

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

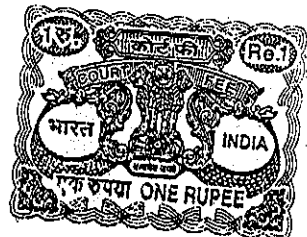
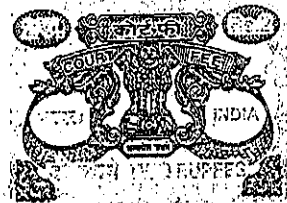
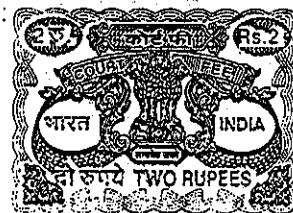
CC No. 55/09

Ms. POONAM CHAUDHARY
Addl. Sessions Judge, (Central)-04
Room No. 345,
Tis Hazari Courts, Delhi

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its head Office at Mittal Court, B-Wing, 224 Nariman Point, Mumbai - 400021 represented by its Legal Officer, Shri Sharad Bansode.

VERSUS

- 1 Purvanchal Plantations India Ltd and ors. a company incorporated under the provisions of Companies Act, 1956 and having its registered office at : C- 119/656,- Floor, Sumer Sagar Road, Gorakhpur, U.P.
- 2 Sh. Bijrendra Kumar Shrivastava S/o Sh. Vashishth Nath Shrivastava, Promoter/Director of the accused no. 1 ; R/o Moh-Madopur, Post Office Gorakhnath, PS Tiwaripur.
- 3 Sh. Madann Lal Verma S/o Sh. Daki Prasad Verma , Promoter/Director of the accused no. 1 ; R/o Moh-Shivpur Shahabajang, Post Office Padari Bazar. PS Shahpur, Disst. Gorakhpur, UP
- 4 Sh. Akhilesh Kumar Singh S/o Sh. Prem Narayan Singh Promoter/ directors of the accused no. 1; R/o Moh-Maddopur, Post Office Gorakhnath, PS Tiwaripur., Disst. Gorakhpur , UP
- 5 Sh. Hare Shyam Jee S/o Sh. Basant Lal, Promoter/ directors of the accused no. 1; R/o Moh-Nathmalpur, Post Office and PS Gorakhnath, Disst. Gorakhpur , UP



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(Central)-01
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Put upon 26/07/12
CJB H.O.

- 6 Sh. Sanjay Kumar Shrivastava S/o Sh. J.L. Shrivastava , Promoter/ directors of the accused no. 1; R/o Moh-Humayupur(North), Post Office and PS Gorakhnath, Disst. Gorakhpur , UP
- 7 Sh. Raj Kumar S/o Sh. Hira Nand Gupta Promoter/ directors of the accused no. 1; R/o Moh-Narsinghpur, Post Office Geeta Press, PS Tiwaripur, Disst. Gorakhpur , UP
- 8 Sh. Ravinder Kumar S/o Sh. Ganga Prasad Promoter/ directors of the accused no. 1; R/o Moh-Nakhash Chowk , Post Office Sadar, PS Kotwali, Disst. Gorakhpur, UP.

Arguments heard on :20.11.2009.
Judgments reserved for :30.11.2009
Judgments announced on :15.12.2009.

JUDGMENT

1. The complaint has been filed by the Security and Exchange Board of India (hereinafter referred to as SEBI), alleging Violation of SEBI (Collective Investment Scheme), Regulation Act. 1999.
2. Briefly, stated the facts as alleged in the complaint are that SEBI was established under the Securities and Exchange Board of India Act, 1992 for providing protection of the interests of investors in securities and to promote the development of and to regulate the securities markets and for

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matters connected therewith or incidental thereto.

3. It is, further stated that accused No. 1 is company of which accused No. 2 to 8 were the directors floated the Collective Investment Schemes (hereinafter referred to as CIS) and collected Rs.5.5 Lacs from the general public. It is also averred that for regulations of CIS being run by entrepreneurs SEBI notified the Securities and Exchange Board of India Regulations, 1999. However the accused company neither applied for registration nor took any step for winding up its CIS and repayment to its investors as per the Regulations. Therefore, according to SEBI, the accused company committed violation of section 11(B), 12(1B) of the Act read with regulation 5(1), 68(1), 68(2), 73 and 74 of SEBI CIS regulations 1999 punishable u/s 24 (1) of Act. SEBI. SEBI has also alleged that accused No.2 to 4, 6 to 8 being the Directors of accused company were responsible to it for the conduct of its business and therefore, were liable for the said violations under Section 27 of the Act.
4. After the filing of the complaint all the accused were summoned vide Order of Ld. ACMM dt. 16.12.2003.
5. After appearance of accused persons notice of accusation was given to the accused to which they pleaded not guilty and claimed Trial.
6. During the pendency of the complaint accused No. 5 expired. Hence, proceedings against him stood abated.

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7. SEBI examined Rakesh Bhanot as CW-1 and thereafter closed its evidence.
8. Statement of accused No. 2, 3, 4, 6 and 8 were recorded u/s. 313 Cr.P.C. Accused did not examine any witness in their defence.
9. I have heard the Ld. Counsel for the parties and perused the records.
10. The question for consideration is whether SEBI has been able to prove its case against the accused beyond reasonable doubt. The present case hinges more or less on the admitted documents issued by SEBI and the accused company prior to the institution of the present case.
11. In support of its case SEBI examined CW1 Shri Rakesh Bhanot who deposed that Government of India vide press release dated 18.11.1997 directed that the plantation bonds and agro bonds issued by the company would be considered as Collective Investment Scheme as stipulated u/s. 11 of SEBI Act. Thereafter, SEBI issued a press release dt. 26.11.97 and a public notice dt.18.12.97 directing the companies which were running CIS to file information with SEBI regarding their schemes, such as details of funds mobilized, names of directors/promoters, in case they were desirous of obtaining benefits of Sec.12 (1B) & 8 of SEBI Act. In pursuance of the same the accused company filed information with SEBI regarding CIS which was

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received by SEBI 13.1.98 and is Ex.CW1/1. CW1 also deposed that memorandum and articles of the company submitted with this letter disclosed the names of the subscribers as Baijendra Kumar, Akhilesh Kumar, Madan Lal Verma, Hare Shaym Jee, Sanjay Kumar Srivastava, Raj Kumar Gupta and Ravindra Kumar. The accused company also submitted copy of application form and offer documents which contained promises and assurances in the schemes.

12. CW1 further testified that SEBI CIS Regulations were notified on 15.10.99. Intimation regarding notification of the regulations was given to the accused company vide public notice dt.20.10.99 and a letter sent to the company dated 21.10.99 by registered post. However, the said letter was returned with the remarks dt.01.11.99 "left without address". The envelope is Ex.CW1/2 and the letter is Ex.CW1/3.

13. CW1 also deposed that in terms of the said Regulations, the company was required to file for registration or wind up its schemes in terms of Regulations 73 & 74 of the regulations. And as per procedures the accused company was required to circulate information memorandum to its investors and to repay and wind up its schemes and submit the winding up and repayment reports with SEBI within 5 ½ months. These regulatory obligations were communicated to the accused company vide letter dt.10.12.99 and 29.12.99. However, the letters dt.10.12.99 and 29.12.99 which were returned with the remarks "left without address". The envelope containing letter dated 10.12.1999 is Ex.CW1/4 and the letter dated

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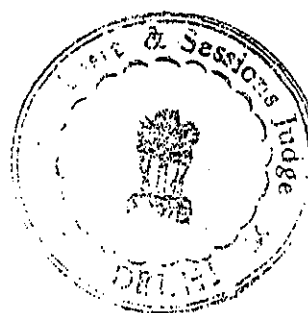


10.12.1999 is Ex.CW1/5. The envelope containing letter dated 29.12.1999 is Ex.CW1/6 and the letter dated 29.12.1999 is Ex.CW1/7. CW1 also testified that the requirements were also communicated to the accused company vide public notice dt.10.12.99. However, the accused company neither applied for registration nor communicated regarding winding up of the scheme to SEBI. Hence, show cause notice dt.12.5.00 was issued which was also returned delivered with remarks "left without address". CW 1 further deposed that returned envelope Ex. CW 1/8 and the letter is Ex. CW 1/9.

14. CW 1 further testified that vide letter dated 31.07.2000 SEBI forwarded a format of winding up and repayment report in which company was required to furnish information regarding winding up of scheme and repayment done thereafter. The letter was however returned undelivered with the remarks "left without address", the returned undelivered envelope is Ex. CW 1/10 and the letter is Ex. CW 1/11.

15. CW 1 further stated that as the company failed to comply with the regulatory provisions of the regulations, the company was directed by chairman SEBI vide order dated 7.12.2000 to repay the investors as per original terms of offer within one month of the order. The copy of order was communicated to the accused company vide letter dated 18.12.2000 which was returned undelivered with the remarks "left without address". The returned envelope is Ex. CW 1/12 and the letter is Ex. CW 1/13. CW 1 further testified that the contents of the order issued by chairman SEBI u/s 11 of the SEBI Act were published in the leading newspapers as well as in vernacular

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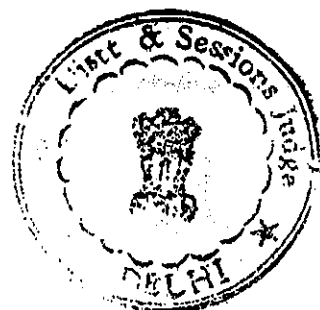


newspapers on 14.01.2001. Public notice issued on 14.01.2001 proved as CW 1/14. CW 1 further testified that copy of notice dated 10.12.99 published in the "Hindustan Times" on 19.12.99 is Ex. CW 1/15. CW 1 further deposed that SEBI intimated to all persons operating CIS, of obligations imposed upon them u/s 73 and 74 in case they were not to apply for registration under the regulations. It was also intimated that in case they failed to comply with the regulations they were liable for further action as well as prosecution.

16. CW 1 further testified that accused company did not file and application seeking registration under SEBI CIS regulations and subsequent to the directions issued by chairman SEBI vide order dated 7.12.2000 neither filed any report with SEBI confirming compliance. CW 1 further testified that name of the accused company appears at serial no. 347 in the public notice dated 14.01.2000 published in the "Hindustan Times". CW 1 further testified that accused company has not been granted any registration under SEBI CIS regulations 1999. CW 1 further stated that all correspondence was with accused company, no specific correspondence was done with directors, hence it is presumed that the directors and persons Incharge of the company were thereby intimated through public notices and press releases of the statutory obligations. CW 1 further stated that he was authorized to file complaint by authority letter dated 21.05.2001 signed by chairman SEBI which is Ex. CW 1/16.

17. In his cross examination CW 1 stated that Ex. CW 1/1 was filed by the accused company in response to public notice of SEBI dated 18.12.97. CW 1

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further stated that information was supplied by accused persons to the SEBI vide Ex. CW 1/1. He further stated that letter dated 27.08.98 was written by SEBI asking some additional information but the said letter could not be delivered.

18. CW 1 further stated that the address of the accused no. 1 company as furnished on its typed letter on letter head Ex. CW 1/1 was C-119/656, 3rd Floor, Sumer Sagar Road, Gorakhpur. CW 1 further stated that all the correspondence was sent at the said address.

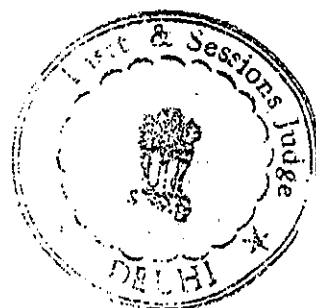
19. CW 1 further stated that envelope Ex. CW 1/8 in which Ex. CW 1/9 mentioned the complete address including the place "Gorakhpur". He further stated that he did not know if accused company stood dissolved in the year 1998. He also stated that no complaint was received by SEBI from any investors of accused company. He denied that any company running CIS and wound up/dissolved prior to the notification of CIS scheme regulation 1999 was not required to comply with the regulations.

20. The statements of accused no. 2, 3, 4, 6, 7 and 8 thereafter recorded u/s 313 Cr.P.C.

21. Section 12(1B) was incorporated in the Act w.e.f. 25.01.95 and is as follows:

"No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or

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collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the Regulations."

22. Therefore according to section 12(1B) no person could sponsors CIS without obtaining registration from SEBI in accordance with the regulation. Regulations came into force w.e.f. 15.10.99

23. CIS has been defined in 11AA of the Act. which is as follows :-

"Collective Investment Scheme – (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which, -

- (i) the contributions, or payment made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;*
- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;*
- (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;*
- (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.*

24. SEBI Act came into force w.e.f. 30.01.92 chapter V relates to the registration certificate. Section 12(B) was incorporated on 25.01.1995.

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According to section 12(1B) of the Act no person could sponsor CIS without registration from SEBI in accordance with the regulations.

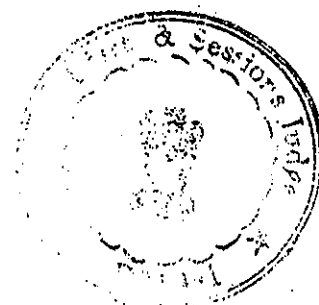
25. The regulation came into force w.e.f. 15.10.99. The company was informed about the notification of SEBI CIS regulations vide letter dated 21.10.99 is Ex. CW 1/6.
26. The present cases hinges on the admitted documents issued by SEBI and accused prior to the institution of the present complaint.
27. CW 1 Sh. Rakesh Bhanot, AGM SEBI proved the letter dated 13.01.98 Ex. CW 1/1 issued by accused company. Genuineness and authenticity of the said documents has not been challenged even by accused, as all the accused admitted in their statement u/s 313 Cr.P.C. that accused no. 1 company had sent letter dated 13.01.98 Ex. CW 1/1 signed by Managing director to SEBI. Along with this letter certified copy of Memorandum and Articles of association of accused no. 1, certificate of incorporation, application form offer documents were enclosed intimating that accused no. 1 had mobilized funds to the tune of Rs. 5.51 lacks under its collective investment scheme. Therefore, Ex.CW1/1 is deemed to have been admitted as correct. As per the undisputed documents Ex. CW 1/1 on the date of its issue accused no. 2, 3, 4, 6, 7 and 8 were directors of accused company carrying on CIS. Accused no. 8 did not bring any documentary evidence ^{he is} on record to prove that he had resigned on 19.09.98.

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28. As per the certificate of incorporation enclosed with Ex. CW 1/1 accused company was incorporated on 12.06.97 and the total investment received upto 31.12.97 under its schemes was Rs. 5.51 lacks.
29. All the accused admitted in the statement u/s 313 Cr.P.C. that accused company did not apply for registration of its CIS under SEBI CIS regulations.
30. According to section 12(1B) of the Act no person could sponsor CIS without registration from SEBI in accordance with the regulations. The regulation came into force w.e.f. 15.10.99.
31. Now, as per the admitted letter Ex. CW 1/1 and its enclosure the accused no. 1 had invited general public to invest in its scheme. So it is admitted fact that the company had been running CIS even as on 31.12.97 and till filing of complaint without registration.
32. In view of the foregoing reasons I have no hesitation in holding that accused company of which accused no. 2, 3, 4, 6, 7 and 8 were directors had been running CIS after 1995 as on 31.12.97 as per Ex. CW 1/1.
33. The Regulation came into force w.e.f. 15.10.99. As per Regulation (5) of the Regulations, the accused company had to apply for registration of its CIS till 31.03.2000. further as per Regulation 73 (1), CIS which failed to make an application for registration to SEBI, would wind up

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the same and repay the investors. Apart from this as per Regulation 74, existing CIS which was not desirous of obtaining provisional registration from SEBI, would formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73. According to Regulation 73 (2) the existing CIS to be wound up, shall send an information memorandum to the investors who had subscribed to the scheme, within two months from the date of receipt of intimation from SEBI.

34. Accused no. 2, 3, 4, 6 and 7 admitted in their statement u/s 313 Cr.P.C. that accused no. 1 did not furnish any report with SEBI confirming compliance regarding repayment, in terms of the order of chairman SEBI dated 7.12.2000 issued under section 11 B of the SEBI Act, 1992 and CIS regulations 1999. So it is an admitted fact that accused company did not file the winding up and repayment report with SEBI as per provisions of the CIS regulations till the filing of the complaint.

35. The defence taken by accused was that letters sent by SEBI were not received however the said defence of accused is without any merits as accused did not care to inform SEBI about the change of their address and ignored the public notices which were issued for reminding the defaulter that they were required to confirm compliance. In these circumstances accused cannot plead ignorance for non compliance of the statutory obligations. Moreover intimation regarding notification of regulation was intimated to the company vide public notice. Ld. Counsel for SEBI Sh. Sanjay Mann has contended that regulation had been notified keeping the public interest in

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mind and their aim and objective cannot be overlooked.

36. I am of the view that accused themselves responsible for non receipt of communication from SEBI as they did not care to inform SEBI about the change of their address and they also ignored the public notice which were issued to remind the defaulter that they were liable to confirm compliance to SEBI.

37. Accused also pleaded that complaint was filed as information about refund of money to the investors was not intimated to SEBI. Ld. Counsel for accused has also submitted that only lapse on the part of accused was that the information of repayment to investors was not intimated to SEBI. However this contention is also without any merits as no such documentary evidence has placed on record by accused to show that entire money of investors stood repaid.

38. For the foregoing reasons I am of the view that at the time of filing of complaint the violation of Act continued, moreover winding up and repayment report had not been submitted to SEBI ^{by accused co} under regulation 73 and 74. Accused were under obligation to submit to SEBI in the prescribed format the winding up and repayment report.

39. For the foregoing reasons I am of the view that SEBI has proved its case beyond reasonable doubt against the accused company of which accused no. 2 to 4 and 6 to 8 were the directors to the effect that CIS as contemplated by


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section 11 AA of the Act, had been floated and funds mobilized from general public without obtaining certificate of registration as required by section 12(1B) of the Act. Further it has been proved on record that despite coming into force of the Regulation w.e.f. 15.10.99 the accused company failed to make application for registration of its CIS within the statutory period contemplated under the regulations. SEBI has also proved that accused company did not get its CIS registered nor wound up the same nor repaid money to its investors as per regulations 73 and 74.

40. I accordingly hold the accused company and its directors Sh. Bijendra Kumar Shrivastava, Sh. Madan Lal Verma, Sh. Akhilesh Kumar, Sh. Sanjay Kumar Shrivastava, Sh. Raj Kumar and Sh. Ravinder Kumar ^{we} ^{offence under} guilty for section 12(1B) of Act and regulations 5(1), 68(1), 68(2), 73, 74 of SEBI (CIS) Regulations, 1999 read with section 24 and 27 of the SEBI Act, 1999. Copy be given free of cost to all the accused. To come up for arguments on sentence on 16.12.2009.

Announced in the open court
On this day of 15th December 2009


(POONAM CHAUDHARY)
ASJ (Central-01) DELHI

Addl. Sessions Judge
(Central)-01
Tis Hazari Courts, Delhi



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15/12/09

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

GC No. 55/09

SEBI Vs. Purvanchal Plantations India Ltd. and ors

16.12.2009.

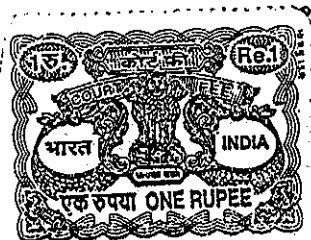
ORDER ON SENTENCE

Ms. POONAM CHAUDHARY
Asst. Judge (Central-01)
Kodak No. 340.
The High Courts, Delhi

Present : Sh. Sanjay Mann, counsel for SEBI.

All the 6 convicts with counsel Sh. V. Ahmad.

1. I have heard the Ld. Counsel for SEBI Sh. Sanjay Mann and Sh. V. Ahmad counsel for convicts on the point of sentence.
2. Ld. Counsel for convicts submits that no complaint was made by any of the investors to SEBI and money invested was of the relatives of accused. Request is made for taking a lenient view.
3. Ld. Counsel for SEBI has strongly opposed the submission made by Ld. Counsel for convicts and submits that accused had mobilized funds from marginalized investors who had no resource to approach Delhi for redressal of grievances.
4. In view of the submissions of Ld. Counsel for accused I am of the view that convicts had sufficient time to comply with the provisions of the act and regulations however violation continued till filing of the complaint and even as till date.
5. The Act came into force in 1992 to provide for establishment of a Board to protect the the interest of investors in securities and to promote the development of, and regulate securities market and matters connected therewith.



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6. According to section 12(1B) of the Act, the Collective Investment scheme could not be run without obtaining registration as per regulations.
 7. Convicts no. 2, 3, 4, 6, 7 and 8 were the directors of accused no. 1 company and accused company in violations of section 12(1B) of the SEBI Act floated Collective Investment Scheme and collected amount to the tune of Rs.5.51 Lacks from general public.
 8. The money of investors has still not been returned since no proof of repayment had been placed on record by accused company.
 9. It is significant to mention that w.e.f 29.10.2002 section 24 of the Act was amended and provides imprisonment extending up to 10 years and fine up to Rs. 25 crores or both. This shows that the legislature has viewed the offences under the act and regulation very seriously. Hence in my view lenient view cannot be taken.
 10. Moreover, the offence in question was committed before the amendment came into force hence, in these facts and circumstances of the present case accused no. 2, 3, 4, 6, 7 and 8 are sentenced to RI for 1 year each. In addition accused no. 1 and accused no. 2, 3, 4, 6, 7 and 8 shall pay a fine of Rs. 1,00,000/- (One lakh) each and in default thereof accused no. 2, 3, 4, 6, 7 and 8 shall undergo SI for 6 months each u/s 24 read with section 27 of the Act. Out of the amount of fine realised a sum of Rs. 20,000/- be paid to SEBI after expiry of period of revision, appeal, towards the expenses incurred by it. Copy of order be given to convicts free of cost. File is consigned to record room.

SCJ
(POONAM CHAUDHARY)
ASJ(Central-01)/DELHI.

16.12.2009

Hazard Courts, Delhi

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16/12/09