

CC No. 56/09

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

VERSUS

- 1 Rimjhim Agro Forest Ltd, a company incorporated under the provisions of Companies Act, 1956 and having its SCO 60, sector 47-C, Chandigarh 160047.
- 2 Sh. P.S. Chaudhary S/o Not known to the complainant, occupation Director of the accused no. 1 ; R/o H. NO. 2828/2 Sector 47-C Chandigarh.
- 3 Sh. D.S. Thakur S/o Not known to the complainant, occupation directors of the accused no. 1; R/o Village Pifharta, PO Tikkri, Disst. Hamirpur.
- 4 Sh. K.S. Kaundal S/o Not known to the complainant, occupation directors of the accused no. 1; R/o Village Gumzhoon, PO Hairpur, Disst. Solan.
- 5 Sh. S.S. Thakur S/o Not known to the complainant, occupation directors of the accused no. 1; R/o Village Kardhwan PO Chowk The Sarkaghat, Disst. Mandi.
- 6 Sh. Roop Lal Kaundal S/o Not known to the complainant, occupation directors of the accused no. 1; R/o VPO Baldwara, Disst, Mandi.
- 7 Sh. H.C. Mahajan S/o Not known to the complainant, occupation directors of the accused no. 1; R/o Village Chambi, PO Soldha, Trh Sadar Disst. Bilaspur.

Arguments heard on
Judgments reserved for

6.11.2009.
20.11.2009

JUDGMENT

1. The complaint has been filed by the Security and Exchange Board of India, alleging Violation of India, SEBI, Regulation Act. 1999.
2. Briefly, stated the facts as alleged in the complaint are that accused no.2 to 7 being the Directors of accused no.1 Company had floated collective investigations scheme and collected 29,00,000/- (Rs. Twenty Nine Lacs only) from the public. It is further alleged that for the Regulation of CIS being run by enterprenuers SEBI notified the Security and Exchange Board of India Board Regulations, 1999. However the accused no. company violated section 11(B) and section 12(1B) of Securities Exchange Board of India Act. 1992 read with regulation 5(1), 68(1), 68(2), 73 and 74 of SEBI CIS regulations 1999 hereinafter referred as regulations punishable u/s 24 (1) of Act. SEBI further averred that accused no. 2 to 7 being the Directors of accused company were responsible for the conduct of its business and were liable for the said violation u/s. 27 of the Act.
3. After the filing of the complaint all the accused were summoned vide Order of Ld. ACMM dt. 21.12.2002.
4. After appearance of accused persons notice of accusation was given to the accused to which they pleaded not guilty and claimed Trial. SEBI examined Ms. Varsha Agarwal, Manager SEBI as CW 1 and thereafter closed its evidence. During the pendency of the case as accused no. 4 and 7 absconded they were declared PO.
5. Statement of accused no.2, 3, 5, 6 for self and on behalf of accused.

company u/s 313 Cr.P.C. were thereafter recorded. Accused did not examine any witness in their defence.

6. I have heard the Ld. Counsel for the parties and perused the records. The question for consideration is whether SEBI has been able to prove its case against the accused beyond reasonable doubt.

7. CW1 deposed that she had been authorised vide delegation of powers Ex.CW1/1 to pursue the complaint. CW1 further stated that in pursuance of press release dt. 26.11.97 accused no.1 company sent a letter dt. 12.8.98 CW1/2 signed by its Managing Director seeking time till 30th, Sep. 98 to furnish the required information. Vide Letter dt. 21.8.98 which is Ex. CW1/3 SEBI advised the company to send Certificate of Compliance by its statutory auditor. CW1 further stated that company vide letter dt. 9.9.98 submitted the Compliance Certificate signed by Managing Director Mr. P S Chaudhary which is Ex. CW1/4 and the company vide letter dt. 30.9.98 which is Ex. CW1/5 submitted a copy of often documents, copy of agreement entered into investors, funds raised in different schemes names, details and background of directors. According to the letter total funds raised through various schemes were to the tune of 29,16,200/- . CW 1 further deposed that according to the information furnished by accused company Sh. D. S. Thakur, K.C. Kaundal, S.S. Thakur, Roop Lal Kaundal and H.C. Mahajan were the directors of the company.

8. CIS Regulations were notified on 15.10.1999. The accused company was informed about the notification of SEBI CIS Regulations vide letter dt. 21.10.1999, office copy of the letter is Ex. CW1/6. However no response were received from the accused company. CW1 further stated that in terms of regulations (5) the accused company was required to apply for registration of its CIS and wind up its scheme in terms of regulations 73(1) CIS

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

9. It is further alleged that the regulatory obligations were communicated to the accused company vide letter dt. 10.12.99 and 29.12.99 and through public notice dated 10.12.99 which is Ex. CW1/7 but no response was received from the company. CW1 also testified the office copy of the letter dt. 10.12.99 as CW1/8 and office copy of letter dt. 29.12.99 as CW1/9, however company neither applied for registration nor informed SEBI of winding of its scheme as prescribed under the CIS Regulation, 1999. Hence, SEBI issue show-cause notice dt. 12.05.00 to accused company. The said letter was returned with the remarks "ID" The envelop is Ex. CW1/10 and letter letter CW1/11. CW1 further stated that thereafter SEBI vide letter dt. 31.07.07 reminded the company that on completion of winding up in terms of provisions 73 it was required to file a detailed report in the format sent by SEBI. The said letter was also returned undelivered. The Chairman SEBI thereafter vide order dt. 07.12.00 issued directions u/s 11 (B) of the SEBI Act, 1992 read with Regulation 65 and 73 of SEBI CIS Regulations enjoining company to refund money collected under the schemes to the investors as per the terms of offer within one month from the date of the order. The contents of the order were brought to the notice of the company vide registered letter dt. 18.12.2000 which was also returned undelivered with remarks "I.D." The envelop is CW1/14 and letter is

Ex. CW1/15. CW1 further testified that there after SEBI vide public notice dt. 14.01.01 published list of 523 entities alongwith the text of Directions issued u/s. 11(B) of the SEBI Act and Cis Regulations name of accused company appears at serial no. 370 and the notice is Ex. CW1/16. However, the company did not file winding report and repayment report as per provisions of regulations.

10. In her cross examination CW 1 stated that delegation of power dated 21.04.2003 Ex. CW 1/1 does not mention her name but delegation of power was in favour of officers holding certain positions in SEBI. She denied that Ex. CW 1/1 and copy of part B is a forged documents. She also denied that by virtue of the Ex. CW 1/1 no authorisation was given to him. She further stated that Ex. CW 1/2 to Ex. CW 1/9 were executed prior to her joining SEBI but denied that she could not identify the signatures of the persons on the documents and further submitted that during the course of her employment she became familiar with the signatures of the signatories and could identify their signatures.

11. CW 1 further stated that all the documents referred by the accused had been signed by P.S. Chaudhary, Managing Director of accused company. She further stated that the details of directors were furnished by accused which is Ex. CW 1/5 but it was not verified from Registrar of Companies. CW 1 also testified the all the communication were referred to accused no. 1 company but there is nothing on record to show that there were any communication sent to any of the director in his personal capacity. [She denied that accused D.S. Thakur and Roop Lal Kaundal were not the directors of accused company. She further stated that no written compliant was received from the investors.] CW 1 further testified that Ex. CW 1/4 was received by SEBI under the signature of P.S. Chaudhary Managing Director. She further stated that she could not

remember whether SEBI verified compliance report submitted by accused which is Ex. CW 1/4 and further deposed that Ex. CW 1/DA was not original. She denied that the Compliant is beyond the jurisdiction of this court and documents filed by SEBI are forged and fabricated. She also stated that she had no personal knowledge regarding the identity of accused and her deposition is based on the official record of SEBI. She further stated that Ex. CW 1/2, CW 1/4 and CW 1/5 were signed by P.S. Chaudhary because his name and designation is mentioned on the same. She further stated that she was not aware whether any amount had been returned by accused no. 1 to its investors or not. CW 1 further stated that no such document was submitted by accused to SEBI regarding refund of any money to its investors.

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

13. 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

14.

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.

15. It is contended on behalf of accused no. 2 & 6 that the power delegation to CW1 was illegal, improper and contravention of the provisions of law as the alleged power was delegated to her much after the filing of complaint case. It is also averred that it did not mention the name of CW1, as such there was not proper delegation of power. I do not find any merit in the said contention of Ld. counsel for accused no. 2 & 6 as CW1 stated that there is delegation of power in favour of officer holding certain positions in SEBI and also stated that earlier authority letter used to be issued by SEBI in the name of individual persons but after delegation of power no specific letter in the name of individual official is required to be issued.

16. In terms of Section 9 of the Act, the board may appoint such officers and employees as it considers necessary, for the discharge of its functions.

17. Section 19 of the Act further provides that "the board may, by general or special order in writing delegate to any member, officer of the board or any other person subject to

such conditions, if any, as may be specified in the order, such of its powers and functions under this Act". In pursuance of the Section 9 and 19 of the Act, the Board in its meeting held on 28.03.2003 considered the proposals of delegation of its financial and general powers to the officers of the board.

18. In view of the above said provision of the act, as CW1 was working as a Manager in SEBI, she was authorized by virtue of delegation of powers by Chairman SEBI pursue the complaint on behalf of company. Hence, the contention of Ld. counsel for accused no. 2 and 6 is rejected.

19. The present case hinges on the admitted documents filed by SEBI and accused no. 2 P.S. Chaudhary MD of company and accused no. 3 S.S. Thakur director admitted in their statements u/s 313 Cr.P.C. that accused company had sent letter which is Ex. CW 1/2 requesting time till 30.09.98 to submit the information to SEBI. Accused no. 2 and 5 also admitted that the company submitted its compliance report to SEBI vide Ex. CW 1/4. Accused no. 3 and 6 gave evasive reply in their statement u/s 313 Cr.P.C. regarding non-compliance of statutory obligations and stated that they were not the director of accused no. 1 company. However they did not lead evidence in their defence to prove the same. The intimation sent by SEBI to accused no. 1 company was returned undelivered with the remarks "I.D.". It appears that that accused had left the address without informing change of their address to SEBI. In these circumstances they cannot plead ignorance for non compliance of statutory provisions of the Act.

20. As per the Ex. CW 1/5 the funds raised by the company were furnished to SEBI. The genuineness of Ex. CW 1/5 has not been challenged by the accused, therefore

Ex. CW 1/5 is deemed to have been admitted as correct. As per this undisputed documents accused had invited general public to invest in its various schemes which were to be managed by it and not by general public. Therefore, it has been proved that accused company had been running CIS even as on 30.09.98.

21. SEBI Act came into force w.e.f. 30.01.92 chapter V relates to the registration certificate. Section 12(1B) was incorporated on 25.01.95 and provides that
"No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the Regulations"
22. Therefore according to section 12(1B) of the Act no person could sponsor CIS without registration from SEBI in accordance with the regulations.
23. 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 and office copy of the said letter is Ex. CW 1/6.
15. As per the admitted documents Ex. CW 1/5 accused company invited general public to invest in its various schemes, therefore it is admitted that accused company had been running CIS as on 30.09.98. According to letter Ex. CW 1/5 company had raised Rs. 29,16,200/- through its directors./ accused no. 2 to 7 through its various schemes. Accused no. 2 and 3 admitted in their statements u/s 313 Cr.P.C. that accused

company sponsored and floated CIS scheme and mobilized funds of Rs. 29,16,200/- as on 30.09.98. In view of the same I have no hesitation in holding that accused company of which accused no. 2 to 7 were the directors, had been running CIS after 1995 and had been collected funds from general public. SEBI had notified CIS regulations on 15.10.99 and sent letter dated 21.10.99 to accused company and office copy of the same is Ex. CW 1/6. By virtue of the same various provision of the regulations were brought to the notice of accused company. As per regulations 5 accused company had to apply for registration of its CIS. As per the regulation 73(1) CIS which failed to make an application with SEBI, would wind up the same and repay the investors. Apart from this as per Regulation 74, existing CIS which was not desirous of obtaining provisional registration from SEBI, would formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73.

16. 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 schemes, within two months from the date of receipt of intimation from SEBI.

17. The question for consideration is whether company had complied with the aforesaid regulations or not. CW 1 stated that accused company neither apply for registration nor informed SEBI about the winding up of its scheme as prescribed under CIS regulation 1999. Accordingly show cause notice dated 12.05.2000 was issued for taking action against accused company for non-compliance with the section 12(1B) of the SEBI Act. and regulation 5 read with section 68(1), 68(2), 73 and 74 of SEBI, CIS regulation 1999. The SEBI thereafter vide letter dated 31.07.2000 reminded the

company that on completion of winding up in terms of the provisions of the regulation 73, it was required to file a detailed report and a format of winding up and repayment report was to be sent. However, the said letter was returned undelivered. Thereafter chairman SEBI vide order dated 7.12.2000 issued directions u/s 11(B) of SEBI Act 1992 read with regulation 65 and 73 of CIS Regulation 1999 directing company to refund the money collected under its scheme. The said letter was also returned undelivered. The accused no. 2 and 3 admitted in their statements u/s 313 Cr.P.C. that company did not file winding up and repayment report as per provisions of CIS and failed to comply with the directions u/s 11 B of SEBI Act. So it is an admitted fact that accused company had not filed the winding up and repayment report with SEBI as per the provisions of CIS regulations.

18. According to section 12(1B) any person carrying on CIS without obtaining registration from SEBI in accordance with the regulation is liable to be punished u/s 24 of the Act.

19. Section 27 relates to the commission of offences by the company and provides as follows:

Offences by Companies : - (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

20. From the facts available on the record it has been proved that accused were

the directors of company and had been running CIS after 1995 till 30.09.98. The regulation came into force w.e.f 15.10.99. Accused no. 2 to 7 continued to be the directors of company at the time of notification of said regulations.

21. The defence taken by the accused was that the money of the investors had been returned. It is pertinent to mention that SEBI vide letter dated 7.12.2000 issued directions u/s 11(B) of SEBI act read with regulations 65 and 73 of CIS regulations 1999 enjoining the company to refund the money collected under the CIS due to the investors within one month of the date of order of chairman SEBI dated 7.12.2000 failing which action would be initiated. However accused company did not file the winding up and repayment report as per the provisions of regulations. Moreover no documentary evidence was placed on record to show that money of the investors had been repaid.

21. For the foregoing reason I am of the view that accused company had been running CIS and collecting fund from general public without obtaining registration certificate from SEBI as required u/s 12(1B) of the Act. It has also been proved that despite coming into force of the regulation accused company failed to make an application for registration of its CIS within statutory period contemplated by regulations. Apart from this SEBI has also proved beyond reasonable doubt that accused company neither got registered its CIS nor wound up the same nor repaid the money to its investors as per regulation 73 and 74.

22. I accordingly hold the accused company Rimjhim Agro Forest Ltd. and its directors Shri P.S.Chaudhary, Shri D.S.Thakur, Shri S.S.Thakur and Shri Roop Lal Kaurdal guilty for violations of regulations 5(1) read with regulations 68(1), 68(2), 73, 74 of SEBI CIS Regulations, 1999 u/s 24 read with section 27 of the SEBI Act, 1999. Copy be given free of cost to all the accused.

Sd —

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

CC No. 56/2009
SEBI Vs. Rimjhim Agro Forest Ltd.
30.11.2009.

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

ORDER ON SENTENCE

Present: Sh. Sanjay Mann, counsel for SEBI.

Convicts no. 2 and 5 on bail with counsel Sh. Dhirender Singh.

Convicts no. 3 and 6 on bail with counsel Sh. Sanjeev Bajaj.

1. I have heard the Ld. Counsel for SEBI Sh. Sanjay Mann and Sh. Dhirender Singh and Sh. Satish Bajaj Counsels for convicts no. 2, 3, 5 and 6 on the point of sentence and also perused the record.

2. Ld. Counsel for accused/convict no. 2 submits that he is the sole earning member of the family and his family comprises of his ailing wife and ailing father. It is also submitted on behalf of accused no. 5 that he is also the sole earning member of the family and his family comprises of his wife and two school going children. It also stated on behalf of convicts no. 2 and 5 that they are not previous convicts. It is prayed that lenient view be taken.

3. It is submitted on behalf of convict no. 3 that his family comprises of his wife and 3 children and he is the sole earning member of the family. Request is made for taking a lenient view.

It is submitted on behalf of accused no. 6 that he had resigned on 1.03.1999 which was accepted on 1.04.1999. It has been held judgment of Hon'ble Supreme Court,

AIR 1976 SC 2386 wherein it is held "hearing with regard to sentence is not to be confined only to oral submission but it is intended to allow accused to produce material bearing on sentence."

Reliance has also been placed upon

Sh. Sanjay Mann
30/11/09
Sanjeev Bajaj

"Negotiable Instrument Act, 1881- Sections 138, 141, 142- Dishonour of Cheque - Offence by company- Liability of Director Company who has resigned - Resignation of Director is effective from date he submits it, because of his intention to resign- It is for company to comply with formalities, required under sections 302 and 303 of Companies Act- Duty of Director is only to give intimation to company about resignation and not to fill up form no. 32 or inform Registrar of Companies because that is duty of Company secretary."

5. Ld. Counsel for SEBI has strongly opposed the submission made by Ld. Counsel for accused no. 6. It is stated that accused no. 6 had not proved his defence. Moreover no such suggestion was put to witness of complainant SEBI CW 1 in his cross examination regarding the fact that accused no. 6 had resigned.
6. In view of the submissions of Ld. Counsel for accused I am of the view that since accused no. 6 had not proved his defence in the trial, the said contention cannot be raised at this stage.
7. 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. According to section 12(1B) of the Act, the Collective Investment scheme could not be run without obtaining registration as per regulations.
8. Convicts no. 2, 3, 5 and 6 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. 20,16,200/- from general public as per Ex. CW 1/5.
9. The money of investors has still not been returned since no proof of repayment had been placed on record by accused company.

10. 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 opinion strict view is called for in the case in question.

11. The offence in question was committed before the amendment came into force hence. In these facts and circumstances of the present case convicts no. 2, 3, 5 and 6 are sentenced to RI for 1 year each. In addition they shall pay a fine of Rs. 1,00,000/- (One lakh) each and in default thereof they shall undergo SI for 6 months each u/s 24 of the Act 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.

12. Application moved on behalf of convicts for suspension of sentence till filing of the appeal.

13. Heard. In view of the section 369(3)(i) as the convicts were on bail and intend to file an appeal the sentence of imprisonment and fine is suspended till 30.12.2009. All the convicts are admitted on bail on furnishing personal bonds in the sum of Rs. 10,000/- each with one surety each of the like amount.

(POONAM CHAUDHARY)
ASJ(Central-01)/DELHI.
30.11.2009

Attached copy

30/11/09

Re-Adm