

for Court Smt Asha Mehta ASJ
024012032/882003
IN THE COURT OF SMT K. S. PAL Jd.

CHIEF METROPOLITAN MAGISTRATE, TIS HAZARI

COURT, DELHI

CC NO: 52/03
14/8/03

resent Amit Pradhan
Made over Sh. J.P.S. Malik, Army
14/8/03

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 and represented by its Deputy Legal Advisor Shri Amit Pradhan.

13/1/05
14/8/03
S.M. DELHI

...Complainant

Vs.

1. Prince Agro Industries Ltd., a company incorporated under the provisions of Companies Act, 1956 having its registered office at 5051, Netaji Subhash Marg, Darya Ganj, New Delhi-110002
2. Shri Hari Lalwani S/o Sh Tikam Chand, Aged : Major, Occupation : Director of the Accused No. 1, Address : R/o 239, Sector 15A Noida UP.
3. Shri P C Pathak, S/o Late Sh. B. R. Pathak, Aged : Major, Occupation : Director of the Accused No. 1, Address : 3469, Galikartar Singh, Aryapura, Subji

11
Date: 15/3/07

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Mandi, Delhi

4. Ms. Anita Lalwani, D/o Sh. Hari Lalwani,

Aged : Major, Occupation : Director of the

Accused No. 1, Address : 3499,

Kuchalalman, Daryaganj, New Delhi

5. Shri Sh. ^{Laxminder} Sunny Thomas S/o Sh. M.V. ^{Thomas}

~~THOMAS~~ : Major, Occupation

: Director of the Accused No. 1, Address :

3499, Kuchalalman, Daryaganj, New

Delhi

6. Shri Om Prakash Totlani, S/o Shri C.M.

Totlani, Aged : Major, Occupation :

Director of the Accused No. 1, Address :

204A Pocket A, Mayur Vihar, Phase II,

New Delhi

...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:

ATTESTED

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15/3/07

6/3/2007

Pr.: Sh. Dinker K. for the SEBI.

Counsel for Jous accused
also for the company.

Vide separate order the accused
stand convicted. Put up for order on
sentence on 7/3/07 at 10.00am (7/2/07)

ASST Delhi
8/3/07



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7.3.07.

Present : Sh. Dinkar, proxy counsel for SEBI.

Sh. Ashish Kapoor Ld Counsel for accused alongwith all accused on bail.

Vide separate order, the accused no.1 Company and its directors are sentenced to a fine of Rs.7,500/- each. On failure to deposit the fine the amount, the accused numbers 2 to 5 shall undergo simple imprisonment for three months.

On deposit of fine the personal bonds and surety bonds of accused shall stand cancelled and sureties stand discharged.

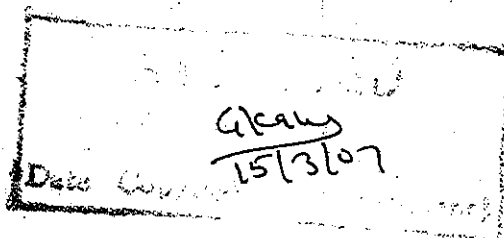
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Announced in the Open Court

(ASHA MENON)

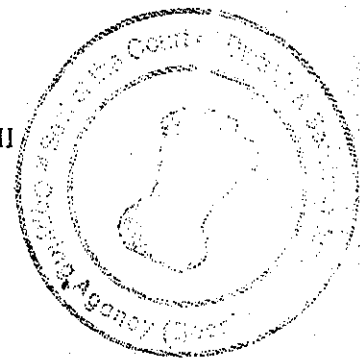
Dated:7.3.07.

Addl. Sessions Judge: Delhi.



IN THE COURT OF SMT. ASHA MENON: ASJ: DELHI
 13/05
 CC 41/2004

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 Deputy Legal Advisor, Sh. Amit Pradhan.



...Complainant

VERSUS

1. Prince Agro Industries Ltd., a company incorporated under the provisions of Companies Act, 1956 having its registered office at 5051, Netaji Subhash Marg, Darya Ganj, New Delhi - 110002.
2. Shri Hari Lalwani S/o Sh. Tikam Chand, Aged : Major, Occupation : Director of the Accused No.1, Address : R/o 239, Sector 15A Noida UP.
3. Shri P C Pathak, S/o Late Sh. B.R. Pathak, Aged : Major, Occupation : Director of the Accused No.1, Address : 3469, Galikartar Singh, Aryapura, Subji Mandi Delhi. (Died)
4. Ms. Anita Lalwani, D/o Sh. Hari Lalwani, Aged : Major, Occupation : Director of the Accused No.1, Address : 3499, Kuchalalman, Daryaganj, New Delhi.
5. Shri Sh. Sunny Thimas S/o Sh. M.V. Thomas, Aged : Major, Occupation : Director of the Accused No.1, Address : 3499, Kuchalalman, Daryaganj, New Delhi.
6. Shri Om Prakash Totlani, S/o Shri C.M. Totlani, Aged : Major, Occupation : Director of the Accused No.1, Address : 204A, Pocket A, Mayur Vihar, Phase II, New Delhi

...Accused

JUDGEMENT

1. The complaint has been filed by the SEBI against the aforesaid accused being the company and its directors for violations of the SEBI Act 1992 and the SEBI (Collective Investment Schemes Regulations) 1999.
2. The brief background as is necessary for the disposal of the case may be stated. The Government of India passed the Securities and Exchange Board of India Act in 1992 and established the Securities and Exchange Board under the said Act (hereinafter referred to as SEBI) with the aim of providing protection of the interests of investors in securities and promote the development of and regulate the securities markets. S.11(1) of the Act provides for the duties of the Board. It was noticed by the Government that a large number of private entrepreneurs were undertaking plantation activities, raising the funds from ordinary investors from the capital market themselves.



investing only frugal amounts in such ventures. It was also noticed that in order to entice investors, these schemes promised very high returns. What was more concerning was the fact that the initial success of such schemes led to the mushrooming of such activities all over the country.

3. It was in this background that the Government of India decided that it had become necessary to regulate the activities of all those entities which were floating Agro and Plantation Bonds. By means of a Press release on 18.11.97, the Government first notified its intention to regulate this market by informing all those involved in such activities that schemes relating to Agro and Plantation Bonds would henceforth be treated as Collective Investment Schemes as defined under the SEBI Act 1992. This meant that all such schemes were to be governed by the provisions of S.12 (1) B of the Act. The entities were put on notice that regulations were to be issued for the running of such collective investment schemes and those entities who desired to take the benefit of the interim arrangement as provided under S.12(1B) of the Act should furnish to the SEBI all details of the company, its schemes and its promoters and directors.
4. Thereafter, the Regulations were brought into force on 15.10.99. Under the regulations, stiff conditions have been prescribed for obtaining registration without which no collective investment scheme could be carried out. The regulations also provided that entities who were not seeking registration had to circulate information memorandum to its investors and repay the investors and wind up the schemes and submit a repayment and winding up report to the SEBI to its satisfaction. Violation of these regulations has been made punishable under S.24 read with S.27 of the SEBI Act 1992.

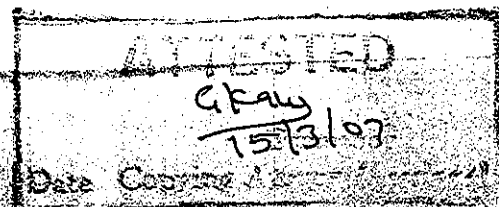
COMPLAINT

5. According to the averments in the complaint, in response to the first press release, the accused of the present complaint had filed the information about its schemes including that it had collected Rs.75 lacs. These details had been furnished with a view to take advantage of S.12(1B) of the Act.
6. It is alleged that after the coming into force of the Regulations in 1999, the SEBI had sent letter dated 21.10.99 to the company. Letters dated 10.12.99 and 29.12.99 had been sent to the accused. Public notices were also issued, in order to inform the accused of the



obligations that existed under the regulations, calling upon them to comply with the same. However, the company neither applied for registration nor informed SEBI of the winding up of its schemes as prescribed by the Regulations.

7. It is alleged in the complaint that the accused were issued a show cause notice dated 12.5.2000 for taking action against them for non compliance with S.12(1B) of the Act and Regulation 5 (1), read with Regulations 68 (1), 68 (2), 73 & 74 of the SEBI (CIS) Regulations 1999. It is alleged that the reply of the accused company dated 31.5.2000 to the show cause notice was not found to be in compliance with the Regulations and the company was informed of the same vide letter dated 8.6.2000. Reminder was sent of the obligations to send information memorandum to investors latest by 28.2.2000 was also sent to the accused asking them further to wind up the Schemes and make repayments to investors by 28.5.2000.
8. It is further alleged in the complaint that the company was advised vide letter dated 31.7.2000 to furnish the winding up and repayment report. Before taking action the company was granted opportunities of personal hearing on 5.12.2000 and 9.7.2001 during the course of which the company was advised to repay the balance amount to investors who had not given their consent to continue with their schemes within a specific time frame and to submit the statutory auditor's certificate in respect of the same. It is alleged that since the company did not report full compliance a final opportunity of personal hearing was granted on 3.4.2002. It is stated that when the company informed that payment to investors pending as they had not approached the company for repayment and were not traceable it was agreed that the company would file the winding up and repayment report in prescribed format and provide reconciliation for amounts mobilized and repaid, amounts for which positive consent had been received, amounts payable to the remaining investors and amount actually repaid. The company was also advised to place the balance amounts in a fixed deposit in a bank and vide letter dated 1.7.2002 the company was advised to place the amount due in separate fixed deposit for each investor for sixty months and submit the copies of the FDRs duly certified by auditors alongwith undertaking signed by all the directors stating that these amounts would be used for no other purpose except repayment of investors.



9. It is alleged in the complaint that the company was to ensure compliance by 15.7.2002. The letter dated 23.8.2002 of the accused submitting certain documents was not found to be full compliance. Therefore, further advice was given to the accused by the SEBI pursuant to which the accused company submitted a certified funds reconciliation statement vide letter dated 9.9.2002. It is alleged in the complaint that the company failed to comply with the SEBI (Collective Investment Schemes) Regulations, 1999 since the company had not reported satisfactory compliance regarding the requirement of separate fixed deposits in favour of the non-consenting investors till date. The SEBI Chairman issued directions u/S 11 B of the SEBI Act, 1992 and Regulation 65 of the SEBI (CIS) Regulations, 1999 on 10.2.2003 directing the refund of the money collected and due to the investors as per the terms of offer within one month. However, since the accused company failed to take any steps for winding up the schemes and making payment to investors the complaint had been filed against the accused company and its directors for violation of Section 11B, Section 12(1B) SEBI Act, 1992 and Regulation 5 (1) read with Regulation 68(1), 68(2), 73 & 74 of the SEBI (CIS) Regulations, 1999 which is punishable under Section 24(1) read with Section 27 of the SEBI Act, 1992.

10. Vide orders dated 14.8.03, the accused were summoned to face trial. It was informed that accused no.3 Sh.P.C. Pathak had died and therefore, proceedings have abated against him. The notice of allegations was served to the accused under S.251 CrPC on 26.9.2005, to which the accused pleaded not guilty. The complainant has examined only one witness Ms. Jyoti Jindgar. Thereafter the statements of the accused were recorded under S.313 CrPC. The accused has examined three witnesses in defence including the accused Hari Lalwani.

EVIDENCE

11. As CW1 Ms. Jyoti Jindgar has deposed to the issuance of the press release on 18.11.97, by the Government of India directing that bonds which were in the nature of Agro and Plantation bonds issued by the companies would be treated as Collective Investment Schemes as stipulated under S11 of the SEBI Act, 1992. She deposed to the second press release dated 26.11.97 and to the public notice dated 18.12.97 issued by the SEBI calling upon the companies running collective

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investment schemes to submit details to the SEBI relating to the funds mobilized, names of directors / promoters, in case they were desirous of obtaining benefits under S12(1B) of the Act.

12. The CW1 deposed that pursuant to this the company filed information with SEBI regarding CISs vide letter dated 7.1.98 which is Ex.CW1/1. The witness stated that as per the letter the company had mobilized Rs.74.70 lacs under its CIS. Subsequently, vide letter dated 29.4.98 the company submitted details of its directors and filed copy of its Memorandum and Articles. As per the said letter Sh.Hari Lalwani, Sh. Sunny Thomas, Sh. P.C. Pathak and Ms. Anita Lalwani were stated to be the directors of the company. This letter is Ext.CW1/2. The promoters/sponsors were Ms. Anita Lalwani and Sunny Thomas.
13. The witness deposed further that subsequently the Regulations were notified on 15.10.99. Intimation about the notification was given by a public notice issued on 20.10.99 and by specific letter dated 21.10.99 sent to the company by registered post. She deposed that in terms of Regulations 73 and 74 the company was required to apply for registration or wind up its operations. It was also required to circulate information memorandum to its investors and to repay them. The accused was also required to submit the winding up and repayment report within five and a half months to the SEBI. The witness stated that the accused company had been sent these regulatory obligations vide public notice dated 10.12.99 and letters dated 10.12.99 and 29.12.99.
14. CW1 Ms.Jyoti Jindgar deposed that the company vide letter dated 13.12.99 Ext.CW1/7 informed that they had refunded Rs.7.70 lacs alongwith agreed bonus amount to their investors. The witness stated that vide letter dated 31.7.2000 the SEBI forwarded the format for submission of the winding up and repayment reports to it. The witness stated that SEBI vide letter dated 22.1.2001 informed the company regarding discrepancies in the information submitted by them vide letter dated 10.1.2001 and those made by their authorised representatives during the personal hearing granted to them. The witness stated that the company's explanation were sought and they were advised to submit their winding up and repayment report in the required format. The witness stated that the company was granted an opportunity of hearing before Chairman SEBI on 3.4.2002 which was

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intimated to the company vide letter Ext.CW1/10.

15. As the accused company failed to comply with the regulatory provisions, the company was directed by SEBI Chairman vide order dated 10.2.2003 to repay its investors as per the original terms of offer within one month of the said order. The witness stated that in response to the company's letter dated 10.3.2003, the company was advised vide letter dated 27.3.2003 that they had failed to comply with the directions issued vide order dated 10.2.2003 and had therefore, made themselves liable for further action. Vide letter Ext.CW1/13 dated 15.5.2003 the accused company submitted the status of repayments made. In response the SEBI advised the company vide letter dated 23.5.2003 to furnish updated winding up and repayment report and an undertaking that the funds placed in fixed deposits will not be alienated till the payments were completed. Once again, the company was reminded to furnish the updated winding up and repayment report duly certified by the auditors and submit the required information and documents vide SEBI letter dated 16.6.2003. The accused submitted a status report vide their letter dated 20.6.2003 Ext.CW1/16 but were advised by the SEBI vide letter dated 29.7.2003 to submit the certified funds, reconciliation statement and other information by August, 2003.

16. The witness deposed that vide letter dated 11.10.2004 the SEBI informed the accused that it had failed to comply with the order as only the principal amount had been paid and no interest due to the investors had been paid. The company was further advised to comply with the FIR requirements communicated to them. It was stated that vide letter dated 18.4.2006 the company had submitted the winding up and repayment report Ext.CW1/19. The witness stated that the company had not repaid any interest component to the investors and had not complied with the Chairman's order and further the report had not been signed by all the directors. The witness deposed that these deficiencies and observations were communicated to the company vide letter dated 25.4.2006. The witness stated that despite reminders the orders of the Chairman dated 10.2.2003 had not been complied with by the accused.

17. The witness was cross-examined by Learned Counsel for the accused Sh. Ashish Kapoor. During her cross examination the witness stated that she had been with the SEBI since 1999 and had dealt with

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this case in the year 2003 and the recent letters had also been issued by her. She deposed that she had general authorization to depose in the case. She deposed that she had examined the information furnished by the accused. She deposed that the company had furnished the certificate of incorporation of the year 1996 and as per the information furnished by the accused vide letter dated 22.1.98 they had commenced their Schemes on 20.4.96. She denied the suggestion that in 1992 the SEBI had called for information regarding the schemes of the accused from the accused. She stated that they had not asked for the list of investors and had only asked for the winding up and repayment report signed by all directors and certified by all directors. She stated that this was only a consolidated report not seeking the details of individual payments to investors. She placed the copy of the letter dated 9.9.2002 as Ext.CW1/D1 and the letter dated 10.3.03 as Ext.CW1/D2. She deposed that the decisions taken at the hearing before the Chairman SEBI on 3.4.02 were communicated to the accused vide letter dated 8.4.2002.

18. The witness produced the entire records relating to the accused company and placed on record letters dated 31.5.2000 alongwith annexures, 23.8.2002, 4.4.2003, 13.9.2004, letter received on 3.3.2006, letter received on 7.3.2006 and certificate dated 5.4.06 duly received by the SEBI as Ext.CW1/D3 to D11. She stated that as per her file no letter dated 26.10.04 had been received by the SEBI. She stated that they have not received any letter dated 21.3.2006. She stated that correspondence received by Head Office were forwarded to Delhi in matters pertaining to this case. She affirmed that as per the order of the Chairman the investors had to be refunded the amounts in terms of the original offer. She denied the suggestion that the accused had duly complied with the requirements under the Regulations and had also informed the SEBI about it. She denied the suggestion that the accused had repaid the investors in terms of the Chairman's order. She stated that the original complaint was signed by Sh. Amit Pradhan presently posted in another Department of SEBI at Mumbai.

19. The accused Hari Bhai Lalwani, Anita Lalwani, Sunny Thomas in their statements recorded u/S 313 Cr.P.C submitted that all investors had been repaid. Accused Om Parkash claimed that he was not involved in the affairs of the company and so did not know the

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Date: 15/3/07

requirement of compliance. However, he too stated that investors had been duly repaid.

20. The accused had examined three witnesses including one of the accused. DW1 is Naresh Kumar who deposed that he had purchased Prince Agro Bonds and Prince Agro had repaid him to his satisfaction and he had signed Ext.DW1/A on being repaid. He stated that his friends and family had also invested in Prince Agro Bonds and had been repaid by the company and neither he nor his wife nor brothers had any complaint against the accused company. He identified the signatures of his wife and brothers on Ext.DW1/B to G. The witness stated that none had any grievance against the company. The witness was not cross examined.

21. DW2 is Sunil Kumar. He too deposed that he had purchased Prince Agro Bonds and had got the money to his satisfaction. He stated that he had no complaints against the company in respect of the bonds. He stated that he had never lodged any complaint against the company and identified his signatures on Ext.DW2/A which he had signed at the time he was repaid the money by the company. This witness was also not cross examined by the SEBI.

22. DW3 is accused Hari Bhai Lalwani. He deposed that they had fully complied with the directions of the SEBI. He deposed that they had sent letter dated 26.10.2004 to the SEBI which is Esxt.DW3/1. He deposed that they had furnished FDRs as per directions of SEBI. He deposed that they had repaid all investors and the Schemes has been closed. He deposed that they had been informing the SEBI as and when payments were being made to the investors. He deposed that no investor had complained against them. He deposed that they had repaid the investors as they demanded their money. He stated that they had 487 investors of whom 10 had been made directors as per their desire and have also been paid according to their wishes. He submitted the attested certificate of the CA as Ext.DW3/2. In further examination the witness stated that they had written a letter to the SEBI dated 21.3.2006 Ext.DW3/3 and had sent the same through courier vide receipt Ext.DW3/4. He deposed that alongwith this letter they had sent WRR and affidavits of four directors alongwith copy of FD amounting to Rs.2,50,000/-. He deposed that the last WRR was sent by them to the SEBI ^{with my} which covering letter dated 18.4.2006 certified by the CA. The witness stated that now no

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15/3/07

payment was due towards the investors of the company and they had complied with all the directions of the SEBI. The witness was not cross examined by the SEBI despite opportunities.

23. This is the evidence that has come on the record,

CONTENTIONS:

24. Sh. V.K. Singh, on behalf of the SEBI has submitted that the accused had not complied with the directions of the SEBI Chairman and the winding up and repayment had been filed only after the filing of the complaint and that too the compliance was not complete as the investors had not been repaid as per original terms of offer. Hence he has submitted that the case had been fully proved against the accused including the directors of the company accused no.1, being accused 2, 4,5 and 6. On the other hand, the Learned Counsel for the accused contended that all through the accused had informed the SEBI of the repayments they were making to all the investors. It was submitted that the accused had complied with all directions issued to them by the SEBI and had finally deposited Rs.2,50,000/- in FDR and submitted the WRR to the SEBI and had thus fully complied with the regulations. Hence the learned counsel has prayed for the acquittal of the accused.

FINDINGS:

25. That the accused were running Collective Investment Scheme was affirmed by them in the first letter sent by the accused Ext.CW1/1 dated 22.1.1998. They had furnished the details of Agro Bond marketed by them and had also informed that they had raised Rs.74,00,074/- with an assured return of Rs.15,000/- on each unit of Rs.5000/- after a period of 66 months. The date of commencement was 20.4.1997. Enclosed with the second letter Ext.CW1/2 dated 29.4.1998 was the certified copies of the Memorandum and Articles of Association, audited balance sheet, particulars of the directors, compliance certificate and statement of sources and application of funds as on 31.3.98. Vide Ex.CW1/7 dated 13.12.99 while furnishing particulars of the funds mobilized from investors, it was explained that under their Collective Investment Scheme Rs.74,70,000/- had been collected and that in future they would not float any Collective Investment Scheme. Thus, there is no doubt that the accused were running Collective Investment Schemes at the time the SEBI (CIS) Regulations were notified on 15.10.99. The activities of the accused

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15/10/99

2003 even up to 2006 have not been paid any interest whereas sum investors who had been repaid in the year 1999 had been paid varied amounts over and above the principal amount. One investor repaid in the year 2000, received Rs.6000/- on the principal amount of Rs.5,000/-. Similarly, one investor repaid in the year 2003 received Rs.45,000/- on the principal of Rs.15,000/- whereas other investors repaid in the same year have not been paid anything additional exceeding the principal. In other words the claim of the accused that investors had been repaid as per the original offer stands falsified by their own document.

33. Thus, even if it be accepted that the accused had repaid investors and have placed Rs.1,15,000/- in FDR to meet the claim of any investor remaining unpaid, the fact still remains that the order of the SEBI Chairman has not been complied with in toto. Moreover, since repayments occurred even in the year 2006 at least till 2006 there was not even partial compliance. Thus the regulations have been violated by the accused and the violation would continue till complete and full compliance to the satisfaction of the SEBI is effected.

CONCLUSION:

34. I, therefore, hold the accused company Prince Agro Industries Limited and its directors Hari Lalwani, Anita Lalwani, Sunny Thomas and Om Parkash guilty for the violations of Regulation 5(1) read with Regulations 68(1), 68(2), 73 & 74 of the SEBI (CIS) Regulations 1999 read with Section 24 r/w S.27 of the SEBI Act 1992. They are entitled to be heard on sentence.

Announced in the Open Court.

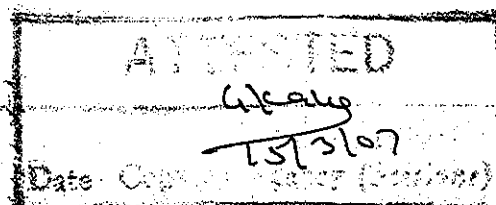
ON 6.3.07

Ashia Menon
(ASHIA MENON)
ADDL. SESSIONS JUDGE:
DELHI.

*Copy given to the convict
in open court at 10
on 7/3/07*

7/3/07

*1. Anita
2. Om Parkash
3. Sunny Thomas
4. Hari Lalwani*



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

CC NO. 131/2005

SEBI VS. PRINCE AGRO INDUSTRIES LTD. & ORS.

ORDER ON SENTENCE:

I have heard Id. counsel for the accused who seeks a lenient view. Id Counsel submits that the accused had fully repaid the investors and that it was an innocent mistake that they had committed in not filing the WRR within time that is before the complaint was filed.

As regards repayment, the issue has been discussed in my judgment. The accused having received vast sums of money through their Collective Investment Schemes failed to repay with the assured returns and till the filing of the complaint did not choose to submit up WRR with the SEBI. There cannot be any conclusion that the non filing of the WRR with the SEBI within time was an innocent mistake.

Nevertheless, keeping in mind the fact that at least the principal amount have been repaid to the investors, I am of the considered view that imprisonment is not called for in the instant case. The accused no.1 Company and its directors are sentenced to a fine of Rs.7,500/- each. On failure to deposit the fine the amount, the accused numbers 2 to 5 shall undergo simple imprisonment for three months.

On deposit of fine the personal bonds and surety bonds of accused shall stand cancelled and sureties stand discharged.

File be consigned to the records.

Announced in the Open Court

Asha Menon
(ASHA MENON)

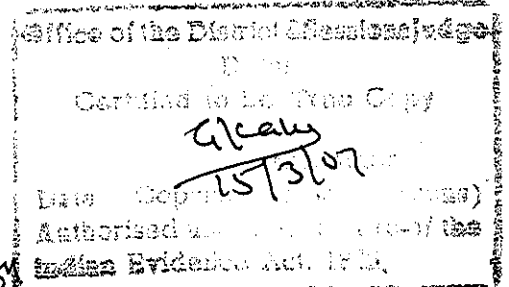
Dated: 7.3.07.

Addl. Sessions Judge: Delhi.

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in open court at 10-
on 7/3/07*

7/3/07

*1 Amita
2 Om Prakash
3 Sunny
4 J-200*



had to be in accordance with these regulations.

26. The accused have described themselves as directors of the accused company communications have been signed by the accused on various dates Sh. P.C. Pathak has died. He was named as director alongwith accused Hari Lalwani, Sunny Thomas and Anita Lalwani vide Ext.CW1/2. The accused Om Parkash has signed communications to SEBI as director, even as per the documents filed by the defence as Ext.CW1/D4 and D5 in May, 2002. Subsequent to May, 2002 communications had been continued with the SEBI particularly in respect of repayments and filing of the winding up and repayment report with the SEBI. In these circumstances all the accused were fully aware of the obligations under the regulations and were also aware of the extent of compliance upto the year 2006. No evidence has come on record to exclude knowledge to any of the accused.

27. The learned counsel for the accused argued that the accused had duly complied with the regulations because right from the beginning the accused had kept the SEBI informed of the repayments being made and had finally submitted a winding up and repayment report to the SEBI reflecting payments to all investors either in cash or by cheque or by issuance of equity bonds. Thus according to the learned counsel for the accused there had been no violation of the regulations. On the other hand, the learned counsel for the SEBI contended that compliance was not complete even upto the year 2006 as the winding up and repayment report submitted in the year 2006, during trial did not reflect payment of interest to the investors as required under the orders of the Chairman, SEBI. Learned counsel for the SEBI submitted that till the filing of the complaint no WRR had been filed. Therefore, the regulations had been violated even at the time of filing of the complaint and that violation still continued.

28. It is to be noted that due compliance of the regulations 68(1)(2) 73 and 74 is when repayments have been effected by a company running a Collective Investment Schemes to its investors, and the submission of the winding up and repayment report in the prescribed format to the satisfaction of the SEBI. In the present case there can be no doubt on the material brought on record that the winding up and repayment report was submitted to the SEBI only in the year 2006 that is during the trial of this complaint. The witness for the SEBI CWI has stated that compliance had not been satisfactory

ALREADY
Date 15/3/07

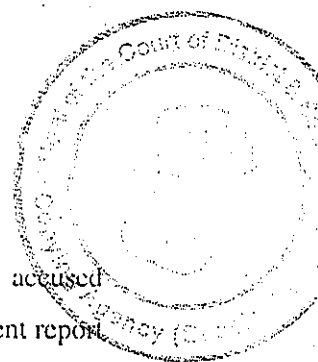
since payments had not been inclusive of promised returns.

29. After the SEBI had sent letter Ext.CW1/8 dated 21.7.2000 to the accused company, the company had become fully aware that winding up and repayment report had to be submitted in format which was available at the SEBI website. A copy of the format was enclosed with this letter. It was also clarified that a part of the winding up and repayment report was to be maintained by the CISs entities for a minimum period of five years from the date of information memorandum with the companies themselves. The accused had responded to the SEBI subsequent to this letter. In fact in various communications, it appears the accused had sought extensions of time to furnish the winding up and repayment report. Thus, till the winding up and repayment report was filed with the SEBI vide letter dated 21.3.2006, the orders of the Chairman dated 10.2.2003 had not been complied with. In fact the reminder sent by SEBI vide Ext.CW1/12 was that the winding up and repayment report submitted by the accused company, alongwith its letter dated 10.3.2003 was not in conformity with the directions. Though communications Ext.CW1/13, CW1/D7 and CW1/D8 have been placed on the record, these communications by the accused to the SEBI did not include a winding up and repayment report in format.

30. Thus, it is established that till the filing of the complaint despite seeking extensions to the time limit to do so, the accused did not file the winding up and repayment report. The accused have been rightly prosecuted for this lapse. As regards the filing of the winding up and repayment report vide Ext.DW3/3, the SEBI has stated that since only the principal amount had been repaid the winding up and repayment report has not been accepted.

31. It may be mentioned here that the purpose of the regulations was to protect investor interest. It is in this context that the satisfaction of the SEBI in respect of repayments made is relevant. The supervision of the SEBI was to ensure that promises made to investors were fulfilled by companies who had sought to make profit by investing marginal amounts themselves and harvesting large funds from the market on the basis of inflated promises. In the present case the accused had collected Rs.74,70,000/-. They have returned a sum of Rs.78,78,137/-. Ext.DW3/2 is the list of investors and repayments made. Rs.2,15,000/- received as principal amount is stated to have been repaid in cash. 449 investors from whom a principal of Rs.67,55,000/- had been collected are stated to have been repaid Rs.71,63,137/-.

32. This claim that due interest had been paid has to be considered in the light of the terms and conditions annexed by the accused to their letter Ext.CW1/1 according to which each unit of Rs.5000/- was to be assured a return of Rs.15,000/- including principal amount after the period of 66 months. A cursory glance at the repayment list Ext.DW3/2 would show that persons who had been repaid in the year 2000, 2002,



ATTESTED
G. K. S. S. S.
15/3/07