

IN THE COURT OF MS. MADHU JAIN, A.C.M.M. TIS HAZARI, DELHI.

COMPLAINT NO. 1205 / 2003.

IN THE MATTER OF:

SECURITIES AND EXCHANGE BOARD OF INDIA,
a statutory body established under the
provisions of Securities and Exchange
Board of India Act, 1992, having its
Regional Office at New Delhi, represented
by its Legal Officer/Manager/Asst.
General Manager Ms./Mr. Rakesh Bhanot.

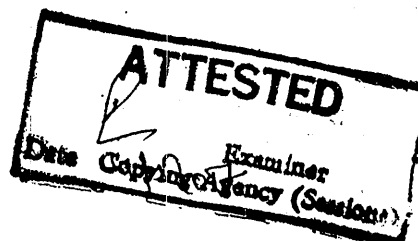
COMPLAINANT

VERSUS

1. LAMVELL PLANTATION LTD.
RE-395/394, Gali No.10,
Shiv Puri West Sagar Pur,
New Delhi.
2. Dr. Lalit Kumar,
R/o. D-543, MIG Partap Vihar,
Vijay Nagar, Ghaziabad-201009.
3. Shri. M. K. Acharaya,
R/o. 239, Kallupura,
Near Ambedkar Bhawan,
Ghaziabad, U.P.
4. Shri. Lokendra Kumar,
R/o. 195, Near Arya Nagar,
Patel Marg, Ghaziabad, U.P.

ACCUSED

COMPLAINT UNDER SECTION 200 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 READ WITH SECTION 24(1), 27 OF SECURITIES
EXCHANGE BOARD OF INDIA ACT, 1992.



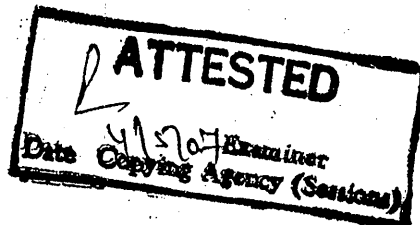


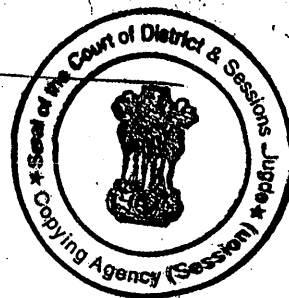
17.8.06. Dr: Accd. Lalit Kumar,
M.K. Acharya and Lakendra
Kumar, also for AI, company,
on bail.

Vide separate orders of even
date, the accused are all
acquitted of the offences for
which they have faced trial.
Their p/bonds & s/bonds are
cancelled. Sureties are discharged.
File be consigned to the records.

Announced in
open court on
17.8.06.

Ashankhenon
A.S.J.





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

CE NO.92/2005

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 Bhanot.

VS. ... Complainant

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RZ-395/394, Gali no.10,
Shiv Puri West Sagar Pur,
New Delhi.

2. Dr. Lalit Kumar.
R/o D-543, MIG Partap Vihar,
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3. Sh. M.K. Acharaya,
R/o 239, Kallupura,
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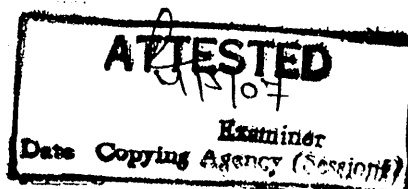
4. Sh. Lokendra Kumar,
R/o 195, Near Arya Nagar,
Patel Marg, Ghaziabad, U.P.

.... Accused

JUDGMENT:

BACKGROUND FACTS:

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1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as the SEBI) through its Assistant General Manager Sh. Rakesh Bhanot against LAMVRLL Plantation Limited and against its Directors Sh. Dr. Lalit Kumar, Sh. M.K. Acharaya and Sh. Lokendra Kumar.





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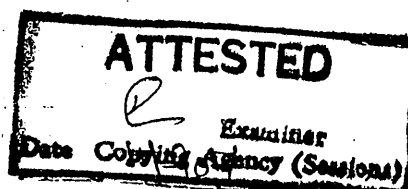
2. The complaint has been preferred under the Securities and Exchange Board of India Act, 1992 and the rules made thereunder.

The case as set out in the complaint is that the Government of India after detailed consultations with the regulatory bodies decided that an appropriate regulatory frame work for regulating entities which issued instruments such as Agro Bonds and Plantation Bonds etc., was required to be created. Thereafter, the Government notified on November 1997, through a press release, that such schemes relating to issue of Agro Bonds etc., would be treated as Collective Investment Scheme governed by the SEBI Act 1992.

3. The aim of these regulations were to ensure investor protection and to promote legitimate investment activities. The regulations were notified in 1999 as the SEBI (Collective Investment Scheme) Regulation 1999.

4. The entities involving any Collective Investment Scheme were required, vide the press releases dated 26.11.97, and 18.12.97 to file information with the SEBI giving the detail of the Company, its Scheme and nature of Investment. In response the accused in this case i.e. LAMVRLL Plantation Limited informed that they had collected Rs.1,04,135 from their Schemes. It also informed who the Directors were.

5. It has been stated in the complaint that after the regulations came into force, the SEBI issued letters dated 15.12.99 and



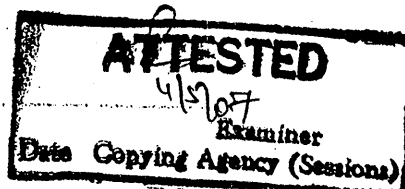


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29.12.99 and also issued public notices dated 10.2.99 informing the accused company of the notification and the regulations and directing it to send information memorandum to all Investors detailing the state of affairs of the Schemes, the amount repayable to each Investors and the manner in which such amount was determined. This information was to be sent by 28.2.2000. Subsequently, the last date for furnishing details was extended up to 31st March, 2000.

6. According to the complainant, the accused No. 1 failed to apply for registration and also failed to submit the repayment report nor did it furnish details for winding up the schemes. Therefore, on December 7th, 2000, orders were issued by SEBI u/s 11 B of the SEBI Act 1992, to the accused company to refund the money collected to the investors within one month and submit the report of repayment and winding up to the SEBI. According to the complainant since there was no compliance of this order, the accused company and its Directors had violated the Regulations No. 68(1) and (2) 73 and 74 R/W Regulation 5 (1) of the SEBI (Collective Investment Scheme) Regulation 1999 and had also violated Section 11 B and 12 (1) B of the SEBI 1992 which were all violation punishable U/s 24 (1) of the SEBI 1992 R/W Section 27 of the said Act.

7. Vide orders dated 16.12.2003 the accused were summoned

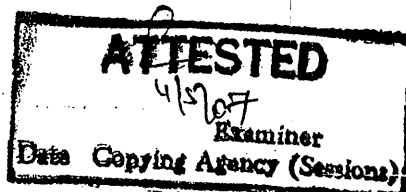




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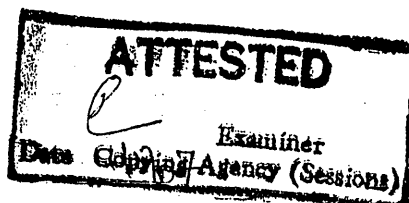




for trial. The notice of allegations under Section 251 Cr.P.C was served up on accused Dr. Lalit Kumar, Sh. M.K. Acharaya, Sh. Lokendra Kumar and the company LAMVRLL Plantation (India) Limited through them for having failed to comply with the regulations and for thus committing offences punishable under Section 24(1) SEBI Act read with Section 27 of the said Act. The accused pleaded not guilty.

EVIDENCE

8. Sh. Rakesh Bhanot, AGM was examined as CW-1 on behalf of the SEBI. During his testimony he has brought on record the letter dated 4.6.98 sent by the accused to the SEBI as Ex.PW1/B. The letter contained the names of the directors. It also contained the information that the company had raised about Rs 104,135 under their different schemes.
9. He has testified that thereafter, letters dated 12.9.98 and 4.8.98 were also received by the SEBI from the accused company which were in response to the letters that the SEBI had sent to the accused company. He further deposed that the SEBI had sent various letters to the accused company informing it about the requirements under the regulations and which were returned undelivered to the SEBI. He brought on record all the undelivered letters along with their envelopes. He also deposed that when show cause notice dated 12.5.2000 was issued, that was also





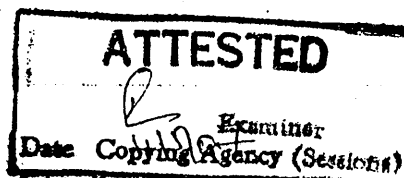
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returned undelivered. He deposed that the format for winding up was also sent to the accused company and once again the communication returned undelivered to the SEBI. He deposed to the public notice issued in the Hindustan Times listing the accused company at serial no.254. He deposed to the non-compliance despite the public notice, by the accused company and the accused directors till the filing of the complaint.

10. In the cross-examination, the witness deposed that he had been authorized by the Chairman Sh. Mehta under the provisions of S.19 SEBI Act to pursue the complaint even though it did not do so specifically to appear as witness in this case. He was not aware of any resolution having been passed in this regard.

11. He admitted that as per the records no public complaints have been received against the accused company. He testified that no new CIS could be started pursuant to the public notice dated 18.12.97. He deposed that they had no documentary evidence to prove whether the accused/directors had commenced any CIS or they had collected money from the public or that the accused had invited deposits from the general public assuring them of high returns, subsequent to 18.12.97. According to the witness the letter of the SEBI Ex.PW1/6 showed that the accused had been continuing their business.

12. The witness denied the suggestion that reports on returned letters/envelopes were forged and fabricated. He affirmed that the letter

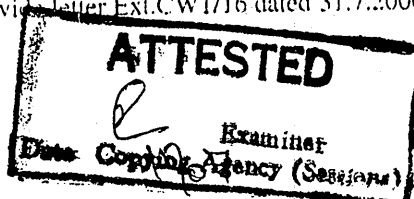




Ext.CW1/2 had been sent by the accused persons in response to the SEBI's letter dated 20.5.98. He also affirmed that in letter Ext.PW1/2 it is mentioned that accused had not collected any money from public by issuing Agro Bonds, Plantation Bonds etc. The witness further affirmed that Ext.CW1/3 had been sent by the accused in response to the SEBI's letter dated 27.8.98 and that Ext.PW1/5 was sent to SEBI by the accused in response to letter dated 22.7.98. To the specific question of the learned defence counsel the witness answered that the accused vide letter Ext.CW1/5 all the documents sought for had been submitted by the accused except latest audited balance sheet and statement of deployment of funds duly certified by auditor.

13. The witness deposed further that since the letter directing the accused to submit documentary proof of winding up had been returned undelivered he could not say whether the scheme had been continued by the accused after the public notice had been issued by the SEBI. He also affirmed that vide Ext.CW1/5 the company had not launched any new Scheme after 20.10.97 and that they had returned back the collected amount by 31.7.98. The witness deposed that SEBI has not received any list of investors who had been returned money alongwith the original receipts issued by the investors till the filing of the complaint. The witness affirmed that Ext.CW1/6 does not mention the requirements to submit a list of depositors and the details of the return of the invested amount to the investors by the accused.

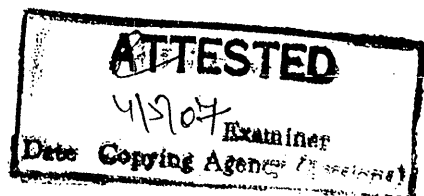
14. The witness deposed that vide letter Ext.CW1/16 dated 31.7.2000





they had asked for winding up and repayment report asking for the names of the investors and other details including mode of repayment. He affirmed that letter Ext.CW1/16 was for those CIS existing after passing of Regulation, 1999 and that there were some conditions that had been prescribed for registration under SEBI CIS Regulations. He also affirmed that one of the conditions prescribed for qualification of registration with SEBI was that the company's net worth exceeded Rs.5 crores. The witness also affirms that in the Memorandum of Association the authorized capital of the accused is shown to be Rs.1 lac and it is possible that the share capital could not have exceeded Rs.1 lacs in 1997.

15. The witness deposed that he could not give the reason for delay in filing the complaint but ventured to explain that as a large number of such cases were with SEBI it may have been a contributing factor and that the offence was continuing due to non-submission of the winding up and repayment report. The witness deposed that they had called the record of the company and in this regard they had sent letter Ext.CW1/16 and in this letter there is no mention of word "inspection". He denied the suggestion that this letter was not for inspection purpose. The witness deposed that there was no need for appointing any commission for the investigation and examination of witness or document as the accused company was not registered with SEBI and the adjudication proceedings could only be in respect of intermediary registered with SEBI and the accused in this case was not so registered. He was unable to give any detail about any other criminal action taken by the SEBI against the accused.



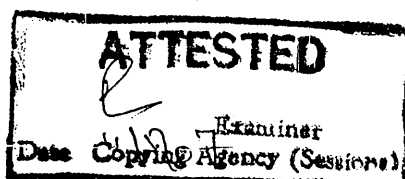


16. After the evidence was recorded, the statements of the accused have been recorded under Section 313 Cr.P.C. 7. evidence has been led in defence.

CONTENTIONS:

17. Sh. Sachit Sethia has argued on behalf of the SEBI that the rules and regulations in respect of Collective Investment Scheme had been introduced as many such CIS had been floated into market and the gullible public had been duped by companies who vanished with the funds that had been raised from the market. It was submitted that it was only because investors were being swindled that the SEBI had brought out the rule to the effect that the companies running Collective Investment Schemes had to register their schemes with the SEBI if they wished to continue with their Collective Investment Scheme.

18. It was submitted that thereafter, the regulations were notified in 1999. It was submitted that only those CIS which had the intention of continuing in the future were required to furnish information and accused in this case had also submitted their information in 1998 which showed that the accused were involved in the CIS and were desirous of taking advantages of the regulations which were to be notified. Sh. Sethia further submitted that thereafter once the regulations were notified the SEBI had sent various letters to the company which were all returned to the





SEBI. It was submitted that the SEBI had taken steps to publish the information in newspaper despite which the accused did not chose to comply with the requirements of law. He therefore submitted that the accused were liable for the violation.

19. On the other hand, the learned defence counsel has submitted that the regulations itself were not applicable to the accused company inasmuch as the SEBI has not proved how much money has been raised by the accused and that they were in fact continuing with their operations when the regulations were notified in 1999. According to learned counsel it was only if the net worth of the company exceeded Rs.5 crores that the regulations would become applicable and in this case when the accused company had raised a small amount of Rs.1 lac there was no occasion for the regulations to become applicable.

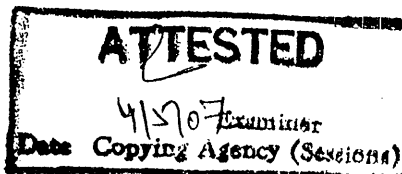
20. In these circumstances, it has been submitted that the accused company was not obligated to apply for registration. It is further submitted that the accused company had informed the SEBI that they were not collecting deposits and had refunded the amount prior to 1999 and therefore, since they were not desirous to continue with the Collective Investment Scheme there could have been no occasion for them to obtain registration. There was also no winding up to be submitted either as the collective investment schemes were not in existence when the regulations requiring such





reports came into force.

21. It is further contended that SEBI had not sent any notice to the directors and no information had been given to the directors about the requirements for compliance and therefore, the complaint was malafide.
22. The further contention is that the complaint was time barred inasmuch as the compliance was to be effected by 31.3.2000 and the complaint could have been filed only by 31.3.2001 and without explanation with the complaint was filed in 2003 it was clearly time barred. Learned counsel has submitted that this offence was not continuing as the act did not say so. It was submitted that the complaint was filed without any verification. It has been submitted by learned counsel that SEBI was authorized to inspect the records of the company and satisfy itself about compliance with regulations. It has been argued that no such notice was sent to the accused company. It was submitted that the mere inspection by the SEBI would have revealed that after 20.10.97 the company had closed its operation and the investors had been repaid by 31.7.98.
23. It has been also argued that the complaint has not been filed by a competent person inasmuch as Section 19 of the SEBI Act, 1992 authorised the Board and not the Chairman to delegate powers and therefore, since Sh. Rakesh Bhanot was neither authorised to file the complaint nor depose as witness the





complaint had to be dismissed.

24. On these contentions, the learned counsel for the accused has prayed that the accused be acquitted.

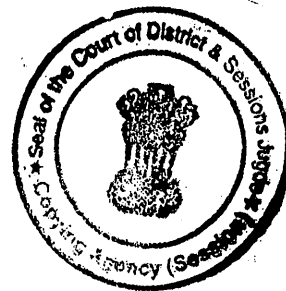
FINDINGS:

25. Each contention can be considered in detail to determine whether or not, the SEBI has succeeded in proving its complaint. To start at the beginning, the question to be considered first is whether the complaint has been properly filed. The complaint has been filed through Sh. Rakesh Bhanot and it is argued by the Learned counsel that under Section 19 of the SEBI Act, 1992, only the Board could delegate its powers. But Section 19 has to be read in conjunction with Section 4 which deals with the Management of the Board. Section 4, Sub-Section 3 is relevant and reads as under :

Am "Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by the Board".

- 75 26. General superintendence and direction of the affairs of the Board would include filing of complaints under the Act.



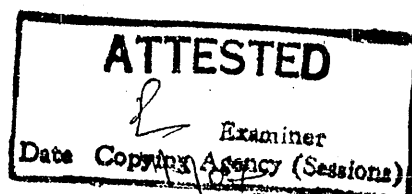


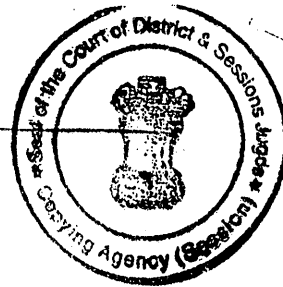
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Therefore, the Chairman, as much as the Board itself, would have the powers to file complaints. It is obvious that while generally supervising or directing the affairs of the Board, the Chairman would also need to delegate his powers. Section 19 does not specifically disqualify the Chairman from exercising the powers of delegation. In the circumstances, the Chairman's authorization of Sh. Rakesh Bhanot is sufficient for the purposes of the complaint.

27. There is a fallacy in the argument of the Learned Defence counsel that the 1999 Regulations of the SEBI were inapplicable to the accused company because it had raised only Rs.1,04,135/- and did not have a net worth of Rs.3 crores or of Rs.5 crores for three years. Regulation 9 of the said regulations of 1999 merely lays down the conditions of eligibility for the grant of regulation for the running of Collective Investment Schemes. If the accused company did not fulfill the criteria for eligibility, its application for registration would have been rejected. But it cannot be said that because of its net worth or the lack of it, the accused would have been outside the purview of the regulations.

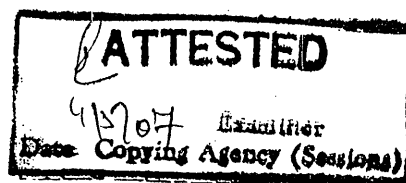
28. Such an interpretation would militate against the very

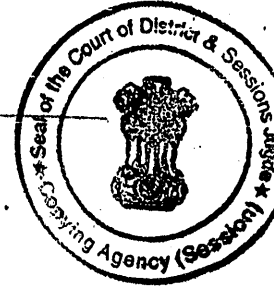




purpose of the regulations, as it intends to protect investors' interests, and protect their money. The requirement of a high net worth to be eligible for conducting a Collective Investment Scheme is to ensure that the investors would be able to realize their money. If smaller companies were to be kept excluded from regulation, clearly they could continue to play havoc with the public by obtaining their money and escaping their legal liabilities with impunity. It is therefore, illogical to argue that on account of the high net worth required to get registration, the accused company stood outside the regulatory norms of the SEBI and were not governed by it.

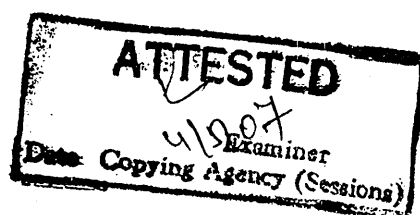
29. Once it was obvious to the company that it could not satisfy the stringent eligibility conditions, even if it desired to continue such Collective Investments Schemes, it had no choice but to close its business. Such companies were thus obligated to follow other instructions of the SEBI for winding up its business and to repay the investors as per the original offer. The question that is to be answered would then be whether the accused were required to and did in fact comply with those requirements or not. The answer would determine their culpability.





30. Before proceeding further, it may be useful to determine whether the complaint is barred by time. Even though the Sections 24 & 27 of the SEBI Act, 1992 make no specific reference to the offence being a continuing one, borrowing from the decisions of the superior courts while dealing with the violations of the Income Tax and the Companies Act, it may be concluded that the offence is a continuing one. Here too, the regulations of the SEBI demand that a Collective Investment Scheme if not eligible for registration have to wind up their activities. They have to repay their investors too. Thereafter, the company has to submit the reports of winding up and repayment in format to the SEBI.

31. The offence would no doubt commence from the date prescribed by the SEBI by when these requirements had to be fulfilled. The non-fulfillment of the requirements by the specified date would result in the commission of the offence on the first date following the time limit fixed by the SEBI, 28.2.2000, and extended upto 31.3.2000. But clearly, the offence would continue to be committed by the company, so long as it neither winds up its activities, nor repays the

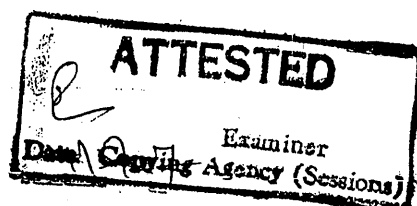




investors. Even if it has wound up its schemes and repaid the investors, the offence would continue further if the company fails to submit the formatted reports to the SEBI. Till all conditions are met, the violation of the regulations would remain.

32. Thus, limitation will have no relevance to the filing of the complaint. Suffice it to now determine whether the accused had carried out their obligations and whether they had done so within the prescribed time and were thus innocent of any violations of the Regulations of 1999.

33. The evidence basically comprises of the correspondence between the accused company and the SEBI. It emerges from the communication sent by the accused company, Ext.PW1/5 that the accused Dr. Lalit Kumar, Mr. M.K. Acharya and Mr. Lokendra Kumar were the Directors of accused no.1, the Company. The accused Sh. M.K. Acharya had pleaded that he had resigned from the Company on 5.8.98. But this fact has not been proved as per law inasmuch as no resolution of the Board of Directors of the Company or its GBM has not been placed on the record to show that the resignation had been duly considered and



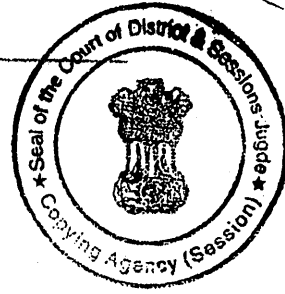


accepted. There is nothing to show that the ROC was also informed by the Board of Directors or someone on its behalf about the change in the Board that had occurred due to the resignation of Sh. Acharya.

34. In other words, no accused can be excluded from the complainant. Vide Ext.PW1/2, while admitting that the Company "works on plantation & agriculture," it was denied by the company, through its Chairman that it had issued any Agro or Plantation bonds. In the same letter to the SEBI, the company also informed the SEBI that it had raised Rs.1,04,135/- from three of its schemes. The details of the schemes and the amounts collected thereunder were also furnished to the SEBI. It is thus, amply clear that the accused had raised money from the public by offering Collective Investment Schemes.

35. One of the defence contentions is that the accused had wound up their schemes even before the regulations had come into force and were not covered by the regulations. It is not disputed that the SEBI Regulations of 1999 governing Collective Investment Schemes, came into effect only on 15.10.99. The accused claim to have repaid their investors in



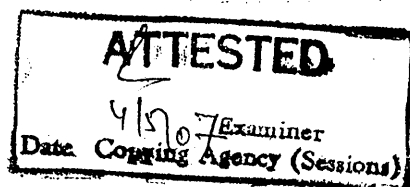


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1998 itself. They also say that they had informed the SEBI about it. According to them, they had no other obligation remaining. That is why they claim that the complaint was baseless.

36. A perusal of the letters Ext.PW1/2, Ext.PW1/3 & Ext.PW1/5 sent by the accused to the SEBI seem to suggest as much Ext.PW1/2 is dated 4.6.98 in response to a letter of the SEBI dated 20.5.98, which related to a demand for information in accordance with directions issued by the Court hearing a Writ Petition in connection with Collective Investment Schemes. Vide this letter, SEBI was furnished the details of the schemes and the amount collected by the accused.

37. The SEBI sent letter dated 22.7.98 Ext.PW1/6 calling upon the accused to comply with the directions of the SEBI to stop mobilizing funds without a credit rating and placing a complete embargo on floating of any new scheme with or without credit rating. It also asked the company to furnish the details of the scheme, the funds raised, copies of the offer documents, the details of the promoter/sponsors, details of the directors of the company, the latest audited balance sheet, a





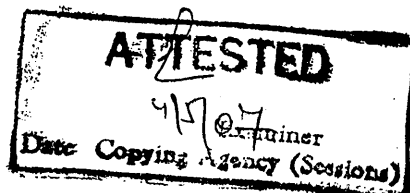
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statement of the deployment of funds, the copy of the Memorandum and Articles of Association and the certificate of the Managing Director that reflected the compliance.

38. The response of the accused is Ext.PW1/5 dated 4.8.98. It informed the SEBI that since the receipt of the letter dated 20.5.98 the company had stopped mobilizing funds under its various schemes from the public/investors. It detailed the funds collected under its schemes and informed that no new scheme had been launched since 20.10.97. It further informed the SEBI that it was unable to obtain any credit rating. Significantly it also stated that all funds raised through various collective schemes stood returned to investors by 31.7.98.

39. Ext.PW1/3 was sent in response to the letter of the SEBI dated 27.8.98. That letter is Ext.PW1/4 whereby the SEBI sought details of the amounts due for redemption upto December, 1998, the names of investors and an auditor's certificate that the company had not mobilized any funds since 1.3.98 without a credit rating

40. The company informed the SEBI that no auditor's certificate was being sent as no new schemes had been floated by the





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in the light of the discussions recorded herein above. I hold that the complainant has failed to prove its case against the accused. The accused Lamvrl Plantation Limited, Dr. Lalit Kumar, Sh. M.K. Acharya and Sh. Lokendra Kumar are acquitted. Their personal and surety bonds are cancelled. The sureties are discharged. File be consigned to the records.

Announced in the Open Court.
Dated: 17.8.06

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

