of accumulated balance of loss, deferred revenue expenditure and other intangible assets, if any, as disclosed in the said balance-sheet.

(2) Every residuary non-banking company shall entrust to one of the public sector banks designated in that behalf, deposits and securities referred to in clauses (a) and (b) of the proviso to sub paragraph (1) to be held by such designated bank for the benefit of the depositors. Such securities and deposits shall not be withdrawn by the residuary nonbanking company, or otherwise dealt with, except for repayment to the depositors.

(3) Every residuary non-banking company shall furnish to the Reserve Bank within thirty days from the close of business on 31 st December 1987 and thereafter at the end of each half year that is as on 30th June and 31 st December, a certificate from its auditors, being members of Institute of Chartered Accountants, to the effect that the amounts deposited in fixed deposits and the investments made are not less than the aggregate amounts of liabilities to the depositors as on 30th June and 3 1 st December of that year.

Explanation:

For the purpose of this paragraph,

(a) "Aggregate amounts of liabilities" shall mean total amount of deposits received together with interest, premium, bonus or other advantage by whatever name called accrued on the amount of deposits according to the terms of contract.

(b) "approved securities" means, the securities in which the Trustee is authorised to invest trust money by any law for the time being in force in India and bonds or fixed deposits issued by any Corporation established or constituted under any Central or State enactments.

(c) "public sector banks" means, the State Bank of India, the Subsidiary Banks and the corresponding new banks referred to in Section 45(1) of the Reserve Bank of India Act, 1934 (2 of 1934).

(d) "unencumbered approved securities" shall include the approved securities lodged by the Company with another institution for advance or any other credit arrangements to the extent to which such securities have not been drawn against or availed of.

10. Paragraph (12) - Every residuary non-banking company shall disclose as liabilities in its books of accounts and balance sheets the total amount of deposits received together with interest, bonus, premium or other advantage, accrued or payable to the depositors.

11. We would first deal with the legal objections raised on behalf of the Peerless and other companies. It has been submitted on behalf of the Peerless and other companies that the directions of 1987 are ultra vires of Ss. 45J and 45K of the Reserve Bank of India Act, 1934. None of the said sections authorises the Reserve Bank to frame any directions prescribing the manner of investment of deposits received or the method of accountancy to be followed or the manner in which its balance-sheet and books of accounts are to be drawn up. It has been contended that S. 45J has no manner of application in the present case. Section 45K (3) of the Act on which reliance has been placed on behalf of the Reserve Bank, merely provides that the Reserve Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally

or to any non-banking institutions in particular in respect of any matters relating to or connected with receipts of deposits, including the rate of interest payable on such deposits and the purpose for which deposits will be received. According to S. 45K(4) if any nonbanking institution fails to comply with any direction given by the bank under sub-S. (3) the Reserve Bank may prohibit the acceptance of deposits by that non-banking institution. It is thus submitted that on a plain reading of S. 45K(3) the Reserve Bank is only competent to frame the directions regarding receipt of depo'sits and such power of direction does not extend to providing the manner in which deposits can be invested or the manner in which the liabilities are to be disclosed in the balance-sheet or books of accounts of the company. It is further submitted that the power under sub-s. (4) is to prohibit acceptance of deposits and as such the permissible field of direction making is limited to receipt of deposits and nothing more. The Reserve Bank of India in framing the directions of 1987 which is a subordinate piece of legislation has clearly over-stepped the bounds of the parent statute of S. 45K (3) of the Act.

12. It is further argued that the Reserve Bank cannot contend that paragraphs 6 and 12 of the directions of 1987 are covered within the powers conferred on the Reserve Bank under S. 45L (1)(b) of the Act. It is submitted that the Reserve Bank had at no point of time expressed its intention to invoke its powers under S. 45L. Even before the Division Bench of the Calcutta High Court the Reserve Bank did not rely on S. 45L as alleged source of its power to issue the impugned directions nor the Reserve Bank referred to S. 45L in its pleadings before the High Court. Wherever the Reserve Bank of India wanted to invoke its power under S. 45L of the Act, it has expressly mentioned that it was exercising its powers under S. 45L. In the case of Non Banking Financial Companies (Reserve Bank) Directions 1977, or the Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977 it has expressly said that it was invoking its powers under S. 45L of the Act, whereas in the case of the impugned directions, the Reserve Bank has only referred to Sections 45J and 45K of the Act. The Reserve Bank of India itself in the affidavit filed before the High Court had stated that the 9 directions of 1987 were framed after careful deliberations at the highest level and now it cannot take the stand that the source of its power in framing the impugned directions was exercised under S. 45L of the Act. It is further contended that in order to invoke the powers under S. 45L of the Act it has to state that the Reserve Bank was satisfied for the purpose of enabling it to regulate the credit system of the coilntry to its advantage and it was necessary to give such institutions directions relating to the conduct of business by financial institution or institutions. In order to exercise its power under S. 45L of the Act, it has to apply its mind for the purpose of arriving at the statutorily required satisfaction. In fact, such recital is necessary since such satisfaction is a pre-condition for the Reserve Bank to exercise its powers under S. 45L of the Act.

13. On the other hand it has been contended on behalf of the Reserve Bank that the power of the Reserve Bank to regulate deposit acceptance activities of non-banking and financial institutions under Chapter IIIB of the Act cannot be disputed. The Reserve Bank has power to issue the impugned directions under Ss. 45J, 45K and 45L of the Act The pith and substance of Para 6 of the directions of 1987 is to ensure that deposits received from the public are invested in a manner to secure the repayment of the deposits. A deposit is, by definition, a sum of money received with a corresponding obligation to repay the same. Thus, the repayment of the deposit is an integral part of the transaction of a receipt of deposit. It is contended that the expression "receipt of ddposit" must be construed liberally, in the light of the nature of the provisions as well as in the light of the wide language used in the provision. It is also argued that even if the impugned directions of 1987 are not covered under the powers conferred under Ss. 45J and 45K of the Act, those are squarely covered by S. 45L of the Act. It is submitted that various provisions under the Act are enabling in nature and confer overlapping powers. Even if there is no recital of S. 45L, it would not be of much

consequence, if such exercise of power can be related to S. 45L of the Act.

14. We have considered the arguments advanced by learned counsel for the parties. Chapter IIIS laying down provisions relating to non-banking institutions receiving deposits and financial institutions was inserted in the Reserve Bank of India Act, 1934, by virtue of Act 55 of 1963 w.e.f. 1-2-1964. Sections 45J, 45K (3) and (4) and 45L 1(b) relevant for our purpose are given as under:

Sec. 45J.

> "The Bank may, if it considers necessary in the public interest so to do, by general or special order,-
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> (a) regulate or prohibit the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money from the public; and
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> (b) specify,the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.
>
> Section 45K
>
> (1) to (2).....
>
> (3) The Bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any non-banking institution or group of non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.
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> (4) If any non-banking institution fails to comply with any direction given by the Bank under sub-section (3), the Bank may prohibit the acceptance of deposits by that non-banking institution.
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> Section 45L (1). If the bank is satisfied that for the purpose of enabling it to regulate the credit system of the country to its advantage it is necessary so to do; it may-
>
> (a).....
>
> (b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution."

15. A combined reading of the above provisions unmistakably goes to show that the Reserve Bank if considers necessary in the public interest so to do can specify the conditions subject, to which any prospectus or advertisement soliciting deposits of money from the public may be issued. It can also give directions to non-banking institution in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and.the periods for which deposits may be received. This latter power flows from sub-s(3) of S. 45K of the Act. The Bank under tnis provision can give directions in respect of any mattters relating to or connected with the of deposits (emphasis added). In our view a very wide power Is given to the Reserve Bank of India to issue directions in respect of any matters relating to or connected with the irecelpt of

deposits. It cannot be considered as a power restricted or limited to receipt of deposits as sought to be argued on behalf of the companies that under this power the Reserve Bank would only be competent to stipulate that deposits cannot be received beyond a certain limit or that the receipt of deposits may be linked with the capital of the company. Such interpretation would be violating the language of S.45K(3) which furnishes a wide power to the Reserve Bank to give any directions in respect of any matters relating to or connected with the receipt of deposits. The Reserve Bank under this provision is entitled to give directions with regard to the manner in which the deposits are to be invested and also the manner in which such deposits are to be disclosed in the balancesheet or books of accounts of the company. The word 'any'qualifying matters relating to or connected with the receipt of deposits in the above provision is of great significanceand in our view the impugned directions of 1987 are fully covered under S. 45K(3) of the Act, which gives power to the Reserve Bank to issue such directions. As a proposition of law we agree with the contention of the learned counsel for the Reserve Bank that when an authority takes action which is within its competence, it cannot be held to be invalid merely because it purports to be made under a wrong provision, if it can be shown to be within its power under any other provision. Learned counsel in this regard has placed re1'ance on Indian Aluminium Company v. Kerala State Electricity Board, (1976) 1 SCR 70: (AIR 1975 SC 1967).

16. In our view,as already held above,the Reserve Bank was competent and authorised to issue the impugned directions of 1987, in exercise of powers conferred under S. 45K(3)of the Act.

17. Having cleared the ground of ultra vires, we must now turn to the main challenge posed on behalf of the Peerless and other companies and employees.

18. Mr. Harish Salve made the leading arguments on behalf of the Reserve Bank of India. His main thrust of the argument was that the Reserve Bank of India had issued these directions of 1987 in order to carry out observations made by this Court in Peerless case (AIR 1987 SC 1023) (supra) and in the public interest of safeguarding the money of the depositors in such companies. The Reserve Bank considered it necessary that the interest of millions of small depositors of rural areas should be made safe and may not be devoured by a mushroom of companies with no stake. According to Mr. Salve it was not the intention of the Reserve Bank to put any restrictions in the manner ot. conduct of business to be done by such companies. But the most important factor weighing in the mind of the Reserve Bank was to safeguard the money of the depositors. It was not the concern of the Reserve Bank as to how and in what manner these companies would regulate their expenses or would be able to conduct such business for earning more profits. According to the Reserve Bank of India these companies cannot be allowed to spend a moiety of deposits for meeting their own expenses. They should find out their own resources for meeting the expenses. According to the Reserve Bank the rate of interest to be paid by these companies to the depositors has been fixed as 10 per cent per annum. They could easily invest such amount in bonds issued by public sector corporations and earn interest at the rate of 14 per cent per annum or more and thereby earn a profit of 4 per cent and regulate their expenses within the limits of such profits. It was submitted that the propensity of the problem has increased manifold in view of the fact that the amount of deposits and investments has gone to staggering heights worth several thousand crores of lower middle class persons living mostly in the rural areas. A bogey of employment hazards of several thousand regular employees and still a large number of agents working in the field cannot deter the Reserve Bank to lay down some directions which may act harshly and resulting in lessening of profits of such companies. It was also submitted that according to the affidavit submitted before this Hon'ble Court on behalf of the Reserve Bank of India it has been stated that prior to 1987 directions, there were 747 such companies which were conducting deposit schemes. At present they could classify only

392 such companies as required information for classifying of the remaining companies had not been received. Most of such companies have not designated their banks as it required under paragraph (6) of the directions and in most of such cases amounts invested in bank deposits and approved securities fall much short of deposit liabilities. The companies operating in these areas also at times become untraceable in that a number of show cause notices issued have been returned as "addressee not known" etc. In some cases those who have chosen to reply have given evasive replies. It has been further stated in the affidavit that most of these companies did not comply with the financial discipline sought to be imposed upon them and have avoided and abhorred any scrutiny into their accounts.

19. It has thus been submitted that to get over these difficulties, the directions of 1987 attempt to provide a steady, stable, identifiable and monitory method by which the cornpanies will be able to disclose all their true liabilities and also utilise the money raised from the depositors for investment in safe identifiable and quantifiable securities instead of investing them in other ventures. This will ensure complete security to the depositors at all times and will also make the accounts of the companies comprehensible and easy to monitor. As regards the formula laid down by the High Court it has been submitted that if a variable as against a fixed and definite percentage of investment with respect to amounts collected by way of each instalment is permited it would be impossible to find out and verify whether the amounts invested are in accordance with the directions at any given point of time when there are thousands of certificates with different dnd varying maturity periods. In the circumstnces, the formula laid down by the High Court is self-defeating and also deprives the depositor of the security envisaged under the directions.

20. It was also submitted on behalf of the Reserve Bank that it is an admitted position that the business of RNBCs is to collect funds from the public and invest the same in Government securities and bank deposits. In the application forms and in the advertisements issued by these companies it is expressly held out to the public that their moneys are safe with the banks and in Government securities. It is the very nature of their business which makes it non-viable if they are to give fair return to the, depositors and private security for the repayment of their moneys. The scheme of control as provided in the directions of 1987 might be harsh but the same is in conformity with the assertions held out by these companies to the public at large. These directions subject the companies to proper discipline by monitoring their actions and such directions cannot be considered as unreasonable. The reasonableness of the directions when looked at from the point of view of the depositors for whose safeguard they have been issued, is beyond question. Return provided and the security to be given through proper investment cannot be faulted on any ground. Thus what seems to be an impossible situation for these companies is not due to the impugned directions but because of the nature of business itself. The funds are collected at exhorbitant costs and on that account it becomes difficult for the companies to give a fair return to the depositors. These companies are not geunine investment companies. If they want to do genuine investment business, they can do so by choosing freely their investment, but in that case Reserve Bank of India directions applicable to such companies would permit them to accept deposits not exceeding 25 per cent of paid up capital and reserve. The directions of 1987 had not imposed any restriction on the right to carry on business but those directions only place a restriction with respect to one of the modes of raising reserves i.e. through public deposits.

21. It has been further argued that the reasonableness of the directions has not to be looked into from the point of view of the company to whom any such restrictions will be irksome and may therefore be regarded as unreasonable. The framing of the directions are only regulatory in nature keeping in view the interest of the depositors without unduly jeopardising the interest of the

employees. Keeping this in mind it has been provided that the minimum return would be at 10 per cent,though there are Govt. and public sector bonds which pay interest at a much higher rate. Even presently bank deposits and other company deposits give return varying between 13 to 15 per cent. There is no limitation on the quantum of deposits with reference to the overall capital as shown in the case of companies governed by the Companies (Acceptance of Deposits) Rules 1975, NonBanking Financial Companies (Reserve Bank) Directions, 1977 and Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 1977. The linking of deposits with capital as in the case of other regulations is a measure to secure the interest of the depositors namely e.g. Companies (Acceptance of Deposit) Rules, 1975, ensure that the assets are at least three times the deposits received. In view of the low or total non-existent capital of the RNBCS, it was not possible to secure the deposits in this manner. Instead, it has been provided that the entire liability towards the depositors should be invested and no part of the deposits be utilised for payment of commission etc. or incurring other expenses. In any event, even if, the directions do not prescribe existence of owners capital as security does not imply that it is permissible to use the deposits received to bridge the time gap between income and expenditure. Merely because the directions do not fix a ceiling on the rate of commissions it does not imply that the Reserve Bank has granted its permission to payment of high commission or incurring of large expenses on management etc. The RNBCs are free to incur such expenses and organise their business as they desire as long as the depositors are fully secured at all times. The contention that the business of the RNBCs will close down if the directions of 1987 are to be adhered to is not based on facts and misconceived in law. A perusal of the Directors' Report of Peerless for the years 1988, 1989 and 1990 clearly go to show that they did not consider the company in any financial difficulty and in fact paid larger dividends even after complying with the impugned directions of 1987.

22. It has thus been submitted that given a wide latitude in judging the validity of economic legislation on the touchstone of reasonableness, in the absence of patent arbitrariness but having nexus with the public objective sought to be attained, the directions cannot be condemned as being violative of Art. 19(1)(g). The result of the contentions put forward on behalf of RNBCs would be that in the case of endowments repayable after, say 10 years, there will be nothing.due and payable in the first nine years and as such there would be no need of investing any sums for the first nine years. The interpretation placed by the respondent companies upon the judgment of the High Court is that it is now open to them to determine as per their own peculiar estimate, what would be sufficient to meet the liabilities towards the deposits and acceordingly such amount would be their aggregate liability". According to the Peerless Company if it deposits 75 per cent of the first year's subscription, it is adequate to cover its liabilities to the depositors. On the other hand as per Timex Company a deposit of only 50 per cent of the first year's subscription would be adequate to cover its liabilities to the depositors. Whereas the Favourite Company contends that investmerit of 40 per cent of the first year's subscription will be adequate to cover the liabilities to the depositors. It has been submitted that according to well accepted accounting practice where any sum is received as a loan or as a deposit it has to be shown as a liability together with accrued interest irrespective of when it is due. The amount contributed by the depositors being a capital receipt and not a revenue receipt cannot under any circumstances be shown in the balance sheet otherwise than at its full value. Moreover, being a capital receipt, it cannot be credited to the profit and loss account since Part II of Schedule VI to the Companies Act, 1956 requires that the amounts to be shown in the profit and loss account should be confined to the income and expenditure of the company. Thus, crediting a part of the first and subsequent year's deposit instalments to the profit and loss account and not showing them fully as a liability in the balance sheet would be a contravention of the provisions of the Companies Act.

23. It has been further submitted on behalf of the Reserve Bank that the question which arises for consideration is whether liability to the depositors can be calculated on an acturial basis. It may be noted that actuarial basis is normally adopted (a) in respect of items of income and exenditure, (b) where there is a significant element of uncertainty. Thus, in so far as the liability arising out of the repayment to the depositors of the amount capitalised by him is considered, the actuarial basis cannot be adopted and this liability must always be stated at its full value. The principle of actuarial valuation is mappposite for the business of RNBCs. It has also been submitted that the formula laid down by the High Court about the quantum of investments to be made by RNBCs is incapable of effectively monitoring and hence the provisions made in the directions of 1987 regarding security to depositors would be rendered wholly illusory. Such impossibility in the monitoring has been demonstrated as follows:

> (A) These companies do not fix a definite but variable percentage of investment with respect to amounts collected by way of each instalment under the certificates of deposits; e.g. Peerless would invest 75% of the collections made out of Ist instalment (retaining and taking to P&L A/ c. 25%) and 82% out of 2nd instalment and so on. At any given point of time, there will be thousands of deposit certificates with varying maturity and the amounts collected would be an impossibility to find out and verify whether the amounts invested are in accordance, with the proportion fixed by the companies with respect to each instalment. Regulatory authority would have to depend entirely on these companies for doing its monitoring exercise.
>
> (B) Each company fixes its own proportion of investment with respect to each instalment based on the projected yield from its investment, e.g. Favourite Finance Company claims that it needed to invest only 40% of the amounts collected by way of Ist instalment claiming that the projected yield from its investment would be 14.8%. This would compound the impossibility of monitoring further.

24. It has thus been argued that the formula laid down by the High Court is selfdefeating and depriving altogether benefits of security provisions given to depositors under the directions of 1987.

25. Mr. Somnath Chatterjee, learned senior counsel appearing on behalf of Peerless Company contended that the Peerless being the largest RNBC in India having an impeccable record of public service decided to give effect to the directions of 1987 as it wanted to avoid any confrontation with Reserve Bank and further not to give an impression of seeking to avoid "regulatory control" tried its best to comply with the said directions w.e.f. 15th May, 1997 till 31st March, 1989. However, from it, working results it appeared bona fide to the Board of Directors of Peerless that it was impossible to carry on its traditional business for any longer period without incurring huge losses. The company as such decided to approach the High Court for obtaining the benefit of judgment delivered in the Timex case. The Peerless has only challenged a part of Paragraph 6 of the directions of 1987 and the consequential direction contained in para 12 which shows that Peerless does not wish to remain outside of the regulatory controls of Reserve Bank but challenges only those directions which make the business totally unworkable. There has been no attempt on the part of Peerless to carry on its business in a manner which may jeopardise the interest of any depositor or which will not protect fully every paisa deposited with Peerless at all points of time. No real complaint was made by or on behalf of Reserve Bank as to any depositor of Peerless running a risk of loss of any amount or that it has carried on or is carrying on the business in an undesirable manner. It has been submitted that Peerless should not be made to suffer for the illegality or improprieties, if any, committed by any other RNBC and neither Peerless nor its 14 lac field agents,

3 thousand field officers and 4 thousand direct employees should be made to suffer. The result of following directions of 1987 would be that all the above agents, officers and employees of the Peerless could loose their jobs and their family members will be thrown on the streets. The Peerless had abolished the provision of forfeiture,in all its schemes as early as in 1986 that is even prior to coming into force of the directions of 1987. The Peerless has been compelled to challenge paragraphs 6 and 12 of the directions of 1987 since enforcement of these provisions wouldresult in complete annihilation of the undertaking of Peerless in the near future.

26. It was further contended that it is inherent in the business carried on by Peerless and other similar RNBCs that the working capital is generated out of the subscriptions received from the certificate holders. Such business comprises in collecting subscriptions from depositors either in lump sum or in instalments and such deposits are paid back with the guaranteed accretions, bonus, interest etc. in terms of the contract at the end of the stipulated term. Through this business such companies have rendered great and commendable service to the nation in mobilising small savings and giving a boost to the movement of capital formation in the country. Such companies have placed at the disposal of Governmental institutions including public sector banks and other financial institutions huge deposits which could not be collected by the said financial institutions themselves or by anybody in the organised sector. The method followed by the companies in carrying on the aforesaid business is that a certain portion of the subscriptions received by it is transferred to the profit and loss account, shown as income, and the same is used to defray inevitable working capital requirements of the company, namely, payment of agent's commission, management expenses, staff salaries and other overheads. However, the balance of the subscriptions (excluding the appropriated part) is transferred to a fund each year and the corpus of the fund is invested in turn in interest bearing investment. The Peerless company initially used to transfer approximately 95% of the first year's subscriptions to the profit and loss account and used to invest the subscriptions received from the second year onwards. However, at present, Peerless is appropriating 25% of the first year's subscription to the profit and loss account and investing the balance 75% in the manner and mode prescribed by paragraph 6 of the directions of 1987. It has been contended that the investment is planned in such a manner that at the end of the contractually stipulated maturity period or at any other point of time when any sum of money may become contractually payable to a depositor, a RNBC is always in a position to pay all its contractual dues to the certificate holder. There is thus no threat to the safety of the depositors money in spite of the aforesaid transfer of a portion of the subscription received to the profit and loss account showing it as income and utilising it for meeting the working capital requirements. It was pointed out that Peerless had been assessed to income-tax on the basis of above method of accounting and no objection has ever been taken by the revenue authorities or by the auditors of Peerless or even by R.B.I. before the issuance of the directions of 1987 . It was submitted that the Peerless was incorporated in the year 1932 when it used to carry on life insurance business. It changed over to the present form of business from 1956 and since then it has been carrying on such business with the full knowledge of R.B.I. as well as other concerned authorities. The R.B.I. never objected to the accounting system followed by the Peerless. In view of the abolition of the forfeiture clause the alleged risk to the depositors has become totally non existent. It was further argued that the R.B.I. framed regulatory measures in 1973 such Miscellaneous Non-banking Companies (Reserve Bank) Directions, 1973. The Reserve Bank granted exemption to Peerless from the provisions of the said Directions of 1973, by an order dated 3rd December, 1973. The Favourite Small Investments Limited filed a writ petition challenging the refusal of Reserve Bank to grant exemption to them from the provisions of the said 1973 Directions to granting such exemption to Peerless. In the said writ petition the R.B.I. filed an affidavit justifying the denial of exemption to Favourite Small Investments Ltd. and in the aforesaid affidavit

submitted in detail the accounting procedure of Peerless including the fact that Peerless was transferring a portion of the subscriptions to the profit and loss account as income and it also certified that the said method was a permissible business method and by following the said method Peerless would be in a position to pay all contractual dues of the certificate holders at the end of the maturity period. Thus the said system of accouting which is called an actuarial system of accounting was found satisfactory by the R.B.I. The said affidavit filed in the Favourite's case has been quoted in the Peerless case in (1 987) 1 SCC 424: (AIR 1987 SC 1023) and the said actuarial system of accounting was not held as impermissible or against any recognised method of accounting .

27. It was also contended on behalf of the Peerless that the interest of depositors is certainly an important consideration but the interest of the depositors is not impaired in any manner whatsoever by the method of accountancy now being followed by Peerless and in fact by all similar companies, namely, appropriation of a part of the subscription to the profit and loss account and meeting the working capital requirements out of the same. In respect of the above contention certain charts were also produced during the course of arguments and from such charts it was sought to establish that except for the first two years the principal amount paid by a subscriber is always covered by matching investment. Further, on the date on which a deposit becomes contractually repayable, there is full coverage of such liability.

28. It was submitted on behalf of All India Peerless Field Officers Association that the said association represents about 14 lac field workers. These 14 lac persons are engaged by Peerless on the basis of individual contracts of engagement and earn their livelihood solely by collecting business for Peerless. For collecting such business Peerless pays to them commission at a contractual agreed percentage on the value of business collected. The said field officers have to meet all expenses for procuring such business such as travelling expenses, boarding, lodging, office and administrative expenses etc. out of such commission. Field officers have to undertake long tours and have to travel into remote villages to reach the small depositors. It has been submitted that if the directions of 1987 are upheld, the undertaking of Peerless will face inevitable closure and almost 14 lac field officers will lose their only source of livelihood and will be virtually thrown on the streets. The field officers and their families will face starvation and extreme penury in case the validity of such directions is upheld. Thus any restriction which would be prohibitive or which would result in closure of the undertaking of Peerless would be against public interest.

29. We have heard the arguments of learned counsel for the parties. It may be made clear at the outset that questions raised in these cases regarding the validity of paragraphs 6 and 12 of the directions of 1987 cannot be determined by taking into consideration the working of the financial soundness of the one company alone like Peerless but the matter has to be examined in a broader perspective of all RNBCs. We have to keep in mind, while deciding the controversies raised in the arguments of such RNBCs which are doing the same kind of business of taking deposits and returning the same to the certificate holders after a gap of 7 to 10 years along with interest, bonus etc. In the affidavit submitted before this Court on behalf of Reserve Bank of India it has been stated that prior to 1987 directions, there were 747 such companies which were conducting this business under various deposit schemes. At present they could classify 392 such companies spread over across the entire country. According to the above affidavit, as on 31 st March, 1990 in the eastern zone out of 185 companies, only 35 have filed the annual returns and out of which only 30 have filed the balance sheet. Similarly, out of 140 companies in the northern zone only 28 have filed annual returns and 32 have filed balance sheet. A perusal of the returns given by 51 of these companies discloses that 35 companies have a negative net worth (i.e. their losses far exceed their share capital and reserves) which necessarily means that they have not only wiped out the share

capital and reserves but their liabilities are far in excess. Only 16 companies have a positive net worth including Peerless. It has been further pointed out in the affidavit that apart from Peerless the aggregate capital investment by 15 companies is Rs. 158 lacs only. As against this, the negative net worth of the 35 companies aggregated to Rs. 3.6 crores. Despite large accumulated losses (in some cases with meagre or nominal capital) these companies apart from Peerless, have realised deposits to the tune of Rs. 86 crores. Apart from the financial parameters most of these small companies are family concerns. Most of such companies have not designated their banks as is required under paragraph 6 of the directions and in most of such cases amounts deposited in banks and approved securities fall much short of deposit liabilities. It has also been pointed in the affidavit that the companies out operating in these areas also at times become untraceable in that a number of show cause notices issued have been returned as "addressee not known" etc. Thus we have to keep in mind the above mushroom of companies also which have set foot in this sort of business.

30. It would also be important to note that most of the depositors in such companies belong to the rural areas and who are persons belonging to lower middle class, small agriculturists and small traders, pensioners etc. These companies advertise their schemes widely in beguiling terms. Through such advertisements they lure the smalr savings of the poor ignorant villagers through a special structure of agents, special agents, different kinds of organisers and so on. The agents commission for the first years subscription is very high and which offers incentive to the agents on securing a fresh business and a disincentive to collect subscriptions of subsequent years. It is a matter of comrrion experience and knowledge that most rural folk particularly those belonging to the lower strata of society will not pay their subscriptions regularly unless somebody takes the trouble of collecting their subscription with the same enthusiasm as mav be shown in enrolling the subscribers in the beginning. It is no doubt correct that these companies do tap and collect the deposits from such areas where the agents of public sector banks or public sector companies or instrumentalities of the state are unable to reach. Thus these companies mop up a large amount of money for ultimately investing in the nationalised banks or other Govt. owned corporations or companies. However, the Reserve Bank considered the safety of the money of the depositors as the paramount consideration in issuing the directions of 1987. It cannot be disputed that the interest of the employees as well as the field officers and agents have also to be taken into consideration while deciding the reasonableness of the impugned directions. It may be further noted that in the Reserve Bank of India v. Peerless Company case (AIR 1987 SC 1023) (supra) this Court though came to the conclusion that the Endowment Certificate Scheme of the Peerless company was outside the Prize Chit and Money Circulation Schemes (Banning) Act, still it was observed that it would be open to the Reserve Bank to take such steps as are open to them in law to regulate schemes such as those run by the Peerless company to prevent exploitation of ignorant subscribers though care must also be taken to protect the thousands of employees. The court expressed grave concern with regard to the mushroom growth of 'financial investment companies' offering staggeringly high rates of interests to depositors leading to the suspicion whether these companies are not speculative ventures floated to attract unwary and credulous investors and capture their savings. It was clearly pointed out that if the Reserve Bank of India considers,the Peerless company with 800 cross invested in Govt. securities, fixed deposits with national banks etc. unsafe for depositors one wonders what they have to say about the mushroom non banking companies which are accepting deposits promising most unlikely returns and as such what action was proposed to be taken by the R.B.I. to protect the investors. In the above background the Reserve Bank came forward with the impugned directions of 1987.

31. Before examining the scope and effect of the impugned paragraphs 6 and 12 of the directions of 1987, it is also important to note that Reserve Bank of India which is banker's bank is a creature of

Statute. It has large contingent of expert advice relating to matters affecting the economy of the entire country and nobody can doubt the bona fides of the Reserve Bank in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate the banking system in the country. It is the duty of the Reserve Bank to safeguard the economy and financial stability of the country. While examining the power conferred by Sec. 58A of the Companies Act, 1956 on the Central Govt. to prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by non banking companies, this Court in Delhi Cloth and General Mills v. Union of India, (1983) 3 SCR, 438 : (AIR 1983 SC 937 at p. 949) observed as under:

> "Mischief was known and the regulatory measure was introduced to remedy the mischief. The conditions which can be prescribed to effectuate this purpose must a fortiori, to be valid, fairly and reasonably, relate to checkmate the abuse of juggling with the depositors/ investors' hard earned money by the corporate sector and to confer upon them a measure of protection namely availability of liquid assets to meet the obligation of repayment of deposit which is implicit in acceptance of deposit. Can it be said that the conditions prescribed by the Deposit Rules are so irrelevant or have no reasonable nexus to the objects sought to be achieved as to be arbitrary ? The answer is emphatically in the negative. Even at the cost of repetition, it can be stated with confidence that the rules which prescribed conditions subject to which deposits can be invited and accepted do operate to extend a measure of protection against the notorious abuses of economic power by the corporate sector, to the detriment of depositors/ investors, a segment of the society which can be appropriately described as weaker in relation to the mighty corporation. One need not go so far with Ralph Nadar in 'America Incorporated'to establish that political institutions may fail to arrest and control this ever-widening power of corporations. And can one wish away the degree of sickness in private sector companies? To the extent cornpanies develop sickness, in direct proportion the controllers of such companies become healthy. In a welfare State, it is the constitutional obligation of the State to protect socially and economically weaker segments of the society against the exploitation by corporations. We, therefore, see no merit in the submission that the conditions prescribed bear no relevance to the object or the purpose for which the power was conferred under Sec. 58A on the Central Government."

32. The function of the Court is to see that lawful authority is not abused but not to attain 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.

33. The main grievance raised on behalf of respondent companies is that if the provisions of paragraphs 6 and 12 of the directions of 1987 are complied with, the companies will be left without any fund to meet their working capital. It would be impossible to run the business without a working capital and to meet even reasonable expenses incurred for payment of agents' commission, management expenses and other overhead expenses. During the course of hearing the counsel for the companies had relied on some charts to show the unworkability and unreasonableness of the

impugned paragraphs 6 and 12 of the directions. It was also pointed out that the arguments made on behalf of the Reserve Bank overlooked the fact that in case of investments in long term schemes such as Indira Vikas Patra and Kisan Vikas Patra the companies will not be able to utilise its return from such investments before the end of the minimum period for which these schemes operate. The respondent companies will thus be left without any income during the period of operation of such schemes and cannot meet its working capital requirements. It has been submitted that the directions of 1987 really amount to prohibition of the business in a commercial sense without reasonable basis and are thus violative of Art. 19(1)(g) of the Constitution. In support of the above contention reliance has been placed on Mohammad Yasin v. Town Area Committee, Jalalabad, 1952 SCR 572: (AIR 1952 SC 115), Premier Automobiles Ltd. v. Union of India, AIR 1972 SC 1690 and on Shree Meenakshi Mills Ltd. v. Union of India, AIR 1974 SC 366. It has also been contended that it is now well settled by plethora of judicial pronouncements that the restrictions on any business caused by regulations should not be more than what would be necessary in the interest of the general public and such restrictions should not overreach the scope of the objects achieved by the regulations.

34. The contention on behalf of the Reserve Bank is that the directions have been made in public interest of safeguarding the interest of millions of depositors and the Reserve Bank is not concerned and while doing so it was rightly thought necessary by the Reserve Bank that the companies cannot be permitted to incur the expenses out of the corpus of the depositors' money. The business carried on by the companies is that of only a middleman or of commission agents and it is for the companies to restructure their organisation by curtailing its expenses. If such middlemen or brokers are, not able to earn a large profit as was done before the enforcement of the impugned directions, it lies with the companies to continue or not such business when the margin of profit is curtailed. These companies want to do the business without having any stake of their own. The companies doing such business cannot be subjected to the scheme of control applied to other financial and non-financial companies for the simple reason that they have no capital and their schemes are for a period much longer than three years. After the decision of the Supreme Court in Peerless case (AIR 1987 SC 1023) these directions of 1987 were issued after mature consideration with the help and advice of experts.

35. Paragraph 6 of the impugned directions according to the Reserve Bank lays down provisions for security of depositors. It prescribes the mode of investment of funds collected by the companies. It cannot be disputed that while collecting deposits the companies clearly hold out to the members of the public that the moneys so collected by them shall be invested in Government securities or kept deposited with the banks and they also assure the depositors that their moneys are safe and secure. On the basis of such representations and on the strength of exaggerated and misleading advertisements these companies collect huge amounts of deposits from a large number of small, poor and uninformed depositors and that too in such investment spread over a long period. The contention on behalf of the Reserve Bank of India is that in the above context these companies carry on their activities wholly with the funds provided by the public by way of deposits and hardly have any capital of their own. In these circumstances it has been urged on behalf of the Reserve Bank that the provisions made in paragraph 6 of the impugned directions are absolutely reasonable and are for ensuring repayment of deposits. It has been submitted that it is common knowledge that small depositors cannot have recourse to courts for recovering their amounts if the companies do not repay the deposits. The direction in paragraph 6 enjoins on these companies to deposit in fixed deposits with public sector banks or unencumbered approved securities or in other investments, a sum which shall not, at the close of business on 31 st December, 1987 and thereafter at the end of each half year i.e. 30th June and 31st December not less than the aggregate amounts of the liabilities to the depositors whether or not such amount have become payable. Thus according to the above

provision whole of the aggregate amounts of the liabilities to the depositors whether or not such amounts have become repayable is required to be deposited or invested. 10% of such amount is required to be deposited in public sector banks and 70% in approved securities and 20% has been allowed to be invested by the company according to its own choice.

36. In order to understand the rigour of the directions laid down in paragraph '6', it would be necessary to understand the scope of other directions as well. Paragraph 4 of the directions lays down that the deposit shall not be accepted for a period of less than 12 months or more than 120 months i.e. one year to ten years from the date of receipt of such deposits. The normal standard applied to non financial and financial companies is that they cannot accept deposits for a period of more than 36 months (except housing finance company). Thus the companies before us have been permitted to conduct their schemes extending over to a long period up to 120 months. This is a special kind of concession provided to the companies of the kind before us.

37. Paragraph 5 of the directions relates to the minimum rate of return fixed at 10% per annum for a deposit with a maturity of 10 years. It is a matter of common knowledge that in the present times even the public sector corporations and banks and other financial and non-financial companies pay interest at much more higher rates ranging from 14 to 18%. Thus according to the above scheme the respondent companies and the other doing such business can easily earn a profit of 4 to 5% on their investments. In case of a request of the depositors for repayment of the deposit before maturity then the amount payable by the company by way of interest etc., shall be 2% less than what could have been ordinarily paid by the company by way of interest if the deposit had. run the full contractual period. However, the question of repayment before maturity or after how many years will depend entirely on the terms and conditions of the contract of such deposit. Paragraph 12 of the directions of 1987 enjoins upon the company to disclose as liabilities in its books of accounts and balance sheets the total amount of deposits received together with interest, bonus, premium or other advantage, accrued or payable to the depositors. Under Clause (a) to the explanation to clause 3 of paragraph '6' "Aggregate Amounts of Liabilities" shall mean total amount of deposits received together with interest, premium, bonus or other advantage by whatever name called, accrued on the amount of deposits according to the terms of contract. Thus the company is required to deposit or invest the aggregate amounts of its liabilities having accrued on the amount of deposits according to the terms of contract. Without going into the figures shown in the various charts, it is clear that if the directions contained in paragraphs 6 and 12 of the directions of 1987 are to be carried out, the companies are not left to utilise any amount out of the deposits as working capital to meet the expenses. In our view the Reserve Bank is right in taking the stand that if these companies want to do their business, they should invest their own working capital and find such resources elsewhere with which the Reserve Bank has no concern. If we look at the Annual Report and Accounts of Peerless for the years 1988, 1989 and 1990 it is clear that it had conducted its business following the impugned directions of 1987 and still had earned substantial profits in these years. It is clear that Peerless is a company having established as back as in 1932 and had substantial funds to invest the entire amount of deposits and had met the expenses out of its accummulated profits of the past years. This shows that the business can be run and profit can be earned even after complying with the impugned directions of 1987 issued by the Reserve Bank. It is not the concern of this court to find out as to whether actuarial method of accounting or any other method would be feasible or possible to adopt by the companies while carrying out the conditions contained in paragraphs 6 and 12 of the directions of 1987. The companies are tree to adopt any mode of accounting permissible under the law but it is certain that they will have to follow the entire terms and conditions contained in the impugned directions of 1987 includingthose contained in paras 6 and 12. It is not the function of the Court to amend and lay down some other directions and the High Court was totally wrong in

doing so. The function of the Court is not to advise in matters relating to financial and economic policies for which bodies like Reserve Bank are fully competent. The Court can only strike down some or entire directions issued by the Reserve Bank in case the Court is satisfied that the directions were wholly unreasonable or violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This court has repeatedly said that matters of economic policy ought to be left to the Government. While dealing with the validity of an order passed on September 30, 1977 fixing a retail price of mustard oil not exceeding Rs. 1 0 /-per kilogram in exercise of powers conferred by S. 3 of the Essential Commodities Act, a Bench of 7 Judges of this Court in M/ s. Prag Ice & Oil Mills v. Union of India and Nav Bharat Oil Mills v. Union of India (1978) 3 SCC 459: (AIR 1978 SC 1296) observed as under (para 23 of AIR):

> "We have listened to long arguments directed at showing us that producers and sellers of oil in various parts of the country will suffer so that they would give up producing or dealing in mustard oil. It was urged that this would, quite naturally, have its repercussions on consumers for whom mustard oil will become even more scarce than ever ultimately .We do not think that it is the function of this Court or of any Court to sit in judgment over such matters of economic policy as must necessarily be left to the Government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them wthout even the aid of experts".

38. In Shri Sitaram Sugar Company Limited v. Union of India with U. P. State Sugar Corporation Ltd. v. Union of India, (1990) 3 SCC 223 : (AIR 1990 SC 1277 at p.1299) this Court observed as under:

> "Judicial review is not concerned with matters of economic policy. The Court d0oes not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably on evidence and whether such findings are consistent with the laws of the land.

39. In R. K. Garg v. Union of India, (1981) 4 SCC 675 at p. 690 : (AIR 1981 SC 2138 at p. 2147) a Constitution Bench of this Court observed as under:

> Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire of strait-jacket formula and this is particularly true in case of legislation dealing with economic matters where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the

field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud, ((1957) 354 US 457) where Frankfurter, J. said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability".

40. It may also be noted that it is not ossible for the Court to determine as to how possible for the Court to how much percentage of deposit of first instalment should be allowed towards expenses which may consist of commission to agents, office expenses etc. Even amongst the three cornpanies - viz. Peerless, Timex and Favourite, there is a difference in this regard. According to the Peerless 25%, Timex 50% and Favourite 60% of the deposits of the first instalment would be necessary for generating the working capital for meeting the genuine expenses. Thus, it would depend from company to company based on various factors such as paid up capital, percentage of commission paid to the agents, rate of interest paid to the depositors, period of maturity for repayment, office expenses and various other factors necessary to mop up working capital out of the depositors money. We cannot ignore the possibility of persons having no stake of their own starting such business and after collecting huge deposits from the investors belonging to the poor and weaker sections of the society residing in rural areas, and to stop such business after a few years and thus devouring the hard earned money of the small investors. It cannot be lost sight that in such kind of business, the agents always take interest in finding new depositors because they get a high rate of commission out of the first instalment, but they do not have same enthusiasm in respect of deposit of subsequent instalments. In these circumstances, if the Reserve Bank has issued the directions of 1987 to safeguard the larger interest of the public and small depositors it cannot be said that the directions are so unreasonable as to be declared constitutionally invalid.

41. It has been vehemently contended before us on behalf of the Peerless employees and field agents that in case the impugned directions are not struck down, the Peerless will have to close down its business and several thousands of employees and their family and several lakhs of field agents would be thrown on the street and left with no employment. We do not find any force in the above contention. So far as Peerless is concerned there is no possibility of its closing down such business. It has already large accumulated funds collected by making profits in the past several years. Thus it has enough working capital in order to meet the expenses. We are not impressed with the argument of Mr. Somnath Chatterjee, learned senior Advocate for the Peerless that after some years the Peerless will have to close down its business if directions contained in paragraphs 6 and 12 are to be followed. The working capital is not needed every year as it can be rotated after having invested once. If the entire amount of the subscribers is deposited or invested in the proportion of 10% in public sector banks, 70% in approved securities and 20% in other investments, such amounts will also start earning interest which can be added and adjusted while depositing or investing the subsequent years of deposits of the subscribers. In any case it lies with the new entrepreneurs while entering such field of business to make arrangement of their own resources for working capital and for meeting the expenses and they cannot insist in utilising the money of the depositors for this purpose. So far as the companies already in this field they must have earned profits in the past years

which can be utilised as their working capital. It is important to note that the impugned directions of 1987 have been made applicable from 15th May, 1987 prospectively and not retrospectively. Thus under these directions the question of depositing the entire amount of subscriptions would only apply to the deposits made after 15th May, 1987.

42. We may also observe that the impugned directions of 1987 as well as any other directions issued from time to time by the Reserve Bank relating to economic or financial policy are never so sacrosanct that the same cannot be changed. Even the financial budget for every year depends on the economic and financial policy of the Government existing at the relevant time. So far as the impugned directions are concerned if it is found in future that the same are not workable or working against the public interest, the Reserve Bank is always free to change its policy and scrap or amend the directions as and when necessary. We have no doubt that if in times to come the Reserve Bank feels that business of the kind run at present by the Peerless and other companies, in terms of the directions of 1987 are not yielding the result as envisaged by the Reserve Bank, it will always be prepared to consider any new proposals which may be conducive both in the interest of the large multitude of the investors as well as the employees of such companies. Mr. Shanti Bhushan, learned senior counsel appearing on behalf of the Reserve Bank made a candid statement on behalf of the Reserve Bank that the Reserve Bank would always be prepared to consider any new proposal which would subserve the public interest.

43. In the result I set aside the orders of the High Court and allow the appeals arising out of SLP Nos. 6930-30A of 1991, 7140 of 1991 and 3676 of 1991 filed by the Reserve Bank of India and dismiss the writ petition No. 677 of 1991. No order as to costs.

44. While respectfully agreeing with my learned brother since the issues bear far reaching semital importance, I propose to express my views as well.

45. This Court in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. (1987) 2 SCR 1: (AIR 1987 SC 1023) for short 'first Peerless case' while holding that Prize Chits and Money Circulation Schemes (Banning) Act, 1978 does not attract "Recurring Deposits Schemes", pointed out that the schemes harshly operate against the poor sections of the society who renuire security and 'protection; urgent action ' appeared to be called for and was imperative to protect the public and emphasized to evolve fool proof scheme to prevent fraud being played upon persons not conversant with practices of the financial enter rises who pose themselves as benefactors of the people. In pursuance thereof the apellant, Reserve Bank of India, for short 'RBI' issued Residuary Non-Banking Companies (Reserve Bank) Directions, 1987 for short 'the Directions'. The short shift with avid eye into the relevant provisions of the Reserve Bank of India Act 2 of 1934 for short 'the Act' and "the directions" would enable us to come to grip of the scope of the scheme of the directions, its purpose and operation. Chapter III (B) of the Act deals with the power of RBI to regulate non-banking institutions receiving deposits. Section 45 (1) (bb) defines deposit includes and shall be deemed always to have included "any receipt or money by way of deposit or loan or in any other form but does not include exceptions are not relevant and hence are omitted. Section 45 (1)(c) defines 'financial institution' to mean any non-banking institution which carries on its business, or part of its business, in any of the following activities; clauses (i) to (v) are omitted, clause (vi) collecting for any purpose of any scheme or arrangement by whatever name called, monies in lump-sum or otherwise by way of subscription.... or in any other manner by awarding prizes or gifts whether in cash or kind or disbursing monies in any other way to persons from wht)m monies are collected or to any other persons but does not include the exclusions are not relevant and hence omitted. Section 45 J empowers that RBI may, if it considers necessary in the public interest

so to do, by general or special order, (a) regulate or prohibit the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money from the public; and (b) specify the conditions, subject to which any such prospectus or advertisement, if not prohibited, may be issued. Section 45K empowers the RBI to collect information from non-banking institution as to deposit and to give directions that every non-banking institution shall furnish to the Bank, in such form, at such intervals and within such time, such statements, information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified by RBI by general or special order including the rates of interest and other terms and conditions on which they are received. Under sub-section (3) thereof the RBI is entitled to issue in the public interest directions to nonbanking institution in respect of any matter relating to or connected with the receipt of deposits including the rates of interest payable on such deposits and the periods for which deposits may be received. The use of the adjective 'any' matter relating to or connected with the receipt of deposits is wide and comprehensive to empower the RBI to issue directions in connection therewith or relating to the receipt of deposits. But exercise of the power is hedged with and should be "in the public interest".

46. Section 45L provides that if the RBI is satisfied that for the purpose of enabling it "to regulate the credit system of the country to its advantage it is necessary so to do"; it may give to such institutions either generally or to any such institution, in particular, "directions relating to the conduct of business' by them or by it as financial institution or institutions including furnishing of information of particulars "relating to paid up capital, reserves or other liabilities", the "investments" whether in the Government securities" or "otherwise", the persons to whom, and the purposes and periods for which, finance is provided and "the terms and conditions", including the rates of interest", on which it is provided. Section 45Q provides that the provisions of this chapter shall have effect "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.

47. The directions became operative from May 15, 1987. They would apply to every Residuary Non-Banking Company for short 'R.N.B.C' which receives any deposit scheme in lump sum or in instalment by way of contribution or subscription or by sale of units of certificates or other instruments or "in any other manner" vide Cl. II of the definition. Cl. III(a) defines deposits as defined in S. 45(1)(bb) of the Act. Para 4 regulates receipt of deposits for a period not less than 12 months and not more than 120 months from the first day of the receipt of the deposit. Paragraph 5 prescribes minimum rate of return of 10 per cent per annum (to be compounded annually) on the amount deposited. The proviso empowers R.N.B.C. at the request of the depositor to make repayment of the deposit, after the expiry of a period of one year from the date of the deposit but before the expiry of the period the deposit with two per cent reduced rate of interest from 10% interest. Paragraph 6, the heart of the directions consists of three sub-paragraphs with explanations. The marginal note expresses "security for depositors". Sub-paragraph (1) thereof provides that on and from May 15, 1987 every R.N.B.C. shall deposit and keep deposited in fixed deposits with public sector banks or invest and keep invested in unencumbered approved securities (such securities being valued at their market value for the time being), or in other investments, which in the opinion of the company are safe, a sum which shall not, at the close of business on 31 st December, 1987 and thereafter at the end of each half year that is, 30th June and 31 st December be less than the aggregate amounts of the liabilities to the depositors whether or not such amounts have become payable. The proviso specifies that the sum so deposited or invested (a) not less than 10 per cent shall be in fixed deposits with any of the public sector banks; (b) not less than 70 per cent shall be in approved securities; and (c) not more than 20 per cent or 10 times the net owned funds of the company, whichever amount is less, shall be in other investments. Provided that such investments

shall be with the approval of the Board of Directors of the Company. The explanation "Net owned funds" shall mean the aggregate of the paid-up-capital and free reserves as appearing in the latest audited balance-sheet of the company as reduced by the amount of accumulated balance of loss, deferred revenue expenditure and other intangible assets, if any, as disclosed in the said balance-sheet. Sub-paragraph (2) enjoins the R.N.B.C. to entrust to one of the public sector banks designated in that behalf, deposits and securities referred to in Cls. (a) and (b) of the proviso to sub-paragraph (1) to be held by such designated bank is for the benefit of the depositors. Such securities and depo sits shall not be withdrawn by the R.N.B.C. or otherwise dealt with, except for repayment to the depositors. Sub-paragraph (3) obligates it to furnish to the R.B.I. within 30 days from the close of business on 31 st December, 1987 and thereafter at the end of each half year i.e., as on 30th June and 31 st December, a certificate from its auditors, being member of institute of Chartered Accountants, to the effect that the amounts deposited in fixed deposits and the investments made are not less than "the aggregate amounts of liabilities to the depositors" as on 30th June and 31st December of that year. Explanation thereto makes explicit what the "aggregate amount of liabilities"; "approved securities"; and "public sector banks" and "uneneumbered approved securities" are meant to be, the details of which are not necessary for the purpose of this case. Paragraph 7 abolishes the power of the R.N.B.C. of forfeiture of deposits; paragraph 8 prescribes particulars to be mentioned in the form soliciting deposits; paragraph 9 enjoins issuance of the receipts to the depositors and paragraph 10 obligates to maintain the register with particulars of depositors mentioned therein. Paragraph 11 enjoins its Board of Directors to furnish the information in their report as envisaged therein. Paragraph 12 which is also material for the purpose of this case provides that every R.N.B.C. shall disclose as liabilities in its books of accounts and balance-sheets, the total amount of deposits received together with interest, bonus, premium or other advantage, accrued or payable to the depositors. Paragraph 13 enjoins to supply to R.B.I. copies of the balance-sheets and accounts together with Directors report. Paragraph 14 obligates the company to submit returns to the R.B.I. in the manner envisaged thereunder. R.N.B.C. has to submit balance-sheet, returns etc. to the department of the Financial Companies as per paragraph 15. Paragraph 16 obligates R.N.B.C. to comply with the requirement of the Non-banking Financial Companies and Miscellaneous Non-banking Companies (Advertisement) Rules, 1977 etc. and actual rate of interest etc. to the depositor. Paragraph 17 applies to the prospective R.N.B.C. to furnish information in Schedule C. Paragraph 18 accords transitory power and paragraph 19 empowers the R.B.I., if it considers necessary to avoid any hardship or for any other just and sufficient reasons, to grant extensions of time to comply with or exempt, any company or class of companies, from all or any of the provisions of the directions either enerally or for any specified period, subject to such conditions as the RBI may impose and paragraph 20 excludes the applicability of paragraph 19 of the NonBanking Financial Companies (Reserve Bank) Directions, 1977.

48. The High Court declared paragraphs 6 and 12 to be ultra vires of Arts. 19(1)(g) and 14 of the Constitution holding that though the directions do not expressly prohibit the business of receiving any deposit under any scheme or arrangement in lump sum or in instalment by way of contribution or subscription by R.N.B.C., in effect the operation of the directions inhibit the existing business and prohibits the future companies to come into being. As seen the public purpose of the directions is to secure for the depositors, return of the amounts payable at maturity together with interest, bonus, premium or any other advantage accrued or payable to the depositors. To achieve that object every R.N.B.C. is enjoined to deposit and keep deposited in fixed deposit and invest and keep invested in uneneumbered approved securities a sum which shall not, at the close of each half year, be less than the aggregate amount of the liability to the depositors whether or not such amount has become payable. The object, thereby, is to prohibit deployment of funds by R.N.B.C. in any other

manner which would work detrimental to the interest of the depositors.

49. The question emerges whether paragraphs 6 and 12 are ultra vires of Arts. 19(1) (g) and 14 of the Constitution. Art. 19(1)(g) provides fundamental rights to all citizens to carry on any occupation, trade or business. Cl. 6 thereof empowers the State to make any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the said rights. Wherever a statute is challenged as violative of the fundamental rights, its real effect or operation on the fundamental rights is of primary importance. It is the duty of the Court to be watchful to protect the constitutional rights of a citizen as against any encroachment gradually or stealthily thereon. When a law having imposed restrictions on the fundamental rights, what the Court has to examine is the substance of the legislation without being beguiled by the mere appearance of the legislation. The Legislature cannot disobey the constitutional mandate by employing an indirect method. The Court must consider not merely the purpose of the law but also the means how it is sought to be secured or how it is to be administered. The object of the legislation is not conclusive as to the validity of the legislation. This does not mean the constitut onality of the law shall be determined with reference to the manner in which it has actually been administered or operated or probably been administered or operated by, those who are charged with its implementation. The Court cannot question the wisdom, the need or desirability of the regulation. The State can regulate the exercise of the fundamental right to save the public from a substantive evil. The existence of the evil as well as the means adopted to check it are the matters for the legislative judgment. But the Court is entitled to consider whether the degree and mode of the regulation whether is in excess of the requirement or is imposed in an arbitrary manner. The Court has to see whether the measure adopted is relevant or appropriate to the power exercised by the authority or whether over-stepped the limits of social legislation. Smaller inroads may lead to larger inroads and ultimately result in total prohibition by indirect method. If it directly transgresses or substantially and inevitably affects the fundamental right, it becomes unconstitutional, but not where the impact is only remotely possibly or incidental. The Court must lift the veil of the form and appearance to discover the true character and the nature of the legislation, and every endeavour should be made to have the efficacy of fundamental right maintained and the legislature is not invested with unbounded power. The Court has, therefore, always to guard against the gradual encroachments and strike down a restriction as soon as it reaches that magnitude of total annihilation of the right.

50. However, there is presumption of constitutionality of every statute and, its validity is not to be determined by artificial standards. The Court has to examine with some strictness the substance of the legislation to find what actually and really the Legislature has done. The Court would not be over persuaded by the mere presence of the legislation. In adjudging the reasonableness of the law, the Court will necessarily ask the question whether the measure or scheme is just, fair, reasonable and appropriate or is it unreasonable, unnecessary and arbitrarily interfere with the exercise of the right guaranteed in Part III of the Constitution.

51. Once it is established that the statute is prima facie unconstitutional, the State has to establish that the restrictions imposed are reasonable and the objective test which the Court to employ is whether the restriction bears reasonable relation to the authorised purpose or an arbitrary encroachment under the garb of any of the exceptions envisages in Part III. The reasonableness is to the necessity to impose restriction; the means adopted to secure that end as well as the procedure to be adopted to that end.

52. The Court has to maintain delicate balance between the public interest envisaged in the impugned provision and the individual's right; taking into account, the nature of his right said to be

infringed; the underlying purpose of the impugned restriction; the extent and urgency of the evil sought to be remedied thereby; the disproportion of the restriction imposed, the prevailing conditions at the time, the surrounding circumstances; the larger public interest which the law seeks to achieve and all other relevant factors germane for the purpose. All these factors should enter into the zone of consideration to find the reasonableness of the impugned restriction. The Court weighs in each case which of the two conflicting public or private interest demands greater protection and if it finds that the restriction imposed is appropriate, fair and reasonable, it would uphold the restriction. The Court would not uphold a restriction which is not germane to achieve the purpose of the statute or is arbitrary or out of its limits.

53. This Court in Joseph Kuruvilla Vellukunnel v. Reserve Bank of India (1962) Suppl (3) SCR 632: (AIR 1962 SC 137 1), held that the RBI is "a banker's bank and lender of the last resort." Its objective is to ensure monetary stability in India and to operate and regulate the credit system of the country. It has, therefore, to perform a delicate balance between the need to preserve and maintain the credit structure of the country by strengthening the rule as well as apparent credit worthiness of the banks operating in the country and the interest of the depositors. In underdeveloped country like ours, where majority population are illiterate and poor and are not conversant with banking operations and in underdeveloped money and capital market with mixed economy, the Constitution charges the State to prevent exploitation and so the RBI would play both promotional and regulatory roles. Thus the R.B.I. occupies place of "pre-eminence" to ensure monetary discipline and to regulate the economy or the credit system of the country as an expert body. It also advices the Government in public finance and monetary regulations. The banks or non-banking institutions shall have to regulate their operations in accordance with, not only as per the provisions of the Act but also the rules and directions or instructions issued by the RBI in exercise of the power thereunder. Chapter 3B expressly deals with regulations of deposit and finance received by the R.N.B.Cs. The directions, therefore, are statutory regulation.

54. In State of U.P.v. BabuRam(1961)2 SCR 679: (AIR 1961 SC 75 1) this Court held that rules made under a statute must be treated, for all purposes of construction or obligations, exactly as if they were in that Act and are to the same effect as if they contained in the Act and are to be judicially noticed for all purposes of construction or obligations. The statutory rules cannot be described or equated with administrative directions. In D.V.K. Prasada Rao v. Govt. of A. P., AIR 1984 Andh Pra 75, the same view was laid. Therefore, the directions are incorporated and become part of the Act itself. They must be governed by the same principles as the statute itself. The statutory presumption that the Legislature inserted every part, thereof for a purpose and the legislative intention should be given effect to, would be applicable to the impugned directions.

55. The R.B.I. issued the directions to regulate the operations of the R.N.B.Cs., to safeguard the interest of the depositors. Payment of interest, bonus, premium or other advantage, in whatever name it may be called is reward for waiting or parting with liquidity. It is paid because of positive time preference (one rupee today is preferred to one rupee tomorrow) on the part of the depositor. Therefore, the directions avowed to preserve the right of the depositors to receive back the amount deposited with the contracted rate of interest; it aims to prevent depletion of the deposits collected from the weaker segments of the society and also tends to effect free flow of the business of the R.N.B.Cs. who would desire to operate in their own way. The question, therefore, emerges whether the directions in paras 6 and 12 violate Arts. 14 and 19(1)(g) of the Constitution.

56. The solidarity of political freedom hinges upon socio-economic democracy. The right to development is one of the most important facets of basic human rights. The right to basic interest is

inherent in right to life. Mahatma Gandhiji, the Father of the Nation, said that "Every human being has a right to live and therefore to find the wherewithal to feed himself and where necessary, to clothe and house himself." Art. 25 of the Universal Declaration of Human Rights provides that "everyone has a right to a standard of livin adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care." Right to life includes the right to live with basic human dignity with necessities of life such as nutrition, clothing, food, shelter over the head, facilities for cultural and socioeconomic well being of every individual. Art. 21 protects right to life. It guarantees and derive therefrom the minimum of the needs of existence including better tomorrow.

57. Poverty is not always an economic problem alone. Very often it is a social as well as human problem. An agriculturist, an industrial worker, the daily wage earner, rickshaw puller and small self-employed teacher, artisan, etc. may have an earning but may be prone to spend his/her entire earnings, apart from on daily necessities of life, on socio-religious occasions, fairs, festivals etc. The urge for better tomorrow and prosperous future; the glamour for freedom from want of any kind and social security, make the vulnerable segments of the society to sacrifice today's comforts to save for better tomorrow. The habit of saving has an educative value for thrift. It endeavours to bring an attitudinal change in life. It enables individuals to assess future specific needs and to build up a financial provision for the purpose. The habit of saving becomes a way of life and harnesses the meagre resources to build up better future. During the days of rising prices, small savings serve as instrument to mop up the extra purchasing power. In addition to wage a war against poverty, waste, unwise spending, hoarding and other activities, habit of saving also enables family budgeting and postponing expenditure which can be deferred in favour of better utilisation in future. To strengthen the urge for thrift and streamline the social security, the disadvantaged need freedom from exploitation and Art.46 of the Constitution enjoins the State to protect the poor from all forms of exploitation and social injustice.

58. Investment agencies or commercial banks are intermediaries between savers and investors. They embark upon deposit mobilisation campaign to mop up the limited resources. Commercial banks or financial investment agencies, be it public sector or private sector, are vying with one another to scale new heights in deposit growth each year, devising different deposit schemes to suit the individual needs of the depositors or savers. Mushroom growth of non-banking agencies put afloat diverse schemes with alluring offers of staggering high rate of interest and other catchy advantages which would generate suspicion of the bona fides of the offer. But gullible depositors are lured to make deposits. It is not uncommon that after collecting fabulous deposits, some unscrupulous people surreptitiously close the company and decamp with the collections keeping the depositors at bay. Therefore, the need to regulate the deposits/ subscriptions, in particular, in private sector became imperative to prevent exploitation or mismanagement as social justice stratagem.

59. The directions are, therefore, a sociai control measure over the R.N.B.Cs., in matters connected with the operation of the schemes or incidental thereto. The direction to investment in the channelised schemes at the given percentage in Cls. (a) and (b) of proviso to para 6(1) was intended to deposit or keep deposited the collections in fixed deposit in the public sector banks or invest or keep invested in unencumbered approved securities so as tonsure safety, steady growth and due payment to the subscribers at maturity of the principal amount and the interest, bonus, premium or other advantage accrued thereon. The amounts deposited shall not be less than the total aggregate a mounts of liabilities to the subscribers. The deposits or securities shall not be withdrawn or otherwise be dealt with except for repayment to the subscribers. It should aiwavs be shown to be a liability till date of the repayment.

60. This Court in Hatisingh Mfg. Co. Ltd. v. Union of India (1960) 3 SCR 528 : (AIR 1960 SC 923) held that freedom to carry on trade or business is not an absolute one. In the interest of the general public, the law may impose restrictions on the freedom of the citizen to start or carry on his business, whether an impugned provision imposing a fetter on the exercise of the fundamental right guaranteed by Art. 19(1)(g) amounts to a reasonable restriction imposed in the interest of general public, must be adjudged not in the background of any theoretical standard or pre-determinate patterns, but in the light of the nature and the incidence of the right, the interest of the general public sought to be secured by imposing restrictions and the reasonableness of the quality and the extent of the fetters imposed by the directions. The creditworthiness of R.N.B.Cs. undoubtedly would be sensitive. It thrives upon the confidence of the public, on the honesty of its management and its reputation of solvency. The directions intended to promote "freedom" and "facility" which are required to be regulated in the interest of all concerned. The directions as a part of the scheme of the Act would be protected from the attack. Vide Latafat Ali Khan v. State of U.P. (1971)Supp SCR 719: (AIR 1973 SC 2070).

61. The R.N.B.C. is required to conduct its business activities in the interest of the depositors or subscribers who are unorganised, ignorant, gullible, and ignorant of the banking operations. If, however, the acts of R.N.B.C. is detrimental to the interest of the depositors, etc. the R.B.I. has power in Chapter 3B to issue directions and the R.N.B.C. is bound to comply with the directions and non-compliance thereof visits with penal action.

62. Admittedly except Peerless General Insurance, the other companies do not have either paid-up capital or reserve fund worth the name. Peerless was established in the year 1932 and over the years it built up reserve fund. R.N.B.Cs. are carrying their business by crediting the entire first year's collections as a capital receipt under actuarial accounting method. In the affidavit of Sri S. S. Karmik, the Chief Officer of the RBI filed on August 13, 1991, it was stated that prior to the directions, 747 R.N.B.Cs. were doing the business. As on that date only 392 R.N.B.Cs. were notified to be existing. Out of them 178 are in West Bengal; 15 in Assam, 26 in Orissa, 6 in Manipur and Meghalaya, 26 in Punjab, 64 in U.P., 22 in Delhi, etc. As on March 3 1, 1990 out of 185, 35 R.N.B.Cs. alone submitted annual returns, and out of them only 30 have filed their balance-sheets. 28 R.N.B.Cs. in the northern region filed their annual returns and 23 filed their balancesheets with incomplete data. 35 of them have negative net-worth (loss for exceeding their share capital and reserve). Apart from Peerless, the aggregate capital investment of 15 companies accounted to Rs. 158 lacs. The negative net-worth of the 35 companies referred to above would aggregate to Rs. 3.6 crores. They raised, apart from Peerless, deposits to the tune of Rs. 86 crores. Many of them even not designated their banks as required under para 6 of the direction. The would be necessary to comply with the amount invested in bank deposits and approved securities fell much short of their pleaded for 40%. Further contention of Shri deposit liabilities. Verona Commercial Credit was that the actuarial accounting Credit and Investment Company, one of the neither violates any law, nor objected to by respondents, have accumulated losses to the the Income-tax Department. Crediting the tune of Rs. 3.8 crores. As per balance-sheet first year's subscription in the accounts as their assets are inadequate to meet the capital receipt would generate company's liability. Favourite Small Scale Investment, working capital for its successful business by one of the respondents as on December 12, meeting the expenditure towards establish1989, even their provisional balance-sheet ment, the commission and a part of profits shows that total liability towards depositors is Forfeiture clause was already deleted before Rs. 44.62 crores while its investment in banks the directions were issued. Interest at 10% and Government security is only Rs. 13 with annual compounding would be reasoncrores. The cash on hand was Rs. 1.74 crores. able return to the subscribers which is being Rs. 8 crores were shown to be loans and ensured to the depositors. The directions advances. The

accumulated losses are Rupees issued by the High Court, subject to the above 22.19 crores as against total share capital and reserve of Rs. 20.73 lacs. It is, thus, clear on its face that while total liabilities are Rs. 49.09 crores, the assets including doubtful loans and advances aggregate to Rs. 26 crores. An inspection into the affairs of the said company conducted in February, 1990 disclosed that up to the end of 1989 the deposit liabilities including interest would be in the region of over Rs. 132 crores. The difference between the inspection and the balance-sheet would be due to actuarial principle. It had committed default to pay to its depositors to the tune of Rs.5.4 crores, which is a gross underestimate.

63. Sri Somnath Chatterjee, the learned Senior Counsel for the Peerless, adopted by other counsel, contended that paragraphs 6 and 12 are totally unworkable. Its compliance would jeopardise not only the existing companies but also the very interest of the depositors and large workmen. No new company would be set up. The direction given in the first Peerless case was to keep in view the interest of the workmen as well; in effect it was given a go-bye. At least 25% of collections would be left over as working capital of the company, to carry on its business in a manner indicated by the impugned judgment, so that no depositor would lose his money and no workman would lose his livelihood and it will be in consonance with public interest. Shri G. L. Sanghi, the learned Senior Counsel for modifications, would subserve the above purpose. Paras 6 and 12, otherwise, are arbitrary and prohibitive violating their fundamental right to do business assured by Arts. 19(1)(g) and 14. Sri Harish S alve resisted the contentions with ability.

64. Para 12 is myocardium and para 6 is the heart of the directions without which the directions would be putrified corpse. On the respondents own showing, for the first two years, by actuarial accounting, the liabilities, as against deposits, are inadequate. The regulation intends to preserve the corpus of the deposits and the interest payable thereon as on date to be a tangible and unencumberedasset at all times, though not repayable. Indisputably the depositors/subscribers stand as unsecured creditors. Undoubtedly every measure cannot be viewed or interpreted in the event of catastrophe overtaking the company. The catchy and alluring but beguiled terms of offer attract the vulnerable segments of the society to subscribe and keep subscribing the small savings for better tomorrow. But many a time, by the date of maturity, their hopes are belied and aspirations are frustrated or dashed to ground. They remain to be helpless spectators with all disabilities to recover the amounts. Pathetic financial position of some of the companies enumerated hereinbefore would amply demonstrate the agony to which the poor subscribers would be subjected to. The fixed deposits and unencumbered securities as per Cls. (a) and (b) of the proviso to paragraph 6(1) would be 80% of the collections of the year of subscription and Shri Chatterji contends to reduce it to 75% and to allow free play to use the residue in their own way. The difference is only 5% and others at vagary. The objects of the direction are to preserve the ability of the R.N.B.C. to pay back to the subscribers/depositors at anv given time; safety of the subscribers' money and his right to unencumbered repayment are thus of paramount public interest and the directions aimed to protect them. The directions cannot and would not be adjudged to be ultra vires or arbitrary by reason of successful financial management ci an individual company. An over all viev. of the working system of the scheme is relevant and germane.

65. The obligation in paragraph 12 of periodical disclousre in the accounts ot a company of the deposits together with the interest accrued thereon, whether or not payable but admittedly due as a liability, is to monitor the discipline of the operation of the schemes and any infraction, would be dealt with as per law. The certificate by a qualified Chartered Accountant is to vouchsafe the correctness and authenticity of accounts and would and should adhere to the statutory compliance.

66. The settled accounting practice is that a loan or deposit received from a creditor has to be shown as a liability together with accrued interest whether due or deferred. The actuarial accounting applies to revenues and costs to which the concept of the "going concern" can be adopted. Therefore, in providing the costs of the company it can set apart its costs on the basis that liability is created for interest, bonus etc. payable in foreseeable future. Undoubtedly the actuarial principle applied by the L.I.C. or the gratuity schemes are linked with life of the assured or the premature death before retirement of an employee, but R.N.B.C. in its contract does not undertake any such risk. The deposit or loan is a capital receipt but not a revenue receipt and its full value shall be shown in the account books or balance-sheet as liability of the company. It cannot be credited to the profit and loss account. Part II of Schedule VI of the Companies Act, 1956 requires that the amount shown in the profit and loss account should be confined to the income and expenditure of the company. Para 12 of the directions is, thus, in consonance with the Companies Act. Moreover, in its advertisement and the application forms, the R.N.B.C. expressly hold out to the public that, their monies are safe with the bank and in the Government securities. Paragraph 6(1) of the directions only mandates compliance of the promise held out by an R.N.B.C. for repayment at maturity. Sub-para (3) of para 6 keeps the deposits uneneumbered and to be utilised by the company only for repayment. In other words, paragraph 6 only elongates the contract in the public interest to safeguard the interest of the vulnerable sections of the depositors. The R.B.I. cannot be expected to constantly monitor the working of the R.N.B.C. in its day-to-day function. The actuarial basis cannot be adopted by the R.N.B.Cs. and the liability must always be reflected in its balance-sheet at its full value. Compliance of the direction in para 12, dehors any method of accountancy adopted by a company, intended to discipline its operations.

67. No one can have fundamental right to do any unregulated business with the subscribers/depositors'money. Eventhebanks or the financial companies are regulated by eiling on public deposits fixing nexus between deposits and net-worth of the company at the ratio of 3 : 1, i.e. 25% of the capital net-worth. No one would legitimately be expected to get immediate profits or dividend without capital investment. The concept of profit or interest presupposes capital investment. The effect of the Cls. (a) and (b) of the proviso to paragraph 6(1) of the direction, no doubt, freezes the right to profit for a short time and fastens an incidental and consequential obligation to mop up paid up capital or investment towards establishment and commission charges to tide over teething trouble. But that is no ground to say that it is impossible of compliance, nor could it bo said that the directions are palpably arbitrary or unreasonable. Anyone may venture to do business without any stake of his own but is subject to the regulations. A new company without any paid up capital, no doubt, cannot be expected to come into existence nor would operate its business at initial existence with profits. Cl. (c) of the proviso to paragraph 6(1) of the directions gives freedom or leeway to invest or rotate, not more than 20 per cent. of collections etc. in any profitable manner at its choice as a prudent businessman to generate its resources to tide over the teething troubles till it is put on rails to receive succour to its existence, without inhibiting the cornpany's capacity to mop up small savings, and the directions do not control its operation. The only rider is the approval of the Board of Directors which is inherent. Absence of imposition of any limit on quantum of deposits with reference to paid up capital or reserve fund like non-banking financial cornpanies, etc. is a pointer in this regard. Thus there is a reasonable nexus between the regulation and the public purpose, namely, security to the depositor's money and the right to repayment without any impediment, which undoubtedly is in the public interest.

68. Looking from operational pragmatism, the restrictions though apparently appears to be harsh in form, in its systematic working, it would inculcate discipline in the business management, subserve public confidence in the ability of the company to honour the contractual liability and assure due

repayment at maturity of the amount deposited together with interest, etc. without any impediment. In other words, the restrictions in paragraph 6 of the directions intended, to elongate the twin purposes, viz. habit of thrift among the needy without unduly jeopardising the interest of the employees of the companies and the R.N.B.Cs. working system itself in addition to safety and due payment of depositor's money. True, as contended by Shri Chatterji that there arises corresponding obligation to pay higher amount of commission to its agents and the commitment should be kept performed and the confidence enthused in the agents. But it is the look out of the businessman. The absence of ceiling on the rate of.commission would give choice between the company and its agents to a contract in this regard and has freedom to manage its business. The R.N.B.Cs. are free to incur such expenses and organise their business as they desire including payment of commission as they think expedient. But the subscribers/depositors' liability, under no circumstances, would be in jeopardy and the directions were designed to ensure that the interest of the subscribers/ depositors is secured at all times, prescribing investment of an equal sum to the total liability to the subscribers/ depositors. Paragraph 12 is only a bridge between the depositors and the promise held out and the contract executed in furtherance thereof as a monitoring myocardium to keep the heart in paragraph 6 functioning without any hiatus. It is settled law that regulation includes total, prohibition in a given case where the mischief to be remedied warrants total prohibition. Vide Narendra Kumar v. Union of India (1960) 2 SCR 375 : (AIR 1960 SC 430). But the directions do not do that but act as a siphon between the subscriber/ depositor and the business itself. Therefore, they are neither palpably arbitrary nor unjust nor unfair. The mechanism evolved in the directions is foolproof, as directed by this court in first Peerless case to secure the interest of the depositors as well capable to monitor the business management of every R.N.B.C. It also, thereby, protects interest of the employees/ field staff commission agent etc. as on permanent basis overcoming initial convulsions. It was intended, in the best possible manner, to subserve the interest of all without putting any prohibition in the ability of a company to raise the deposit, even in the absence of any adequate paid up capital or reserve fund or such pre-commitment of the owner, to secure such deposits.

69. Thus the directions impose only partial control in the public interest of the depositors. The deposits invested or keep invested qua the company always remained its fund till date of payment at maturity or premature withdrawal in terms of the contract. The effect of the impugned judgment of the Calcutta High Court namely redefinition of the aggregate liabilities as contractual liabilities due and payable would have the effect of requiring the R.N.B.Cs. to deposit an amount equal to the sum payable only in the year of maturity allowing free play to the R.N.B.Cs. to use the subscriptions/deposits in its own manner during the entire earlier period, jeopardise the security of the subscribers/depositors and are self-defeating. The sagging mismanagement prefaced hereinabove would be perpetrated and the depositor is always at the mercy of the company with all disabilities, killing the very goose namely the thrust to save for prosperous future or to tide over future needs.

70. It is well settled that the Court is not a Tribunal from the crudities and inequities of complicated experimental economic legislation. The discretion in evolving an economic measures, rests with the policy makers and not with the judiciary. Indian social order is beset with social and economic inequalities and of status, and in our socialist secular democratic Republic, inequality is an anathema to social and economic justice. The Constitution of India charges the State to reduce inequalities and ensure decent standard of life and economic equality. The Act assigns the power to the RBI to regulate monetary system and the experimentation of the economic legislation, can best be left to the executive unless it is found to be unrealistic or manifestly arbitrary. Even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibilities from those on whom a democratic society ultimately rests. The Court has to see whether the

scheme, measure or regulation adopted is relevant or appropriate to the power exercised by the authority. Prejudice to the interest of depositors is a relevant factor. Mismanagement or inability to pay the accrued liabilities are evils sought to be remedied. The directions designed to preserve the right of the depositors and the ability of R.N.B.C. to pay back the contracted liability. It also intended to prevent mismanagement of the deposits collected from vulnerable social segments who have no knowledge of banking operations or credit system and repose unfounded blind faith on the company with fond hope of its ability to pay back the contracted amount. Thus the directions maintain the thrift for saving and streamline and strengthen the monetary operations of R.N.B.Cs.

71. The problems of Government are practical ones and may justify if they do not require rough accommodation. Illogical it may be and unscientific it may seem to be, left to its working and if need be, can be remedied by the R.B.I. by pragmatic adjustment that may be called for by particular circumstances. The impugned directions may at first blush seem unjust or arbitrary but when broached in pragmatic perspective the mist is cleared and that the experimental economic measure is manifested to be free from the taints of unconstitutionality.

72. Para 19 of the directions empowers the RBI to extend time for compliance or to exempt a particular company or a class thereof from all or any of the provisions, either generally or for a specified period subject to such conditions as may be imposed. Power to exempt would include the power to be exercised from time to time as exigencies warrant. An individual company or the class thereof has to place necessary and relevant material facts before the R.B.I. of the hardship and the need for relief. A criticism of arbitrariness or unreasonableness may not be a ground to undo what was conceived best in the public interest. What is best is not always discernible. The wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to judicial review. The legislative remed may be ineffective to mitigate the evil or fail to achieve its purpose, but it is the price to be paid for the trial and error inherent in the economic legislative efforts to grapple with obstinate social issues. It is proper for interference in judicial review, only, when the directions regulations or restrictions are palpably arbitrary, demonstrably irrelevant or discrimina tory. Exercise of power then can be declared to be void under Art. 13 of the Constitution. So long as the exercise of power is broadly within the zone of reasonableness, the Court would not substitute its judgment for that of legislation or its agent as to matters within their prudence and power. The Court does not supplement the feal of the experts by its own values.

73. It is settled law that so long as the power is traceable to the statute, mere omission to recite the provision does not denude the power of the legislature or rule making authority to make the regulations, nor considered without authority of law. S. 114(h) of the Evidence Act draws a statutory presumption that official acts are regularly performed and reached satisfaction on consideration of relevant facts. The absence of reiteration of objectives satisfaction in the preamble as of one under S. 45L does not denude the powers, the R.B.I. admittedly has under S. 45L, to justify the actions. Though S. 45L was neither expressly stated nor mentioned in the preamble of the directions of the required recitation of satisfaction of objective facts to issue the directions from the facts and circumstances it is demonstrated that the R B.I. had such satisfaction in its considerations of its power under S. 45L, when the directions were issued. Even otherwise S. 45K(3) itself is sufficient to uphold the directions.

74. The impugned directions are thus within the power of the R.B.I. to provide tardy, stable, identifiable and monitorable method of operations by each R.N.B.C. and its compliance of the directions. This will ensure security to the depositors at all times and also make the accounts of the company accurate, accountable and easy to monitor the working system of the company itself and

continuance of its workmen. The directions in paragraphs 6 and 12 are just, fair and reasonable not only to the depositors, but in the long run to the very existence of the company and its continued business itself. Therefore, they are legal, valid and constitutionally permissible.

75. The writ petition is dismissed and the appeals are allowed. The writ petitions filed in the High Court stand dismissed. No costs in this Court. Order accordingly

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