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

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 Legal Officer, Sh. Sharad Bansode.

Complainant

VERSUS

- 1.M/S . S.S. Krishi Vikas Limited  
a company incorporated Under  
the Companies Act, 1956, having  
its Regd. Office at T-52, Gali No.1,  
Laxmi Nagar, Vikas Marg,  
Delhi - 110092.
- 2.Sh.A.P.Pandey s/o Sh. R.D.Pandey.  
Director of accused No.1,  
R/o 23/344, Trilok Puri,  
Delhi - 110091.
- 3.Shri Shri Bechan Prasad s/o Sh. Birjoo Parshad,  
Director of accused No.1,  
R/o 25/75, Trilok Puri,  
Delhi - 110091. (PO)
- 4.Sh. Subrota Pal s/o late sh. S.C.Pal,  
Director of accused No.1,  
R/o B-12/12, Sagar Pur East,  
Delhi (PO)

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 submitted details which included the names of the promoters and directors of the schemes and the details of the schemes.
6. It is alleged that after the coming into force of the Regulations in 1999, the SEBI had sent a registered letters in December 1999 at the address of the company. Public notice was also issued, in order to

inform the accused of the obligations that existed under the regulations, calling upon them to comply with the same. Apart from asking the company to circulate information memorandum to all investors, the SEBI directed the entities to register the schemes with the SEBI. The time for doing so was extended upto 31 March 2000.

7. It is alleged in the complaint that the accused failed to register with the SEBI. Therefore, under the Regulations, 73 & 74, the accused were directed to wind up operations and repay the investors. On 7.12.2000 the SEBI Chairman directed the accused Company to refund the money collected from investors to the investors within a period of one month from the date of these directions. Since the company failed to comply with these directions and had also not sought registration with the SEBI, the complaint has been filed for violation of Regulations 5 (1), 68 (1), 68 (2), 73 & 74 of the SEBI (CIS) Regulations 1999 punishable under S.24 r/w S.27 of the SEBI Act 1992.
8. Vide orders dated 14.1.04. the accused were summoned to face trial. The accused A.P.Pandey appeared before this Court while the accused No.3 & 4 Bechan Parshad and Subarto Pal have been declared proclaimed offenders. The notice of allegations was served to the accused under S.251 CrPC on 31.8.2006, to which the accused pleaded not guilty. The accused A.P.Pandey has claimed that there was mistaken identity, which was a matter to be proved during trial. The complainant has examined only one witness Ms.Radhika Varma. Thereafter the statement of the accused was recorded under S.313 CrPC. The accused has examined himself as witness in his defence.

#### EVIDENCE

9. As CW1 Ms. Radhika Varma 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 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.
10. The CW1 deposed that vide letter Ex.CW1/1 dated 19.5.98 the

accused responded. The witness stated that the accused had submitted in certain initial information regarding its scheme and operations vide this letter. It was also submitted that though no public funds had been collected under any scheme since incorporation, the SEBI would be informed when the company did start collecting public funds. The letter also listed the names of accused 2-4 as the directors of the company. The letter was signed by accused Bechan Parshad as Director (Accounts). The witness deposed that the accused sent a copy of the Memorandum and Articles of Association and a brochure regarding the features of the company's scheme.

11. 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. The witness deposed that the letter returned undelivered to the SEBI with the report that the letter had remained unclaimed. 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. However, both the letters returned back to the SEBI as unclaimed by the addressee.

12. CW1 Ms. Radhika Varma deposed further that since the accused company had not applied for registration nor had submitted the winding up report, show cause dated 12.5.2000 had been issued to it. But this communication returned undelivered to the SEBI. Vide letter dated 31.7.2000 the SEBI forwarded the format for submission of the winding up and repayment reports to it. This letter also returned undelivered to the SEBI. Since the accused failed to comply with the regulatory provisions, the SEBI Chairman passed orders dated 7.12.2000 directing the accused company to repay its investors as per the original terms of offer within one month. Once again, this letter returned to the SEBI undelivered. A public notice was issued by the SEBI on 18.12.2000 informing every body of the contents of the order.

Public notice was published in the Hindustan Times and other vernacular newspapers, on 14.1.2001 informing all defaulters about their obligations under the regulations and warning of action including prosecution in case of default. The witness deposed that till the filing of the complaint the accused did not apply for registration and did not submit the winding and repayment report in format.

13. The witness was cross-examined by Sh. Anil Tripathi on behalf of the accused. During her cross-examination the witness stated that she was authorised to represent the case since the chairman exercised all powers of the board. She stated that the accused company was not registered with the SEBI. She admitted that there were no investor's complaints against the accused. She stated that she had no personal knowledge about the case and had deposed on the basis of the record.
14. The witness deposed that the SEBI had not of its own and independently verified the details furnished to it by the company. She admitted that the name of the first director was Sh. Angad Parshad Pandey. She stated that she had no knowledge whether it was Aditya Parshad Pandey, who was present in the court. She stated that she was unaware the background of Aditya Parshad Pandey and did not know whether he had retired from DESU as helper/ALM.
15. The statement of the accused was recorded when he stated that his name was Aditya Parshad Pandey and he had no concern with the accused company and did not know any Bechan Parshad. He also stated that he had never resided at 23/334, Trilok Puri although he was the owner of property No.23/235, Trilok Puri.
16. The accused also examined himself on oath as DW1 giving his name as Aditya Parshad Pandey. He has brought his pension record, medical card issued by the erstwhile DESU as its employee. He has brought the last drawn salary slip. He has placed the copy of the demolition slip issued to him by DDA. He deposed that he was presently residing in the village. When cross-examined by sh. Sanjay Man for the SEBI, the accused denied that he was connected with the accused company or that he was deposing falsely.
17. On the basis of this evidence, the Id. Counsel for the accused has submitted that he be acquitted as it was the case of mistaken identity. Id. Counsel has argued that even as per the salary record the accused attending the court, Aditya Pd. Pandey was not involved in the

running of the accused company S.S.Krishi Vikas and the use of initials A.P.Pandey had resulted in this confusion and wrong prosecution.

18. The Id. Counsel for the SEBI has conceded that as per the salary record the director of the accused company S.S. Krishi Vikas Limited was Angad Parshad Pandey. The accused facing trial has brought on record documents that have been issued to him officially being his pension papers, medical identity card etc. The copy of the pension order Ex.DW1/A reflects the attested photograph of the accused and the name Aditya Parshad. Bharti Devi is the name of the wife of Aditya Parshad, whose photograph is attested on the pension order. The memorandum of association at page 24 mentions Asha Pandey as the wife of Angad Parshad Pandey. The copy of the demolition slip Ex.DW1/E is of the year 1977. The pay slip Ex.DW1/D is of the month of February 2002. Ex.DW1/C is the copy of the pensioner's identity card, which reflects the case of the accused attending the court with the name Aditya Parshad and the address 23/235, Trilok Puri.

19. On the basis of all this record it is clear that the person who has attended the court is Aditya Parshad Pandey and that no false claim has been set up, that A.P. Pandey was somebody else. As per the record produced by the SEBI in evidence it is apparent that the A.P.Pandey listed as accused No.2 in the complaint was Angad Parshad. The confusion appears to have occurred on account of the similarity in the initials and the initials of the father since Angad Parshad Pandey is son of R.D.Pandey and Aditya Parshad Pandey is son of Ram Dass Pandey and because both are resident of Trilok Puri Block 23.

20. In the circumstances Aditya Parshad Pandey is acquitted of the charges against him and it is held that he had no connection with the accused company S.S. Krishi Vikas Limited. His personal bond and surety bond are cancelled and surety is discharged.

ANNOUNCED IN OPEN COURT.

ON 2.11.06

(ASHA MENON)  
ADDL. SESSIONS JUDGE:  
DELHI.