



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : BALLB/BBALLB

SEMESTER : VIIIth

SUBJECT : Banking law

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LECTURE : 6

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Section 5 in BANKING REGULATION ACT, 1949

5. Interpretation.—⁸ [In this Act], unless there is anything repugnant in the subject or context,—

⁹ [(a) “approved securities” means—

(i) securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Indian Trusts Act, 1882 (2 of 1882);

(ii) such of the securities authorised by the Central Government under clause (f) of section 20 of the Indian Trusts Act, 1882 (2 of 1882), as may be prescribed;]

(b) “banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;

(c) “banking company” means any company which transacts the business of banking¹⁰ [in India]. Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

¹¹ [(ca) “banking policy” means any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources;]

¹² [(cc) “branch” or “branch office”, in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, and for the purposes of section 35 includes any place of business where any other form of business referred to in sub-section (1) of section 6 is transacted;]

¹³ [(d) “company” means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;]

¹⁴ [(da) “corresponding new bank” means a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970); or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);]¹⁵ [***]

(f) “demand liabilities” means liabilities which must be met on demand, and “time liabilities” means liabilities which are not demand liabilities;

¹⁶ [(ff) “Deposit Insurance Corporation” means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961 (47 of 1961);]¹⁷ [***]

(ffb) “Exim Bank” means the Export-Import Bank of India established under section 3 of the Export-Import Bank of India Act, 1981 (28 of 1981);]

¹⁸ [(ffc) “Reconstruction Bank” means the Industrial Reconstruction Bank of India established under section 3 of the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984);]

¹⁹ [(ffd) “National Housing Bank” means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987;]

(g) “gold” includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;

²⁰ [(gg) “managing agent” includes,—

(i) Secretaries and Treasurers;

(ii) where the managing agent is a company, and director of such company, and any member thereof who holds substantial interest in such company;

(iii) where the managing agent is a firm, any partner of such firm;]

²¹ [(h) “managing director”, in relation to a banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called:] ²² [Provided that the managing director shall exercise his powers subject to the superintendence, control and direction of the Board of Directors;]

²³ [(ha) “National Bank” means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;] ²⁴ [***]

(j) “prescribed” means prescribed by rules made under this Act;

²⁵ [(ja) “regional rural bank” means a regional rural bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);] ²⁶ [***]

²⁷ [(l) “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);] ²⁸ [***]

(n) “secured loan or advance” means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance; and “unsecured loan or advance” means a loan or advance not so secured;

²⁹ [(ni) “Small Industries Bank” means the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989;]

³⁰ [(na) “small-scale industrial concern” means an industrial concern in which the investment in plant and machinery is not in excess of seven and a half lakhs of rupees or such higher amount, not exceeding twenty lakhs of rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to the trends in industrial development and other relevant factors;]

³¹ [(nb) “Sponsor Bank” has the meaning assigned to it in the Regional Rural Banks Act, 1976 (21 of 1976);

(nc) “State Bank of India” means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);] ³² [³³ [(nd) “subsidiary bank” has the meaning assigned to it in the State Bank of India (Subsidiary Banks) Act, 1959;] ³⁴ [³⁵ [(ne) “substantial interest”,—

(i) in relation to a company, means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together, in the shares thereof, the amount paid upon which exceeds five lakhs of rupees or ten per cent. of the paid-up capital of the company, whichever is less;

(ii) in relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent of the total capital subscribed by all the partners of the said firm;]

³⁶ [(o) all other words and expressions used herein but not defined and defined in the Companies Act, 1956 (1 of 1956), shall have the meanings respectively assigned to them in that Act.]³⁷ [***] COMMENTS

(i) “Banking” does not include other commercial activities of the banking institution; Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564.

(ii) The essential characteristic of banking is the ability to receive money by way of deposit from the customers and also to honour the customers’ cheque. If there is an inability to do so, then the mere fact that the company has a power to grant loans will not make it a ‘banking company’; Mahaluxmi Bank Ltd. v. Registrar of Companies, West Bengal, AIR 1961 Cal 666.

(iii) A “banking company” means a company which carries on the business of banking, no matter, if the same is not carried on for some time; Kalipada Sinha v. Mahaluxmi Bank Ltd., AIR 1961 Cal 188.

(iv) Until the court orders for the liquidation of a banking company, it continues to exist in its original form, even though the proceedings for its liquidation are started under section 194 of the Companies Act; K.V.S. Vassan Bros. v. The Official Liquidator, The B.B. Corp. I. Ltd., AIR 1952 Trav 170.

MCQS:

1).

Which entity regulates and supervises NBFCs?

- A) SEBI
- B) RBI
- C) Ministry of Finance
- D) NABARD

2).

Who is entrusted with the power to lay down instructions to the banks in India for audits?

- A) RBI
- B) Finance Ministry
- C) State Government
- D) None

3).When did the Banking Regulation Act come into effect?

- A) 16th March 1949
- B) 10th March 1949
- C) 12th March 1950
- D) 6th March 1950

4).When did the Banking Regulation Act, 1949 become applicable to the state of Jammu & Kashmir?

- A) 1949
- B) 1970
- C) 1956

D) 1966

5).The Banking Regulation Act was initially passed by what name?

A) Banking Firms Act, 1949

B) Banking Companies Act, 1949

C) Banking Units Act, 1949

D) None