BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 8 of 2005

Date of decision: 6.7.2009

Lloyds Finance Limited ……Appellant

Versus

Securities and Exchange Board of India …… Respondent

Mr. E. P. Bharucha, Senior Advocate with Mr. Mohan Salion, Advocate for the Appellant.
Mr. Pravin Kamble, Advocate with Mr. Kumar Desai, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

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

Challenge in this appeal is to the order dated November 8, 2004 passed by the adjudicating officer imposing a monetary penalty of Rs. 3 lacs on the appellant for having violated the provisions of Section 15C of the Securities and Exchange Board of India Act, 1992 (for short the Act) for its failure to redress the grievances of its investors. The facts giving rise to this appeal lie in a narrow compass and these may first be noticed.

The appellant is a company registered under the Companies Act, 1956 with its registered office in Mumbai. It had been engaged in providing financial services to its customers and was registered with the Reserve Bank of India as a non-banking finance company. During the course of its business activities, the appellant had been inviting and accepting deposits from the public under various schemes. It had issued convertible debentures to the public and it is common ground between the parties that the convertible portion of the debentures were converted by the company at the option of

the investors and the non convertible portion was held by them (investors) as non convertible debentures. The Securities and Exchange Board of India (for short the Board) received complaints from the investors alleging, among other things, that their grievances had not been redressed by the company in as much as the non-convertible debentures when matured for payment had not been redeemed and that the investors were not paid the amounts due to them. On receipt of the complaints the Board addressed several communications to the company calling upon it to redress the grievances of its investors. It is not in dispute that a total of 265 complaints were received by the Board which were forwarded to the company for their redressal. Since the company failed to redress the grievances of its investors, a notice was issued by the Board calling upon it to show cause why adjudication proceedings be not initiated against it for imposing a monetary penalty under the Act. During the pendency of the proceedings before the Board, as many as 228 complaints were redressed by the company and only 37 complainants had a grievance namely that the amount due to them on maturity of the non-convertible debentures had not been paid. In response to the show cause notice, the company filed its detailed reply pointing out therein that it was not a fit case for imposing the monetary penalty. The adjudicating officer afforded a personal hearing to the representatives of the company who had then filed their detailed submissions. It was pointed out that the appellant was a non banking finance company regulated by the Reserve Bank of India which had by its letter dated February 27, 1999 communicated that a special officer had been appointed for the purpose of overseeing the activities of the company and also for ensuring compliance with the statutory requirements and to prevent the affairs from further deterioration. The company had also been directed that it shall have to obtain a prior written permission from the said special officer for making any payment to any one except the payment of salaries and other establishment expenses. The adjudicating officer was further informed that a request was made to the special officer by letter dated June 25, 2001 seeking his permission to make payment to the non-convertible debenture holders some of whom had complained to the Board and that the said permission was declined on the ground that it would be discriminatory if payment was made to some and not to all the

debenture holders. On a consideration of the material collected by the adjudicating officer during the course of the enquiry and taking note of the reply filed by the company, he came to the conclusion that the appellant had failed to redress the grievances of its investors and thereby it had violated the provisions 15C of the Act. Accordingly, by the impugned order he levied a monetary penalty of Rs. 3 lacs. Hence this appeal.

We have heard the learned senior counsel on behalf of the appellant and Shri Kumar Desai learned counsel on behalf of the Board. We are of the view that the impugned order in the circumstances of the present case cannot be sustained. It is true that as many as 265 investors of the appellant company had complained to the Board regarding the non redressal of their grievances and the fact of the matter is that during the pendency of the proceedings before the Board, the grievances of as many as 228 investors had been redressed. Only the grievances of 37 investors could not be redressed. They were holding non-convertible debentures which had matured and the amount at maturity had not been paid. As already noticed, the stand of the company is that it was unable to make the payment owing to the restraint orders passed by the Reserve Bank of India and, therefore, the adjudicating officer was not justified in levying the penalty. We find merit in this submission. It is not disputed that the Reserve Bank of India had appointed a special officer to oversee the activities of the company and to ensure compliance with the statutory requirements by the company and also to prevent its affairs from further deterioration. We also have on record a direction issued by the Reserve Bank of India directing the company not to make payment to any person except the payment of salaries and other establishment expenses without the prior written permission from the special officer. The permission which was sought by the company was declined by the special officer and the communication received from the Reserve Bank of India dated August 25, 2001 in this regard reads as under:

> "Show Cause Notice from Stock Exchange, Mumbai-
> Payment to NCD holders- M/s. Lloyds Finance Ltd.
>
> Please refer to your letter No. LFL/MGJ/HSM/55/01 dated 25th June 2001 on the captioned subject. In this connection,

> we advise that the matter has been examined carefully at our end. However, we are unable to accede to your request since the payment of Rs. 8.5 lakhs to some debenture holders who are pressing for payment, will be discriminatory as against others as the total debenture payment due is Rs. 2.5 crores."

It is thus clear that the company had not been granted the permission to pay the non-convertible debentures, some of whom had complained to the Board regarding the non redressal of their grievances. The adjudicating officer has referred the communication dated July 31, 2003 to hold that the restraint order passed by the special officer had been lifted and that the Reserve Bank of India had no objection to the payment being made to the secured creditors. We have perused this communication which is on the record and it is true that the Reserve Bank of India had given its no objection to the appellant company's proposal for making payment to its secured creditors but by that time a winding up petition had already been filed and was pending in the High Court since the year 2002 (being company petition 1017 of 2002). It is also not in dispute that the Hon'ble High Court appointed a special committee headed by a former Judge of the High Court and two senior retired police officers to look into the affairs of the company and to formulate schemes for payment to the depositors. The primary function of this special committee was to recover the assets of the company with a view to discharge its liabilities and we are informed that this committee is still in place and carrying on its activities under the supervision of the Hon'ble High Court. Further, in the winding up proceedings the appellant company has filed a scheme before the Hon'ble Company Judge for the payment of amounts due to the non convertible debenture holders and we are informed that this scheme is pending for final consideration by the court. This appeal was being adjourned from time to time for the last more than two years to wait the out come of the said scheme. In view of the pendency of winding up proceedings in the High Court, the company was unable to pay to its non-convertible debenture holders even though the Reserve Bank of India had lifted the ban initially imposed by it on the payment to the secured creditors. In this view of the matter, we are satisfied that the company was really unable to make the payment to the non convertible debenture holders even though it wanted to and, therefore, this is not a fit case in which penalty

under section 15C of the Act should be levied. As already noticed, the company was unable to make the payment due to the restraint order passed by the Reserve Bank of India and thereafter due to the pendency of winding up proceedings in the High Court which fact had not been taken note of by the adjudicating officer.

For the reasons recorded above, the appeal is allowed and the impugned order levying monetary penalty on the appellant set aside with no order as to costs.

Sd/-
Justice N.K.Sodhi.
Presiding Officer

Sd/-
Samar Ray
Member

6.7.2009
pmb

Prepared & Compared by
pmb