

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

COMPLAINT NO. 1206 /2003,

IN THE MATTER OF:

16/12/03

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 Ms./Mr. Rakesh Chauhan.

09401R0326322003

COMPLAINANT

VERSUS

1. VASUDHAIV PLANTATIONS & LIVESTOCKS LTD.
Buxipur Crossing,
Ali Nagar Road,
Gorakhpur - U.P.
2. Shri. Manoj Kumar Gupta,
S/o. Dr. R.K. Gupta,
R/o. Cinema Road,
Gorakhpur - U.P.
3. Shri. Vijay Kumar Gupta,
S/o. Shri. Murari Lal Gupta,
R/o. C-127/187, Dilezakpur,
Gorakhpur - U.P.
4. Shri. Alok Sinha,
S/o. Shri. Upendra Pd Sinha,
R/o. E-1998/6, Rajajeeपुरam,
Lucknow-U.P.
5. Shri. P.K. Samant,
S/o. Shri. C. S. Samant,
R/o. B-23, Suraj Kund Colony,
Gorakhpur - U.P.

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.



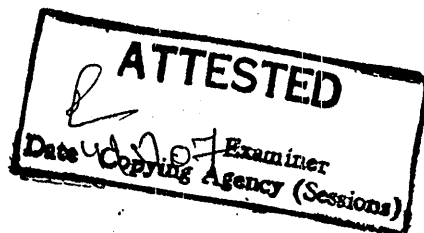


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1153
20-10-06
Prs Name for SEBI
Accused 2, 3 & 4 on bail
also for A.I. with counsel.
Vide separate orders
of even date the
accused company &

a 2 numbered 1



10/28/07



the accused 2-5, being
the Directors are connected
and sentenced to a fine
of Rs 30,000 each. In default
of payment of fine the accused
Manoj Kr. Gupta, Vijay Kumar
Gupta, Abot Sanka and
R.K. Samant shall undergo

SI for six months.

On payment of fine the
personal bonds & surety bonds
shall stand cancelled and
the sureties will stand
discharged.

File be consigned to the
records.

Announced in
open court on
28.10.06.

J. Shastri
Asst.





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

CC NO.88/2005

SECURITIES & 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 Ms/Mr. Rakesh Bhanot.

... Complainant

VS.

1. VASUDHAIV PLANTATIONS & LIVESTOCK LTD.
Buxpur Crossing,
Ali Nagar Road,
Gorakhpur U.P.
2. SH. MANOJ KUMAR GUPTA
S/o Dr. R.K. Gupta,
R/o Cinema Road,
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3. SH. VIJAY KUMAR GUPTA
S/o Sh. Murari Lal Gupta,
R/o C-127/187, Dilczakpur,
Gorakhpur -U.P.
4. SH. ALOK SINHA
S/o Sh. Upendra Pd. Sinha,
R/o E-1998/6, Rajajeeppuram,
Lucknow U.P.
5. SH. P.K.SAMANT
S/o Sh. C..S. Samant,
R/o B-23, Suraj Kund Colony,
Gorakhpur U.P.

..... 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



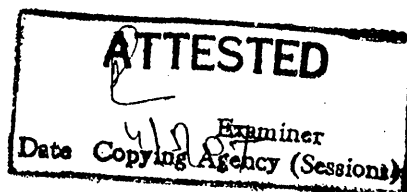


the securities markets. S.11(1) of the Act provides for the duties of the Board. It was noticed by the Government that a large number of private entrepreneurs were undertaking plantation activities, raising the funds from ordinary investors from the capital market, themselves investing only frugal amounts 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 have 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.9.7 lacs were stated to have been mobilized by the company and the accused Manoj Kumar Gupta, Vijay Kumar Gupta, Alok Sinha and P.K.Samant were named as Directors.

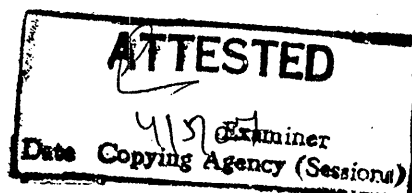
6. It is alleged that after the coming into force of the Regulations in 1999, the SEBI had sent a registered letters in December 1999 at the address of the company. Public notice was also issued, in order to inform the accused of the obligations that existed under the regulations, calling upon them to 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 16.12.03, the accused were summoned to face trial. The notice of allegations was served to the accused under S.251 CrPC on 7.10.05, 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 three 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 the Memorandum and Articles of Association. As per this letter dated 30.4.98, the accused company had mobilized about Rs. 9.7.lacs under its CIS. The letter listed the names of accused 2-5 as the directors of the company. The accused company had also annexed the latest audited balance sheets as of 31.3.97.
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 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 company had closed.
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". 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.491 in this list. He deposed

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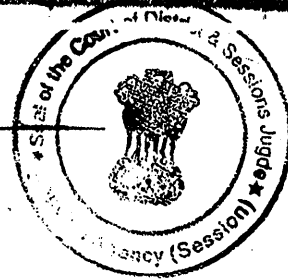
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that there had been no compliance till the filing of the complaint.

13. The witness was cross examined by the Ld. Counsel for the accused. During his cross examination the witness stated that in the absence of any such information with him as filed by the accused with the SEBI, he could not say that all the investors had been repaid by the accused even prior to 15.10.99. He admitted that the complaint had been filed on the basis of the information furnished by the accused themselves. He stated that he was not aware whether the accused P.K.Samant had resigned as director on 7.1.98. He denied that the accused had been impleaded without any liability. Similarly the witness stated that on the basis of the Form 32 put to him the accused Alok Sinha had never been the director of the Company between 1996 and 2001.
14. The witness denied that the accused company had been dealing with live stock and not with plantations. He pointed to the use of the word "plantation" by the company itself in its letter head. He, therefore, refuted the suggestion that in these circumstances the accused company was not governed by the regulations. He deposed that the SEBI had not distinguished between CIS for plantation and livestock. He could not affirm or deny that the company had stopped operation in 1997 or that the investors had been repaid in 1998. He admitted that no independent verification had been carried out by the SEBI before the complaint was filed. He denied that the complaint is barred by time.
15. Out of the three defence witnesses DW1 is Sh.B.K.Kumar Gupta who deposed that he had not taken any fund under the plantation scheme. He filed the balance sheet for the year 1997 as Ex.DW1/1. DW2 is the accused Alok Sinha, who deposed that he had never been the director of the accused company. He placed on record certified copy of the Form 32 as Ex. DW2/1. DW3 is the accused Pradeep Kumar Samant. He deposed that he was not the director of the accused company since he had resigned on 7.1.98. He deposed that his resignation had been accepted by the company and a no dues certificate had also been issued by the company in his favour. He deposed that he had also sent a telegram and letter to the ROC informing them about the resignation. He stated that the company had issued to him a copy of Form 32.

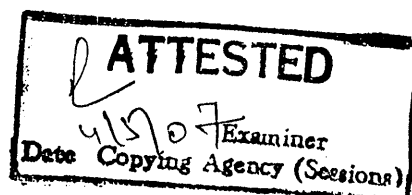




16. This constitutes the entire evidence that has been brought on the record by both sides.

CONTENTIONS

17. Sh.Sachit Setia for the SEBI has argued that the SEBI had been given information by the accused themselves and had themselves described the company as a plantation company. It was submitted that the SEBI being a government body would have been furnished the correct information by the accused and so there was no need for the SEBI to have verified further the details from independent sources before the case was filed. He pointed out that the accused had not filed any brochure or other matter to prove that they had no agro or plantation based CIS. It was submitted that the SEBI had issued public notices and the accused had responded to one such notice. The letters had been sent at the addresses furnished by the accused. As such the Ld. Counsel has argued that the accused could not claim relief on the grounds of ignorance.
18. The Ld. Defence counsel Sh.Ajay Kumar Srivastava has argued that in the absence of any evidence as brought on the record by the complainant that the accused had raised any money under plantation schemes, the case was liable to be dismissed. The Ld. Counsel has argued that the company had been involved only in running a milk diary. Hence his first argument is that the regulations had no applicability to the activities of the company. It is also submitted that no guidelines had been in existence when the company had been formed. According to Ld.counsel, the regulations were applicable only to companies to be formed in the future. He has submitted that when the accused company had wound up in the year 1998, the regulations could under no circumstance apply to it. Finally it has been argued that since the company had no obligation to do so, not being governed by the regulations, the failure of the accused to inform the SEBI about the repayment did not constitute any violation of the regulations.
19. The Ld. Counsel has argued that neither the accused Alok Sinha nor the accused P.K.Samant was liable for any lapse attributable to the company since they had no role to play in the affairs of the company. On these contentions, the Ld. Defence counsel has prayed that the accused be acquitted.



FINDINGS

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

21. There is no force in the argument that the complaint is barred by limitation. The accused had been given time till 31.3.2001 to comply with the directions issued by the SEBI Chairman on 7.12.2000. When the accused failed to comply with the directions by that date, it can only be said that they first committed the offence on 1.4.2001. Since the SEBI is obligated to protect the interest of investors, it has to be satisfied that the investors had been actually repaid. For this they have prescribed a certain format. It is only when the winding up and repayment report has been found satisfactory by the SEBI that the compliance of the directions would be complete. Till then the offence continues. Compliance is no doubt a one time compliance. Under Regulations 73 and 74 the company which has not obtained registration had to wind up the schemes and repay the investors and file that information with the SEBI. So had the company filed the information, the offence would have come to an end upon due compliance. But till such compliance is effected, the offence continues to be committed because the very purpose of the regulations is to ensure that the investors interests are not compromised. Thus, no question of limitation can arise.

22. The complainant has no doubt to prove the case against the accused beyond shadow of doubt. In the present case, I am of the considered view that this onus has been properly discharged by the complainant. There is force in the contention that when the SEBI had required information from entities running collective investment schemes, there was an obligation on those filing information to furnish the correct details to the SEBI. Having once furnished details themselves, the accused cannot extricate themselves from prosecution by protesting the absence of other verification by the SEBI. After all, if the SEBI had to verify the details of the accused company, its activities and the identity of the directors, it would naturally have to fall back on the details furnished by the accused to another statutory body, namely, the Registrar of Companies. The SEBI was therefore justified in relying on the information furnished by the accused themselves vide Ex.CW1/1 for purposes of this complaint.

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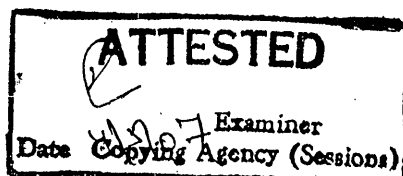
23. Ex.CW1/1 is a letter dated 30.4.2000 sent by the accused company signed by accused Manoj Kumar Gupta. It refers to an earlier letter dispatched by the accused to the SEBI dated 15.1.1998. The contents of this letter is sufficient to prove how misplaced the arguments of the Ld. Defence Counsel are in submitting that the accused company was not a plantation company and that the SEBI has not proved that it is a plantation company and thus not governed by the Regulations. The words used in this letter leave no manner of doubt in the mind that the accused company was carrying on a collective investment scheme in agro/plantation bonds. The actual words can be reproduced to establish this. The letter states:

".....We had filed the details of our plantation & Agro Schemes vide UPC dated 15.1.98....." . And again:

".....It has come to our notice that the SEBI has requisitioned some more information from Plantation company. In compliance of requisition we are also enclosing....." .

24. Thus it is apparent that the accused themselves considered themselves to be a plantation company. A perusal of the Memorandum of Association also puts paid to any doubt that the accused company was anything other than a plantation company. SEBI has sufficiently proved that the accused were covered by the regulations being a company running collective investment schemes. In fact it is significant to note that the accused were unhappy that the SEBI had not included their name in the list circulated by the SEBI despite having furnished information on 15.1.97. That is what prompted them to respond to a requisitioning about which they had received notice! That eagerness to benefit from the regulations seems to have dissipated when the turn of obligations has come! The accused cannot be allowed to blow hot and cold to their perceived advantage.

25. The accused submitted their audited balance sheets but merely because it mentions about milk, cattle etc, no inference can be drawn that the accused were a livestock company. The balance sheet refers to five schemes under which capital had been raised. No brochure of the schemes have been placed on the record to show that the schemes were anything other than agro or plantation bonds about which the accused had themselves disclosed to the SEBI vide letters dated 15.1.98 and Ex.CW1/1. The onus having shifted upon the



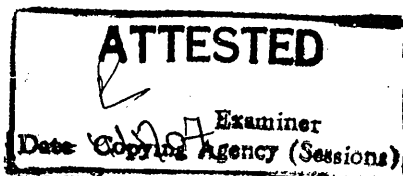


accused, they have not discharged their burden.

26. The position is the same when the question is about the directorship of the company. The accused Alok Sinha has placed on record the certified copy of Form 32, to substantiate his claim that he was not ever a director of the company. But the documents filed by him relate to the first directors and appointment of additional directors causing changes in the Board of Directors upto 3.6.96. But this is not sufficient to meet the contents of Ex.CW1/1 which mentions the name of accused Alok Sinha as a present director as on 31.3.1998. The accused has not filed any Form 32 subsequent to this date to prove that he had no role to play in the affairs of the company especially at the time the accused were required to submit compliance. He has not brought on record any documentary proof to show that he was only an employee of the accused company, and that even in that capacity he had no role to play in the affairs of the company.

27. The accused Pradheep Sawant has similarly claimed that he had resigned from the company. But he has not placed on record any document to prove his resignation. The accused Pradheep Sawant has filed a no dues certificate issued by co-accused Manoj. But the accused Manoj has not stated even during his examination under S.313 CrPC that the accused Pradheep Sawant had no connection with the company after 7.1.98. A valid resignation requires the passing of a resolution by the Board of Directors accepting such resignation. Thereafter, the change caused by the resignation of a Director is to be informed to the Registrar of Companies. There is no such resolution. The Form 32 placed by the accused Pradheep Sawant is one allegedly sent to him by the company. But that has no evidentiary value. It would have been different if the Form had come from the ROC. That would have authentically reflected the resignation of accused Pradheep Sawant. Similarly his intimation to the ROC about his resignation, assuming such a letter and telegram had been sent, will not satisfy the legal standard of proof of such resignation.

28. The accused have claimed that all amounts stood repaid in the year 1998. But once 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





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

CC NO.88/05

SERI VS. M/S VASUDHAIV PLANTATIONS &
LIVESTOCKS LTD. & ORS

ORDER ON SENTENCE:

Heard Sh. Ajay Srivastava for the accused on the point of sentence. Id. Counsel has submitted that a lenient view may be taken, in view of the fact that the professional career of the accused would be adversely affected.

Keeping in my mind the facts and circumstances of the case, I do not consider it appropriate to sentence the accused any term of imprisonment. However, in view of the fact that there has been no proof of re-payment of an amount of about more than Rs. 9 lacs that have been collected by the accused from the public, the purpose of the enactment cannot be lost sight of, which was to prevent unscrupulous persons cheating the gullible public by promising high and unrealistic returns and play with their money for self benefit, remaining oblivious of the obligations towards their investors.

In the circumstances, I sentence the accused company and the remaining accused being its directors to a fine of Rs. 30,000/- each. In default of payment of fine the accused no. 2 to 5, Manoj Kumar, Vijay Kumar, Alok Sinha, P.K Samant shall undergo simple imprisonment for 6 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)

Addl. Sessions Judge: Delhi.

Announced in the Open Court
Dated: 28.10.06.
(1) Manoj Kumar
(2) Vijay Kumar
(3) Alok Sinha
(4) P.K. Samant

