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IN THE COURT OF Sh. PADAM KANT SAXENA,
ADDITIONAL SESSIONS JUDGE: DELHI.

CC No.115/2005

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 Mittal Court, B-Wing
224 Nariman Point, Mumbai-400 021
represented by its Legal Officer,
Sh. Sharad Bansode.

.....Complainant.

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Versus

1. Angel Green Forests Ltd.
a Company incorporated under
the provisions of Companies Act, 1956,
having its Registered Office at Vijaya
Bank Complex, The Mall, Kapurthala.
2. Sh. Harminder Singh, S/o Not known to the
complainant; Occupation Managing Director
of the Accused no.1; resident of
Arora Niwas, Mohabat Nagar,
Kapurthala

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3. Sh. Jagdish Singh Baweja,
-S/o Not known to the complainant;
Occupation Director
of the Accused no.1;
Resident of H. No. 3653, Sector 23 D
Chandigarh

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4. Smt. Surjit Kaur S/O Not known to the
complainant, Occupation Director of
the Accused no.1; resident of
Arora Niwas, Mohabat Nagar.
Kapurthala

..... Accused

Date of Institution : 21.12.2002
Date of Final Arguments : 11.07.2008
Judgment reserved on : 11.07.2008
Date of Judgment : 11.07.2008

JUDGMENT

1. In brief case of Securities and Exchange Board of India
(hereinafter referred to as 'SEBI') a statutory body established under
the provisions of Securities and Exchange Board of India Act, 1992
(for short 'the Act') as disclosed in the complaint dated 21.12.2002 is
that accused nos. 2 to 4 being directors of accused no. 1 (for the sake

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of convenience hereinafter, it would be referred to as 'the accused company'), had floated Collective Investment Schemes (for short referred to as 'CIS') and collected Rs. 0.60 crores from the general public. It is also averred that for regulation of the CIS being run by the entrepreneurs, SEBI notified the Securities and Exchange Board of India Regulations, 1999 (for short referred to as "the Regulations"). However, the accused company neither applied for registration nor took any steps for winding up its CIS and repayment to the investors as per the Regulations. Therefore, according to SEBI, the accused company committed violation of Sections 11 (B), 12 (1B) of the Act, r/w the regulations 5 (1), 68 (1), 68 (2), 73 and 74, which is punishable under Section 24 (1) of the Act. SEBI has also claimed that accused nos. 2 to 4 being directors of the accused company were responsible to it for conduct of its business and therefore were liable for the said violations under Section 27 of the Act.

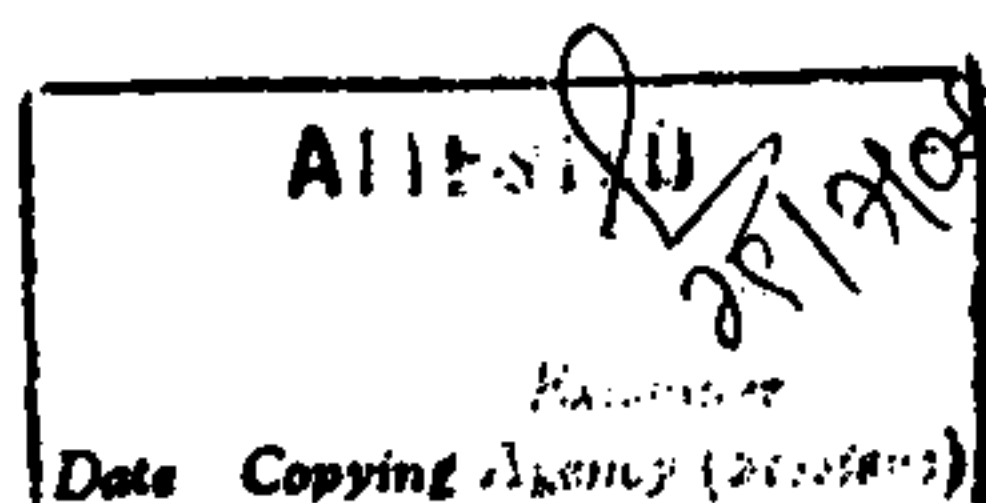
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2. After filing of the complaint in question on 21.12.2002, all the accused were ordered to be summoned by Ld. A.C.M.M., Delhi on that very date. Therefore, in view of the said date of original institution, this case is more than five years' old.

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3. In pursuance of order no. F.3 (4)/ADJ/75650 dated 04.12.2004, passed by Id. District and Sessions Judge, Delhi, the complaint case in question came to be transferred to this court by Id. ACMM, Delhi vide order dated 07.03.2005.

4. Accused no. 4 Smt. Surjeet Kaur, who is one of the directors of the accused company, is about 67 years of age. Therefore she is a senior citizen.

5. After appearance of accused, notice of accusation was given to them on 21.7.2006 by Id. predecessor of this court to which each one of them pleaded not guilty and claimed trial.

6. On behalf of SEBI, in support of its case, Shri Aman Jain, Manager and Ms. Jyoti Jindgar Dy. General Manager entered the witness box and examined themselves as CW.1 and 2 respectively whereafter Id. counsel for SEBI closed his evidence.

7. Thereafter statements of accused nos. 2 to 4 for self and for on behalf of accused company were recorded under Section 313

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8. In support of their defence, accused no.2 alone entered the witness box and examined himself as DW1 whereafter ld. defence counsel closed his evidence.

9. I have heard Ld. Counsel for the parties and have gone through the records carefully.

10. The question that falls for consideration is, has SEBI been able to prove its case beyond reasonable doubts against the accused or not.

11. The present case hinges more or less on the admitted documents issued by SEBI and the accused company, prior to the institution of the present case. These documents would be referred to hereunder at the appropriate stage.

12. As already stated, first witness of SEBI is CWI Aman Jain. He has inter-alia proved on record letter dated 24.01.1998 issued by the accused company as Ex. CW-1/2. Genuineness and authenticity of

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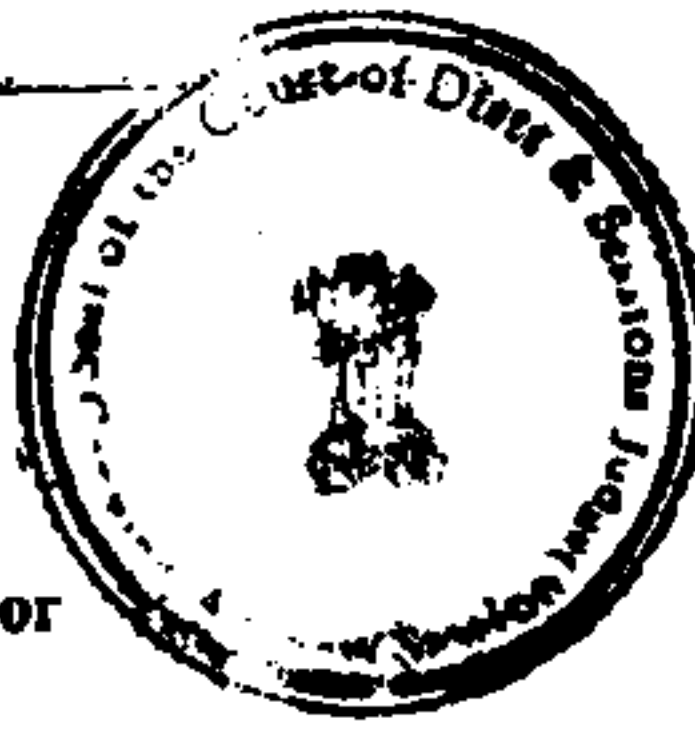
this document has not been challenged even by the accused. Therefore it is deemed to have been admitted as correct. As per this undisputed document Ex.CW1/2, even on 24.01.1998 i.e. the date of its issue, accused nos. 2 to 4 were directors of the accused company.

13. The said Shri Aman Jain CW 1 has also proved on record letter dated 29.04.1998 Ex. CW-1/3 which was issued on behalf of the accused company. Along with this letter, certified true copy of the Memorandum and Articles of Association of the accused company were also enclosed and as per certificate of incorporation appearing therein, accused company was incorporated on 15.06.1995. It would be useful to point out at this stage itself that even DW.1 Shri Harminder Singh, accused no.2, director of accused company, during the course of his cross-examination admitted that they started mobilisation in the year 1995 itself. (emphasis supplied).

14. Now the Act came into force w.e.f. 30.1.1992. Chapter V of the Act relates to Registration Certificate. Section 12(1B) was incorporated in the Act w.e.f. 25.01.1995. This provision of law reads as follows:-

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"No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations"

15. Therefore, according to Section 12(1B) of the Act, no person could sponsor inter alia CIS without obtaining a registration from SEBI in accordance with the Regulations. At the cost of repetition it may be stated that the regulations came into force w.e.f. 15.10.99.

16. Now the question is, what is a CIS. It has been defined in Section 11 AA of the Act. According to sub-section (1) thereof any scheme or arrangement which satisfied the conditions referred to in sub-section (2) thereof shall be a collective investment scheme. The conditions specified in sub-section (2) thereof are as follows:-

"(2) Any scheme or arrangement made or offered by any company under which:-

(1.) the contributions, or payments made by the investors, by whatever name called, are pooled and

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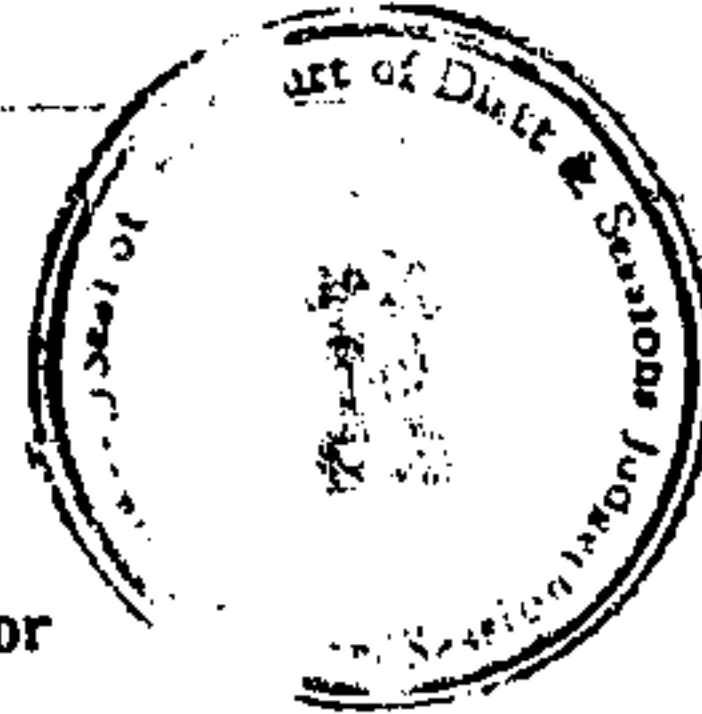
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utilized for the purposes of the scheme or arrangement;

(ii.) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.

(iii.) The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv.) the investors do not have day to day control over the management and operation of the scheme or arrangement."

17. Now as per the aforesaid admitted letter dated 24.01.1998 Ex.CW1/2 and its enclosures, the accused company had invited general public to invest in its various schemes which were to be managed by it and not by the general public and the profits etc. were to be shared by investors also. So, it is admitted that the accused

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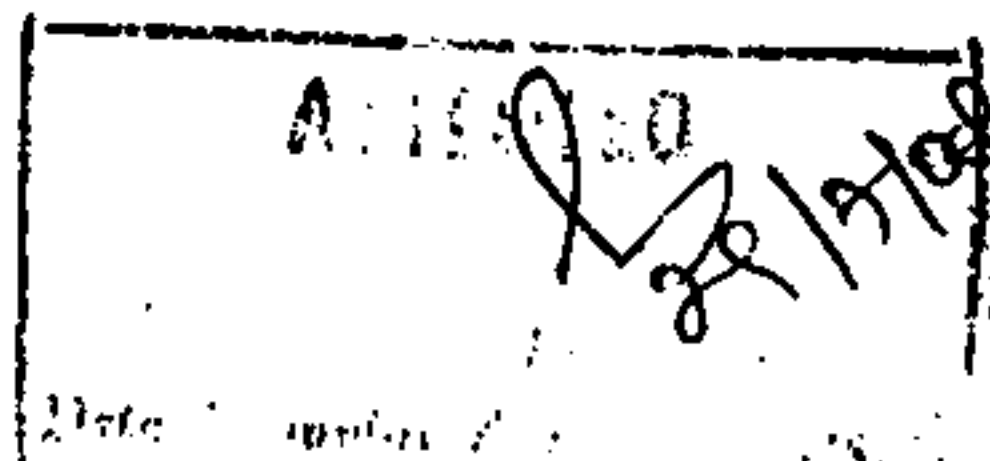
company had been running CIS even as on 24.01.1998.

18. Apart from the above, CW 2 Ms. Jyoti Jindger has inter-alia testified that Sh. Harminder Singh, Jagdish Singh Bajwa and Smt. Surjeet Kaur were instrumental in mobilizing funds under CIS of the accused company. This has also not been challenged in the cross-examination. Therefore this portion of evidence has been admitted even by accused. Further, accused nos. 2 to 4 in their respective statements under Section 313 of the Criminal Procedure Code, 1973 admitted having sponsored and floated collective investment schemes and also mobilized funds to the tune of Rs.59,12,100/- as on 31.03.1998. Even DW 1 Sh. Harminder Singh, who was examined on behalf of the accused in their defence admitted that the collective investment schemes were not registered and had mobilized funds since 1995. It is also significant to note that even as per attested true copy of balance sheet appended to Ex.CW1/2, as on 31.3.1997, the accused company had investor funds to the tune of Rs.45,10,550/-. Also as per photocopy of the balance sheet of the accused company appended to Ex.CW1/4, as on 31.3.2008, it i.e. the accused company had, investor funds to the tune of Rs.59,12,100/-.

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19. In view of the said discussion, I have no hesitation in holding that the accused company of which accused nos. 2 to 4 were directors had been running CIS after June, 1995 and had also been collecting funds from general public.

20. As already stated, the Regulations came into force w.e.f. 15.10.99.

21. As per the material available on record, after notification of the Regulations, SEBI sent a letter dated 12.05.2000 Ex. CW-1/6 to the accused company. By virtue of this letter, various provisions of the Regulations were brought to the notice of the accused company. This letter had been received by the accused company, as is admitted by it in its letter dated 27.5.2000 Ex. CW-1/7, which was received by SEBI on 01.06.2000. These are also admitted documents. Now, as per Regulation (5) of the Regulations, the accused company had to apply for registration of its CIS till 31.03.2000. Further as per Regulation 73 (1), CIS which failed to make an application for registration to SEBI, would wind up the same and repay the investors. Apart from this, as per Regulation 74, existing CIS which was not desirous of obtaining provisional registration from SEBI, would formulate a scheme of

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repayment and make such repayment to the existing investors in the manner specified in Regulation 73. According to Regulation 73 (2) the existing CIS to be wound up, shall send an information memorandum to the investors who had subscribed to the schemes, within two months, from the date of receipt of intimation from SEBI.

22. Ld. defence counsel has vehemently argued that the aforesaid provisions of the Act and the Regulations had been complied with by the accused company and therefore the accused should be acquitted.

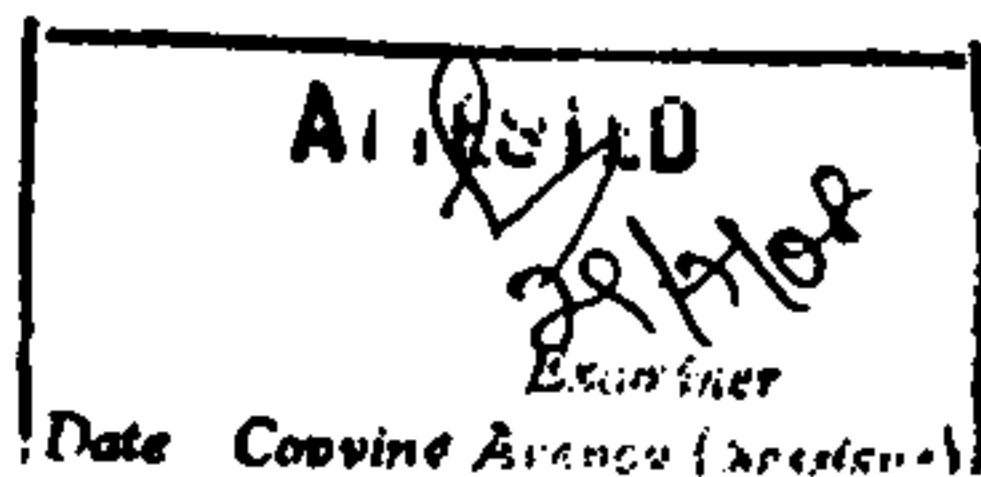
23. The point that arises for consideration is whether the accused company had complied with the aforesaid Regulations or not. In order to find out answer to this question, let us analyse the evidence available on the record of this case.

24. CW 1 Shri Aman Jain has also proved a letter dated 04.07.2001 Ex. CW-1/11 issued by the accused company. Another letter dated 30.04.2002 Ex. CW-1/14 issued by the accused company, was also proved by the said very witness CW 1. As per the said letter dated 30.04.2002 Ex. CW-1/14 issued by the accused company, the CIS had not been wound up nor repayments had been made to its

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investors. The other admitted document of the accused company is dated 18.07.2002 Ex. CW-1/DA which was issued by it i.e. the accused company to SEBI and even as per this document neither the CIS had been wound up by the accused company nor money of the investors had been paid by it till then i.e. till 18.7.2002.

25. Now, as already stated, as per Section 12 (1B) of the Act any person carrying on a CIS without a certificate of registration from SEBI, in accordance with Regulations, is liable to be punished under Section 24 of the Act.

26. Section 27 of the Act deals with the commission of offences by the company. According to sub section (1) thereof if an offence has been committed by a company, then every person who at the time of commission of the offence was in charge and was responsible to the company for conduct of the business, as also the company shall be deemed to be guilty of offence.

27. In fact, in the face of the evidence available on record and discussed hereinbefore, it is clear that the accused nos. 2 to 4

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being in charge of affairs of accused company had been running CIS after June, 1995 and till 2002. The Regulations came into force w.e.f. 15.10.1999. Accused nos. 2 to 4 continued to be directors of the accused company at the time of notification of the said regulations w.e.f. 15.10.1999 and continue to be so even now.

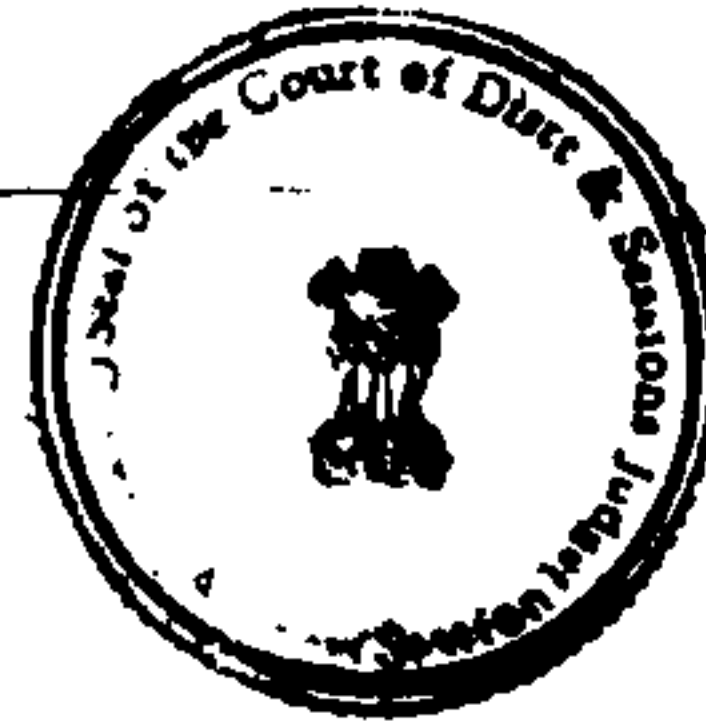
28. The accused have sought to raise the defence that the entire money of the investors stood repaid till September, 2002 and winding up and repayment report (for short 'the WRR') as per the Regulations, had been filed with SEBI. Photocopy of the letter of the accused company in this regard is Ex.CW-2/DA. In this regard it is important to note that SEBI wrote letter dated 22.12.2006 Ex.CW-2/DC to the accused company enclosing therewith copy of its earlier letter dated 10.08.2006 stating inter-alia that WRR in proper format had not been filed. So, the said defective WRR filed by the accused company during the pendency of this case, would not save it from liability which it had already incurred by violating the provisions of the Act and the Regulations.

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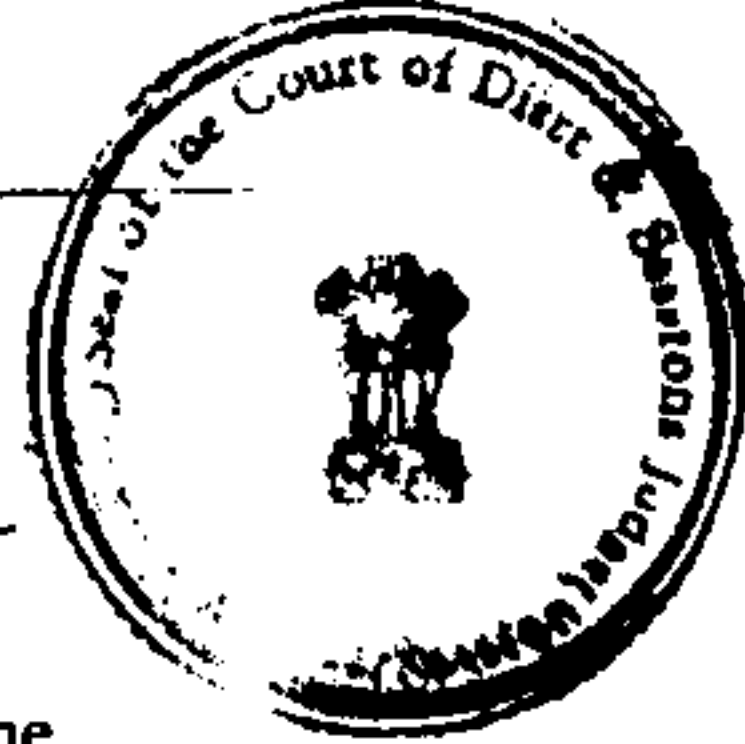


29. The other portion of the defence of the accused about repayment to the investors, that too after the period specified in the Regulations and even not in accordance therewith, would also not save the accused from liability particularly when no documentary evidence has been placed on record by accused to show that the entire money of the investors stood repaid and also when no fees had been paid by the accused company to SEBI, for statutory audit of its WRR by its auditors i.e. by the auditors of SEBI.

30. In view of the aforesaid discussion I hold that SEBI has been able to prove its case against the accused company of which accused nos. 2 to 4 were its directors, to the effect that CIS as contemplated by Section 11 AA of the Act had been floated and funds from general public mobilized thereunder without obtaining Certificate of Registration as required by Section 12 (1B) of the Act. Further it has also been proved on record to the effect that despite coming into force of the Regulations w.e.f. 15.10.1999, the accused company failed to make an application for registration of

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its CIS within the statutory period contemplated by the Regulations. Apart from this, SEBI has also been able to prove beyond reasonable doubt to the effect that the accused company neither got its CIS registered nor wound up the same nor repaid money to its investors as per the Regulations 73 and 74.

31. Resultantly, all the accused are held guilty under Section 24 read with Section 27 of the Act.

Dictated and announced
in the open court
today i.e. on 11.07.2008

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(PADAM KANT SAXENA)
ADDITIONAL SESSIONS JUDGE:
DELHI.

Copy given to convicts
in the court and file
on 14/7/08

[Signature] → Jagdish Singh
[Signature] → Surjit Kumar
↓
Harinder Singh

ALLIED
<i>[Signature]</i> 27/7/08
Date Copying <i>[Signature]</i> (to file)

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IN THE COURT OF SH. PADAM KANT SAXENA,
ADDITIONAL SESSIONS JUDGE: DELHI.

CC No. 115/2005 (New)

SEBI Vs. Angel Green Forests Ltd. and others.

ORDER ON SENTENCE

Vide judgment dated 11.7.2008 all accused had been held guilty for commission of offences under Securities and Exchange Board Of India Act, 1992 (for short referred to as 'the Act') and Securities and Exchange Board Of India Regulations, 1999 (for short referred to as 'the Regulations') which are punishable under Sections 24 and 27 of the Act.

I have heard arguments of Sh. Sanjay Maan and Sh. Rahul Dabus, Advocates for SEBI and Sh.S.S. Dhawan, advocate for the convicts and have gone through the records carefully.

The Act was enacted to provide for the establishment of a Board to protect the interests of investors in securities and to

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promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. In the judgment dated 11.7.2008 it has already been held by this court that convict no.1 of which convict no. 2 to 4 were directors, after its incorporation on 15.6.2008 had floated Collective Investment Schemes without obtaining Registration Certificate as per Section 12(1B) of the Act and had also mobilized funds to the tune of Rs.59,12,000/-as on 31.3.2008, from the general public. It was further held in the said judgment that despite coming into force of the Regulations, w.e.f. 15.10.99, the convicts failed to get the said Schemes registered. It was also held in the said judgment that the convicts also failed to wind up the said schemes, file Winding Up and Repayment Report (for short referred to as 'the WRR') and to repay money of the investors on or before 31.3.2000. Therefore, it was also held that for commission of the said offences the convicts were liable to be punished under Section 24 read with Section 27 of the Act.

The facts discussed in detail in the said judgment clearly go to show that the convicts had illegally collected and misused

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the funds of the general public amounting to Rs. 59,12,100/- in violation of the provisions of the Act and the Regulations. It is significant to note that w.e.f. 29.10.2002, Section 24 of the Act provides imprisonment extending up to 10 years or fine up to Rupees Twenty Five Crores or with both. So, this clearly shows, that the legislature has viewed the offences under the Act and the Regulations, very seriously. Needless to mention that the offences in question were committed after June 1995 and before 31.3.2000 and the punishment provided in Section 24 of the Act at that time was imprisonment extending up to one year or with fine or with both. In view of all these facts a strict action is called for in the case in question.

Convict No.4 is a woman aged 67 years. Therefore it will not be in the interest of justice to send her to jail.

In the facts and circumstances of the present case, I order that Sh. Harminder Singh, convict No.2 and Sh. Jagdish Singh Baweja, convict No.3 shall undergo rigorous imprisonment for six months. In addition, each one of them shall also pay fine in

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the sum of Rs.50,000/- failing which the defaulter shall undergo SI for two months. Convict Nos.1 and 4 shall pay fine in the sum of Rs. 1,00,000/-(One lac rupees) each failing which the defaulter (excluding convict no.1) shall undergo SI for two months. The Convicts shall also file WRR in the proper format with SEBI, within a period of two months from today, who shall get the same audited and it would be free to take appropriate action, if any, as per law.

Copies of the judgment and the instant order be supplied to the convicts free of cost.

Dictated and announced
in the Open Court
today i.e. on 14.07.2008

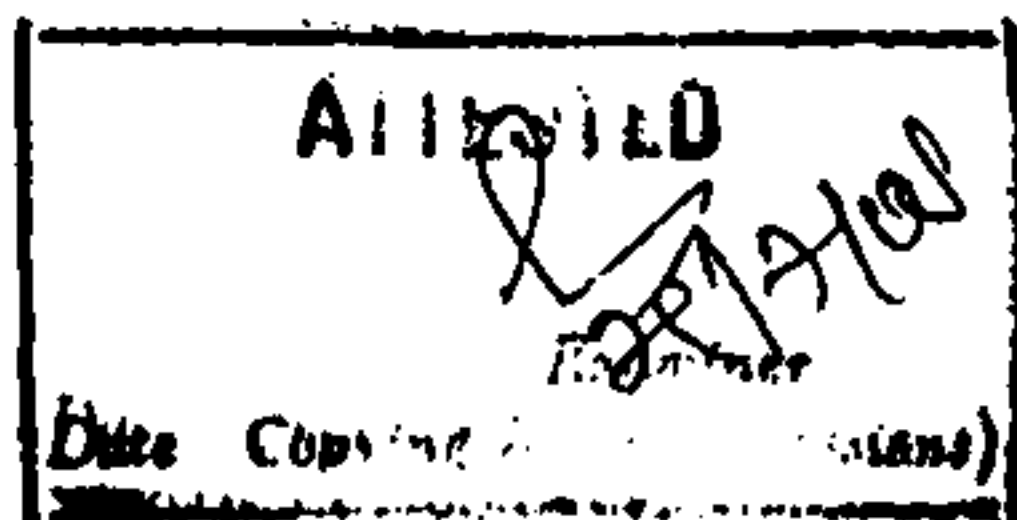
Padam Kant Saxena
14/7/08

(PADAM KANT SAXENA)
ADDITIONAL SESSIONS JUDGE:
DELHI.

*Copys given to convicts
in the Court office on
14/7/08*

[Signature]
[Signature]

Sumit Kumar



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