

In The Court of Sh. A.K. Jain, ASJ, Delhi
IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, TIS
HAZARI COURTS, DELHI.

CC NO: ~~TM~~ 2003
21/8/05

SECURITIES AND EXCHANGE BOARD
OF INDIA, (a statutory body established
under the provisions of Securities and
Exchange Board of India Act, 1992).
Having its Regional Office at Rajendra
Place, New Delhi represented by its Asst.
General Manager, Mr. JYOTI JINDGAR.

58
21/8/05
...COMPLAINANT

VERSUS

1. M/s Alpine Agro Industries Ltd.
Having its Registered Office at
Crystal Nagar, Nainital - 263 132.

ALSO AT

Tallital, Nainital - 263 022.

ALSO AT

The Crystal House,
G-17-G, South Extn. II,
New Delhi 110 049.

ALSO AT

A-14, Sector 30, Noida
(Corresponding Address)
ALSO AT

Crystal Biotech Inds. Ltd.
C/o MMCL, 522-A, Hemkunt Chambers,
Nehru Place, New Delhi 110 019.
(Corresponding Address)

2. Shri Kailash Chandra Durgapal (Director)
S/o Shri G.B. Durgapal,
Tara Lodge, Tallital,
Nainital (UP)

ALSO AT

Halduchaur, Nainital (UP)

3. Shri A.K. Sethi (Director)
945, HIG Flats, Sector 29,
Faridabad (haryana)

4. Shri J.C. Tiwari (Director)
Jayanti Niwas, Cheena House
Compound,
Mallital, Nainital (UP) 493

ATTESTED
16/2/11

Item No. 11

CC No. 09/2010

13.02.2012

Present: Sh. Sanjay Mann, Advocate Counsel for SEBI.

Accused No. 3,5,6 & 7 are PO vide order dated 03.10.08.

Accused No. 9,11 & 12 are PO vide order dated 03.10.08.

Accused No. 8 is acquitted vide order dated 10.07.08.

Accused No. 2,4 and 10 are in person with Sh. D.S. Chauhan, Adv.

Accused No. 1 is company represented by none.

Vide separate judgment A1 i.e. M/s Alpine Agro Industries Ltd. and A2 Sh. Kailash Chander Durgapal and A4 Sh. J.C. Tiwari have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI ACT. However, A10 Mr. Ishwar Dutt Dumka is acquitted from all the charges.

Arguments heard advanced by counsel for both the parties on the point of sentence.

Vide separate order on the point of sentence, convict no. 2 & 3 are sentenced rigorous imprisonment for a period of six months and a fine of ₹ 5 lac each is imposed in default convict no. 2 & 3 shall undergo further three months simple imprisonment for the offence punishable under

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Section 24(1) of the SEBI Act. Convict no.1 is also burdened with a fine of ₹ 5 lac for the offence punishable under Section 24(1) of the SEBI Act.

Compensation from the fine amount, if realised, is also awarded to the investors under Section 357 of the Code of Criminal Procedure as per the conditions referred to in the order on the point of sentence.

Learned counsel for SEBI submits that presently SEBI is not aware about the assets of company accused and states that as and when SEBI will come to know about the assets of company accused, SEBI shall take appropriate steps for the realization of the fine amount.

Fine amount is not paid.

Copy of judgment along with order on the point of sentence be given to the convicts/their counsel free of cost.

Since accused no.3, 5, 6, 7, 9, 11 & 12 are proclaimed offenders, file be consigned to record room with direction that same be revived as and when they apprehended.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI

13.02.2012



IN THE COURT OF SH. PAWAN KUMAR JAIN,
ADDITIONAL SESSIONS JUDGE-01(CENTRAL):DELHI

Complaint Case No. 09 of 2010
ID No: 02401R0229912003

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body,
established under the provisions of Securities and Exchange Board of
India Act, 1992, having its Regional office at Rajendra Place, New Delhi
represented by Ms. Rekha Verma, Manager, SEBI.

Versus

1. M/s Alpine Agro Industries Ltd.
having its registered office at :
Crystal Nagar, Nainital-263 132,

Also at:
Tallital, Nainital- 263 022

Also at:
The Crystal House,
G-17-G, South Extn.II,
New Delhi- 110 0491

Also at:
A-14, Sector 30, Noida,
(Corresponding Address)

Also at:
Crystal Biotech Industries Ltd.,
C/o MMCL, 522-A, Hemkunt Chambers,
Nehru Place, New Delhi-110 019
(Corresponding Address)

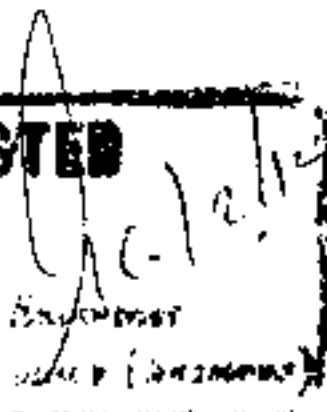
.....Accused no.1



CC No. 09/10

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ATTESTED



Signature of the attesting officer

2. **Sh. Kailash Chandra Durgapal (Director)**
S/o Sh. G. B. Durgapal,
R/o Tara Lodge, Tallital,
Nainital (Uttarakhand)
Present address at:
Village Deena, PO Haldichaur,
Distt. Nainital (Uttarakhand)

.....Accused no.2
3. **Sh.A.K.Sethi (Director)**
945, HIG Flats, Sector 29
Faridabad (Haryana)

.....Accused no.3
4. **Sh. J.C.Tiwari(Director),**
S/o Late Sh. Pitamber Dutt Tiwari,
R/o Melrose Compound, Mallital,
Nainital (UP)

.....Accused no.4
5. **Sh. Prashant Chandola (Director)**
B-31/83, Panchkosi Road,
Lanka, Varanasi (UP)

.....Accused no.5
6. **Ms.Priynka Pathak (Promoter/Director)**
Kurmanchal Niketan,
Bhowali, Nainital.

.....Accused no.6
7. **Dr. Narendra Bahadur Singh (Promoter/Director)**
Industrial Area, Bhimtal, Nainital.

.....Accused no.7
8. **Dr. Devi Datt Tewari (Promoter/Director)**
Krihnapur, Tallital, Nainital,

.....Accused no.8





9. Dr. Vivekanand Sharma (Promoter/Director)
Indra Sada, Sukha Tal,
Nainital.

.....Accused no.9

10. Dr. Ishwari Datt Dumka (Promoter/Director)
S/o Sh. Heera Ballabh,
R/o Village Bachinawar, PO Haldichour Nainital
Distt. Nainital (Uttarakhand)

.....Accused no.10

11. Sh. Basant Ballabh Joshi (Promoter/Director)
Dholigaon, Devidhura, Nainital

.....Accused no.11

12. Sh. Girish Chandra Joshi (Promoter/Director)
10/3, Tallital, Nainital

.....Accused no.12

Date of Institution : 15.12.2003
Date of committal to Session Court : 05.02.2005
Judgment reserved on : 31.01.2012
Date of pronouncement of judgment : 13.02.2012

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. D.S. Chauhan, Advocate, Counsel for accused no.
2, 4 & 10

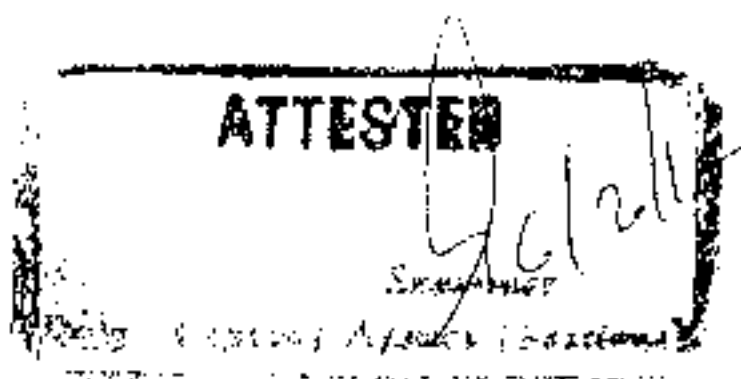
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J U D G M E N T :

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on December 15, 2003 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the provisions of Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.
2. Twelve persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being : Alpine Agro Industries Ltd. (hereinafter, "A1" or "the Company accused"), accused No. 2 Sh. Kailash Chandra Durgapal ("A2"), accused No.3 Sh. A.K.Sethi ("A3") accused No.4 Sh. J. C. Tiwari ("A4") accused No.5 Sh. Prashant Chandola ("A5"), accused No.6 Ms. Priyanka Pathak ("A6"), accused No.7 Dr. Narendra Bahadur Singh ("A7"), accused No. 8 Dr. Devi Datt Twarei ("A8), accused No.9 Dr. Vivekanand Sharma ("A9"), accused No.10 Ishwari Datt Dumka ("A10"), accused No.11 Basant Ballabh Joshi ("A11") and accused No.12 Sh. Girish Chandra Joshi ("A12"). It is alleged that A2 to A12 were Directors of the company accused and as such persons were in charge of, and responsible to, A1 for the conduct of its business within the meaning of

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the provision contained in Section 27 of the SEBI Act.

3. It is alleged in the complaint that A1 had floated the Collective Investment Scheme (CIS) and raised amount approximately ₹ 10,04,000/- from general public, in violation of the provisions contained in Section 12 (1B) of the SEBI Act. It is also alleged that after coming into force of the CIS Regulations and in spite of public notice dated December 18, 1997, the accused persons had failed to get the Collective Investment Scheme registered with SEBI or to wind up the said scheme or repay the amount collected from the investors in terms of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

4. Cognizance on the complaint was taken by the learned ACMM vide order dated December 15, 2003 whereby process were issued under Section 204 Cr.P.C. against all the accused persons

5. On account of the amendment, particularly in Sections 24 and 26 of the SEBI Act, through Amendment Act which came into force w.e.f. November 24, 2002, pursuant to Administrative Directions of Hon'ble High Court, under orders of the Ld. District & Sessions Judge, this case was transferred on February 5, 2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Additional Sessions Judge, Delhi.

6. Vide order dated July 10, 2008, AB Dr. Devi Datt Tewari had

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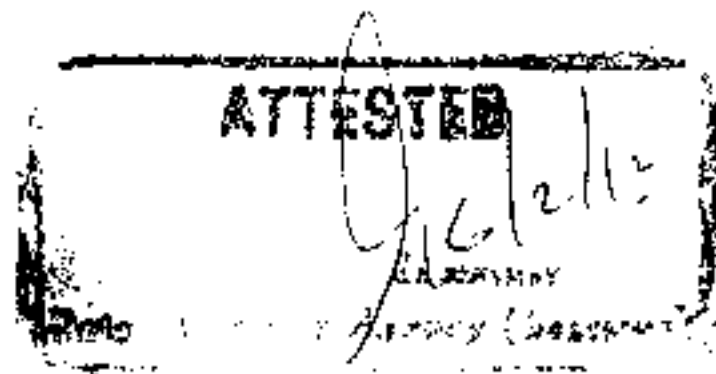
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been acquitted from all the charges as matter was compounded between A8 and SEBI. Vide order dated October 3, 2008, A3, A5, A6, A7, A9, A11 & A12 were declared proclaimed offenders on account of their non-appearance. Thereafter, vide order dated March 5, 2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company), A2, A4 & A10 wherein all accused persons pleaded not guilty and claimed trial. Since A1 company has not been represented by none, hence none had responded to the notice on behalf of company.

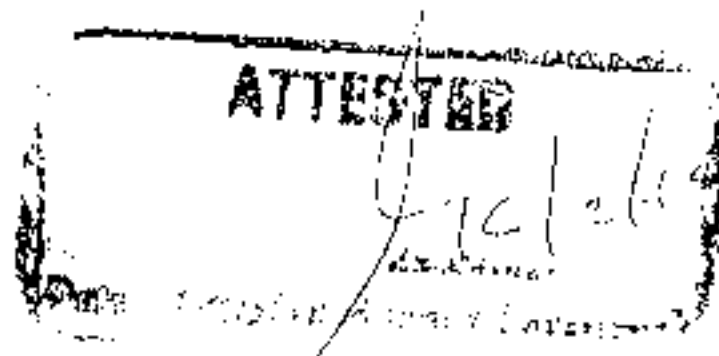
7. To prove its case, complainant has examined only two witnesses namely Ms. Rekha Verma, Manager, SEBI as CW1 and Ms. Versha Aggarwal, AGM, SEBI as CW2. Thereafter, A2, A4 & A10 were examined under Section 313 Cr.P.C. A2 took the plea that he was working as clerk in M/s Crystal Credit India Ltd and worked there till 1999. It was stated that he had never signed on behalf of accused company. It was submitted that he was neither director nor in charge or responsible for day to day affairs of the accused company. A4 also took the similar plea that he was working with M/s Crystal Credit India Ltd since 1992 to 1998 and he had never signed any document on behalf of accused company and he was neither director in charge or responsible to the day to day affairs of the accused company. A10 also took the similar plea and submitted that he was working as Development officer in M/s Crystal Credit India Ltd during the period 1989 to 1994 and he had never signed any document on behalf of accused company and neither he was director/promoter or incharge of, and responsible to, the day to day affairs of the accused company.

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8. To prove their innocence, accused persons examined Sh. Kailash Chandra Durgapal (A2) as DW1, Sh. Jagdish Chand Tiwari, (A4) as DW2 and Sh. Ishwari Dutt Dumka (A10) as DW3
9. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, counsel for complainant and Sh. Diwan Singh Chauhan, Advocate, counsel for A2, A4 & A10 and perused the record carefully.
10. Learned counsel appearing for accused persons vehemently contended that accused persons had not committed any offence as the company accused had mobilized funds till March 1998 whereas the CIS Regulations were notified w.e.f. October 15, 1999. It was contended that since no fund was mobilized after the enforcement of CIS Regulations, company accused had not violated any provision of SEBI Act
11. Per contra, learned counsel appearing for SEBI sagaciously contended that company accused was incorporated initially on January 24, 1994 in the name and style of M/s Northern Himalayan Agro Forestry Ltd. and its name was changed into M/s Alpine Agro Industry Ltd. w.e.f. August 28, 1995. It was contended that the company accused had mobilized funds to the tune of Rs. 10.35 lac during the period 1995-1997. It was contended that since company accused was incorporated on August 28, 1995, company accused had violated Section 12(1B) of the Act as well as provisions of CIS Regulations.
12. It is admitted case of the SEBI that company accused was

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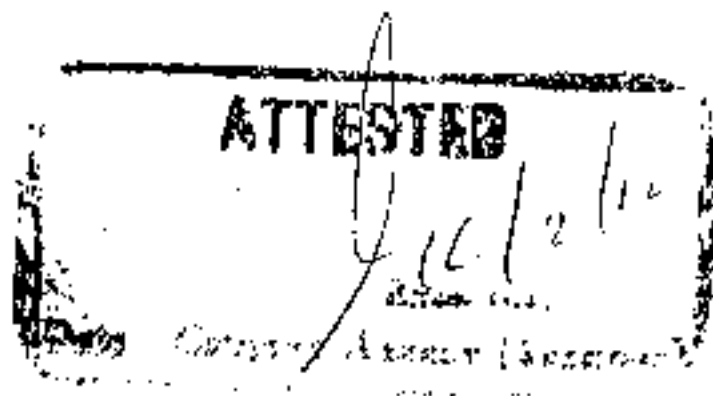


Initially incorporated in the name and style of M/s Northern Himalayan Agro Forestry Ltd. on January 24, 1994 and thereafter, its name was changed into M/s Alpine Agro Industry Ltd. (A1) w.e.f August 28, 1995. Mere fact that the company accused had changed its name from M/s Northern Himalayan Agro Forestry Ltd. to M/s Alpine Agro Industry Ltd does not mean that company accused was incorporated on August 28, 1995. In fact company accused was originally incorporated on January 24, 1994 and its name was changed subsequently w.e.f. August 28, 1995.

13. Company accused had furnished certain information to the SEBI vide its letter dated December 16, 1997 and the said letter is exhibited as Ex. CW1/6. In the said letter, company accused had submitted the brochure of collective investment schemes launched by the company accused (A1) and further intimated the SEBI that company accused had received/raised ₹ 10.35 lac under various schemes. In other words, company accused had mobilized the said amount between August 1995 to December 1997. Now question arises as to whether company accused had violated any provision of SEBI Act at the time of mobilizing funds during the said period or not.

14. Section 12(1B) was inserted in the Act in the year 1995. By virtue of Section 12(1B) of SEBI Act, no person could 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. Admittedly when the scheme was launched by the company accused during the period

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1995-1998, company accused had not obtained any registration from the Board, thus company accused had violated the provisions of Section 12(1B) in the year 1997 itself by mobilizing funds through CIS without obtaining certificate of registration from the SEBI.

15. It is undisputed fact that CIS Regulations were notified w.e.f October 15, 1999 and company accused had not mobilized any fund after March 1998.

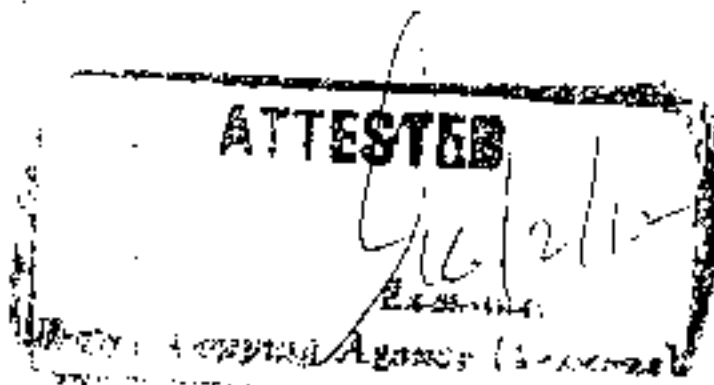
16. Learned counsel appearing for accused persons contended that since no fund was raised after CIS Regulations were notified in 1999, company accused had not violated any provision of the SEBI Act.

17. Now question arises as to whether CIS Regulations were applicable in the facts and circumstances of the present case or not.

18. This question was dealt with by Allahabad High Court in case *Paramount Bio-Tech Industries Limited Vs. Union of India* reported in 2003 INDLAW All 168, wherein it was held in p. 10:-

"It is true that there were no Regulations upto 1999 and, hence, certificate could not be granted under Section 12(1B). However, the proviso to Section 12(1B) permitted only those persons who were carrying on the business of collective

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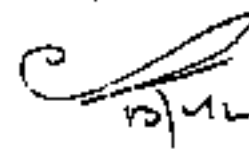
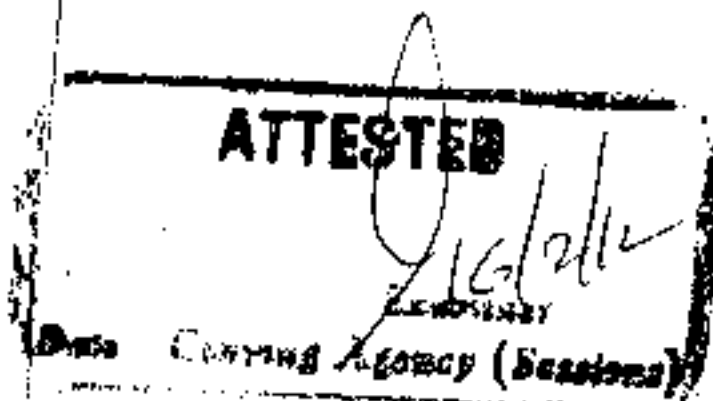
investment scheme prior to the 1995 amendment (which came into force with effect from 25 January, 1995) to continue to operate till Regulations were framed. Petitioner No.1 was incorporated in 1996 (vide paragraph 7 to the writ petition) and, hence, it was obviously not carrying on the said business before 25 January 1995. Hence, it could not get the benefit of the proviso to Section 12(1B). It follows that the business of collective investment scheme, which it was doing, was wholly illegal. The letter of the SEBI to the petitioner dated 27 February, 1998 (vide Annexure 4 to the writ petition) was thus indulgent to the petitioner. In fact, by that letter, the SEBI took a lenient view by permitting the petitioner to operate after getting rating from a credit agency. In fact, even this concession could not have been granted by the SEBI, as the proviso to section 12(1B) does not apply to the petitioner, for the reasons given above. The SEBI should in fact have totally prohibited the petitioner from doing the business of collective investment scheme and should have directed prosecution of the petitioner and its officials under Section 24 read with section 27 of the SEBI Act".

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19. From the above judgment, it becomes crystal clear that merely there was no regulation during the year 1995-97 was not an excuse for the company accused for not obtaining registration of a certificate. It also becomes clear that relaxation provided under the proviso to Section 12 (1B) was available only those companies which were operating a scheme on or before January 25, 1995, when Section 12 (1B) was inserted in the Act. Such schemes were permitted to be continued till the regulations were notified by the SEBI. Since, in the instant case company accused had launched the CIS only after August 1995, company accused was not entitled for the relaxation as provided under the Act. Since company accused had not obtained any certificate of registration during the period 1995-1997 when it mobilized funds through various CIS, company accused had violated the provisions of Section 12 (1B) of the SEBI Act.

20. It is also undisputed fact that CIS regulations were notified on October 15, 1999. As per Regulation 5(1), any person who was immediately prior to the commencement of these Regulations was operating any scheme, shall make an application to the Board for the grant of certificate within two months from the date of regulations. Admittedly, company accused had not made an application in accordance with regulation 5 of the CIS Regulations. According to Regulation 73, if the company failed to make any such application, company shall wind up the existing scheme and send the information to the SEBI relating to the scheme and the amount repayable to each investor and the manner in which amount is determined and was returned to the investor and shall also file winding up and repayment report with the SEBI on the prescribed format. Admittedly, the

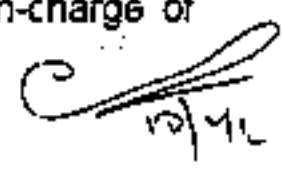
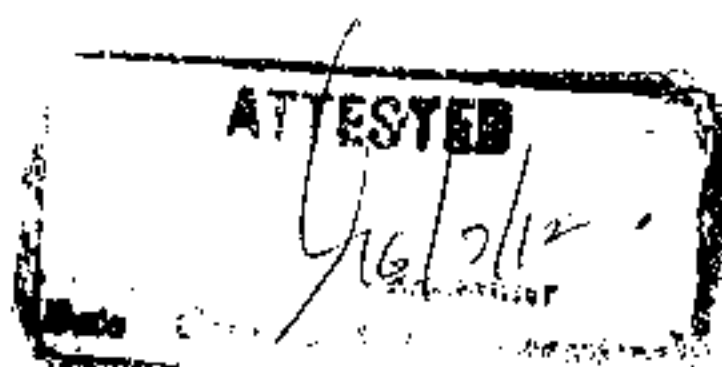



company accused had not complied with the provision of Regulation 73 of the CIS Regulations, thus company accused had not only violated Regulation 5 but also violated Regulation 73 of the CIS which amounts violation of Section 24(1) of the Act.

21. From the on going discussion, it becomes clear that company accused had violated Section 12 (1B) of the SEBI Act as well as regulation 5 & 73 of the CIS Regulation. Thus company accused is guilty for the offence punishable under Section 24 (1) of the SEBI Act.

22. Learned counsel appearing for the accused persons vehemently contended that there is no evidence to prove that A2, A4 and A10 were directors of the accused company or they were in-charge or responsible to the the company accused for the conduct of its business. It was further argued that all the said accused were working with M/s Crystal Credit India Ltd. and they had not signed any document on behalf of company accused. It was submitted accused persons appeared in the witness box and categorically deposed that they had never acted on behalf of accused company.

23. Per contra, learned counsel appearing for the SEBI refuted the said contentions by arguing sagaciously that name of A2 and A4 was mentioned in the list of first directors of the company accused. It was further submitted that A2 had also signed various documents on behalf of company accused, which proved that he was in-charge of

and responsible to conduct the business of the company accused. However, he fairly conceded that A10 was only one of the subscribers of the company accused and was not holding any position in the company accused.

24. Company accused had sent a letter dated December 16, 1997 to the SEBI, which is exhibited as Ex. CW1/6 wherein company accused had furnished the profile of its promoters, which includes the name of A2 and A4. As per the said profile, A2 was graduate in forestry and post graduate in Economics and having post graduate diploma in Financial Management from IGNOU. He had vast experience in the field of agro-forestry and mining. Similarly, A4 was post-graduate in Economics and LL.B. and had vast experience in financial control and management and associated with various development activities in Nainital region. From their profile, it is crystal clear that both were well educated and having vast experience in management and finance. Thereafter, company accused had sent another letter dated April 27, 1999 to the SEBI intimating about the detail of its directors and said letter is exhibited as Ex. CW1/7. As per the said letter, A2 and A4 were also the directors of the company accused. No doubt in the Articles and Association of the company accused, which is part of Ex. CW1/7, A4 was not the first director of the company accused. During trial, SEBI had collected information about the company accused and its directors from ROC and filed the same of record, which is exhibited as Ex. CW1/25. As per the said document, A4 J.C. Tiwari was inducted as one of the directors on January 19, 1996 and retired from the company accused on September 29, 1998. Said document also proves that A2 was inducted as director

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since the incorporation of the company accused. Thus, it becomes clear that A2 and A4 were directors of company accused.

25. Company accused vide its letter Ex. CW1/6 admitted that company accused had mobilized funds to the tune of ₹ 10.35 Lac under different collective investment schemes. Thereafter, company accused vide its letter Ex. CW1/10 intimated the SEBI that it had deployed a sum of ₹ 10.35 Lac in plantation from April 1, 1996 to February 28, 1998. Thereafter, company vide its letter dated November 16, 1998 intimated the SEBI that it had raised fund to the tune of ₹ 65.00 lac and future obligation of the company was about ₹ 54.70 lac. Vide its letter dated November 16, 1998 exhibited as Ex. CW1/9, company accused intimated the SEBI that total number of investors was 1681. Auditor of the company accused furnished a certificate to the effect that company accused had not raised any amount from public since March 1, 1998. Thus, as per the information furnished by the company accused from time to time to the SEBI, company accused had raised fund to the tune of ₹ 65.00 lac from general public under various CISs launched by the company accused.

26. Now, question arises as to whether any individual director was competent to mobilize fund on behalf of company accused. Certainly answer is in negative. As per the terms and conditions of the Articles and Association of the company accused, only board of directors had the power to raise fund on behalf of the company accused. No individual director had power to raise fund from general public on behalf of the company accused. In fact without the decision

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of board of directors, company accused could not raise a single penny from the general public. Thus, members of board of directors were responsible for the conduct of the said business of the company accused. As already discussed that A2 and A4 were directors of company accused, thus being directors they were in charge of and responsible to the company accused for the conduct of said business of the company accused. Under proviso to Section 27 of the SEBI Act onus is shifted upon the individual director that the company accused had raised the fund in violation of provisions of SEBI Act without his knowledge or that he had taken due diligence to prevent the company from raising fund in violations of the provisions of SEBI Act.

27. A2 K.C. Durgapal had also signed the balance sheet on behalf of company accused, which further proves that he was actively involved in the affairs of company accused.

28. CW1 in his deposition categorically deposed that A2 to A12 were the directors of the company accused and persons were in charge of and responsible to the company accused for the conduct of its business. During his cross-examination, CW1 deposed that A2 ceased to be the director of company accused w.e.f. November 1, 2001, it means that A2 was one of the directors when the company accused had mobilized funds from general public. Similarly, he deposed that Mr. J.C. Tiwari had seen shown retired w.e.f. September 29, 1998 in Ex. CW1/25. It means that prior to September 29, 1998, Mr. J.C. Tiwari was one of the directors of the company accused.

29. No doubt, A2 and A4 in their deposition took the plea that

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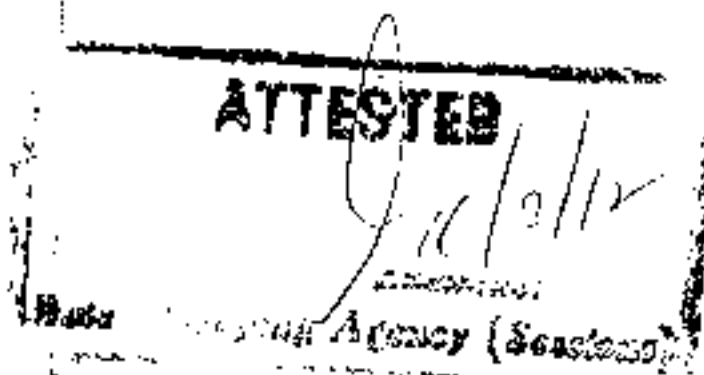




SEBI VS M/S ALPINE AGRO INDUSTRIES LTD. ETC.

they had never been on the board of directors of the company accused and they were working with M/s Crystal Credit India Ltd at the relevant time. It is pertinent to mention here that there is no bar that a person can not join the directorship of a company while working somewhere else. There is no explanation from the accused side how their name appeared on the board of directors of the company, accused as well as in the record of ROC. During the cross-examination of CW1 a suggestion was given to the witness that M/s Crystal Credit India Ltd was the sister concern of the company accused. This rather shows that there was connection between the company accused and M/s Crystal Credit India Ltd, which rules out the defence version that accused persons had no concern with the company accused. Since, the name of accused persons appeared as directors in the record of ROC and A2 had also signed the balance sheet of company accused, onus was upon the accused persons to prove that they had no concern with the company accused, but accused persons failed to lead any cogent evidence in this regard except their bald assertion. Had their name been misused by any person, A2 and A4 would have certainly taken action against the wrong-doer, but till date they have not initiated any action against any such person.

30. Though learned counsel appearing for the accused cited numerous judgment on the point that accused persons can be held guilty only if it is established that the persons were in-charge of, and responsible to, for the conduct of the business of the company accused. Since, this proposition of law is not in dispute, no purpose would be achieved to cite the judgments relied upon by the accused



persons. As already discussed, there are overwhelming evidence on record to prove that being directors, A2 and A4 were persons in charge of, and responsible to, the conduct the business of the company accused.

31. Since, learned defence counsel strongly relied upon the two judgments of High Court of Delhi i.e. *Jagdish Saran Aggarwal v. SEBI, 2009 I AD (DELHI) 744* and *Kanchan Aggarwal v. SEBI, 2008 (107) DRJ 134*, I have gone through the same. Perusal of said judgments reveals that both the petitions had arisen from a case which was filed by SEBI against M/s Yojna Agro Forestry Ltd. In the said matter, two directors had filed different petitions before the High Court of Delhi and in both the petitions proceedings qua the petitioners were quashed on the ground that they had resigned from the company much prior to the date when directions were issued by the Chairman of the SEBI and further held that the cause of action had arisen to file the complaint only on January 7, 2001. However, in the instant case, as already discussed, company accused had violated the provisions of Section 12 (1B) of SEBI Act during 1995 to 1998 itself when A2 and A4 were the on the board of directors of the company accused. Mere fact they had resigned subsequently or the SEBI had initiated a legal action against them later on is not suffice to exonerate them from their liability, which has been imposed by the legislature.

32. As learned counsel for SEBI has fairly conceded that there is no admissible evidence on record to prove that A10 was holding any position in the company, thus it can not be said that A10 was person in-charge of and responsible to the company accused for the conduct of its business.



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 22001001
 Jagdish Saran Aggarwal (Seswone)

33. Pondering over the ongoing discussion, I am of the considered opinion that complainant has succeeded to prove beyond the shadow of all reasonable doubts that company accused had mobilized funds in violations of Section 12 (1B) of the Act and also violated the regulations no. 5 and 73 of CIS Regulation, which are punishable under Section 24 (1) of the Act. Complainant has also succeeded to establish beyond doubt that A2 and A4 being the directors of the company accused at the relevant time were persons in-charge of and responsible to the company accused to conduct its business, thus with the aid of Section 27 of the Act, they are also liable for the said violations. Accordingly, I hereby hold the A1 M/s Alpine Agro Industries Ltd. and A2 Sh. Kailash Chander Durgapal and A4 Sh. J.C. Tiwari guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI ACT. However, complainant has failed to bring home the guilt of accused A10 Mr. Ishwar Dutt, Dumka beyond the shadow of doubt, thus I hereby acquit him from all the charges.

Announced in the open Court
on this 13th day of February 2012

(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

Given to the Convicts
in open Court at 11 a.m.

13/2/12
on behalf of
Convict No 2 & 3
Kumari
CC No. 09/10/12 convict
(Advocate)

Page No. 18 of 18

ATTESTED
[Signature]
[Stamp: Additional Sessions Judge (Sectional)]



SEBI V. M/S ALPINE AGRO INDUSTRIES LTD. ETC

IN THE COURT OF SH. PAWAN KUMAR JAIN,
ADDITIONAL SESSIONS JUDGE-01(CENTRAL):DELHI

Complaint Case No. 09 of 2010
ID No: 02401R0229912003

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Regional office at Rajendra Place, New Delhi represented by Ms. Rekha Verma, Manager, SEBI.

Versus

1. **M/s Alpine Agro Industries Ltd.**
having its registered office at :
Crystal Nagar, Nainital-263 132.

Also at:
Tallital, Nainital- 263 022

Also at:
The Crystal House,
G-17-G, South Extn.II,
New Delhi- 110 0491

Also at:
A-14, Sector 30, Noida,
(Corresponding Address)

Also at:
Crystal Biotech Industries Ltd.,
C/o MMCL, 522-A, Hemkunt Chambers,
Nehru Place, New Delhi-110 019
(Corresponding Address)

.....Convict no.1

CC No. 09/10

Page no. 1 of 5

ATTESTED

[Signature]

[Stamp]

2. **Sh. Kailash Chandra Durgapal (Director)**
S/o Sh. G. B. Durgapal,
R/o Tara Lodge, Tallital,
Nainital (Uttarakhand)
Present address at:
Village Deena, PO Haldichaur,
Distt. Nainital (Uttarakhand)

.....Convict no.2

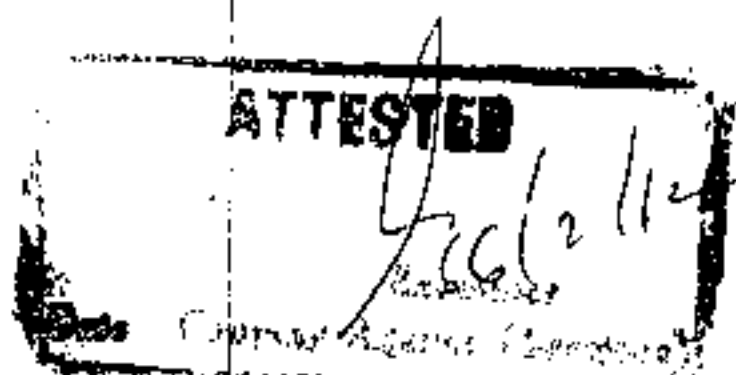
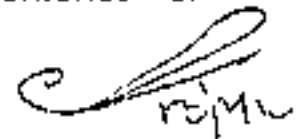
3. **Sh. J.C.Tiwari(Director),**
S/o Late Sh. Pitamber Dutt Tiwari,
R/o Melrose Compound, Mallital,
Nainital (UP)

.....Convict no.3

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. D.S. Chauhan, Advocate, Counsel for convict
no. 2 & 3

ORDER ON THE POINT OF SENTENCE(ORAL):

1. **Vide** separate judgment A1 i.e. M/s Alpine Agro Industries Ltd. and A2 Sh. Kailash Chander Durgapal and A4 Sh. J.C. Tiwari have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI ACT.
2. **Learned counsel** appearing for convicts requests for lenient view on the ground that there is no criminal antecedents of either of the convicts and they are sole bread earner of their respective families and having school going children. On the other hand, learned counsel appearing for complainant requests for substantial sentence of

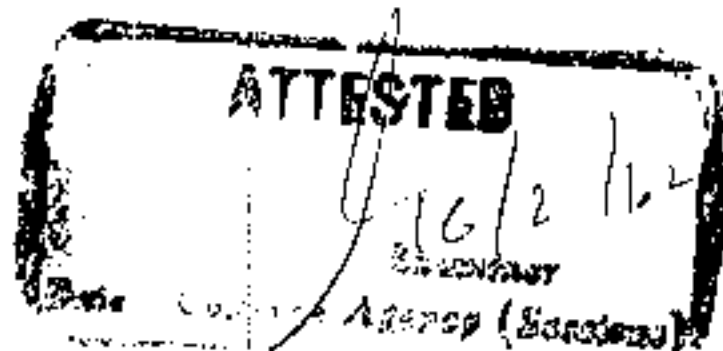


imprisonment as well as substantial amount of fine on the grounds inter-alia that convicts had mobilized funds to the tune of ₹ 65 lac from the general public and till date company accused had not refunded the amount to the investors.

3. I have heard Counsel for both parties, perused the record carefully and gave my thoughtful consideration to their submissions.

4. As per record produced during trial, company accused had mobilized funds to the tune of ₹ 65 lac through various CISs and as per letter of company accused dated November 16, 1998, which is exhibited as Ex. CW1/8, the liability of the company accused towards the investors was upto ₹ 54.70 lac. By way of amendment in Act 59 of 2002, sentence of one year as mentioned under Section 24(1) of the SEBI Act has been enhanced to the extent of 10 years or fine to the extent of ₹ 25 crore or both. This shows that legislature has considered the violations of provisions of the SEBI Act quite serious. Needless to say that ultimate victim of the violations are innocent investors. In the instant case, company accused had neither filed WRR till date nor paid the amount to the investors. Considering the quantum of fund mobilized by the company accused and the fact that till date, company accused had not refunded a single penny to the investors, I am of the opinion that convicts do not deserve any leniency. Accordingly, I hereby sentence convict no. 2 & 3 for rigorous imprisonment for a period of six months and also impose a fine of ₹ 5 lac each in default convict no. 2 & 3 shall under go simple imprisonment for a period of three months for the offence punishable under Section 24(1) of the SEBI Act.

[Signature]
13/4/12



5. Since, the real victims of the offence committed by the convicts are innocent investors, who invested their hard earned money in the hope that they would get handsome return of their investment, but in the hope of attractive returns, they lost their actual investment. Thus, justice demands that such investors should be compensated from the said fine amount if realized. Accordingly, I hereby direct that the said amount of fine, if realised shall be utilized to compensate the investors proportionately under Section 357 of the Code of Criminal Procedure. After realization of the fine amount SEBI shall issue public notices through print media and other modes to find out the investors. After verification of documents of investors, SEBI shall submit a report in the Court for realization of the amount to the investors. If the total amount to be paid to the investors is found more than the realised fine amount, compensation shall be made proportionately to the investors. However, amount of compensation shall be released to the investors only after the expiry of period of appeal or revision, or if any appeal or revision is filed, then after the decision of such appeal or revision.

6. Learned counsel for SEBI submits that presently SEBI is not aware about the assets of company accused and states that as and when SEBI will come to know about the assets of company accused, SEBI shall take appropriate steps for the realization of the fine amount.

7. Fine amount is not paid.

12/4/10



8. Copy of judgment along with order on the point of sentence be given to the convicts/their counsel free of cost.

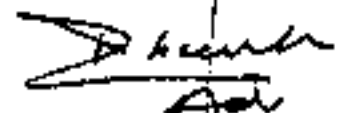
9. Since accused no.3, 5, 6, 7, 9, 11 & 12 are proclaimed offenders, file be consigned to record room with direction that same be revived as and when they are apprehended.

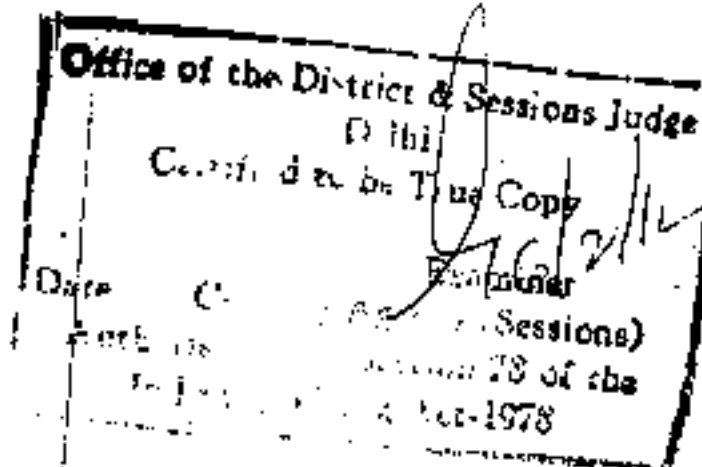
Announced in the open Court
on this 13th day of February 2012


(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

Copy given to the convicts
in open Court at f.o.c.


13/2/12

Hand copy on behalf
of Counsel No 2 & 3

Adl
13/2/12



8. Copy of judgment along with order on the point of sentence be given to the convicts/their counsel free of cost.

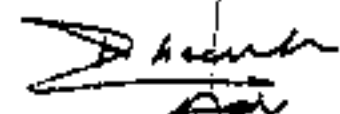
9. Since accused no.3, 5, 6, 7, 9, 11 & 12 are proclaimed offenders, file be consigned to record room with direction that same be revived as and when they apprehended.

Announced in the open Court
on this 13th day of February 2012


(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

Copy given to the convicts
in open Court at f.o.c.


13/2/12

Recd Copy on behalf
of Convict No 2 & 3

13/2/12

