

Case No. 33/09
SBI Vs. Ankur Forest and Project Development co. Ltd.
04.02.2010.

Present : Sh. Sanjay Mann, counsel for SEBI.

Convict no. 2 to 4 and 6 on bail with counsel Sh. Amit Kumar

1. I have heard the Ld. Counsel for SEBI Sh. Sanjay Mann and Sh. Amit Kumar counsel for convicts on the point of sentence.
2. It is submitted on behalf of all the convicts that they are farmers and wife of convict Jagjit Singh is suffering from cancer, prayer is made for taking a lenient view.
3. Ld. Counsel for SEBI Sh. Sanjay Mann has strongly opposed the submission made by Ld. Counsel for convicts and prayed for maximum punishment on the ground that the malafide of the accused company and convicts has to be consider from the fact that accused company did even make payment of palatory amount of RS. 12,500/- invested by investors and one of the investor had approached the Hon'ble High court of Punjab and Haryana by way of filing of company petition for winding up of the accused company and despite the same the amount remained unpaid. Ld. Counsel for SEBI Sh. Sanjay Mann further submitted that accused had mobilized funds from the general public.
4. Ld. Counsel for SEBI Sh. Sanjay Mann states that the Act came into force in 1992 to provide for establishment of a Board to protect the the interest of investors in securities and to promote the development of, and regulate securities market and matters connected therewith.

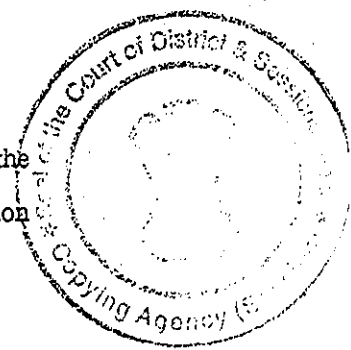
ATTESTED

11/2/10

136095057

13. (C) 1942-1943 (Barclay)

2D



5. I am of the view that convict had sufficient time to comply with the provisions of the act and regulations made thereunder however violation continued till filing of the complaint and even as till date.

6. According to section 12(1B) of the Act, the Collective Investment scheme could not be run without obtaining registration as per regulations.

7. Convicts no. 2 to 4 and 6 were the directors of accused no. 1 company and accused company in violations of section 12(1B) of the SEBI Act floated Collective Investment Scheme and collected amount from general public.

8. It is significant to mention that w.e.f 29.10.2002 section 24 of the Act was amended and provides imprisonment extending up to 10 years an fine up to Rs. 25 crores or both. This shows that the the legislature has viewed the offences under the act and regulation very seriously. Hence in my view lenient view cannot be taken.

9. However as the offence in question was committed before the amendment came into force hence, in these facts and circumstances of the present case accused no. 2 to 4 and 6 are sentenced to RI for 1 year each. In addition accused company and accused no. 2 to 4 and 6 shall pay a fine of Rs. 5,00,000/- (Five lac) each and in default thereof accused no. 2 to 4 and 6 shall undergo SI for 6 months each u/s 24 read with section 27 of the Act. Out of the amount of fine realised a sum of Rs. 20,000/- be paid to SEBI after expiry of period of revision, appeal, towards the expenses incurred by it. Copy of order be given to convicts free of cost. File is consigned to record room.

(POONAM CHAUDHARY)
ASJ(Central-01)/DELHI.
04.02.2010.

10
ATTESTED
11/2/10

(1) *Chaudhary*
(2) *Molavi*
(3) *Amr*
(4) *Tajpur Singh*

CC No. 33709

SEBI Vs Ankur Forest and Project Development co. Ltd.

04.02.2010.



Present: Sh. Sanjay Mann, counsel for SEBI.

Convict No. 2 to 4 and 6 with counsel Sh. Amit Kumar

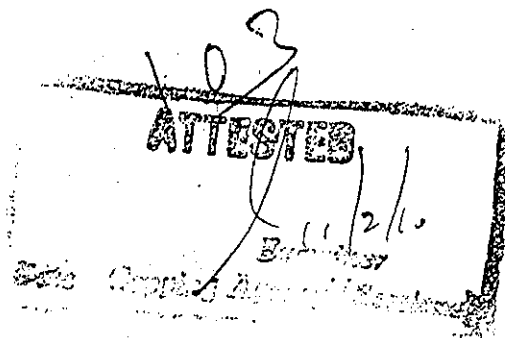
Application moved on behalf of convicts for suspension of sentence till *and fine*

filing of the appeal.

Heard. In view of the section 389(3)(i) as the convict was on bail and intends to file an appeal, hence sentence of imprisonment and fine is suspended till 03.03.2010 till then all the convict is admitted on bail on furnishing personal bonds in the sum of Rs. 10,000/- each with one surety each of the like amount. Personal bond furnished, accepted till 03.03.2010.

Handwritten signature

(POONAM CHAUDHARY)
ASJ(Central-01)/DELHI.
04.02.2010.



SEBI Vs. Ankur Forest & Projection Development (I) Pvt. Ltd. & Ors.

IN THE COURT OF MS. POONAM CHAUDHARY
ASJ (CENTRAL-01) : DELHI

CC No. 33/09

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 - 400021 represented by its Legal Officer, Shri Sharad Bansode.

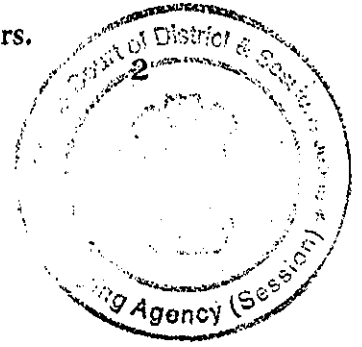
VERSUS

- 1 Ankur Forest & Project Development India Ltd. a company incorporated under the provisions of Companies Act, 1956 and having its registered office at : SCO 805 (2nd floor) Shivalik Enclave, Chdkalka Road, Manimajra, Chandigarh
- 2 Sh. Tarsem Saini, S/o Not known to the complainant; Occupation Director of the Accused no. 1; resident of Village , Birmangoli , PO Lakhmari, Distt, Kurukshetra, Haryana.
- 3 Sh. Rajbir Singh, S/o Not known to the complainant; Occupation Director of the Accused no. 1; resident of Village Birmangoli, PO Lakhmari, Distt, Kurukshetra, Haryana.
- 4 Sh. Jagjit Singh, S/o Not known to the complainant; Occupation Director of the Accused no. 1; resident of Village Rachheri , PO Ganeshpur , Distt. Ambala Haryana.
- 5 Sh. Hemant Sharma, S/o Not known to the complainant; Occupation Director of the Accused no. 1; resident of VPO



61
ATTESTED
11/2/12
Secretary
Secy. (Civil) / Chandigarh Agency

SEBI Vs. Ankur Forest & Projection Development (I) Pvt. Ltd. & Ors.



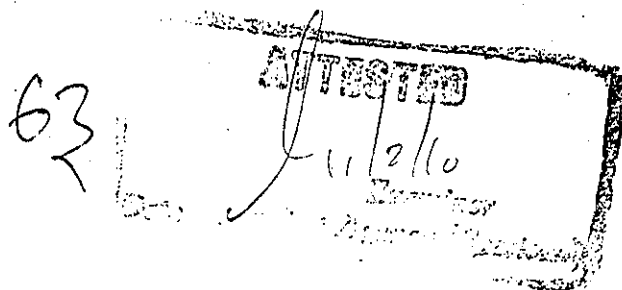
Mullana, Nr. Harmilap Mandir, Distt. Ambala Haryana.

- 6 Sh. Mohan Lal Saini, S/o Not known to the complainant; Occupation Director of the Accused no. 1; resident of Village Gharoli, PO Patheir, Disst. Ambala Haryana.

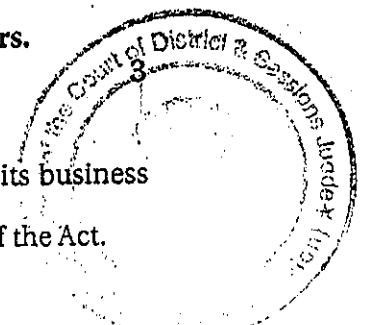
Arguments heard on : 27.01.2010.
Judgments reserved for : 29.01.2010.
Judgments announced on : 29.01.2010.

JUDGMENT

1. The brief facts of the case are that the Securities and Exchange Board of India (herein after referred to as 'SEBI') a statutory body established under the provisions of Securities and Exchange Board of India Act 1992 (herein after referred to as the Act) as disclosed in the complaint dated 21.12.02 are that accused nos. 2 to 6 being the directors of accused no. 1 (herein after referred to as accused company) floated Collective Investments Scheme (for sort 'CIS') and collected Rs.0.35 crore from the general public. It is also averred that for the Regulations of CIS, being run by entrepreneurs, SEBI notified the Securities and Exchange Board of India Regulation 1999 (herein after referred to as 'Regulations'). However, accused company did not apply for registration neither it took any steps for winding up its CIS and repayment to the investors as per the Regulations. Therefore, according to the SEBI, accused company committed violations of Sections 11(b), 12(I)(b) of the Act read with Regulations 5(1), 68(1), 68(2), 73 & 74 punishable under Section 24(1) of the Act. SEBI is claimed that accused no. 2 to 6 being the directors of



SEBI Vs. Ankur Forest & Projection Development (I) Pvt. Ltd. & Ors.



the accused no 1 company were responsible for the conduct of its business and, therefore, are liable for the said violations under Section 27 of the Act.

2. After the filing of the complaint, all the accused were summoned vide order of Ld. ACM, Delhi dated 2.12.02
3. After the appearance of accused notice of accusation was given to accused nos. 2, 3, 4 and 6 on 24.02.06 to which notice they pleaded not guilty and claimed trial. Accused no. 5 absconded and he was declared P.O.
4. In support of its case the complainant SEBI examined CW1 Ms. Versa Aggarwal, Assistant General Manager, SEBI and CW2 Ms. Jyoti Jindgar, General Manager, CW 1 deposed that she was authorized to pursue the complaint vide delegation of power signed by Chairman, SEBI. She further stated that complaint was filed by Sh. Sharad Bhansode, she identified his signature as she had seen him working during her duty. She further stated that vide public notice dated 18.12.97, the company which had issued bonds such as agro bond, plantation bonds were to be treated as CIS coming under the provisions of SEBI Act. The companies were required to file their information with SEBI regarding the details of directors, funds mobilized, copy of Memorandum and Articles. She further stated that the company vide letter received on 18.12.97 submitted a details of its directors, funds mobilized and filed a copy of memorandum of articles which is Ex.CW1/1 as per the CW 1,1 accused nos. 1 to 6 were stated to be the directors of the

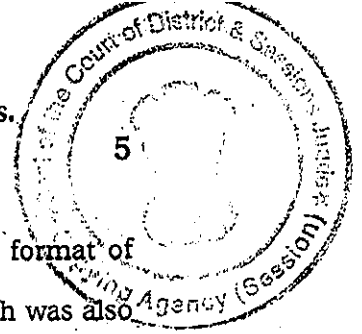
ue

65

65
JUL 11 2010
JUL 11 2010

company. The company had mobilized Rs. 34,79,151/- under its CIS. She further deposed that as per Memorandum of Articles the promoter of the companies were Sh. Tarsem Saini, Sh. Hemant Sharma, Sh. Jagjeet Singh, Sh. Rajbir Singh, Sh. M.L. Saini, Sh. S. Singh and Sh. Jai Bhawagwan. She further stated that the company informed vide letter dated 28.07.98 which is Ex. CW1/2 submitted that audit of financial year 1997 and 1998 had not been completed and they would submit the audited balance-sheet immediately after completion of audit. CW1 also deposed that SEBI's (CIS) Regulations were notified on 15.10.99. The company was informed of the notification vide press release dated 20.10.99 and letter dated 21.10.99 which is Ex. CW1/4 which was returned undelivered with the remarks left without address". The regulatory requirements in terms of provisions of Regulations 5(1) 73 and 74 of the above Regulations for registration, winding up of the schemes and repayment to the investors were intimated to the company vide letters dated 10.12.99 and 29.12.99 and through public notice dated 10.12.99. The letters were returned undelivered with the report "left without address" the returned envelop is EX. CW 1/5 and Ex. CW1/6 is the date 10.12.99 returned envelop of letter dated 29. 2.99 is Ex. CW 1/7 and letter CW 1/8. CW 1 further stated that as accused company neither applied for registration nor informed SEBI of the winding up of its scheme. Show cause notice dated 12.05.07 was issued against the company which again returned undelivered with the remarks left without address. The returned envelop is CW1/9 and show cause notice is CW1/10. The company replied the show cause notice. Thereafter vide letter dated 31.07.2000, the company was reminded that on completion of winding

67 ATTESTED
11/2/10



up of the company was required to file the detailed report. The format of winding up and repayment report was sent to the company which was also returned undelivered with the remarks left without address. The returned envelope is CW1/11 and letter CW1/12. CW1 further stated that the company did not file the winding up and repayment report with SEBI. Hence, Chairman, SEBI, thereafter vide order dated 07.12.2000 issued directions under Section 11(1B) of the Act directing the company to refund the money collected under its scheme within the period of one month from the date of order failing which further action was to be initiated. The contents of the letter were brought to the notice of the company vide letter dated 18.12.2000. CW1 had testified that a public notice appeared on 14.01.01 a list of 523 notice was published alongwith the text of the directions issued under Section 11(b) of the Act and the name of the accused company appeared at serial no. 37 of the list. CW1 was also stated that the accused company had not till date filed the winding up and repayment report neither complied with the chairman's order.

5. In her cross examination CW 1 stated that vide Ex.CW1/1 company informed about its directors to SEBI but did not specify as to who were actually involved in the running of the company. She further stated that accused facing trial were the directors of the company at the time of commission of the offence. She also stated that SEBI had not inquired prior to the filing of the complaint that accused was was ordered to be wound up by the order of the Hon'ble High Court Punjab & Haryana. CW1 also stated that

ll

69

ATTESTED

[Signature]

Winding Agency (Session)

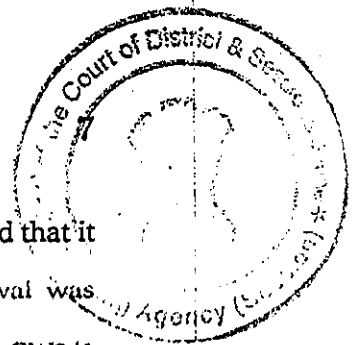
- she could not state as to who had collected the money from the investors on behalf of the company and neither SEBI inquired from ROC in 2002 as to who was the director of the company. She further stated that she did not know whether vide order dated 05.07.01 official liquidator had been appointed in respect of this company. CW1 further stated that no director was individually served with any letter or notice of SEBI.

6. CW-2 Ms. Jyoti Jindgar deposed that she was also working as a Deputy General Manager, in SEBI and CW1 Versa Aggarwal as Assistant General Manager, SEBI and was competent to pursue the complaint in view of delegation of power dated 21.04.03 Ex. CW2/1. She further stated that non-compliance of SEBI directions and violations of Section 12 (1)(b) of SEBI Act and Regulations made thereunder is attributable to accused nos. 2 to 6 who were the directors of accused no. 1. She also deposed that accused no. 1 company did not get the scheme registered with SEBI prior to mobilization of funds thereunder. She also stated that till date accused no. 1 company had not applied for registration nor any provisional registration was granted. She also deposed that accused no. 1 or its directors had not filed any winding up and repayment report despite being intimated regarding the statutory obligations.

7. In her cross examination she denied that she was not authorised to depose on behalf of the SEBI. The photocopy of the certified true copy of the delegation of power was Ex. CW 2/1. She denied as per the delegations of

7/

12/11



powers Ex. CW 2/1, CW 1 was not competent to depose. She also stated that it was not specifically mentioned in CW1/2 that Ms. Versa Aggarwal was authorized to pursue the complaint. However, she further stated that CW2/1 authorizes officers higher in rank than manager to sign the complaint on behalf of SEBI CW1 was competent to pursue the complaint. She stated that complaint was not signed by CW1.

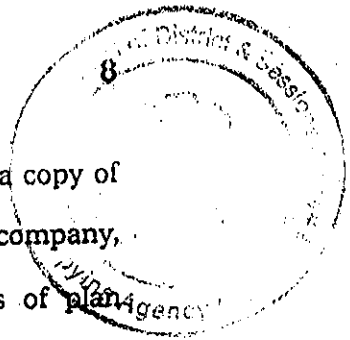
8. Thereafter, the statements of accused nos. 2, 3, 4 and 6 were recorded under Section 313 Cr.P.C. The accused did not examine any witness in their defence.
9. I have heard the Ld. counsel for the parties and perused the record.
10. The questions for consideration is whether SEBI has been able to prove its case beyond reasonable doubt against the accused was not.
11. The case hinges on the admitted documents issued by SEBI and accused company prior to the institution of the complaint as already stated CW1 Ms. Versa Aggarwal proved that the letter dated 18.12.97 Ex.CW1/1 issued by accused company. The genuineness of the letter has not been challenged by the accused, therefore, it is deemed to have been admitted by accused. As per this undisputed documents accused no. 2 to 6 were directors of accused company.

72

ATTESTED

11/2/18

Attested by (Signature)



12. • Along with Ex. CW 1/1 the accused company had enclosed a copy of Memorandum and Articles of Association of the accused company, application/offer documents stating the terms and conditions of plan schemes floated by company. Investment plans giving complete details in respect of plans floated by the company, details of funds raised through the schemes. Bio-data of the directors/sponsors/promoters/Assurances made in the scheme. As per the certificate of incorporation appearing therein accused company was incorporated on 22.09.95. In this regard it would be relevant to mentioned that accused in their statement u/s 313 Cr.P.C. stated that they were not aware whether registration was required prior to mobilization of funds. They further stated that money was mobilized from the family members, friends and was also contributed by the directors. Thereby they admitted that company had starting mobilizing funds in the year 1995 itself.

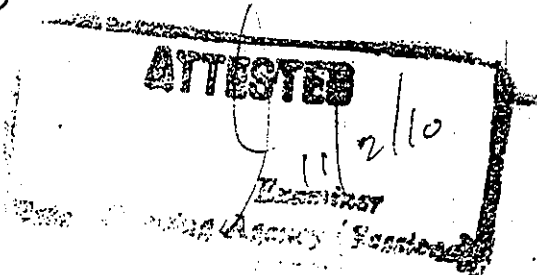
13. The Act came into force w.e.f. 30.01.92 Chapter V relates to the registration certificate. Section 12(1B) was incorporated on 25.01.95 and provides that

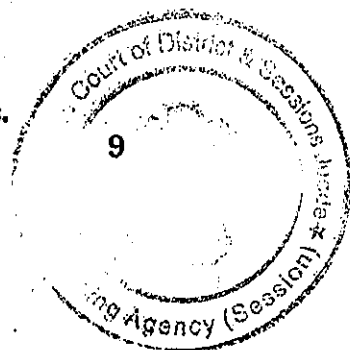
"No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the Regulations"

14. Therefore according to section 12(1B) of the Act no person could sponsor CIS without registration from SEBI in accordance with the

11

75





regulations. The regulation came into force w.e.f. 15.10.99.

15. CIS has been defined in 11AA of the Act, which is as follows :-

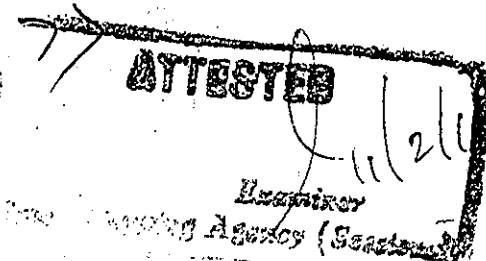
"Collective Investment Scheme -- (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which, -

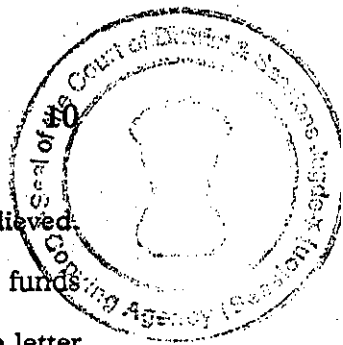
- (i) the contributions, or payment made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;**
- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;**
- (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;**
- (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.**

16. As per the letter Ex. CW 1/1 and its enclosures the accused company had invited general public to invest in its various schemes which were to be managed by it and not by general public. From the said documents it has been proved by SEBI that accused had been running CIS even as on 22.09.95.

In their statement u/s 313 CR.P.C. accused persons stated that they did not



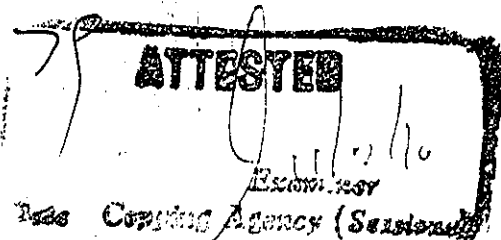
SEBI Vs. Ankur Forest & Projection Development (I) Pvt. Ltd. & Ors.



- file this information however reply given by the accused cannot be believed.
- Since as per Ex. CW 1/1 the details of director of the company, funds mobilized, memorandum and article of association were furnished on letter head of the accused company to SEBI.

17. CW 1 also deposed that the director no. 2 to 6 were instrumental in mobilizing funds under its CIS. CW 1 further stated that accused company of which accused no. 2 to 6 were the directors and they had mobilized funds to the tune of Rs. 34,79,151/-. The accused did not challenge the testimony of CW 1 regarding the mobilization of funds to the tune of Rs. 34,79,151/- by accused company. Hence it has been proved that accused sponsor floated CIS and mobilized funds to the tune of Rs. 34,79,151/- and the CIS was not registered although funds were mobilized since 22.09.95.

18. In their statement u/s 313 Cr. P. C. accused Tasrim Saini, Rajbir Singh, Jagjit Singh and M. L. Saini stated that they were not aware of the communication sent by SEBI regarding CIS Regulations 1999 being notified on 15.10.99 and they were also not aware whether company had to apply for registration and comply with the regulatory requirements. They also stated that they were not aware if SEBI had sent a format of winding up and repayment report to the accused company. They also stated that they were not aware whether Winding up and repayment report was filed as the company had been wound up by order of Hon'ble Punjab and Haryana High court.



19. Accused examined DW 1 Sh. Tasrem Saini in their defence who had stated company was wound up on 5.07.2001 vide the orders of Hon'ble High court of Punjab & Haryana dated 5.07.2001 which is Ex. DW 1/1. In his cross examination he stated that company was wound up due to non payment to investors. He also stated that the petitioner was an investors in the said company petition who had only invested Rs. 12,000/- He also stated that apart from him Sh. Hemant Sharma, Sh. Rajbir Singh, Sh. Jagjit Singh, Sh. Mohan Lal Saini were also the directors of accused no. 1 company. He further stated that company commenced business on 22.08.96. He also admitted that accused company had not filed the winding up and repayment report.

20. Ld. Counsel for SEBI Sh. Sanjay Mann has contended that SEBI has proved its case against the accused beyond reasonable doubt from the evidence brought on record. Ld. Counsel for SEBI further contended that accused were themselves responsible for non receipt of communication sent by SEBI since they had "left the given address" and had not cared to inform SEBI regarding change of the address. Moreover accused ignored public notices which were issued to remind the defaulters that they were required to confirm compliance. It is further contended by Ld. Counsel for SEBI that accused have failed to fulfill the statutory obligations. .

21. On the other hand Ld. Counsel for accused has alleged that the company had been wound up by order of Punjab and Haryana High court.

81

ATTESTED

[Signature]
Examiner
Secy. Craying Agency / Section

22. However Ld. Counsel for SEBI has alleged that petition for winding up under section, 433/434/439 of the companies Act was filed by one of the investors of accused company as accused company could not repay Rs. 12,000/- to the investors and this fact also supports the case of SEBI. This fact also shows that accused did not repay the investors.

23. It is further contended on behalf of accused that after the winding up petition was filed accused company was not legally bound to do anything and winding up and repayment report was not required to be submitted by the accused company as it stood wound up vide order of Hon'ble High court of Punjab and Haryana dated 05.07.2001.

24. Ld. Counsel for SEBI, Sh. Sanjay Mann submits that winding up petition was filed by investors as the company was unable to pay its debt and could not repay the investors. Section 433 of the Companies Act provides that a company can be wound up by the court if it is unable to pay its debt. Accused company was wound up vide order of Hon'ble High court of Punjab and Haryana dated 5.07.2001 in view of the admission of respondent company it was under and debt and could not made the payment due to financial crushes. Therefore admittedly accused company was unable to pay the investors.

25. Ld. Counsel for SEBI further submitted that accused company neither filed the winding up and repayment report neither obtained the registration,

ll

83

ATTESTED
[Signature]
Examiner
Date _____
Company Secretary (Sole)

neither they formulate the scheme of repayment nor made repayment to the investors nor they sent information memorandum to its investors within 2 months from the date of receipt of intimation from SEBI. Hence they violated the regulatory obligations.

26. Ld. Counsel for accused also contended that after filing of winding up petition accused company was not required to obtain any certificate of registration. It was also contended that accused company was not running CiS at the time of notification of the regulations. However this contention of Ld. Counsel for accused is rejected as accused company had furnished the information to SEBI vide Ex. CW 1/1 regarding funds mobilized, its various scheme under which funds were mobilized and accused company had also sought time vide Ex. CW 1/2 to submit the the audited balance sheet for the year 1997-1998 along with statements of funds mobilized under various scheme after complete audit, the testimony of CW 1 was not challenged in this regard. Moreover CW 1 stated that company had not filed the WRR even till the date of filing of the complaint which was 21.12.2002, hence violated of the act continued.

27. The accused company was prosecuted as the violation continued. In the circumstances that the winding up and repayment report has not been submitted to SEBI, investors had not been repaid accused cannot claim stay of proceedings in view of the winding up of the company vide order of Hon'ble High court of Punjab and Haryana dated 5.07.2001.

ATTESTED

28. It was also contended that since they were not aware of the requirements under the regulations, the failure to complete the requirements is not mala fide. But in my view on the basis of evidence and material on record SEBI has succeeded in proving that accused were running CIS and were governed by the regulations. Thus there was existing CIS being run by accused at the time of notification of regulations in 1999. The letters sent by SEBI to accused were returned undelivered with the remarks "left without address". In these facts and circumstances accused cannot plead ignorance for non compliance of statutory obligations.

29. In view of the Ex. CW 1/1 and its enclosures, I have no hesitation in holding that accused no. 2 to 4 and 6 were the directors of the accused company running CIS after 1995 and collecting funds from general public.

30. As already stated that regulations came into force w.e.f. 15.10.99. After the notification of regulations SEBI sent a letter Ex. CW 1/6 to the accused company which was returned undelivered with the remarks "left without address". As per regulations 5 accused company had to apply for registration of its CIS. Regulation 73(1) provided that CIS which failed to make an application with SEBI, would wind up the same and repay the investors. Apart from this as per Regulation 74, existing CIS which was not desirous of obtaining provisional registration from SEBI, would formulate a scheme of repayment and make such repayment to the existing investors in the manner

87
ATTESTED

2000 Copying (Secy)

specified in Regulation 73.

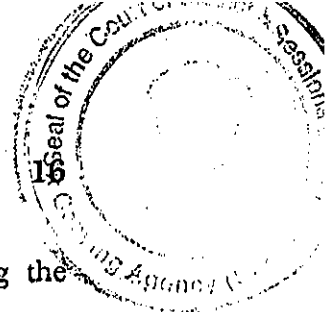
31. According to Regulation 73(2) the existing CIS to be wound up, shall send an information memorandum to the investors who had subscribed to the schemes, within two months from the date of receipt of intimation from SEBI.

32. Accused company was thus bound to wind up and submit its winding up and repayment report to SEBI in terms of the regulations 73, 74 which they admittedly failed to do till the filing of complaint. The accused company was bound to submit the winding up the repayment report to SEBI in terms of the regulations 73 and 74, which they failed to do even till the filing of complaint. CW 1 stated that SEBI forwarded the format of winding up and repayment report in which companies were required to furnish information regarding winding up and repayment done thereafter the said letter was returned undelivered with the report "left without address". In these circumstances accused cannot plead ignorance for non-compliance. Thus, the violations continued at the time of filing of the complaint. In these circumstances when WRR was not submitted accused are guilty of violations.

33. The next contention of the Ld. Counsel for accused is that accused company was desirous of taking the benefit of section 12 (1B) of the Act. as mentioned in Ex. CW 1/1 but SEBI did not grant certificate for registration. The said contention has been opposed by Ld. Counsel for SEBI on the ground

89
ATTESTED

12/10
Branch Manager
Securities Agency (Securities)



that no steps have been taken by accused company for obtaining the certificate of registration from the board in accordance with the regulation. In this regard it will be relevant to mention that accused no. 2 to 4 and 6 had stated in their statement under section 313 Cr.P.c. as they were not aware whether company had filed the application for registration. It was also alleged on behalf of accused company that the accused company was not running CIS at the time of notification of regulations and repayment was also not required to file in view of the winding up petition filed in the Hon'ble High court of Punjab and Haryana dated 5.07.2001 whereby accused company was wound up and official liquidator was appointed.

34. As per the letter Ex. CW 1/1 and its enclosures the accused company had invited general public to invest in its various schemes which were to be managed by it and not by general public. From the said documents it has been proved by SEBI that accused had been running CIS even as on 22.09.95. In their statement u/s 313 Cr.P.C. accused persons stated that they did not file this information however reply given by the accused cannot be believed. Since as per Ex. CW 1/1 the details of director of the company, funds mobilized, memorandum and article of association were furnished on letter head of the accused company to SEBI.

35. In view of the Ex. CW 1/1 and its enclosures, I have no hesitation in holding that accused no. 2 to 4 and 6 were the directors of the accused company running CIS after 1995 and collecting funds from general public.

de

81

ATTESTED
Gul/2/10
Registrar
Court of Sessions (Sessions)

36. Section 12 (1B) was incorporated in the act on 25.01.95. All the accused persons had stated in their statement under section 313 Cr.P.C. that they were not aware of the legal formalities and also stated that money mobilized was of their friends, family members and all the directors. It is pertinent to note that all the accused had admitted that funds had been mobilized by the accused under its CIS and all the accused gave evasive reply to the question put to them as whether information was furnished by them to SEBI Ex. CW 1/1 regarding funds mobilized under its CIS.

37. It is also submitted on behalf of accused that SEBI CIS were not published in the gazette. However in this regard it was submitted by Ld. Counsel for SEBI that testimony of CW 1 was not challenged with regard to the notification of SEBI CIS regulation on 15.10.99.

38. It was further submitted on behalf of the accused that no letters were individually served on the directors. It was also stated that show cause notice dated 12.05.2000 Ex. CW 1/9 was not served upon the accused company. However this contention of Ld. Counsel for accused cannot be accepted as all the letters were addressed to the company and they were returned undelivered with the remarks "left without address". Accused were themselves responsible for non receipt of communication from SEBI.

39. Ld. Counsel for accused has placed reliance upon

44

93

ATTESTED
11/2/10
Coping Agency (Session)

127 (2006) DELHI LAW TIMES 576, CRB CAPITAL MARKETS LIMITED VS. RESERVE BANK OF INDIA, where in it has been held as under:

"Reserve Bank of India act. 1934- Sections 45 MC (1) (d), 45K (4), 45 MB (1), (2), 45 (1A) - Banking Regulation Act, 1949 - Companies Act, 1956-Section 391(6), 392-Scheme of Arrangement / Compromise - Power of Bank to file winding up petition - Meeting of unsecured creditors not attended by any of objectors in spite of being served notice of same - Company Court can stay criminal proceedings - Prayer of stay of criminal proceedings in petition entitled to be granted and cases filed by CBI kept in abeyance- Scheme clearly indicates projected balance sheet for first six years - only after consideration of flow of funds, creditors and shareholders assented to approval of scheme - objection raised by O.L. cannot be countenanced and rejected - No bar on this Court to record sanction of scheme - Directions for supervision of modification of scheme given while approving scheme.

40. However facts of the case relied upon are not applicable to the facts of the present case as the present case relates to the violation of SEBI CIS regulations.
41. As already stated that as per section 12(1B) any person carrying on CIS without obtaining registration from SEBI in accordance with the regulation is liable to be punish u/s 24 of the Act.
42. Section 27 relates to the commission of offences by the company.

ATTESTED

11/2/10

Page (1)

Section 27

According to sub section (1) where an offence has been committed by a company every person who at the time of the offence was committed was incharge 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.

43. I accordingly hold that accused company Ankur Forest and Project Development India Pvt. Co. Ltd. and its director accused no. 2 to 4 and 6 guilty for violation of Regulation 5(1) read with regulations 68 (1), 68(2), 73 & 74 of SEBI CIS regulations 1999 r/w section 24 & 27 of the SEBI Act. 1992. Accused to be heard on sentence on 4.02.2010.

Poonam Chaudhary

Announced in the open Court
On this day of 29th January 2010

(POONAM CHAUDHARY)
ASJ (Central-01) : DELHI

29 Jan 2010

*Received
Copies of
Judgment at Delhi
on behalf of acc no.
2, 3, 4, & 6.
A.S.J.
Poonam
adv. for
acc. 2, 3, 4 & 6*

| | |
|--|------------------|
| Office of The District & Sessions Judge Delhi. | |
| Certified to be True Copy | |
| Date | Examiner 1/12/10 |
| Copying Agency (Sessions) | |
| Authorised under Section 78 of the Indian Evidence Act 1973 | |

97