

CC 11/12
17/09/2010
IN THE COURT OF SHRI R.K.GAUBA, ADDITIONAL
SESSIONS JUDGE, DELHI.

C.C. No.11 of 2010.

IN THE MATTER OF :

Securities and Exchange Board
of India

Complainant

Versus

Vasundhara Forests and others

Accused

AMENDED MEMO OF PARTIES

IN THE MATTER OF :

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

- I. Vasundhara Forest Ltd. a company
incorporated under the provisions of
Companies Act, 1956 and having its
Regd. Office at Quite Office No.14,
11 Floor, Sector 35A, Chandigarh - 160022.

ATTESTED

Date Copying Agency (Seal)



2. Nidhi Chopra also known as Pallavi Kapoor
w/o Shri Sanjay Kapoor
resident of 548, MIG Flats, Urban Estate,
Phagwara, District Kapurthala, Punjab
Director of Accused No.1 resident of 898,
Sector 38A, Chandigarh
3. Sh Umesh Chopra s/o Not known to the
complainant Occupation Director of Accused
No.1; resident of 898 Sector 38-A, Chandigarh
4. Smt.Sudesh Chopra, w/o Not known to
the complainant; Occupation Director of the
Accused No.1; resident of 898 Sector 38A,
Chandigarh.
5. Kr.Poonam Chopra, d/o Not known to the
complainant; Occupation Director of the
Accused No.1; resident of 898 Sector 38A,
Chandigarh.
6. Shri Sanjay Kapoor, s/o Not known to the
complainant; Occupation Director of the
Accused No.1; resident of 308, Model Town,
Ambala.
7. Shri S.P.Kapoor s/o Not known to the
complainant; Occupation Director of
the Accused No.1; resident of 308,
Model Town, Ambala.





8. Smt. Swarn Kapoor, w/o Not known to the complainant Occupation Director of the Accused No.1; resident of 308, Model Town, Ambala.

... .. Accused

Delhi
February 23, 2011.

Complainant

through

(O.P. Faizi & Co.)
Advocates





Item No. 9
CCNo. 11/10

6.02.2012

Present: Sh. Ashish Aggarwal, Counsel for the SEBI.
Accused No. 3,4,5 & 6 in person with counsel Sh. Manish Kumar, Adv.
Accused No.2, 7 & 8 are absent.
Name of the accused No. 1 had already been struck off.

Separate applications on behalf of accused No. 2, 7 & 8 are moved for personal exemption. Heard.

Accused No. 2,7 & 8 are exempted for today only through counsel Sh. Naresh Mishra, Advocate.

Vide separate Judgment accused No. 2,3 & 6 are held guilty for offence punishable U/s 24(1) read with 27 of the SEBI Act. However, accused No. 4,5, 7 & 8 are acquitted from all charges.

Ld. Counsel requests to adjourn the order on the point of sentence on the ground that accused Nidhi is confined to bed due to illness. Heard.

At his request, renotify the matter for arguments on the point of sentence on 15.02.2012.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
6.02.2012.





SEBI Vs. Vasundhara Forest & others

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

Complaint Case No. 11 of 2010
ID No: 02401R0146202002

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- 40 021 represented by Asstt. General Manager Ms. Versha Aggarwal.

Versus

1. **M/s Vasundhara Forest Ltd.**
a company incorporated under the provisions of Companies Act, 1956 and having its registered office at Quite Office No. 14, 11 Floor, Sector 35 A, Chandigarh-160022

.....Accused no.1

2. **Smt. Nidhi Chopra**
w/o Sanjay Kapoor
Occupation Director of the Accused no.1
R/o 548,MIG Flats, Urban Estate,
Phagwara, District Kapoorthala, Punjab.

.....Accused no.2

3. **Sh. Umesh Chopra**
S/o Late Sh. S. S. Chopra,
Occupation Director of the Accused no.1
R/o 898 Sector 38-A Chandigarh

.....Accused no.3

6/11/10

CC No. 11/10

Page no 1 of 21





SEBI Vs. Vasundra Forest & others

4. **Smt. Sudesh Chopra,**
W/o Sh. S. S. Chopra,
Occupation Director of the Accused no.1
R/o 898 Sector 38-A Chandigarh
.....Accused no.4
5. **Kr. Poonam Chopra**
W/o Sh. Hitesh Khana
Occupation Director of the Accused no.1
R/o 898 Sector 38-A Chandigarh.
.....Accused no.5
6. **Sh. Sanjay Kapoor,**
S/o Sh. S. P. Kapoor
Occupation Director of the Accused no.1
R/o 308, Model Town, Ambala
.....Accused no.6
7. **Sh. S.P. Kapoor**
S/o Late Sh. Dharambir Kapoor
Occupation Director of the Accused no.1
R/o 308, Model Town, Ambala
.....Accused no.7
8. **Smt. Swaran Kapoor**
W/o Sh. S.P.Kapoor
Occupation Director of the Accused no.1
R/o 308, Model Town, Ambala
.....Accused no.8

Date of Institution : 21.12.2002
Date of committal to Session Court : 13.01.2005
Judgment reserved on : 23.01.2012
Date of pronouncement of judgment : 06.02.2012

6/12





SEBI Vs. Vasundra Forest & others

Present: Sh. Ashish Aggarwal, Advocate, Counsel for SEBI.
Sh. P.S.Singhal, Advocate for all accused persons

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 21, 2002 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 M/S Vasundhara Forest Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Smt. Nidhi Chopra ("A2"), accused No.3 Sh. Umesh Chopra ("A3") accused No.4 Smt. Sudesh Chopra ("A4") accused No.5 Kr. Poonam Chopra ("A5"), accused No.6 Sh. Sanjay Kapoor ("A6") & accused No.7 Sh.S.P.Kapoor ("A7") and accused No. 8 Smt. Swaran Kapoor ("A8). It is alleged that A2 to A8 were Directors of the company accused and as such persons were in charge of, and





SEBI Vs. Vasundra Forest & others

responsible to, A1 for the conduct of its business within the meaning of 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 ₹ 0.40 crore 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 21, 2002 whereby process was 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 January 13, 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.





SEBI Vs. Vasundra Forest & others

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SEBI Vs. Vasundra Forest & others

6. **Vide** order dated November 26, 2006, 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 A8 wherein all accused persons pleaded not guilty and claimed trial. Since A2 represented A1 company accused, she also responded to the notice on behalf of company.
7. **To** prove its case, complainant has examined only two witnesses namely Sh. Manish Vashist as CW1 and Ms. Versha Aggarwal as CW2. Thereafter, A2 to A8 were examined under Section 313 Cr.P.C. A2 to A6 took the plea that company accused became defunct in the year 1998, and the name of company was struck off from the record of ROC on April 19, 2000 and since then company stood dissolved. A7 & A8 took the plea that they were neither directors of the company accused nor promoters of the same and they have been falsely implicated in this case. Though initially accused persons in their statements recorded under Section 313 Cr.P.C stated that they would lead evidence in their defence, yet they preferred not lead any evidence in their defence.
8. I have heard arguments advanced by Sh. Ashish Aggarwal Advocate, counsel for complainant and Sh. P.S. Singha, Advocate, counsel for all accused persons and perused the record carefully
9. **Learned** counsel appearing for accused persons vehemently contended that since the present complaint has not been filed by the Board as mentioned in Section 26 of the Act, complaint is not

6/4/10





SEBI Vs. Vasundra Forest & others

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6/11/10





SEBI Vs. Vasundra Forest & others

maintainable. It was further contended that the present complaint has not been filed by the duly authorised person as Board had never authorised any person to file the complaint on behalf of the SEBI. The said contention is countered by the learned counsel appearing for complainant by arguing that Chairman of the Board had authorised Mr. Sharad Bansode, the then Legal officer of the SEBI to file the complaint vide letter of authority exhibited as Ex. CW1/18, thus it was contended that the complaint was filed by the duly authorized person.

10. As per Section 26 of the SEBI Act, no Court can take cognizance for any offence punishable under the Act unless the complaint is made by the Board. The 'Board' has been defined under Section 2(1)(a) of the Act. Section 3 defines the Establishment and incorporation of Board and Section 4 of the Act defines Management of the Board which also includes Chairman. Under Section 4(3) of the Act, Chairman shall also have the powers of general superintendence and direction of the affairs of the Board and Chairman may also exercise all powers and do all acts and things which may be exercised or done by the Board. In exercise of his powers as mentioned under Sub-Section 3 of Section 4 of the Act read with Section 19 of the Act, Chairman of the Board had authorised Sh. Sharad Bansode, the then Legal officer of SEBI to file the present complaint. Since, the Chairman of the SEBI had authorised Mr. Sharad Bansode in terms of Section 4(3) of the Act, it cannot be said that Mr. Sharad Bansode had no authority to file the complaint on behalf of SEBI. Since, Section 4(3) of the Act empowers the Chairman to do all acts or things which may be





SEBI Vs. Vasundra Forest & others

exercised or done by the Board besides general superintendence or direction of the affairs of the Board, Chairman of the SEBI had enough power to authorise any other person in terms of Section 19 of the Act to file complaint on behalf of SEBI. Thus, to my mind, there is no substance in the contention raised by the learned defence counsel.

11. **Learned** counsel appearing for accused persons vigorously contended that the name of the company accused was struck off in the year 2000, thus the directors/promoters of the company accused cannot be prosecuted with the aid of Section 27 of SEBI Act. It was further contended that cause of action had arisen to file the present complaint only on December 7, 2000 when Chairman of the SEBI had issued the directions. It was argued that since the company accused was not in existence on that day, its promoters/directors could not be prosecuted with the aid of Section 27 of the Act.
12. **Per contra**, learned counsel appearing for the complainant sagaciously contended that the company accused was incorporated in the year 1996 and company accused had mobilized funds in violation of provisions of the SEBI Act, thus its promoters/directors are liable in terms of Section 27 of the Act.
13. **Section 27(1)** of the Act imposes vicarious liability on the persons who were in-charge of, and responsible to, the company accused for the conduct of its business at the time of commission of offence and same reads as under:





SEBI Vs. Vasundra Forest & others

Offence by Companies: (1) Where an offence under this Act has been committed by a company, every person who at the time of offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

14. Thus, the moot question is as to whether A2 to A8 were the in charge of, and responsible to, the company accused for the conduct of its business at the time when company accused had committed the alleged offence. If A2 to A8 are found to be in-charge of, and responsible to, the company accused for the conduct of its business, it will be immaterial, if the name of the company accused had been struck off from the record of Registrar of the Companies subsequently. To prove the guilt of accused persons with the aid of Section 27 of the Act, complainant has to establish that A2 to A8 were in-charge of, and responsible to, the company accused for the conduct of its business at the time when company accused had committed the offence punishable under the provisions of SEBI Act. Thus, mere fact that the name of company accused had been struck off in the year 2000 from the record of Registrar of the Companies is not crucial date to decide the vicarious liability of A2 to A8 in terms of Section 27 of the SEBI Act. Thus, to my mind, the said contention is without any substance, hence same is rejected.

15. Learned counsel appearing for the accused

CC No. 11/10

Page no. 8 of 21





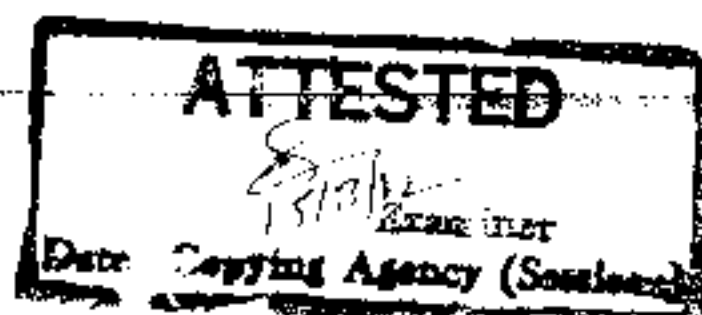
SEBI Vs. Vasundra Forest & others

astutely contended that since CIS Regulations were notified on October 15, 1999, no offence was committed prior to the year 1999. It was further contended that since A2 to A8 were not the directors of the company accused at the time when the present complaint had been filed by the SEBI, they cannot be held liable for the violation committed by the company accused. It was further contended that as per the complaint, A2 to A8 were the promoters/sponsors of the company accused and there is no iota of evidence to show that they were holding any position in the company accused. It is submitted that A3 had resigned from the company accused on August 30, 1996, thus argued that A3 cannot be held liable for the violation if any, committed by the company accused. In support of his contention, learned defence counsel relied upon the judgments reported in 2008(4)JCC2707, 2008(4) 2717 and 157(2009) DLT 417

16. On the other hand, learned counsel appearing for SEBI contended that the company accused had furnished the information about its directors through its letter Ex. CW1/2 and as per the said letter, A2 to A8 were the directors of the company accused at the relevant time, thus it was contended that being the directors/promoters, they were in charge of, and responsible to, the company accused for the conduct of its business

17. It is undisputed fact that company accused was incorporated in the year 1996. Company accused in its letter dated January 14, 1998 exhibited as Ex CW1/2 intimated the SEBI that company accused had raised funds to the tune of ₹ 40,77,580/- and also

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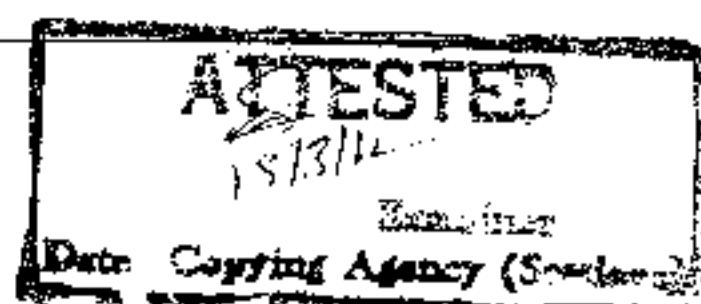
SEBI Vs. Vasundra Forest & others

supplied the brochure of the schemes to the SEBI. Since, company accused was incorporated only in the year 1996 and the said letter was sent by the company accused to the SEBI on January 14, 1998, it means that company accused had mobilized the said funds during the period 1996-1998.

18. Now question arises as to whether company accused had violated any provision of the SEBI Act at the time of mobilizing the said amount as it is undisputed fact that CIS Regulations were notified in October 1999.

19. 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 1996-98, company accused had not obtained any registration from the Board, thus company accused had violated the provisions of Section 12(1B) in the year 1996-98 itself by mobilizing funds through CIS without obtaining certificate of registration from the SEBI.

20. Admittedly, Regulations were notified in October 1999 only and there was no regulation during the year 1996-98 when company accused had mobilized funds through various CIS. On the said basis, learned defence counsel argued that company accused could not





SEBI Vs. Vasundra Forest & others

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 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

CC No. 11/10

Page No. 1 of 21





SEBI Vs. Vasundra Forest & others

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".

21. From the above judgment, it becomes clear that merely there was no regulation in the year 1996-1998 was not an excuse for the company accused for not obtaining registration of a certificate. Since company accused had not obtained any certificate of registration during the period 1996-98 when it mobilized funds through various CIS, company accused had violated the provisions of Section 12 (1B) of the SEBI Act.

22. 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 Regulation. 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 provisions of Regulation





SEBI Vs. Vasundra Forest & others

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

23. From the ongoing 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

24. In its complaint, SEBI had prosecuted A2 to A8 alleging that they were directors/persons in charge of, and responsible to, the company accused. To prove this fact, SEBI had relied upon the letter exhibited as Ex. CW1/2, sent by the company accused pursuant to the press release dated December 18, 1997 issued by the SEBI. Perusal of the said letter reveals that company accused had furnished the list of promoters/sponsors to the SEBI stating that A2 to A8 were the promoters /sponsors. From the said letter, it is not clear whether A2 to A8 were the promoters/sponsors of the company or they were promoters /sponsors of the schemes launched by the company accused. During the course of arguments, learned counsel for complainant submitted that A2 to A8 were the promoters of the company accused as well as sponsors of the schemes. However, during the trial, complainant has failed to produce any evidence whatsoever to establish that A2 to A8, whose names are mentioned in Ex. CW1/2, were the sponsors of the said schemes. To rope the accused persons for the violations committed by the company accused with the aid of Section 27 of the Act, SEBI has to prove that





SEBI Vs. Vasundra Forest & others

A2 to A8 were the persons in-charge of, and responsible to, the company accused for the conduct of its business at the time of committing the alleged offence. CW1 in his examination-in-chief deposed that A2 to A8 were the promoters/sponsors. He admitted that A4 and A5 were not the directors of the company accused. He further deposed that he is not sure whether A7 and A8 were the directors of the company accused or they were in charge of, and responsible to, the company accused for the conduct of its business. Similarly, CW2 in her deposition, admitted that A4, A5, A7 and A8 were not the directors of the company accused but they were merely promoters/sponsors of the company accused. SEBI has filed the Memorandum and Articles of Association of the company accused and as per the said document, said accused persons namely A4, A5, A7 and A8 were not the directors of the company accused. Their name is mentioned therein being the subscribers of the equity shares of the company accused. Thus, it becomes clear that A4, A5, A7 and A8 were the promoters of the company accused and they were not holding any position in the company accused. Since, they were not holding any position in the company accused, it cannot be said that they were in-charge of, and responsible to, the company accused for the conduct of its business. Thus, they cannot be held vicariously liable with the aid of Section 27 of the Act, for the violations committed by the company accused.

25. As per Memorandum and Articles of Association of the company accused, A2 Ms. Nidhi Chopra and A3 Mr. Umesh Chopra were the first directors of the company accused. Ms. Sanjay Kapoor was also one of the directors of the company accused but as per





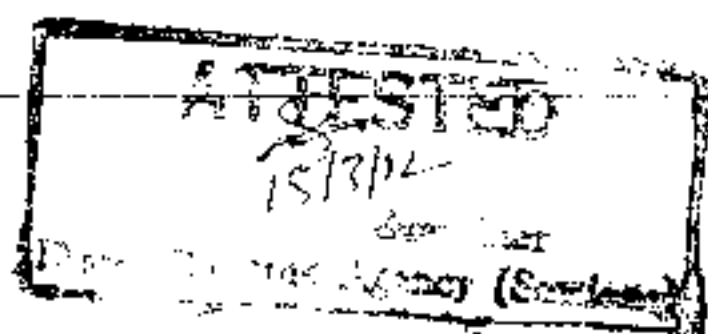
SEBI Vs. Vasundra Forest & others

memo of parties Ms. Nidhi Chopra is the wife of Sanjay Kapoor. Thus, Mrs. Sanjay Kapoor is none else but A2.

26. Learned defence counsel appearing for the accused persons took the plea that A3 Mr. Umesh Chopra had resigned from the Board of Directors on August 30, 1996. In his statement recorded under Section 313 Cr.P.C., A3 Mr. Umesh Chopra had not taken any such plea. Though in his statement recorded under Section 313 Cr.P.C., A3 Mr. Umesh Chopra stated that he would lead evidence to prove his innocence yet he failed to lead any evidence in his defence. In other words there is no iota of evidence on record to show that A3 had resigned from the company accused on August 30, 1996.

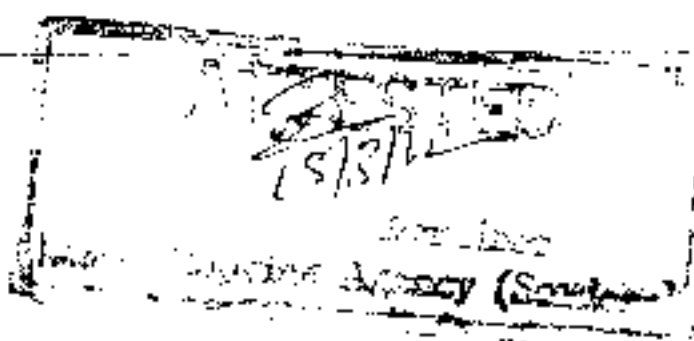
27. As per Memorandum and Articles of Association of the company accused, A2 Ms. Nidhi Chopra was not only the first director of the company accused but also Managing Director-cum-Chairperson of the company accused. Though it was contended that Ms. Nidhi Chopra had also resigned from the company accused, yet no such plea was taken in the statement recorded under Section 313 Cr.P.C. nor any evidence produced on record during the trial. Thus, in the absence of any evidence on record, the contention does not inspire any confidence.

28. Thus, it becomes clear that A2 Ms. Nidhi Chopra and A3 Mr. Umesh Chopra were the first directors of the company accused and A2 was also the Managing Director-cum-Chairperson of the company accused.





6/4/12





SEBI Vs. Vasundra Forest & others

prevent the commission of such offence. Being the Zonal Manager of the company accused, A6 was one of the persons who was in-charge of, and responsible to, the company accused when company accused had mobilised funds in violations of provision of Section 12 (1B) of the Act.

30. Coming to the judgments relied upon by the learned defence counsel for accused persons. Judgments title as *Jagdish Sharad Aggarwal VS SEBI and Kanchan Aggarwal VS SEBI Reported in 2008 (4) JCC 2704 and 2008 (4) JCC 2717* respectively were in fact passed in one case where M/s Yozna Agro Forestry Ltd. had mobilised funds in violations of the provisions of SEBI Act. In both the said judgments the proceedings qua petitioner were quashed on the ground that the petitioner had resigned from the Board of Directors of the company accused in year 1998 whereas the cause of action to file the complaint had arisen in the year 2001 and the complaint was filed in the year 2003. On the basis of said judgments learned counsel appearing for accused persons contended that in the instant case also A2 and A3 had resigned from the Board of Directors of the company accused much prior to filing of the present complaint or much prior to the year 2001 when the cause of action had arisen first time in favour of SEBI to file the complaint against the accused persons.

31. Admittedly, in the instant case, the directions were issued by the Chairman of the SEBI on December 07, 2000 and the complaint was filed in the court only on December 21, 2002. The





SEBI Vs. Vasundra Forest & others

question arises as to when cause of action arose in favour of SEBI to file the complaint against the accused persons.

32. As already discussed, the company accused was incorporated in the year 1996, thus in terms of Section 12 (1B) of the Act, company accused was not supposed to mobilise any fund through CIS unless company accused had obtained a certificate of registration from the SEBI. Admittedly the company accused had not obtained any certificate of registration in terms of Section 12 (1B) of the Act. Under proviso to Section 12 (1B) of Act, relaxation has been provided to companies to continue with the existing schemes, if any, till the time SEBI notified the regulations in terms of the provisions of the SEBI Act. However, that relaxation was applicable only to those companies which were operating the schemes prior to the insertion of Section 12 (1B) in the Act. Since, Section 12 (1B) was inserted in the Act on January 25, 1995, it means that the schemes which were in existence prior to that date were entitled to be continued till the notification of Regulations. Since in the instant case, the company was incorporated only in the year 1996, company accused was not entitled to seek relaxation as provided under the proviso to Section 12 (1B) of the Act. Mere fact that SEBI had extended the benefit to the company accused to continue with the schemes after complying with the provisions of CIS Regulations does not mean that they had no liability when the company accused had mobilized the funds in violations of provision of SEBI Act. The said proposition of law has been discussed in detailed in *paramount case (supra)*. Thus, to my mind both the said judgments are not helpful to the accused persons.



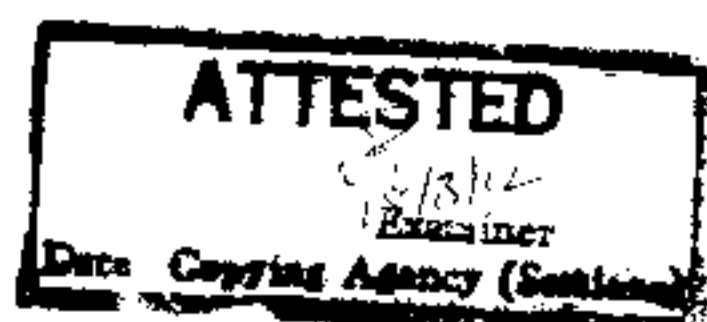


SEBI Vs. Vasundra Forest & others

33. Now to the case titled *Rashima Verma Vs SEBI reported in 157 (2009) DLT 417*, I am of the opinion that the said judgment is also not helpful to the A2, A3 and A6. In the said case, the proceeding qua petitioner was quashed on the grounds inter-alia that his name was mentioned as one of the subscribers in Memorandum and Articles of Association of the company accused and his name did not appear in the list of Managing Director and Directors appointed as per the Articles of Association of the company accused whereas on the contrary, in the instant case, name of A2 and A3 is appearing in the Memorandum and Articles of Association of the company accused as first directors and A2 was the Managing Director-cum-Chairperson of the company accused. Thus, it cannot be said that they were not the persons in charge of, and responsible to, the company accused for the conduct of its business. Similarly, A6 was Zonal Manager of the company accused at the relevant time and being the Zonal Manager, he was also in charge of, and responsible to, the company accused to conduct the business of the company accused.

34. As already discussed, in the instant case company accused had violated the provisions of Section 12 (1B) of the Act at the time of mobilising funds through various CIS schemes launched by the company accused during the period 1996-1998. Needless to say that the individual director was not competent to mobilise funds on behalf of the company accused. To mobilize fund from public is a collective decision of the Board of Directors of the company accused, thus the persons who were directors of the company accused at the relevant

A handwritten signature in black ink, appearing to be "S. K. Singh", is written over the end of paragraph 34.





SEBI Vs. Vasundra Forest & others

time or the persons who were looking after the affairs of the company accused being occupying substantial post in the company accused such as A6 were in-charge of and responsible to the company accused for the conduct of its business. Since A6 was one of the promoters of the company accused, it cannot be said that he was merely one of the employees of the company accused. Being one of promoters, he had interest in the schemes launched by the company accused. Being the Zonal Manager, it was his duty to ensure that company should not have violated any provisions of law at the time of mobilising funds. During trial, he failed to establish that he had no knowledge of the act of the company accused, which is otherwise not believable, thus I am of the opinion that he is also liable for the violations committed by the company accused in terms of Section 27 of the SEBI Act.

35. Pondering over the ongoing discussion, I am of the considered opinion that complainant has succeeded to prove that company accused (A1) had mobilized funds in violation of Section 12 (1B) of the SEBI Act and also violated Regulation 5 & Regulation 73 of CIS Regulations which is punishable under Section 24 (1) of the SEBI Act. Complainant has also succeeded to prove that A2 and A3 being the directors of company accused (A1) and A6 being the Zonal Manager of the company accused, were in-charge of, and responsible to, the company accused for the conduct of its business at the time of committing the above violations, thus in terms of Section 27 of the Act, they are also liable for the above violations. Accordingly, I hereby hold them i.e. A2 Ms. Nidhi Chopra, A3 Mr. Umesh Chopra and A6 Mr.





SEBI Vs. Vasundra Forest & others

Sanjay Kapoor guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act. However, complainant has failed to prove the guilt of A4, A5, A7 and A8 beyond the shadow of all reasonable doubts. thus, I hereby acquit them from all the charges.

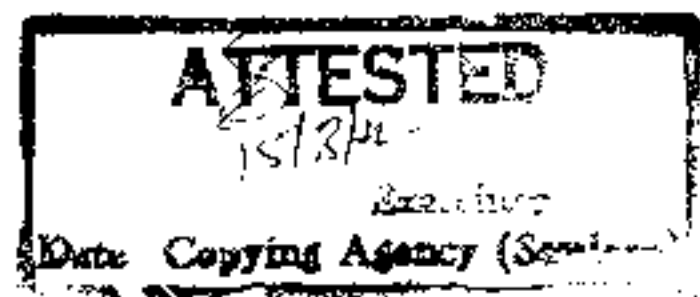
Announced in the open Court
on this 6th day of February 2012

6/2/12
(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

*Copy given to court in
the Court at Foc on
15/2/12
15/2/12*

15/2-12

Sanjay Kapoor





Item No. 8
CC No.11/10

15.02.2012

Present: Ms. Priyana Tyagi, Advocate, Counsel for the SEBI along with Ms. Sharika K.G, AGM of SEBI
Convict no. 1 (Nidhi Chopra) and convict no. 3 (Sanjay Kapoor) are in person with counsel Sh. I. L. Kapoor, Advocate
Convict no. 2 Umesh Chopra in person with counsel Sh. P. S. Singhal, Advocate
Name of the accused No. 1 had already been struck off.

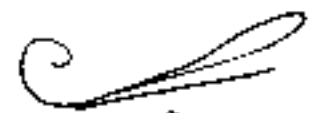
Arguments heard on the point of sentence.

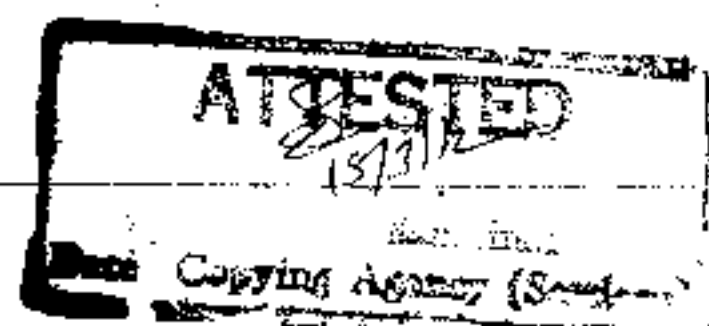
Vide separate order on the point of sentence, convict no. 2 & 3 are sentenced for rigorous imprisonment for a period of six months and also burdened with a fine of ₹ 4 lac each in default convict no. 2 and 3 shall under go simple imprisonment for a period of three months for the offence punishable under Section 24(1) of the SEBI Act. Convict no. 1 Nidhi Chopra is burdened with a fine of ₹ 4.50 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.

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

Learned defence counsel on behalf of convict Umesh Chopra moves an application under Section 389 Cr.P.C for suspension of sentence


15/2/12






on the grounds inter-alia that convict has deposited the amount of fine of Rs. 4 lac and was on bail during trial. Considering the submission of learned defence counsel, sentence of imprisonment is suspended till 31.3.2012 on furnishing a personal bond in the sum of ₹ 10,000/- with one surety in the like amount. Bail bond furnished and same is accepted. Original FDR be kept in file.

Learned counsel appearing for convict Nidhi Chopra @ Palvi Kapoor requesting to permit the convict to deposit the balance fine amount of ₹ 2.50 lac. Since the convict has deposited ₹ 2 lac towards the fine amount, convict Nidhi Chopra @ Palvi Kapoor is permitted to deposit the balance amount of fine i.e. ₹ 2.50 lac within 30 days from today. Application stands disposed of

Since, convict Sanjay Kapoor has not paid the fine nor any application is moved, he be sent to jail.

File be consigned to record room.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
15.02.2012.



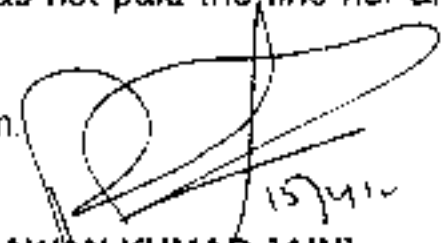


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[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
15.02.2012.



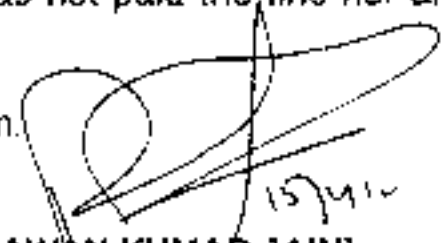


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[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
15.02.2012.





SEBI Vs. Vasundhara Forest & others

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

Complaint Case No. 11 of 2010
ID No: 02401R0146202002

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- 40 021 represented by Asstt. General Manager Ms. Versha Aggarwal.

Versus

1. **Smt. Nidhi Chopra**
w/o Sanjay Kapoor
Occupation Director of the Accused no.1
R/o 548,MIG Flats, Urban Estate,
Phagwara, District Kapoorthala, Punjab.

.....Convict no.1

2. **Sh. Umesh Chopra**
S/o Late Sh. S. S. Chopra,
Occupation Director of the Accused no.1
R/o 898 Sector 38-A Chandigarh

..... Convict no.2

3. **Sh. Sanjay Kapoor,**
S/o Sh. S. P. Kapoor
Occupation Director of the Accused no.1
R/o 308, Model Town, Ambala

.....Convict no.3





SEBI Vs. Vasundra Forest & others

Present: Sh. Ashish Aggarwal, Advocate, Counsel for SEBI.
Sh. P.S.Singhal & Sh. I.L.Kapoor, Advocates for all
convicts

ORDER ON THE POINT OF SENTENCE:

1. **Vide** separate judgment dated February 6, 2012 A2 Ms Nidhi Chopra, A3 Umesh Chopra and A6 Sanjay Kapoor 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 the convict no.2 Umesh Chopra submits that he is a man of 40 years of age and having no criminal antecedents and is the sole bread earner of his family having two school going daughters and has ailing and widow mother. It is further submitted that SEBI has not received any complaint from any investor, which shows that company accused had refunded the amount to the investors before the name of company accused had struck off from the record of ROC.
3. **Learned** counsel for convict no. 1 Ms. Nidhi Chopra & convict no. 3 Sanjay Kapoor submits that both are husband and wife and convict no. 1 Ms. Nidhi Chopra is working in a private school whereas convict no. 3 Sanjay Kapoor is running some shop and they are the bread earner of their family having school going children and there is no previous criminal involvement. It is further submitted that company

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19/1/12

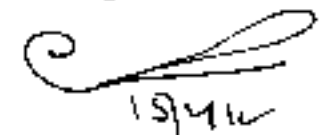


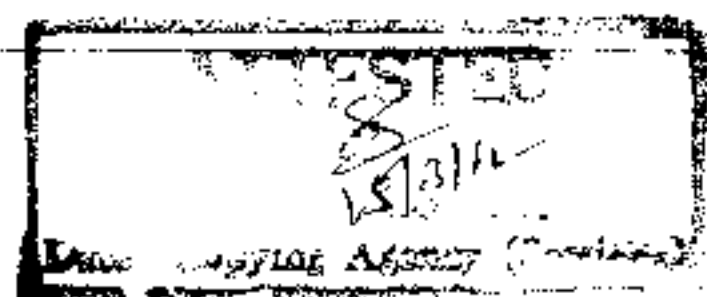


SEBI Vs. Vasundra Forest & others

accused had refunded the amount to the investors otherwise name of company accused would not be struck off from the record of ROC.

4. Per contra learned counsel appearing for SEBI requests for the maximum punishment on the grounds inter-alia that company accused had mobilized the funds to the tune of above ₹ 40 lac. and till date, company accused had not refunded the amount to the investors.
5. I have heard Counsel for both parties, perused the record carefully and gave my thoughtful consideration to their submissions.
6. As per evidence adduced by the parties, company accused had mobilized funds to the tune of ₹ 40,77,580/- in violation of provisions of SEBI Act and during trial, convicts failed to produce any evidence on record to show that company accused had refunded the amount to the investors. Mere fact that investors had not made any complaint to the SEBI is not a ground to draw a presumption that company accused had refunded the amount to the investors. Since, the defence is taken by the convicts that company accused had refunded the amount to the investors, onus was upon the convicts to establish that the said amount had been refunded to the investors but they failed to discharge the onus, even company accused had not filed WRR till date.
7. It is pertinent to mention here that 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 to fine to the extent of ₹ 25 crore or both. This shows that legislature


15/4/14






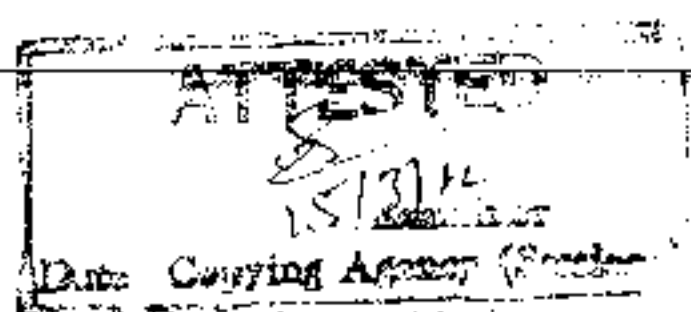
SEBI Vs. Vasundra Forest & others

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 magnitude of the funds 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.

8. **Convict no. 1 & 3** are husband and wife and if both be sentenced to imprisonment, then their family will be disturbed. Accordingly, a lenient view is taken qua convict no. 1 Ms. Nidhi Chopra. Accordingly, I hereby sentence convict no. 2 & 3 for rigorous imprisonment for a period of six months and also impose a fine of ₹ 4 lac each in default convict no. 2 and 3 shall under go simple imprisonment for a period of three months for the offence punishable under Section 24(1) of the SEBI Act. Convict no. 1 Nidhi Chopra is burdened with a fine of ₹ 4.50 lac for the offence punishable under Section 24(1) of the SEBI Act.

9. **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


15/11/14






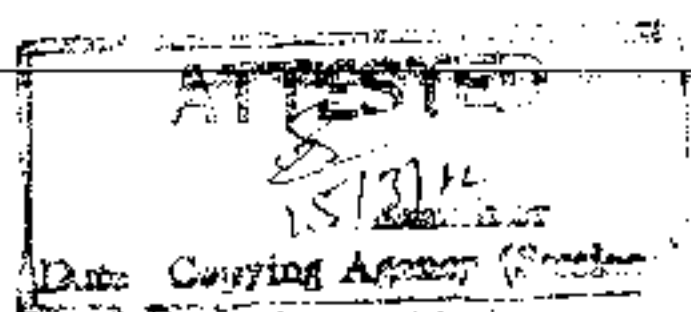
SEBI Vs. Vasundra Forest & others

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15/11/14





SEBI Vs. Vasundra Forest & others

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.

10. Copy of judgment along with order on the point of sentence be given to the convicts/their counsel free of cost.
11. File be consigned to record room.

Announced in the open Court
on this 15th day of February 2012


(PAWAN KUMAR JAIN)

ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

Copy of judgment
in the Court of the
on 15/2/12.

15-2-12

Kalshapoor

CC No. 11/10

Office of The District Sessions Judge Delhi
Confirmed to be True Copy
Date: Copying Agency (Sessions)
Authorised by Section 79 of the Indian Evidence Act 1973

Page no. 5 of 5