

CC No. 27/09

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 JSM Plantation & Dairy Farming Ltd.
a company incorporated under the provisions of Companies act, 1956 and having its registered office at : 101, Ram Ratan Marg, Farrukhabad-209 625 (UP)
- 2 Sh. Dharmendra Pratap Singh, S/o Sh. Dayal Babu, Director of the Accused no. 1; R/o 101, Ram Ratan Marge Farrukhabad 209625 (U.P.)
- 3 Smt. Mithelesh Kumari, W/o Sh. Dayal Babu, Director of the Accused no. 1; R/o 101, Ram Ratan Marge Farrukhabad 209625 (U.P.)
- 4 Sh. Siyaram Saraf S/o Late Sh. Munshilal Saraf, Director of the Accused no. 1; R/o Village & PO

CC No. 27/09
SEBI Vs. JSM Plantation

1/9

Out up. 26/07/10
K. K. 10.

SD

Ramnagar, Manipuri UP.

5 Sh. Pradeep Kumar Saraf, S/o Sh.
Siyaram Saraf, Director of the Accused
no. 1; R/o Village & PO Ramnagar,
Manipuri UP.

Arguments heard on :23.04.2010.
Judgments reserved for :28.04.2010.
Judgments announced on :28.04.2010.

JUDGMENT

1. In brief the case of 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 is that accused no. 2 to 5 being the director of accused no. 1 (herein after referred to as accused company) floated Collective Investments Scheme (for short 'CIS') and collected Rs 2,67,037/- 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 the 'Regulations'). However, accused company neither applied for registration nor 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(1B) of the Act read with Regulations 5(1), 68(1), 68(2), 73 & 74 punishable under Section 24(1) of the Act. SEBI also claimed that accused no. 2 to 5 being the directors of 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 filing of the complaint, all the accused were summoned vide order of Ld. ACMM, Delhi dated 16.12.2003. After appearance of the accused notice of accusation was given to them to which accused no. 2 to 5 pleaded not guilty on behalf of the company and self and claimed trial.
3. In support of its case the complainant/SEBI examined Sh. Rakesh Bhanot AGM SEBI as CW 1 and thereafter closed its evidence.
4. The statements of accused no. 2 to 5 were thereafter recorded u/s 313 Cr.P.C. Accused examined 1 witness in their defence and thereafter closed its defence evidence.
5. I have heard the Ld. Counsel for parties and perused the record.
6. The questions for consideration is whether SEBI has been able to prove its case beyond reasonable doubt against the accused or not. The present case hinges upon the documents issued by SEBI and accused company prior to the institution of the complaint.
7. In support of its case SEBI examined CW 1 Sh. Rakesh Bhanot the authorised representative of the complaint. He stated that he was authorised to file the complaint vide letter of authority of Chairman SEBI Ex. CW 1/ 11.
8. CW 1 deposed that government of India vide press release dated 18.11.97 directing that bonds which were in the relation of plantation bonds and agro bonds issued by companies would be considered as Collective Investment Scheme as stipulated under section 11 of SEBI Act. 1992. Thereafter SEBI issued press release dated 26.11.97 and public notice dated 18.12.97 directing companies which were running CIS to file information with SEBI regarding their schemes such details of funds mobilized, names of directors/ promoters etc. in case they were desirous of obtaining benefits under section 12 (1B) of SEBI Act. CW 1 further stated that in pursuance of the press release, accused company furnished

information to SEBI vide letter dated 14.01.98 Ex. CW 1/ 1. CW 1 further stated that along with this letter accused company also enclosed the certified copy of Memorandum and Articles of Association of the company, Compliance certificate, audited balance sheet as on 31.03.97, names and occupation of directors and information at to deployment of funds. As per Ex. CW 1/ 1 accused company had mobilized funds to the tune of Rs 2,67,037/- under its CIS. CW 1 further deposed that as per the information furnished by accused company to SEBI accused no. 2 to 5 were the directors of the company. CW 1 also stated that directors were persons incharge of the affairs of the company.

9. The authenticity of Ex. CW 1/1 was not challenged by accused therefore it is deemed to be admitted as correct. In view of Ex. CW 1/ 1 accused no. 2 to 5 were the directors of the accused no. 1 company and accused no. 1 company had mobilized funds to the tune of Rs. 2,67,037 as on 18.06.98.

10. SEBI 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"

11. 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.

12. 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.*

13. As per the admitted document Ex. CW 1/1 dated 18.06.98 and its enclosures accused company had invited general public to invest in its various schemes which were to be managed by it and profits would be shared by investors

also. Therefore as per Ex. CW 1/ 1 accused company had been running CIS as on 18.06.98.

14. The testimony of CW 1 was not challenged regarding the fact that accused no. 2 to 5 were the persons incharge of the affairs of the company. In their statement u/s 313 Cr.P.C. all the accused admitted that accused vide letter Ex. CW 1/1 furnished information to SEBI that company had mobilized funds of Rs. 2,67,037/- under its CIS. As per admitted letter Ex. CW 1/1 and its enclosures company had been running CIS as on 18.06.98. Apart from this CW 1 also stated that SEBI CIS regulations were intimated to accused company vide public notice dated 20.10.99 and letter sent vide registered post, the copy of the letter is Ex. CW 1/ 2. As per regulations 5(1) of the regulation accused company had to apply for registration of its CIS till 31.03.2000. As per the regulation 73(1) 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 specified in Regulation 73.

15. Regulatory obligations were communicated to the accused company vide letter dated 10.12.99 and 29.10.99 which are Ex. CW 1/ 3 and Ex. CW 1/ 4 as well as vide public notice Ex. CW 1/ 5, however the company neither applied for registration nor intimated regarding its winding up scheme, hence show cause notice was issued to the accused company which is Ex. CW 1/ 6. Thereafter SEBI vide letter dated 31.07.2000 forwarded a format of the Winding up and Repayment report in which companies were required to furnish information regarding winding up of the schemes and repayment done thereafter but the accused company failed to comply with regulatory obligations. CW 1 also stated that as the company failed

to comply with the regulatory provisions, company was directed vide order of Chairman SEBI dated 7.12.2000 to repay the investors as per the original terms of offer within one month of the said order. CW 1 also stated that copy of order was also also communicated to the accused company vide Ex. CW 1/9 and contents of order were published in all leading newspapers, the copy of the same was Ex. CW 1/10. CW1 also stated that as accused company failed to comply with regulatory obligations SEBI filed the present complaint.

16. In their statement u/s 313 Cr.P.C. all the accused admitted that intimation regarding notification of the SEBI CIS regulations were communicated to accused company vide Ex. CW 1/ 2 but further stated that company was already closed in September 1997.
17. In their defence accused examined 1 witness who was an investor of the company related to one of the director and stated that company started business in the year 1996 from the funds of directors and their family members but due to loss in the business the amount of Rs. 4,21,000/- contributed by the directors was refunded in 1997. It was also stated that WRR , audited balance sheet for the year 1996-1997 and 1997-1998 and other relevant documents and details of repayment were forwarded to SEBI. In his cross examination he stated that he had no concern with the accused company but he had invested money in the company. He further stated that head office of the company was in his house. He further stated that WRR was filed by the accused company with SEBI but it was filed late. He further stated that he could not say whether it was filed in the year 2004, 2005 or 2006. He further stated that amount mobilized by the company was Rs. 4.21 lacs. He also stated that names of investors is not mentioned in the balance sheet.
18. In their statement u/s 313 Cr.P.C. accused admitted that subsequent to the filing of the present complaint accused company vide letter dated 03.03.06 the

accused company submitted winding up and repayment report Ex. PW 2/A.

19. Ld. Counsel for SEBI contended that there were certain discrepancies in the WRR submitted by accused company and the accused company vide letter Ex. PW 2/B sent to SEBI admitted that total amount mobilized was Rs. 4.21 lacs. Thereafter SEBI vide Ex. PW 2/C pointed out that quantum of period of mobilization of amount was not clear as accused company had mobilized Rs. 4.21 lacs but in the balance sheet for the year 1996-97, the amount mobilized was shown as Rs. 2,67,037/-, therefore accused company was directed to submit the details of amount mobilized and repayment with documentary proof and also submit the statutory auditors certificate. Ld. Counsel for SEBI Sh. Sanjay Mann contended that the defence of accused that all the amount had been repaid cannot be accepted and in this regard it is important to note vide Ex. CW 2/C SEBI pointed out the the discrepancies in the WRR submitted by accused company so defective WRR submitted by accused company would not save it from liability which it had already incurred by violations of provisions of act and regulations. The other defence of accused company about the repayment to investors is also without any merits as no documentary proof has been placed on record by accused company to show that entire money of investors stood repaid. Hence the contention of Ld. Counsel for accused that the money of investors stood repaid in 1997 does not stand substantiated even though accused company addressed a letter Ex. CW 1/D2 to SEBI in this regard, enclosing therein by a statement of repayment.
20. The other defence of accused is that vide letter dated 23.07.98 Ex. CW /D1 they informed SEBI that accused company was not mobilizing any further funds under its CIS.
21. However SEBI vide letter Ex. CW 1/DB informed accused company that interest on the amount mobilized was not paid as directed vide order of SEBI dated

7.12.2000 and in case the amount collected were without interest as contended by accused company a certificate of statutory auditor and confirmation by director in this regard was directed to be filed by accused company. The accused company was also directed by SEBI vide Ex. CW 1/D4 to file the compliance certificate in the letter head of the company.

22. For the foregoing reasons I am of the view that SEBI has proved its case against the accused company of which accused no. 2 to 5 were the directors to the effect that CIS as contemplated by section 11 AA of the Act, had been floated funds mobilized from general public without obtaining certificate of registration as required by section 12(1B) of the Act. It has also been proved that despite coming into force of the regulations w.e.f. 15.10.99 accused company failed to make an application for registration of its CIS within the statutory period as contemplated by regulations. Apart from this SEBI has also proved beyond reasonable doubt that accused 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.

23. I accordingly hold that accused company JSM Plantation & Dairy Farming Ltd. and accused no. 2 to 5 being directors of company are 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 7.05.2010.

Announced in the open Court
On this day of 28th April 2010

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

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

CC No. 27/09

SEBI Vs. JSM Plantation and Diary Farming Ltd. & ors.

07.05.2010.

ORDER ON SENTENCE

Present : Sh. Sanjay Mann, counsel for SEBI.

Convict no. 2 to 5 on bail with counsel Sh. Satish Bajaj

1. I have heard the Ld. Counsel for SEBI Sh. Sanjay Mann and Sh. Satish Bajaj counsel for convict no. 2 to 5 on the point of sentence.
2. It is submitted on behalf of convict no. 2 that he was 17 years of age at the time of mobilization of funds and convict no. 3 is a house wife. It is submitted by convict no. 4 that he is 80 years old and convict no. 5 is his son. It is prayed that lenient view may be taken.
3. Ld. Counsel for SEBI has strongly opposed the submission made by Ld. Counsel for convicts and submits that accused had mobilized funds from general public in violations of SEBI CIS regulations.
10. 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 interest of investors in securities and to promote the development of, and regulate securities market and matters connected therewith.
11. 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.

12. According to section 12(1B) of the Act, the Collective Investment scheme could not be run without obtaining registration as per regulations.
13. Convict no. 2 to 5 were the directors of accused no. 1 company and in violations of section 12(1B) of the SEBI Act floated Collective Investment Scheme and collected amount from general public.
14. 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 and 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.
15. 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. 1 to 5 are sentenced to pay a fine of Rs. 50,000/- (Fifty thousand) each and in default thereof accused no. 2 to 5 shall undergo SI for 3 months each u/s 24 read with section 27 of the Act. Convicts shall file WRR in the format with SEBI within 2 months from today. 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.
07.05.2010.