IN THE HONOURABLE HIGH COURT OF SINDH

AT KARACHI

(Constitutional Jurisdiction)

28-5-15

Constitutional Petition No. 3016 /2015

1. Nasir Ali Shah Bukhari,
Son of Late Mr. Khadim Ali Shah Bukhari,
R/o House No. 20, Street No. 9,
Kh-e-Shamsheer, DHA, Phase V,
Karachi.

2. KASB Corporation Limited,
8-C, Block 6, PECHS,
Off. Shahrah-e-Faisal,
Karachi
Through Petitioner No. 1.

3. Muzaffar Ali Shah Bukhari,
Son of Nasir Ali Shah Bukhari,
R/o House No. 20, Street No. 9, Kh-e-Shamsheer,
DHA, Phase V, Karachi.

... Petitioners

Versus

1. Federation of Pakistan,
Through Secretary, Ministry of Finance,
Government of Pakistan,
Pakistan Secretariat,
Islamabad.

2. State Bank of Pakistan,
Through Governor,
I. I. Chundrigar Road,
Karachi.

3. Securities & Exchange Commission of Pakistan
Through Chairman,
State Life Building-2, 4th Floor North Wing, Wallace Road,
Karachi

&

3

Securities and Exchange Commission of Pakistan
National Insurance Corporation Building,
Jinnah Avenue,
Islamabad.

4. A. F. Ferguson & Co.,
A firm of Chartered Accountants, through its all partners
State Life Building 1-C,
I.I. Chundrigar Road, Karachi.

5. Bank Islami, Through Company Secretary
Head Office, 11th floor, Executive Tower,
Dolmen city, Marine Drive, Block-4 Clifton,
Karachi.

6. Cybernaut Investments Group (Through CEO)
A-16 Eworld No. 11
Zhingguanwn Street,
Haidian District, Beijing, 100080.
China

... Respondents

CONSTITUIONAL PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF PAKISTAN, 1973

Respectfully Sheweth:

SEAL OF THE HIGH COURT OF SINDH

IN THE HIGH COURT OF SINDH, KARACHI
CP Nos. D-3007/2015, 3076/2015 and 4927/2015

Date	Order with signature of Judge

Present: Munib Akhtar and Omar Sial, JJ.

For hearing of main case

Dates of hearing: 02 and 09.04.2018

Mr. Salahuddin Ahmed,
Advocate for petitioner in
CP D-3007/2015

Mr. Abid Zuberi and Dr. Amjad
Hussain Bokhari a/w Mr. Zaeem Hyder and
Saif Sohail, Advocates for petitioners in
CP D-3076/2015

Mr. Muhammad Amin Bandukda, Advocate for
Petitioner in CP D-4927/2015

Mr. Liaquat Merchant and Mr. Ghulam
Murtaza a/w Mr. Emad Hassan, Ms. Hira
Ahmed and Mr. Ameer Nausherwan
Adil, Advocates for State Bank of
Pakistan

Mr. Arshad Tayebaly a/w Mr. Muhammad Shahid,
Ms. Sehar Rana and Mr. Nabil Chandia, Advocates
for BankIslami

Mr. Ali Almani, Mr. Sami ur Rehman and
Mr. Jam Zeeshan, Advocates for the external
Auditors

Mr. Asim Mansoor Khan, Deputy Attorney
General and Mr. Aslam Butt, Standing Counsel

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Munib Akhtar, J.: The petitioners in all three petitions are (or rather were) shareholders in the erstwhile KASB Bank Ltd. ("Bank"). This banking company was subjected to action by the Federal Government and the State Bank of Pakistan under s. 47 of the Banking Companies Ordinance, 1962 ("1962 Ordinance"), firstly by way of a moratorium (imposed on 14.11.2014) and then amalgamation with the BankIslami Pakistan Ltd. ("BankIslami") under a scheme of amalgamation (the effective date of which was 07.05.2015). At the time of the amalgamation the Bank was held to have a negative valuation, with the result that its shareholders were neither given any shares in BankIslami nor did they get any compensation (other than a wholly symbolic Rs. 1000/-, to be shared among all). The petitioners challenge these actions on various grounds, including in particular the manner in which

proceedings under s. 47 were conducted and the Bank's negative valuation. It may be noted that at the relevant time the Bank had around 1.95 billion shares' outstanding. The two petitioners in CP D-3007/2015 and CP D-3027/2015 held, on a percentage basis, 0.236% and 0.036% respectively of the total shareholding. However CP D-3076/2015 has been filed by persons who, directly and indirectly, together held the bulk of the equity, being in excess of 80%.

2. Learned counsel appearing for the petitioner in CP D-3007/2015 submitted that the actions taken against the Bank, and in particular their effect on the petitioner's shares, were contrary to Article 24 of the Constitution. It was submitted that s. 47 as appearing in the statute book was in violation of this constitutional provision and had to be read down suitably. Furthermore, the mandatory procedure laid down in the section had not been properly followed and applied, and the discretion vested in terms thereof in the Federal Government and the State Bank had been exercised in a mala fide manner, both in law and in fact. Learned counsel submitted that the petitioner held 4.6 million shares in the Bank and had held them since 2010, i.e., since much before the impugned action. The basic allegation against the Bank was that its capital adequacy ratio (CAR) was not up to the required limit and that the minimum capital requirements were not being met. It was on such basis that the Federal Government, on an application made to it by the State Bank, imposed a moratorium on the Bank on 14.11.2014. Referring to the press release issued by the State Bank with reference to this action, learned counsel drew attention to the statement therein that the Federal Government had directed the former to consider either the reconstruction of the Bank or its amalgamation with some other banking company. The Bank being a listed company, learned counsel referred to the trading pattern of its shares over the relevant period, i.e., from 13.11.2014 till 29.04.2015, when trading was suspended. This, according to learned counsel showed that the market valued the Bank's equity positively (even though below par) and not negatively as per the valuation accepted and applied by the State Bank.

3. Learned counsel referred to a letter dated 28.04.2015 that was issued to the Karachi Stock Exchange by the BankIslami. This referred to a draft scheme of amalgamation of the Bank with the BankIslami, as received by the latter from the State Bank and which had been put up on BankIslami's website. The letter requested that any suggestions or objections to the proposed scheme be forwarded to BankIslami "for consideration of the Board by 2.00 p.m. on April 29, 2015" for onward submission to the State Bank "by close of business hours tomorrow as instructed to us". Learned counsel submitted that a wholly inadequate period of not more than 24 hours (and

indeed, even less than that) was given for filing objections or suggestions to the proposed scheme. Furthermore, this communication had been made not by the State Bank or the Bank but by the BankIslami. It was submitted that this was a flagrant breach of the relevant subsections of s. 47. Learned counsel then referred to the order dated 07.05.2015 whereby the Federal Government accorded sanction to the proposed scheme. Referring to the scheme itself, learned counsel read out the first four recitals thereof. In the fourth recital reference was made to a report prepared by external auditors (being an accountancy firm) that was tasked with valuing the Bank. Section 5.04 of the scheme was referred to, in which as per the valuation report the shares of the Bank were given a negative value. Learned counsel submitted that the report of the external auditors was never revealed or released to the shareholders of the Bank although it obviously had a hugely detrimental effect on their shareholdings. Learned counsel challenged the negative valuation of the Bank, denying that such was in fact the case. It was submitted that the failure by the State Bank to release the external auditors' report had also the effect of preventing the shareholders from making any effective representations, suggestions or objections to the scheme when proposed, and that this was a clear breach of their rights and the State Bank's obligations in terms of s. 47. (This was independent of the objection taken to the amount of time given to file objections.) Learned counsel also referred to sections 6.01 and 6.02 of the scheme in which, as noted above, the total compensation paid to the shareholders came to a symbolic Rs. 1000/-.

4. Continuing with his submissions, learned counsel submitted that there had been a gross violation of subsections (6) and (7) of s. 47. It was submitted that the procedure contemplated by these provisions was that the State Bank should have directed, and ensured, that the Bank and BankIslami forwarded the proposed scheme to their shareholders, depositors and creditors or should have done the same itself. Any objections had to be considered by the State Bank by a proper application of mind as required and contemplated by well-established principles and the scheme modified suitably if the objections were found to have force. Learned counsel submitted that the term "modifications" as used in subsection (7) included a change from amalgamation to reconstruction and even abandoning the proposed action altogether. However all of this was possible only if a proper opportunity and, most importantly, time was given to the shareholders etc to lodge their objections and suggestions. Learned counsel submitted that at all material times the Bank was in fact under the State Bank's control. Referring to para 5 of the order of moratorium dated 14.11.2014, learned counsel submitted that although a committee, comprising of senior officers of the Bank, had been constituted as therein required, it was clear that at all times all material decisions were to be

taken either by or only with the consent of the State Bank itself. Paras. 5 to 7 of the aforesaid order were referred to in particular in this regard. Learned counsel emphasized that a reasonable time had to be granted to the shareholders to enable them to give suggestions and take objections. It was, quite properly, accepted that each and every person who made a suggestion or raised an objection could not be given a personal hearing. But, learned counsel submitted, if a proper timeframe had been applied to this aspect of s. 47, and objections and suggestions received, the State Bank would be able to sift through the same and apply itself to them. It was reiterated that the one day given was wholly inadequate on any view of the matter. It was also emphasized that the valuation report was never revealed so as to enable the shareholders to effectively exercise their rights. Learned counsel submitted that the veil of secrecy over the valuation established the mala fides of the whole exercise. According to learned counsel the BankIslami was itself in violation of those very requirements for which action was taken against the Bank, i.e., not meeting the CAR requirements etc. In this regard reference was made to the financial accounts of the BankIslami. Furthermore, it also came to light that the State Bank gave a loan of Rs. 20 Billion to the BankIslami after the scheme had been put into effect. Insofar as the Bank itself was concerned, learned counsel submitted that there was in fact a foreign party, a Chinese company, which had shown interest in the Bank and a willingness to put in fresh capital by way of equity. There had been extensive correspondence between the Chinese party and the State Bank from which, according to learned counsel, the bona fides of the former were quite apparent. This correspondence was on record and referred to by learned counsel. There was thus a "white knight" willing to rescue the Bank, if at all it was ailing in the manner as contended by the State Bank. However, for mala fide reasons, the Chinese company was given short shrift by the State Bank and not allowed to proceed further. It was submitted that this further established the mala fide manner in which the exercise was carried out.

5. Learned counsel also submitted that the procedure envisaged under s. 47, and in particular the manner in which that section had been applied to the Bank, was violative of Article 24 of the Constitution. Reliance was placed on certain case law. Learned counsel concluded by submitting that it appeared that the State Bank had kept everyone's interests in mind except the shareholders of the Bank, who had been treated shabbily both in law and in fact. The exercise was in clear violation of their rights and they, including of course the petitioner in CP D-3007/2015, were entitled to suitable relief. It was prayed accordingly.

6. Learned counsel for the petitioners in CP D-3076/2015 submitted that the second petitioner held 80.62% of the shareholding in the Bank. Learned counsel referred to subsection (8) of s. 47 and submitted that the Federal Government had to independently apply its mind to the scheme proposed by the State Bank and not simply adopt whatever the latter put before it. Learned counsel submitted that the proposed scheme was put out on 27.04.2015 and the Federal Government accorded its sanction on 07.05.2015. The period between 29.04.2015 and 07.05.2015 was the period in which the State Bank had to apply its mind to any objections or suggestions received, submit the scheme (modified if appropriate) to the Federal Government and for the latter to apply its mind to what had been put before it. In such circumstances it was clear that there could not possibly have been any proper action taken by the Federal Government as required and contemplated by law. Insofar as the action actually taken was concerned, learned counsel submitted that there were other banking companies in the same or similar predicament as the Bank, and yet nothing was done about, or to, them. Thus, the whole exercise smacked of mala fides. As regards the valuation placed on the Bank, learned counsel submitted that it was unlawful and the petitioners' rights under Articles 23 and 24 had been seriously violated. Learned counsel submitted that the external auditors had been appointed to carry out the exercise under a tripartite agreement entered into between the State Bank, the Bank and the accountants. This agreement was on the record, but the valuation report had never been revealed. It was submitted that if the Bank had been properly and lawfully evaluated then the shareholders would either have got shares in BankIslami or been given adequate compensation, rather than the derisory and token amount of Rs. 1000/-. Learned counsel submitted that the petitioners had been lodging their protests all along and had also found a Chinese company willing to put in substantial funds and equity into the Bank. Yet, the State Bank simply refused to entertain the third party. It was submitted that in any action under s. 47 the role of the State Bank was akin to a neutral umpire. However, the facts showed that it had acted in a partisan manner and had actively connived to ensure the extinguishment of the Bank's independent existence and its amalgamation with the BankIslami. Reference was also made to s. 45 of the (Indian) Banking Regulation Act, 1949 ("Indian Act"), which was said to be *in part materia* s. 47. Learned counsel prayed for appropriate and adequate relief for the petitioners.

7. Learned counsel for the petitioner in CP D-4927/2015 adopted the submissions made by learned counsel in CP D-3007/2015 and emphasized that the Bank's shareholders, including the petitioner, were entitled to have the Bank properly evaluated, and be informed of the manner in which the valuation exercise had been carried out. It was submitted that the Bank's value

could not be negative as wrongly contended by the State Bank. Learned counsel prayed for adequate compensation being paid to the petitioner.

8. Learned counsel for the State Bank strongly refuted the case sought to be made by the petitioners and defended the actions taken as within law and a proper and necessary response to the facts and circumstances in relation to the Bank that had been unfolding at that time. It was submitted that the petitions were not maintainable and s. 47 was not ultra vires the Constitution. It had been properly and lawfully applied. Learned counsel submitted that *prior to* the present round of litigation two petitions had been filed in the Islamabad High Court. One was WP 398/2015, which was unconditionally withdrawn. The other was WP 1274/2015, which was dismissed on the merits. The relief sought in the present petitions was substantially the same as sought earlier from the Islamabad High Court. Thus, these petitions were not maintainable. It was also submitted that the petitions involved determination of complicated questions of fact, which was not an exercise that could be carried out in constitutional jurisdiction. It was further submitted that two of the petitions involved very minute shareholdings, and this was a material factor in determining whether those petitioners were entitled to any relief. Furthermore, learned counsel submitted, the scheme had been carried out and the operations of the two banks merged and amalgamated. It was simply not possible to undo the scheme, which was a past and closed transaction that, in accordance with well established principles, could not and ought not to be reopened or upset.

9. Learned counsel submitted that the State Bank had been vested with a vast array of statutory powers under the 1962 Ordinance. Reference was made in particular to ss. 41A, 41B and 42. Insofar as the first two sections were concerned, learned counsel submitted that those powers were not invoked or exercised because the capital of the Bank had completely eroded. As regards s. 42, learned counsel referred in particular to clause (e) of subsection (1), and to paragraphs (iv), (ix) and (xv) of the said clause. It was submitted that s. 47 could not be invoked directly: s. 42 was the gateway through which the section could be, as it were, accessed. Learned counsel submitted that the interests of the shareholders of a banking company were different from those of its depositors. It was submitted that subsection (4) of s. 47, in terms whereof a banking company under moratorium could be reconstructed or amalgamated made no reference to its shareholders. At the relevant time, the Bank had Rs. 57 Billion in deposits, which, on amalgamation, had become the responsibility of the BankIslami. Insofar as s. 47 was concerned, it was submitted that the two days given for filing objections and suggestions were adequate and reasonable. The scheme was also published in the newspapers. It was further submitted that even if any suggestions etc had come [illegible]

subsection (8) become operative, those would have been entertained. The objections etc could even have been sent to the Federal Government for its consideration. Thus, learned counsel contended, in reality there was all told a period of around eleven days that was available for the filing of objections and suggestions and their consideration. That, it was contended, was certainly adequate and reasonable.

10. Continuing with his submissions, learned counsel submitted that the record clearly showed that the matter of the scheme of amalgamation originated with and was initiated by the State Bank and not the Federal Government. All averments to the contrary were denied. The petitioners had full knowledge of all the relevant facts at all material times. As regards the non-compliance of the Bank with the statutory requirements regarding CAR etc, learned counsel referred to the lengthy correspondence placed on the record, starting from around May, 2008 and ending in September, 2014 whereby the State Bank had repeatedly sought compliance by the Bank. However, there was a manifest failure to do so. Thus, the action taken by the State Bank did not come suddenly out of the blue. There was a context and history to it, and the action was fully justified in view of the continuing defaults by the Bank. The minimum capital required was Rs. 10 Billion; in the Bank's case this had come down to Rs. 0.958 Billion. The CAR was negative 4.63%. The Bank's situation, according to learned counsel, had simply become disastrous. It was submitted that the Bank was also plagued by bad governance. Again, correspondence had been repeatedly addressed to the Bank in this regard but to no avail. As regards the Chinese investor, learned counsel submitted that the company was not found financially viable. The State Bank wanted to do its own due diligence as regards the Chinese company but they did not come forward in this regard. In any case, no firm commitment as satisfied the State Bank was received from them. Learned counsel submitted that at least four banks had initially shown interest in acquiring the Bank by way of amalgamation and had come forward to do due diligence. However, three had dropped out and only the BankIslami remained in the field. Thus, it was incorrect to suggest that there was some mala fide motive or action to hand over the Bank to BankIslami. It was accepted that the latter was given firm support by the State Bank after the amalgamation but learned counsel submitted that that would have been true regardless of whichever banking company had taken over the Bank. It was denied that such support was specific to the BankIslami in the sense or manner as sought to be portrayed by the petitioners. It was submitted that the Bank had been properly evaluated in accordance with law by the external auditors and this had been done in terms of the tripartite agreement. The negative valuation accurately reflected the ground realities. As regards Article 24, learned counsel submitted

that paragraph (f) of clause (3) expressly provided that it did not apply in respect of existing laws, and the 1962 Ordinance fell in that category. It was prayed that the petitions be dismissed.

11. Learned counsel for BankIslami also strongly opposed the petitions. It was submitted that the amalgamation had been given full effect and could not be undone. The status quo ante could not be restored. Thus, e.g., more than 47 of the Bank's branches had been relocated or absorbed in the post-merger scenario. The BankIslami had done nothing illegal. If at all any compensation was payable to the Bank's shareholders (which was strongly denied) that liability in any case could not be forced on the BankIslami. Indeed, learned counsel submitted, if the amalgamation had at all involved the BankIslami paying (or even having the remotest possibility of having to pay) compensation, it would not have undertaken the deal at all. As regards the application of s. 47, learned counsel submitted that in fact no suggestions or objections as such were received and therefore the whole point sought to be made out in this regard was essentially moot. Insofar as the petitioners in two of the petitions were concerned their shareholding was less than negligible. Insofar as the third petition, brought by the sponsors and controlling shareholders of the Bank, was concerned they were not entitled to any relief as they were directly and largely (if not solely) responsible for the acts and omissions that had brought the Bank to its knees. They could not now turn around and claim to be the victims of allegedly illegal action. Learned counsel submitted that after the amalgamation, Rs. 20 Billion was certainly provided to the BankIslami by the State Bank. Of this Rs. 15 Billion was for liquidity purposes and Rs. 5 Billion to cover the shortfall. The depositors of the Bank had been paid around Rs. 27 Billion, of which Rs. 19 Billion were taken out immediately after the amalgamation and the lifting of the moratorium. This huge obligation had been duly honored by the BankIslami. Furthermore the BankIslami had already repaid around Rs. 15 Billion of the funds provided by the State Bank. It was denied that the BankIslami had at any time faced the sort of the problems that had afflicted the Bank, whether by way of CAR or otherwise and in this regard learned counsel referred to the relevant portions and extracts from the accounts. It was submitted that in the years preceding 2014 the BankIslami had in fact made profits. Thus all attacks on, and insinuations against, its financial health were incorrect and denied. In support of his various submissions learned counsel relied on certain case law including, in particular, a decision of the Indian Supreme Court in respect of s. 45 of the Indian Act. It was prayed that the petitions be dismissed.

12. The right of reply was exercised. Learned counsel in CP D-3076/2015 submitted that insofar as the litigation in the Islamabad High Court was

concerned, the first petition was withdrawn unconditionally. Insofar as the other petition (WP 1274/2015), learned counsel submitted, referring to the judgment whereby it was disposed off (dated 05.05.2015), that the ground taken by the State Bank was that the petition was premature, as objections pertaining to the scheme were pending. It was this ground that found favor with the Court and learned counsel referred to para 16 of the decision. On the case as pleaded before him the learned Single Judge was persuaded that the petition was based on mere apprehensions. It was for this reason that it was dismissed. There was no adjudication on the merits of the case. Two days later came the order sanctioning the scheme, without any consideration of the objections. It was this that led to the filing of CP D-3076/2015 in this Court on 28.05.2015. Thus, learned counsel submitted, the earlier litigation did not at all bar the present cases, and the petitions were maintainable. Even otherwise, learned counsel submitted, when the prayer clauses of the various petitions were compared, the relief sought from this Court was of a different nature from that sought before the Islamabad High Court. Thus, no question of res judicata was involved. As regards the other banks, stated to be in a position similar to that of the Bank (including in particular the BankIslami), learned counsel referred to the financial statements of the latter to reiterate that there were no material differences. It was submitted that if at all any action was to be taken against it the Bank ought to have been reconstructed and not amalgamated. And, if at all it was to be amalgamated, then it ought not to have been with the BankIslami.

13. As regards the submission made by learned counsel for the State Bank that s. 42 was the "gateway" to s. 47, learned counsel drew attention to subsection (1A) of the former. This provided for an opportunity of hearing being given. Learned counsel submitted that no such opportunity was granted. Thus, on the State Bank's own showing, it had failed to comply with a mandatory requirement of law and had straightaway proceeded under s. 47 without following the route laid down in s. 42. It was submitted that this conclusively showed the mala fide manner in which the entire action had been taken. As regards s. 47, learned counsel submitted that subsection (4) allowed the State Bank to propose either a scheme of reconstruction or amalgamation, but the onus lay on it to satisfactorily show why it had adopted the latter and not the former course. There had to be good reason for foregoing the option to reconstruct the banking company under moratorium. No such reason was ever forthcoming. Even the auditors had to recommend either reconstruction or amalgamation but their report was never revealed. It was submitted that the valuation report was crucial in order to enable the shareholders etc to file proper suggestions or objections and also to assess whether the correct decision was to amalgamate the Bank rather than to reconstruct it. The

categorically stated before the Court that they were not interested in paying any compensation, the only relief left open was a reversal of the whole scheme and a restoration of the status quo ante.

16. We have heard learned counsel as above and considered the record and material placed before us. Section 47, which is a fairly lengthy provision, in material part provides as follows:

> **"47. Powers of State Bank to apply to Federal Government for suspension of business by a banking company and to prepare scheme of reconstruction or amalgamation.—**
>
> (1) Notwithstanding anything contained in the provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where it appears to the State Bank that there is good reason so to do, the State Bank may apply to the Federal Government for an order of moratorium in respect of a banking company.
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> (2) The Federal Government, after considering the application made by the State Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all action and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper, and may from time to time extend
> the period so however that the total period of moratorium shall not exceed six months.
>
> (3) Except as otherwise provided by any directions given by the Federal Government in the order made by it under sub-section (2) or at any time thereafter, the banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors.
>
> (4) During the period of moratorium, if the State Bank is satisfied that- -
>
> (a) in the public interest; or
>
> (b) in the interests of the depositors; or
>
> (c) in order to secure the proper management of the banking company; or
>
> (d) in the interests of the banking system of the country as a whole, it is necessary so to do, the State Bank may prepare a scheme —
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> (i) for the reconstruction of the banking company; or
>
> (ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank").
>
> (5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:—
>
> (a) the constitution, name and registered office, the capital assets, powers, rights, interests, authorities and privileges, the liabilities,

duties and obligations, of the banking company on its reconstruction or, as the case may be, of the transferee bank;

(b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;

...

(f) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the State Bank considers necessary in the public interest or in the interests of the members, depositors and the creditors or for the maintenance of the business of the banking company;

(g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim--

(i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;

(h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation, weather their interest in such shares has been reduced under clause (f) or not, of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim--

(i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

...

(k) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(6) A copy of the scheme prepared by the State Bank shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any, within such period as the State Bank may specify for this purpose.

(7) The State Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the

amalgamation and from any members, depositors or other creditors of each of those companies and the transferee bank.

(8) The scheme shall thereafter be placed before the Federal Government for its sanction and the Federal Government may sanction the the scheme without any modifications or with such modifications as it may consider necessary; and the scheme as sanctioned by the Federal Government shall come into force on such date as the Federal Government may specify in this behalf:

Provided that different dates may be specified for different provisions of the scheme.

(9) Upon the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank.

(10) On such date as may be specified by the Federal Government in this behalf, the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of, the transferee bank.

..."

17. We begin by considering some of the preliminary objections as to maintainability taken by learned counsel for the State Bank. It is true that the petitioners in two of the petitions, CP D-3007/2015 and CP D-4927/2015, held a vanishingly small percentage of the Bank's shareholding. Had these been the only two petitions in the field, this aspect may well have proved decisive. However, there is also the third petition, CP D-3076/2015, the petitioners of which directly or indirectly hold the bulk of the shares. It is only when combined with this petition that the other two remain viable, in the context of the objection now under consideration. However, as to the third petition, learned counsel for the State Bank relied on the earlier round of litigation in the Islamabad High Court. We have considered the judgment of that Court, which is also reported, as *Nasir Ali Shah Bukhari and others v. Federation of Pakistan and others* 2015 CLD 1787. In our view, learned counsel for the petitioners are correct in submitting that the Islamabad High Court was pleased to dismiss the petition on a preliminary ground, namely that it was premature. The merits of the case, which are fully presented in the petitions before us, were not considered. Therefore, with respect, we are of the view that the earlier round does not bar, or affect the maintainability of, CP D-3076/2015. Since this petition is maintainable, that also deals with the objection taken as regards the other two petitions. These objections, with respect, are not sustainable.

SEAL OF THE HIGH COURT OF SINDH

18. Insofar as the merits of the petitioners' case is concerned, the aspect that first requires consideration is whether there was a violation of subsections (6) and (7) of s. 47, inasmuch as it is alleged that sufficient time was not granted for the filing of suggestions and/or objections to the proposed scheme. Three points may be made at the outset regarding these subsections. Firstly, the period within which suggestions and/or objections can be made or taken obviously has to be reasonable. It cannot, in law, be set at the absolute or unqualified discretion of the State Bank. The reasonableness of the *period will* depend in part on the determination of the legal meaning of *these provisions* and in part on their application to the facts and *circumstances* of the case before the Court. Of course, it is ultimately for the Court to decide whether or not the period was reasonable. Secondly, subsection (6) requires the State Bank to send the draft scheme to the banking company that is the subject of action under s. 47, the transferee bank and any other banking company involved in the amalgamation. But, and thirdly, as subsection (7) *provides*, suggestions and objections may be made not just by these banking companies but also by the members (which term is, for convenience, used in this judgment synonymously with shareholders), depositors and other creditors thereof. The interaction of the last two points also raises issues with regard to the statutory duties of the State Bank, in a manner shortly to be stated.

19. As regards the reasonableness of the period to be granted by the State Bank, it should be kept in mind that the 1962 Ordinance was promulgated at a time when, effectively, the only means of communication (at least as here relevant) was the mail. Things have of course now accelerated to the point of virtually instantaneous communication by way of email etc., to the extent that mail of the 1960's variety is often derided as "snail mail" not only by those who have come to age in the Internet era and have therefore known nothing else but even by those who can hearken back, though perhaps increasingly dimly, to the earlier period. The question is whether, as a matter of law, this has an effect on the reasonableness of the period to be granted in terms of subsection (6). What could be a reasonable period in this Digital Age may well (and perhaps almost certainly would) have been totally inadequate when the 1962 Ordinance was promulgated. The question therefore is, when subsection (6) is to be interpreted and applied in the here and now, is it permissible as a matter of law to take into consideration the communication modalities that are now so prevalent that they can legitimately be taken as the new norm? It is of course well established that specific words, terms or expressions used in a statute that are relatable to scientific and technological levels achieved when the statute was enacted are to be interpreted dynamically so that they continue to remain relevant and can, e.g., be applied to technologies and techniques unknown (and even undreamt of) at the time of

enactment. It is in this sense that statutes are said to be of the "always speaking" variety. However, the question before us is of a somewhat different nature. It relates to the reasonableness of a period to be granted by a regulatory authority to persons to make suggestions or take objections to a scheme that may well (indeed, almost certainly would) adversely affect their rights and interests, including property rights. Furthermore, although subsection (6) only requires the State Bank to send the proposed scheme to the banking companies, subsection (7) allows for the members, depositors and other creditors to take objections and make suggestions as well, which are also to be considered by the State Bank. This would require the banking companies to forward the proposed scheme to their members etc., for the latter to consider the same and then send in their suggestions and objections, most probably to the concerned banking company for onward transmission to the State Bank. Furthermore, it is not simply a matter of the proposed scheme being delivered to the concerned persons. The "turnaround" time, i.e., the time reasonably required by a person to peruse and consider something as lengthy and complex as a scheme under s. 47, take a decision whether suggestions are to be made or objections taken, and if so then to actually commit to writing, must also be taken into account. And it must also be recognized that all these persons would not have the same expertise, experience or resources to consider the proposed scheme. This would itself have a bearing on the "turnaround" time. Clearly, these factors would have to be taken into consideration by the State Bank in determining the period. When the 1962 Ordinance was promulgated this would, compared to the communication tools now available, have taken a relatively much greater amount of time. All of this feeds accordingly into the question of the correct approach to take, as a matter of law, as to how the reasonableness of the period granted is to be determined. At the same time, it must also be kept in mind that even in the context of "snail mail", there have been advances, in the sense that courier services, express delivery and the like came into vogue and became normal. Before proceeding further, two points may be made in relation to the question of reasonableness. Firstly, subsection (2) of s. 47 allows the Federal Government to impose a moratorium for a fixed period or periods of time but such that the total period cannot exceed six months. If the Federal Government imposes the moratorium for a relatively short period, that could impact on what would be a reasonable period under subsection (6). Secondly, subsection (14A) allows the State Bank to make a scheme for the reconstruction or amalgamation even if there is no moratorium imposed. If the State Bank were to exercise this power, it could have an effect on the question of reasonableness. Neither of these points arises here since the Federal Government from the very beginning imposed a moratorium and that too for the full six months. The points must therefore be regarded as left open for

future consideration in a suitable case. It could be that such consideration impacts on the analysis and discussion carried out in this judgment.

20. In our view, when all of the foregoing is taken into consideration, the correct interpretive approach to subsection (6) at this point in time is to take what may be regarded as the middle path. Thus, while the State Bank can recognize that many, and perhaps most, of those who must be the recipients of the proposed scheme will have access to modern means of communication (i.e., Internet, email etc.) it must also appreciate that that would not necessarily be so universally. The period must, as a matter of law, be set accordingly and its reasonableness so determined.

21. The next question that arises is the nature of the State Bank's statutory duty in terms of subsections (6) and (7). Is it only bound, in terms of subsection (6), to send the proposed scheme to the banking companies and leave it to them to forward the same to their members, depositors and creditors in such manner as they will, only taking the latter into consideration while determining the period within which it is to receive suggestions and objections? Or, is it also under a duty to ensure that the banking companies have in fact transmitted the proposed scheme to their members, etc. in order to enable them to make suggestions/objections in terms of subsection (7)? In our view, the State Bank must be regarded as being under a duty not only to send the proposed scheme to the banking companies but also to ensure that they take all reasonable steps to forward the same to their members, etc in such manner as enables them, if they so desire, to take objections etc. in a meaningful manner within the stipulated period. This is so because subsection (7) casts a duty on the State Bank to consider its proposed scheme in the light of the suggestions and objections received. It cannot, in effect, limit such consideration to whatever is received from the banking companies only to whom it is to send the proposed scheme under subsection (6). Subsection (7) is cast in much broader terms and the State Bank therefore has a legal responsibility accordingly. In casting a duty on the State Bank subsection (7) creates a corresponding right in the banking companies' members, depositors and other creditors. It is for the State Bank to protect this right as the banking companies' regulator.

22. Subsection (4) of s. 47 allows for a scheme to be prepared either for the reconstruction of the banking company or its amalgamation with another. It will be recalled that learned counsel for the petitioners submitted that the term "modifications" as used in subsection (7) was broad enough for the State Bank to consider objections and suggestions that would "switch" the proposed scheme from one course to the other so that if, e.g., the scheme was for

amalgamation to "convert" it into one for reconstruction or *vice versa*. It was submitted also that in light of the suggestions and objections the State Bank could even be persuaded to drop the scheme altogether. We agree. Quite obviously, if the State Bank has initiated action by proposing a scheme under subsection (4), it can of its own motion drop the scheme at any time before it reaches the Federal Government in terms of subsection (8). Furthermore, the latter is not bound to accept the scheme as presented; it may modify it in such manner as it considers necessary or even reject it altogether. We can see no reason why, even though subsection (7) uses the word "*modifications*", the State Bank cannot be persuaded by the suggestions made or objections taken to either "switch" the scheme from one "mode" to the other, or even abandon it altogether.

23. As the foregoing discussion makes clear, it is our view that subsections (6) and (7) impose mandatory statutory duties on the State Bank. These cannot be sidestepped, avoided or abandoned. The proposed scheme, whether of amalgamation or reconstruction, will almost invariably have serious and perhaps drastic consequences for the members, depositors and creditors of the banking companies (and of course, also on the latter themselves as separate legal entities). We must emphasize that in our view these provisions are not to be regarded as merely a statutory recognition of the right of hearing, important enough though that is in its own right. The proper and meaningful exercise of the right to make suggestions and take objections can affect the proposed scheme in the most fundamental manner possible, even to the extent of persuading the State Bank to abandon it altogether. Section 47, when considered as a whole, shows that these subsections are not merely steps along the way to an inevitable enforcement of the proposed scheme; they are essential to a consideration and assessment of the very viability of the entire project. Subsections (6) and (7) must be so construed and applied.

24. When one considers the actions taken by the State Bank under these subsections in the facts and circumstances before us, and in particular the period actually granted, in our view there has been a clear breach of statutory duty. On 27.04.2015 the State Bank issued letters to the Bank and BankIslami enclosing in each case a draft of the proposed scheme and stating that the scheme was being "shared" with the banking company in terms of s. 47(6). Suggestions and/or objections were invited by the "close of business on Wednesday 29th April 2015". The next day BankIslami addressed a letter to the Karachi Stock Exchange stating that the proposed scheme had been received from the State Bank and was available on the former's website. It was requested that any suggestions and/or objections be forwarded to the bank's company secretary, "for consideration by the Board by 2.00 p.m. on

April 29, 2015 and onward submission to SBP by close of business hours tomorrow as instructed to us". The scheme was also, so it seems, published in the press. And that was it. In our view, there was a near complete failure to comply with the requirements of subsections (6) and (7) in the manner described above. Even on the most charitable view, the State Bank only gave two days to respond, and that only to the banking companies. Insofar as their members were concerned, they had one day's time and that too only courtesy the notice given to the Stock Exchange. However, no direct communication appears ever to have been addressed to the members, depositors and other creditors of the banking companies. In our view, the time period involved simply cannot be regarded as reasonable and as complying with mandatory requirements. Indeed, it was so woefully inadequate that it can only be described as unreasonable. Regrettably, it was nothing but a pro forma attempt to show that the requirements had been complied with. However, there was no compliance within the meaning of the law. It will not be out of place to recall here that by 27.04.2015 the moratorium had been in place for several months. There was therefore neither any urgent need nor emergent situation that could possibly justify the State Bank giving only a 48-hour window to file suggestions or take objections. It is true that by then the six month period of the moratorium imposed by the Federal Government (which was the maximum permissible) was drawing to an end. But it was entirely the State Bank's own responsibility that it had not formulated and circulated the proposed scheme earlier. It cannot possibly justify breaches of its statutory duty on this basis and, in particular, drastically curtail the period given for response to a mere two days (at most). Furthermore, there was also a breach of the State Bank's duty (as explained above) to ensure that the Bank and BankIslami took all reasonable steps to provide their members, depositors and creditors with the proposed scheme so as to enable them to take objections and/or give suggestions. It may be noted that the communication made by BankIslami to the Stock Exchange was apparently to comply with listing requirements and not in terms of subsections (6) and (7). But, in any case, the period given was so brief that any exercise under the latter was practically impossible. Thus, the members, creditors and depositors were deprived of very valuable and substantive rights to give suggestions and take objections. Even the banking companies could hardly be expected to give any meaningful reply within the period granted. It is true that the Board of Directors of the Bank apparently did hold a meeting on the morning of 29.04.2015 to consider the proposed scheme. The minutes of the directors' meeting were apparently forwarded the same day to the State Bank. The directors, inter alia, took issue with the negative valuation of the Bank. However, an examination of the minutes as placed on record shows that there was no substantive engagement with the proposed scheme. This is hardly surprising. We may note that the

minutes also purported to state that the directors represented "the Bank and its constituencies; which includes shareholders, depositors, creditors and staff and, therefore, our reflections on the Scheme should endeavour to cover the outlook of these groups". This claim, in its totality, is contrary to law. The directors undoubtedly represented the Bank, which itself was entitled to file suggestions and objections. The directors could, perhaps, also be regarded as representing those who held the bulk of the shareholding as it was they who would have elected them to the Board (though even here nothing definite can be said on the basis of the record as available). However, the directors absolutely did not and could not represent other shareholders, and the depositors and creditors. They were not the "constituencies" of the Bank, and they could not be deprived of their rights under the subsections, nor could the State Bank be absolved of its corresponding duty as regards them simply because the directors sent the minutes of their meeting to the latter.

25. The submission made by learned counsel for the State Bank that suggestions and/or objections could even have been entertained after the scheme had been sent to the Federal Government under subsection (8) and there was all told a period of around 11 days from 27.04.2015 till 07.05.2015 for this purpose cannot, with respect, be accepted. The State Bank cannot justify its breach of statutory duty in such manner. Subsections (6) and (7) are intended to apply on their own footing and independently of what follows in terms of subsection (8). Indeed, it is clear that they form the necessary prelude and gateway to the latter. It is for the State Bank to apply itself to the suggestions and objections received and modify the proposed scheme in suitable circumstances or even drop it altogether. That legal responsibility cannot be shifted onto the Federal Government nor discharged by it.

26. Before we consider what is the effect (and the consequences that ought to ensue on account) of this breach of statutory duty it will be appropriate to take up the second substantive aspect of the petitioners' objections. This, it will be recalled, was that the Bank had been given a negative valuation on the basis of a report prepared by external auditors but this report was never shared with those entitled to take objections and give suggestions in terms of subsections (6) and (7). It was submitted (quite independently of the objection taken to the time granted) that without access to the report no meaningful objections could be taken or suggestions made at all. This aspect of the petitioners' case raises a more general question: what kind of information/ record/material (herein after compendiously referred to as "information"), if at all any, is the State Bank obligated to provide when it circulates a proposed scheme in terms of the subsections? For purposes of the present analysis we assume that the State Bank has otherwise given a reasonable period as

contemplated by law, and that the proposed scheme, again in line with its statutory duty, has been timely provided to the banking companies and their members, depositors and creditors. In our view, in answering this question the legislative intent behind the subsections must be kept in mind. The law intends for the banking companies, their members, depositors and creditors to be in a position to make or take meaningful and substantive suggestions or objections. The exercise is not intended to be pro forma nor is it that the law contemplates that the State Bank should be able to simply brush aside all suggestions and objections. The intent of the law is clearly to create a situation where, if and to the extent necessary, the State Bank has to seriously engage with the suggestions and objections and after properly applying itself to the same make such modifications to the proposed scheme as it considers necessary. It may even be that, as explained above, it is persuaded to drop the scheme altogether. All of this may not be possible unless the banking companies and their members etc. are provided with at least some (though not necessarily all) of the information on the basis of which the State Bank has proposed the scheme. The answer to the question posed above would therefore, in our view, depend on the facts and circumstances of the case and the nature of the proposed scheme. It could be that in some situations, it is sufficient compliance with the law for the State Bank to only provide a copy of the proposed scheme. However, in other situations, it could be that at least some (if not all) of the information considered by the State Bank will have to be provided. We pause here to note that the State Bank would be entitled, in the first instance, to only send a copy of the scheme; it is only if the banking company or any member, etc. asks further for the information that the question would arise whether it has to be provided. If the matter is a situation of the first category then the State Bank would, in law, be entitled to refuse providing any of the information at all. However, if it falls in the second category then the State Bank would, in law, have to provide the information though it would be entitled to determine how much, and which portion thereof, is to be provided. Of course, even here the State Bank would have to act in terms of principles well established under administrative law.

27. Applying the foregoing to the facts and circumstances before us, we are firmly of the view that the banking companies and their members, depositors and creditors were entitled to the valuation report of the external auditors. As pointed out by learned counsel for the petitioners, the proposed scheme on the face of it relied on the said report to reach, and apply, the conclusion that the Bank had a negative valuation, with the result that it not only had to be amalgamated with another banking company but that its shareholders would not be entitled to receive anything (other than the symbolic Rs. 1000/-). The report, in other words, had the most drastic and

dramatic effect on the members' property rights, i.e., their shareholdings in the Bank. They were obviously entitled to object to the negative evaluation or make suggestions with reference thereto. This could not be done in any meaningful manner unless they had access to the report. Therefore, if the State Bank had acted in a lawful manner by providing a reasonable period for making suggestions and/or taking objections as contemplated by law, and either the Bank or BankIslami or any of their members, depositors or creditors had asked for the report, the State Bank would, in law, have been obligated to provide them with copies of the same.

28. We are now in a position to assess the effect of the breaches of statutory duty on the part of the State Bank as identified above and the consequences that ought to ensue on account thereof. We are firmly of the view that the effect and consequences cannot go the extent of unraveling the amalgamation itself. Too much has happened, and from the record made available it is clear that the assets, liabilities and business of the Bank are now too tightly integrated with and into those of BankIslami for the status quo ante to be restored. Only in this sense, and to this extent, we agree with learned counsel for the State Bank that it is a past and closed transaction. However, the matter of the valuation of the Bank is something that can be regarded as alive. If the petitioners are correct in their submissions that the Bank was improperly and incorrectly evaluated and in fact had a positive value, of which they could have persuaded the State Bank had they been given a reasonable period to make suggestions and take objections and (crucially) access to the valuation report, then that is something that can and ought to be addressed and remedied. However, even here one point may be made. If the Bank did have a positive value and had been so assessed by the State Bank, then the proposed scheme could have provided either for the allotment of shares in BankIslami or payment of compensation (see in particular clauses (f) to (h) of subsection (5) of s. 47). In our view, keeping in mind the ground realities, the possibility of any allotment of shares must be regarded as ruled out. Therefore, the only question that remains alive is whether, assuming that the Bank ought to have been given a positive valuation, its shareholders would have been entitled to any meaningful compensation, and if so to what extent. This question can be put in more formal terms as follows: if the petitioners (along with other members of the Bank) had been given a reasonable period as contemplated by a proper and lawful application of subsections (6) and (7), and also access to the report of the external auditors, could they have taken objections to the valuation of the Bank in the proposed scheme such that the State Bank would have considered it necessary to modify it and grant meaningful compensation to them in full satisfaction of their claims?

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29. Before proceeding further, certain points may be made. In relation to the terms in which we intend to dispose off these petitions. Firstly, nothing in the paras herein above should be regarded as constituting a finding by us that the valuation placed on the Bank by the external auditors, and accepted by the State Bank, was incorrect. The auditors may well have reached the conclusion that they did rightly and in accordance with law and the State Bank may well have acted entirely properly in accepting their report and preparing the scheme accordingly. On the other hand, it may be that the auditors got it wrong, on the facts and/or in law, and the State Bank compounded the error by relying on the report for purposes of the scheme. We say nothing about this aspect. Our concern, on which of course we do record the findings made above, has rather been with the failure by the State Bank to abide by subsections (6) and (7), i.e., its failure to discharge its legal responsibilities and obligations and the consequent denial to the Bank's shareholders of their rights as envisaged in terms of these provisions. It is to remedy the situation thereby created that we intend to give appropriate directions so that the question posed in the last preceding para can be answered. For this reason, secondly, although on an order made in CP D-3007/2015 the auditors' report was produced before the Court in a sealed envelop and handed over in such manner to the Nazir we have, quite deliberately, not opened the report to consider the same. Thirdly, while we reiterate that the correct legal meaning and application of subsections (6) and (7), in particular with reference to the period and manner of notice for filing suggestions or objections, is as given above, in the directions that follow there has, perforce, had to be deviation from the same. This is only on account of the situation now prevailing and is not at all intended to establish a template to be used by the State Bank should any similar case arise in the future. Finally, since we intend to dispose off the petitions on the foregoing basis it is not necessary to consider the other submissions that were made by learned counsel for the respective parties. We intend no disrespect in not doing so.

30. In view of the foregoing these petitions are disposed off in the following terms:

a. The State Bank shall, within 30 days of this judgment, give notice to those persons who were members of the Bank as on 27.04.2015 inviting objections to the negative valuation of the Bank as set out in the scheme of amalgamation. The notice shall be prominently displayed on the website of the State Bank and also published in the press. The notice shall also be sent by the State Bank to the Stock Exchange, CDC and BankIslami and they shall be obligated to simultaneously publish it on their

websites. The State Bank shall make all reasonable efforts to locate the particulars of the persons aforesaid from the Stock Exchange, CDC and BankIslami and also issue notice to them individually to the extent possible. However, publication in the press and on the website of the State Bank shall be sufficient. The period within which objections can be taken shall be set out in the notice, and shall be 15 days from its publication on the website of the State Bank.

b. Simultaneously with the publication of the notice as above, the State Bank shall also prominently post in full (i.e., inclusive of any annexures etc.), the auditors' report regarding the valuation of the Bank on its website. The notice shall also contain a statement therein that the report is so available on the website. Unless the auditors' report is so posted the publication of the notice shall be deemed non-compliant with this judgment.

c. The State Bank shall not be under obligation to post or give any information/record in relation to the valuation other than the auditors' report and shall be entitled to reject or ignore any request that may be made for any additional information/ record.

d. The State Bank shall consider all objections that may be received along with any material/record supporting the same. Such objections may be made by any person to whom the second last sentence of this clause can apply. The State Bank shall issue a reasoned and speaking order ("Order") within 30 days of the last day for filing objections. The Order shall be published by posting on the State Bank's website and intimation of such posting shall also be given in the press. The Order shall either confirm the valuation of the Bank earlier arrived at and used for purposes of the scheme of amalgamation or it may make some other valuation. If the latter, and such valuation results in a meaningful or substantive compensation being payable, the State Bank shall also include in the Order the modalities whereby such payment is to be made (including the manner in which claims are to be lodged, for which not less than 30 days' time shall be given), but full compensation shall be payable within four months of the Order, and the State Bank must so ensure. Compensation shall be deemed to be meaningful or substantive if it would result in

payment equal to 10% or more of the par value of the Bank's shares. Any valuation, even if positive, that would result in compensation less than this shall be ignored, i.e., will not result in an obligation to make any payment. The compensation shall be payable pro rata to all those persons who were members of the Bank as on 27.04.2015, their legal heirs (if such be the case) or any lawful transferees or assigns, and the modalities to be set out in the Order shall, among other, deal with all such matters as well anything ancillary and incidental thereto. Any of these persons shall also be, if and as appropriate, a "person aggrieved" within the meaning of clause (f) below.

e. Since the payment of compensation, if any, will emanate from and be relatable to the breaches of statutory duty by the State Bank, it alone shall have the liability and responsibility to make payment. There shall be no such liability on any other person including, in particular, BankIslami.

f. Any person aggrieved by the Order, whether in whole or in part, may challenge the same by means of an appropriate action but subject to the following conditions:

   i. If any compensation is at all payable under the Order in terms as set out above, then the aggrieved person must (without prejudice to the challenge) have lodged a claim with the State Bank.

   ii. Since the challenge may well involve determination of questions of fact, which will require the recording of evidence the action can only be by way of a civil suit to be filed in a court of competent jurisdiction, and not otherwise. The civil suit shall be deemed governed by Article 2 of the First Schedule to the Limitation Act, 1908 so that the period of limitation will be 90 days. The cause of action, for purposes of computing limitation, shall be deemed to have accrued on the date the Order is published in terms as above. In any such suit, the State Bank will of course be entitled to raise all defences available to it, including by way of s. 94.

g. The State Bank shall forthwith apply to the Nazir of this Court for release of the auditors' report deposited in terms as stated

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above and the Nazir shall immediately return the same subject to proper verification and confirmation. Nothing in this clause shall affect the timelines given in the other clauses.

31. The petitions are disposed off in the above terms without any order as to costs.

S/- Munib Akhtar
Judge

S/- Omar Sial
Judge

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