BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

**Order Reserved on:14.8.2019**
**Date of Decision: 9.9.2019**

**Appeal No.386 of 2018**

Central Bank of India
Chandermukhi, Nariman Point,
Mumbai – 400021. ….. Appellant

Versus

Securities & Exchange Board of India
SEBI Bhavan, C-4A, G Block,
Bandra Kurla Complex,
Mumbai 400051. …… Respondent

Mr. Ankur Kumar, Advocate i/b. Ezylaws for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Faiza Dhanani, Mr. Chirag Bhavsar, Advocates i/b. MDP & Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice M.T. Joshi

1. The present appellant had earlier carried out the business of debenture trustee. During the period of 12th November, 2009 to June, 2010, the appellant had accepted five listed trusteeship assignments. The respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') has conducted

inspection of its record for a period from September 9, 2009 to August 31, 2015 and found violations of various provisions of Securities and Exchange Board of India (Debenture Trustee) Regulations, 1993 (hereinafter referred to as 'DT Regulations'). Therefore, the show cause notice was issued and after considering the reply given by the appellant the adjudicating proceedings was started. After duly hearing the appellant, the Adjudicating Officer vide the impugned order found that the appellant was in violation of various provisions of DT Regulations. In the circumstances, a cumulative penalty of Rs.3 lakhs was imposed on the appellant under the provisions of Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') in terms of the provisions of Section 15HB of the SEBI Act. Hence, the present appeal.

2. First of the violation noted by SEBI was violation of Regulation 13(a) of the DT Regulations which provides for entering into written agreements with the issuer companies. SEBI has found that in respect of Britannia Industries Ltd, Deepak Fertilizers and Petrochemicals Corporation Ltd. no such agreement was entered into.

According to the appellant, no format of agreement is prescribed by the DT Regulations and, therefore, as appointment and inspection letters of the assignment are on record there is no violation of this regulation.

The Adjudicating Officer however did not accept the explanation by observing that though any format is not prescribed, SEBI has prescribed, details of agreement under DT Regulations.

Learned counsel for the appellant submitted before us that an offer in writing from the issuer Company and acceptance letter of the trusteeship by the appellant amounted to agreement as per the Indian Contract Act. On the other hand, learned counsel for the respondent SEBI submitted that the copies of those acceptances would show that there were certain counter offers. In the circumstance, the specific provision of DT Regulation of having a written agreement is not followed.

From the record we find that though there is no specific written agreement executed between the issuer Company and the appellant it is an admitted fact that on the basis of acceptance letter of the offer of the issuer Company the appellant acted as debenture trustee. Thus by conduct the conditions of acceptance letters were accepted. Since written proposal from the issuer

Company and the acceptance letter from the appellant are on record in our view there is a technical violation of this specific regulation.

3. The second charge against the appellant was that a director of the appellant was also director of one of its client that is the issuer Company IL&FS. The appellant explained that the appellant bank is a public sector bank. Its directors are appointed in terms of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Central Government held 81.46% of the equity capital on June 30, 2015. 18.54% shares were held by shareholders other than Central Government including LIC Pension Funds Ltd. As per the rule 2 Directors were elected by shareholders. Mr. S. Bandyopadhyay was the Managing Director and CEO of LIC Pension Fund Limited, a subsidiary Company of LIC of India. He assumed the office of independent Director of the appellant on 1st July, 2015. LIC had also investment in IL&FS Ltd. Therefore, it had appointed Mr. S. Bandyopadhyay as a Director in IL&FS. Therefore, he was not involved in the management either of the appellant bank or IL&FS at the relevant time. It was further explained that debenture trusteeship business of IL&FS was undertaken on 5th November, 2014 i.e. before election of Mr. S. Bandyopadhyay

as Director of the appellant. The appellant had ceased to be debenture trustee by the time Mr. S. Bandyopadhyay became director. However, as IL&FS could not appoint new trustee, the appellant was required to continue as interim debenture trustee. Therefore, there was no violation of Regulation 15(3) of the DT Regulations.

According to the Adjudicating Officer, the composition of the Board of Director of the appellant as a public sector bank or the type of Directorship in the issuer company is immaterial according to DT Regulation. Therefore, the explanation was not accepted.

4. 13A(a) of DT Regulations provide as under:-

> *"13A. No debenture trustee shall act as such for any issue of debentures in case—*
>
> *(a) it is an associate of the body corporate,*
>
> > *"associate" in relation to a debenture trustee, or body corporate shall include a person, -*
> >
> > *(i) who, directly or indirectly, by himself, or in combination with relatives, exercise control over the debenture trustee or the body corporate, as the case may be, or*
> >
> > *(ii) in respect of whom the debenture trustee or the body corporate, as the case may be, directly or indirectly, by itself, or in combination with other persons, exercise control, or*

> *(iii) whose director, is also a director, of the debenture trustee or the body corporate, as the case may be."*

5. Upon hearing both sides in our view since the provisions in clear terms prohibit a person who inter alia "exercise control over the debenture trustee or the body corporate" would not mean a nominee Director or an independent Director. Unless and until the promoter or a person is able to exercise control he cannot be termed as associate. In the present case, Mr. S. Bandyopadhyay was merely nominee and independent director respectively. Further, the appellant had already discontinued to be debenture trustee of IL&FS but was required to merely act as interim debenture trustee. Therefore, in our view, there is no violation of the Regulations.

6. The third alleged violation by the appellant is that of Regulation 13A(b) of the DT Regulations which provide that the Debenture Trustee shall not act as such for any issue of debenture in case it has lent and the loan is not yet fully repaid or is proposing to lend money to the issuer Company. The appellant started granting loans to IL&FS Ltd since February, 1996 and the relationship continued, even then the appellant acted as debenture trustee for 12 issues of IL&FS.

The appellant submitted that the provision of DT Regulation was inserted with effect from 4th July, 2003. Since June, 2010 the appellant has stopped new business of debenture trusteeship. The loan was sanctioned to IL&FS since more than two decades and the limitations were being reviewed every year. It was gradually reduced and at the time of inspection it was Rs.37.50 crores while in the year 2008-2009 it was Rs.82.50 crores. There was no enhancement of the credit facility to IL&FS. In view of the fact that the credit facility could not have been abruptly stopped, gradual exit from the position had taken place and ultimately the appellant also decided to gradually exit from the position of debenture trustee of IL&FS. Notice for retirement was issued on 5th November, 2014. It is therefore submitted that in view of the above facts the violation if any may be condoned.

The Adjudicating Officer found that some time the loan limit was even increased by Rs.2.50 crores and as there is admission of violation of the Regulations the Adjudicating Officer found that the violation has been proved.

Upon hearing both sides in our view though technically there is violation of the Regulations, the explanation of the appellant will have to be accepted as there cannot be any sudden

exit from the loan facility availed by IL&FS though at a time there may be small increase in the limit. Ultimately it is to be noticed that the appellant decided to exit from the position of debenture trustee of IL&FS. Therefore, there was only a technical violation of the provisions.

7. The fourth violation held by the Adjudicating Officer is of Regulation 15(i)(n) of the DT Regulations. SEBI alleged that the appellant was required to communicate to the debenture holders on half yearly basis the compliance of the term of issues by the issuer companies and default if any in payment of interest etc. The appellant's submissions were that during the inspection period it was acting as a trustee in respect of five companies only. As regards IL&FS there were no issue of default in payment by the issuer company of default in payment of interest letter under joint signature of the Company and the appellant was being sent to all the debenture holders every half yearly. After the inspection, the appellant has started sending communication exactly under the Regulation to the debenture holders and copies thereof have been uploaded in the appellant's website. It is therefore submitted that it was only limited non compliance of the Regulations which is technical in nature.

The Adjudicating Officer however observed that the duty cast by DT Regulation 15(1)(A) is not fulfilled by the appellant. The Adjudicating Officer further observed that while the show cause notice is regarding five companies the appellant has given explanation regarding only one Company namely IL&FS. Further since there was admission of limited non compliance the Adjudicating Officer did not accept the explanation.

In our view though the show cause notice was regarding the non compliance of the Regulations in respect of five companies the explanation is regarding only one issuer Company namely IL&FS. In the circumstances, the violation of the Regulation is clearly established in the present case.

8. Lastly the Adjudicating Officer found that the appellant has violated the provisions of SEBI circular no. MIRSD/DPS III/Cir-11/07 dated 6th August, 2017 and Regulations 23(4), (5), (6) of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

According to the circular and the Regulation, the debenture trustee is required to disseminate information and reports on securities filed by the issuer to the investors. The debenture trustee is required to place the same on the website. Further, press release is also required to be issued.

The appellant submitted that it was complying with the circular. Periodical report had been uploaded on the appellant's bank's website. There were no defaults in payment of interest of redemption money by the issuer Company during the relevant period therefore no information in this regard was required to be posted on the website. Further no press release was required.

The Adjudicating Officer held that merely because there were no defaults by the issuer Company post SEBI inspection, the dissemination of the information cannot be withheld in this regard. The explanation of the appellant was therefore not accepted.

In our view, since there were no default the requirement of posting information in this regard was merely a formality. The appellant was disseminating other information in substance as detailed above. The default, if any, was therefore only technical in nature.

9. In view of the above findings, the Adjudicating Officer concluded that the appellant is liable for monetary penalty. The Adjudicating Officer found that the amount of disproportionate gain or unfair advantage cannot be quantified. He, therefore, held that a penalty of Rs.3 lakhs would be sufficient. The learned counsel for the appellant pointed out the fact as

contended in the reply to the show cause notice that the appellant has stopped its business of debenture trusteeship since the year 2009 and all the trustee assignment have been now taken by the subsidiary namely Central Bank Financial Services Ltd. He further submitted that the nature of violation as detailed above cannot be termed as intentional or serious in nature and, therefore, appeal be allowed. On the other hand learned counsel for the respondent submitted that except the explanation regarding the nonexistence of written agreement, the plea of the appellant is not in denial of the fact of violation but only in explaining as to why there were violations. He therefore submitted the appeal be dismissed.

10. Upon hearing both sides we find that the appellant is a public sector bank. While some of the violations are technical in nature some violations particularly regarding the disbursement of loan to IL&FS was the cause of old standing relations between the appellant and the Company which could not have been suddenly stopped due to amendment of the DT Regulations in between. In that view of the matter, in our view, instead of monetary penalty censuring the appellant on this count would be just and sufficient. Hence the following orders.

The appeal is partly allowed. The order of the Adjudicating Officer imposing monetary penalty upon the appellant is set aside instead the appellant is let off on censure for the violations.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C. K. G. Nair
Member

Sd/-
Justice M.T. Joshi
Judicial Member

9.9.2019
Prepared and compared by
RHN