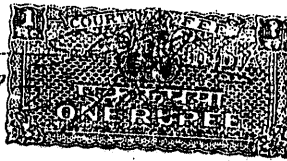
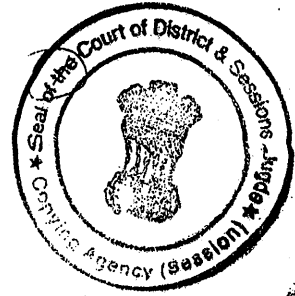


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98] D



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

COMPLAINT NO. 1209 /2003.

IN THE MATTER OF:

16/12/03

24/12/2003

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 Bhauch

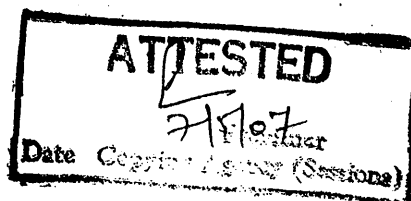
COMPLAINANT

VERSUS

1. YAARA PLANTATIONS LTD.
E-13, Poorthy Apartments,
Block F, Vikaspuri,
New Delhi.
2. Shri. Ashutosh Dwivedi,
S/o. Shri. C.D. Dhiwedi,
R/o. 1254/23/47/84 A,
Kydwai Nagar, Bhawajpuram,
Allahabad, U.P.
3. Shri. Rakesh Dhar Mishra,
S/o. Shri. R. B. Mishra,
R/o. 3, Swastic Apartment,
Vejalpur Road,
Ahmedabad-51, Gujarat.
4. Smt. Veena Dwivedi,
S/o. Shri. Ashutosh Dhiwedi,
R/o. 1254/23/47/84 A,
Kydwai Nagar, Bhawajpuram,
Allahabad, U.P.
5. Shri. Dhananjay Tripathi,
R/o. P-78, MIG 2nd Phase,
Modipuram, Meerut-U.P.

11
ACCUSED

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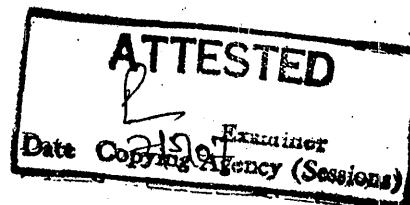




2

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:



5



27.10.06

Present: Sh.Mann for the SEBI.

Accused with counsel.

Vide separate order of even date accused no.5 Dhananjay Tripathi is acquitted while the accused no.1 to 4 are convicted and the company Yaara Plantation Ltd; accused Ashutosh Dwivedi, accused Rakeshdhar Mishra, and accused Smt. Veena Dwivedi have been sentenced to a fine of Rs.10,000/-each. In default of payment of the fine the accused Ashutosh

Contd.





CC No. 108/05

Contd.

Dwivedi, accused Rakeshdhar Mishra, and accused Smt. Veena Dwivedi 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.

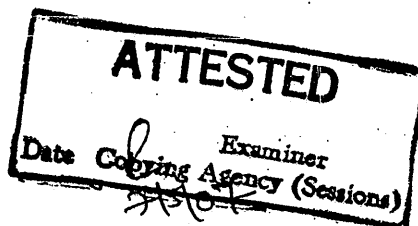
Asht Menon

Announced in the Open Court

(ASHA MENON)

Dated: 27.10.06.

Addl. Sessions Judge: Delhi.





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

CC 108/05

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./Mr. Rakesh Bhanot.

Versus

.... Complt.

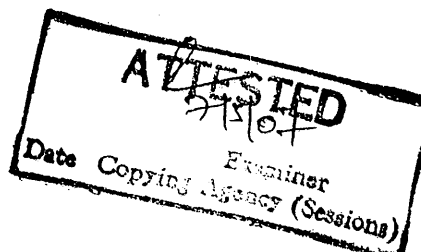
- 1.YAARA PLANTATIONS LTD.
E-13, Poorthy Apartments,
Block F, Vikaspuri,
New Delhi.
- 2.SH. ASHUTOSH DWIVEDI
S/o Sh. C.D. Dhiwedi,
R/o 1254/23/47/B4-A,
Kydwai Ngr, Bhawajpuram, Ahemdabad-51, Gujrat.
- 3.SH. RAKESH DHAR MISHRA
S/o Sh.R.B. Mishra,
R/o 3, Swastik Apartment, Vajalpur Road,
Ahmedabad-51, Gujrat.
- 4.SMT.VEENA DWIVEDI
W/o Sh.Ashutosh Dwivedi,
R/o 1254/23/47/B4-A, Kydwai Ngr,
Bhawajpuram, Allahabad, U.P.
- 5.SH. DHANANJAY TRIPATHI
R/o P-78, MIG 2nd Phase,
Modipuram, Meerut-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.

Contd.2/-



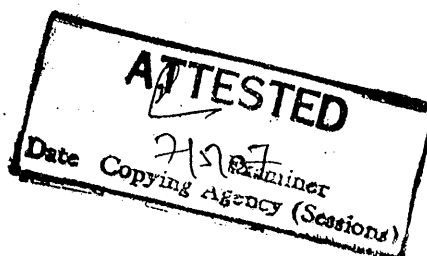


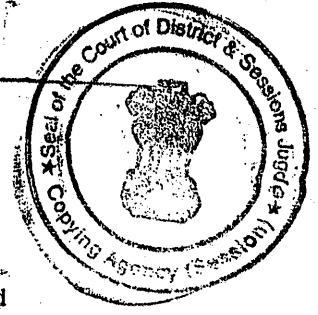
2. The brief background as is necessary for the disposal of the case may be stated. The Government of India passed the Securities and Exchange Board of India Act in 1992 and established the Securities and Exchange Board under the said Act (hereinafter referred to as SEBI) with the aim of providing protection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

Contd.3/-



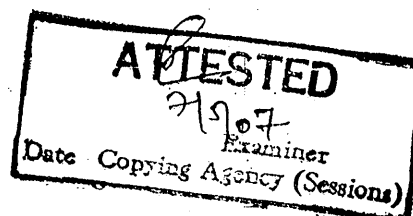


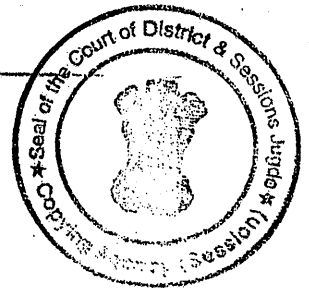
Violation of these regulations has been made punishable under S.24 read with S.27 of the SEBI Act 1992.

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.2.49 lacs were stated to have been mobilized by the company Yaara Plantations Ltd and the accused Sh. Ashutosh Dwivedi, Sh. Rakesh-Dhar Mishra, Smt Veena Dwivedi and Sh. Dhananjay Tripathi 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 5.12.05, to which the accused pleaded not guilty. The complainant has examined only one witness Sh. Rakesh Bhanot .

Contd.4/-





Thereafter the statements of the accused were recorded under S.313 CrPC. The accused have not examined any witness in defence.

EVIDENCE

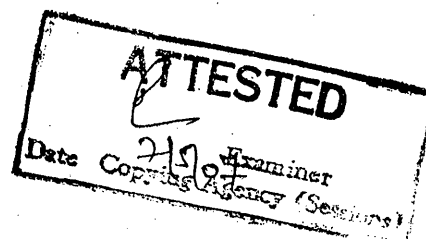
9. As CW1 Sh. Rakesh Bhanot has deposed to the issuance of the press release on 18.11.97, by the Government of India directing that bonds which were in the nature of Agro and Plantation bonds issued by the companies would be treated as Collective Investment Schemes as stipulated under S11 of the SEBI 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 providing the terms and conditions of the schemes launched, promises to investors, copies of the proposal forms, agreement and guarantee and receipt with terms and conditions. As per this letter dated 10.1.98, the accused company had mobilized about Rs. 2.49 lacs under its CIS. The letter listed the names of accused 2-5 as the directors and promoters of the company.

11. The witness deposed that the SEBI had sought additional documents from the accused company vide its letter dated 31.3.98. In reply the accused sent letter dated 24.4.98 Ex.CW1/2 supplying the copy of the Memorandum and Articles of Association along with the details of the Directors. By the said letter the accused informed the SEBI that the statement of the deployment of funds was under preparation and the same would be submitted later on.

12. 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. 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

contd.5/-





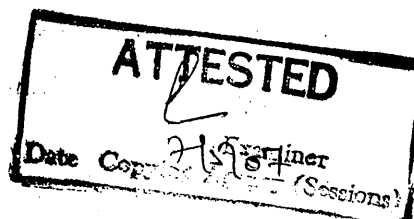
and repayment report within five and a half months to the SEBI. The witness stated that the accused company had been sent these regulatory obligations vide letters dated 10.12.99 and public notice dated 10.12.99.

13. CW1 Sh. Rakesh Bhanot deposed further that since the accused company had neither applied for registration nor had intimated about winding up of the scheme, show cause dated 12.5.2000 had been issued to it. The letter returned with the report to the effect that the address was incomplete. Vide letter dated 31.7.2000 the SEBI forwarded the format for submission of the winding up and repayment reports to it. 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 within one month. 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.516 in this list. He deposed that there had been no compliance till the filing of the complaint.

14. The witness was cross examined by Sh. S.K.Pandey Ld. Counsel on behalf of the accused no.2-4. During this cross examination the witness admitted that compliance certificate had been annexed to Ex.CW1/2 dated 29.4.98. He could not affirm whether the company had stopped receiving investments w.e.f 29.4.998 as he had no such information. He admitted that the letter dated 30.5.2006 had been received at the office of the SEBI and brought the same on the record as Ex.CW1/DA. He could not confirm whether the company had submitted the winding up report on 30.5.2006.

15. The witness was also cross-examined by Sh.Mishra on behalf of accused no.5. During this cross-examination the witness stated that it was on the basis of the letter of the accused company, Ex.CW1/1, the SEBI had concluded that the A-5 was a director of the accused company. He stated that he was not familiar with the signatures of the A-5, while admitting that the Ex.CW1/1 did not bear the signatures of A-5. He denied as incorrect the suggestion that the A-5 had no control over the affairs of the company, as he was a full time government servant.

Contd.6/-





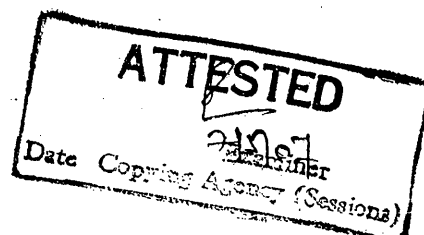
CONTENTIONS

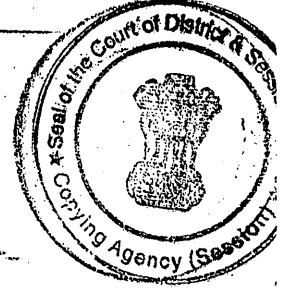
16. Sh. Sanjay Mann for the SEBI, standing in for Sh. Sachit Sethia, counsel for the SEBI, has argued that the SEBI had been given information by the accused themselves that they had collected about Rs. 2,50,000 from their CIS. He submitted that the letters had been sent at the addresses furnished by the accused. He submitted that though the accused had initially responded to the public notice and letter of the SEBI, they stopped responding after the Regulations were brought into force, placing obligations on all entities carrying on collective investment schemes. It was pointed out that the accused did not respond to the show cause notice issued to them and then failed to comply with the orders issued by the SEBI Chairman under S.11B of the SEBI Act 1992. The Ld. Counsel has pointed out that it was only recently that the accused have submitted their winding up report, thus affirming that they had failed to comply till the complaint had been filed. Hence he has prayed that the accused be convicted and dealt with appropriately keeping in mind the purpose of the enactments.

17. The Ld. Defence counsel for the accused no. 5 has submitted that there was nothing to show the involvement of the accused in the affairs of the company and that no details of his parentage had been given in the memo of parties, thus substantiating the defence that he had falsely and erroneously been implicated in this case. He has argued that Ex. CW1/1 was not signed by the accused no. 5. He has pointed out that the Memorandum of Association reflected the names of only three directors which did not include the name of this accused. He has submitted that the ROC records also reflected such a position. Hence he has prayed that A-5 be acquitted.

18. In the written arguments filed by the Ld. Counsel for the remaining accused, it has been contended that no money had been mobilized from the public and all amounts had been invested by the directors themselves, and that too was on paper to show credibility before the general public. It is further submitted that this amount was refunded to the directors on 30.4.98, immediately after the publication of the notice. It is submitted that the company had submitted compliance certificate dated 29.4.98 certifying that no amount was being raised

Contd. 7/-





under the existing schemes and undertaking not to raise any amount in future without the orders of the SEBI.

19. It is also claimed that the accused have applied for composition of the offence by submitting the WRR to the SEBI which was being audited by the chartered accountants and thus, the formalities of the entire process had been completed. On merits it was further submitted that the complaint was time barred. Finally it has been prayed that the accused be dealt with leniently and let off after reprimand.

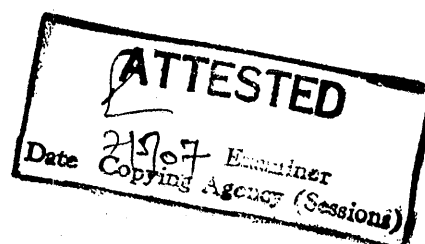
FINDINGS

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. Admittedly, it is only now that the accused have submitted the WRR to the SEBI. 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

Contd.8/-





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
Dated: 27.10.2006.

Asha Menon
(ASHA MENON)
Addl. Sessions Judge :
Delhi.

*Copy given to accused
in open court at POC
26/10/06*

- (i) *Ashutosh*
- (ii) *Dr. B. D. Singh*
- (iii) *B. D. Singh*

7/5/2007



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

CC NO.108/2005

SIBI VS. YAARA PLANTATION LTD AND ORS

ORDER ON SENTENCE:

I have heard Sh. S.K. Pandey counsel for the accused on the quantum of sentence. Learned counsel submits that the case against the accused has been pending for long and this factor may also be kept in mind and a lenient view may be taken in the matter.

Sh.Mann has prayed that accused be dealt with as per law keeping in mind the purpose of the enactment.

Having heard the submissions and keeping in mind all the circumstances of this case, I am of the considered view that internment in jail is not called for in this case though the law provides for it. Keeping in mind the observation recorded in my judgment regarding the amounts mobilized in the manner including that the accused claimed that they had shown such investments on their behalf only to establish credibility in the market, the failure of the accused to comply with the SIBI regulations cannot be completely overlooked, since the purpose of the regulation was to curb such tendencies by people who sought to raise easy money from the market. That the accused no.1 to 4 were not fully successful is another matter.

I accordingly, sentence the accused no.1 company Yaara Plantation Ltd, accused Ashutosh Dwivedi, accused Rakeshdhar Mishra, and accused Smt. Veena Dwivedi to a fine of Rs.10,000/-each. In default of payment of the fine the accused Ashutosh Dwivedi, accused Rakeshdhar Mishra, and accused Smt. Veena Dwivedi 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.

Asha Menon
(ASHA MENON)

Addl. Sessions Judge: Delhi.

91
Copy sent to
accused
S.K. Pandey
Court at P.O.C
28/10/06

(1) Ashutosh Dwivedi
(1) Rakeshdhar Mishra
(1) Veena Dwivedi

