(1)

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 85/ **OF 2004**
14/01/04

Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B – Wing, 224 Nariman Point, Mumbai 400 021 represented by its Legal Officer, Shri Sharad Bansode.

...Complainant

VERSUS .

1. CityGold Agro India Ltd. a Company incorporated Under the Companies Act, 1956, having its Regd. Office at :H 195A, Dilshad Garden, Delhi-110095.
2. Shri Raghuvir Saran Sinha S/o Shri D.L. Sinha, Director of Accused No.1, R/o: B-30/F-2, Dilshad Garden, Delhi.
3. Shri Ajit Kumar Sinha S/o Shri R.S. Sinha, Director of Accused No.1, R/o: B-30/F-2, Dilshad Garden, Delhi.
4. Shri Pardip Kumar Sinha S/o Shri R.S. Sinha, Director of Accused No.1, R/o: B-30/F-2, Dilshad Garden, Delhi.
5. Shri Sanjay Vij S/o Shri R.L. Vij Director of Accused No.1, R/o: A-21, S-

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18/8/04

II, Dilshad Garden, Delhi. .....Accused

COMPLAINT UNDER SECTION 190 & 200 OF THE CODE OF CRIMINAL PROCEDURE, 1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

May It Please Your Honour:

Cr. Case No.155/2005

04.08.2007

Present: Sh. Sanjay Maan, Advocate for SEBI

Accused nos. 2 to 5 are present on bail for self and for accused no.1 company with Sh. Yashwant Singh, Advocate.

Vide separate judgment of date, dictated and announced each accused has been held to be guilty and therefore liable for punishment under Section 24 of Securities and Exchange Board of India Act, 1992.

Arguments on sentence have been heard. Vide separate orders each convict has been ordered to pay Rs.5,000/- and in default thereof convict nos. 2 to 5 would undergo simple imprisonment for 15 days. On payment of file bail bonds of each convict shall stand cancelled and their sureties would stand discharged.

File be consigned to Record Room.

(PADAM KANT SAXENA)
ADDL. SESSIONS JUDGE:
DELHI04.08.2007

18/8/07

IN THE COURT OF Sh. PADAM KANT SAXENA,

ADDITIONAL SESSIONS JUDGE: DELHI.

CC 155/05

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 Rajendra Place, New Delhi represented by its Legal Officer, Sh. Shard Bansode,

..... Complainant.

Versus

1. City Gold Ago India Ltd. a company
   incorporated under the companies Act, 1956,
   having its registered office at : H-195 A,
   Dilshad Garden, Delhi-110 095.

2. Sh. Raghuvir Saran Sinha
   S/o Sh. D.L. Sinha, Director of accused no. 1,
   R/o B-30/F-2, Dilshad Garden, Delhi.

3. Sh. Ajit Kumar Sinha
   S/o Sh. R. S. Sinha
   Director of accused no. 1,
   R/o B-30/F-2, Dilshad Garden, Delhi.

4. Sh. Pardip Kumar Sinha
S/o Sh. R. S. Sin ha
Director of accused no. 1,
R/o B-30/F-2, Dilshad Garden, Delhi.

5. Sh. Sanjay Vij
S/o Sh. R.L. Vij,
Director of accused no.1,
R/o A-21, S-II, Dilshad Garden,
Delhi.

..... Accused

Date of Institution :02.04.2005

Date of Final Arguments : 30.07.2007

Judgment reserved on : 30.07.2007

Date of Judgment : 04.08.2007

JUDGEMENT

1. Vide this judgment I shall dispose of the present complaint which had been filed by the complainant against accused under Sections 190 and 200 Cr.P.C r/w Sections 24 (1) and 27 of Securities and Exchange Board of India Act,

1992(for short referred to as ' the Act') with a prayer that they be punished as per law."

2. In brief case of the complainant as disclosed in the complaint is that the Government of India, after detailed consultations with the regulatory bodies, decided that an appropriate regulatory framework for regulating entities, which issue instruments like Agro Bonds, Plantation Bonds etc., had to be put in place, that in pursuance thereof a press release was issued by the Government on November 18, 1997, conveying that such schemes should be treated as Collective Investment Schemes coming under the Act, that in order to regulate such collective investment schemes, both from the point of view of investor protection as well as promotion of legitimate investment activity, Securities and Exchange Board of India (for short referred to as 'SEBI') was asked to formulate the regulations for them, that SEBI in the year 1999 notified regulations for the regulation of the activities of collective investment schemes, titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as 'CIS Regulations' or 'the said

regulations'), that accused no. 1 was operating collective investment schemes and raised substantial amount from the general public, that accused no. 1 Company filed information/details with SEBI regarding its collective investment schemes pursuant to SEBI press release dated November 26, 1997, and/or public notice dated December 18, 1997, that in terms of Chapter IX of the said regulations, any person who had been operating a collective investment scheme at the time of commencement of the said regulations shall be deemed to be an existing collective investment scheme and shall comply with the provisions of the said Chapter IX, that in terms of the said Chapter IX any person who immediately prior to the commencement of the said regulations was operating a collective investment scheme would make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations, that SEBI vide its letters dated December 15, 1999/December, 29, 1999 and also by way of a public notice dated December 10, 1999 gave intimation to the accused no.1 directing it to send memorandum to all the investors dealing with state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount is determined, that as per the

aforesaid letters of SEBI, the information memorandum to the investors was required to be sent latest by February 28, 2000, that SEBI having regard to the interest of investors and request received from various persons operating collective investment schemes extended the last date of submitting the application by existing entities up to March 31, 2000, that accused no.1 failed to make any application with SEBI for registration of the collective investment schemes being operated by it as per the said regulations, that in terms of Regulation 73 (1) of the said regulations, an existing collective investment scheme which failed to make an application for registration with SEBI, would wind up the existing collective investment schemes and repay the amounts collected from the investors, that further in terms of Regulation 74 of the said regulations, an existing collective investment scheme which was not desirous of obtaining provisional registration from SEBI would formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73, that however, the accused no.1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the

provisions of Sec.12 (1B) of the Act, and Regulation 5 (1) read with Regulation 68(1), 68 (2), 73 and 74 of the said regulations, that on December 7, 2000 SEBI by exercising its powers conferred upon it under Section 11 B of the Act directed accused no.1 to refund the money collected under the aforesaid collective investment schemes of accused no.1 to the persons who invested therein within a period of one month from the date of the said directions, that despite repeated directions by SEBI, the accused no.1 did not comply with the said Regulations and from this, it was clear that the accused no.1 had been intentionally and with dishonest intention evading the repayment of the amounts collected by it from the investors, that the accused no.1 raised substantial amount and its failure to refund the said amount to the general public who invested their hard-earned money in the schemes operated by the accused no.1 caused huge pecuniary damage to them, that in view of the above, accused no.1 had committed the violation of Sec. 11 B, 12 (1B) of the Act, and Regulation 5 (1) read with Regulation 68 (1), 68 (2), 73 and 74 of the said Regulations, which is punishable under Section 24 (1) of the Act, that accused nos. 2 to 5 were directors and in charge of affairs of accused no.1 and were responsible to

accused no.1 for conduct of its business but have deliberately and intentionally violated Section 27 of the Act and hence the present complaint.

3. Initially the complaint in question had been filed on 14.01.2004 before Ld. ACMM, Delhi. Thereafter in view of the order No. F 3 (4)/ADJ/75650 dated 04.12.2004 this case stood transferred to this court. The accused were summoned by this court and after their appearance notice dated 2.12.2005 was given to the accused to which each one of them pleaded not guilty and claimed trial.

4. In support of its case, complainant examined two witnesses in all whereafter statements of accused under Section 313 Cr.P.C. were recorded. One witness was examined by the accused in their defence.

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

6. At the threshold learned defence counsel argued that the summoning order had been passed by the predecessor court without applying its judicial mind, in a mechanical and routine manner, which according to him, amounted to sheer misuse of process of law. In this regard reliance has been placed on a judgment of the Apex Court reported as ***Pepsi Food Ltd. Vs. Special Judicial Magistrate, 1999(1) JCC (SC) 41***. In this case accused had been summoned by a Magistrate for Commission of certain offences. Accused moved Hon'ble High Court for quashing the said summoning order but it declined to do so and held that accused could move the Magistrate for seeking their discharge. In this fact situation two Hon'ble Judges of the Apex Court set aside the said order of Hon'ble High Court and quashed the summoning order. In my humble opinion, this judgment instead of supporting the accused, demolishes the argument advanced on their behalf in this regard. The point which needs consideration is, is a successor Court competent to review the order passed by the predecessor Court particularly when there has been no change in the circumstances. In the instant case the accused want this Court to review the order dated 14.01.2004 passed by the predecessor Court. With regard to this aspect of the

matter, the answer has been provided for by Hon'ble Supreme Court in two of its judgments reported as ***Adalat Prasad Vs. Roop Lal and others 2004 VIII A.D. (SC) 533*** and ***Subramanium Sethuraman vs. State JT 2004 (8) S.C. 220.*** In those cases it has been held that the order of summoning passed by a Magistrate, cannot be reviewed by him. This proposition of law is equally binding on this Court also. In view of these judgments it is clear that order of summoning passed in the present case is not open to review by this court. If accused had any grievance in this regard, they should have approached Hon'ble Delhi High Court under Section 482 Cr.P.C. as has been held in the case ***Pepsi Food Ltd. (Supra)***, relied upon by Ld. Defence Counsel for getting the summoning order quashed. So this argument does not help the accused.

7. The other argument advanced by learned defence counsel is that at the time when cognizance of the offences in question was taken by the predecessor court, prosecution in respect thereof had already become time barred in view of Section 468 Cr.P.C., 1973. Therefore, according to Ld. Defence Counsel cognizance of the offences taken on complaint filed

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beyond period of limitation of one year is stated to be unjustified and bad in the eyes of law. In this regard reliance has been placed on a judgment of Hon'ble Delhi High Court reported as ***Shyam Sunder Bhartia Vs. NCT of Delhi, 2007 (2) JCC 1533***. As against this learned counsel for SEBI has vehemently argued that the offences alleged against the accused are 'continuing offences' and therefore period of limitation for filing the complaint would continue to run till necessary compliance as per provisions of the Act and regulations is made by accused and as per Section 472 Cr.P.C., 1973, a fresh period of limitation would begin to run at every moment of the time during which the offences continued.

8. Now as per Section 12 (1B) of the Act, no person would sponsor or cause to be sponsored inter-alia a collective investment scheme unless he obtains a certificate of Registration from SEBI. Further, the regulations came into force w.e.f. 15.10.1999 and according to the same inter-alia a person desirous of running an investment scheme had to get it registered with SEBI and those who did not want to continue,

they had to wind up and make repayment to investors in accordance therewith,

9. The question is, whether the offences alleged against the accused are 'continuing offences' as claimed by SEBI or were committed once and for all, at the time of commission thereof, as is being claimed for by the defence.

10. At this stage a reference may be made to a judgment delivered by Hon'ble Delhi High Court in the case of ***Bausch and Lomb India Ltd. & Others Vs. Registrar of Co., Delhi and Haryana, New Delhi, 85 (2000) DLT 409***. In this case facts were that in November 1991, petitioner no. 1, an incorporated company, (of which petitioners No. 2,3 and 4 were the Chairman, Managing Director and the Company Secretary respectively) came out with a public issue of 14% partially convertible debentures and 17% non-convertible debentures. Subscription list of the issue was to close on 18th November, 1991. Permission under Section 73 of the Act was granted to petitioner no. 1 by the Delhi Stock Exchange for dealing in the said debentures on 27th January, 1992 and

hence, under Section 73 (2A) of the Act, the liability to repay the monies received from the applicants in excess of the aggregate of the application monies relating to the debentures in respect of which allotments had been made arose on 27th January, 1991 and the said excess monies were to be repaid to the applicants within eight days thereof. According to the petitioner all the shares/debentures certificates, refund warrants, brokerage and underwriting commission cheques had been mailed on 27th January, 1992 itself whereas the statutory date by which the refund orders were to be sent under Section 73 (2A) was 4th February 1992. However, on 17 December, 1992, a notice under Section 73 was received by the petitioners to show cause as to why action should not be taken against them for committing default under Section 73 (2A), for not refunding the excess application monies within the stipulated time. On the basis these facts Hon'ble Delhi High Court held that under sub-section (2A), the company and its officers were obligated to repay the over-subscribed amount paid by the persons who had responded to the prospectus issued by the company. When the subscription lists were closed, the excess money stood ascertained with reference to the actual allotments made and it became

repayable. It was also held that the company had no right to retain it and was required to refund the excess amount forthwith. Once the period stipulated under sub-section (2A) was over, the liability of the Company to pay the interest commenced and continued so long as the refund with interest was actually paid. So long as the excess amount had not been repaid, the default under sub-section (2A) continued. Having regard to the avowed object and purpose of the legislation namely, that the company should not be permitted to retain the excess amount received from a subscriber to his detriment, it was held that the said offence was continuing offence within the meaning of Section 472 of the Code, according to which, a fresh period of limitation begins to run at every moment of the time during which the offence continues, and, therefore the period of limitation as prescribed by Section 468 of the Code does not have any application. (underlining is mine to supply emphasis).

11. Now what do we find in the present case. The purpose of the regulations is to regulate the functioning of collective investment schemes. The regulations required that collective

investment schemes be registered with the SEBI. Stringent parameters have been provided for grant of registration with a view to ensure financial soundness of the company and to prevent the defrauding of investors. Those companies who did not wish to continue with their collective investment schemes or did not qualify for registration were required under the regulations, to wind up and to circulate an investor memorandum amongst their investors. Therefore in view of the aims and the objects of the Act and the Regulations, accused no.1 was bound to disclose to the investors the schedule of repayment and simultaneously inform the SEBI about the scheme and schedule of repayment. Accused no.1 was also obliged by the regulations to wind up the scheme and submit a winding up and repayment report in a particular format to the SEBI. It has come in the evidence of CW-1 Sh. Rakesh Bhanot, that in pursuance of public notice dated 18.12.1997 accused no.1 sent its reply dated 14.01.1998 Ex. CW-1/1. In this letter, Ex. CW-1/1 address of registered office and head office of accused no.1 was mentioned as "M-195 A Dilshad Garden, Delhi-95". After the aforesaid regulations came into force, SEBI vide its letter Ex. CW-1/3 sent copy of the said regulations. Further SEBI vide various other letters Ex. CW-

1/5 to Ex. CW-1/11 sent to accused no.1 at its aforesaid registered and head office address, reminded it i.e. accused no.1 of its various obligations including those mentioned above in the instant paragraph, which it was supposed to perform as per the Act and the regulations. Despite this, neither winding up and repayment report (for short referred to as "the WRR") was filed nor repayment was made. This portion of evidence remained unchallenged and uncontroverted in the cross-examination and therefore is deemed to have been admitted as correct. There is no reason as to why the said undisputed portion of deposition should not be believe to be true. In the face of this evidence, it appears to me that the breach of the Act and the Regulations stood committed. The said offences alleged against accused would come to an end only after the payments to the investors were made and the WRR was submitted to SEBI and till then, the said offences would be 'continuing'. In the face of these facts, the object for which the Act and the regulations were enacted, the offences subject matter of the present case are 'continuing offences' as was held in the case of ***Bausch and Lamb India Ltd and others (Supra)*** and therefore are not barred by limitation under Section 468 Cr.P.C., 1973.

12. Therefore it is clear that accused no. 1 did not get itself registered with SEBI in terms of the said Act and the regulations. There is also no dispute that the WRR was also not filed by the accused with SEBI. In these circumstances, when neither scheme was wound up nor the WRR had been submitted to the SEBI by the accused till the filing of the complaint, the present complaint is certainly not barred by time. The argument of Ld. Defence Counsel to the contrary is therefore rejected.

13. In the case of ***Shyam Sunder (Supra)*** relied upon by Ld. Defence Counsel the incident took place in June-July 2000 and therefore filing of complaint on 12.09.2001 was held to be barred by time. However this judgment is not applicable to the facts of the present case. I have already held hereinbefore that the offences alleged against the accused are "continuing offences" within the meaning of Section 472 Cr.P.C., 1973 and therefore fresh period of limitation would begin to run at every moment of time during which the offence continues.

14. According to Ld. Counsel for SEBI accused nos. 2 to 5 were promoters/Directors of accused no.1 who had been

running a collective investment scheme without a certificate of registration as required by Section 12 (1B) of the Act. Further according to him despite coming into force of the regulations w.e.f. 15.10.1999 the accused failed to make an application for registration and neither wound up the aforesaid scheme nor filed WRR prescribed in the proforma with SEBI and therefore violated regulations 65, 68, 73 and 74. Hence according to him accused became liable for punishment under Section 24 read with Section 27 of the Act.

15. In this regard argument advanced by Ld. Defence Counsel is that accused nos. 2 to 5 could not be made liable in respect of the offences in question merely because they were directors of accused no.1. It is claimed that Section 27 of the Act and Section 141 of Negotiable Instruments Act, 1881 are identical to each other. Ld. Defence Counsel has invited my attention to various judgments rendered by Hon'ble Supreme Court and Hon'ble Delhi High Court while dealing with Section 141 of Negotiable Instruments Act, 1881. In those judgments the law laid down is that there is no universal rule that each Director of a company is incharge of its every day affair and

therefore only persons who could be said to be connected with the commission of a crime at the relevant time could be subjected to action. In those judgments it was further held that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. There can no quarrel with the said proposition of law and the aforesaid law is well settled. However the question is, whether the said law is applicable to the facts and circumstances of the present case or not.

16. Hon'ble Apex Court in the case of ***Amba Lal Sarabhai Vs. Amrit Lal and Co, 2001 RLR 705*** has held that every member of the judicial fraternity has to play its role with the main object to find the truth and render justice to litigants. It was further held that this judicial culture has not to be lost sight of.

17. It is also well known that if there is a writing, then no

other evidence can be looked into. (Refer ***Inder Singh Vs. Prem Singh, 1993 RLR 197***).

18. In the face of the said law, let us try to analyse the evidence available on record. In order to appreciate the controversies involved, it would be useful to refer to the salient provisions of the Act and the regulations.

19. The Act came into force w.e.f. 30.01.1992 with the avowed object to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. According to Section 2 (ba) which was introduced w.e.f. 22.02.2000 states that a collective investment scheme means a scheme or an arrangement which satisfies the conditions specified in Section 11 AA of the Act. What is a "collective investment scheme" has been dealt with by Section 11 AA of the Act. In order that a scheme or management may be termed as collective investment scheme, the following characteristics must exist therein:-

i. That payments or contributions of investors are utilized for the purpose of the scheme or arrangement.

ii. That the investors invest the said money with a view to receive profits, income, produce etc. from such scheme or arrangement.

iii. That the said scheme or arrangement is managed on behalf of the investors and

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

20. Section 12 (1B) of the Act lays down that no person shall sponsor or cause to be sponsored etc. to any venture fund or collective investment scheme including mutual fund unless he obtains a certificate of registration from the Board.

21. Section 24 of the Act deals with offences. It provides punishment for contravention or attempted contravention, abetment etc. of the Act or the rules or of the regulations.

Admittedly as per this provision earlier the punishment provided for was imprisonment for 'one year or with fine or with both' but w.e.f. 29.10.2000 the said punishment was substantially enhanced to 'ten years or with fine which may extend to Rs.25 crores or with both'.

22. Section 27 of the Act deals with the Commission of offences by companies.

23. CW.1 Shri Rakesh Bhanot has inter -alia testified as follows:

" Pursuant to this, company filed information vide their letter dated 14.1.1998 with SEBI regarding CISs which was received by us on 15.1.1998 which is Ex.CW1/1 which runs to 11 pages besides copy of Memorandum and Articles of Company. The letter contained terms and conditions of the schemes launched by the company, promises and assurances made in the scheme , copies of the offered documents of the scheme and names, details and background of promoters. As per this letter the

promoters of the company were Shri Raghubir Saran Sinha, Shri Ajit Kumar Sinha, Shri Pradeep Kumar Singh and Shri Sanjay Vij."

24. Now from the aforesaid portion of the deposition of CW.1 Shri Rakesh Bhanot, it is clear that Ex.CW1/1 along with annexures was sent by accused no.1 itself to SEBI disclosing certain facts mentioned therein. This portion of the evidence has not been challenged. Therefore, Ex.CW1/1 alongwith its enclosures, is an admitted document. Now the annexures appended to Ex.CW1/1 clearly show that the payments of investors were to be utilized for the purpose of investment scheme floated by accused no.1. It is also clear from these documents that the investors were assured of good returns and the said schemes had to be managed on behalf of the investors but in day to day affairs of the Scheme, they i.e. the investors had no say. So, admittedly this is a 'Collective Investment Scheme' within the meaning of the Act. Even accused No.2 in his statement of accused under Section 313 Cr.P.C. admitted about running of CIS i.e. Collective Investment Scheme.

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25. Further CW.1 Shri Rakesh Bhanot also testified that the company viz. accused No.1 did not file any application seeking registration under the Regulations nor was granted any such registration. This evidence has also remained undisputed. Therefore this also becomes an admitted fact.

26. It is also clear that accused no.1 in its aforesaid communication dated 14.1.1998 Ex.CW1/1 which was signed on its behalf by accused no.5 also annexed therewith a sheet containing names , details and background of promoters. The said details show that accused no.1 at that time was head of business administration of the company. Further according to it, accused no.2 was stated to be the then head of marketing affairs of accused no.1. Accused nos. 4 & 5 at the relevant time were stated to be managing the agricultural activities. If this document Ex.CW1/1 is read in conjunction with other accompanying documents including the Schedule of payment, then it becomes amply clear that the investments were to be utilized as mentioned therein. Now, as already stated, the said documents were not challenged by any accused in the cross-examination of CW.1 and therefore have become

admitted documents. So, in the face of the documents annexed with Ex.CW1/1 it stands proved on record that accused nos. 2 to 5 were actively involved in the affairs of accused no.1 and were managing the same. So, this is not a case where accused nos. 2 to 5 have been impleaded merely in their capacities as directors of accused no1. In fact they were responsible to accused no.1 for running of its affairs. Therefore, various judgments to which a reference was made by Ld. Defence counsel during the course of arguments, does not advance his cause at all.

27. Now it is proved that accused nos. 2 to 5 on behalf of accused no.1 were running a collective investment scheme as per Ex.CW1/1 dated 14.1.1998. It also stands proved that accused neither applied for registration nor were granted one by SEBI. As per the statutory obligation contained in the aforesaid provisions of the Act and the Regulations, operations of accused no.1 had to be wound up and W.R.R. had to be filed with SEBI.

28. Now, in the light of the above evidence, as per terms of proviso appended to Section 27(1) of the Act , it was for accused nos. 2 to 5 to prove that the offences in question were committed without their knowledge or that they had exercised due diligence to prevent commission of such offences. In fact only one defence witness was examined by accused and he is DW.1 Shri Sunil Mehra. His deposition does not throw any light on this aspect of the matter. Therefore in the absence of any defence evidence in this regard, all accused have to be held liable as per Sub section (1) of Section 27 of the Act.

29. In any case, in the face of the impeccable documentary evidence Ex.CW1/1 along with its annexures it is clear that the offences in question were committed with the consent and connivance of accused Nos. 2 to 5 on behalf of accused No.1. So, all accused are liable to be punished as per Section 24 of the Act.

30. During the course of arguments it was submitted by Ld. Counsel for SEBI that there is no information that accused had mobilized any funds. Even CW.2 in her

deposition deposed that she did not have on record any complaint received against the company from any investor. Further according to her , no person came forward with any complaint in spite of public notice. So, in the face of this evidence of complainants' own witness and statement of Ld. Counsel for SEBI, I have no hesitation in holding that complainant has failed to prove that accused no.1 had mobilized any funds. Therefore question of repayment to investors did not arise.

31. Now, let us deal with aspect of filing/otherwise of W.R.R. by accused . During the course of cross-examination of CW.2 a suggestion was put to her to the effect that CIS Regulations required the existing collective investment Scheme entities to either obtain registration or wind up after repaying the investors within the time stipulated therein and file the winding up and repayment report which she admitted to be correct. This witness also deposed in her cross-examination that it was mandatory on all companies which had established CIS to file the WRR irrespective of the funds mobilized. This has also not been challenged and therefore is deemed to

have been admitted as correct. Another suggestion was put to CW.2 during the course of her cross-examination to the effect that the company had not raised any fund nor they were required to file any WRR, which also she claimed to be incorrect. Therefore it is clear that the accused did not file WRR and therefore breached Regulation 73.

32. In view of the aforesaid discussion, I hold that SEBI has been able to prove its case to the effect that accused no.1 had been running a CIS but it failed to get it registered and also failed to file WRR. Therefore in view of Section 27 of the Act, all accused violated Section 12(1B) of the Act and the Regulations 68,73, 74. Hence they are held guilty and as such are liable to be punished under Section 24 of the Act.

(PADAM KANT SAXENA)
ADDITIONAL SESSIONS JUDGE:
DELHI.

Dictated and announced
in the open court today
i.e. on 04.08.2007

Copy given to the accused in open court at fee.
04/8/07

1. Sudesha.
2.
3.

18/8/07

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

CC 155/05

SEBI Versus City Gold Ago India Ltd. & Others

ORDER ON SENTENCE

In pursuance of the judgment of even date dictated and announced, accused have been held to be guilty and liable to be punishment under Section 24 of SEBI. Learned defence counsel has prayed for a lenient view on the ground that accused no.2 is a senior citizen. Further according to him no money was collected by the accused in pursuance of the collective investment scheme floated by them. It is also his argument that the accused have not past criminal record.

Admittedly accused no.2 is a senior citizen and there is also no evidence that accused persons had collected any money from the investors in respect of collective investment scheme in question. In view of the facts and circumstances of the present case I am satisfied that interest of justice would be fully met if each accused is ordered to pay fine, in the sum of Rs.5,000/- and in default thereof defaulter excluding accused no.1, would undergo simple imprisonment for 15 days. After payment of fine bail bonds of accused shall stand cancelled and their sureties would stand discharged.

Dictated and announced
in the open court today
i.e. on 04.08.2007

(PADAM KANT SAXENA) 18/8/07
ADDITIONAL SESSIONS JUDGE:
DELHI.