

IN THE SUPREME COURT OF BANGLADESH
(Appellate Division)

Present:

Mr. Justice Mahmudul Amin Choudhury,
Chief Justice
Mr. Justice Mainur Reza Chowdhury
Mr. Justice Mohammad Gholam Rabbani
Mr. Justice Md. Ruhul Amin

CIVIL APPEAL NOS.192 AND 193 OF 2000

(From the judgment and order dated 14.3.2000 passed by the High Court Division in Writ Petition No.4938 of 1999).

BRAC, BRAC Centre, 75, :
Mohakhali, Dhaka and others.

.....Appellants
(In C.A.No.192/2000)

-Versus-

Professor Mozaffar Ahmed and :
others.

.....Respondents
(In C.A.No.192/2000)

Bangladesh Bank, Bangladesh :
Bank Bhaban, Motijheel C.A.,
Dhaka.

... ..Appellant
(In C.A.No.193/2000)

-Versus-

Professor Mozaffar Ahmed :
and others.

.....Respondents
(In C.A.No.193/2000)

For appellants
(In C.A.No.192/2000)

: Mr. Syed Ishtiaq Ahmed, Senior Advocate, Dr. Kamal Hossain, Senior Advocate, Mr. T.H. Khan, Senior Advocate (Ms. Nihad Kabir, Mr. Tanzibul Alam, Advocates with them) instructed by Mr. Sharifuddin Chaklader, Advocate-On-Record.

For respondent No.1.
(In both the appeals)

: Mr. Tawfique Nawaz, Senior Advocate, Mr. Kazi Shahabuddin Ahmed, Senior Advocate (Mr. Muhammad Feroze, Advocate and Mr. Jashim Uddin Ahmed, Advocate with them), instructed by Mr. Aftab Hossain, Advocate-On-Record.

For respondent No.4
(In C.A.No.192/2000)

: Mr. Ahsanullah Patwari, Advocate-on-Record.

For respondent Nos.2-3
(In C.A.No.192/2000)

: Not represented.

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For appellant
(In C.A.No.193/2000)

: Mr. Rokanuddin Mahmud, Senior
Advocate, instructed by Mr. S.H.
Siddique, Advocate-on-Record.

Respondent Nos.2-10
(In C.A.No.193/2000)

: Not represented.

Date of hearing

: 17.4.2001, 18.4.2001, 22.4.2001,
26.4.2001, 2.5.2001, 3.5.2001,
7.5.2001, 8.5.2001, 9.5.2001,
13.5.2001, 14.5.2001, 15.5.2001,
16.5.2001, 20.5.2001, 21.5.2001,
22.5.2001 and 23.5.2001.

(Judgment)

Mahmudul Amin Choudhury C.J.: These appeals by leave are against judgment and order passed in Writ Petition No.4938 of 1999 by a Division Bench of the High Court Division which was filed as a public interest litigation questioning the validity of certificate dated 4.4.1999 of Bangladesh Bank giving no objection for the incorporation of BRAC Bank Limited by Bangladesh Rural Advancement Committee briefly known as BRAC a society registered under the Societies Registration Act, 1860 and the Memorandum and Articles of Association of BRAC Bank Limited and its certificate of incorporation issued on 20.5.1999 by the Registrar of Joint Stock Companies. Further case of the writ petitioner is that pursuant to the issuance of the aforesaid certificate of no objection dated 4.4.1999 BRAC proceeded to incorporate BRAC Bank Limited with the Registrar of Joint Stock Companies and Firms. Thereafter BRAC invested moneys in the purported BRAC Bank Limited to the extent of Tk.19,99,400.00 being 99.97 percent of the paid up capital of BRAC Bank Limited as is evident from the Memorandum and Articles of Association of the Bank. It is apparent from the objectives of BRAC that BRAC is entitled to engage itself in charitable purposes and other activities set out under section 20 of the Societies Registration Act but nowhere under the terms of registration BRAC is permitted to undertake the activities of sponsoring, owning, controlling, or operating a banking company or for that matter an airline, shipping company, construction company or other commercial enterprises. Further case of the writ petitioner is that ownership of BRAC in the purported BRAC Bank Limited is not consistent with section 20 of the Societies Registration Act, 1860 ✓

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briefly SRA in as much as section 20 of the Act contemplates activities of registered societies in the field of promotion of science, literature, fine arts, diffusion of useful knowledge but not as a public company limited by shares. Further case of the writ petitioner is that the Bank Companies Act, 1991 provides that a bank must be a public limited company and must fulfil several other criteria in order to be considered eligible to be a banking company. Further BRAC Bank Limited is not a lawfully constituted public limited company since it is composed of less than seven persons in as much as respondent Nos.7, 8, 9 and 10 in the writ petition not being separable from BRAC are in the eye of law one and the same person and one of the subscribers of BRAC Bank Limited Mr. Syed Humayun Kabir is the present Chairman of the Executive Council of BRAC with the effect that BRAC Bank Limited is in reality composed of BRAC itself. If BRAC a registered society is allowed to own, control, manage and operate the business of banking in violation of the terms and conditions and laws of incorporation there will be a serious undermining of the commercial, financial and more importantly legal framework in the country with the effect that legitimate and otherwise qualified entities and persons will be precluded from undertaking commercial banking and financial activities and serious financial in-discipline will be ensued in Bangladesh. The writ petitioner's further case is that to allow BRAC to invest monies in sponsoring, subscribing, owning, controlling and operating the BRAC Bank Limited as a banking company would also render nugatory the intent and purposes of the Bankruptcy Act, 1997 wherein it has been stated that a charity can not be sued under the Bankruptcy Act and whereas the proposed BRAC Bank Limited being owned by a registered society and or a charitable society can not be proceeded against under the Bankruptcy Act in circumstances where it would be necessary to do so thereby severely undermining the fundamental rights of the writ petitioner and a multitude of individual creditors and depositors afflicted by a common wrong, injury and invasion. It is also the case of the writ petitioner that by their common action the respondents in the writ petition have attempted to circumvent the law and have committed a fraud on several statutes.

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Before the High Court Division respondent No.1 of the writ petition filed an affidavit-in-opposition and his case is that BRAC is a

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registered society having been registered on 18.12.1972 in accordance with the SRA 1869. Their objection is that the writ petition as filed is not maintainable on the ground of locus standi of the petitioner to file the writ petition and laches as it was filed after over eight months of issuance of the alleged impugned order and after seven months of the date of the certificate of incorporation for which declarations are sought. Their further case is that BRAK Bank is a lawfully constituted banking company duly incorporated with the Registrar of Joint Stock Companies as a public limited company under the Companies Act, 1994 and respondent No.2 of the writ petition has legally given the certificate of incorporation. Neither the Bangladesh Bank order (P.O. 127 of 1972) nor the Banking Companies Act, 1991 impose any particular requirement for a person to be a sponsor of a banking company. Respondent Nos.8, 9 and 10 of the writ petition are the lawful shareholders of BRAC Bank Limited being citizens of Bangladesh with high experience and having the legal right to sponsor any commercial bank. Respondent No.1 of writ petition rightly, validly and justly issued letter of no objection dated 4.4.1999 to allow BRAC to incorporate the draft Memorandum and Articles of Association of the proposed BRAC Bank Limited and respondent No.2 of the writ petition rightly issued the certificate of incorporation of the Bank on 20.5.1999. The Memorandum of BRAC clearly authorizes BRAC to invest its moneys in purchasing shares of a corporate entity whether it is a banking company or otherwise. The terms of SRA 1860 has not put any legal bar to carry out such activities of BRAC to augment its income. BRAC by purchasing shares of BRAC Bank Ltd. is in no way covering itself to or acting as a public company limited by shares and the ownership of sharers in BRAC Bank Limited is conducive to the charitable activities of BRAC which are fully within the ambit of the activities as contemplated under SRA 1860 and as such are not barred by either SRA 1869 or any other law, rule or regulation for the time being in force. BRAC was given permission to sponsor BRAC Bank Limited fully in accordance with all the relevant provisions of law. Their further case is that the writ petitioner has failed to identify any single provision of law which has been violated in allowing BRAC to own shares in BRAC Bank Limited. Their further case is that BRAC'S liability in respect of the bankruptcy of BRAC Bank Limited

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will be limited in any event to the unpaid portion of any call on any ✓

shares held by it in BRAC Bank Limited. BRAC Bank Limited as a public limited company and a banking company and not being a charitable organization is fully subject to the provision of the Bankruptcy Act, 1997. The writ petitioner has completely failed to identify any particular fundamental right which might even conceivably be affected by virtue of the fact that BRAC is not subject to bankruptcy proceedings under Bankruptcy Act, 1997. The instant writ petition in the nature of public interest litigation is not maintainable in law and also on the ground of gross laches and lack of standing in as much as no objection letter was issued by Bangladesh Bank dated 4.4.1999 and seven months after the issuance of the impugned certificate of incorporation dated 21.5.1999 in respect of which declaration were sought in the writ petition and no ground having been made out on which such delay can be justified and on the ground of manifest lack of standing of the writ petitioner and the writ petitioner has no genuine grievance. Their further case is that section 20 of the SRA 1860 permit the registration of the Societies for the purposes stated therein. BRAC Bank Limited is a properly formed banking company which is duly incorporated with the Registrar of Joint Stock Companies as a public limited company having complied with all applicable laws, rules and regulations for the time being in force. The certificate of incorporation under section 24 of the Companies Act, 1994 was duly granted by the Registrar of Joint Stock Companies and is conclusive as to the incorporation in respect of BRAC Bank Limited. This company has been lawfully constituted and given certificate for commencement of business dated 20.5.1999. BRAC is a charitable organization and registered under the SRA 1860. The Memorandum of the Society of BRAC clearly permits the BRAC to invest money in purchasing shares of a corporate entity be it a banking company or otherwise to obtain permission from the Government or any public body for exercise of its right to sponsor a banking company which in its judgment is conducive to the attainment of its charitable and social welfare activities. It is submitted that the participation of BRAC in BRAC Bank Limited is intended to ensure that credit is provided to low and middle income groups in order to enhance their earning capacity and their social welfare and in order to generate income as dividend for BRAC which will be utilized to carry out its charitable and social welfare activities.

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and SRA 1860 has not created a legal bar on the carrying out of such activities by BRAC. BRAC by purchasing shares in BRAC Bank Limited is in no way covering itself to or acting as a public company limited by shares, BRAC has been given permission to sponsor BRAC Bank Limited fully in accordance with all the relevant provisions of law particularly those of Bangladesh Bank order 1972 SRA 1860 and BCA 1991 as well as the Companies Act, 1994.✓

On hearing Syed Istiaq Ahmed, learned Advocate appearing for the petitioners in Civil Petition for Leave To Appeal No. 375 of 2000 and Mr. Rokanuddin Mahmud in Civil Petition for Leave to Appeal No.441 of 2000 leave was granted in the following terms :✓

1. The High Court Division erred in holding that for a society registered under the SRA 1860 to start a commercial enterprise like a bank to earn profit should be ultra vires section 20 of the SRA 1860, in that there is no prohibition imposed on a charitable society registered under section 20 of the SRA 1860 to prevent it from investing its monies in shares in a commercial enterprise, so long as the profits earned are wholly devoted to charitable purposes, and further that the SRA 1860 was enacted, as its preamble states, " for improving the legal condition of societies" by giving registered societies a legal entity, the right to own property and the legal capacity to sue and to be sued.✓

2. The High Court Division erred in making the Rule absolute as by doing so it was in effect winding-up a bank which had been incorporated seven months earlier, obtained a licence, and made all necessary preparation to commence business within a few days time, as it is not permissible, or appropriate, for the writ jurisdiction to be invoked or exercised for the purpose of winding-up a Bank, in disregard of the provisions of the BCA 1991 and without any determination of the issues and consideration of the interest of shareholders and other stakeholders of the general public.✓

3. The learned Judges of the High Court Division acted wrongly in not holding that the Societies Registration Act 1860 does not put statutory limitation on BRAC to invest their money to BRAC Bank Ltd. and erred in law in holding that such investment would be ultra vires section 20 of the said Act.✓

4. The leave petition involves interpretation of several laws and involves the question of general public importance.

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Mr. Rokanuddin Mahmud, learned Advocate appearing for Bangladesh Bank-petitioner in Civil Petition No. 441 of 2000, submits that the writ petitioner has no locus standi to file the writ petition and he did not disclose how he was aggrieved. He next submits that the writ petitioner is guilty of serious laches in that the writ petition was filed after 8 months and 8 days from issuing 'no objection' and after about 7 months of incorporation of BRAC Bank Ltd. the High Court Division committed an error of law in not discharging the Rule on that count alone. Lastly, he submits that the letter of 'no objection' and incorporation of BRAC Bank Ltd. having been done in accordance with law the High Court Division was wrong in striking down the same. ✓


Dr. Kamal Hossain, learned Advocate appearing on behalf of appellant No.1 submits that the writ petition which was described as a public interest petition is not maintainable as no fundamental right let alone right of the petitioner has been infringed and the petitioner failed to show as to how the right of any vulnerable and socially disadvantaged class of person was infringed for which judicial protection was sought in public interest. In the present case even according to the writ petitioner as pointed out in paragraph 20 of the writ petition only those persons mentioned therein have been prejudiced who are potential sponsors of banking activities who by the stretch of imagination can not be characterized as a vulnerable weak or socially disadvantaged group on whose behalf a public interest petition could be filed by the petitioner. It is submitted that the writ petition is nothing but a gambling in litigation only preferred on behalf of certain vested quarters who used the petitioner in their attempt to get a favourable decision keeping themselves behind curtain and as such the writ petitioner can not file the writ petition as a public interest litigation. It is submitted that the writ petition was brought in respect of a no objection letter dated 4th April, 1999 and a certificate of incorporation dated 20.5.1999 after a lapse of nearly eight months at a time when just a few days before the bank was to start its operation and as such the petitioner is not entitled to get any relief in the writ jurisdiction because the same is barred by laches. It is submitted that the BRAC was duly registered under the Societies Registration Act, 1860 and there is no basis for contending that a society registered under this Act as a charitable society is prohibited ✓

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or precluded from undertaking activities which can generate profit so that the same could wholly be devoted to charitable and social welfare activities. Dr. Kamal Hossain submits that the onus is on the petitioner to show a law which prohibits BRAC as a society registered under the aforesaid Act from investing in shares of BRAC Bank Limited. Placing the provision of section 23 of the Contract Act Dr. Hossain submits that this section clearly provides that for an agreement to be held unlawful it must be forbidden by law. BRAC is a subscriber to the Memorandum of a banking company. The Memorandum and Articles of Association are a contract allowing members to carry on business in accordance with the provision of the Memorandum and Articles of Association and unless BRAC is forbidden to enter into such a contract the same is lawful and a contention to the contrary is misconceived and unfounded. It is also submitted that the contention that Clause 3(xv) of the Memorandum of BRAC should be read subject to Clause 3(i) is not tenable since Clause 3(xxiii) of the Memorandum clearly sets out that each object shall be construed as an independent clause not subject to any other clause. Dr. Hossain submits that the High Court Division committed wrong in this respect. He also submits that BRAC not being prohibited or precluded by any law from undertaking activities which can generate profit was also expressly empowered by its memorandum to invest its money and there is no basis for contending that clause 3(xv) of the memorandum is ultra vires. Since 1972 it was never suggested that this clause is ultra vires. BRAC has carried on over the years activities which are profit earning and the profit they are utilizing for charitable purposes. It is also contended that the case of the writ petitioner that clause 3(xv) only allows BRAC to invest in other charitable societies is misconceived since investment means use of money for earning a return (profit). It is also submitted that clause 3(xi) is to be construed harmoniously with clause 3(i) and 3(xxiii). There is no inconsistency or conflict in investing money for profit earning activities so long as the profits are wholly applied for charitable purposes. This proposition is fully supported that activities for profit is taken to be distinct from activities conducted for the purpose of making profit. Dr. Hossain further submits that the contention that granting of no objection certificate by Bangladesh Bank in favour of BRAC Bank was ultra vires because the BRAC Bank

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memorandum was not subscribed to by seven persons and/or because it was not done in compliance with the requirement of section 14A of the Bank Companies Act, 1991 is totally misconceived. The BRAC Bank Limited submitted its Memorandum and Articles of Association duly signed by seven subscribers and a certificate of incorporation was duly issued on 20th May, 1999 and this certificate has a conclusiveness under section 25 of the Companies Act, 1991 and the Government also granted a waiver under section 121 of the Bank Companies Act in respect of the provision of section 14A of the Act. So there is no substance in the contention that Bangladesh Bank acted in a discriminatory manner. Placing the provision of section 14A and 121 of the Companies Act Dr. Hossain submits that the High Court Division erred in concluding that by granting exemption under section 14A Bangladesh Bank showed favour to BRAC Bank Limited when no such ground was raised in the writ petition itself. On the point of discrimination it was argued that the same was raised not by the writ petitioner but by one of the amicus curiae without any objective basis based on a misconception of relevant facts and applicable law. It is submitted that the power of waiver was exercised by the Government pursuant to section 121 of the Bank Companies Act and not by Bangladesh Bank. Certificate of incorporation was granted with full jurisdiction and the Registrar clearly acted within his power to grant such a certificate. He further submits that the High Court Division manifestly fell into error in considering the issue of lifting of the corporate veil. This doctrine is applicable to cases of fraud or where in war time a company is in fact own or controlled by the enemy state. This doctrine has no application. At the time of incorporation of the Bank as well as of the society everything was disclosed and duly considered at the time of considering the application for granting no objection certificate by Bangladesh Bank. It is also submitted that the High Court Division committed wrong in their finding that a society registered under the SRA 1860 was required or permitted only to invest in bonds and securities as provided in section 20 of the Trust Act. This finding is wholly misconceived as the Trust Act is expressly limited in its applications to private trusts and even has no application to public or charitable trusts leave alone to a society registered under the SR Act 1860. Dr. Hossain questioned the finding of the High Court Division in respect


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of investment made by BRAC on the fund received from abroad. It is submitted that as long as money received as foreign donation is invested to generate more resources for charitable purposes neither the Government in exercise of its regulatory powers nor the donors have any objection to such investment and there is nothing on record to show that any such objection was raised either by the Government or by Bangladesh Bank against investment made by BRAC for generating more resources. Dr. Hossain submits that this is fully in consonance and in compliance with the Government policy directive that NGOs should become less and less dependent on donations and should become more and more self-reliant which is only possible through engaging in income generating activities. The Government has been encouraging the NGOs engaging in activities to generate income so that they become self-reliant and may conduct their welfare activities. It is also submitted that BRAC now relies to the extent of nearly 80 % on its own resources and 20% on donors. It is submitted that if the judgment of the High Court Division is to prevail then all BRAC activities and the activities of all other NGOs which have succeeded in generating resources through income generating activities and expanding their charitable purposes will face irreparable damage and destruction to the detriment of the countless number of poor and disadvantaged persons including women and children who are beneficiaries of their programmes devoted to poverty alleviation, education, health and income and employment generation for the poor.

Appearing on behalf of the appellants Syed Istiaq Ahmed, learned Advocate supporting the submission made by Dr. Kamal Hossain further added that BRAC Bank has its own restriction as provided in their memorandum. Placing the provision of section 20 of the Societies Registration Act Mr. Ahmed submits that this section does not regulate the income generating activities. He submits that this provision provides for registration of a charitable society whose activities are governed by their memorandum and when the registered society generate their income in lawful manner same can not be questioned. Here BRAC has invested money in BRAC Bank Limited which is very much lawful and not prohibited by the memorandum and the purpose of this investment is to generate more income for spending on charitable activities. Mr. Ahmed submits that one should not lose sight of meaning of words investment and spending. If a

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charitable society is established only for spending money received from different sources for charitable purposes then the society will be completely dependent upon donations and alms which is not desirable. So for generating income for charitable purposes such a society may invest its own money and the Government also is inducing the N.G.Os. to generate their income and not to depend upon donation. Mr. Ahmed submits the main object of BRAC is charity and for fulfilling that object they may invest their money in such a project which may generate income and BRAC Bank Limited is such a project. He submits that certificate of incorporation of BRAC Bank Limited has a presumption of its conclusiveness under section 25 of the Companies Act with the incorporation of BRAC Bank Limited. This conclusiveness cannot be questioned in writ jurisdiction. He submits that for generating their own income for using in charitable activities BRAC can invest its money in Bank and in the present case surplus money has been invested. Mr. Ahmed placing the judgment of the High Court Division submits that the High Court Division it appears construed BRAC Bank Limited as BRAC. BRAC is only a shareholder. He submits that incorporation of BRAC Bank Limited can not be questioned in the writ jurisdiction by the writ petitioner. This may be questioned at the instance of the Attorney General in appropriate forum. He submits that in filing writ petition and seeking relief therein the writ petitioner in a clever, and indirect way wanted to wind up BRAC Bank Limited. As an incorporated Bank the same may be windup at the instance of Bangladesh Bank and not by any other authority or person. Furthermore when a bank is incorporated this can be windup at the order of the High Court Division under section 64 of the Companies Act. Learned Advocate further contends that the writ petition is not a bona fide one and the writ petitioner it appears from the averments made in the petition represented a vested interest or quarter who failed to impress how he is prejudiced by the incorporation of BRAC Bank Limited and the writ petition is silent on material discrimination and arbitrariness though the High Court Division has found this. He contends that the BRAC Bank Limited has not in any way infringed any of the fundamental rights of the writ petitioner as enshrined in our constitution.

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BRAC supporting the submission made by Dr. Kamal Hossain and

Syed Istiaq Ahmed added that a society registered under section 20 of the SRA may invest its surplus money and this section has not put any restraint in investment. BRAC is also registered under the Foreign Donation Ordinance wherein also there is no embargo in investment for generating income to be used in charitable purposes. He further submits that there is no complain against the BRAC that they are using foreign donations in a manner not contemplated under this Ordinance. There is also no prohibition clause in the Ordinance itself. He also submits that the writ petitioner has been used as a ploy by certain interested quarters and he himself is not an aggrieved party. Furthermore no public interest is involved in the matter as it would be evident from the averments made in the writ petition. Alleged persons who intended to float such a banking company are not coming before the High Court Division with the plea that they have been discriminated by Bangladesh Bank or by the Government.

Mr. Rakanuddin Mahmud, learned Advocate appearing on behalf of Bangladesh Bank submits that for incorporation of a Bank no permission from Bangladesh Bank is necessary. The Registrar of Joint Stock Companies is empowered to incorporate the same, in the present case Bangladesh Bank only gave a licence to operate as a banking company which is not in challenge and once a company is incorporated it can only be windup in accordance with law and it is well settled that a banking company could not be wind up at the instance of a stranger but it is only to be made at the instance of Bangladesh Bank and in view of the clear provision of law the writ petitioner has no right to initiate a winding up procedure in such a case. Mr. Mahmud submits that the present writ petition has been filed as a camouflage to windup BRAC Bank Limited which is a concept unknown in law. Further he submits that when the writ petitioner can not initiate the proceeding of winding up of a bank directly he can not be allowed to get the relief indirectly. In the present case the writ petitioner in an indirect manner attempted to windup BRAC Bank Limited. He submits that the High Court Division committed an error in making the Rule absolute and thereby closing/winding up of BRAC Bank Limited which has been incorporated and whose permission to banking has been given long before filing of the writ petition. He submits that the demand of justice notice was issued on 11.12.1999 but by that date everything was

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complete and nothing was left with Bangladesh Bank. He submits that after much deliberation Bangladesh Bank granted licence. So there is nothing wrong or mala fide in it. He submits that the law on the winding up of a bank is very clear and it is only the Bangladesh Bank which may initiate such a proceeding. He also accepted the submission made by Dr. Kamal Hosain on lifting the veil as there was no hide and seek in the matter and the whole matter was before Bangladesh Bank and considering the pros and cons permission was accorded.

He also submits that section 65 of the Companies Act which is applied without derogation to section 64 of that Act in respect of winding up of a bank company and he submits such winding up should be at the order of the High Court Division under section 65 of the Companies Act and in any matter of winding up the Companies Act will not apply. It is only the Bank Companies Act that will apply. The learned Advocate contends that the case of the petitioner is that there was nepotism in the matter of granting licence to BRAC but where is the material to show or indicate that there was nepotism? He also submits that the writ petitioner in such a case can not claim discrimination as he was not a sponsor of any bank. The only person who can claim discrimination is by that person who has been actually discriminated. The writ petitioner in the present case has not at all been discriminated. So he has no cause of action. Pointing attention to certain remarks made by the High Court Division against Bangladesh Bank learned Advocate contends that such allegations are not there in the writ petition and the High Court Division has exceeded their jurisdiction and authority in making such comments which should be expunged. As regards lifting of the veil, Bangladesh Bank has given the licence to BRAC Bank Limited and BRAC has not approached Bangladesh Bank with any veil. It is a society registered under the Societies Registration Act and they went to invest their unspent money and after a long deliberation Bangladesh Bank granted the permission and from the conduct of BRAC it appears that they have not gone with any veiled identity but the High Court Division committed illegality in dealing with the BRAC as BRAC Bank Limited disregarding the fact that BRAC Bank Limited is a legal entity wherein BRAC is only a shareholder and nothing more. Bangladesh

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Bank on being satisfied granted licence. So there is no scope of lifting the veil. ✓

Mr. Tawfique Nawaz, learned advocate appearing on behalf of the writ petitioner-respondent on the other hand submits that the learned Advocate appearing on behalf of the appellants argued the case beyond the scope of leave granting order. Placing the leave granting order Mr. Newaz submits that the scope of the appeal is very limited. He submits that Annexures 'A', 'C' and 'C-1' of the writ petition has in fact undermined the fundamental right of the writ petitioner and multitude of individuals including the intending promoters of Bank Companies and other societies. The writ petitioner is an expert economist and was attached with many banking companies and as such has every right to move the High Court Division in writ jurisdiction to ventilate grievance on behalf of aggrieved persons and in such a situation the writ petition is competent. He submits that though it was argued that in an indirect way it is being tried to wind up the Banking Company but the fact remains that the company has not yet started any business and in such a situation before any damage is caused to the public the same may be nipped in the bud. So there is no wrong in moving the High Court Division in its writ jurisdiction. While interpreting the provision of Societies Registration Act it should be borne in mind that in such a law no prohibition clause is required to be incorporated as a Society Registered under this Act is permitted to prescribe its activities as mentioned in the Act itself. There should not be any clause indicating the prohibition of certain act. He submits that no provision or rule is required excepting the words mentioned in the law, others are taken to be prohibited and in the present case BRAC is required to undertake charitable activities. It can not undertake any business activities such as initiating or establishing, a bank, prohibition of such activities are there in the Act itself. In respect of foreign donation it is submitted that these donations are received for charitable purposes and not for business purposes and the same can not be invested in business. So the prohibitions are there in the law and it should be found out accordingly and the High Court Division has done this. He further submits that money received by the BRAC for charitable purposes can never be used other than the purpose for which it was received. The amount received for charitable purposes ✓

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can not be alienated. If the money is invested in a bank and in case of its failure this money meant for charitable purpose will be lost and there is always a risk in it. Mr. Newaz submits that Memorandum and Article of Association of BRAC has not authorised it to invest money in the purchase of shares and did not have any legal capacity to initiate a banking company which is completely ignored by Bangladesh Bank and the Registrar of Joint Stock Companies at the time of issuing the impugned Annexures. The High Court Division correctly held that Article 3(xv) of the Memorandum does not consent to the purchase of share by BRAC in as much as allowing BRAC to BRAC Bank Limited will cause a metamorphosis changing BRAC from a society to a company which is not legally allowed. It is also submitted that Bangladesh Bank and the Registrar of Joint Stock Companies when issuing their respective impugned orders completely disregarded section 92 of the Code of Civil Procedure which is applicable in the facts and circumstances of the present case. It is submitted that in the investment of the fund of the charity in any undertaking beyond the scope of the trust the consent of the Attorney General would be required and as BRAC is a charitable society such consent is very much required to invest its funds in BRAC Bank Limited which has not been obtained. It is submitted that this provision has not been considered by Bangladesh Bank and Registrar of Joint Stock Companies before issuing the impugned Annexures. This provision of law was disregarded completely by Bangladesh Bank and Register of Joint Stock Companies and as such the petitioner had/has authority to move the High Court Division as has been done in the present case.

In this appeal at the very outset an objection has been raised by Dr. Kamal Hossain and Mr. Rokanuddin Mahmud on the competency or locus standi of the petitioner in filing this writ petition in the form of public interest litigation. They argued that this writ petitioner has absolutely no locus standi to file the writ petition as he is not representing the common people for mitigating their common grievance but is representing a vested quarter who are utilizing this writ petitioner. In support of their claim the learned Advocate placed reliance on the principle of law enunciated in Dr. Mohiuddin Farooque's case reported in 49 DLR (AD)1. It appears that in paragraph 1 of the writ petition the writ petitioner himself gave his antecedent as a citizen of Bangladesh, a distinguished professor of

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Economics, sometime President of the Economics Association of Bangladesh, Director of the Institute of Business Administration, Dhaka, a member of the Cabinet in the Government, enjoying high reputation nationally and internationally for his involvement and contribution to economic and financial matters of the country and in paragraph two of the writ petition it has been mentioned that the writ petitioner holds the constitution of the Republic in high esteem and feels that it is the sacred duty of every citizen to safeguard and defend the constitution and to maintain its supremacy as the embodiment of the will of the citizens of the Republic. In paragraph 20 of the writ petition it has been mentioned that if respondent No.4 is allowed to own, control, manage and operate the business of banking in violation of the terms, conditions and laws of incorporation, there will be a serious undermining of the commercial, financial and more importantly legal framework in the country, that legitimate and otherwise qualified entities and persons will be prejudiced from undertaking commercial banking and financial activities and serious financial indiscipline will be imminent in Bangladesh. In paragraph 21 of the writ petition it has been mentioned that if respondent No.4 invest its money in sponsoring, subscribing, owning, controlling and operating the purported respondent No. 5 bank as a banking company it would render nugatory the intent and provisions of the Bankruptcy Act, 1997 wherein it has been stated that a charity can not be sued under the Bankruptcy Act and whereas the proposed respondent No.5 bank being owned by a registered society and/or a charitable society, can not be proceeded with under the Bankruptcy Act in the circumstances where it would be necessary to do so thereby undermining the fundamental rights of the petitioner and a multitude of individuals i.e. creditors and depositors afflicted by a common wrong, injury and invasion. In paragraph 22 of the writ petition it has been asserted that respondents acted deliberately and in a calculated manner in complete disregard of the laws of Bangladesh including the legal status and capacity of respondent No.4 to establish a public company and a banking business and further in disregard of several other laws which would bind respondent No.4 to own, control, subscribe, operate and dissolve itself or for that matter protect the interests of the depositors and creditors of respondent No.5. These are in all the writ petitioner put forward in support of his competency or

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locus standi to file the writ petition as a public interest litigation. The High Court Division dealt with this matter by stating that the petitioner is a well known professor of Economics an expert in finance with vast knowledge and experience in the banking sector. A detail introduction of the petitioner has been given in the judgment. The petitioner has been described as a person involved with the affairs and management of banks in Bangladesh for a long time. With the background he has, he is not constrained by the confines laid down by the Appellate Division in the aforementioned case. The petitioner is a citizen of Bangladesh he is not a busybody or interloper. There is no allegation that he is a litigious person nor does it appear that he has acted for a collateral purpose to achieve a dubious goal for generating publicity for himself or to create mere public sensation, in fact little publicity is given to the case. Rather his interest in the subject matter seems to be bona fide to espouse a public cause involving public wrong in as much as there has been a gross violation of the laws relating to the Societies Registration Act, 1860, the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 affecting the fundamental rights of an indeterminate number of people including intending promoters of banking companies as well as indigenous association of persons who steadfastly adhere to the laws of Bangladesh. These are all in regard to the writ petitioner's bona fide in filing this public interest litigation and how the High Court Division dealt with. ✓

This writ petition has been filed under Article 102 of our constitution which provides that the High Court Division on the claim of any person aggrieved may give such directions or orders to any person or authority including any person performing any function in connection with the affairs of the republic as may seem appropriate for the enforcement of any of the fundamental rights conferred by Part-3 of the Constitution. So any person who is aggrieved as provided under this Article may move the High Court Division for issuance of certain orders and directions and who is the person aggrieved in such alleged public interest litigation has been clearly and thoroughly discussed and decided by this Division in the Case of Dr. Mohiuddin Farooque reported in 49 DLR (AD)1. In this decision Justice Mustafa

Kamal has disposed of the question of locus standi in the judgment in paragraphs 47, 48, 49 and 50. It has been propounded that ✓

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interpreting the word "any person aggrieved" meaning only and exclusively individuals and excluding the consideration of people as a collective and consolidated personality will be a stand taken against the constitution. It has been held that in so far as it concern public wrong or public injury or invasion on the fundamental rights of an indeterminate number of people any member of the public being a citizen suffering the common injury or common invasion in common with others or any citizen or an indigenous association as distinguished from a local component of a foreign organization espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102 of the constitution. Agreeing with Justice Mustafa Kamal Justice B.B. Roy Choudhury in paragraph 97 of this decision has held that inescapable conclusion is that the expression person aggrieved means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortunate fellow beings for a wrong done by the Government or a local authority in not fulfilling its constitutional or statutory obligation. In paragraph 9 of the judgment His Lordship the Chief Justice observed that in a petition filed under Article 102 of the Constitution the court will have to decide in each case, particularly when objection is taken not only the extent of sufficiency of interest but also the fitness of the person for invoking the discretionary jurisdiction under this Article 102 of the constitution. It has also been held by the Hon'ble Chief Justice that ordinarily it is the affected party which is to come to the court for remedy. The court in considering the question of standing in a particular case, if the affected party is not before it and if it finds no satisfactory reason for nonappearance of the affected party it may refuse to entertain the application. This is clear a decision on the matters of locus standi/bona fide of a writ petitioner in a public interest litigation. It has been settled that expression "person aggrieved" means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortune fellow beings for a wrong done by the Government or a local authority in not fulfilling its constitutional or statutory obligations.✓

Herein the present case before us we have found how the writ petitioner tried to agitate the point at issue before the High Court Division in this type of public interest litigation. The writ petitioner has not mentioned anywhere in his petition how less fortune people ✓

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are being prevented in moving the High Court Division in such a matter and it has not been mentioned how the petitioner himself and other less fortunate people are affected by the impugned order. In the writ petition itself the writ petitioner has described him as a distinguished professor of economics with high reputation and as a men of high standing in the field of economics and he also stated that legitimate and otherwise qualified entities of persons will be precluded from undertaking commercial banking and financial activities and impugned orders will cause serious financial indiscipline in the field of financial matters in Bangladesh. In the entire writ petition there is nothing to show that the writ petitioner moved the High Court Division for and on behalf of himself and also of other less fortunate persons of the society who have no source and means to invoke the jurisdiction of the High Court Division or these less fortunate people are in any way affected by the impugned orders. The main contention or concern of the writ petitioner is that these impugned orders may cause serious financial in-discipline in Bangladesh and other objection is that the legitimate and otherwise qualified entity of persons will be precluded from undertaking commercial banking activities. This means that those who are capable of establishing a banking company may have a cause against the issuance of the impugned orders. This indicate that well to do people of the country who are capable of establishing banking companies or financial undertakings will be affected by the impugned orders and these people sure are not less fortunate people in our society. So the petitioner cannot move the High Court Division under Article 102 of the Constitution to protect the interest of these so called less fortunate people in the society. The High Court Division observed as follows :

“rather his interest in the subject matter seems to be bona fide to espouse a public cause involving public wrong in as much as there has been a gross violation of the laws relating to the Societies Registration Act, 1860, the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 affecting the fundamental rights of an indeterminate number of people including intending promoters of banking companies as well as indigenous association of persons who steadfastly adhere to the laws of Bangladesh.”✓

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The averment made in the writ petition and decision arrived at by the High Court Division clearly indicate that this case can not be construed as a public interest litigation as propounded in Dr. Mohiuddin Farooque's case. The writ petition has been filed just to protect the alleged interest of intending promoters of banking companies who by no stretch of imagination can be styled as less fortunate persons. It has not been alleged in the writ petition that this writ petitioner has any connection whatsoever with any existing bank. So in no way the petitioner's status can be construed as status of an aggrieved person as contemplated under Article 102 of our constitution. ✓

Learned Advocates Dr. Kamal Hossain and Syed Ishtiaq Ahmed submits that the High Court Division approached the point at issue from an apparent wrong angle. Both of them submit that the High Court Division indirectly decided that the BRAC is precluded from undertaking any project or investing their moneys in any undertaking excepting an undertaking sponsored or supported by the Government or state sponsored securities. Learned Advocate submits that the High Court Division took BRAC as a trust as contemplated under the Trust Act though as a matter of fact the same is not a trust but a Society Registered under Societies Registration Act. ✓

Before going further let us look into the provisions of the Trust Act. All trusts created come within the purview of Trust Act and Trust has been defined in section 3 of that Act. It provides that a trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declare and accepted by him and the Trust Act provides that subject matter of a trust must be property transferable to the beneficiary. Section 20 of the Trust Act provides that where the trust property consist of money and can not be applied immediately or at an earlier date to the purposes of the trust, the trustee may subject to any direction contained in the instrument of trust may invest money on the securities i.e. promissory note, debenture, Stock or other security of the Government. Section 20B of the Trust Act also provides that where the trust property comprise money and it can not be applied immediately to the purpose of the trust, the trust may subject to any prohibition or restriction imposed under the instrument of trust invest an amount not exceeding 25% of such money subject to maximum ✓

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limit of investment in any security list with Stock Exchange of Bangladesh. It has also been provided that in determining the exact amount of money that may be invested under sub-section (1) at any given time the money already invested if any under this section and also under section 20(F) shall be the maximum limit of investment at that time. It has also been provided that nothing in this section shall be construed to be a bar to authorise to invest trust money by the author of the trust beyond maximum limit of investment. So it appears that the Trust Act itself has provided for certain restrictions on the investment of the trust money and there are certain projects where the trust money may be invested. ✓

Admittedly the BRAC as a Society has been registered under the Societies Registration Act 1860. The preamble of the Act provides the purpose for which the Act was promulgated and those are meant for improving legal condition of the Societies established for the promotion of literature, science or the fine arts, or for the diffusion of useful knowledge for the charitable purpose and section 20 provided that charitable society may be registered under this Act. It also provided in this Act that a charitable society must have a Memorandum of Association showing the name of the society, the object of the Society, names, addresses and occupations of the Governing directors, committee or other governing body to whom by rules of the Society, the management of its affairs is entrusted and copy of the rules and regulations of the Society certified to be a correct copy by not less than three of the members of the Governing body shall be filed with the memorandum of association. Section 3 of the Act provides that after registering the Society the Registrar shall certify that the Society has been registered under this Act and it has also provided in section 6 that every Society registered under this Act may sue or be used in the name of the president, chairman or principal secretary or trustees as shall be determined by the rules and regulations of the Society. In the entire Act nothing has been mentioned as to the procedure or limitation on the investment if any to be made by the Society. Section 2 provides that a Society registered under this Act must have a memorandum of association and it must contain the rules of the Society regarding management of its affairs.

This indicate that a Society registered under this Act is to be governed by its memorandum of association. Admittedly BRAC is a Society ✓

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registered under the Societies Registration Act and as such it is guided under this Act and also by its own memorandum.

We have gone through the provision of Trust Act of 1982 and Societies Registration Act 1860 as amended up to date and it appears that by Trust Act the legislature wanted to regulate the activities the function and management of the trust properties. The word "trust" has been interpreted in section 3 as follows : ✓

a trust is an obligation annexed to the ownership of the property and arising out of a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner : the person who reposes or declares the confidence is called the author of the trust and the person who accepts the confidence is called trustee : person for whose benefit the confidence is accepted called the "beneficiary" the subject matter of the trust is called trust property or trust money and beneficial interest or interest of the beneficiary is his right against the trust is the owner of the trust property and the instrument if any by which trust is declared is called the instrument of trust. ✓

This section also provides meaning of word registered. Under this law registered means registered under the law for the registration of documents for the time to being in force. This means that if it is a registered trust then this must be construed as registered under Registration Act under which the documents are registered. ✓

From a consideration of the provision of Trust Act it appears that it provides for certain duties and obligations upon the trustees and also provides how the trust money or the trust property may be utilized. Section 20B of the Trust Act also authorized the trustees to invest certain amount of trust money in any security listed with the Stock Exchange of Bangladesh. The Trust Act also authorized the trustees to invest unused money of the trust. ✓

From a consideration of this Act it appears that this is a self contained code and it has provided for ways and means of management of the trust property and its use and investment.

But the Societies Registration Act is a separate law under which the legislature felt the necessity of improving the legal condition of the societies established for the promotion of literature, science, fine arts, or for the diffusion of useful knowledge, diffusion of political ✓

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education, donation or for the charitable purpose and for the said purpose the Act was enacted in 1860. This provides that any 7 or more persons for any literature, scientific or charitable purpose or for any such purpose may subscribe to a Memorandum of Association and filing the same with the Registrar of Joint Stock Companies form themselves into a society under this Act. So from this section 1 of the Act it appears that for forming a society there should be a Memorandum of Association and such Associations are to be registered with the Registrar of Joint Stock Companies and the Act provides for filing of Memorandum of Association and the rules and regulations framed under section 2 of the Act for registration and section 20 provides the types of societies which may be registered. From a consideration of this Act as well as the Trust Act it is abundantly clear that a trust is to be registered with the Sub-Registrar as provided under the Registration Act and all documents are to be registered with that Registrar whereas a society is to be registered with the Registrar of Joint Stock Companies and under the Trust Act the subject matter of the trust is called the trust property whereas under this Societies Registration Act any 7 (Seven) or more persons may form a society for the purpose as mentioned in the Act by accepting the Memorandum of Association and may get it registered with the Registrar of Joint Stock Companies. So the provision of registration in both the Acts are different distinct and separate. A society registered under the Societies Registration Act cannot be construed as a trust. These are different and distinct and there is no ambiguity in it. ✓

Admittedly the BRAC is a charitable society registered with the Registrar of Joint Stock Companies as provided under the Societies Registration Act. So BRAC cannot be construed as a trust. It is a charitable society for all practical purposes and as it is a society registered under the aforesaid Act it is guided under the provision of this Act and the Memorandum of Association. The provisions of Trust Act has no manner of application in the functioning of BRAC. Memorandum of Association of BRAC indicate that this was established by 7 persons for engaging themselves in charitable purposes and social welfare activities only on nonprofit basis. As per provision of sections 1 and 2 of the Societies Registration Act BRAC is being guided and regulated under its Memorandum which clearly

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formulated how charitable purpose is to be conducted and how to get fund for the said purpose. While registering this society the Registrar of Joint Stock Companies has not found anything wrong with the Memorandum of Association or has not found that any of the articles of the Memorandum to be against any of the provisions of the Societies Registration Act. Article XV of the Memorandum provides the Society with the authority to invest and deal with money of the society not immediately required in such manner as may from time to time be determined and this determination is to be made by the society itself. Article XIV also provides that BRAC is entitled to receive donation from persons, institutions or companies from here and abroad and use the same towards the objective of the society. Article XV has clearly authorized the BRAC to invest their surplus money in accordance with the decision of the BRAC itself. The embargo that is there in the Trust Act has no manner of application in the case of BRAC or any society registered under the Societies Registration Act. The embargo if any must be there in the Memorandum of Association and in the case of BRAC there is no such embargo in the investment of fund of the society. From a consideration of the materials on record we hold that BRAC can not be construed by any stretch of imagination as a trust. It is a charitable society pure and simple as evident from their Memorandum of Association. When it is a charitable society and not a trust the provision of Trust Act has no manner of application in the case of BRAC. ✓

So in view of the aforesaid and in view of the Memorandum of Association of BRAC any money belonging to BRAC may be invested by them and it can be done for the purpose of welfare of the society and its beneficiaries. The Societies Registration Act has not provided for any bar in the investment by BRAC which has been there in their Memorandum of Association. ✓

Mr. Tawfique Nawaz, learned Advocate appearing on behalf of the respondent submits that as BRAC is a charitable society the money or fund they receive are for charitable purpose which can not be invested for any other purpose. He submits that BRAC cannot alienate money in business to the detriment of the beneficiaries of the society and consequently no investment is permissible in BRAC Bank. ✓

ATTESTED It appears that the BRAC has decided to purchase shares in BRAC Bank Limited for the purpose of augmenting its resources for ✓

using in charitable purposes. The profit that would be accrued from such investment would be used for charitable purposes.

Syed Ishtiaq Ahmed submits that the investment in BRAC Bank can not be construed as alienation of the money. This has been done with the purpose of earning profit so that the same may be utilized for other charitable purposes. He further submits that when BRAC Bank is a schedule bank there is no chance of alienation of BRAC's money. Syed Ishtiaq Ahmed submits that when the Memorandum of Association provided the authority for investment and dealing with the money of the society not immediately required the BRAC can invest its money in BRAC Bank Ltd. He submits that there cannot be investment in charity. The investment is to be made elsewhere. He submits that there is no embargo for such investment as provided under the Societies Registration Act or in the Memorandum of Association. Such investments are permitted under the Memorandum of Association and there is no bar under the Act as well. We have heard the learned Advocates on this point and it appears that earlier the High Court Division of the Supreme Court in a decision has held that income from the BRAC is not taxable as it is being used for charitable purposes but subsequently by Finance Act of 1999 income from the charity has been made taxable. In such circumstances when a charitable society can not earn profit how can their income be made taxable? This indicate that a charitable society can invest their money and the profit earned from that investment will be taxable and admittedly donation to the society are not income and they are only received and it can not be construed as an income earned. If a society is prevented in investing its money for augmenting its resources the society will be dependent only on donations. The Government has already directed the Non-Government Organizations to augment their income and not remain dependent on donations both internal and foreign. So from this it appears that the Government also visualized the necessity of investment of society's money for the purpose of getting more resources for using in charities. Considering the facts and circumstances of the case we are of the view that charitable society can invest its unspent money for getting more money to be spent in charity and when there is absolutely no bar under the Societies Registration Act and when the Memorandum of Association

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of a society has authorized the same to invest their money not immediately required the same may be invested.

Admittedly BRAC was registered under the Societies Registration Act and this is a charitable society. The controversy has been raised from the side of the writ petitioner-respondent that as it is a charitable society it can not invest its money. Their further case is that BRAC can not enter into any transaction for earning profit. We have already noticed that Mr. Tawfique Nawaz contended that by such investment in business fund of the society may be alienated which has been seriously objected to by Syed Ishtiaq Ahmed. He submits that for the purpose of securing more fund to be used for charitable purposes the surplus money may be invested and the profit earned may be used for the purpose for which the charity was established. In support of his submission Syed Ishtiaq Ahmed placed reliance in All England Law Reports 1958 page 612 wherein it has been found as follows :- ✓

"Looking at the way in which the society has conducted its affairs, I am of opinion that it has made profits. It has not distributed those profits like a commercial company. Nor has it returned them to members. It has used them to build up large and accumulating reserve funds. But the fact that the society has made profits does not mean that it is conducted for profit which I take to mean conducted for the purpose of making profit. Many charitable bodies such as colleges and religious foundations have large funds which they invest at interest in stocks and shares or purchase land which they let at a profit. Yet they are not established or conducted for profit. The reason is because their objects are to advance education or religious as the case may be. The investing of funds is not one of their objects properly so called but only a means of achieving those objects. So here, it seems to me, that if the making of profit is not one of the main object of an organization, but is only a subsidiary object that is to say, if it is only a means whereby its main objects can be furthered or achieved then it is not established or conducted for profit" ✓

From the above it is abundantly clear that a society registered under the Societies Registration Act may invest its fund with the object of getting more money for spending in charitable purposes. The main object of this investment is to provide charities to deserving. ✓

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persons and not to make profit. So the investment by BRAC in BRAC Bank Limited is not for profit. The object of BRAC as found from their Memorandum of Association is charity and for perpetuating their object such investment is permissible and we find no wrong in the same. ✓

Syed Istiaq Ahmed, and Mr. Rokanuddin Mahmud submits that when BRAC Bank Limited has been incorporated its existence can not be questioned by the writ petitioner either directly or indirectly. BRAC Bank Limited was incorporated admittedly on 20.5.1999 and certificate of commencement of business was issued on the same date and the licence was granted on 29.7.1999 and BRAC Bank Limited was to establish a Branch at Gulshan on 11.11.1999 for which permission was accorded to BRAC Bank Limited on 21.7.1999. These are the admitted facts. It is submitted by the learned Advocate that for incorporation of a Bank no permission is necessary. It is registered by the Registrar of Joint Stock Companies who is empowered to incorporate such a Bank and at the time of incorporation no objection was raised from any quarter and after observing all legal formalities and finding no bar BRAC Bank Limited was incorporated. It is submitted that once a company is incorporated it can only be wind up under due process of law and BRAC Bank Limited can not be wind up at the instance of a stranger but only at the instance of Bangladesh Bank. Here in the present case the writ petitioner sought the following reliefs :- ✓

(A) to issue Rule Nisi calling upon ✓

(I) the respondent No.1 to show cause as to why the impugned order dated 4 April, 1999 (Annexure-A) issued by the respondent No. 1 giving its no objection to the respondent No.4 to incorporate the draft memorandum of Articles of the respondent No.5 with the Registrar of Joint Stock Companies should not be declared to have been made and issued without lawful authority and of no legal effect and (II) the respondent No. 2 to show cause why the memorandum and Articles of Association and the certificate of incorporation (Annexures C and C-1) of the respondent No. 5 incorporating it as a public company limited by shares and a banking company should not be declared as having been made without lawful authority and of no legal effect. ✓

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These are the main reliefs sought for in the writ petition. It appears that by Annexure-A dated 4.4.1999 Bangladesh Bank has issued a no objection letter for the incorporation of BRAC Bank Limited which was issued on the perusal of draft Memorandum and Articles of Association of proposed BRAC Bank Limited and we have already found that the Bank was incorporated on 20.5.1999 and the certificate of commencement was issued on the same date and after the incorporation of the bank and the licence of commencement was issued and permission was obtained for opening a branch at Gulshan the present Rule was issued in December, 1999 and in that writ petition there is no challenge on the granting of licence. The first challenge is in respect of Annexure-'A' which is no objection certificate and second one is Memorandum and Articles of Association and the certificate of incorporation which are Annexures-'C' and 'C-1'. It is submitted that by filing this writ petition at a belated stage when the process of incorporation and commencement of business was complete the writ petitioner in an indirect way wanted to gag the functioning of the bank. It is well settled that a relief to which one is not entitled directly can not also be given to that person indirectly and from the prayer portion it is abundantly clear that the writ petitioner wanted to gag incorporation of the bank and its functioning in an indirect manner when the incorporation is complete. Section 25 of the Companies Act provides that a certificate of incorporation given by the Registrar in respect of any Association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedents and incidental thereto have been complied with and the association is a company authorized to be registered and duly registered under this act. So the incorporation of BRAC Bank Limited and the certificate of incorporation that has been issued is conclusive proof that requirement have been fulfilled and the same is complete as per provision of section 25 of the Companies Act and in case of winding up of such a bank the same can only be done as provided under sections 64 and 65 of the Bank Companies Act, 1991. The bank which is already incorporated can not therefore be wind up at the instance of the writ petitioner in an indirect manner. The writ petitioner as found from the prayer portion wanted to cut at the root of incorporation which is not permissible under the law and on that

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count also the writ petitioner is not entitled to any relief. The High Court Division failed to appreciate the legal position and wrongly made the Rule absolute.

Furthermore other companies which have been incorporated may be wind up under the provision of the Companies Act, 1994 as provided under sections 234 and 241 of that Act and unless these provisions are followed no company could be wind up which has also escaped the notice of the High Court Division and the writ petitioner who is a third party having no interest in the Bank can not initiate an indirect proceeding to wind up an incorporated bank. From what has been found from the writ petition particularly its prayer portion it is clear that this petition has been filed to knap a winding up process of the company which concept is unknown in law. Winding up process of an incorporated bank has been clearly set forth in the Bank Companies Act and no third party has any say in the matter. The law is very clear on this point. In the writ petition it has been alleged that while issuing the impugned certificate Annexure-'A' Bangladesh Bank has taken recourse to nepotism but the writ petitioner failed to substantiate this allegation. There is absolutely no material to show that Annexure-'A' has been issued because of nepotism. No other enterprener is coming to allege that due to nepotism exercised in favour of BRAC Bank Limited his prayer for opening a bank has been refused. So the allegation of nepotism against Bangladesh Bank is baseless. This incorporation of BRAC Bank Limited and the certificate of commencement of business have not been challenged by any other existing bank or the intending banking companies. So the question of nepotism or favouritism in favour of BRAC does not arise. The petitioner also tried to impress that there is discrimination in granting licence to the appellant but from the perusal of the judgment itself as well as on the writ petition and other documents it appears that Bangladesh Bank set over the matter for several years and on being satisfied issued Annexure-'A' and no other party came before the High Court Division with the allegation of discrimination towards them. The discrimination can be claimed only by a person who has been discriminated. The writ petitioner was not an applicant for establishing a bank and the question of discrimination towards him does not arise. This also escaped the notice of the High Court Division. So from all the aforesaid it appears that the writ petitioner in

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an indirect manner tried to wind up BRAC Bank Limited or to torpedo its activities.

In this matter an objection has been raised from the side of the writ petitioner that BRAC which is a charitable society incorporated under the Societies Registration Act can not invest foreign donation and by investing money in BRAC Bank Limited it has violated the provision of Foreign Donation Ordinance.

Mr. Tawfique Nawaz, learned Advocate for the respondent submits that BRAC as a charitable society has received a substantial amount of money as donations from foreign donors and those were meant for spending in voluntary activities and not for making any investment. The law on the point is Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance XLVI of 1978.) This Ordinance was promulgated to regulate receipt and expenditure of foreign donations for voluntary activities and voluntary activities means an activity undertaken or carried on by any person or organizations of his or its own free will to render agricultural, relief, missionary, educational, cultural, vocational, social welfare and developmental services etc. So BRAC as a charitable society can receive and spent foreign donations for social welfare activities and as it a registered society it has authority to spend donated amounts as per its Memorandum of Association and also under the said Ordinance. But this Ordinance has not created any obstacle in the investment for the purpose of getting more income to be spent in charities. The law on the point is silent. There is no bar in the law in investing foreign donations in income generating activities and if BRAC has invested the unspent donation in BRAC Bank it has not violated any of the provisions of the Ordinance. In that view of the matter we find no force in the submission made by Mr. Tawfique Nawaz.

Mr. Tawfique Nawaz, learned Advocate for the respondent further submits that both Bangladesh Bank and Registrar of Joint Stock Companies while issuing their respective impugned orders have completely disregarded the provision of section 92 of the Code of Civil Procedure which is applicable in the facts and circumstances of the present case. Section 92 of the Code of Civil Procedure provides that in the Case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or

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where the direction of the Court is deemed necessary for the administration of any such trust, the Attorney General or two or more persons having an interest in the trust and having obtained the consent in writing of the Attorney General may institute a suit for obtaining a decree for removing any trustee appointing a new trustee vesting any property in a trustee directing accounts and inquires etc. etc. ✓

This Section it appears is meant for a trust created for public purpose which may be of a charitable or religious nature. From a consideration of this provision it appears to us that this section is meant for trust properties which is governed by Trust Act and not applicable to charitable societies registered under the Societies Registration Act. In view of the clear provision of section 92 and the case before us we hold that the provision of section 92 of the Code of Civil Procedure has no manner of application in the facts and circumstances of the case and we find no force in the submission made by Mr. Tawfique Nawaz.

Mr. Rakanuddin Mahmud, learned Advocate appearing on behalf of Bangladesh Bank quoting the following lines from the judgment of the High Court Division submits that it was an unkind observation without any basis and is very much unfair and these may be expunged. The lines are as follows :-

Both Bangladesh Bank the Registrar of Joint Stock Companies have acted in total disregard of law. It may be argued that the subsequent gazette notification has removed the legal incapacity of BRAC Bank but it shows non application of minds by both the concerned authorities. Further no ground for removing the restriction has been given in the no objection letter. Bank Companies Act was enacted to impose discipline and bring accountability in the financial sector. But the actions of Bangladesh Bank in this case are smeared with arbitrariness, non-accountability, lack of discipline and breach of inequality clause as enshrined in Article 27 of the Constitution. ✓

We have gone through the entire judgment and also heard the learned Advocate of both the sides and also considered the legal position and we hold that both Bangladesh Bank and Registrar of Joint Stock Companies acted within the frame work of law and no disregard of law is visible. Bangladesh Bank sat over the matter for a

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long time and after prolong deliberations issued the impugned orders and so is the case with the Registrar of Joint Stock Companies. Legal incapacity that was there in the commencement of the business has been removed by the Gazette notification which was not issued by Bangladesh Bank or by the Registrar of Joint Stock Companies. It was made by the Government for which Bangladesh Bank can not be made responsible. It can not be said that it shows non application of minds by these authorities. We have already found that there was no favouritism, nepotism, arbitrariness, lack of discipline and breach of equality clause in the whole affair right from the starting of the procedure to get the Bank incorporated and upto issuance of certificate of commencement of business. We have discussed the matter at length and we find force in the submission made by the learned Advocate for the appellant. In view of the aforesaid the observation made by the High Court Division calls for our interference and accordingly the same are expunged from the judgment. ✓

We have given our anxious consideration to the materials on record and after hearing the learned Advocate of both the sides and on consideration of the relevant law we hold that the High Court Division committed gross illegality traveling beyond the scope of Article 102 of the Constitution and in making the Rule absolute which require our interference. ✓

There is, therefore, merit in these appeals which are allowed without costs. Judgment and order passed by the High Court Division in the aforesaid writ petition is accordingly set aside and the Rule discharged. ✓

Sd/- M. Amin Chowdhury. C.J.

MAINUR REZA CHOWDHURY, J:- I agree with the judgment of my Lord, the Chief Justice. However I would like to discuss and give a short opinion with respect to the references made by the High Court Division to amendments of section 20 of the Societies Registration Act 1860 made in different states of India by State legislation and by Union Act to include new purposes for which societies may be formed and registered under the Act. In the state of Bihar by Act 2 of 1960 after the words "science, literature" in section 20 the words "industry, agriculture" were inserted. By Haryana Act 23 of 1974, section 20 was ✓

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amended to include "promotion of the interest or welfare of the public and any other object as may be notified by the Government as beneficial to the public". In Maharashtra- Bombay Act 76 of 1958 section 2 provides that notwithstanding anything contained in sub-section (1) any society registered under the public societies Registration Act for any public or religious purpose and operating in the Hyderabad area of the state of Bombay of the Societies Registration Act, 1958 shall be deemed to be and continue to be registered under this Act. In Uttar Pradesh by U. P. Act 11 of 1984 in section 20 after the words "established for the promotion of" and before the word "science" the words "Khadi and village industry, Panchayet industry, Rural Development" were inserted. Similarly amendments were made by including or substituting other activities such as promotion of social welfare, activities conducive to the protection and improvement of the natural environment (including forests, lakes, rivers and wild life) compassion for living creatures, literature, Science, Sports, games or the fine arts. By Pondicherry Act 9 of 1969 in its application to the union territory of Pondicherry section 20 was to include dissemination of social economic education, promotion of the interest or welfare of the public or a section of the public or of non-trading associations with objects confined to the Union Territory and any other objects as may be notified by the Government as being beneficial to the public or to a section of the public. ✓

The High Court Division observed that from the above it seems that in India it was thought necessary to include new or additional purposes to section 20 of the Societies Registration Act 1860 by legislative enactment both Provincial and Union to meet new demands of time. ✓

By this observation of the High Court Division it was perhaps meant that sponsoring a banking company having not been included in section 20 of the Societies Registration Act 1860 by any amendment in Bangladesh, BRAC could not sponsor or invest in the banking company BRAC Bank Ltd. ✓

What the states in India have done by the amendments mentioned above is that they have increased the scope of section 20 by including numerous activities which societies could undertake as their objects. In the instant case the investment of BRAC of its money ✓

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not immediately required in BRAC Bank Ltd. is not an activity as envisaged in section 20 of the Act. It is an investment made under clause XV of the memorandum of BRAC in order to augment its resources for more effectively achieving the objects for which it was incorporated. Therefore in order to make investment in a bank, BRAC does not have to be so authorised under section 20 of the Societies Registration Act 1860, and so no amendment of the section is necessary. ✓

sd/- Mainur Reza Chowdhury J.

MOHAMMAD GHOLAM RABBANI, J: I agree with the judgment of the learned Chief Justice that these appeals be allowed without costs. ✓

sd/- M.G. Rabbani J.

MD RUHUL AMIN, J:- I have the opportunity of going through the judgment of my Lord the Chief Justice and the judgment of my brother Mainur Reza Chowdhury, J. I regret my inability to agree with the judgments. ✓

In the judgment of my Lord the Chief Justice case of the writ petitioner and the case of the contesting respondents (in the writ petition) with necessary details have been set forth. As such I avoid repeat by stating the case of the writ petitioner and the case of the respondents in the writ petition. ✓

Respondent No.1 in Appeal No.192 of 2000 (writ petitioner) filed the writ petition questioning legality of issuing of no objection certificate of Respondent No.2 to Bangladesh Rural Advancement Committee, (BRAC) Appellant No.1, to incorporate the draft Memorandum of Articles of BRAC Bank Ltd., Appellant No.2, with the Registrar of Joint Stock Companies and seeking declaration against the Respondent No.3 why Memorandum of Articles of Association and the certificate of incorporation of the Appellant NO.2 to have been made without lawful authority and is of no legal effect. ✓

Respondent No.1 filed the writ petition primarily contending that BRAC being one of the society as mentioned

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in Section 20 of the Societies Registration Act, 1860 and that primary object of BRAC, as in its Memorandum, as society is not authorized to go for conducting business for profit or in other wards to go for conducting business for making profit. As against the said contention of the respondent No.1, the appellants' contention is that there is no bar in the Societies Registration Act, herein after referred to as the Act, in general and particularly in Section 20 of the Act and further that Clause XV of the Memorandum of BRAC, authorizes the same to invest its surplus found for augmenting its fund for the charity and as such investment in the BRAC Bank for the purpose of augmenting income for expanding the field of charity was quite in accordance to the Clause XV of the Memorandum of BRAC. It has also been contended by the appellant that Clause XXIII of the Memorandum of BRAC has quite clearly stipulated that none of the Clauses of the Memorandum of BRAC would any way 'limit or restrict by reference to or inference from the terms of any Sub-Clause or by the name of the Society' and that any of the Sub-Clause or the object therein would be subsidiary or auxiliary to the objects mentioned in the first clause.✓


To appreciate the contentions of the appellants and the respondents provision of Section 20 and the different clauses of the Memorandum of BRAC are set forth below.✓

Section 20 of the Act reads as;✓

"20. The following societies may be registered under this Act :- ✓

Charitable societies, *** societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, (the diffusion of political education), the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.✓

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Clauses I, XV and XXIII of the Memorandum of BRAC are as follows; ✓

i. To engage in charitable purposes and social welfare activities strictly on non-profit basis. ✓

xv. To invest and deal with the money of the Society not immediately required in such manner as may from time to time be determined. ✓

xxiii. The objects as set forth in any Sub clause of the above clause shall not, except when the context expressly requires, be in anyway limited or restricted by reference to or inference from the terms of any sub-clause or by the name of the Society. No such sub-clauses or the objects therein specified or the powers thereby conferred shall be deemed merely subsidiary or auxiliary to the objects mentioned in the first sub-clause of this clause, and the Society shall have full powers to exercise all or any of the powers conferred by any part of this clause in any part of the world." ✓

It is the undisputed position that appellant No.1 has, been registered under the Act 'to engage in charitable purposes and social welfare activities strictly on non-profit basis'. ✓

BRAC in the light of Clause XV of its Memorandum has invested its "money not immediately required" in the paid up capital of the BRAC Bank to the extent of 99.97%. This investment of the BRAC is claimed by the respondent No.1 as an undertaking conducted for profit which is totally contrary to the object for which BRAC has been registered. This contention is made upon referring to the provision of Section 20 of the Act and Clause 1 of of the Memorandum of BRAC. As against this it has been contended by the appellants that investment in the paid up capital of BRAC Bank of the surplus money of the BRAC is in no way be said conducting business for profit but the said investment is to augment income with the view in the end to expand the base of the BRAC or in other words to make charitable activities of the BRACK more broad based for the greater number of disadvantaged and less fortunate ✓

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group of persons in the society. It has also been contended that investment by BRAC in the BRAC Bank is totally permitted by the Clause XV of the Memorandum of BRAC. The said submissions have been made upon referring to the observation of Lord Denning, J in the case of Trustees of The National Deposit Friendly Society Vs. Skegness Urban District Council reported in (1958) 2 All E.R 601. The observation is as follows; ✓

" But the fact that the society has made profits does not mean that it is 'conducted for profit', which I take to mean conducted for the purpose of making profit'. Many charitable bodies, such as colleges and religious foundations, have large funds, which they invest at interest in stocks and shares, or purchase land, which they let at a profit. Yet they are not established or conducted for profit. The reason is because their objects are to advance education or religion, as the case may be. The investing of funds is not one of their objects properly so called, but only a means of achieving those objects. So here, it seems to me, that, if the making of profit is not one of the main objects of an organization, but is only a subsidiary object-that is to say, if it is only a means whereby its main objects can be furthered or achieved-then it is not established or conducted for profit: see R.v Whitmarsh (9) (1850), 15 Q.B. 600, Bear v. Bromley (10) (1852), 18 Q.B.271). Applied to this case, I think that the building up of a reserve fund-despite its size-is not one of the main objects of this society. It is only incidental- a consequence of the wise investment policy it has pursued. The main object of the society is to provide security for people of small means against the risks which life holds for them-and not to make a profit there from. It is, therefore, not conducted for profit." ✓

In the background of the facts as stated herein before, particularly that BRAC has invested its money to

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the extent of 99.97% in the paid up capital of BRAC Bank it is difficult to consider that the investment so made has not been made for making profit or that by the said investment BRAC itself has not gone for conducting business for profit. Even if it is considered that the investment has been made with an object to earn profit to advance charity and that the investment has been made to attain the objects of the BRAC and as such, if for argument's sake, it is accepted that the investment was not for making profit but to furthering attainment of its objects still then the investment remains a one for making profit totally contrary to the object for which the society has been established as because the investment so made is to be considered activities of profit since profit in the investment is neither certain nor secure. It was the contention of the respondent No.1 in the writ petition that BRAC in the instant case gone for an undertaking of purely commercial character of both profit as well as risk factor of loss and that in fact has gone for investment in a commercial concern holding almost entire share holdings and that has camouflaged the undertaking as Public Limited though most of the signatories in the Memorandum as well as the Articles of Association of the BRAC Bank are of one entity i.e BRAC as such it was the duty of the Registrar of Joint Stock Companies to see whether there were 7 or less than 7 persons are signatories to the Memorandum and the Articles of Association and that aspect of the matter having not been examined at the time of issuance of the certificate of incorporation of BRAC Bank, and that there by Registrar of Joint Companies acted without jurisdiction. As against this it has been submitted by the appellants that although the signatories to Memorandum of Association of BRAC are mostly BRAC personnel but they in their independent capacity subscribed to The Memorandum and the Articles of Association of the BRAC Bank. This contention appears, in the background of the facts, to be not convincing one since signatories to the Memorandum and Articles of Association of the BRAC Bank are mostly BRAC personnel and this has been done with the object that the BRAC Bank be the exclusive concern of the BRAC because of investment in the paid up capital to the extent of 99.97% by the BRAC.

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Bangladesh Bank respondent No.2 in Appeal No.192, appellant in Appeal No.193 while issuing no objection certificate for the reasons best known to it overlooked this material fact or in other words escaped its notice as to that BRAC Bank whether has its separate entity from BRAC.

BRAC receives donation from foreign government or organization or a citizen of a foreign State and the utilization of donation is limited to the 'voluntary activity' as has been defined in Clause (d) of Section 2 of the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance XLVI of 1978), in brief the Ordinance. In the background of the facts on record it is seen that by making investment in the BRAC Bank, the BRAC has gone for commercial activity with the donation received from foreign government or organization or citizen which is beyond voluntary activity as mentioned in Clause(d) of Section 2 of the Ordinance. To meet this objection of the respondent No.1 it has been submitted from the appellants' side that there being direction from the government to the voluntary organization or societies like the BRAC for becoming less depended on foreign donation the BRAC is quite within its limit in going for investment of the foreign donation not immediately required for charitable purpose. But even if there is any direction from the government to the organization or society like one as BRAC is to become less depended on foreign donation that itself will not lead one to think or conclude that the society like the one as BRAC when taking the donation money out of charity fund for commercial undertaking with uncertainty factor of profit and there by making utilization of donation for voluntary activity uncertain or nil is within its primary object. One would definitely not think about the government's policy direction that organization receiving foreign donation as the BRAC is, instead of undertaking voluntary activity with foreign donation should take steps for earning profit upon making investment in the field or fields where profit is uncertain or in other words there is risk factor of loss. It has been contended on behalf of the appellants that society receiving foreign donation in case goes on distributing the money received as donation, without undertaking for augmenting fund, then

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charity at one stage would come to stand still. But the fact remains can the societies, as the BRAC is one of those, go for commercial activities in the name of augmenting income for making the charity board base, upon involving itself directly in commercial activities. An organization receiving foreign donation would certainly take steps for augmenting its income or otherwise it would go for activities for earring profit to keep the voluntary activity containing one, but for that would certainly not go to involve itself in commercial activities with the risk factor of loss of invested money. The BRAC by investing its fund to the extent of 99.97% in the paid up capital of the BARC Bank has gone for commercial activities involving itself directly in commercial activities for profit and thereby has involved itself giving go by to its object and purpose for achieving which it was registered and receives foreign donation. This has not been contemplated by the policy direction of the government as to the organization or society receiving foreign donation and engaged in charity to be less depended on foreign donation. Provision of Section 20 of the Act shows the type of societies those can go for registration under the Act. It is seen from the provision of Section 20 of the Act that the society those can go for registration under the Act are exclusively of the kind other than of the societies permitted by law to undertake commercial activities. The BRAC has been registered under the Act with the object to engage itself in charitable purpose and social welfare activities strictly on non-profit basis. Although there is provision in the Clause XXV of the Memorandum of the BRAC that it can invest its fund immediately not required but such investment itself in no way authorizes the BRAC to go for pure profit oriented commercial activity and consequent thereupon making non-profit activity as well as voluntary activity secondary one. The BRAC in going for investment in the paid up capital of BRAC Bank to the extent of 99.97%, in my view has certainly given go by to its non-profit activities and in place has gone for purely commercial activities, which is not permitted by its Memorandum.

The contention of the appellants that the money or assets of the BRAC, invested in the undertaking would not

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Sudhansu Choudhury of Bangladesh

be lost appears to be not well founded one since the law of bankruptcy is very much applicable to the BRAC Bank in the paid up capital wherein participation of the BRAC is to the extent of 99.97% and that in case of bankruptcy of the BRAC Bank the charity money would be lost even if not totally but substantially. In the name of augmenting income of BRAC for expanding voluntary activity or that social welfare activities, Clause XXV of The Memorandum of BRAC does in no way contemplates investment of asset or money of the BRAC in commercial activities where loss of money or asset so invested is probable. It has been submitted on behalf of appellants in both the appeals that even if bankruptcy proceeding which under the law would only be initiated at the instance of the Bangladesh Bank and that even if in worse situation bankruptcy visits the BRAC Bank, the investment of the BRAC would be free from the effect of bankruptcy since the money that has been invested by the BRAC is trust money. It need be mentioned that it is not the definite case of the BRAC that its assets or money are trust property and that for obvious reason BRAC has not pleaded that its assets are assets of a Trust. The question of initiation of proceeding only at the instant of the Bangladesh Bank and that Bangladesh Bank alone and that no other body or person can go for initiation of a bankruptcy proceeding is not the matter for consideration or decision at the moment before me. So, chance of initiation of Bankruptcy Proceeding in respect of BRAC Bank has altogether been not ruled out. This being a situation the apprehension of loosing even if not the entire money but substantial quantity of money of the charity in case of initiation of bankruptcy proceeding very much remains and as such the contention that BRAC by the investment in question has made the charity money vulnerable to the risk factor of loosing the entire money can altogether be not graded without foundation. In this background of the fact Bangladesh Bank or the Registrar Joint Stock Company have not addressed themselves to this material aspect of the matter while issuing no objection certificate and certificate of incorporation respectively.

On behalf of the appellants it has been argued that respondent no.1 has no locus standi to invoke the writ.

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jurisdiction challenging registration of the BRAC Bank by the Registrar of Joint Stock Companies and the no objection certificate issued by the Bangladesh Bank for commencing of the business since he is not aggrieved in any respect by the action or actions of the Registrar Joint Stock Companies and the Bangladesh Bank. It has also been argued that certificate of incorporation as given by the Registrar of Joint Stock Company incorporating the Bangladesh Bank as public Limited Company and that issuance of no objection certificate by the Bangladesh Bank to the BRAC Bank for registration and commencing its business as in no way affect the public in general or a particular group of respondent No.1, he has no right to come with the writ petition in the nature of public interest litigation. It is seen from the materials on record that the Registrar of Joint Stock Company and the Bangladesh Bank in the performance of their duties as to issuance of certificate of incorporation and issuance of no objection certificate for registration failed to perform their duties, i.e. to see whether the BRAC Bank has a separate entity from the BRAC which they were required to do under the law or in other words the said two organizations issued certificate without compliance of the provision of law in that a charitable organization registered under the Act is not in law authorized to undertake totally commercial activity upon deviation from its primary objects. This being the position in my view the respondent No.1 was quite competent to move the High Court Division seeking relief by way of declaration the actions of the Registrar of Joint Stock Company and the Bangladesh Bank were without lawful authority and were of no legal effect. It has been submitted on behalf of the appellants that in the Act there is no provision prohibiting the charitable and voluntary society registered there under for undertaking activities for the purpose of augmenting its income to make the charitable activities board based. Apparently it would appear from the provisions of the Act that there is no embargo on the Societies or Organizations as are mentioned in Section 20 of the Act in going for profit earning commercial undertaking(s) for the purpose of augmenting its income or in other words to go for the activities for

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profit. But on a close scrutiny of the provisions of the Act particularly kind of society or organization mentioned in Section 20 of the Act, society or organization that can be registered under the Act is required to confine itself to either voluntary activities or charitable activities primarily. The society or organization may go for incidental activities related to or connected with charitable or welfare activities but in no way can go for investing society's fund with the presence of risk factor of loss and that engage itself in activities in no way related to social welfare activity. If the society registered under the Act goes for any other activities in any form different from the purpose for which it has been registered it would certainly be found in the Act that the said kind of activities are not permissible. The BRAC has been registered under the Act with the sole object of charitable purpose and to be engaged in social welfare activities on the non-profit basis under the Act. ✓

The present undertaking of the BRAC i.e investment to the extent of 99.97% in the paid up capital of BRAC Bank is totally contrary to the purpose for which the BRAC has been registered and that going for the instant undertaking is also violative of the provision of the Act as because in case of going for activities other than the activities for which the BRAC as has been registered as well as other kind of societies that can be registered under the Act would cease to be the society of the kind mentioned in Section 20 of the Act. In case of allowing the society, registered under the Act to undertake the undertaking, as in the present case BRAC has undertaken, or similar other undertaking with risk factor of loss of the asset or money of the society invested there would be necessity of amendment of the Act widening the base of the societies registered under the Act to go for other kind of business too other than 'charity and unless amendment is made enabling the Societies registered under the Act to go for activities other than the activities for which at the present the societies are registered under the Act it is not permissible for the societies registered under the Act to go for pure commercial undertaking upon a deviation from

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the original object and purpose for which the Societies were and are registered. ✓

In view of the discussions made herein above I do not find any substance in these appeals. Accordingly the same are dismissed. ✓

Sd/- Md. Rehul Amin, J.

ORDER OF THE COURT

By a majority decision these appeals are allowed without costs. The judgment passed in Writ Petition No.4938 of 1999 is hereby set aside and the same is dismissed. ✓

Sd/- M. Amin choudhury, C.J.

Sd/- Mainur Raza choudhury, J.

Sd/- M. G. Rabbani, J.

Sd/- Md. Rehul Amin, J.

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The 4th day of June, 2001.
 A.T. Bhuiyan/*17210/*