

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 101 of 2011

Date of decision: 26.9.2011

Axis Bank Ltd.
(Debenture Trustee)
3rd Floor, “Trishul”,
Opp. Samartheshwar Temple,
Law Garden, Ellis Bridge,
Ahmedabad – 380 006.

.....Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

..... Respondent

Mr. R. S. Loona, Advocate with Mr. Abhishek Borgikar, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Omprakash Jha, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S. S. N. Moorthy, Member

Per : Justice N. K. Sodhi, Presiding Officer (Oral)

Challenge in this appeal is to the order dated March 10, 2011 passed by the adjudicating officer imposing a monetary penalty of ₹ 2 lacs on the appellant for violating, among others, Regulation 13A of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter called the regulations).

2. The appellant is a private sector bank which quite often acts as a debenture trustee in the securities market. It is registered with the Securities and Exchange Board of India (for short the Board) as a debenture trustee under the regulations. The Board carried out inspection of the books of accounts, documents and other

records maintained by the appellant as a registered intermediary. The inspection team found a large number of irregularities including violation of several provisions of the regulations. Adjudication proceedings were initiated against the appellant and a show cause notice dated December 6, 2010 was issued pointing out the alleged violations of regulations. It was alleged that the appellant as a debenture trustee had common directors with the body corporates with whom it had entered into agreements to act as debenture trustees. It was further alleged that the appellant had financial dealings with such body corporates and that it violated, among others, Regulation 13A of the regulations. The appellant filed its detailed reply denying some of the allegations levelled in the show cause notice. On a consideration of the material collected during the course of the inspection and the enquiry conducted by the adjudicating officer, he concluded that the appellant was guilty of several irregularities and violations as alleged in the show cause notice. Some of the allegations made in the show cause notice have also been dropped and the appellant exonerated. As regards the violation regarding Regulation 13A, it has been found that one Shardul Shroff was a common director on the boards of the appellant and Noida Toll Bridge Co. Ltd. with whom the former had an agreement to act as a debenture trustee in May 2002. Similarly, one Rama Bijapurkar was a common director on the board of the appellant and Mahindra & Mahindra Financial Services Limited on whose behalf the appellant acted as a debenture trustee. The appellant had also acted as a debenture trustee on the basis of agreements executed with Hindustan Construction Company Limited and Jindal Stainless Limited although it had lent monies to these body corporates. In other words, the appellant while acting as a debenture trustee had financial dealings with these two companies. In the reply filed by the appellant, this factual position has not been disputed and it is stated that the lapse on the part of the appellant was not intentional and that the common directors were soon made to resign.

We have gone through the impugned order and the record and it appears to us that the lapse committed by the appellant does not appear to be intentional and it is for this reason that the adjudicating officer has taken a lenient view and imposed a nominal penalty of ₹ 2 lacs. In view of these lapses, the impugned order deserves to be upheld. Without going into the other allegations levelled against the appellant, we dismiss the appeal and uphold the impugned order. There is no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S. S. N. Moorthy
Member

26.9.2011
Prepared & Compared by
ptm