

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, DELHI

MAGISTRATE, DELHI

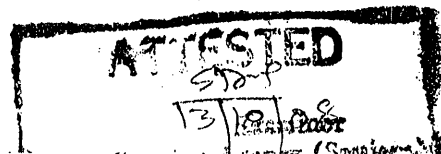
CC NO: OF 2003

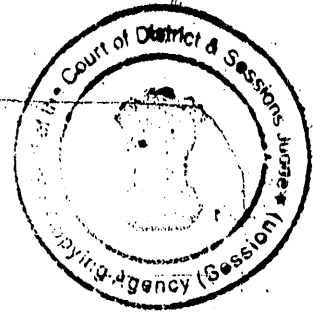
Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B - Wing, 224 Nariman Point, Mumbai 400 021 represented by its Asst. General Manager, Rajesh Bhanot.

...Complainant

VERSUS .

1. Navraj Plantations & Livestock Ltd.
Company incorporated under the Companies Act, 1956, having its Regd. Office at 3/117, Vishnupuri, Kanpur-208002 and also at 2A/363-B, Azad Nagar, Kanpur-208002 (U.P.).
2. Smt. Bina Mittal W/o Shri Prem Prakash Mittal, Director of Accused No.1, R/o: 3/117, Vishnupuri, Kanpur-208002.
3. Shri Rajesh Anand S/o Late Suresh Prasad, Director of Accused No.1, R/o: Laxmi Mohalla, Bara Chowk, Giridih-815301, Bihar and also at 2A/363-B, Azad Nagar, Kanpur-208002 (U.P.).





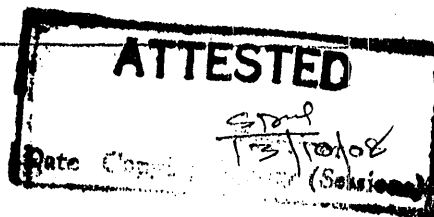
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4. Shri Navin Anand S/o Late Suresh Prasad, Director of Accused No.1, R/o: Laxmi Mohalla, Bara Chowk, Giridih-815301, Bihar and also at 2A/363-B, Azad Nagar, Kanpur-208002 (U.P.).

.....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:



CC No.09/2005


19.09.2008

Present: Shri Sanjay Maan, advocate for SEBI.

Accused nos. 2 & 4 are present on bail.

An application has been moved on behalf of accused no.3
Rajesh Anand seeking his exemption on the ground mentioned therein.
Not opposed. Allowed.

No further arguments have been advanced. Put up for
orders during the course of the day.



(PADAM KANT SAXENA)
ADDL. SESSIONS JUDGE:
Delhi/19.09.2008

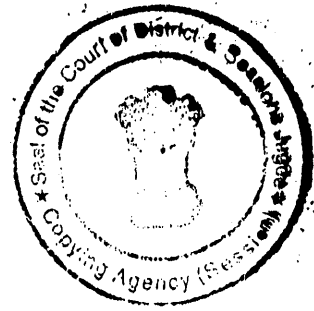
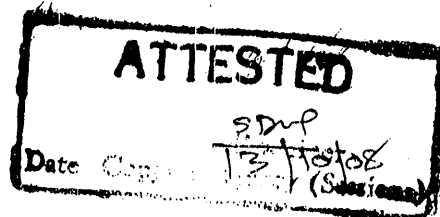
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Present: Shri Sanjay Maan, advocate for SEBI.

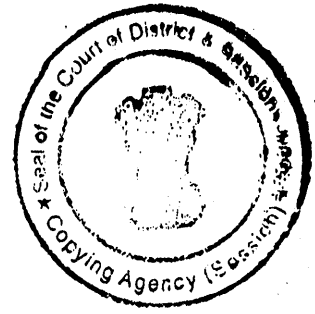
Accused nos. 2 & 4 are present on bail.

Vide separate judgment of date, dictated and announced in
the open court, all accused are acquitted of the charge framed against
them. Their bail bonds are cancelled and sureties stand discharged. File
be consigned to record room.


(PADAM KANT SAXENA)
ADDL. SESSIONS JUDGE:
Delhi/19.09.2008



IN THE COURT OF Sh. PADAM KANT SAXENA,
ADDITIONAL SESSIONS JUDGE: DELHI.



CC No.09/2005

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 Mittal Court, B-Wing
224 Nariman Point, Mumbai-400 021
represented by its Legal Officer,
Sh. Rakesh Bhanot.

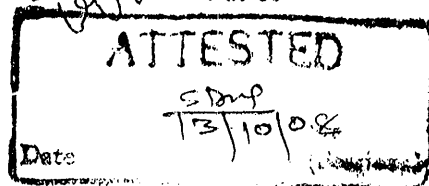
.....Complainant.

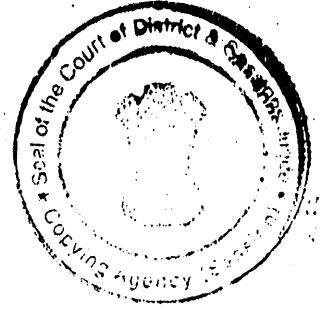
Versus

1. Navraj Plantation and Livestock Ltd.
a Company incorporated under
the provisions of Companies Act, 1956,
having its Registered Office at 3/117, Vishnupuri,
Kanpur-208002 and also at 2A/363-B,
Azad Nagar, Kanpur-208002 (U.P.)
2. Smt. Bina Mittal
W/o Sh. Prem Prakash Mittal,
director of accusedno.1,
R/o 3/117, Vishnupuri, Kanpur-208002.

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3. Sh. Rajesh Anand
s/o Late Suresh Prasad,
Director of accused no. 1,
r/o Laxmi Mohalla, Bara chowk,
Giridih-815301,
Bihar and also at 2A/363-B,
Azad nagar, Kanpur-208002 (U.P)

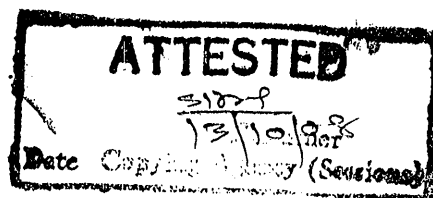
4. Sh. Navin Anand
s/o Late Suresh Prasad,
Director of Accused no. 1,
R/o Laxmi Mohalla,
Bara Chowk,
Giridh-815301, Bihar and also at 2A/363-B,
Azad Nagar, Kanpur-208002 (U.P.)
Accused

Date of Institution	: 16.12.2003
Date of Final Arguments	: 12.09.2008
Judgment reserved on	: 12.09.2008
Date of Judgment	: 19.09.2008

JUDGMENT

1. Accused nos. 2 to 4 who are stated to be directors of accused no.1, have been facing trial for violation of Section 12

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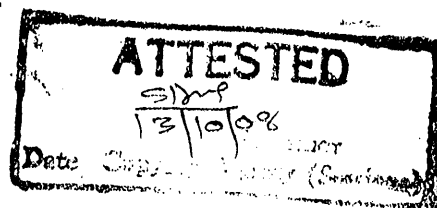
(1B), etc. of Securities and Exchange Board of India Act, 1992 (for short referred to as 'the Act') and Regulation Nos. 5, 68 etc. of Securities and Exchange Board of India Regulations, 1999 (for short referred to as "the Regulations") in pursuance of the complaint dated 16.12.2003 filed by Securities and Exchange Board of India (for short referred to as 'SEBI') before Id. Additional CMM, Delhi .

2. Shorn of unnecessary details, the brief facts, as disclosed in the aforesaid complaint are as follows:

It was noticed that the private entrepreneurs had undertaken activities on a commercial scale and as such the Government of India, after detailed consultations with the regulatory bodies, decided that an appropriate regulatory framework for regulating entities, which issued instruments like Agro Bonds, Plantation Bonds etc. should be put in place. Therefore a press release was issued by the Government of India on November 18, 1997, conveying that such schemes should be treated as collective investment schemes coming under the Act. In pursuance thereof and SEBI press release dated November

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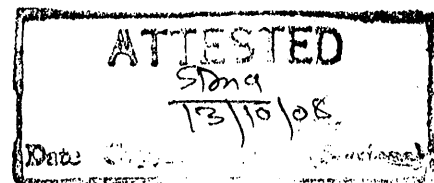


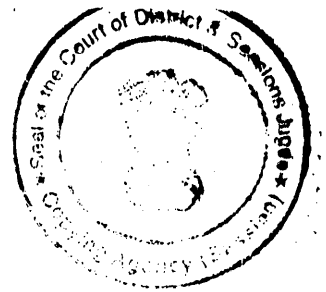


26, 1997 and public notice dated December 18, 1997, accused no.1 filed information/details with SEBI regarding its collective investment schemes stating that it had been operating collective investment schemes and had raised an aggregate amount of more than Rs.2.1 lacs from the general public. According to SEBI, in terms of Chapter IX of the regulations, any person who had been operating a collective investment scheme at the time of commencement of the said regulations, shall be deemed to be an existing collective investment scheme which shall comply with the provisions of the said Chapter and shall make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations. Thereafter, SEBI having regard to the interest of investors and the requests received from various persons operating collective investment schemes, extended the last date of submission of the application by existing entities, up to March 31, 2000. It was also averred that accused no.1 failed to make any application with SEBI for registration of the collective investment schemes being operated by it as per the said regulations and in terms of Regulation 73 (1) of the said

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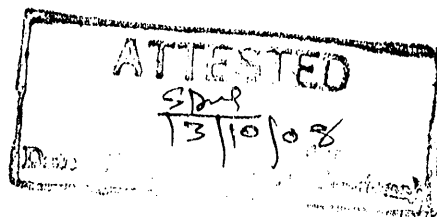


regulations, an existing collective investment scheme which failed to make an application for registration with SEBI, had to wind up the existing collective investment schemes and repay the amounts collected from the investors. Further according to SEBI, in terms of Regulation no. 74 of the regulations, an existing collective investment scheme which was not desirous of obtaining provisional registration from SEBI, had to formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73. It was also specifically alleged in the complaint that accused no.1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the provisions of Section 12 (1B) of the Act and Regulation Nos. 5 (1) r/w 68 (1), 68 (2), 73 and 74 of the said regulations.

3. In pursuance of order no. F.3 (4)/ADJ/75650 dated 04.12.2004, passed by Hon'ble District and Sessions Judge, Delhi, the complaint case in question came to be transferred to

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this court by Ld. ACMM, Delhi vide order dated 06.01.2005.



4. Notice of accusation had been given to the accused on 09.12.2005 by Id. predecessor of this court, to which the accused pleaded not guilty and claimed trial.

5. In support of its case, SEBI examined two witnesses in all whereafter Id. counsel closed its evidence. Thereafter, statements of accused nos. 2 to 4 were recorded under Section 313 of Code of Criminal Procedure, 1973 wherein they pleaded false implication.

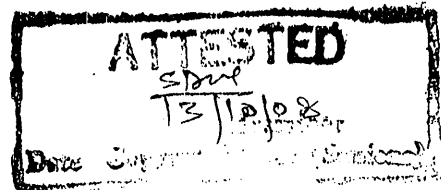
6. In support of their defence, accused examined two witnesses, whereafter defence evidence stood closed.

7. I have heard Ld. Counsel for the parties and have gone through the records carefully.

8. Accused no. 2 who is a director of accused no. 1 is a woman and therefore there is a need for an early disposal of this

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case.



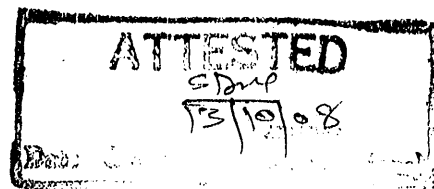
9. On the basis of the materials available on record, let us try to find out whether, SEBI has been able to prove its case beyond reasonable doubts, against the accused or not.

10. Before proceeding further in the matter, it would be useful to remember that the Act had been enacted with a view to provide for establishment of a Board i.e. SEBI to protect the interests of investors in Securities and to promote the development of, and to regulate the Securities market and for matters connected therewith or incidental thereto. Thereafter SEBI in exercise of its powers conferred by Section 30 of the Act read with Sections 11 and 19 thereof, made, the Regulations, which came into force w.e.f. 15.10.1999.

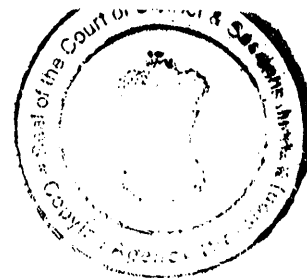
11. At this stage itself, it would be useful to remember that Hon'ble Delhi High Court in the case of State Vs Meena Kumari, 1986 RLR 319, in the context of appreciation of evidence in criminal trials inter-alia held that, there are two

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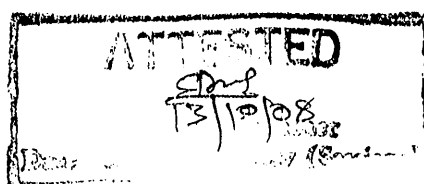
rules of practice which must never be forgotten. The first is that the witness must be cross-examined on all parts of his testimony which it is intended to dispute, otherwise what the witness says in his examination-in-chief will be accepted as true. The second rule of practice pointed out is that the attention of the witness must be drawn to any contradiction in his statement or with any previous statement and he must be afforded an opportunity to explain. If that is not done, no argument founded on the contradiction is permissible. It was also held that witness may make wrong or confusing statements due to nervousness or lack of understanding and if inconsequential, mountain should not be made of mole hill.

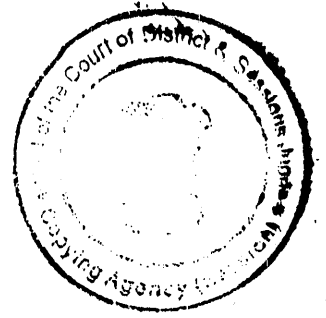


12. Keeping in view the aforesaid rules of practice, let us analyse and assess the evidence available on record of this case for finding out, whether the case set up by SEBI, in the complaint in question, has been proved beyond reasonable doubts against the accused or not.

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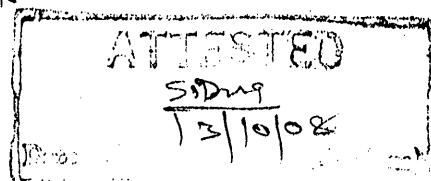
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13. It is the specific case of SEBI as disclosed in the complaint in question that many private entrepreneurs had undertaken plantation activities who issued instruments like agro bonds, plantation bonds etc. wherein they invested minimal amount and raised a majority of funds from ordinary investors and as such Govt. of India vide press release dated 18.11.1997 conveyed that such schemes should be treated as collective investment schemes coming under the Act. Even CW 1 Rakesh Bhanot in his examination-in-chief referred to this press release dated 18.11.1997 of Govt. of India. The said CW 1 Rakesh Bhanot also went on to depose that thereafter even SEBI had issued a press release dated 26.11.1997 and a public notice dated 18.12.1997, whereby it directed the companies who were running collective investment schemes to file relevant information such as details of funds mobilized, names of Directors/Promoters etc. It is an admitted case of SEBI that it was in pursuance thereof that accused no. 1 filed relevant information by way of certain documents. It may be pointed out that the said documents have been filed on record by SEBI itself. CW 1 Sh. Rakesh Bhanot in his oral deposition, as

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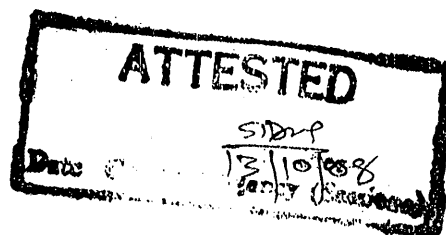


contained in his examination-in-chief, inter-alia proved the said letter issued by accused no. 1 as Ex.CW-1/1 which runs into four pages. Along with this letter Ex. CW-1/1, details and background of accused nos. 2 to 4 were also given by accused no.1. Next annexure appended to Ex.CW-1/1 gives the details of funds viz. to the tune of Rs.2.08 lacs which had been raised by accused no.1 under its various schemes. Also, along with the said letter, blank application form no. 1617, Terms and Conditions of various schemes and certified true copy of Memorandum and Articles of Association of accused no.1, were also annexed. Perusal of the cross examination of CW 1 Rakesh Bhanot by Id. defence counsel reveals that genuineness and authenticity of these documents which were proved by him, has not been challenged. Therefore these documents are deemed to have been admitted as correct even by the accused. Even DW 2 Sh. Rajesh Anand, who is accused no. 3, in his own deposition admitted these documents and therefore this defence evidence also, lends assurance to the aforesaid prosecution evidence.

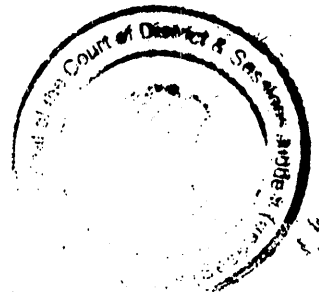


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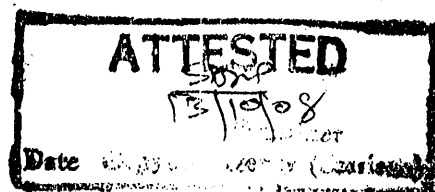
14. According to the said letter dated 16.01.1998 Ex.CW-1/1 accused no.1 stood incorporated on 23.04.1997 and obtained certificate of commencement of business on 25.04.1997. Further according to the information contained in the annexures appended to Ex. CW-1/1, accused no. 3 was the Managing Director while accused nos. 2 to 4 were Directors of accused no.1. There is also an admission by accused no. 1 in the said Ex. CW-1/1 and its annexures that under its various plantation schemes, a total sum of Rs.2,08,645/- till December, 1997, stood collected by it. At the cost of repetition, I may state that these are all facts admitted by accused themselves in view of admission of the said documents.



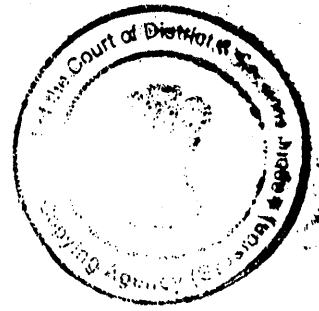
15. It is on the strength of these admitted documents, that Id. counsel for SEBI submits that a bare perusal of the specimen of the said blank application form no. 1617 annexed with Ex. CW-1/1 reveals that, accused no.1 had invited general public to invest in its various plantation schemes floated by it. Further according to Id. counsel, one of "Terms and Conditions" mentioned in the said form, the right to control and manage the

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trees, plantations, live stock etc. would remain vested in accused no.1 and as per the other term mentioned in the said 'Terms and Conditions' appended to Ex. CW-1/1, payment of monthly income etc. to investors stood guaranteed by accused no.1. So, SEBI claims that the said schemes of, accused no.1 amounted to collective investment schemes and as such accused no.1 was bound to comply with the Regulations which came into force w.e.f. 15.10.1999. Therefore in paragraph 13 of the complaint it has been averred by SEBI as follows:-

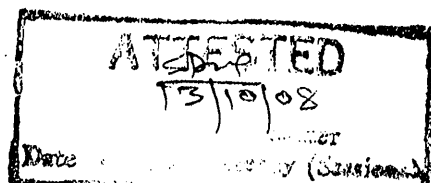


"13.Accused no. 1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the provisions of Section 12 (1B) of Securities and Exchange Board of India Act, 1992 and Reg. 5 (1) with Reg. 68 (1), 68 (2), 73 and 74 of the said regulations."

16. So the crux of the case set up by SEBI is that at the time

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of the enforcement of the Regulations w.e.f. 15.10.1999, accused no. 1 had been operating its collective investment schemes should have applied for registration or in the alternative should have wound up the said schemes, repaid money to its investors and also filed winding up and repayment report.

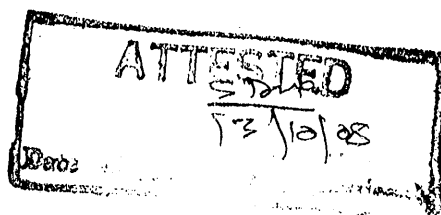


17. At this stage, the foremost point that arises for consideration is that whether at the time of enforcement of the Regulations w.e.f. 15.10.1999, accused no.1 had been operating collective investment schemes or not.

18. The Act came into force w.e.f. 30.01.1992, Chapter V of the Act relates to Registration Certificate. Section 12 (1B) of the Act stood incorporated in the Act w.e.f. 25.01.1995 and it reads as follows:-

"(1B) 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

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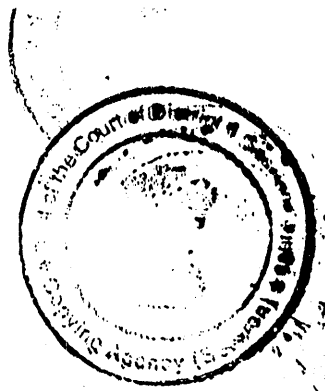
of registration from the Board in accordance with the regulations:"

Provided that any persons sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment scheme operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995 for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of Section 30.)

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

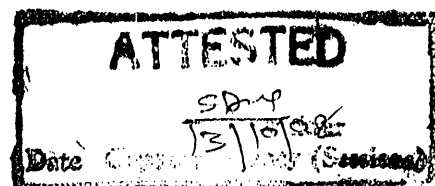
(3) The Board may by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations.

Provided that no order under this sub-section shall be made unless the person concerned has been given a

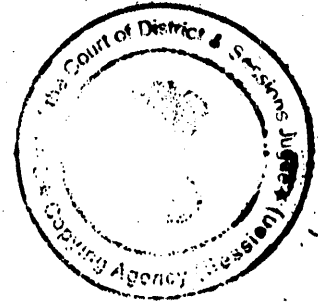


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reasonable opportunity of being heard.

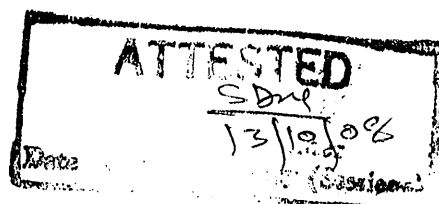


19. Therefore, according to Section 12(1B) of the Act which came into force w.e.f. 25.01.1995, no person could sponsor etc. any collective investment scheme without obtaining a registration from SEBI in accordance with the Regulations. At the cost of repetition it may be stated that the Regulations came into force w.e.f. 15.10.99.

20. A perusal of the provisions of the Act as it stood originally, would reveal that a 'Collective Investment Scheme' had not been defined therein even till 25.01.1995, when Section 12 (1B) stood enacted. This fact was admitted even by Id. counsel for SEBI, at the time of arguments. It would be useful to note that collective investment scheme came to be defined in the Act for the first time on 22.02.2000 when Sec.11 AA stood incorporated therein. As already mentioned, CW1 Rakesh Bhanot in his deposition inter alia testified that Govt. of India vide Press release dated 18.11.97 had directed that the Bonds which were in the nature of 'Plantation bonds and Agro bonds

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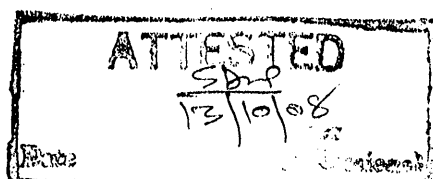


etc.' issued by companies 'would be considered as Collective Investment Schemes as stipulated under Section 11 of the Act.' (underlining is mine to supply emphasis). Thereafter, as per CW 1 Rakesh Bhanat, SEBI issued press release dated 26.11.1997 and public notice dated 18.12.1997 directing the companies which were running collective investment schemes to file information with it i.e. 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 (1B) of SEBI Act. So, it stands admitted even by SEBI that the plantation and livestock schemes with which we are concerned in the present case, came to be considered as 'Collective Investment Schemes' because of the said press release dated 18.11.1997 issued by Govt. of India and subsequent public notice dated 26.11.1997 and press release dated 18.12.1997 of SEBI. As per the proviso, appended to Section 12 (1B) of the Act, all Collective Investment Schemes including the present schemes of accused no.1, which were in existence as on 26.11.1997, could continue their activities till the Regulations were notified.

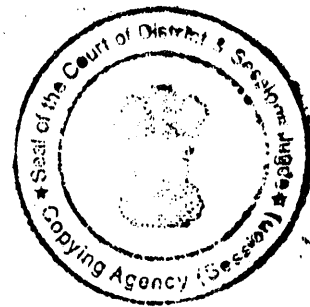


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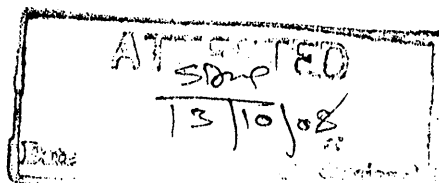


21. It is important to note that, neither the said press release dated 18.11.1997 of Govt. of India nor public notice dated 26.11.1997 and press release dated 18.12.1997 of SEBI, have been proved on record by SEBI. However, during the course of arguments, a copy of the said press release dated 26.11.1997 issued by Government of India, was produced by learned defence counsel for the inspection of this Court. This copy was admitted to be correct copy of press release dated 26.11.1997 issued by Govt. of India. Since, this is an admitted document, therefore at the time of writing the judgment this has been marked as Ex.C-1. This document clearly shows that after that date i.e. 26.11.1997, no person could float any such new plantation schemes which were considered as 'Collective Investment Schemes' and collect further fund. The said Ex. C1 also states that any such existing scheme could continue till the Regulations were notified. (underlining is mine to supply emphasis).



22. Ld. defence counsel has vehemently argued that accused no.1 had refunded entire deposits to its investors

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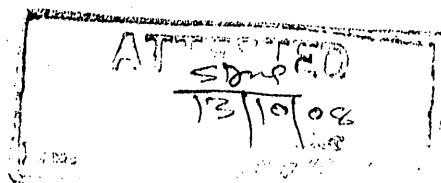
before 31.3.1999 i.e. much before the coming into force of the Regulations w.e.f. 15.10.1999 and therefore it is claimed that the provisions of the Regulations were not applicable to the accused. Consequently, learned defence counsel submits that since the Regulations were not applicable to accused no. 1 at the time of enforcement, it was not bound to comply with the same and as such question of violation of either the Regulations or the Act does not arise. Per Contra, Id. Counsel for SEBI with equal vehemence submits that after notification of the Regulations, the accused failed to comply with various provisions thereof viz. Regulation Nos. 5, 73 and 74 of the Regulations and as such they are liable to be convicted and punished for violation of the Regulations and the Act.



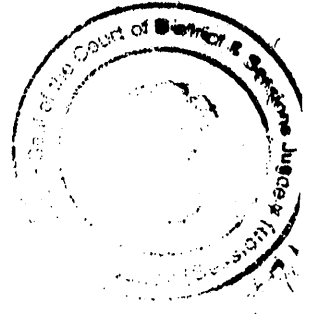
23. At this stage it would be useful to note that accused no.1 in its letter dated 28.04.1998 Ex.CW-1/2 had categorically averred that it had neither accepted any deposit in its existing schemes nor had launched any new schemes. As already stated, this letter has been filed by SEBI and is an admitted document. Admittedly SEBI did not conduct any independent

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investigation in respect of the facts subject matter of the present prosecution and has solely relied upon the aforesaid documents submitted by accused no.1. Also it is not the case of SEBI that after submission of the aforesaid information vide its aforesaid documents, any further funds had been generated by accused no.1 from its investors or that it had launched any new collective investment schemes.

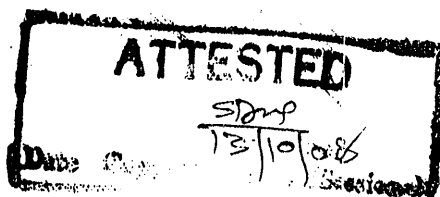


24. On the basis of the materials available on record, let us try to find out whether SEBI has been able to prove, that the provisions of the Regulations at the time of their notification on 15.10.1999, were applicable to accused no.1 or not in respect of its various schemes mentioned in Ex.CW-1/1 and its various annexures, pursuant to which it had collected Rs.2,08,645/-.

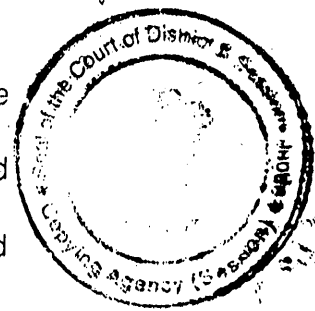
25. According to law of evidence, a fact which is specifically within the knowledge of a party, the burden of proving that fact lies upon him. This is the principle of Section 106 of the Indian Evidence Act, 1872 which is applicable to criminal proceedings also.

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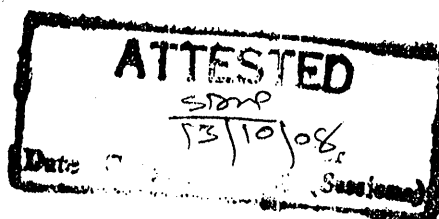
26. It is significant to note that even before institution of the case, accused no.1 had intimated SEBI vide its letter dated 28.04.1998 Ex. CW-1/2 that it had already returned approximately Rs.1.00 lac to its investors. Though this document was issued by accused no. 1 but it has been filed and proved on record by SEBI. Therefore it becomes an admitted document. At the cost of repetition, it may be pointed out that there is no dispute about the contents thereof i.e. of Ex. CW-1/2 and admittedly SEBI had not carried out any independent investigation in that regard. No other evidence to the contrary has been produced by SEBI. Resultantly, I have no hesitation in holding that, as mentioned in Ex.CW-1/2 dated 28.04.1998, before 28.04.1998, accused no. 1 had already returned approximately Rs.1.00 lac to its investors.



27. With a view to find out whether the Regulations after their enforcement w.e.f. 15.10.1999, were applicable to accused no. 1 or not, a brief reference to the relevant Regulations would be useful.

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28. Regulation no. 5 of the Regulations pertains to making of an application by an existing collective investment scheme to SEBI for grant of a certificate. A bare perusal of this provision shows that it applies to a person who was 'operating a collective investment scheme'.

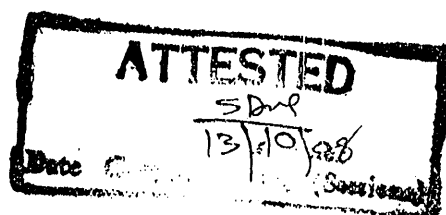


29. Regulation no. 68 of the Regulations deals with the existing schemes for obtaining provisional registration and applies to a person who had been operating a collective investment scheme at the time of commencement of the Regulations. Explanation appended to this regulation states that the expression 'operating a collective investment scheme' would include 'carrying out the obligations undertaken in various documents entered into with investors'.

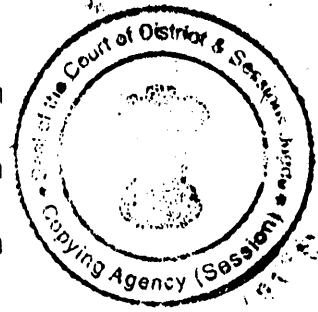
30. A perusal of the aforesaid Regulations would reveal that they would apply to a person, if and only if, at the time of commencement thereof i.e. of the Regulations, it had been 'operating a collective investment scheme'. It is important to

Photo 12-19-10

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note that though as per the aforesaid press release Ex. C1 issued by Govt. of India, plantation bonds etc., which had been floated by accused no. 1 and with which we are concerned in the present case, came to be included within the term 'Collective Investment Schemes' but in fact, for the first time, the said term came to be defined in the Act w.e.f. 22.12.2000, after incorporation of Section 11 AA therein.

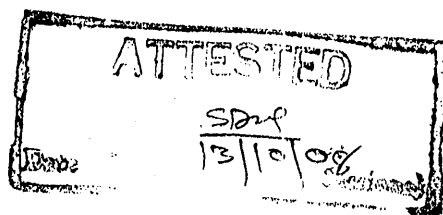


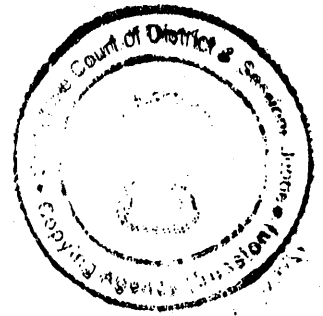
31. It is well settled that every person accused of a crime is always presumed to be innocent, so that the burden lies upon the prosecution to establish beyond a reasonable doubt that all the ingredients of the offence, with which the accused have been charged, are made out. It is not for the accused to prove their innocence but for the prosecution to prove their guilt. It is sufficient for the accused to raise a doubt as to his guilt and this can be done on the basis of preponderance of probabilities.

32. CW 1 Rakesh Bhanot in his cross examination recorded on 09.11.2006 specifically deposed that he had not dealt with the case of accused no. 1 and he had filed the case on the basis

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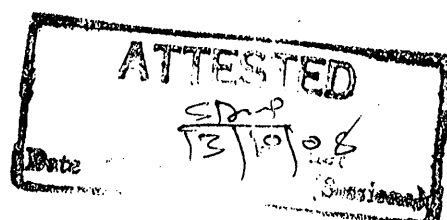


of record. This witness admitted receipt of audited balance sheets of accused no. 1 for the years 1997-98 and 1998-99. On 16.07.2004 this witness also admitted receipt of letter Ex.CW-2/D1 which had been sent by accused no.1 to SEBI. In this letter, accused no. 1 had categorically informed SEBI that out of the total collection of Rs.2,44,705/-, a sum of Rs.1,01,440/- stood paid till 31.03.1998 while the remaining outstanding amount of Rs.1,43,265/- as on 31.03.1998, stood repaid in 1998-99, as reflected in the balance sheet. In his cross-examination, at one place, this witness deposed that he had not dealt with the balance sheets of accused no.1 for the years 1997-98 and 1998-99 and therefore could not say whether the same exonerate accused no.1 or not. In response to another question, this witness also deposed that till filing of the complaint, there was no document to suggest that accused no. 1 had continued the scheme or had wound up. (underlining is mine to supply emphasis)

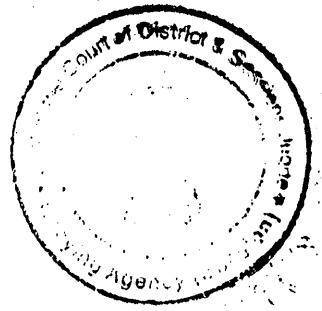
33. The only other witness examined on behalf of SEBI is CW 2 Ms. Jyoti, who in her oral deposition recorded on

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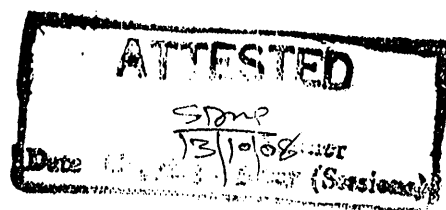
12.10.2006, inter-alia deposed that SEBI had relied upon the information furnished by accused. Also, in her cross-examination recorded on 09.11.2006, she inter-alia stated that she could not confirm whether accused no.1 Company had repaid the entire amount raised from its investors, before notification of the Regulations w.e.f. 15.10.1999. Further, according to this witness, as per record of SEBI there were no complaints against accused no. 1 from any investor for non-payment of money. In response to another question CW 2 Ms. Jyoti in her cross-examination deposed that till filing of the complaint there was no document with SEBI to suggest that accused no. 1 company had continued the scheme or wound up. On 12.10.2006, this witness in her deposition also stated that she could neither deny nor confirm that accused were not carrying on its collective investment schemes at the time of notification of the Regulations. (Emphasis supplied)



34. The said witness viz. CW 2 Ms. Jyoti in her oral deposition also proved letter dated 01.07.2004 Ex.CW-2/A which had been sent by accused no. 1 to SEBI wherein it had

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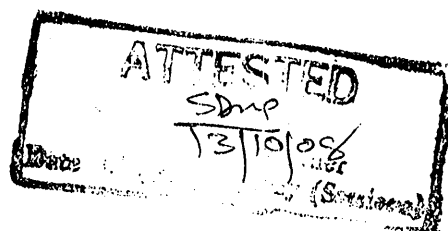
stated that it had already repaid all mobilized funds under its schemes in the financial year 1997-98 and 1998-99. According to this witness, there were certain inconsistencies in the said submission of accused no. 1 company and therefore it i.e. SEBI had called for submission of statutory auditor's certificate. This witness also admitted that Ex.CW-2/D2 running into 65 pages were the audited balance sheets of accused no. 1 which had been submitted to SEBI. It further came in the deposition of CW 2 Ms. Jyoti recorded on 07.09.2006, that even if repayments had been made by accused no.1, SEBI would not have known about the same. She also categorically deposed on 12.10.2006 that the only deficiency noticed by SEBI in the audited balance sheets of accused was non-filing of winding up and repayment report as per the regulations. CW 2 Ms. Jyoti also admitted as correct in her cross-examination on 12.10.2006 a suggestion put to her by Id. defence counsel to the effect that the reports submitted by accused fulfilled the requirements as per Companies Act, 1956. (Emphasis supplied)



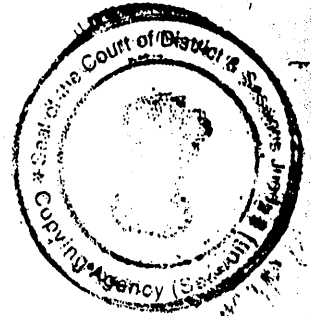
35. So, the aforesaid evidence adduced on behalf of SEBI

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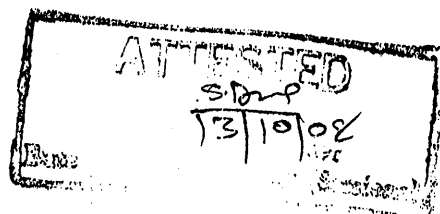
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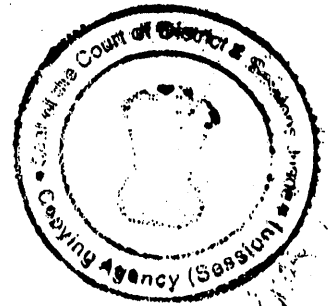
would show that it does not dispute genuineness and authenticity of the audited balance sheets of accused no. 1 proved on record as Ex.CW-2/D2 (Collectively). A perusal of the said admitted balance sheets of accused no. 1 shows that first page thereof is the auditor's report as contemplated by law. DW 1 Vinod Pandey is a practicing Chartered Accountant. According to him, his firm i.e. M/s V. Pandey Associates was appointed Statutory Auditor of accused no. 1 M/s Navraj Plantation and Livestock Ltd. on 12th September, 1997. He proved the letter of appointment is Ex.DW-1/A. DW 1 Vinod Pandey also proved letter dated 28.04.1998 as Ex.DW-1/B. It had also been issued by him. As per this letter Ex.DW-1/B, by 31.03.1998 accused no. 1 had refunded Rs.1.01 lacs to investors. This witness also deposed that he had audited the accounts of accused no. 1 for the period 1997-98 to 2002-03 and the auditor's reports forming part of Ex. CW-2/D-2, were prepared by him. It is important to note that genuineness and authenticity of the said portions of oral deposition of DW 1 Vinod Pandey were not challenged in cross-examination and as such the same are deemed to have been admitted as correct.



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31.03.1999 except making of bald suggestions which were denied by him, as wrong.

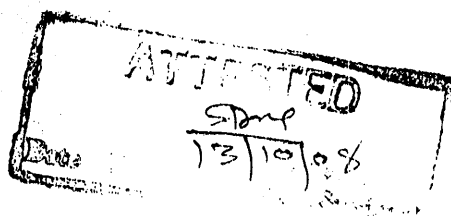


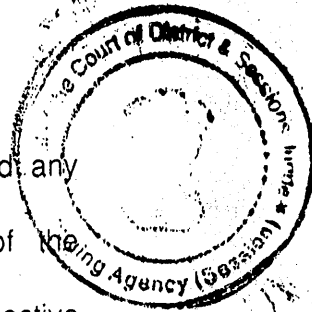
37. The aforesaid unchallenged and controverted documentary evidence produced on behalf of accused does show that its defence to the effect that the entire money of the investors collected by accused no. 1 in respect of its plantation bonds stood repaid by 31.03.1999, may be true,* particularly when no investors had filed any complaint with SEBI and no independent investigation had been carried out by SEBI. In view of the preponderance of probabilities & on the basis of the aforesaid materials on record, possibility of the defence of accused to the effect that the entire mobilized funds of the investors stood repaid by accused no.1, before 31.03.1999 being true, cannot be ruled out.

38. Resultantly I hold that SEBI has failed to prove that as on 15.10.1999 the Regulations were applicable to accused no. 1 since entire money of investors stood repaid by it before 31.03.1999 and it had not been operating any collective

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investment schemes thereafter. SEBI has not adduced any evidence to show that at the time of notification of Regulations, accused no. 1 had been operating its collective investment schemes. Therefore, on account of non-compliance of various provisions of the Regulations, neither accused no.1 nor accused nos. 2 to 4, who were its directors, can be held criminally liable. SEBI has also failed to prove that it was mandatory for accused to comply with the Regulations.

39. Resultantly the accused stand acquitted. Their bail bonds are cancelled and the sureties stand discharged.

Dictated and announced
in the open court
today i.e. on 19.09.2008

(PADAM KANT SAXENA)
ADDITIONAL SESSIONS JUDGE:
DELHI.

