

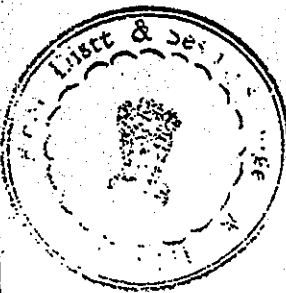
IN THE COURT OF MS. POONAM CHAUDHARY
ASJ (CENTRAL-01) : DELHI

CC no. 47/09

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 Asst General Manager, Sh. Rakesh
Bhanot.

VERSUS

- 1 Hind Forest India Ltd. company
incorporated under the provisions of
Companies Act, 1956 and having its Regd
office at SCO 842, Top Floor, Kalka Road,
Manimajra, Chandigarh-160101.
- 2 Sh. Shiv Sharma S/o Shri Satpal Sharma,
Director of accused no. 1 company, R/o 81,
Kismat Nagar, Vill. Babyal, Ambala.
- 3 Sh. Gurmail Chaudhary S/o Sh. Lajja
Ram, Director of accused no. 1 company,
R/o Vill. Fatehpur, P.O. Bhure-Wala, Distt.
Ambala, Haryana.
- 4 Sh. Raj Kumar Gupta S/o Sh. Ram Nath,
Director of accused no. 1 company, R/o
Village and Post Office Shahzadpur, The.
Naraingarh, Distt. Ambala (Haryana)-
134202.



Arguments heard on : 30.03.2010
Judgments reserved for : 31.03.2010
Judgments announced on : 31.03.2010.

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Put up to CYS-G no.
26/07/10.

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JUDGMENT

1. In brief the case of the Securities and Exchange Board of India (hereinafter referred to as "SEBI") statutory body established under the provisions of Securities and Exchange Board of India Act 1992 (hereinafter referred to as 'the Act') has disclosed in the complaint is that accused no. 2 to 4 being the directors of accused no. 1 company (hereinafter referred to as accused company) floated collective investment schemes (in short referred to as CIS) and collected Rs. 14,49,561/- from general public.

2. It is further averred that for regulation of CIS being run by entrepreneurs SEBI notified the Securities and Exchange Board of India Regulations 1999 (hereinafter referred to as the Regulations). However accused company neither applied for registration nor took any steps for winding up its CIS and repayment to its investors as per the Regulations. Therefore according to SEBI the accused company committed violation of Sections 11(B), 12 (1B) of the Act read with Regulations 5 (1), 68 (1), 68 (2), 73, 74 punishable U/s 24 (1) of the Act. SEBI also claimed that accused no. 2 to 4 being directors of accused company were responsible for the conduct of its business and were therefore liable U/s 27 of the Act.

3. After the filing of the complaint all the accused were ordered to be summoned by Ld. ACMM vide order dated 16.12.2003. After appearance of accused notice of accusation was given to which accused no. 4 pleaded not guilty for self and on behalf of company and claimed trial. Accused no. 2 and 3 had absconded and were declared Proclaimed Offenders.

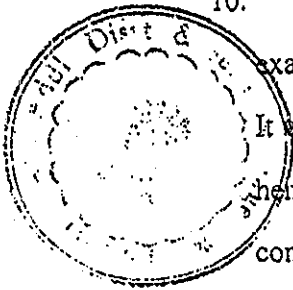
In support of its case SEBI examined CW 1, Sh. Rakesh Bhanot, AGM, SEBI and CW 2 Ms. Versha Agarwal, AGM, SEBI and thereafter closed its evidence. The statement of accused no. 4 was thereafter recorded U/s 313 Cr.P.C. Accused did not lead



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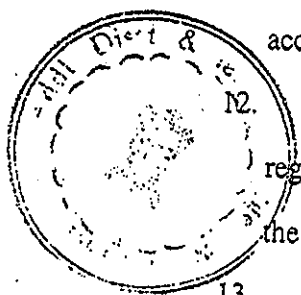
evidence in his defence.

5. I have heard the Ld. counsel for parties and carefully perused the record.
6. The question for consideration is whether SEBI has been able to prove its case against the accused beyond reasonable doubt.
7. The case hinges on the documents issued by SEBI and accused company prior to the institution of this case.
8. CW 1 Sh. Rakesh Bhanot AGM SEBI deposed that he was competent to continue and pursue the present complaint by virtue of the letter of authority issued by SEBI which is Ex. CW 1/1.
9. CW 1 further stated that in pursuance of the press release issued by SEBI calling upon entities to filing upon information regarding its promoters and directors and its schemes, funds mobilized its CIS, the accused company sent letter dated 10.01.1998 to SEBI which is Ex. CW 1/2 enclosing therewith the copy of memorandum and articles of association, brochures, profile of company, application form of company and details of funds mobilized. The letter was signed by the director of the accused company. As per the said letter accused company had mobilized Rs. 14,49 lakhs under its CIS and as per the MOA the directors of accused company were Sh. Anil Jain, Sh. S.K. Sharma, Sh. Sanjay Aggarwal, Sh. Gurmail Chaudhary and Sh. Raj Kumar Gupta who were incharge of the day to day affairs of the accused company. As per the testimony of CW 1 these persons were subscribers to the memorandum.
10. However Ld. Counsel for accused contended that CW 1 deposed in his cross examination that SEBI did not verify whether Ex. CW 1/2 was sent by accused company. It was further submitted that Ex. CW 1/2 does not bear the seal of the accused company hence it was a not a genuine document but was forged document. However this contention of Ld. counsel for accused is without any merit as Ex. CW 1/2 was sent to SEBI by accused company and bears the signatures of one of the directors. It was further



contended by Ld. Counsel for SEBI that besides Ex. CW 1/2 the accused company also sent a letter dated 30.04.1998 to SEBI which is Ex. CW 1/DA furnishing the compliance certificate with regard to the directions issued by SEBI enclosing with it the names and address of the directors, audited balance sheet, certified copy of Memorandum and Articles of Association and compliance certificate. The Ld. counsel for accused stated that authenticity of the Ex. CW 1/DA was also not verified by SEBI. However Ld. counsel for SEBI Sh. Sanjay Mann argued that any document furnished to a public person is presumed to be correct hence Ex. CW 1/2 and CW 1/DA sent by accused company to SEBI are presumed to be genuine. As per Ex. CW 1/2 and CW 1/DA I am of the view that accused no. 4 was one of the directors of accused company. As per the certificate of incorporation appearing in the memorandum and articles of association accused company was incorporated on 17.03.1997. Therefore, the accused company was running CIS as on the date of issue of Ex. CW 1/2 which is 10.01.1998.

11. On the basis of Ex. CW 1/2 and Ex. CW 1/DA, I have no hesitation in holding that accused no. 4 was one of the director of accused company and accused company had been running CIS since its incorporation on 17.03.97 and had mobilized funds from general public. As already stated SEBI CIS regulation came into force with effect from 15.10.1999. As per Ex. CW 1/2 the company had investors funds to the tune of Rs. 14,49,561/- as on the date of issue of Ex. CW 1/2 which is 10.01.98. Section 12(1B) was incorporated in the Act w.e.f. 25.01.1995. Therefore SEBI succeeded in proving that accused company had been running CIS as on 10.01.98 the date of issue of Ex. CW1/2.



12. As per Section 12 (1B) of the Act any person carrying on CIS without registration from SEBI in accordance with regulations is liable to be punished U/s 24 of the Act.

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

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"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 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*



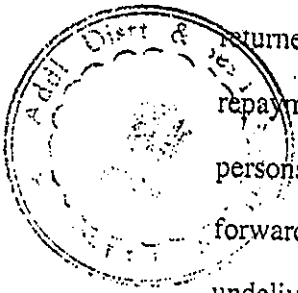
16. CW 1 further deposed that the SEBI CIS Regulations were notified on

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15.10.1999. Intimation of the same was sent to the accused company on 21.10.1999 vide letter Ex. CW 1/ 3 which was returned undelivered with the remark "left without address". The statutory requirement were also communicated to all entities vide public notice Ex. PW 1/4.

17. As per the Regulation (5) of regulations the accused company had to apply for registration of its CIS till 31.03.2000. Further as per regulations 73 (1) CIS which failed to make an application for registration 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 existing investors in the manner specified in Regulation 73. According to regulation 73 (2) existing CIS to be wound up shall, send information memorandum to investors who had subscribed to the schemes, within two months from the receipt of intimation from SEBI.

18. Thus, the statutory requirements called upon entities running CIS to confirm compliance. CW 1 further stated that as accused company did not comply with the obligations under the SEBI CIS Regulation show cause notice dated 12.05.2000 was sent to accused no. 1 which was also returned undelivered. However, accused company did not file reply to show cause notice therefore SEBI vide letter dated 31.07.2000 forwarded a format of winding up and repayment report for compliance which was also returned undelivered. As the accused company did not file the winding up and repayment report with SEBI as such directions were issued to accused company and the persons incharge of the company vide order dated 7.12.2000. The said directions were forwarded to accused company vide letter dated 18.12.2000 which was also returned undelivered with the remarks "left without address" vide Ex. CW 1/9 and copy of directions u/s 11 B of SEBI act is Ex. CW 1/10. CW 1 also stated that directions u/s 11 B of the SEBI act were also communicated to accused vide public notice dated 14.01.2001



company failed to apply for registrations of its CIS and did not wind up its CIS or repay the investors as per regulations 73 and 74.

22. I accordingly hold that accused company Hind Forest India Ltd. and its directors 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 the point of sentence on 8.04.2010.

Poonam Chaudhary

Announced in the open Court
On this day of 31st March 2010

(POONAM CHAUDHARY) Sessions Judge
ASJ (Central-01) : DELHI (Central)-01
Tis Hazari Courts, Delhi



Ms. POONAM CHAUDHARY
ASJ (CENTRAL-01) : DELHI
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This Honourable Court, Delhi

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

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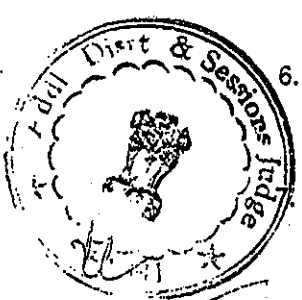
08.04.2010.

ORDER ON SENTENCE

Present : Sh. Sanjay Mann, counsel for SEBI.

Convict no. 4 on bail with counsel Sh. Amit Kumar.

1. I have heard the Ld. Counsel for SEBI Sh. Sanjay Mann and Ld. counsels for convict no. 4 on the point of sentence.
2. It is submitted on behalf of convict no. 4 that his family comprises of his wife and two children who are dependent upon him as he is the sole earning member of the family. It is prayed that lenient view may be taken.
3. Ld. Counsel for SEBI has opposed the submission made by Ld. Counsel for convicts and submits that accused had mobilized funds to the tune of Rs. 14,49,561/- from general public in violations of SEBI CIS regulations.
4. Ld. Counsel for SEBI Sh. Sanjay Mann submitted that the Act came into force in 1992 to provide for establishment of a Board to protect the interest of investors in securities and to promote the development of, and regulate securities market and matters connected therewith.
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.
Convict no. 4 was the directors of accused no. 1 company and



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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 or fine up to Rs. 25 crores or both. This shows that 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. 4 is sentenced to RI for 6 months. In addition accused company and accused no. 4 shall pay a fine of Rs. 4,00,000/- (Four lack) each and in default thereof accused no. 4 shall undergo SI for 3 months u/s 24 read with section 27 of the Act. Out of the amount of fine realised a sum of Rs. 30,000/- 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 u/s 299 Cr.P.C.

Addl. Sessions Judge
(Central-01)
(POGNAM CHAUDHARY)
AS(Central-01)/DELHI.
08.04.2010.

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