

IN THE COURT OF MS. ASHA MENON: ADDL. SESSIONS JUDGE:
DELHI.

CC NO.34/2005

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, Sn. Sharad Bansode.

... Complainant

VS.

1. Sagaun Plantation Ltd. Company incorporated under the Companies Act, 1956. having its Regd Office at Puspanjal Complex, Shahi Market, Cinema Road, Gorakhpur-273001.
2. Sh. Rakesh Behari Srivastava S/o Late Sh. Kamala Pd. Srivastava. Director of Accused No.1, R/o Canal Road, Rustampur (North) Daudpur, Gorakhpur, UP.
3. Mrs. Anoo Srivastava W/o Rakesh Behari Srivastava, Director of Accused No.1, R/o Canal Road, Rustampur (North) Daudpur, Gorakhpur, UP.
4. Sh. Anil Kumar Srivastava C/o Sh. B.D. Srivastava. Director of Accused No.1, R/o Dharampur, Shahpur, Distt. Gorakhpur, UP.

.... Accused

JUDGMENT:

BACKGROUND FACTS:

1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as the SEBI) through its Legal Officer, Sh. Sharad Bansode against Sagaun Plantation Ltd. and against its Directors Sh. Rakesh Behari Srivastava, Mrs. Anoo Srivastava and Sh. Anil Kumar Srivastava.

Recd on
23/3/06

29.12.99 and also issued public notices dated 10.2.99 informing the accused company of the notification and the regulations and directing it to send information memorandum to all investors

detailing the state of affairs of the Schemes, the amount repayable to each investors and the manner in which such amount was determined. This information was to be sent by 28.2.2000.

Subsequently, the last date for furnishing details was extended upto 31st March, 2000.

ALLEGATIONS IN THE COMPLAINT.

6. According to the complainant, the accused No. 1 failed to apply for registration and also failed to submit the repayment report nor did it furnish details for winding up the schemes. Therefore, on December 7th, 2000, orders were issued by SEBI u/s 11 B of the SEBI Act 1992, to the accused company to refund the money collected to the investors within one month and submit the report of repayment and winding up to the SEBI. According to the complainant since there was no compliance of this order, the accused company and its Directors had violated the Regulations No. 68(1) and (2) 73 and 74 R/W Regulation 5 (1) of the SEBI (Collective Investment Scheme) Regulation 1999 and had also violated Section 11 B and 12 (1) B of the SEBI 1992 which were all violation punishable U/s 24 (1) of the SEBI 1992 R/W Section 27 of the said Act.

with this letter also intimating that it had mobilized Rs.82,320/- up to 31st March, 1997 under the Collective Investment Scheme. The witness deposed that the letter also contains names of Directors i.e. Sh. Rakesh Behari Srivastava, Mrs. Anco Srivastava and Sh. Anil Kumar Srivastava. The witness also deposed that subsequently the company sent another letter dated 25.4.98 Ex.CW1/2, informing the SEBI that the company had mobilized Rs.2,95,420/- between 22.11.96 and 31.3.98.

9. Subsequently, the SEBI (CIS) Regulations, 1999 were notified on 15.10.99. The witness deposed that intimation regarding the notification of regulations had been sent to the Company and it was intimated vide public notice dated 20.10.99 and specific letter dated 21.10.99 were sent by registered post. She deposed that this letter returned with the remarks "left". The witness deposed that in terms of the regulations the Company was required to apply for registration or wind up its scheme in terms of Regulations 73 and 74 and was further required to circulate information memorandum to its investors and to repay and wind up its scheme and submit the winding up and repayment report with the SEBI within five and half months. The witness deposed that these were communicated to the Company vide letters dated 10.12.99 and 29.12.99 and both these letters were also returned undelivered to the SEBI with the remarks "left without address". The witness stated that the requirements

11. In cross-examination CW1 admitted as correct that the accused had sent letter dated 25.4.98 in response to the letter of the SEBI dated 15.3.98. She admitted as correct that as per this letter Ex.CW1/2 the accused had informed the SEBI that they had not floated any new scheme after 18.12.97. The witness was unable to state anything in respect of the letter dated 27.11.98 placed on the record as Ex.CW1/DA. She further deposed that since the company had not furnished any certificate in this respect, she could not state whether the company stood almost wound up by 27.11.98 or whether by that date most of the investors had been repaid their money. She further deposed that as far as she knew, no complaints had been received from any investors against the company. She denied that the case was a false one.

12. The accused have filed two documents in their defence.

CONTENTIONS

13. I have heard the submissions made by the accused and on behalf of the SEBI. The stand taken by the accused is that they had already wound up their activities in 1998 and repayments had started in November, 1998 and therefore, there was no occasion for the accused to get themselves registered. Their further contention is that since they did not receive any communication from the SEBI, they were unaware of the formalities they had to complete. According to them when repayments had been effected, there was

16. From the evidence certain facts seem admitted. The Government had notified in 1997 that companies which were running Collective Investment Schemes were required to file information with SEBI regarding their schemes along with details of amounts mobilized, the names of Directors/Promoters etc., in case they were desirous of obtaining benefit of Section 12 (1) B of the SEBI Act 1992. Section 12 of the SEBI 1992 requires the registration of Stock Broker, Sub Broker, Share Transfer Agents etc., and Section 12 (1) B relates to the requirements of registration certificate from the board by any person who was sponsoring or carrying on venture, capital funds or Collective Investment Scheme including mutual funds. Section 12 (1) B of the SEBI 1992 reads as under:

"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 obtain a certificate of registration from the Board in accordance with the regulations :

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment scheme operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act 1995, for which no

with the circular of the SEBI dated 24.2.98. This underlined the necessity for the Collective Investment Schemes to be subject to the regulations of the SEBI while carrying out business in Collective Investment Schemes.

19. There is no doubt that the accused were running a Collective Investment Scheme. Ex.CW1/1 in response to the public notice issued in the newspaper by the SEBI, reveals that the company was involved in agricultural and allied activities and various documents annexed by the company with this letter gave details of the deposits received under the Sagaun Unit Scheme. Vide Ex.CW1/2, the accused themselves informed the SEBI that they had raised Rs.2,95,420/- under their schemes and they disclosed this in their compliance certificate in respect of the directions of the SEBI to regulate Collective Investment Scheme. Thus, there is no doubt left in the mind that the accused were running Collective Investment Schemes and had collected Rs.2,95,420/-.

20. From the various communications on the record sent by the accused to the SEBI such as Ex.CW1/1, Ex.CW1/2 and Ex.D-1, it is absolutely clear that the accused were fully aware of the fact that the SEBI was monitoring and regulating the Collective Investment Schemes floated in respect of agricultural and plantation bonds etc. Despite that knowledge, they did not choose to submit all details to

satisfactorily prove the despatch of this letter because the stamp of the post office and the date of despatch are both not legible. In any case, as rightly pointed out by the Law Officer of the SEBI, if the

original was with the accused themselves, nothing could have been sent to the SEBI. Moreover, a perusal of the contents of this letter would reveal that the accused were informing the SEBI that they were unable to comply with the directions of the Hon'ble High Court and were intending to refund the money to the investors slowly and had already started to refund the same to the investors. Thus, the letter only discloses an intention to refund money. Under no circumstance, could the accused have believed that thereafter they did not have any requirement to inform the SEBI of the repayment. In fact, the accused have not produced before this Court any record of repayment or of the company having wound up their operations. There is nothing on the record on which to hold that the accused were under the bonafide belief that having refunded amounts, they were exempted from complying with the requirements of the SEBI regulations.

22. Even assuming that Ex.CW1/DA had been dispatched to the SEBI and had been received by the SEBI, on this single document no presumption could have been raised by the SEBI that no fund had been mobilized after February, 1998. Nothing prevented the accused from informing the SEBI about their

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ORDER ON SENTENCE

The accused have been heard on the point of sentence. The accused have claimed that the default has occurred only on account of ignorance and on ground of bonafide belief that they had nothing to comply with. However, as observed in the judgment, these pleas cannot be accepted. They themselves have placed on record Ex.D-1 which informed them that the Hon'ble High Court of Delhi was also seized of the matter and the SEBI had not only informed them about the requirements of complying with the directions of the Hon'ble High Court but also of the notifications issued by the SEBI. The accused are not illiterate or ignorant persons. They have floated a company and had even obtained Rs.2,95,420/- through their Collective Investment Scheme. Therefore, their violation cannot be easily excused or treated leniently.

In the present case keeping all the facts and circumstances in mind, I am of the considered view that the ends of justice would be met if the accused are sentenced to a fine of Rs.5,000/- each. In default of fine, they shall undergo SI for one month.

The personal bonds and surety bonds of the accused are cancelled. Sureties stand discharged. File be consigned to records.

Announced in the Open Court.
Dated: 17.3.2006.

(ASHA MENON)
Addl. Sessions Judge, Delhi.