

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN RESPECT OF CENTRAL BANK OF INDIA

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) initiated an enquiry against the Central Bank of India (hereinafter referred to as the Bank), vide order dated May 13, 2009 under the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations 2008. The said enquiry was in respect of the alleged violations committed by the Bank as a debenture trustee in respect of the rights issue of 15% Secured Redeemable Non-Convertible Debentures by Synergy Financial Exchange Limited (hereinafter referred to as SFEL) and 19.5% Secured Non-Convertible Debentures by DCM Financial Services Limited (hereinafter referred to as DCM). It was alleged that the Bank had contravened the following provisions:

- i. Regulations 14, 15(1)(b), 15(1)(f), 15(1)(g)(iii)-(iv), 15(1)(j), 15(2)(b) of the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 (hereinafter referred to as the Regulations).
- ii. Regulation 15(1)(h) of the Regulations
- iii. Clauses 2 and 3 of the Code of Conduct stipulated under Regulation 16 of the Regulations and
- iv. Rule 4(d) of the Securities and Exchange Board of India (Debenture Trustees) Rules, 1993 (since rescinded)

2. The Designated Authority (hereinafter referred to as the Enquiry Officer), vide report dated November 19, 2009 recommended that a warning may be issued to the Bank to be careful and diligent in its duty as a debenture trustee, in respect of its activities in the matter of SFEL. The Enquiry Officer further

recommended that all the allegations pertaining to the issue of Secured Non-Convertible Debentures by DCM may be withdrawn, for the reasons stated therein. Thereafter, a notice dated February 15, 2010 was issued by SEBI to the Bank requiring it to show cause as to why appropriate action as recommended by the Enquiry Officer should not be taken against it. A copy of the Enquiry Report was also forwarded to the Bank along with the said show cause notice. The Bank was advised to indicate as to whether it required a personal hearing before SEBI. Subsequently, the Bank, vide letter dated March 5, 2010 *inter alia* stated that, as a debenture trustee it had acted diligently and had taken legal action against the company for the recovery of debenture amount with interest and for enforcement of security, without funding for the legal expenses from the debenture holders. It was further replied “*We have considered the report and accept the recommendation of the designated authority of issuing a ‘warning’, in terms of the said report. We have taken note of the findings of the Designated Authority on the various issues & shall take care to ensure that in future such occurrences are not repeated.*” In view of the above and also for the fact that the Bank had not sought for a personal hearing, the present proceedings is being considered and disposed of on the basis of the material available on record including its letter dated March 5, 2010.

3. The allegation is that the Bank had failed to discharge its duty as expected from a prudent debenture trustee and contravened various provisions of the Regulations as mentioned in the Enquiry Report. The facts of the case and the findings by the Enquiry Officer have not been disputed. I note that the National Consumer Disputes Redressal Commission, vide order dated July 4, 2008, while dismissing the revision petition filed by the Bank directed its Registry to forward a copy of the said order to SEBI for appropriate action, if thought fit, for the deficiency in discharge of the duties by the Bank as prescribed under the Regulations of SEBI. Though, a Special Leave Petition

was filed by the Bank against the aforesaid order, the same was dismissed by the Hon'ble Supreme Court of India, vide Order dated September 26, 2008 leaving the questions of law open. It was *inter alia* observed by the Enquiry Officer that the Bank was not able to clearly prove compliance of Regulation 15(1)(b) of the Regulations which mandates inspection of books of account, record, registration of body corporate and trust property to the extent necessary for discharging its obligation. It was further observed, *"Had a detailed inspection been conducted by the noticee, the financial position of SFEL may have come to light and consequently either the defaults in payment of principal and interest could have been avoided; or the noticee could have filed suit for enforcement of security without further delay."* Detailed findings were given by the Enquiry Officer in respect of each of the charges. It was also found that the Bank had not called for a meeting of the debenture holders and intimated them of the state of affairs of SFEL, as mandated under Regulation 15(2)(b) of the Regulations. It was *inter alia* found by the Enquiry Officer that the Bank had violated Regulations 15(1)(b), 15(1)(h) read with Clauses 2 and 3 of the Code of Conduct mentioned in Schedule III to the Regulations, 15(2)(b) of the Regulations in respect of its activities as a debenture trustee in the matter of SFEL. As regards, the violation of Regulation 15(1)(j) of the Regulations, the Enquiry Officer recommended to take a lenient view.

4. The violations committed by the Bank were examined in detail by the Enquiry Officer. Though, a copy of the same was provided to the Bank, it chose not to controvert the findings of the Enquiry Officer. As the Bank has not disputed the findings of the Enquiry Officer, I do not deem it necessary to repeat the same in detail in this Order. The Bank has lost sight of the statutory duties prescribed under the Regulations while functioning as a debenture trustee. Being a public sector bank and carrying out activities as a debenture trustee, it should have been all the more careful and diligent in its duties. The foremost

duty of a debenture trustee is to protect the interest of the debenture holders. Had the Bank complied with the provisions of the Regulations and conducted proper inspection of SFEL, the debenture holders would not have lost interest or the redemption amount. The duties of the debenture trustees are mandatory in nature and the breach of the same would result in an appropriate penalty. The Bank, in its reply to the show cause notice submitted that it had taken note of the findings of the Enquiry Officer on various issues and that it shall take care to ensure that such occurrences would not be repeated in future. The Bank also accepted the recommendation of "warning". In the facts and circumstances of the case, I do not find any reason to disagree with the findings and recommendation of the Enquiry Officer and the present enquiry proceedings is disposed of as ordered herein under.

4. In view of the foregoing, I, in exercise of the powers conferred upon me, under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby warn Central Bank of India to be careful and cautious in future while discharging its duties as a debenture trustee. Central Bank of India is further advised to comply with the regulations, circulars and other statutory requirements prescribed by the Securities and Exchange Board of India from time to time, that govern its activities as a debenture trustee.

**DR. K.M.ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

**PLACE: MUMBAI
DATE: JUNE 25, 2010**