

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: ~~78/04~~ OF 2004

Securities and Exchange Board of India, a

statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B - Wing, 224 Nariman Point, Mumbai 400 021 represented by its Legal Officer, Shri Sharad Bansode.

...Complainant

VERSUS .

1. Avi Plantation & Floriculture Ltd. a Company incorporated Under the Companies Act, 1956, having its Regd. Office at : 458-R, Model Town, Panipat, Haryana, also at: D-II/New Colony Extn., Railway Station, Faridabad. And having its corporate office at: TA-93-D, Guru Ravi Das Marg, Tughlakabad Extention, New Delhi.
2. Shri Suresh Dutt Sharma S/o Devi S. Sharma, Director/Promoter of Accused No.1, R/o:185, Pocket A-4, Konark Apartment, Kalkaji Extention, New Delhi.
3. Shri Arun Tiwari S/o Late Shri P.N.

Handwritten signature and date 12/5

Handwritten number 31





Twari, Director/Promoter of Accused
No.1, R/o: 23 CY Chintamani Road,
Allahabad (UP).

4. Shri Sanjay Tiwari S/o Late Shri P.N.
Twari, Director of Accused No.1, R/o:
23 CY Chintamani Road, Allahabad
(UP).

5. Ms. Neeta Sharma W/o Shri Suresh
— Dutt Sharma, Director/Promoter of
Accused No.1, R/o:185, Pocket A-4,
Konark Apartment, Kalkaji Extention,
New Delhi.

6. Ms. Karuna Tiwari W/o Late Sh. P.N.
Tiwari, Director/Promoter of Accused
No.1, R/o:185, Pocket A-4, Konark
Apartment, Kalkaji Extention, New
Delhi.

Copy

7. Ms. Madhavi Tiwari D/o Late Shri P.N.
— Twari, Director/Promoter of Accused
No.1, R/o: 23 CY Chintamani Road,
Allahabad (UP).

8. Mrs. Sadhna Shukla. Director/Promoter
of Accused No.1, R/a: B 2251, Indira
Nagar, Lucknow.

.....Accused

37

COMPLAINT UNDER SECTION 190 & 200 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992

May It Please Your Honour:

127
ATTESTED





Item No. 12
CC No. 60/10

16.11.2011

Present: Sh. Sanjay Mann, Advocate with Ms. Renu Sharma, Counsel for the complainant.
Accused no.1 is company represented by accused no. 2.
Proceeding qua accused no. 6 has already been abated on account of her death.
Accused no. 2,3,4,5,7 and 8 are in person with counsel Sh. Rajat Aneja and Sh. N. Pandey, Advocate.

Vide separate judgment accused no. 1 to 4 are held guilty for the offence punishable under Section 24(1) read with Section 27 of the SEBI Act. Other accused persons i.e. accused no. 5,7 and 8 are acquitted from all the charges.

Arguments heard on the point of sentence.

Vide separate order, convict no. 1 to 4 are burdened with the fine of ₹ 25,000/- each. In default convict no. 2 to 4 shall undergo three months SI for the offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

Fine amount paid.

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

File be consigned to record room.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
16.11.2011





SEBI Vs. AVI PLANTATION & FLORICULTURE LTD & ORS

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

**Complaint Case No. 60 of 2010
ID No: 02401R5171272004**

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B-Wing, 224 Nariman Point, Mumbai 400 021 represented by its Legal Officer, Sh. Sharad Bansode.

Versus

1. **AVI Plantation & Floriculture Ltd.** a Company incorporated Under the Companies Act, 1956, having its Registered office at: 458-R, Model Town, Panipat, Haryana, also at: DII/New Colony Extn., Railway Station, Faridabad and having its corporate office at: TA-93-D, Guru Ravi Das Marg, Tughlakabad Extention, New Delhi

.....Accused no.1

2. **Sh. Suresh Dutt Sharma**
S/o Devi S. Sharma
(Director/Promoter of Accused no.1)
R/o 185, Pocket A-4,
Konark Apartment,
Kalkaji Extention, New Delhi

.....Accused no.2

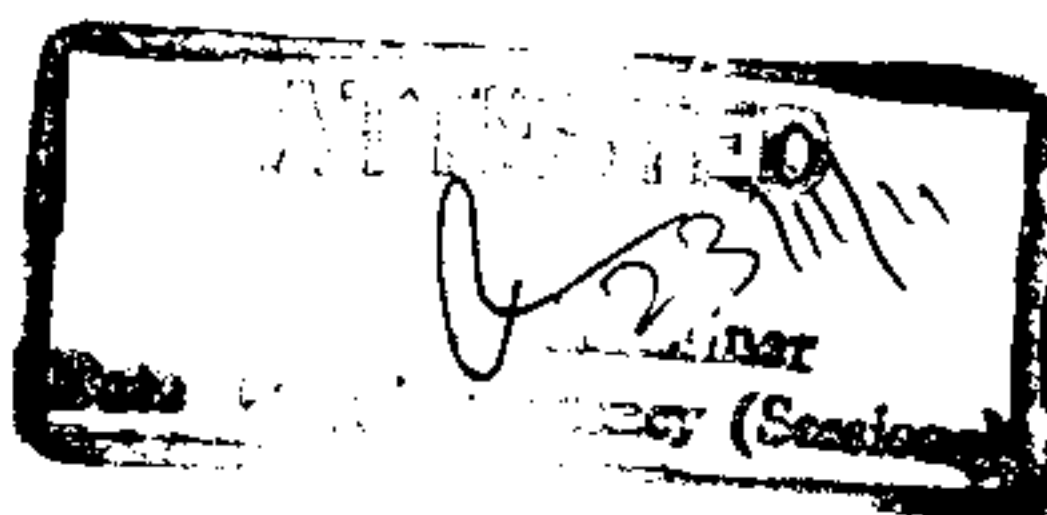
3. **Sh. Arun Tiwari**
S/o Late Sh. P. N. Tiwari,
(Director/Promoter of Accused No.1)
R/o 23 CY Chintamani Road, Allahabad
U.P.

.....Accused no.3

16/11/11

CC No. 60/10

Page no. 1 of 12





SEDI V. AVI PLANTATION & FLORICULTURE LTD & ORS

4. **Sh. Sanjay Tiwari**
S/o Late Sh. P. N. Tiwari,
(Director/Promoter of Accused No.1)
R/o 23 CY Chintamani Road, Allahabad
U.P.

.....Accused no.4

5. **Sh. Neeta Sharma**
W/o Sh. Suresh Dutt Sharma,
(Director/Promoter of Accused No.1)
R/o 185, Pocket A-4, Konark Apartment,
Kalkaji Extention, New Delhi

.....Accused no.5

6. **Sh. Karuna Tiwari**
W/o Sh. P.N.Tiwari,
(Director/Promoter of Accused No.1)
R/o 185, Pocket A-4, Konark Apartment,
Kalkaji Extention, New Delhi

.....Accused no.6

7. **Ms. Madhavi Tiwari**
D/o Sh. P.N.Tiwari,
(Director/Promoter of Accused No.1)
R/o 123 CY Chitamani Road,
Allahabad, U. P.

.....Accused no.7

8. **Mrs. Sadhna Shukla**
(Director/Promoter of Accused No.1)
R/o B 2251, Indira Nagar, Lucknow

.....Accused no.8

16/11/11





SEBI Vs. AVI PLANTATION & FLORICULTURE LTD & ORS

Date of Institution : 14.01.2004
Date of committal to Session Court : 23.04.2005
Date of Judgment Reserved on : 02.11.2011
Date of pronouncement of judgment : 16.11.2011

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. Rajat Aneja, Advocate, Counsel for all accused.

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 January 14, 2004 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. Eight persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Avi Plantation & Floriculture Ltd. ("A1"), accused No. 2 Sh. Suresh Dutt

16/11/11



Sharma ("A2"), accused No. 3 Sh. Arun Tiwari ("A3"), accused No.4 Sh. Sanjay Tiwari ("A4"), accused No. 5 Ms. Neeta Sharma ("A5"), accused No. 6 Ms. Karuna Tiwari ("A6"), accused No. 7 Ms. Madhavi Tiwari ("A7") & accused No. 8 Mrs. Sadhna Shukla ("A8"). It is alleged that A2 to A8 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 the provisions 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 approximate amount of ₹ 9.78 lac 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 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 January 14, 2004 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





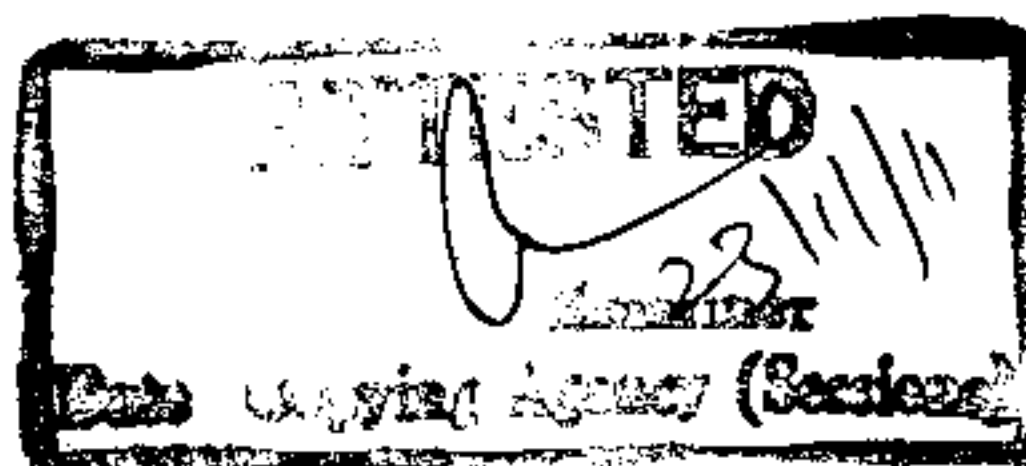
SEBI Vs. AVI PLANTATION & FLORICULTURE LTD & ORS

Hon'ble High Court, under orders of the Ld. Distt. & Sessions Judge, this case was transferred on April 23, 2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Addl. Sessions Judge, Delhi.

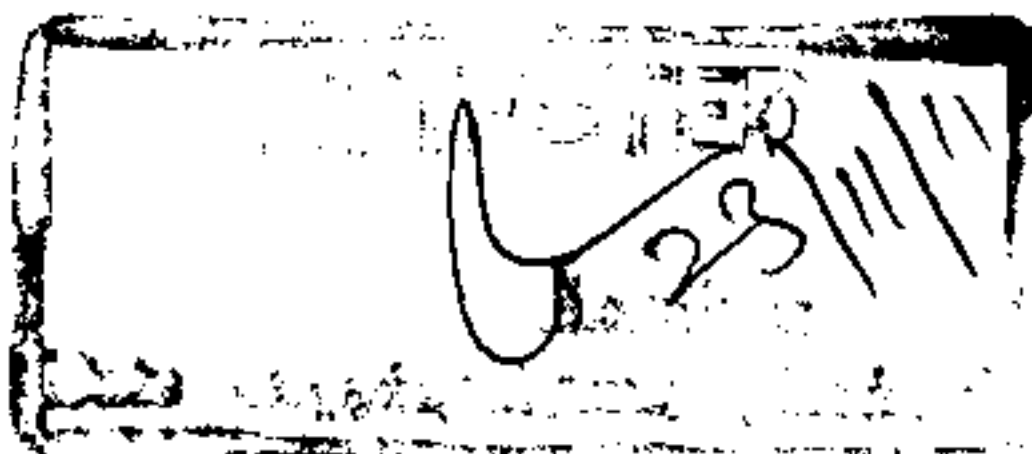
6. Thereafter, vide order dated October 28, 2005, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company), A2 to 8 wherein all accused pleaded not guilty and claimed trial. During the trial, vide order dated April 16, 2010, proceedings qua A6 was abated on account of her death.

7. To prove its case, complainant has examined only one witness named Ms. Jyoti Jindgar, Dy. Asstt. General Manager, SEBI. Thereafter, A2 to A8 except A6 (proceedings qua her abated) were examined under Section 313 Cr.P.C. All the accused persons in their statement took the plea that they had not violated any provision of SEBI Act as the funds were mobilized through close relatives and friends. It was stated that after public notice dated December 18, 1997, the mobilized fund was refunded to the investors and company accused had taken the affidavit from the investors in this regard. It was further stated that on July 24, 2009, company accused had moved an application for compounding of the offence but the same was dismissed by the SEBI in mechanical manner. Thereafter, company accused had moved an application before the SEBI for furnishing a list of auditors. Despite that SEBI failed to provide the same. It was stated that SEBI had filed the present criminal complaint only to harass the accused persons.

16/11/11



8. In order to prove their innocence, accused persons examined Sh. Suresh Dutt Sharma (A2) as DW1.
9. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, Counsel for complainant and Sh. Rajat Aneja, Advocate, Counsel for all accused.
10. Learned counsel appearing for accused vehemently contended that the company accused had not committed any violation of the SEBI Act because company accused had mobilized funds only through close relatives and friends and refunded the amount to them after public notice dated December 18, 1997. It was further argued that since CIS Regulations were notified only on October 15, 1999, company accused was not supposed to comply with the CIS Regulations, thus it was contended that company accused had not violated any provision of CIS Regulations. It was further stated that SEBI had sent a letter Ex. CW1/4, CW1/6, CW1/8, CW1/11, CW1/3 and CW1/15 at the Faridabad address while company accused was not maintaining any office at the said address and it is not clear how SEBI had come to know about the said address.
11. On the other hand, learned counsel appearing for the complainant contended that it is immaterial whether the company accused had mobilized funds through close relatives or friends. It was argued that since company accused had mobilized funds in violation of Section 12(1B) of the SEBI Act, company accused and its directors had committed the offence punishable under Section 24(1) of the SEBI Act. It was further contended that even after notification of CIS



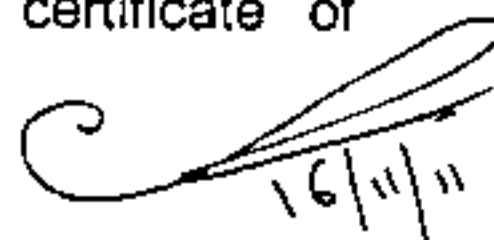


SEBI Vs. AVI PLANTATION & FLORICULTURE LTD & ORS

Regulations, company accused had not approached the SEBI for obtaining the certificate of registration and even company accused had not filed WRR till the filing of criminal complaint. However, learned counsel appearing for complainant fairly conceded that SEBI had sent the letters Ex. CW1/4, CW1/6, CW1/8, CW1/11, CW1/13 and CW1/18 inadvertently at the Faridabad address and no such address of company is available in the record of SEBI. He further fairly conceded that A5 to A8 were not the directors of the company accused as they were merely subscribers of the company accused.

12. It is undisputed fact that company accused was incorporated on August 7, 1997. Since, company accused was incorporated in the year 1997, as per Section 12(1B) of the Act, company accused was not supposed to mobilize any fund unless it obtained a certificate of registration from the Board.

13. 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. Though under the proviso to Section 12(1B) of SEBI Act, relaxation has been provided to the company to continue the existing scheme which were in operation immediately before the insertion of Section 12(1B) in the SEBI Act, no such certificate of registration was required for such schemes till the regulations are notified. Since, the company accused was incorporated in the year 1997, company accused was not supposed to launch any collective investment scheme without obtaining the certificate of


16/11/11

CC No. 60/10

Page no. 7 of 12





SEBI V. AVI PLANTATION & FLORICULTURE LTD & ORS

registration from the SEBI. The relaxation as provided under proviso to 12(1B) of the SEBI Act is not applicable in the facts of present case because the company accused was incorporated in the year 1997 and company accused had mobilized funds after inserting Section 12(B) in the Act. Thus, company accused had violated Section 12 (1B) of Act, which is punishable under Section 24 (1) of the SEBI Act.

14. Now question may arise that the regulations were notified in October 1999 only and there was no regulation in the year 1997-1998 when company accused had mobilized funds through various CIS, thus it could be argued that company accused could not obtain any certificate of registration from SEBI in terms of Section 12(1B) of the Act. 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 para 80:-

"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 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

16/11/11

CC No. 60/10

Page no. 8 of 12





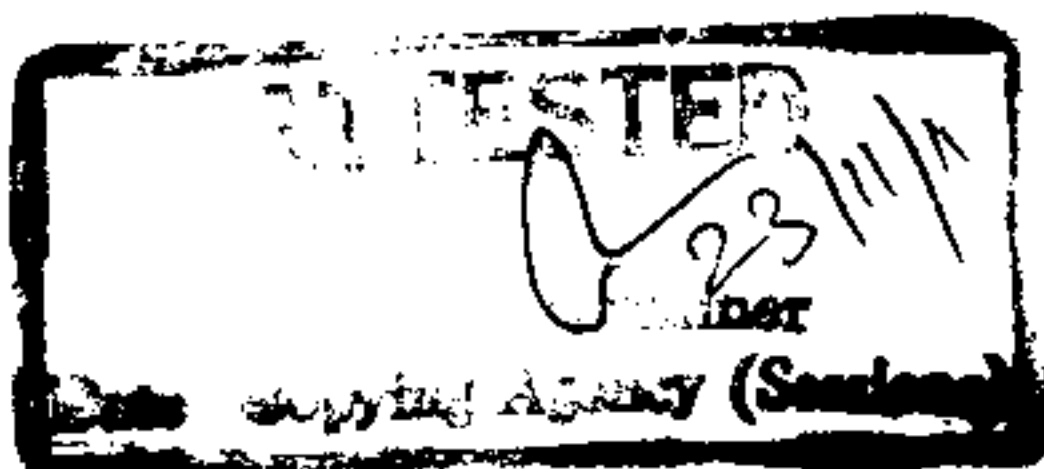
SEBI V. AVI PLANTATION & FLORICULTURE LTD & ORS

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".

15. From the above judgment, it becomes crystal clear that after insertion of Section 12(1B) in the Act, company accused was not entitled to mobilize funds without obtaining a certificate of registration from the board in accordance with regulations, but in the instant case, company accused had mobilized funds in the year 1997 without obtaining the certificate of registration which is in violation of Section 12 (1B) of the Act. Since, funds were mobilized after 1995, company accused was not entitled for the relaxation as provided under the proviso to Section 12 (1B) of the Act.

16. It is undisputed fact that CIS regulations were incorporated on October 15, 1999. Even company accused had not made an application in terms of Regulation 5 of CIS regulations for seeking registration of the Scheme, nor company accused had filed any WRR in terms of Regulation 73 of the CIS Regulations, thus company accused had also violated Regulation 5(1) and 73 of the CIS which amounts violation of Section 24(1) of the Act.

16/11/11





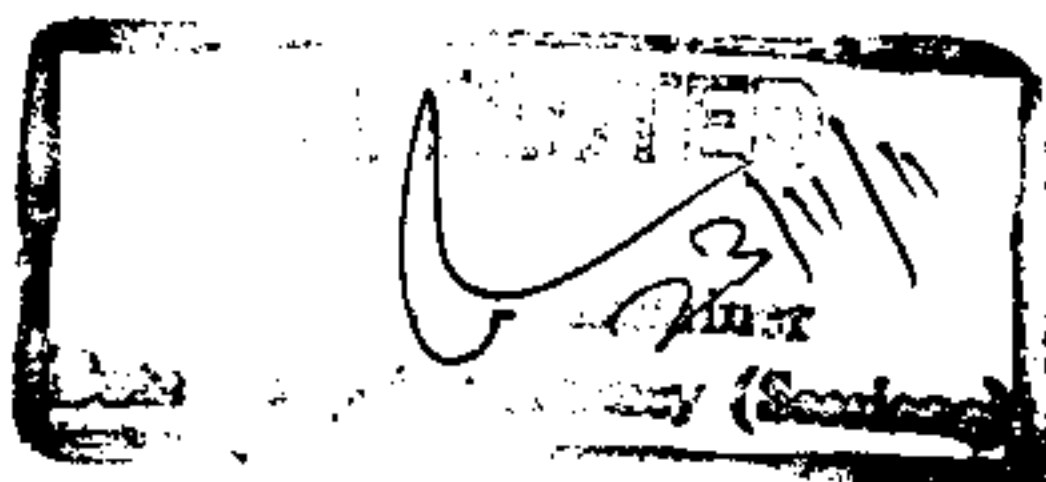
SEBI V. AVI PLANTATION & FLORICULTURE LTD & ORS

17. As per the version of complaint, A2 to A8 were the directors of company accused. However, during the course of arguments, learned counsel for complainant fairly conceded that A5 to A8 were not the directors of the company accused and they were merely the subscribers.

18. Company accused had furnished the list of directors to the SEBI through its letter Ex. CW1/2 and as per the detail furnished by company accused A2, A3 and A4 were the directors of the company accused. Even this fact is also not disputed by the learned counsel for accused during the course of arguments. From the Memorandum and Articles of Associations of company accused, it reveals that A5 to A8 were merely subscribers which corroborated the contention of learned counsel for complainant that they they were merely subscribers. Thus they were not incharge of or responsible to the A1 for the conduct of its business. Whereas being the directors of the company accused, A2 to A4 were in charge of, and responsible to, A1 for the conduct of its business. Even this fact was proved by CW1 in her deposition. Moreover, this fact is not disputed by learned defence counsel. Thus, being the directors of company accused, A2 to A4 are also liable for the violations committed by the company accused, in terms of Section 27 of the SEBI Act.

19. It is undisputed fact that company accused had mobilized funds to the tune of ₹ 9,78,950/- and this fact is admitted by the company accused in its letter Ex. CW1/2. Merely fact that company


16/11/11



accused had mobilized the funds through its close relatives and friends is not sufficient to hold that company accused had not violated the provisions of SEBI Act. Question is not whether the company accused had mobilized funds from general public or from friends/close relatives but real question is as to whether company accused had violated any provisions of SEBI Act at the time of mobilizing the funds.

20. As already discussed, company accused had violated Section 12(1B) as well as regulation no. 5 & 73 of CIS Regulations, thus I do not find any substance in the contention of learned defence counsel that since company accused had mobilized funds through friends and close relatives, it did not violate any provisions of SEBI Act. Similarly, merely fact that company accused had refunded the amount to the investors is not sufficient to exonerate the company accused from its liability. If the company accused had not moved any application in terms of Regulation 5 of CIS Regulations, company accused was supposed to file WRR in terms of regulation 73 of CIS Regulations. But company accused had not filed the same. Thus, merely because company accused had refunded the amount to the investors is not sufficient to exonerate the company accused from its liability. However, this can be considered as a mitigating factor at the time of determining the sentence.

21. Pondering over the ongoing discussion, I am of the considered opinion that complainant has succeeded to establish beyond the shadow of all reasonable doubts that company accused had mobilized funds through CIS in violation of Section 12(1B) of the SEBI Act and also violated regulation no. 5 & 73 of CIS Regulations. Complainant

16/11/11





SEBI V. AVI PLANTATION & FLORICULTURE LTD & ORS

has also established that A2 to A4 being the directors of company accused were in charge of, and responsible to, the company accused for the conduct of its business at the time of mobilizing funds, thus they are also liable for the said violations in terms of Section 27 of the Act. Thus, I hereby hold A1 i.e AVI Plantation & Floriculture Ltd., A2 Sh. Suresh Dutt Sharma, A3 Sh. Arun Tiwari and A4 Sh. Sanjay Tiwari guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

22. However, complainant has failed to establish beyond the shadow of all reasonable doubts that other accused were in charge of, and responsible to, the company accused for the conduct of its business at the time of mobilizing funds, in terms of Section 27 of the Act. Thus, I hereby acquit A5, A7 and A8 from all the charges.

Announced in the open Court.
On this 16th day of November 2011


(PAWAN KUMAR JAIN)
Additional Sessions Judge-01,
Central/THC/Delhi

Copy given to convict
in the Court for
on 21/11/11
21/11/11





SEBI Vs. AVI PLANTATION & FLORICULTURE LTD & ORS

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

**Complaint Case No. 60 of 2010
ID No: 02401R5171272004**

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B-Wing, 224 Nariman Point, Mumbai 400 021 represented by its Legal Officer, Sh. Sharad Bansode.

Versus

1. **AVI Plantation & Floriculture Ltd.** a Company incorporated Under the Companies Act, 1956, having its Registered office at: 458-R, Model Town, Panipat, Haryana, also at: DII/New Colony Extn., Railway Station, Faridabad and having its corporate office at: TA-93-D, Guru Ravi Das Marg, Tughlakabad Extention, New Delhi.

.....**Convict no.1**

2. **Sh. Suresh Dutt Sharma**
S/o Devi S. Sharma
(Director/Promoter of Accused no.1)
R/o 185, Pocket A-4,
Konark Apartment,
Kalkaji Extention, New Delhi

.....**Convict no.2**

3. **Sh. Arun Tiwari**
S/o Late Sh. P. N. Tiwari,

CCNo. 60/10

Page no. 1 of 4





SEBI Vs. AVI PLANTATION & FLORICULTURE LTD & ORS

(Director/Promoter of Accused No.1)
R/o 23 CY Chintamani Road, Allahabad
U.P.

.....Convict no.3

4. **Sh. Sanjay Tiwari**
S/o Late Sh. P. N. Tiwari,
(Director/Promoter of Accused No.1)
R/o 23 CY Chintamani Road, Allahabad
U.P.

.....Convict no.4

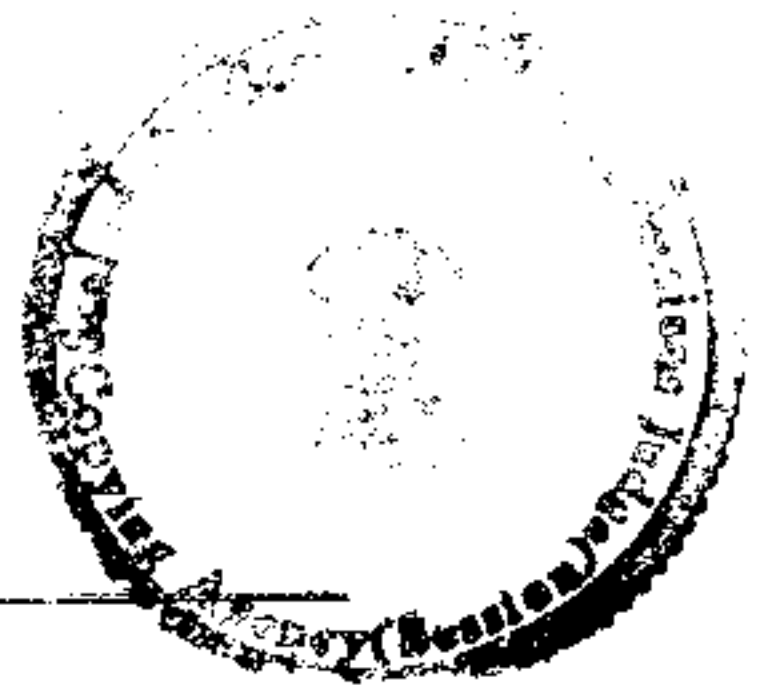
**Present: Sh. Sanjay Mann and Ms. Renu Sharma, Advocates,
Counsel for SEBI.
Sh. Rajat Aneja and Sh. N. Pandey, Advocates,
Counsel for convicts.**

ORDER ON THE POINT OF SENTENCE (ORAL):

1. Vide separate judgment dated November 16, 2011, A1 i.e. Company accused i.e AVI Plantation and Floriculture Ltd., A2 Sh. Suresh Dutt Sharma, A3 Sh. Arun Tiwari and A4 Sh. Sanjay 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 a lenient view on the ground that no other criminal case is pending against the convicts. It is further submitted that convicts had mobilized funds through close relatives and friends and convicts had already refunded

16/11/11





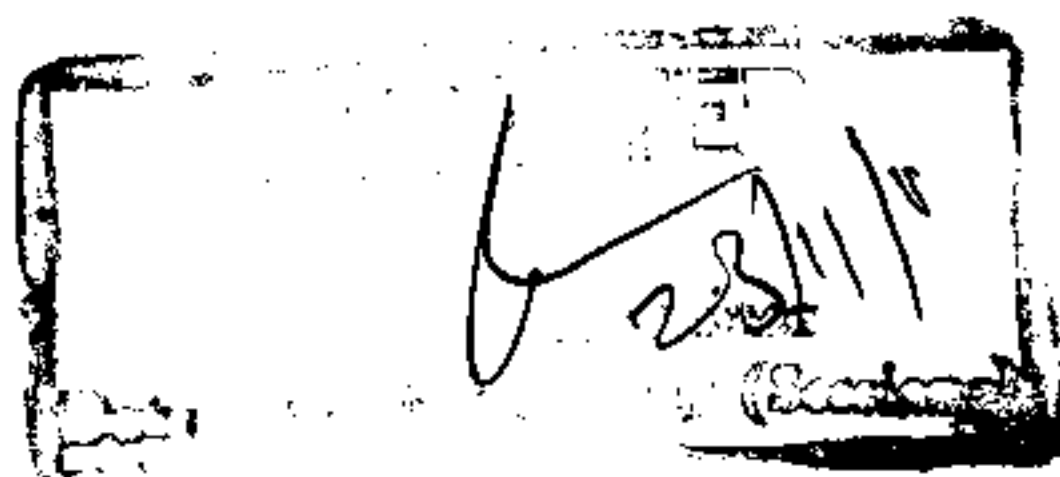
SEBI Vs. AVI PLANTATION & FLORICULTURE LTD & ORS

the mobilized amount to them. It is further stated that during the pendency of trial, convicts also moved an application before the SEBI for compounding the offence as well as also made a request to the SEBI to furnish the list of auditors so that company accused (convict no.1) could get its account audited. It is further submitted that no complaint of any investors is pending with the SEBI. On the other hand, learned counsel appearing for complainant requests for substantial punishment on the ground that convicts failed to file WRR till date.

3. I have heard Counsel for both parties, perused the record carefully and gave my thoughtful consideration to their submissions.
4. During his testimony, DW1 had filed the affidavits of investors to show that mobilized funds had already been refunded to them and also filed the list of investors. Admittedly, SEBI had not received any complaint from any investors about the non-refund of the amount, which strengthen the defence version that convict had refunded the amount to the investors. Considering all these facts, I am of the opinion that ends of justice will be met if convicts are burdened with fine. Accordingly, I hereby impose a fine of ₹ 25,000/- upon each of convicts i.e convict No.1 to 4 in default convict nos. 2 to 4 shall undergo three months simple imprisonment for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.

5. Fine amount is paid.


16/11/10





SEBI Vs. AVI PLANTATION & FLORICULTURE LTD & ORS

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

Announced in the open Court.

On this 16th day of November 2011


(PAWAN KUMAR JAIN)
Additional Sessions Judge-01,
Central/THC/Delhi

Copy given to convict
in the Court at free
on 21/11/11
21/11/11


21/11/11

