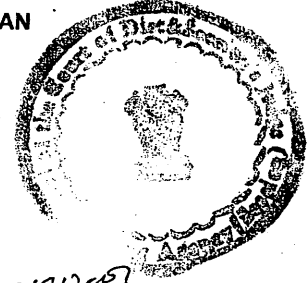




IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 1180 OF 2003



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

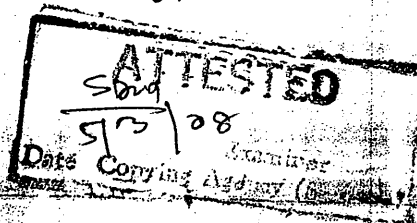
represented by its Asst. General Manager,

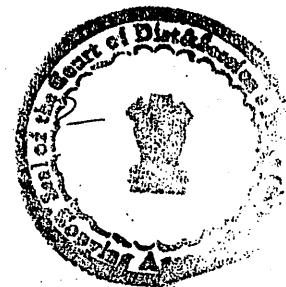
Rajesh Bhanot.

...Complainant

VERSUS.

1. H.P. Tillers Tracts & Tourism Ltd.
Company incorporated under the
companies Act, 1956, having its
Registered Office at Fingask Estate,
Shimla-3, H.P.
2. Shri Sushil Sharma, S/o Shri Mohan
Datt, Director of Accused No.1, R/o:
VPO Narag, Distt. Sirmaur, H.P.
3. Shri C.R. Sharma S/o Shri D.R.
Sharma, Director of Accused No.1,
R/o: Vill. P.O. Deothi, Distt. Solan, H.P.
4. Shri Jitendra Verma S/o Shri A.S.
Verma, Director of Accused No.1, R/o:
Village Gauheri, P.O. Shough, Distt.



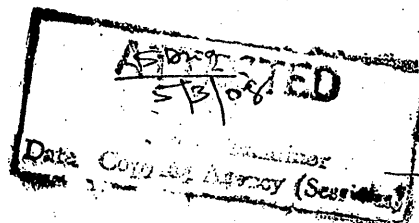


Shimla, H.P.

.....Accused

COMPLAINT UNDER SECTION 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:



Present : Sh. Mann for SEBI with Law Officer Sh. Rakesh Singh.

A-2 Sushil Sharma, A-3 C.R. Sharma, A-4 Jitender Verma
present on bail also for A-1.

Vide separate order, the accused no.1 Company and its directors
are sentenced to a fine of Rs.30,000/- each. On failure to deposit the fine
the accused numbers 2 to 4 shall undergo simple imprisonment for four
months. The accused 1 to 4 are further directed to file the winding up and
repayment report with the SEBI within two months from today failing which
SEBI would be entitled to take action against them as per law.

On deposit of fine the personal bonds and surety bonds of
accused shall stand cancelled and sureties stand discharged.

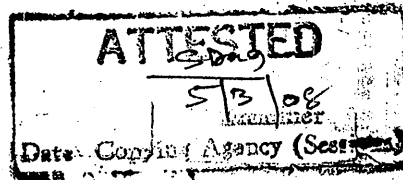
File be consigned to the records.

Announced in the Open Court

Dated:9.3.07.

Asha Menon
(ASHA MENON)

Addl. Sessions Judge: Delhi.



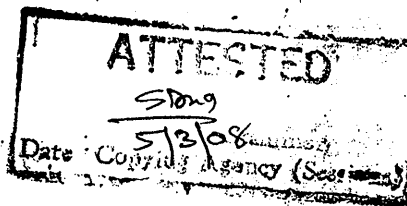
117/05

9.3.07

File taken up again on application moved by the accused seeking time to deposit the complete fine and for suspension of the term imprisonment imposed in default of deposit of fine.

Heard. The application is disposed of U/S 424 Cr.P.C and accused are directed to deposit the fine of Rs.30,000/- imposed on each of the accused in two installments. One be paid today amounting to Rs.4,000/- each. The balance be deposited by the accused by 15.3.07. The sureties are not discharged till the accused deposited the fine and the accused will be bound to appear before this court on the basis of these surety bonds to deposit the penalty imposed on them.

Shankar
ASJ : 9.3.07



IN THE COURT OF MS. ASHA MENON: ASJ: DELHI.

CC NO.117/2005

SECURITIES & 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 Asst General Manager, Sh.Rakesh Bhanot.



... Complainant

VS.

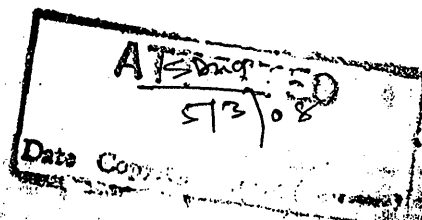
1. H.P. Fillers Tracts & Tourism Ltd. Company incorporated under the Companies Act, 1956 having its Regd. Office at Fingask Estate, Simla -3 H.P.
2. Sh.Sh. Sushil Sharma, S/o Shri Mohan Datt, Director of Accused no.1, R/o: VPO Narag, Distt. Sirmaur, H.P.
3. Sh. C.R.Sharma S/o Shri D.R. Sharma, Director of Accused no.1, R/o Vill. P.O. Deothi, Distt. Solan, H.P.
4. Sh.Jitender Verma S/o Shri A.S. Verma, Director of Accused no.1, R/o Village Cieuhari, P.O. Shough, Distt. Shimla H.P.

.... Accused

JUDGMENT:

BACKGROUND FACTS:

1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as the SEBI) for short, alleging violation of the SEBI (Collective Investment Schemes) Regulations, 1999.
2. To give a brief background to the case, the Government of India had set up the SEBI under the Securities and Exchange Board of India Act, 1992 with the aim of protecting investor interests, in the backdrop of large scale floating of plantation and agro bonds by companies with no financial viability. The uncontrolled proliferation of such companies led to the duping of lakhs of gullible people who lost



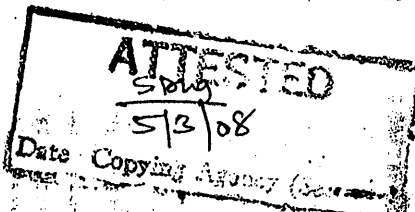
their money by investing in such non-viable projects.

3. This prompted the Government to intervene and the SEBI Act, 1992 came into force, under which SEBI itself was established. The SEBI has the obligation to regulate the securities and stock market and has been vested with extensive powers to discharge these obligations. Violations have been made criminal offences and the SEBI has to file criminal complaints against such violators.

ALLEGATIONS IN THE COMPLAINT

4. In order that the provisions of Section 11 (1) of the SEBI Act, were given effect to the government announced its intentions to bring out regulations in respect of Collective Investment Schemes specifically. It issued a public notice to this end on 26.11.1997 and 18.12.1997. Under the provisions of Section 12 of the SEBI Act, 1992 those entities that had been operating Collective Investment Schemes immediately prior to coming into effect of the provisions were given two month's time to apply for registration. By means of the public notice/press release, SEBI required all those interested in benefiting under the provisions of Section 12, to furnish all details about the company and the schemes and the amounts mobilized etc. to the SEBI.

5. The accused company had in response to the press release/public notice, apparently furnished their details to the SEBI. The SEBI (Collective Investment Scheme) Regulations were notified on 15.10.99. The SEBI asked all companies dealing with Collective Investment Schemes to issue information memorandum to all investors

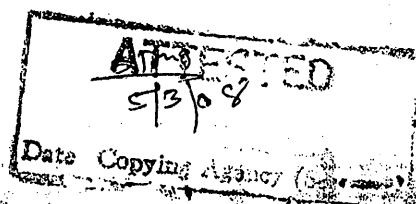


detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount was determined. This was to be sent by 28.2.2000. This date was extended to 31.3.2000.

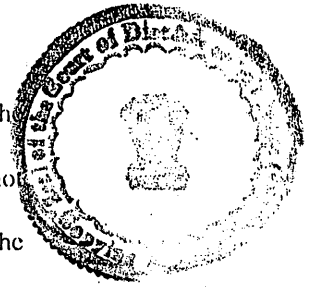
6. Under the regulations of 1999, 73(1) those existing Collective Investment Schemes that had not applied for registration were required to wind up their schemes and repay the investors. Under regulation 74 those entities which were not desirous of registering with the SEBI even provisionally were also obliged to draw up and formulate a scheme for repayment and make the repayment in terms of the regulation 73.

7. The allegation in the complaint is that the accused neither applied to the SEBI for registration nor took steps to wind up the schemes and repay the investors. Therefore, the SEBI Chairman directed the accused vide orders dated 7.12.2000 that they refund the money collected within a month in terms of the original offer. Yet, and despite repeated directions of the SEBI, the accused failed to comply with the regulations, as stated in the complaint.

8. On these allegations the SEBI submitted in the complaint that the accused had violated Regulations 68(1), 68(2), 73 & 74, read with Regulation 5 (1) of the SEBI Regulation 1999 read with Section 11B & 12(1B) of the SEBI Act, 1992 punishable under Section 24 read with Section 27 SEBI Act, 1992. Vide orders dated 16.12.2003, the accused H.P. Tillers Tracts & Tourism Ltd. Company, and its directors Sh. Sushil Sharma, Sh. C.R. Sharma and Sh. Jitendra Verma were summoned to face trial for these violations.



9. On their appearance notice of allegations was served upon the accused under Section 251 Cr.P.C on 3.6.05 to which they pleaded not guilty. The complainant examined one witness Sh. Rakesh Bhanot. The accused have not examined any on their behalf.

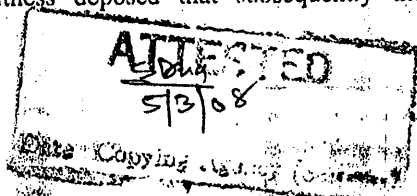


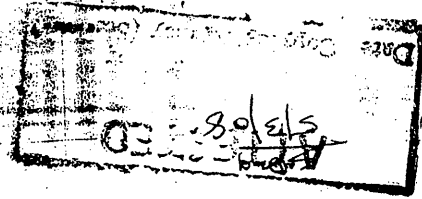
EVIDENCE

10. Sh. Rakesh Bhanot was examined as CW-1 on behalf of the SEBI. He has referred to the press release dated 18.11.97 whereby the Government of India declared bonds which were in the nature of plantation bonds and agro bonds to be considered as Collective Investment Schemes under Section 11 of the SEBI Act, 1992. He has also referred to the press release dated 26.11.97 and a public notice dated 18.12.97 whereby the companies were directed to file information with SEBI regarding their Schemes with details of funds mobilized, names of Directors/Promoters in case they were desirous of obtaining benefits u/S 12(1B) of the SEBI Act.

11. The witness deposed that pursuant to the public notice and press release, the company filed information vide their letter dated 13.1.98 which is Ext.CW1/1, alongwith a copy of the company's pamphlet. According to this letter the accused had collected Rs.15 lacs under their CIS. The company also submitted details and background of the Promoters/sponsors namely Sh. Sushil Sharma, Sh.C.R. Sharma and Sh.Jitendra Verma. The letter also contained the details of promises and assured returns made to investors.

12. The witness deposed that subsequently the SEBI (CIS)



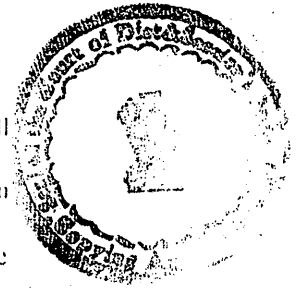


published in leading national newspapers and vernacular newspapers on the order issued by the Chairman, SIBI u/s 11 of the SIBI Act was also returned undelivered to the SIBI. The witness stated that the contents of communicated to the company vide letter dated 18.12.2000 which of the regulatory provisions of the Regulations. This order was dated 7.12.2000 against this accused also since there was no compliance 14. The witness deposed that the SIBI Chairman issued order 31.7.2000. This too returned undelivered with the same remarks.

submitting the winding up and repayment report vide its letter dated CWI stated that the SIBI had sent to the company the format for undelivered with the report the company had left without address. The scheme a show cause dated 12.5.2000 was issued to it which returned neither applied for registration nor intimated regarding winding up of the 13. The witness deposed further that since the accused company

Times on 19.12.99. were also published vide public notice dated 10.12.99 in the Hindustan 10.12.99 and 29.12.99 which returned undelivered to the SIBI. These obligations were communicated to the company vide specific letters dated within five and a half months. The witness deposed that these regulatory repay them and submit the winding up and repayment reports to the SIBI required to circulate information memorandum to its investors and to up its schemes in terms of Regulations 73 & 74. The company was Regulations the company was required to apply for registration or wind Regulations, 1999 were notified. The witness deposed that in terms of the

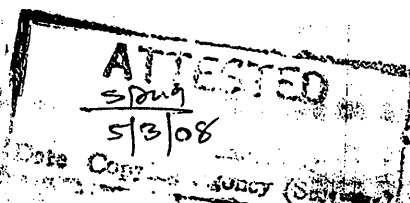




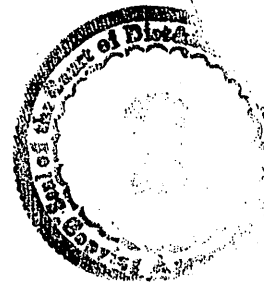
14.1.2001. He deposed that vide this public notice SEBI had intimated all the CIS the obligations imposed on them under Regulations 73 and 74 in case they were not to apply for registration under the regulation. He deposed that SEBI had vide these notices also informed that failure to comply with the requirements would open the companies liable for further action including directions for debarment, initiation of prosecution etc. He deposed that the name of the accused company appeared at serial no.194 of the public notice. He deposed to the non-compliance by the accused company and its directors despite the public notice till the filing of the complaint.

15. CWI Sh. Rakesh Bhanot was cross-examined by Id.Counsel for the accused. During this cross-examination, the witness deposed that it was true that the letter dated 21.10.1999 sent to the company had returned undelivered. He affirmed that the advertisements had been published in all the leading national newspapers and also in vernacular newspapers. He admitted that no copy of the advertisement in vernacular newspapers had been filed. He stated that he had no knowledge whether the accused had submitted a winding up petition with the ROC Jalandhar on 22.12.2000 or whether the ROC had imposed a penalty while disposing off that petition. He stated that the details of the winding up petitions filed by various companies had not been obtained from the ROC. He refuted the suggestion that the present case had been a result of a communication gap between the SEBI and the ROC Jalandhar.

16.The accused in their statements recorded under S.313 CrPC claimed



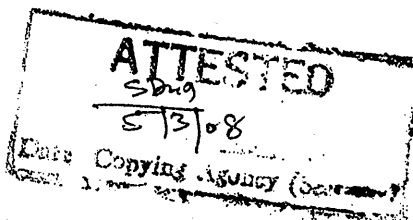
that the funds had been raised from the Directors which had been returned to them. They claimed that they had paid Rs. 13,500 as fine and had wound up the company. They admitted that the company had not applied for provisional registration, and had closed their office.



CONTENTIONS

17. The I.d. Counsel for the SEBI submitted that though the accused company was reminded by letters and public notices of the obligations under the Regulations, yet the accused had not submitted compliance. Since no WRR had been filed despite issuance of show cause notice, the Chairman issued orders under Section 11B of the SEBI Act, 1992. Again there was no compliance. Hence it was submitted that the case had been fully proved against the accused beyond any shadow of doubt. I.d. Counsel has argued that purpose of the enactment could not be lost sight of and compliance of a statutory obligation had to be strictly in the manner provided for and any violation could not be viewed lightly.
18. The I.d. Counsel for the accused has submitted that the Regulations were not applicable to the accused company since they applied only to those companies that were existing and the accused company had been wound up after payment of the penalty. Hence I.d. Counsel has prayed that as no terms had been violated the accused be acquitted.

FINDINGS

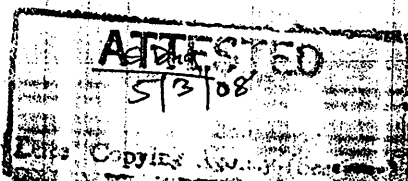


19. I have carefully considered the arguments and I have carefully considered the evidence brought on the record by both sides.



20. This fact cannot be lost sight of that it were the accused themselves who had furnished all the details of their company to the SEBI. While doing so they were responding to the call of a statutory body. A presumption of authenticity attaches to the information so submitted. There was therefore no need for the SEBI to have sought verification from another statutory body namely the ROC Jalandhar about the veracity of the addresses of the accused company and their directors. The accused had ample opportunity to have informed the SEBI of the closure of its office and or the winding up of the company. It did not choose to do so. The accused can derive no benefit from the non-verification of details by the SEBI from the ROC, Jalandhar.

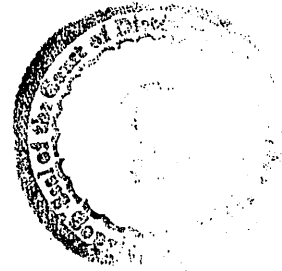
21. Another aspect to be considered is the difference between winding up of the company under the Company Act and the winding up of the collective investment schemes run by the company, as required under the SEBI (CIS) Regulations. The winding up of the collective investment schemes does not entail the winding up of the company itself. Even if the company stood wound up if no winding up and repayment report was submitted to the SEBI, the company would remain liable for non-compliance of the Regulations. These are distinct obligations. The very purpose of the submission of the winding up and repayment report is to assure the repayment of investors of the company.



22. In the present case, moreover, there is no evidence of the company having been wound up. Except for submitting that a penalty had been paid, there is no order of any kind to show under what circumstances the penalty had been imposed and paid. It is not known who had applied for the winding up of the company: whether the directors did so or there had been a creditor's petition. There is no information as to whether any liquidator had been appointed and most importantly whether the creditors had been repaid.

23. Reverting to the evidence that has come on the record, the accused vide Ex.CW1/1 had admitted that they had been running collective investment schemes. They had themselves stated that they had raised Rs.15 lacs through their schemes. No evidence has been produced by the accused to substantiate their claims that the directors alone had contributed the amounts. No presumption can be raised that only the directors had contributed the amounts. In any case that fact would have no material bearing on the case, since as per the regulations no distinction has been drawn between a company raising funds from its directors and a company raising funds from the public, so long as the funds were raised through collective investment schemes. That fact is not in dispute here that the accused company was running collective investment schemes.

24. As regards the arguments that the regulations were applicable only to existing CISs, there is no proof that the accused company had in fact wound up till the date the chairman issued his orders U/S 11B of the SEBI Act, 1992. Even if it was to be accepted that the accused company



ATTESTED

5/3/08

Copy of the

the reports are filed in the prescribed manner and in no other manner. The accused did not do so. Their explanation for not doing so has not been found to be satisfactory. Though the accused in their statements U/S 313 Cr.P.C had claimed that they had not collected any funds, their letter Ex.CW-1/1 belies this claim. On the other hand, had the accused actually raised funds only from the directors i.e. themselves and have they made repayments either prior to or subsequent to their application for winding up submitted to the ROC there should have been no hesitation to comply with the Regulation 73 and 74 and submit the repayment report and the winding up report to the satisfaction of the SEBI. The satisfaction of the SEBI is important for the simple reason that the Regulations have come into effect only for investor protection.

27. Thus, it is clear that the accused were all responsible for the violations of the Regulations of the SEBI and have failed to comply with the same. They are, therefore, liable for the violations.

CONCLUSION:

28. I, therefore, hold the accused company H.P. Tillers Tracts and Tourism and its directors Sh. Sushil Sharma, Sh.C.R. Sharma and Sh.Jitendra Verma. guilty for the violations of Regulation 5(1) read with Regulations 68(1), 68(2), 73 & 74 of the SEBI (CIS) Regulations 1999, read with Section 24 r/w S.27 of the SEBI Act 1992. They are entitled to be heard on sentence.

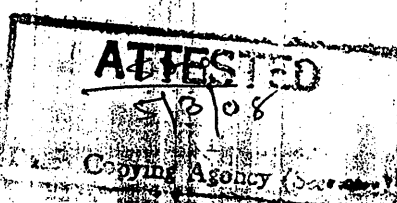
Announced in the Open Court.

Dated: 8.3.07

Ashia Menon
(ASHIA MENON)
Addl. Sessions Judge: Delhi.

*Copy given to counsel in the court
at P.C. on dt: 09.03.07*

20/3/07
20/3/07



IN THE COURT OF MS. ASHA MENON: ASJ DELHI
CC NO. 117/2005

SEBI VS. H.P. TILLERS & TOURISM LTD. & ORS.

ORDER ON SENTENCE:



1. The Id Counsel for the accused has submitted that the accused had not collected any funds and they had merely floated the company on paper and that, therefore, a lenient view be taken. It was submitted the accused were poor agriculturists and that therefore, a light sentence be imposed.
2. As discussed in the judgment it was for the accused to have proved that their first information furnished to the SEBI vide Ex.CW-1/1 was incorrect that only Rs.15 lacs had been raised through their schemes. No such evidence has come on the record. The fact therefore remains that the accused had collected Rs.15 lacs through their CIS. The accused not only have adduced no evidence as to the repayment of funds collected but have now taken the stand that nothing had ever been collected!
3. The very purpose of the Regulations was investor's protection. The satisfaction of the SEBI in respect of the repayment is very important. It is to that end that WRR was sought in format. Here the accused seem comfortable with non compliance, pretending that no collection had even been effected. It would be preposterous to believe that someone had falsely sent Ex.CW-1/1 to the SEBI in the year 1998 in response to the public notice of the SEBI asking the companies running CIS to submit complete details in order to avail the benefit of Section 12B of SEBI Act 1992. This is another reason why the denial of collection now made has to be viewed as a refusal even to acknowledge the obligation to repay investors.
4. In the circumstances, the lapse has to be considered as a willful one calling for strict punishment.
5. I, therefore, sentence the Accused no.1 Company to a fine of Rs.30,000/-. The accused 2 to 4, its directors, are also sentenced to a fine

ATTESTED

By: Copying Agency (S. S. S. S.)

of Rs.30,000/- each. In default of the payment of fine they shall undergo simple imprisonment for four months.

The accused no.1 to 4 are further directed to submit the complete winding up and repayment report to the SEBI within two months from today failing which the SEBI would be once again entitled to initiate action against the accused as per law.

7. On deposit of fine the personal bonds and surety bonds of accused shall stand cancelled and sureties shall stand discharged.

File be consigned to the records.

Announced in the Open Court

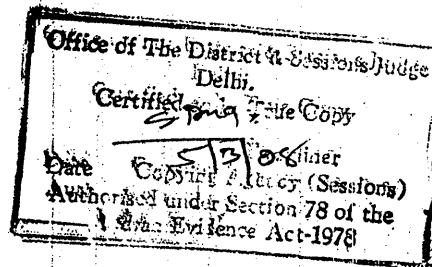
Dated: 9.3.07.

Asha Menon
(ASHA MENON)

Addl. Sessions Judge: Delhi.

Copy given to committee the
Court for on dt: 9/3/07
9/3/07

[Handwritten signatures]



57