



IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE
NEW DELHI

COMPLAINT CASE NO 67 OF 2004
14/01/04

IN THE MATTER OF :

Securities & Exchange Board of India,
A statutory body established under the
Provisions of Securities & Exchange
Board of India Act, 1992, having it's
Regional Office at : Block No: 1, Rajendra
Bhawan, Rajendra Place District
Centre, New Delhi - 110 008

Through it's Legal Officer :-

Mr. Sharad Bansode

... Complainant

Versus

1. Shailson Plantations Ltd.
Having it's registered office at :
167, Saini Enclave,
Bhartendu H.C. Marg,
Vikas Marg,
Delhi - 110 092

Also at :

F-30, Jagat Puri,
Parwana Road,
Delhi - 110 051

2. Sh. Shailesh Kumar Singh
Director M/S Shailson Plantations Ltd.
S/o Sh. Ram Vinod Singh,
R/o 32(B), J&K Block, Laxmi Nagar,
Delhi - 110 092,

(i) Saini Enclave No-167
Karkandawala Delhi
(ii) R-6, Suraj Mal Vikas Nall.

3. Sh. Dharmender Kumar Singh,
Director M/S Shailson Plantations Ltd.
S/o Sh. Udayveer Singh
R/o H-100, Govindpuram,
Ghaziabad - U.P.

4. Sh. Qm Dutt Sharma
Director M/S Shailson Plantations Ltd.
W/o Sh. Parmal Sharma
R/o 1/11820, Panchsheel Garden,
Naveen Sahadara,
Delhi - 110 032

... Accused?





**COMPLAINT UNDER SECTION 200 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 READ WITH SECTION 24(1), 27 OF
SECURITIES & EXCHANGE BOARD OF INDIA ACT, 1992**

MOST RESPECTFULLY SHOWETH:





SEBI Vs. Shailson Plantations Etc.

Item no.
01.06.2012

CC No. 7/2010

Present: Sh. Anand Singh, Advocate, Counsel for complainant
Sh. A.K.Bansal, Advocate, counsel for convict no. 2

Vide separate judgment dated June 1, 2012, A1 M/s Shailson Plantation Ltd. and A2 Sh. Shailesh Kumar Singh have been held guilty for the offence punishable under Section 24(1) read with Section 27 of the SEBI Act while accused no. 4 Om Dutt Sharma has been acquitted from all the charges.

Arguments heard on the point of sentence.

Vide separate order on the point of sentence convict no. 2 Sh. Shailesh Kumar Singh is burdened with a fine of ₹2 lac in default simple imprisonment for a period of six months for the offence punishable under Section 24(1) read with 27 of SEBI Act.

Convict no. 1 i. e. company accused is also burdened with a fine of ₹ 2 lac for the offence punishable under Section 24 (1) of the SEBI Act.

Counsel for SEBI submits that SEBI shall take appropriate steps for realization of fine amount after tracing out the assets of the convict company. Request is allowed.

Copy of judgment along with order on the point of sentence

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be given to the convict/his counsel free of cost.

Since A3 is proclaimed offender, file be consigned to record room with direction that the same be revived as and when he is apprehended.


(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI





SEBI Vs. Shailson Plantation Ltd. & others.

IN THE COURT OF SH. PAWAN KUMAR JAIN,
ADDITIONAL SESSIONS JUDGE-01(CENTRAL):DELHI

Complaint Case No. 7 of 2010
ID No: 02401R5197672004

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Regional office at Block No. 1, Rajendra Bhawan, Rajendra Place District Centre, New Delhi-110 008 and represented by Rekha Verma, Manager, SEBI.

Versus

1. **SHAILSON PLANTATION LTD.**
having its registered office at:
167, Saini Enclave, Bhartendu H.C.Marg,
Vikas Marg, Delhi-110 092

.....Accused no.1

2. **Sh. Shailesh Kumar Singh**
S/o Ram Vinod Singh,
Director of M/S Shailson Plantations Ltd.
R/o 32 (B), J & K Block, Laxmi Nagar,
Delhi-110 092

.....Accused no.2

3. **Sh. Dharmender Kumar Singh,**
S/o Sh. Udayveer Singh
Director of the Accused no.1
R/o H-100 Govindpuram, Ghaziabad
U.P.

.....Accused no.3

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4. Sh. Om Dutt Sharma
S/o Sh. Parmal Sharma
Director of the Accused no.1
R/o H-100, Govindpuram,
Naveen Sahadara, Delhi

.....Accused no.4

Date of Institution : 15.01.2004
Date of committal to Session Court : 16.04.2005
Judgment reserved on : 24.05.2012
Date of pronouncement of judgment : 01.06.2012

Present: Sh. Anand Singh, Advocate, Counsel for complainant
Sh. A.K.Bansal, Advocate, counsel for accused no. 2
and 4

J U D G M E N T :

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on January 15, 2004 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the provisions of Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.





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2. Four persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Shailson Plantations Ltd.(hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Shailesh Kumar Singh ("A2"), accused No.3 Sh. Dharmender Kumar Singh ("A3") and accused No.4 Sh. Om Dutt Sharma ("A4"). It is alleged that A2 to A4 were Directors of the company accused and as such persons were in-charge of, and responsible to, A1 for the conduct of its business within the meaning of the provisions contained in Section 27 of the SEBI Act.
3. It is alleged in the complaint that A1 had floated the Collective Investment Schemes (CIS) and raised amount approximately ₹ 16.50 lacs from general public, in violation of the provisions contained in Section 12 (1B) of the SEBI Act. It is also alleged that after coming into force of the CIS Regulations and in spite of public notice dated December 18, 1997, the accused persons had failed to get the Collective Investment Scheme registered with SEBI or to wind up the said scheme or repay the amount collected from the investors in terms of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.
4. Cognizance on the complaint was taken by the learned ACMM vide order dated January 15, 2004 whereby process was issued under Section 204 Cr.P.C. against all the accused persons.
5. On account of the amendment, particularly in Sections 24 and

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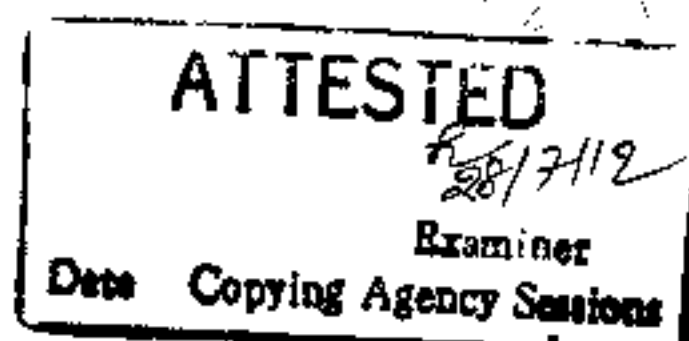




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26 of the SEBI Act, through Amendment Act which came into force w.e.f. November 24, 2002, pursuant to Administrative Directions of Hon'ble High Court, under orders of the Ld. District & Sessions Judge, this case was transferred on April 16, 2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Additional Sessions Judge, Delhi.

6. Vide order dated April 30, 2009, A3 was declared proclaimed offender on account of his non-appearance. Vide order dated October 15, 2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company) & A2 & A4 wherein accused persons pleaded not guilty and claimed trial.
7. To bring home the guilt of accused, complainant has examined only one witness named Ms. Rakha Verma, Manager of SEBI as CW1. Thereafter, A2 & A4 were examined under Section 313 Cr.P.C. wherein they denied all evidence led by the complainant. Accused no. 2 took the plea that company accused had refunded the entire amount to the investors, thus, no investor had made any complaint to the SEBI. It is further submitted that if there is any complaint from any investor, he would make the payment to such investors. He admitted that he was one of the directors in the company accused and company accused had sent the letter Ex. CW1/6. He also took a defence that he was not responsible for day to day affairs of the company accused. On the other hand, accused no. 4 took the plea that he was not the director in the company accused at any point of time and further stated that he had no concern with day to day affairs of the company accused. To prove their innocence, accused persons examined following witnesses:





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DW1 Sh. K. C. Chauhan, investor
DW2 Sh. Akhil Singh, investor
DW3 Sh. Hari Om Pandey, investor
DW4 Sh. Kuldeep Kaul, investor
DW5 Sh. Chander Sheikher, investor
DW6 Sh. Ishwar Chand Jha, investor
DW7 Sh. Ajay Gupta, investor
DW8 Sh. Parmod Kumar, investor
DW9 Sh. Satish Aggarwal, investor
DW10 Sh. Shailesh Kumar, accused no. 2

8. I have heard arguments advanced by Sh. Anand Singh, Advocate, Counsel for complainant and Sh. A.K.Bansal, Advocate, counsel for accused no. 2 & 4 and perused the record carefully.

9. Learned counsel appearing for accused persons contended that the SEBI has not acted impartially as SEBI had not impleaded Dinesh Kumar Gupta as accused despite the fact that his name is also mentioned as one of the directors in Ex. CW1/6. It was submitted that A4 Om Dutt Sharma was neither promoter nor director of the company accused and he had been impleaded with mala fide intention. However, he admitted that A2 was one of the directors of the company accused but contended that the company accused had refunded the entire amount to the investors and due to ignorance, A2 failed to file the WRR. It was submitted that in order to prove that the company accused had refunded the amount to the investors, A2 has examined nine investors who categorically deposed that they had received their invested amount along with the interest.





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10. On the other hand, learned counsel appearing for SEBI contended that the company accused had mobilized funds in violation of Section 12(1B) of the Act and also violated CIS Regulations. It was submitted that company accused failed to file the WRR, which amounts violations of Regulation 73 of CIS regulations.

11. First of all, I will deal with the issue as to whether company accused had violated any provisions of SEBI Act at the time of mobilizing fund or not?

12. As per Section 12(1B) of the SEBI Act, w.e.f January 25, 1995 when said Section was inserted in the statute, no person shall sponsor or caused to be sponsored or carry on or caused to be carried on any venture, capital fund or collective investment schemes unless he obtains a certificate of registration from the Board in accordance with the regulations. It means that after January 25, 1995, no person was supposed to carry on any collective investment scheme unless he had obtained a certificate of registration from the Board. It is undisputed fact that in the instant case, company accused was incorporated on August 4, 1997. It means that the company accused had mobilized the fund after August 4, 1997. Despite that company accused had not obtained any certificate of registration before mobilizing the fund. It is also undisputed fact that company accused had sent a letter to the SEBI, which is exhibited as Ex. CW1/6 (colly) intimating the SEBI that company had mobilized funds to the tune of ₹ 16,39, 205/- through various schemes. Thus, it becomes crystal clear that company accused had mobilized funds in violation of Section 12(1B) of the Act. Moreover, the contents of letter Ex. CW1/6 is admitted by A2 in his statement recorded under Section 313 Cr.P.C.

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13. It is undisputed fact that CIS regulations were notified on October 15, 1999 wherein another opportunity was given to the companies to seek certificate of registration. However, for that company accused was supposed to move an application in terms of Regulation 5 within two months from the date of notification of the regulations. However, company accused failed to move any such application. Once the company failed to move the application to seek certificate of registration or if application was moved but the same was rejected by the SEBI, such company was not only bound to wind up the scheme but also to refund the amount to the investors and was supposed to submit the winding up and repayment report with the SEBI on the prescribed format in terms of Regulation 73 of CIS regulations. Admittedly, company accused had neither moved any application under Regulation 5 nor submitted winding up and repayment report with the SEBI in terms of Regulation 73, thus company accused had violated Regulation 5 & 73 also. Needless to say violation of provisions of Section 12(1B) and CIS regulations are punishable under Section 24 of the SEBI Act.

14. Now, I will deal with the contention as to whether A4 Om Dutt Sharma was one of the directors in the company accused or not?

15. In order to prove that A4 was one of the directors in the company accused, SEBI has relied upon the letter Ex. CW1/6 wherein the name of A4 is mentioned as one of the directors. SEBI has also filed the certified copy of Memorandum of Association & Articles of Associations of company accused. In both the said documents, the





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name of A4 is not mentioned either as subscribers, promoters or directors. SEBI has also filed Form-32 but the same also does not pertain to A4. In other words, there is no evidence except Ex. CW1/6 to show that A4 was one of the directors in the company accused. Even A4 has not signed any document on behalf of company accused. A4 took the plea in his statement recorded under Section 313 Cr.P.C that he was not holding any position in the company accused. Once he denied that he was not holding any position in the company accused, onus was upon the SEBI to adduce cogent evidence to establish that he was holding any position in the company accused. Mere fact that name of A4 is mentioned in letter Ex. CW1/6 is not sufficient to establish beyond the shadow of doubt that he was one of the directors in the company accused. Since there is not sufficient evidence on record to establish that A4 was holding any position in the company accused, he cannot be held vicariously liable for the violations committed by the company accused.

16. Now, I will take up the contention relating to A2.

17. Though A2 admitted in his statement recorded under Section 313 Cr.P.C that he was one of the directors in the company accused, yet from Memorandum of Association of company accused establishes that he was one of the promoters/subscribers of the company accused. Further from Articles of Association of company accused, it is evident that he was one of the first directors of the company accused. His name is also mentioned in Form-32 as a director from the date of incorporation of the company accused and the said Form is part of Ex. CW1/25. His name is also mentioned in letter Ex. CW1/6 and the said letter is signed by A2 himself. All these documents establish beyond

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the shadow of doubt that he was not only one of the directors in the company accused but also involved in the day to day affairs of the company accused as he had signed the letters on behalf of company accused which were sent to the SEBI.

18. A2 has examined as many as nine witnesses i.e. DW1 to DW9 who invested the amount in the company accused, to establish that he had refunded the amount to the investors. He had also filed the affidavit of 56 investors to establish that the investors had received their amount along with the interest. He has also filed the vouchers of the company accused showing that the amount was refunded to the investors. This further establishes that A2 was involved actively in the activities of the company accused.

19. In view of the above, I am of the opinion that at the time of commission of offence, A2 was person in-charge and responsible to, the company accused for the conduct of its business, thus he is also liable for the violations committed by the company accused while mobilizing the fund.

20. Pondering over the ongoing discussion, I am of the considered opinion that complainant has succeeded to establish beyond the shadow of all reasonable doubts that company accused had mobilized funds in violation of Section 12 (1B) of the SEBI Act and also violated Regulation 5 (1) & 73 of CIS Regulations, which is punishable under Section 24(1) of SEBI Act. Simultaneously, SEBI has also succeeded to establish that A2 was the person in-charge of, and responsible to, the company accused for the conduct of its business at the time of said violations. Thus, I hereby hold A1 i.e. Shailson

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Plantation Ltd. and A2 Shailesh Kumar Singh guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act. However, complainant has failed to bring home the guilt of A4 Sh. Om Dutt Sharma beyond the shadow of doubts, thus I hereby acquit him from all the charges.

*Announced in the open Court
on this 1st day of June 2012*


(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI





SEBI Vs. Shailson Plantations Ltd. & others

IN THE COURT OF SH. PAWAN KUMAR JAIN,
ADDITIONAL SESSIONS JUDGE-01(CENTRAL):DELHI

Complaint Case No. 7 of 2010
ID No: 02401R5197672004

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Regional office at Block No. 1, Rajendra Bhawan, Rajendra Place District Centre, New Delhi-110 008 and represented by Rekha Verma, Manager, SEBI.

Versus

1. **SHAILSON PLANTATION LTD.**
having its registered office at:
167, Saini Enclave, Bhartendu H.C. Marg,
Vikas Marg, Delhi-110 092

.....Convict no. 1

2. **Sh. Shaillesh Kumar Singh**
S/o Ram Vinod Singh,
Director of M/S Shailson Plantations Ltd.
R/o 32 (B), J & K Block, Laxmi Nagar,
Delhi-110 092

.....Convict no. 2

Present: Sh. Anand Singh, Advocate, Counsel for complainant
Sh. A.K.Bansal, Advocate, counsel for convict no. 2





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ORDER ON THE POINT OF SENTENCE (ORAL):

1. Vide separate judgment dated June 1, 2012, A1 M/s Shailson Plantation Ltd. and A2 Sh. Shailesh Kumar Singh have been held guilty for the offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

2. Learned counsel appearing for convict no.2 requests for a lenient view on the ground that as per the allegations made in the complaint, company accused had mobilized funds to the tune of ₹ 16,39,205/- and submitted that the said amount had already been refunded to the investors. It is submitted that to establish the same, convict no. 2 has placed on record the vouchers and all the affidavits of investors. On the other hand, counsel for SEBI requests for substantial punishment on the ground that company accused has not filed winding up and repayment report till date and has also not produced the audited balance-sheet.

3. I have heard counsel for both the parties and perused the record carefully.

4. As already held that company accused had mobilized funds to the tune of ₹ 16,39,205/- from general public. From the testimony of witnesses examined by the convict, it is clear that company accused had already been refunded the amount to the investors. Even convict no. 2 has filed the vouchers duly signed by the investors. During trial, SEBI has failed to produce any evidence contrary to the same, thus this Court has no reason to disbelieve the same.





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5. Considering the fact that convicts had refunded the amount to the investors, I am of the opinion that ends of justice will be met if convicts are burdened with substantial amount of fine. Accordingly, I hereby impose a fine of ₹ 2 lac upon convict no. 2 Sh. Shailesh Kumar Singh in default simple imprisonment for a period of six months for the offence punishable under Section 24(1) read with 27 of SEBI Act.

6. Convict no. 1 i.e M/s Shailson Plantation Ltd. is also burdened with a fine of ₹ 2 lac for the offence punishable under Section 24 (1) of the SEBI Act.

7. Counsel for SEBI submits that SEBI shall take appropriate steps for realization of fine amount after tracing out the assets of the convict company. Request is allowed.

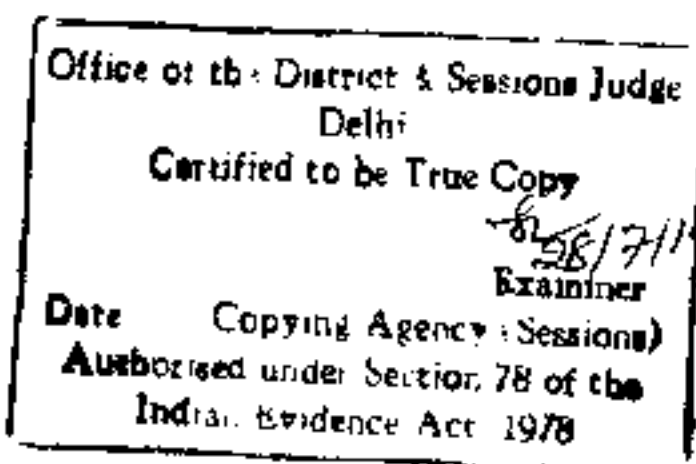
8. Copy of judgment along with order on the point of sentence be given to the convict/his counsel free of cost.

9. Since A3 is proclaimed offender, file be consigned to record room with direction that the same be revived as and when he is apprehended.

*Announced in the open Court,
on this 1st day of June 2012*


(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
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