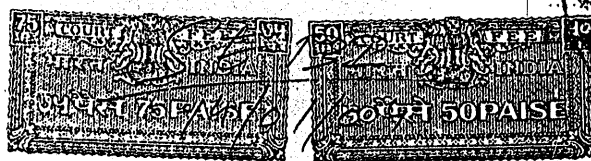


139



IN THE COURT OF MS. MADHU JAIN, A.C.M.M. TIS HAZARI, DELHI.

COMPLAINT NO. 52/2004
14/01/04

IN THE MATTER OF:

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 New Delhi, represented
by its Legal Officer/Manager/Asst.
General Manager Mr. Sharad Bansode.

COMPLAINANT

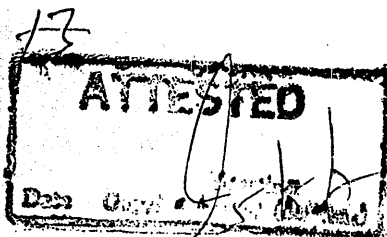
VERSUS

1. THAR INDIA FOREST LTD.
G. S. Road,
Near GOGA Gate Circle,
Bikaner-334001,
Rajasthan.
2. Shri. Lal Chand Gour,
S/o. Shri. N. L. Gour,
R/o. II E, 322,
J.N. Vyas Colony,
Bikaner-334003,
Rajasthan.
3. Shri. Ajit Singh Maharoo,
S/o. Shri. U. D. Maharoo,
R/o. 4 E, 487,
J.N. Vyas Colony,
Bikaner-334003,
Rajasthan.
4. Shri. Om Prakash Chauhan,
S/o. Shri. Babulal Chauhan,
R/o. Karamchari Colony,
Nokha, Bikaner,
Rajasthan.

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.

28

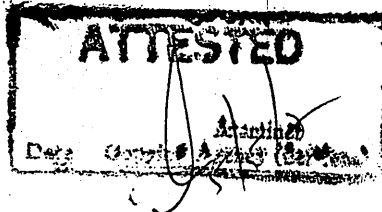


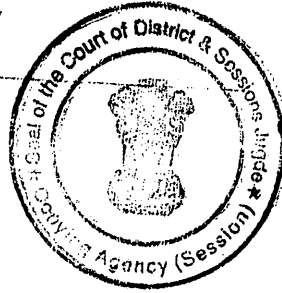


820/000
13-10-06

27-10-06. Pr: counsel Mr. Ruchna
Arora
with accd.
Vide separate orders
accused have been
found guilty. By
request, be put up
On 28.10.06 for order
hearing sentence. *[Signature]*

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28.10.06. Pr. A2-A4 on bail
with Ms. Ruchira Asora.
Heard args. on quantum
of sentence. Be taken
up again for orders on
sentence.

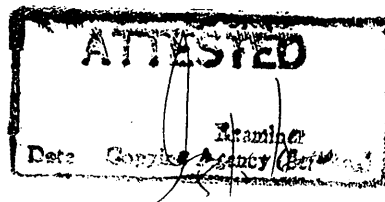
Am
JST.

Vide separate orders
the accused company and
its directors A2-A4 are
sentenced to fine of Rs 8000
each. In default of payment
of fine, the accd Lalchand
Gaur, Ajit Singh Maharao and
Om Prakash Chauhan shall
undergo SI for three months.
Upon payment of fine, the
personal bonds & surety bonds
of the accused will stand
cancelled & sureties will
stand discharged.

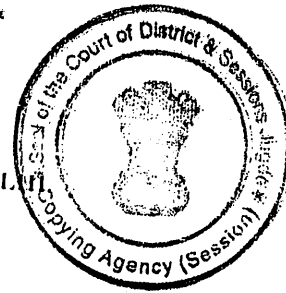
File be consigned to the
records.

Announced in open
Court on 28.10.06.

Ashatthens
JST, Delhi



IN THE COURT OF MS. ASHA MENON: ASJ: DEL.



CC NO.132/2005

SECURITIES & EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having Regional office at New Delhi, represented by its Legal Officer/Manager/Asst. General Manager Ms/Mr. Rakesh Bhanot.
... Complainant

VS.

1. THAR INDIA FOREST LTD.
G.S. Road,
Near Goga Gate Circle,
Bikaner-334001,
Rajasthan.

2. SH. LAL CHAND GOUR
S/o Sh. N.L. Gour,
R/o H E. 322,
J.N. Vyas Colony,
Bikaner-334003,
Rajasthan.

3. SH. AJIT SINGH MAHAROO
S/o Sh. U.D. Maharoo,
R/o 4 E. 487,
J.N. Vyas Colony,
Bikaner-334003,
Rajasthan.

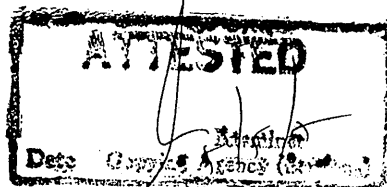
4. SH. OM PRAKASH CHAUDHAN
S/o sh. Babulal Chaudhan,
R/o Karamchari Colony,
Nokha, Bikaner,
Rajasthan.

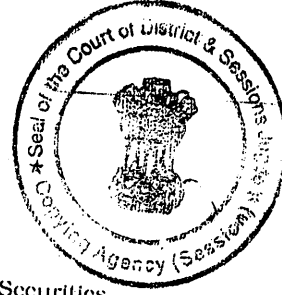
..... Accused

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.

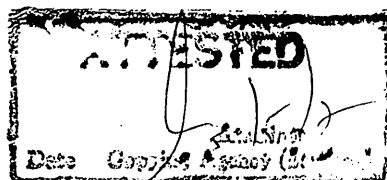
2. The brief background as is necessary for the disposal of the

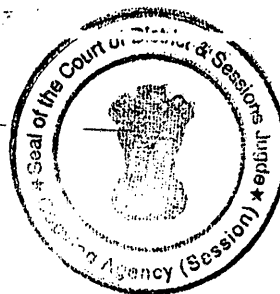




case may be stated. The Government of India passed the Securities and Exchange Board of India Act in 1992 and established the Securities and Exchange Board under the said Act (hereinafter referred to as SEBI) with the aim of providing protection of the interests of investors in securities and promote 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.



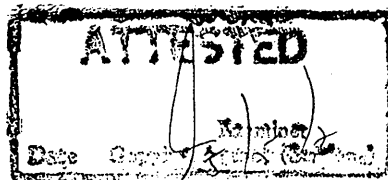


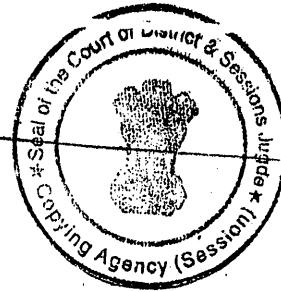
COMPLAINT

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 amount mobilized by the company in various schemes. A sum of Rs.1,20,705 were stated to have been mobilized by the company Thar India Forest Limited and the accused Sh. Lal Chand Gour, Sh. Ajit Singh and Sh. Om Prakash were named as Directors.
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 notice of allegations was served to the accused under S.251 CrPC on 29.7.05, to which the accused pleaded not guilty. The complainant has examined only one witness Ms. Radhika Varma. Thereafter the statements of the accused were recorded under S.313 CrPC. The accused have not examined any witness in defence.

EVIDENCE

- 67 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



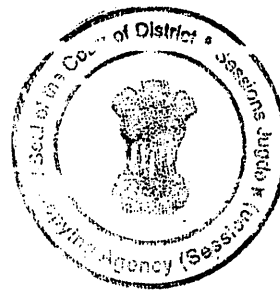


that bonds which were in the nature of Agro and Plantation bonds issued by the companies would be treated as Collective Investment Schemes as stipulated under S11 of the SEBI Act, 1992. She deposed to the second press release dated 26.11.97 and to the public notice dated 18.12.97 issued by the SEBI calling 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 sent along with this letter a copy of an earlier letter dated 14.1.1998 and a brochure containing details of the company's schemes. As per this letter dated 14.1.98, the accused company had mobilized about Rs. 1,20,705 till 31.12.1997 under its CIS. The letter also listed the names of accused 2-4 as the directors of the company. The witness deposed that thereafter the accused sent another letter dated 27.6.98 Ex.CW1/2 enclosing details of the directors/promoters, a copy of the Memorandum and Articles of Association, compliance certificate and a brochure regarding details of its scheme. In a third letter dated 16.1.99, Ex.CW1/3, the accused informed the SEBI that it was not mobilizing any more funds and was in the process of repaying the investors.

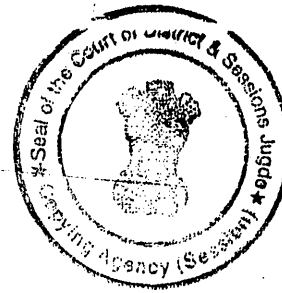
11. The witness deposed further that subsequently the Regulations were notified on 15.10.99. Intimation about the notification was given by a public notice issued on 20.10.99 and by specific letter dated 21.10.99 sent to the company by registered post. The witness deposed that the letter returned undelivered 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 letters dated 10.12.99 and 29.12.99. However, both the letters returned back to the SEBI as unclaimed by the addressee.

ATTESTED
Examiner
Copying Agency (Session)



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. But no response was received from the accused. 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. In response to this, the accused company sent letter dated 9.3.2001, Ex.CW1/14 submitting that it had completed repayments to all its investors. The SEBI sent letter dated 19.3.2001 to the accused reminding it to send the winding up report in the format sent to it on 31.7.2000. Once again, this letter returned to the SEBI undelivered. A public notice was issued by the SEBI 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 the Ld. Counsel for the accused. During her cross examination the witness stated that she had been deposing only on the basis of the records. She stated that she had no knowledge that the investors were the directors and their family members and friends. She refuted the suggestion that the accused had not received or mobilized any money from the public. She refuted the suggestion that the accused had no liability to pay any investors and asserted that as per the information received by the SEBI, the sum of Rs.1,25,705 had been collected from the public. She deposed that two investor complaints had been received against the accused company as per the records. She refuted the suggestion of the defence that through the correspondence placed on the record it was apparent that the accused had fully complied with the requirements under the Regulations. She denied the suggestion that the accused had not received the letter dated 31.7.200 along with the format of the WRR. She denied that the accused had submitted the details of the





winding up by the accused and had thus complied with the directions issued by the SEBI. She denied that the complaint was a false one meant to harass the accused.

14. This constitutes the entire evidence that has been brought on the record by both sides.

CONTENTIONS

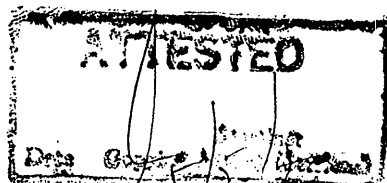
15. Sh. Sanjay Mann for the SEBI has argued that the SEBI had given information to all entities running collective investment schemes through issuance of public notices and the accused had responded to one such notice. The letters had been sent at the addresses furnished by the accused and if the letters had returned, the accused ought to be blamed. As such the Ld. Counsel has argued that the accused could not claim relief on the grounds of ignorance. It was submitted that the accused had violated the law meant for investor protection and were therefore to be dealt with in keeping with the purpose of the enactments.

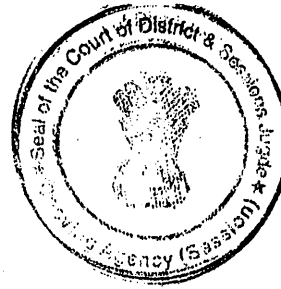
16. On the other hand, the Ld. Counsel for the accused Ms. Ruchira Arora, has submitted that the company had functioned only for a short time and the money had been invested only by family and friends. She submitted that the investors had been repaid over a period of time and receipts obtained upon such repayment proved the fact. It was submitted that the accused had committed a small mistake in not informing the SEBI about the repayment. It was submitted that there was nothing intentional in the non-delivery of the letters of the SEBI to the company and this had happened only on account of change in the address. On these contentions, the Ld. Defence counsel has prayed that the accused be dealt with leniently.

FINDINGS

17. I have heard the counsel for both sides and I have carefully perused the evidence on the record.

18. It is apparent from the evidence that there is no quarrel about certain facts. Thus, it is admitted that the accused company had floated collective investment schemes and a sum of Rs. 1,20,705 had been raised. It is also an admitted fact that the accused 2-4 are the directors of the accused company. It is another admitted fact that the accused had never applied for registration with the SEBI. It is also admitted that the accused have not filed any winding up or repayment





7

reports in format with the SEBI.

19. The accused have claimed that all amounts had been contributed by the directors and their relatives and friends and that investors stood repaid in the year 1998 itself. But there is nothing to substantiate these claims. No shred of evidence has been brought on the record to show who the company's investors were especially that they were connected with the accused only. The letters sent by the accused to the SEBI being Ex.CW1//1 & 2 do not mention or even suggest that no outside funds were involved. No presumption can be drawn in the favour of such a contention. As regards repayment, apart from the information given to the SEBI that repayments were in progress, there is not an iota of evidence proving such repayments. No balance sheets or accounts have been placed on the record to show such repayments. Rather, the witness has stated there were two investor complaints against the accused.

20. It is thus clear that the accused have not complied with the Regulations. The explanation of non receipt of the format is not acceptable, since the letter dated 31.7.2000 had not been received back by the SEBI. Secondly, the SEBI had addressed letters to the accused at the very addresses furnished by themselves and if the communications were not received, it could be only due to the wrong address being furnished by the accused or because of their refusal to receive the letters. In either case, the accused are to be blamed.

21. Thus, the accused are liable for the lapse committed by them in not furnishing the WRR to the SEBI in format as required under the Regulations of 1999.

CONCLUSION

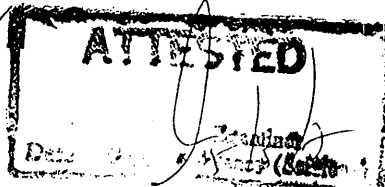
22. In the light of the foregoing discussions I hold the accused company Thar India Forest Limited and the accused Sh. Lal Chand Gour, Sh. Ajit Singh and Sh. Om Prakash who are its Directors guilty of the violations of the Regulations 73,74 read with Regulations 5,68 (1&2), of the SEBI (CIS) Regulations 1999 punishable under S.24/27 SEBI Act 1992. They are entitled to be heard on the quantum of the sentence to be awarded to them.

ANNOUNCED IN OPEN COURT ON

27.10.06

Ashia Menon
(ASHIA MENON)

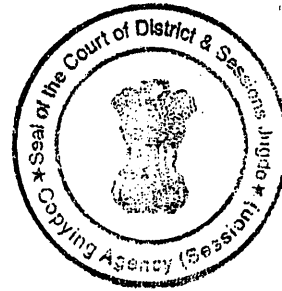
Addl. Sessions Judge: Delhi.



71
Copy given
to all members
of the court
at 10:00
28/10/06

① *[Signature]*
② *Ajit*

③ *[Signature]*



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

CC No. : 132/05

SEBI Vs. M/S Thar India Forests Ltd.

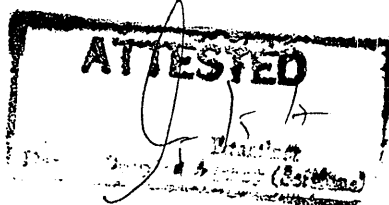
ORDER ON SENTENCE

I have heard Ms. Ruchika Arora for the accused on the quantum of sentence. Learned Counsel submits that the accused are resident of Bikaner and have been regularly attending the court and the trial. Ld. Counsel has submitted that the accused had collected only a paltry amount from the investors who were only family members and friends and who had been repaid. She has submitted that considering the background of the accused as they are school Teachers a lenient view may be taken.

As already opined in my judgment repayment is not proved and infact the testimony of the CWI shows that one investor had complained against the accused. In the circumstances, violation cannot be considered lightly. However, keeping ^{their} ~~in view~~ background in mind no sentence of imprisonment is being imposed.

I, accordingly, sentence the accused no.1 Company M/S Thar India Forests Ltd. and Accused Lal Chand Gour, Accused Ajit Singh Maharoo and Accused Om Prakash Chauhan to a fine of Rs.8,000/- each. In default of the payment of the fine the Accused Lal Chand Gaur, 73 Accused Ajit Singh Maharoo & Accused Om Prakash Chauhan shall 8M undergo simple imprisonment for 3 months. On deposit of the fine,

Contd.. P/2..





- 2 -

the Personal Bond and Surety Bonds of the accused shall stand cancelled and sureties will stand discharged.

File be consigned to records.

Announced in the open court.

Dt: 28-10-06

Ashakumar
(ASHA NENON)

Addl. Sessions Judge: Delhi

*Copy given to
accused in open
court at POC
28/10/06*

- ① *[Signature]*
- ② *Asadul*
- ③ *Chauhan*

