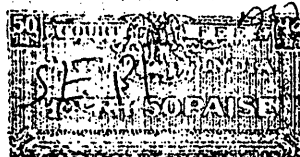


in the court of Mr. Ahsan



IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 1180 OF 2003

16/11/02

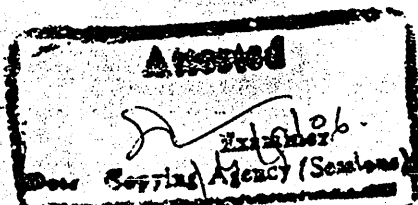
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Securities and Exchange Board of India, a
statutory body established under the
provisions of Securities and Exchange
Board of India Act, 1992, having its Head
office at Mittal Court, B - Wing, 224
Nariman Point, Mumbai 400 021
represented by its Asst. General Manager,
Rajesh Bhanot.

...Complainant

VERSUS

1. Help (India) Plantation & Development,
Company incorporated under the
Companies Act, 1956, having its Regd.
Office at St.No.3, 6485, 4th Floor,
Nawab Road, Delhi-110 006.
2. Shri Pawan Singh, S/o Shri Uday
Singh, Director and Promotor of
Accused No.1 R/o: W.Z. 896, Nangal
Raya, Janakpur, Delhi.
3. Shri Ajay Singh, S/o Shri Uday Singh,
Director and Promotor of Accused No.1
R/o: W.Z. 896, Nangal Raya, Janakpur,
Delhi.
4. Shri Abbai Singh Chowhan, S/o Shri



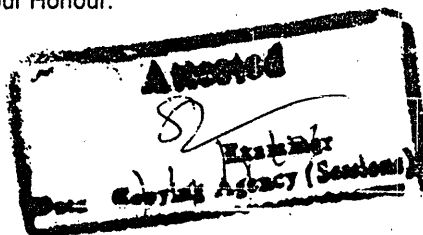


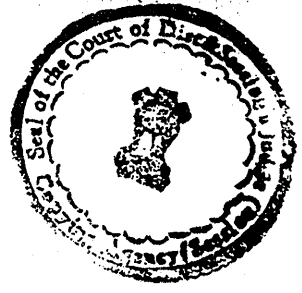
Singh Bharat, Director and Promotor of
Accused No.1, R/o: G-2-56/A, Partap
Vihar, Ghaziabad.

.....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:





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

CC NO.147/2005

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 Asstt. General Manager Rakesh Dhanot.

Complainant

VS.

1. Heir (India) Plantation & Development Company
Incorporated under the companies Act, 1958, having
its registered Office at St.No.3, 6435, 4th Floor
Nawas Road, Delhi-110 006.
2. Sh. Pawan Singh S/o Sh. Uday Singh
Director and Promotor of accused no.1.
R/o H-296, Nangal Raya, Janakpur, Delhi
3. Sh. P. Singh S/o Sh. Uday Singh
Director and Promotor of accused no.1.
R/o H-296, Nangal Raya, Janakpur,
Delhi
4. Sh. Anand Singh Chowhan, S/o Singh Bharat,
Director and Promotor of accused no.1.
R/o G-2-56/A, Partap Vihar, Ghaziabad.

Accused

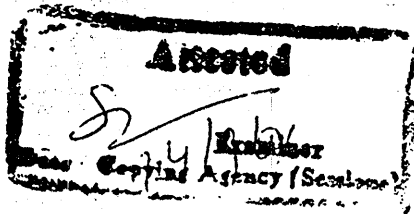
JUDGMENT:

BACKGROUND FACTS:

1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as the SEBI) for short trading violation of the SEBI (Collective Investment Schemes) Regulations, 1999.

2. To give a brief background to the case, the Government of

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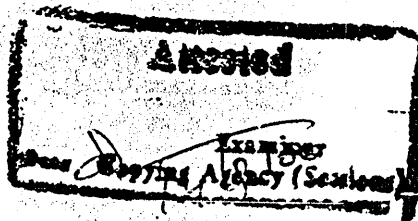


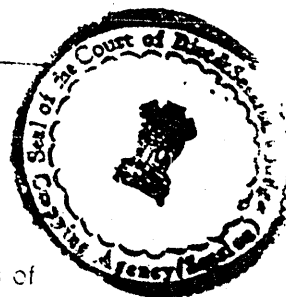


India had set up the SEBI under the Securities and Exchange Board of India Act, 1992. The Act itself was brought into existence with the aim of protecting investor interests, in the backdrop of large scale floating of plantation and agro bonds by companies with no financial viability. The uncontrolled 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 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. Various offences have been created with prescribed penalties. adjudicatory authorities have been created to deal with violations. Some violations have made punishable under the criminal justice system and in these cases, the SEBI is required to file a criminal complaint just as this one.

4. In order that the provisions of Section 11 (1) of the SEBI Act, 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 which had been operating Collective Investment Schemes immediately prior to coming into effect of the provisions



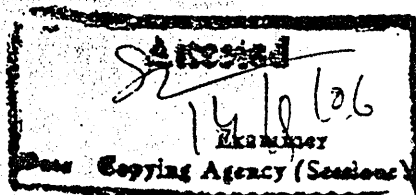


were given two month's time to apply for registration. By means of the public notice/press release, SEBI required all those interested in benefiting under the provisions of Section 12 to furnish all details about the company and the schemes and the amounts mobilized etc. to the SEBI.

ALLEGATIONS IN THE COMPLAINT

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 schemes, 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 those existing Collective Investment Schemes which 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

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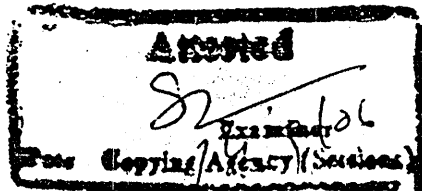
applied to the SEBI for registration nor took steps to wind up the schemes and repay the investors. Therefore, the SEBI Chairman directed the accused vide orders dated 7.12.2000 that they refund the money collected within a month in terms of the original offer. Yet, and despite repeated directions of 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 Help (I) Plantation & Development Company, and its directors Pawan Singh, Arun Singh & Abbal Singh were summoned to face trial for these violations.

9. On their appearance notice of allegations were served upon the accused under Section 251 Cr.P.C to which they pleaded not guilty. The complainant examined Sh. Rakesh Bhanot as its witness.

EVIDENCE

10. Sh. Rakesh Bhanot, AGM was examined as CW-1 on behalf of the SEBI. CW-1 Sh. Rakesh Bhanot has deposed to the Government of India press release dated 18.11.97 directing that bonds which were in the nature of Plantation Bonds and Agro

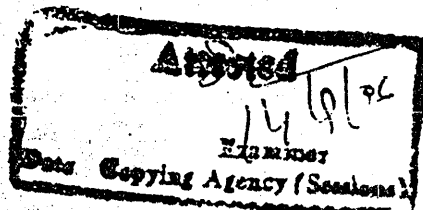


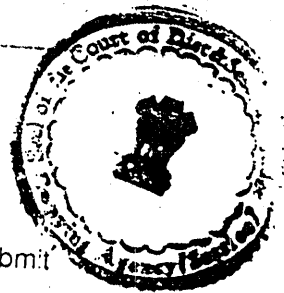


boards issued by the Companies would be considered as Collective Investment Scheme as stipulated under Section 11 of the SEBI Act, 1992. He deposed that thereafter, the SEBI issued press release dated 26.11.97 and the public notice dated 18.12.97 directing the Companies which were running Collective Investment Scheme (CIS) to file information with SEBI regarding their schemes such as details of fund mobilized, names of Directors/Promoters etc in case they were desirous of obtaining benefits under Section 12(1) (B) of SEBI Act. He deposed that pursuant to this the Company filed information vide letter dated nil Ext.CW1/1 received by the SEBI on 22.1.98, also intimating that it had mobilized Rs.90,000/- under its five Schemes. The witness deposed that the letter also contained names of the Directors viz Sh. Pawan singh. Sh. Ajay Singh and Sh. Abbai Singh.

11. The witness Sh. Rakesh Bhanot further deposed that the SEBI (CIS) Regulations, 1999 were notified on 15.10.99. He deposed that notification of regulations had been intimated to the Company vide public notice dated 20.10.99 and specific letter dated 21.10.99 was sent by registered post. He deposed that the letter did not return undelivered to the SEBI. The witness deposed that in terms of the regulations the Company was required to apply for registration or wind up its scheme in terms of Regulations 73 and 74 and was further required to circulate information memorandum

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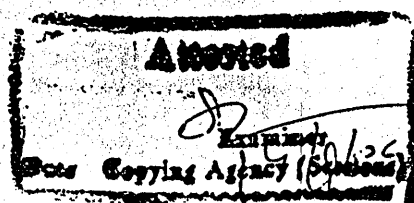




to its Investors and to repay and wind up its schemes and submit the winding up and repayment report with the SEBI within five and half months. The witness deposed that these were communicated to the Company vide letters dated 10.12.99 and 29.12.99 and both these letters were also not returned undelivered to the SEBI. The witness stated that the requirements were also communicated vide public notice dated 10.12.99.

12. The witness further deposed that as the Company neither applied for registration nor intimated regarding the winding up of its scheme, show cause dated 12.5.2000 was issued which was returned to the SEBI undelivered to the accused with remarks "left without address". The witness stated that SEBI had intimated the format for the winding up and repayment report in which companies were required to furnish information regarding winding up of the schemes vide letter dated 31.7.2000 which was also returned undelivered to the SEBI. On account of the failure of the company to comply with the regulatory provisions of the regulations, the company was directed by the Chairman, SEBI vide order dated 7.12.2000 to repay the Investors as per the original terms of offer with in one month of the said order. The witness stated that this order was communicated to the company vide letter dated 18.12.2000 which was returned as undelivered to the SEBI. The contents of the order was also published in Hindustan Times on

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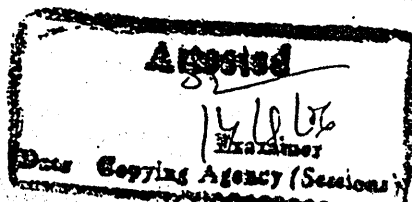
13.12.99 and in the public notice dated 14.1.2000 the name of this company was shown at serial no.205. The witness brought on record various exhibits including the returned envelopes and the copy of the publication in the newspaper.

13. The statements of the accused were recorded under Section 313 Cr.P.C. They examined one witness Sh. Devender Kumar Gola in defence.

14. DW1 Devender Kumar Gola stated that he knew the accused Abbai Singh Chauhan since 1993 being his neighbour and his friend. He testified that the accused Abbai Singh had informed him about registration of Help India Plantation and Development Company at Nawab Road, Sadar Bazar, Delhi as he had experienced in this field and that he had visited this office ^{for} about 15-20 days. He deposed that thereafter, on one occasion he found the premises locked and returned home. He deposed that next day accused Abbai Singh informed him regarding public notice of the SEBI in the newspaper and told that they had closed the company. He testified that as he had ^{been} informed ^{by the} accused Abbai Singh, ^{he} had not done any business in the plantation company.

CONTENTIONS:

15. The Learned Counsel for the SEBI Sh. Sanjay Mann has argued that the complainant had fully proved the case against the accused. He has submitted that it was the accused which had

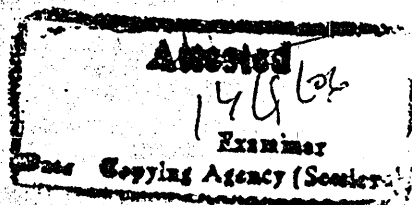




provided details of its directors and the collections made under its schemes. He has argued that the accused failed to repay the investors and submit the winding up and repayment report with the SEBI. He has submitted that the accused failed to inform the SEBI about the change in their address and so the accused were solely responsible for not being able to receive the communications from the SEBI.

16. The Learned Counsel argued that the public notices issued by the SEBI would have also sufficed to bring to the notice of the accused that there were several requirements that were to be met under the regulations. It has been argued that in these circumstances, lack of knowledge was not a plea available to the accused. It has been argued that the accused had raised Rs.90,000/- but it could have been more. Thus keeping in mind the purpose of the enactment the default of the accused had to be viewed seriously and the accused convicted and punished.

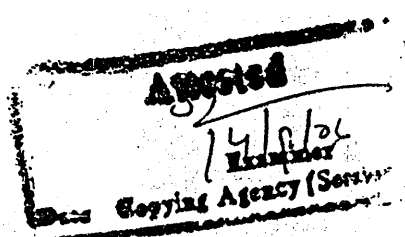
17. On the other hand, the Learned Defence Counsel Ms. Ranjit Bedi has submitted that the accused were innocent. It has been pointed out that none of the directors had been sent any communication and were thus in the dark about the regulations. It is submitted that the accused had closed their business and had only failed to send the information to the SEBI but that was not intentional. She has prayed that the accused be acquitted.





FINDINGS:

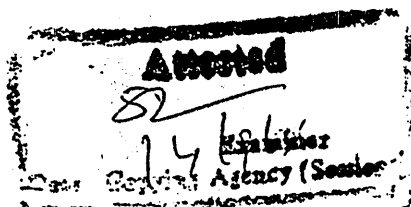
18. The accused were aware of the intention of the Government to regulate business of Collective Investment Schemes. It was in response to the first public announcement that the accused had sent their letter Ext.CW1/1 to the SEBI. The accused had informed the SEBI themselves that they had collected Rs.90,000/- from their Collective Investment Schemes. This letter dated 22.1.98 had given the address from where the company was functioning. When the SEBI subsequently sent letters to the accused at the given address, all letters returned to it. The accused have not explained why this happened.
19. Moreover, the accused have admitted in their statements recorded under Section 313 Cr.P.C that they had seen the public notice issued on 14.1.200 and the name of their company in the list of defaulters. The accused cannot take the plea of ignorance in these circumstances.
20. Despite knowledge, the accused did not chose to send the winding up and repayment report to the SEBI. The accused have claimed in their statements that there were no
71 investors except themselves and the business had not

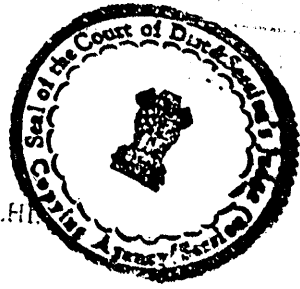




commenced. They also claim that the business was closed. But no proof has been produced during trial to substantiate all these contentions. Even the date of closure and repayment, even to themselves, if their version is to be accepted have not been disclosed.

21. The oral testimony of DW1 has no evidentiary value, since it is based on hearsay, the witness deposing to what accused Abbai Singh had told him. Ex.CW1/1 admittedly sent by the accused way back in January 1998 does not mention that Rs.90,000/- had been collected only from the directors/promoters.
22. It may be noticed that DW1 is an advocate and known to Abbai Singh accused. According to him when he had met the accused, the accused had told him about a public notice about which the accused wanted to clarify before continuing his scheme. If this version is to be accepted, it would show that the accused were aware of the regulations and their obligations there under.
23. Yet despite knowledge, the accused did not comply with the requirements of submitting the winding up and repayment report. DW1 was available to them for professional





IN THE COURT OF MS ASHA MENON, ASJ, DELHI
CC NO.147/05
SEBI VS. HELP INDIA PLANTATION AND
DEVELOPMENT COMPANY & OTHERS

ORDER ON SENTENCE

Counsel for the accused has submitted on quantum of sentence. Learned Counsel for accused prays that a lenient view may be taken, in view of the fact that the accused had defaulted only in informing the SEBI that they had wound up their operations. Learned Counsel also submits that the families of the accused are dependent upon them and therefore, a lenient view imposing fine without any term of imprisonment may be taken.

Keeping in mind all the facts and circumstances of this case, I am of the view that imposing of a fine of Rs.5,000/- each on the accused company Help India Plantation and Development and its Directors Sh. Pawan Singh, Sh. Ajay Singh and Sh. Abbal Singh would meet the ends of justice. In the event of default in the payment of this fine, the accused Sh. Pawan Singh, Sh. Ajay Singh and Sh. Abbal Singh shall undergo simple imprisonment for two months. On payment of fine the personal bonds and sureties bonds of the accused shall stand cancelled and the sureties will stand discharged.

File be consigned to the records.

Announced in the Open Court.
Dated: 28.8.2006.

Asha Menon
(ASHA MENON)
Addl. Sessions Judge: Delhi.

*Copy given to the convict
in open court at 10
on 28/8/06*

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28/8/06

NOTE:- All the acc. left Court without receiving
certified copy of Judgement.

Abhimat

Office of the District Sessions Judge, Delhi
Certified to be a true Copy
Date <i>28/8/06</i>
Authorised under: Section 76 of the Indian Evidence Act, 1972

7. Vinay Sharma, Director of accused no.1
A-134, Karampura, New Delhi-15.
& 101/63, Yamuna Colony Market, Chakrata Road,
Dehradun, Uttaranchal.

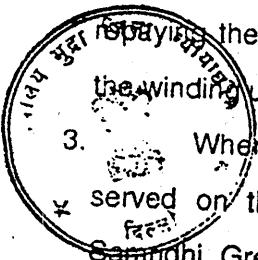
8. ~~Ajay Kumar~~, Director of accused no.1
A-134, Karampura, New Delhi-15.
& 101/63, Yamuna Colony Market, Chakrata Road,
Dehradun, Uttaranchal. Accused

JUDGMENT:

1. This complaint has been preferred by the SEBI against Samridhi Green Forest Ltd. and its directors for violating the regulations no.68(1), 68(2) read with regulations 5(1), 73 and 74 of the SEBI Regulations, 1999 read with Section 12(1B) of the SEBI Act, 1992 and Section 11B of the SEBI Act, 1992 and Section 24(1) of the SEBI Act, 1992 read with Section 27 read with 1992.

2. The allegations against the company and its directors, in brief, are that they had floated Collective Investment Schemes and had collected Rs.20,000/- from the investors but despite the notifications and public notice of the SEBI in this regard, the accused had neither got their Collective Investment Scheme registered with the SEBI nor had they complied with the SEBI Chairman's order dated 7.12.2000 for winding up the scheme and repaying the investors within a month of the order and submitting the winding up and repayment report to the SEBI by 31.3.2000.

3. When notice of allegations under Section 251 Cr.P.C was served on the accused P.K. Mishra, director of accused no.1 Samridhi Green Forest Ltd, he pleaded not guilty. It may be mentioned that process under Section 82-83 Cr.P.C has already been initiated against the remaining accused for declaring them PO.



ATTESTED
12/5/06
EXAMINER

Contd...