

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

COMPLAINT NO. 54 /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

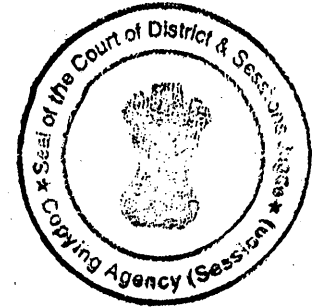
1. TRIMURTI FORESTRY LTD.  
101 & 103, (F.F.), Aditya Complex,  
C-Block, Yamuna Vihar,  
Delhi-110053.
2. Shri. Kunj Bihari Lal Saxena,  
S/o. Late Gauri Shankar Saxena,  
R/o. B-4/125, Yamuna Vihar,  
Delhi-110053.
3. Shri. Radhey Govind Saxena,  
S/o. Late Anokhey Lal Saxena,  
R/o. B-457, MIG, DDA Flats,  
East Of Loni Road, Delhi-110053.
4. Smt. Uma Saxena,  
W/o. Shri. Kunj Bihari Lal Saxena,  
R/o. B-4/125, Yamuna Vihar,  
Delhi-110053.
5. Shri. Ravindra Nath Saxena,  
S/o. Shri. Shimbhoo Nath,  
R/o. Mandi Chob, Amroha, (U.P.)
6. Smt. Madhu Saxena,  
W/o. Shri. Sheelash Govind,  
R/o. C-6/268, Yamuna Vihar,  
Delhi-110053.
7. Shri. Sallauddin,  
S/o. Late Hazi Amir Baksh,  
R/o. 37, Ppark End, Vikas Marg,  
Delhi-110092.

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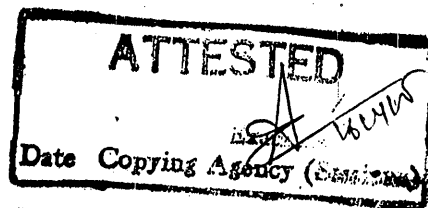
8. Smt. Parul Saxena,  
W/o. Shri. Deepak Saxena,  
R/o. 6/6, Arya Bhatt Enclave,  
Ashok Vihar, Delhi.

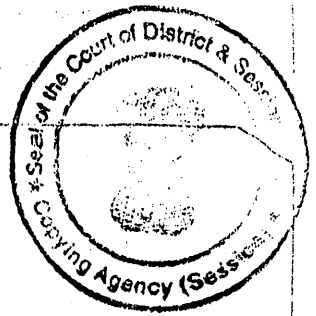
9. Shri. Sumit Gupta,  
S/o. Not Known,  
R/o. B-387, Meera Bagh,  
Near Pashim Vihar, New Delhi.



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.





Govind Saxena, Smt. Uma Saxena, Sh. Ravindra Nath Saxena, Sh. Sallauddin, Smt. Parul Saxena and Sh. Sumit Gupta shall undergo simple imprisonment for three months.

On deposit of fine the personal bonds and surety bonds of accused shall stand cancelled and sureties are discharged.

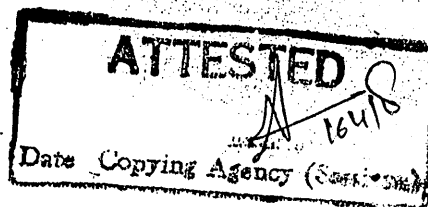
File be consigned to the records.

*Asha Menon*  
(ASHA MENON)

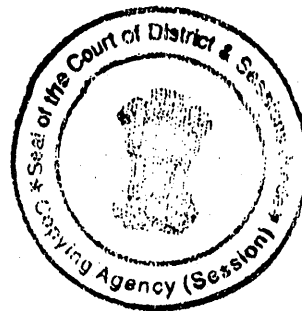
Announced in the Open Court

Dated: 27.10.06.

Addl. Sessions Judge: Delhi.



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



CC 32/04

SEBI-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  
Bhansode.

..... Complainant

Versus

1.TRIMURTI FORESTRY LTD.  
101 & 103, (F.F.), Aditya Complex,  
C-Block, Yamuna Vihar,  
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2.SH. KUNJ BIHARI LAL SAXENA  
S/o Late Gauri Shankar Saxena,  
R/o B-4/125, Yamuna Vihar,  
Delhi-110053.

3.SH. RADHEY GOVIND SAXENA  
S/o Late Anokhey Lal Saxena,  
R/o B457, MIG, DDA Flats,  
East of Loni Road, Delhi-53.

4.SMT. UMA SAXENA  
W/o Sh. Kunj Bihari Lal Saxena,  
R/o B-4/125, Yamuna Vihar,  
Delhi-53.

5.SH.RAVINDRA NATH SAXENA  
S/o Sh. Shimbhoo Nath,  
R/o Mandi Chob, Amroha, UP.

6.SMT. MADHU SAXENA  
W/o Sh. Sheelash Govind,  
R/o C-6/268, Yamuna Vihar,  
Delhi-110053.

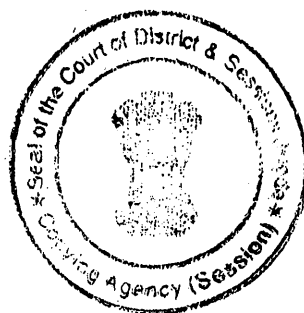
7.SH.SALLAUDDIN  
S/o Late Hazi Amir Baksh,  
R/o 37, Park End, Vikas Marg,  
Delhi-92

8.SMT.PARUL SAXENA  
W/o Sh. Neepak Saxena,  
R/o 6/6, Arya Bhatt Enclave,  
Ashok Vihar, Delhi.

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9.SH. SUMIT GUPTA.  
S/o Not Known,  
R/o B388, Meera Bagh,  
Near Paschim Vihar,  
New Delhi.



### 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.

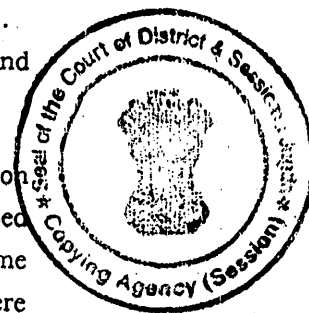
2. The brief background as is necessary for the disposal of the case may be stated. The Government of India passed the Securities and Exchange Board of India Act in 1992 and established the Securities and Exchange Board under the said Act (hereinafter referred to as SEBI) with the aim of providing protection 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

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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.1,77,700 were stated to have been mobilized by the company and the accused Sh. Kunj Behari Lal Saxena, Sh. Radhey Govind Saxena, Smt. Uma Saxena, Sh. Ravindra Nath Saxena, Smt. Madhu Saxena, Sh. Sallauddin, Smt. Parul Saxena and Sh. Sumit Gupta were named as Directors.

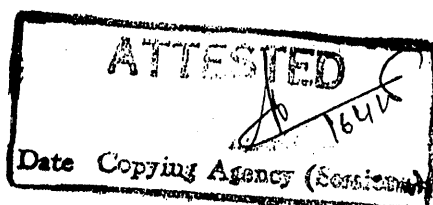
6. It is alleged that after the coming into force of the Regulations in 1999, the SEBI had sent registered letters in December 1999 at the address of the company. Public notice was also issued, in order to inform the accused of the obligations that existed under the regulations, calling upon them to 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 up to 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

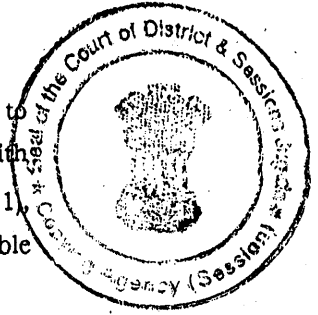
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month from the date of these directions. Since the company failed to comply with these directions and had also not sought registration with the SEBI, the complaint has been filed for violation of Regulations 5 (1), 68 (1), 68 (2), 73 & 74 of the SEBI (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 29.4.05, to which the accused pleaded not guilty. The complainant has examined only one witness Sh. Rakesh Bhanot. After the statements of the accused were recorded under S.313 CrPC, the accused have examined five witnesses in defence.

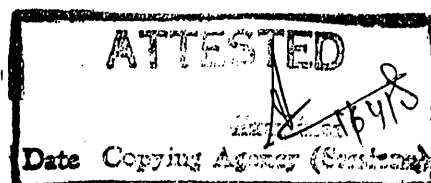
#### EVIDENCE

9. As CW1 Sh. Rakesh Bhanot 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. He deposed to the second press release 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 pursuant to this press release and public notice the accused company had submitted their details vide their letter Ex.CW1/1 along with a copy of pass-book for recurring deposit scheme, copy of application form along with terms and conditions, offer document containing salient features of its scheme. As per this letter dated 4.2.98, the accused company had mobilized about Rs. 1,77,700 under its CIS. The letter listed the names of accused 2-9 as the directors of the company. The witness deposed that the accused had sent another letter dated 28.4.98 to the SEBI which is Ex.CW1/2 annexing the copy of the Memorandum and Articles of Association and furnishing the names and addresses of the Directors as on 31.3.98.

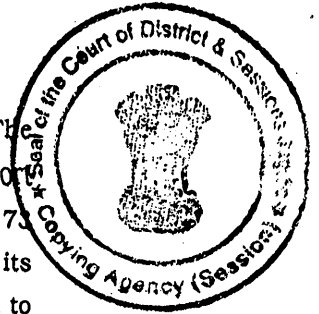
11. The witness deposed further that after the notification of the Regulations on 15.10.99, a public notice was issued on 20.10.99 and the

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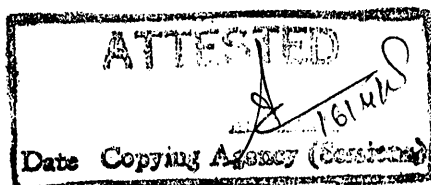
company was sent specific letter dated 21.10.99 by registered post. The witness deposed that the letter returned back to the SEBI with the report that the addressee had left. He deposed that in terms of Regulations 73 and 74 the company was required to apply for registration or wind up its operations. 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 with the postal remarks that the addressee had left without address and the premises were found locked.

12. CW1 Sh. Rakesh Bhanot deposed further that since the accused company had not complied with the regulations, show cause dated 12.5.2000 had been issued to it. Vide letter dated 31.7.2000 the SEBI forwarded the format for submission of the winding up and repayment reports to it. But both these communications were returned undelivered. Thereafter, the SEBI Chairman passed orders dated 7.12.2000 directing the accused company to repay its investors as per the original terms of offer. Once again the letter returned to the SEBI with the report "left without address". A public notice was issued by the SEBI in the Hindustan Times and other vernacular newspapers, informing all defaulters about their obligations under the regulations and warning of action including prosecution in case of default. The name of the accused company appeared at serial no.476 in this list. He deposed that there had been no compliance till the filing of the complaint.

13. The witness was cross examined by the Ld. Counsel for the accused. During his cross examination the witness stated that from the record he could state that there were no investor complaints against the accused company. He deposed that it was in order to address the issue of return of letters undelivered to the company that the public notices and press releases had been issued by the SEBI. He admitted that no letters had been individually sent to the directors of the company though their addresses were available on the record.

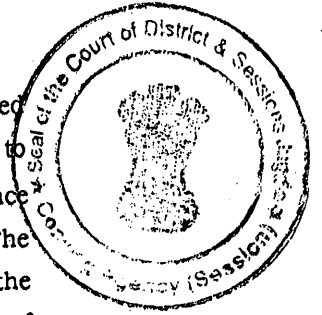
14. The witness admitted that the accused Smt. Madhu Saxena was reported to have resigned on 10.11.1997. He deposed further that the

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SEBI was not aware of the repayments made to any investor. He deposed that till the filing of the complaint no such information was furnished to the SEBI by the accused. The witness admitted to the correspondence with the accused in the year 2005. These are Ex.CW1/DA to DF. The witness refuted the suggestion that the accused had failed to submit the repayment report with the SEBI only on account of non receipt of instructions. He explained that the newspaper publications contained the instructions. He stated that he had no knowledge that the accused had not collected any deposits after December 1997.



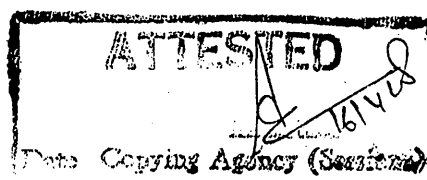
15. Turning to the evidence led in defence, as noticed, five defence witnesses have been examined. DW1 is Sh. Deepak Kumar Saxena, who deposed that he had invested Rs.25,000 in Trimurti Forestry Ltd. In the year 1997 and had received this amount in cash in the year 1998. He claimed to have received some interest too on his investment. During cross-examination he stated that he could not recall if he had signed any document at the time of making the investments.

16. DW2 is Sh. Navneet Saxena, who stated that he had invested Rs.15,000 in the company and had received the money back in a year's time, in cash. He deposed that he had signed a voucher at the time of receiving back his money. During his cross-examination he deposed that he had learnt about the company during his tenure at the Stock Exchange. He deposed that he had not insisted on interest as a prudent measure as the company was not doing well and was closing down. He deposed that the receipt issued by the company to him at the time of investment had been taken back at the time of repayment to him.

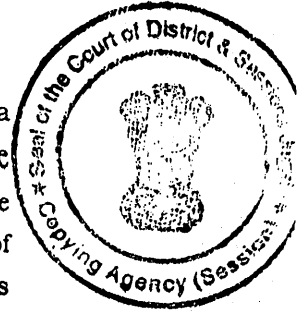
17. DW3 is Sh. Subhash Chand Pandey who had invested Rs.5000 on 10.10.1997 and had received the money in cash in December 1998, without interest. He claimed to have learnt about the company from the hand bills that were distributed. He stated that he had filled in a form at the time of investment but had not been issued any receipt at that time by the company. He admitted that he had not received any interest.

18. DW4 is Sh. Shivjeet Singh. He deposed that he had been working in the collection department of the accused company from 1997 to 1999. He deposed that the company had its office at Aditya Complex ,

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C Block , Yamuna Vihar. He claimed to have made collections in the area of Sonia Vihar and to have issued pass-books to the investors. He claimed that he had returned the money to the investors and to have taken back the pass-books. He placed on record forty photocopies of receipts issued by investors to whom he had repaid the money. In his cross-examination he revealed that he himself had made no investment in the company.



19. DW5 is Sh.K.M.Azad , a Chartered Accountant . He stated that he had carried out the audit of the company and as per his findings the company had collected a sum of Rs.1,87,300 during the year 1997-98 and the entire money had been repaid by the company in the year 1998-99. He brought on record the copies of his reports, duly receipted by the SEBI as Ex.DW5/A and B dated 12.7.06 and 14.8.06.

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

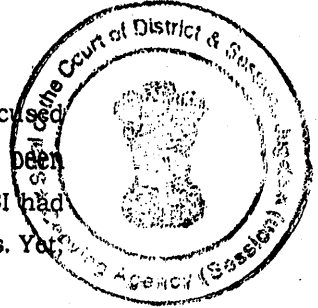
#### CONTENTIONS

21. Sh.Sachit Setia for the SEBI has argued that the accused themselves had furnished information to the SEBI about the collection of Rs.1.8 lacs from the public through their collective investment schemes. It was submitted that the accused had however failed to comply with the regulations and fulfill the norms set by the SEBI. He pointed out that it was only after the complaint was filed that the accused have made an attempt to repay the investors and submit the compliance to the SEBI. Ld. Counsel for the SEBI has submitted that had the investors been repaid, there was no reason why the SEBI had not been informed about it at that time, since the Auditor's report has been submitted only in 2006.

22. The Ld. Defence counsel Sh.Sachin Aggarwal has argued that that when the accused company had wound up in the year 1998, the regulations could under no circumstance apply to it. It was submitted that the money collected in the year 1997 had been returned in 1998-99. Interest had also been paid. Thus, no amount remained payable at the time the Regulations came into force. This, according to the Ld. Defence Counsel was proved by the testimony of DW5. Ld.

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Counsel submitted that the flat from where the office of the accused company had been running had been sold out and the SEBI had been informed of the change in address. It was contented that the SEBI had been informed on 24.9.98 that the company had closed its business. Yet, SEBI had suppressed such information.

23. It was submitted that since the SEBI had not informed the directors individually, and had sent the communications inexplicably at the old address of the company, the accused were not at fault. Finally it has been argued that the company had no obligations and the failure of the accused to inform the SEBI about the repayment did not constitute any violation of the Regulations. It has been submitted that interest was not payable as the schemes were prematurely closed. On these contentions, the Ld. Defence counsel has prayed that the accused be acquitted.

#### FINDINGS

24. From the evidence and the contentions, it can safely be held that the accused company was a company running collective investment schemes in the nature of Agro and Plantation bonds. This is also clear from Ex.CW1/1. The amount collected up to 31.12.1997 was mentioned as Rs.1,77,700 under three schemes. There is also no controversy that the names of accused 2-9 had been furnished to the SEBI as Directors of the company. However, it is also clear from these details that accused no.6 Smt. Madhu Saxena had resigned on 10.11.1997 and accused no.9 Sh. Sumit Gupta had been appointed in her place as director. Therefore, the accused no. 6 cannot be held liable for the non-compliance of the Regulations which came into force subsequent to her resignation.

25. The same logic is not available to the other accused. They admit that they were directors but claim that they were not involved in the affairs of the company. Once the accused chose to become directors, until and unless they proved through convincing evidence that they in fact had no role to play in the affairs of the company, they cannot be exonerated from the obligations under law. They have laid no such evidence on the record. In fact the accused who claim not to have even attended any meeting of the Board of Directors have to be found guilty of

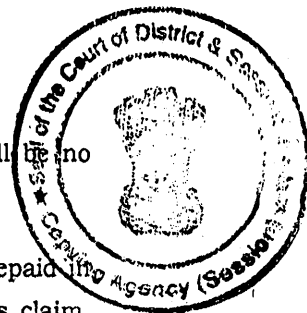
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abrogating their legal duties under the Companies Act and will be no reason to deal with them more favourably.



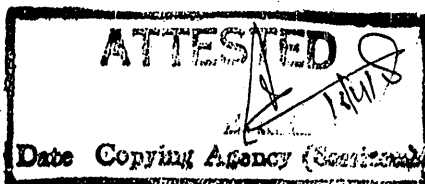
26. The accused have claimed that all amounts stood repaid in the year 1998. But again, there is nothing to substantiate this claim. Had there been any evidence to prove that the accused company had no amount remaining outstanding to be paid to any of its investors, by the time the Regulations came into force in 1999, it was indeed possible to hold that the company and its directors were not bound by the obligations under the Regulations. It could have been then said that since the accused company was no longer an existing company at the time of the commencement of the Regulations, the same were inapplicable to it. But in the absence of any such evidence of repayment the only conclusion that can be drawn is that the accused company and its directors were obliged to comply with the requirements under the Regulations and the orders of the SEBI Chairman issued thereunder.

27. The defence evidence cannot help the accused in this regard. Though it is claimed by the accused that the company had issued pass-books to its investors and though DW4 claims to have taken back pass-books from investors repaid by him, no pass-book of DW1-3 have been placed on the record by the accused to prove that they had been repaid. Though they claimed that they had signed vouchers in receipt of the money, no such vouchers have been placed on the record. The report of the DW5 does not also confirm full repayment, since it could confirm repayment of Rs.1,40,200 out of Rs.1,87,300.

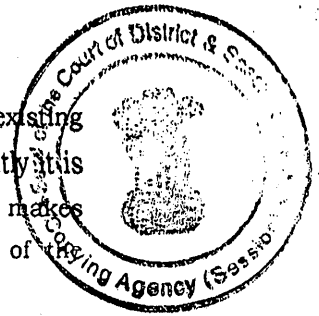
28. Even if the SEBI had not placed on the record any letter dated 24.9.98, the accused could have proved the dispatch of such a letter and sought the production of such a letter from the records of the SEBI. In the absence of such a letter, there can be no ground to believe that the company had ceased its business since the year 1998, and were thus not an existing company at the time of notification of the Regulations. The accused have varyingly claimed repayment in the year 1998 and 1999. Proof was thus paramount.

29. The letter dated 28.4.98, Ex.CW1/2 cannot be read as information to the SEBI about closure of its operation. It only informs that no new collective investment schemes have been floated after the

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public notice dated 18.12.97. It also informs that even under the existing schemes no further collections have been effected. But, significantly this is silent on what happened to the existing funds already collected. It makes no reference to any repayment or of winding up and closure of existing schemes.



30. In this context no plea of ignorance can come to the aid of the accused since their first communications with the SEBI had been even in the absence of specific letters addressed to the directors by the SEBI. Having responded to the SEBI's letters addressed to the company alone, the accused cannot claim the defence of lack of particular communications with the directors for non-compliance. In fact the accused who had assured "compliance with any further directions on collective investment schemes that may be issued by the SEBI from time to time", vide their letter dated 28.4.98 to the SEBI, have to be attached with the knowledge of the other public notices and press releases issued by the SEBI subsequent to the notification of the Regulations in respect of the collective investment schemes.

31. The name of the company was listed in the list of defaulters published in the Hindustan Times on 14.1.2001. The accused 2-9 are not illiterate people. The notice at least should have woken them up. Admittedly, the accused had not applied for registration with the SEBI. They were obliged to then submit the repayment and winding up report as called for from them. But they failed to do so. The explanation offered of repayment having remained unsubstantiated, clearly, their non-compliance is completely willful and intentional.

#### CONCLUSION

32. In the light of the foregoing discussions, while I acquit the accused no.6 Smt. Madhu Saxena, I hold the accused company Trimurti Forestry Limited and its directors, the accused Sh. Kunj Behari Lal Saxena, Sh. Radhey Govind Saxena, Smt. Uma Saxena, Sh. Ravindra Nath Saxena, Sh. Sallauddin, Smt. Parul Saxena and Sh. Sumit Gupta 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.

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Copy given  
to all accused  
in open court  
for copy  
27/10/06

Announced in the Open Court  
Dated: 27.10.2006.

Announced  
27/10/06

Asha Menon  
(ASHA MENON)

Addl. Sessions Judge: Delhi.

ATTESTED



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

CC NO.32/2004

SEBI VS.

TRIMURTI FOREST LTD AND ORS

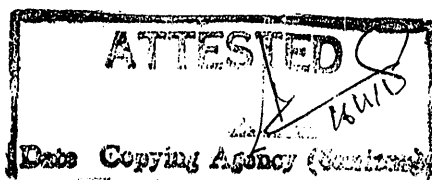
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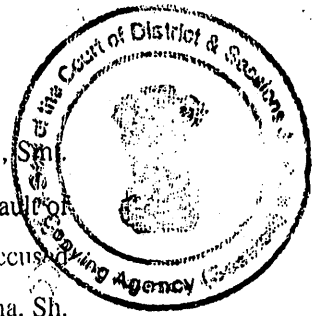
I have heard Sh. Sachin Aggarwal counsel for the accused on the quantum of sentence. Learned counsel submits that the accused no.5 is a Government servant and he may be dealt with accordingly. It is argued that the accused no.4 is a renal patient and it is submitted on behalf of other accused that none of them had signed any paper and were not involved in the companies affairs.

Sh.Mann has prayed that accused be dealt with as per law keeping in mind the purpose of the enactment. He has submitted that but for the introduction of the regulations by the SEBI to check the activities of the companies floating CIS, even the present accused would have done everything in their might to obtain as much money from the gullible public by promising high and unrealistic returns. Hence he has submitted that the accused be awarded suitable punishment.

Having heard the submissions and keeping in mind all the circumstances of this case, I am of the considered view that internment in jail may not be necessary in this case though the law provides for it. Keeping in mind the fact the accused had all joined hands with the singular aim of exploiting expectations of the public and thus enrich themselves the plea taken that except for the accused who had signed the papers other were less culpable has to be rejected. When sentiments were shared for making profits and when the accused signing papers was doing so in furtherance of the joint and common intentions there can be no escape from joint liability. The accused in this case are not uneducated or lay persons and in fact they had themselves undertaken to comply with further directions of the SEBI. The further plea that a small amount was involved would only reflect the success of the venture and not the aim of the accused.

137 In the circumstances, I sentence the accused no.1 company Trimurti Forestry Ltd, accused Kunj Bihari Lal Saxena, Sh. Radhey Govind





Saxena, Smt. Uma Saxena, Sh. Ravindra Nath Saxena, Sh. Sallauddin, Smt. Parul Saxena and Sh. Sumit Gupta to a fine of Rs.10,000/-each. In default of payment of the fine the accused company Trimurti Forestry Ltd, accused Kunj Bihari Lal Saxena, Sh. Radhey Govind Saxena, Smt. Uma Saxena, Sh. Ravindra Nath Saxena, Sh. Sallauddin, Smt. Parul Saxena and Sh. Sumit Gupta shall undergo simple imprisonment for three months.

On deposit of fine the personal bonds and surety bonds of accused shall stand cancelled and sureties are discharged.

File be consigned to the records.

Announced in the Open Court

Dated:27.10.06.

*Ash Menon*  
(ASHA MENON)

Addl. Sessions Judge, Delhi.

*Copy given to  
accused in open  
Court at Rm  
24/10/06  
12/11/06*

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