BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

APPEAL NO.8/2001

In the matter of:

Venus Greeneries Ltd **Appellant**

Vs.

Securities & Exchange Board of India **Respondent**

APPEARANCE

Mr. Arun Kumar
Advocate **for Appellant**

Mr. S.V.Krishna Mohan
Division Chief, SEBI

Mr.Praveen Trivedi
Asstt. Legal Adviser,
SEBI **for Respondent**

(Appeal arising out of the order dated 7.12.2000 made by the Chairman, Securities & Exchange Board of India)

ORDER

The Appellant is a public limited company registered with the Registrar of Companies, Bihar. Paid up capital of the Appellant, as per its Balance Sheet as on 31.3.2000 is Rs.17.07 lakhs, comprising 1, 70, 700 equity shares of Rs.10 each. The Appellant is stated to be a "plantation company". It had launched three collective investment schemes. In terms of the Securities and Exchange Board of India Act, 1992 (the Act) and the Securities and Exchange Board of India (Collective Investment Schemes) Regulations 1999 (the 1999 Regulations), the Respondent is mandated to regulate the working of collective investment schemes. According to the Respondent's version the Appellant had failed to comply with the statutory requirements and on that premises it issued the impugned order under section 11B of the Act read with regulations 65 and 73 of the 1999 Regulations. The impugned order appears to be a standard order issued by the Respondent to all those existing collective investment schemes, which according to the Respondent had failed to comply with the requirements of the Regulations. The order is not specifically addressed to the Appellant. But the forwarding letter is addressed to the Appellant. Full text of the short order which is under challenge is as under: -

"SECURITIES AND EXCHANGE BOARD OF INDIA

DIRECTIONS UNDER SECTION 11B OF THE SEBI ACT 1992 READ WITH REGULATIONS 65 & 73 OF SEBI (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 1999.

You had filed information/details with SEBI regarding your Collective Investment Schemes pursuant to SEBI Press Release dated November 26, 1997 and/or public notice dated December 18,1997 and/or our letter. Subsequent to the notification of SEBI (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as the said regulations) dated October 15, 1999, any person who immediately prior to the commencement of these regulations was operating a Collective Investment Scheme(s), shall make an application to SEBI for grant of registration

within a period of two months from the date of notification, under the provisions of the said Regulations.

SEBI having regard to the interest of the investors and requests received from various entities, extended the last date for submitting application by existing entities upto March 31, 2000 and the same was intimated by SEBI vide a press release and a public notice. However, you did not apply for grant of registration with SEBI as provided under the said Regulations.

As per regulation 73(1) of the said regulations an existing Collective Investment Scheme, which has failed to make an application for registration with SEBI, shall wind up the existing scheme(s) and repay the investors.

Further as per regulation 74, an existing Collective Investment Scheme, which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73.

SEBI vide letter dated December 15, 1999/December 29, 1999 and also by way of a public notice dated December 10, 1999, had given individual intimation in terms of regulation 73(2) which casts an obligation on you to send an Information Memorandum to all the investors detailing the state of affairs of the scheme(s), the amount repayable to each investor and the manner in which such amount is determined. Accordingly, you were required to send the Information Memorandum to the investor latest by February 28, 2000. You have neither applied for registration under SEBI (Collective Investment Scheme) Regulation, 1999 nor have taken any step for winding up of the schemes in the manner provided under the said Regulation for repayment to the investors. It is, therefore, noted that you have prima facie violated the provisions of section 12(1B) of SEBI Act, 1992 and regulation 5(1) read with regulation 68(1), 68(2), 73 and 74 of SEBI (Collective Investment Schemes) Regulations, 1999.

SEBI also issued a public notice dated March 31, 2000, in the newspaper inviting your attention to the aforesaid position.

Further, a notice dated May 12, 2000, was issued to you asking you to show cause as to why the action as stated therein be not initiated against you. However, you have neither replied to this show cause notice nor have you responded to the news paper publication.

Now, therefore, in exercise of the powers conferred upon me under section 11B of SEBI Act, 1992 I hereby direct you to refund the money collected under the scheme (s) with returns, which is due to the investors as per the terms of the offer within a period of one month from the date of this Order failing which the following actions would follow: -

> Initiation of prosecution under section 24 of SEBI Act, 1992, which prescribes imprisonment for a term, which may extend to one year or with fine, or with both against you/promoters/directors/managers/persons in charge of the business of your scheme.
>
> You/promoters/directors/managers/persons in charge of the business of your scheme would be debarred from operating in the capital market for a period of 5 years.
>
> Writing to the State Governments/local police to register civil/criminal cases against you for apparent offences of fraud, cheating, criminal breach of trust and misappropriation of public funds.
>
> Writing to the Department of Company Affairs to initiate the process of winding up of your company".

The Appellant claiming to be aggrieved by the above order filed the present appeal on 9.2.2001. In terms of section 15T of the Act, appeal is to be filed within 45 days of the receipt of the order by the concerned person. According to the Appellant the impugned order though dated 7.12.2000 reached it only on 28.12.2000 and the appeal was filed on 9.2.2001, thereby within the time stipulated in section 15T of the Act. The Respondent has not contested this. The Respondent filed its reply on 12.3.2001. Thereafter the appeal was posted on different dates i.e. on 17.4.2001, 11.6.2001, 5.7.2001, 20.8.2001, 7.9.2001 and 8.10.2001. The Appellant sought adjournment on one ground or other on each occasion resulting in delay in the disposal of the appeal.

Appellant's Counsel was present only on 5.7.2001 and 8.10.2001.Even though present on 5.7.2001, he sought adjournment. Since the appeal was being dragged on, the Tribunal had to inform the Appellant of the consequences of remaining unrepresented at the scheduled hearings and seeking adjournment routinely. In the minutes dated 7.9.2001 fixing the case on 8.10.2001, a copy of which was sent to the Appellant, the Tribunal recorded as follows:

7.9.2001

"Appellant is not present even today. The appeal was filed on 9.2.2001 and the Respondent's reply was served on the party around 12.3.2001. Thereafter the case was posted for disposal on 17.4.2001. On that date the Appellant did not appear but asked for adjournment by three months. Matter was adjourned to 11.6.2001. Appellant did not appear on 11.6.2001, neither did he request for any adjournment. Case was again adjourned to 5.7.2001. On 5.7.2001 Mr. Arun Kumar, advocate for the Appellant attended and sought adjournment. Matter adjourned to 20.8.2001. On that day no one appeared for the Appellant, neither there was any request from the Appellant for adjournment. Matter was again adjourned to today i.e. 7.9.2001. Yesterday by fax the Appellant's counsel has informed the Tribunal that he is suffering from jaundice and as such not in a position to attend the hearing today. He seeks adjournment of the case by one month. Respondent has serious objection in granting extension. They feel that under one alibi or other the Appellant is dodging refund of money to the detriment of the investors. I have noted the apprehension of the Respondent. However, one more opportunity is given to the Appellant in the light of the request that the Counsel is not in a position to appear today on personal grounds. Posted at 11.00 a.m. on 8.10.2001."

On 8.10.2001 the Appellant's Counsel appeared and argued the case.

The Appellant on 5.7.2001 filed a rejoinder and on 17.8.2001 a photocopy of the Respondent's order dated 2.7.2001 was also filed in the Tribunal.

As already stated, the impugned order is a general order meant to apply to all those collective investment schemes, who according to the Respondent had either failed to seek registration under the Regulations or did not take any steps for winding up of the Schemes in the manner provided therein. The impugned order is directed to those schemes which had not responded to the Respondent's letter dated 15.12.1999/29.12.1999, public notice issued in the news papers on 31.3.2000 and the show cause notice issued on 12.5.2000.

It is seen from the pleadings that there is a Civil Writ Petition No.3352/98 pending before the Hon'ble Delhi High Court in which the Appellant and the Respondent have been made parties. However, the Representative of the Respondent categorically stated that the impugned order and the resultant appeal are not covered under the said CWP and the matter is not subjudice. Based on the said submission, the present appeal was taken up for consideration.

According to Shri Arun Kumar, learned Counsel appearing for the Appellant, the Appellant had launched 3 collective investment schemes namely (1) Green Value Unit, (2) Master Green Unit and (3) Early Encash Green Unit. In respect of Green Value Unit Scheme and Master Green Unit Scheme, the Appellant has not promised any monetary return, but the investors were assured of giving certain fixed volume of wood in return of their investment after ten years from the date of their investment and in respect of the third scheme i.e. Early Encash Green Unit, the investors were assured of some monetary return after 6 years of their investment. According to Shri Kumar, the Appellant has neither launched any new scheme nor raised fresh funds from the public in the existing schemes since 1.4.1998. Shri Kumar stated that the total amount so far mobilised from investors was only Rs.21.38 lakhs, and out of which a sum of Rs.4.95 lakhs has already been returned to the investors concerned. According to the learned Counsel, the Appellant has also invested its own funds to the extent of Rs.19.45 lakhs which is more than the money raised from the public and as such the Appellant is also interested in properly managing the scheme to get the yield. He also submitted that all the particulars /information sought by the Respondent were duly furnished, but the Appellant could not respond to the Respondent's letters dated 15.12.1999 and 29.12.1999 as the same did not reach the Appellant. The learned Counsel also stated that since the public notice issued by the Respondent on 10.12.1999 was not seen by the Appellant, the requirements of the same could not be complied with.

Learned Counsel submitted that it is not practically possible to wind up the schemes at this stage because the funds received from the public have already been invested in the schemes for procuring land planting and nourishing the trees, that the trees are only partially grown up being only 3 years old having no commercial uses and that Forest Act also prohibits cutting of partly grown trees.

Referring to the instructions to get credit rating of the schemes done by one of the accredited credit rating agencies, the learned Counsel submitted that the said requirement as per the Respondent's letter was only necessary in case the Appellant was to mobilise funds from the public, that since the Appellant had no plan to mobilise funds from the public, as per the Respondent's own version credit rating was not required to be made. He further submitted that in any case, for a small company like the Appellant credit rating by accredited agencies is not possible as the cost involved being prohibitive. According to the learned Counsel, CRISIL one of the credit rating agencies whom the Appellant had approached for the purpose quoted Rs. 1 lakh as initial fee and Rs.60, 000/- per year as surveillance fee, that since the Appellant's scheme is for 10 years the total expenditure on this account alone over the period of 10 years would be Rs.7 lakhs, which if accepted would result in erosion of the funds of the scheme otherwise available to the unit holders

Learned Counsel submitted that inspite of several press releases and advertisements issued by the Respondent, the Appellant has not received even a single complaint, which goes to show the investor confidence in the scheme.

Shri Kumar submitted that, though only 3000 plants were assured by the Appellant to its investors, it has planted 60, 000 Semal plants in its project, which would show the strength of the scheme and the money of the investors is safe.

The learned Counsel submitted that since the impugned order has been passed without providing an opportunity of being heard, the order is in violation of the principles of natural justice and on this ground alone, the order is liable to be set aside.

Learned Counsel submitted that compliance of the impugned order is not only practically possible but also would not be in the interest of investors. According to him it is not in the interest of the investors to wind up the scheme at present as the scheme is for 10 years and the plants are too young to be cut and sold, to realiase money to make refunds. According to him unless these plants are chopped off and sold, there is no way to raise money to meet with the requirements of the impugned order. Learned Counsel submitted that in the interest of the investors, the existing schemes be permitted to continue to its maturity and the Respondent's directions having adverse effect on the scheme and the interest of investors be set aside.

Shri Krishna Mohan, learned Representative of the Respondent explained in detail the back ground in which the Respondent entered the scene to regulate the working of collective investment schemes. He explained the havoc caused by certain collective investment schemes, looting the innocent investors by promising moon on earth and the concern raised by the Courts and the Government in the matter. He referred to several writ petitions filed by investor associations in various High Courts against the collective investment schemes, to show the gravity of the situation. Shri Krishna Mohan submitted that though efforts were made to control these schemes quite sometime ago because of certain limitations nothing much could be done to regulate plantation schemes and the like schemes. It was only on notification of the Regulations in October 1999 and also after making amendment to the Act in 1999, focussed action could be initiated against the errant collective investment schemes.

Shri Krishna Mohan submitted that in terms of section 12(1B) of the Act Collective Investment Schemes are prohibited from carrying on their activities without obtaining certificate of registration from the Respondent. Section 11(2)(c) of the Act empowers the Respondent to regulate collective investment schemes, that in exercise of the power vested in it, the 1999 Regulations was notified on 15.10.1999. In this context he referred to the 1999 Regulations and submitted that those collective investment schemes in existence on the date of notification of the Regulations are left with limited options – either to get registered or to be wound up in the manner provided in the Regulations. According to the learned

Representative since the Appellant has made it clear that it cannot get registered, the course of action left open to it is to wind up the scheme and distribute the income realised to the investors. In this context, he referred to the direction given by the Hon'ble Delhi High Court, in CWP No.3352/98-SD. Bhattacharya & Ors. v. SEBI. & Ors. vide its order dated 7.10.1998 and stated that in so far as the existing schemes are concerned they are required to strictly comply with the circular of the Respondent dated 24.2.1998 vide the said circular existing collective investment schemes were directed to not to mobilise any money from the public or from the investors under the existing schemes unless the instruments of such scheme carries a rating from one of the four credit rating agencies stated therein. He submitted that the Appellant's letter dated 23.11.1998 clearly states that it had not mobilised any funds since 1.4.1998 thereby meaning that they had mobilised money upto April1, 1998 in violation of the said circular.

Shri Krishna Mohan submitted that the Respondent had intimated the Appellant regarding the orders dated 7.10.1998 and 13.10.1998 of the Hon'ble High Court of Delhi in CWP 3352/98, that the Respondent had also sent a letter on 10.12.1999 to the Appellant requesting it to apply for registration or wind up the existing scheme and repay the amount to the investors, that the consequences of non compliance of the said requirements were also stated in the said letter. He further stated that on 29.12.1999, the Respondent had directed the Appellant to send the information memorandum to the investors regarding repayment within two months. Shri Krishna Mohan stated that the Respondent's letters of 12.5.2000 and 31.7.2001 asking the Appellant to furnish the repayment report, addressed to the last known address was returned undelivered.

Learned Representative submitted that even though the Respondent had informed the Appellant about the notification of the 1999 Regulations and the requirement of the said Regulations that no existing collective investment scheme shall launch any new scheme or raise money from the investors without obtaining a certificate of registration from the Respondent the Appellant did not take any steps to obtain registration, that it was in this context the Respondent issued the impugned order under Regulation 65 for protecting the interests of the investors.

Shri Krishna Mohan submitted that the Respondent had not violated the principles of natural justice in as much as it had issued letters to the notified address of the Appellant and public notice was also issued requesting all the collective investment schemes in operation to comply with the requirements of the Regulations, that there is every reason to believe that the Appellant was deliberately avoiding letters from the Respondent as these letters were inconvenient to the Appellant. Appellant cannot say that it did not receive the letters or that it did not see the public notice issued in the Newspapers, that feigning ignorance of the instructions is only an alibi to escape the penal consequences of non compliance of the Regulations.

Shri Krishna Mohan submitted that the order is issued in compliance with the directions of the Hon'ble Delhi High Court in CWP 3352/98 and in terms of the 1999 Regulations and as such requires to be saved.

I have carefully considered the rival contentions and my views are as follows:

It is an admitted fact that the Appellant is managing collective investment schemes which are subject to the regulatory measures provided in the 1999 Regulations. As the scheme was already working on the date of notification of the Regulations on 15.10.1999, it is an existing scheme attracting the provisions of Chapter IX of the Regulations. In Chapter IX of the Regulations the steps required to be taken by the existing collective investment schemes have been stated. In this context it is to be noted that in terms of section 12(1B) of the Act:

> "No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:
>
> Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995 for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30."

In terms of section 11(2)(c) of the Act, the Respondent is empowered to regulate the working of collective investment schemes. Section 30 empowers the Respondent to make regulations consistent with the Act and the rules made thereunder to carry out the purposes of the Act.

The Respondent notified the 1999 Regulations on 15.10.1999. As per regulation 5, "any person who immediately prior to the commencement of the Regulations was operating a scheme, shall subject to the provision of chapter IX of the Regulations make an application to the Board for the grant of certificate within a period of 2 months from such date". Regulation 9 specifies the conditions/ eligibility to get the certificate of registration in respect of the new schemes. Chapter IX prescribes the requirements to be followed by the collective investment schemes, which were operating on the date of notification of the 1999 Regulations (i.e. 15.10.1999). In fact Chapter IX by itself, to some extent is a self-contained code as far as the existing collective investment schemes are concerned. Since this chapter has a bearing on the issues raised in the appeal the provisions enumerated therein are extracted below:

"68. (1) Existing schemes to obtain provisional registration- (1) Any person who has been operating a collective investment scheme at the time of commencement of these regulations shall be deemed to be an existing collective investment scheme and shall also comply with the provisions of this Chapter.

Explanation- The expression ‘operating a collective investment scheme’ shall include carrying out the obligations undertaken in the various documents entered into with the investors who have subscribed to the scheme.

(2) An existing collective investment scheme shall make an application to the Board in the manner specified in regulation 5.

(3) The application made under sub-regulation (2) shall be dealt with in any of the following manner:-

(a) by grant of provisional registration by the Board under sub-regulation (1) of regulation 71;

(b) by grant of a certificate of registration by the Board under regulation 10;

(c) by rejection of the application for registration by the Board under regulation 12.

No scheme to be launched until grant of registration -

69. No existing collective investment scheme shall launch any new scheme or raise money from the investors even under the existing scheme, unless a certificate of registration is granted to it by the Board under regulation10.

Consideration of application for grant of provisional registration -
70. (1) The applicant for the purpose of being considered eligible for the grant of provisional registration shall satisfy the Board that-

(a) the scheme of the applicant are in the nature of collective investment schemes;

(b) the affairs of the applicant are not being conducted in a manner detrimental to the interest of existing investors;

(c) the applicant has at least 50% independent directors at the time of making the application.

Explanation "Independent directors" shall mean directors who are not associates of the persons operating the existing collective investment scheme;

(d) any person, directly or indirectly connected with it has not been granted registration by the Board under the Act.

(2) The Board for the purposes of grant of provisional registration may, inter alia, inspect the schemes, books of accounts, records and documents of the applicant.

(3) The Board shall recover from the applicant such expenses including fees paid to the auditor, appraising agency as may be incurred by it for the purposes of inspecting the schemes, books of accounts, records and documents of the applicant.

(4) The Board on being satisfied that the requirements specified in sub-regulation (1) are not fulfilled may reject the applications and the applicant thereupon shall wind up its existing scheme (s) in the manner specified in regulation 73.

Grant of provisional registration

71. (1) The Board after being satisfied that the conditions specified in regulation 70 are fulfilled may grant provisional registration to the applicant subject to the following conditions, namely:-

(a) the applicant shall get the existing schemes rated by a credit rating agency within one year from the date of grant of provisional registration.

(b) the applicant shall get the existing schemes audited by an auditor within a period of one year from the date of grant of provisional registration;

(c) the applicant shall get existing schemes appraised by an appraising agency within a period of one year from the date of grant of provisional registration;

(d) the applicant shall create a trust and appoint trustee in the manner specified in Chapter IV of these regulations within a period of one year from the date of grant of provisional registration;

(e) the applicant shall comply with accounting and valuation norms in respect of schemes floated before the commencement of these regulations as specified in Part II of the Ninth Schedule within a period of one year from the date of provisional registration;

(f) the applicant shall meet the minimum net worth of Rupees one crore within one year from the date of grant of provisional registration which shall be increased by Rupees one crore each within two years, three years, four years, and five years from the date of grant of provisional registration;

(g) the applicant shall not dispose of the scheme property except for meeting obligations arising under the offer document of the scheme;

(h) the applicant shall comply with the conditions specified in regulation 11;

(i) such other conditions which the Board may impose.

(2) The applicant shall give a written undertaking to the Board to comply with the conditions specified in sub-regulation (1).

(3) The applicant who has been considered eligible for the grant of provisional registration by the Board, shall pay provisional registration fee as per the Second Schedule.

(4) An applicant who after grant of provisional registration fails to comply with the conditions as specified in sub-regulation (1) and regulation 9 shall not be considered eligible for the grant of certificate of registration under regulation 10 and shall wind up the scheme in the manner specified in regulation 73.

Registration to existing scheme-

72. (1) An existing Collective investment Scheme which satisfies the Board that the requirements specified in regulation 9 and the conditions specified under regulation 71 have been fulfilled, shall be granted a certificate of registration under regulation 10 upon payment of registration fees as specified in paragraph 2 of the Second Schedule and on such terms and conditions as may be specified by the Board.

(2) An existing collective investment scheme which has been granted certificate of registration under sub-regulation (1) may be allowed to float new schemes on such terms and conditions as may be specified by the Board.

Manner of repayment and winding up -
73. (1) An existing collective investment scheme which, -

(a) has failed to make an application for registration to the Board; or

(b) has not been granted provisional registration by the Board; or

(c) having obtained provisional registration fails to comply with the provisions of regulation 71;

shall win up the existing scheme.

(2) The existing collective investment scheme to be wound up under sub-regulation (1) shall send an information memorandum to the investors who have subscribed to the schemes, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount is determined.

(3) The information memorandum referred to in sub-regulation (2) shall be dated and signed by all the directors of the scheme.

(4) The Board may specify such other disclosures to be made in the information memorandum, as it deems fit.

(5) The information memorandum shall be sent to the investors within one week from the date of the information memorandum.

(6) The information memorandum shall explicitly state that investors desirous of continuing with the scheme shall have to give a positive consent within one month from the date of the information memorandum to continue with the scheme.

(7) The investors who give positive consent under sub-regulation (6), shall continue with the scheme at their risk and responsibility:

Provided that if the positive consent to continue with the scheme, is received from only twenty-five per cent or less of the total number of existing investors, the scheme shall be wound up.

(8) The payment to the investors shall be made within three months of the date of the information memorandum.

(9) On completion of the winding up, the existing collective investment scheme shall file with the Board such reports, as may be specified by the Board.

74. Existing scheme not desirous of obtaining registration to repay - An existing collective investment scheme which is not desirous of obtaining provisional registration from the Board shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in regulation 73."

On a perusal of the above cited regulations, it is clear that a collective investment scheme which was in operation on the appointed day i.e. 15.10.1999 has three options i.e. (a) get registered with the Respondent or (b) wind up the schemes or (c) formulate a scheme of repayment and make such repayment.

It is evident from the averments in the appeal memorandum and the submissions made by the learned Counsel for the Appellant that it is not in a position to get the schemes registered as per the Regulations for the main reason that its networth is very small and also not possible to raise it to the minimum net worth of rupees one crore required to reach within a year. Further it was also submitted that the fund position of the Appellant was not strong enough to meet the cost of getting the schemes credit rated by the accredited agencies.

The second alternative, that is, winding up of the scheme has also not been favoured by the Appellant for the reason that it would not be in the interests of the investors to chop off the partly grown plants and sell the wood. Learned Counsel had submitted that the trees are hardly 3 years old and to be profitable at least 10 years' growth is required. Learned Counsel had also submitted that the Appellant has not raised funds from the public or from the existing investors towards the scheme since April 1998.

Shri Kumar had submitted that the investors have full confidence in the schemes and that is why nobody has made any complaint against the schemes to the Appellant or to the Respondent. If what the Appellant says is correct, why it has not thought of following the course of action provided in regulation 74? According to the said regulation an existing collective investment scheme which is not desirous of obtaining provisional registration is entitled to formulate a scheme of repayment and make such repayment to the existing investors with the consent of not less than 75% of the investors, in the manner specified in regulation 73 (text extracted above). Reluctance to pursue the course of action under regulation 74 remains unexplained.

It is evident from the Appellant's own version that it has not complied with the requirements of Chapter IX applicable to the existing collective investment schemes. The Appellant's contention that the order has been passed without giving any opportunity of being heard and as such violative of the principles of natural justice is unfounded in as much as it is on record that the Respondent had issued notices to the Appellant at its registered office requesting to comply with the statutory requirements. These letters were stated to be returned undelivered to the Respondent. The fact that the communication issued to the Appellant's registered office address used to return undelivered is corroborated by the fact that even the notices issued by the Tribunal too had the same fate. The communications were addressed to the office address given by the Appellant and it is for the Appellant to make proper arrangements to receive letters etc. at its notified office. It is on record that the Respondent before issuing the impugned order had also issued public notice in the newspapers giving opportunity to all those existing collective investment schemes including the Appellant to represent to the Respondent, if they so desired, in the matter. It is difficult to believe that the Appellant's management had missed such a prominently displayed notice in the newspapers circulated in Patna.

Therefore, feigning ignorance of the notice and questioning the validity of the order on the ground of breach of the rules of natural justice is untenable.

In terms of regulation 65, the Respondent is empowered to issue the following directions.

> "65. Directions by the Board: - The Board may, in the interests of the securities market and the investors and without prejudice to its right to initiate action under this Chapter, including initiation of criminal prosecution under section 24 of the Act, give such directions as it deems fit in order to ensure effective observance of these regulations, including directions:
>
> > (a) requiring the person concerned not to collect any money from investors or to launch any scheme;
> >
> > (b) prohibiting the person concerned from disposing of any of the properties of the scheme acquired in violation of these regulations;
> >
> > (c) requiring the person concerned to dispose of the assets of the scheme in a manner as may be specified in the directions;
> >
> > (d) requiring the person concerned to refund any money or the assets to the concerned investors alongwith the requisite interest or otherwise, collected under the scheme;
> >
> > (e) prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specified period."

The impugned order directing the Appellant to refund the money to the investors is well within the powers of the Respondent as could be seen from regulation 65.

In the light of the facts of the case stated above, non - compliance of the requirements of the provisions under Chapter IX by the Appellant stands established. The impugned order is as per the powers available to the Respondent under regulation 65. Therefore the order is to be sustained.

The appeal is dismissed.

(C.ACHUTHAN)
PRESIDING OFFICER

Place: Mumbai
Date: November 28, 2001