

IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, TIS
HAZARI COURTS, DELHI.

CC NO: 1236-2003

19/7/05

15/11/02

**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 Asst.
General Manager, Mr. JYOTI JINDGAR.

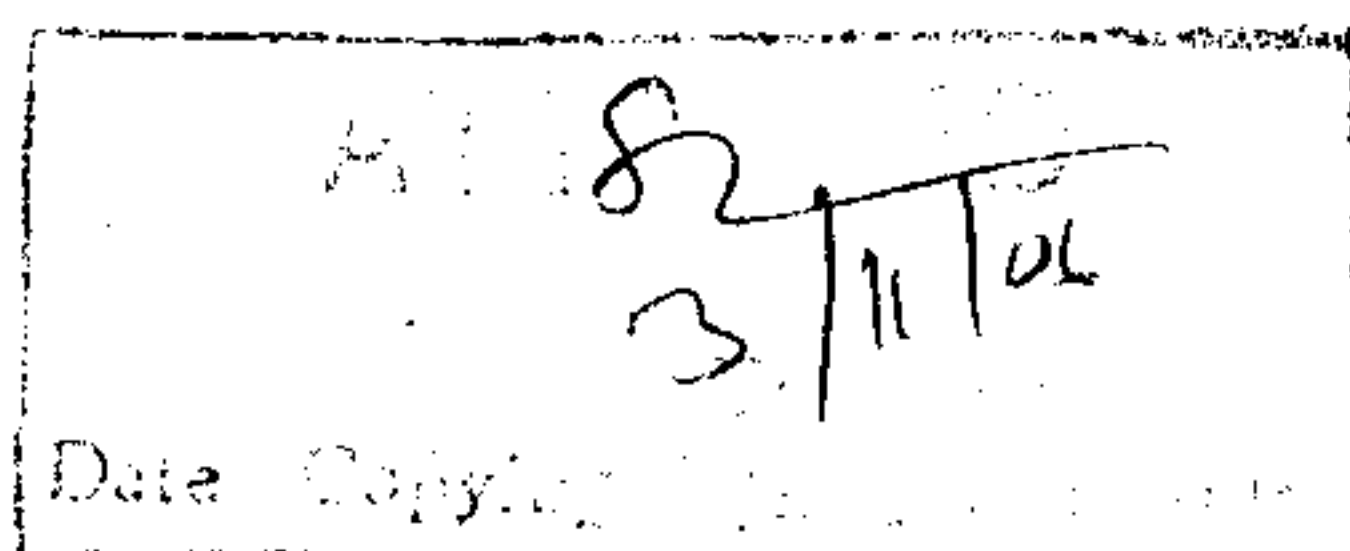
...COMPLAINANT

VERSUS

1. M/s Five Star Forests Ltd.
Having its Registered Office at
Tehsil Mehra-Barsar,
Distt. Hamirpur (H.P.)
2. Sh. Vijay Thakur (Director/Promoter)
Village Railli, Jajari,
Tehsil Barsar, Distt. Hamirpur
3. Sh. Sita Ram (Director/Promoter)
Village Changer,
Tehsil Barsar, Distt. Hamirpur
4. Sh. Ajmair Singh (Director/Promoter)
PO Bargram,
Tehsil Barsar, Distt Hamirpur
5. Ms. Pappi Devi (Director/Promoter)
Village Changer, PO Kuleshra
Tehsil Barsar, Distt. Hamirpur
6. Mr. Prem Singh (Director/Promoter)
VPO Bhakreri,
Tehsil Barsar, Distt. Hamirpur
7. Sh. Harnam Singh (Director/Promoter)
Village Railli, PO Jajari
Tehsil Barsar, Distt. Hamirpur

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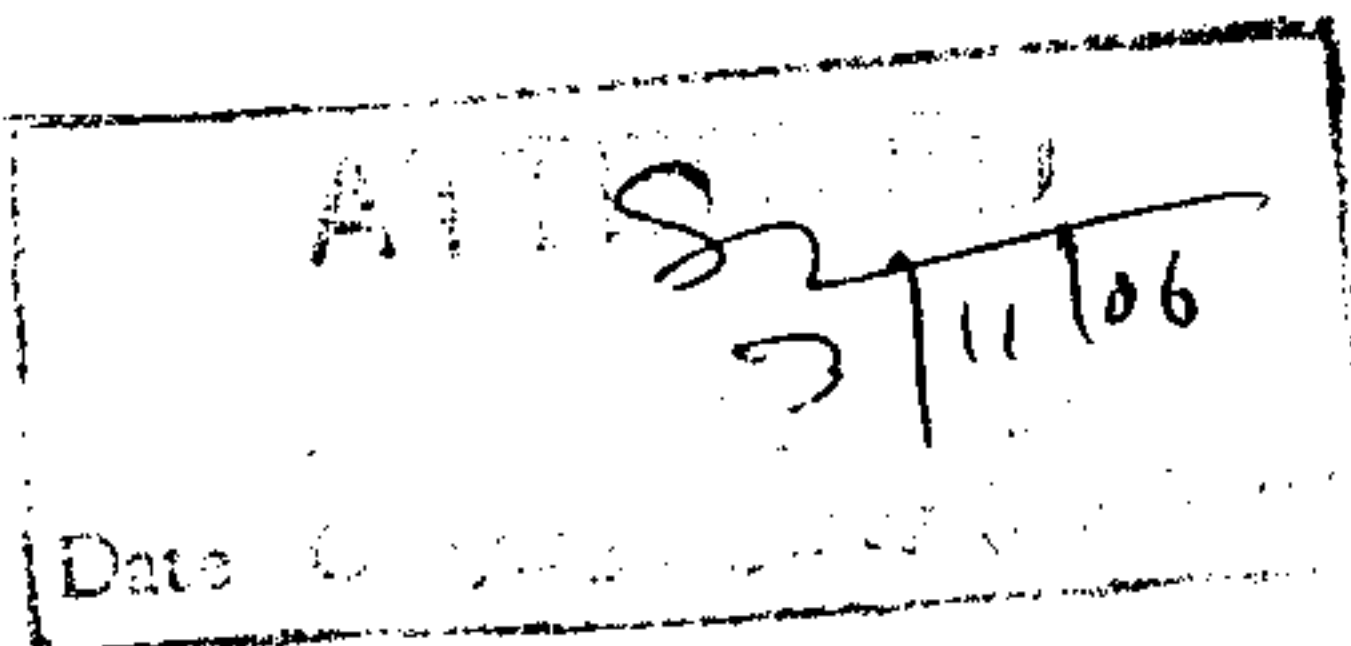


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8. Mr. Deshraj (Director/Promoter)
Village Changer, PO Kulehra,
Tehsil Barsar, Distt. Hamirpur

.....ACCUSED

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

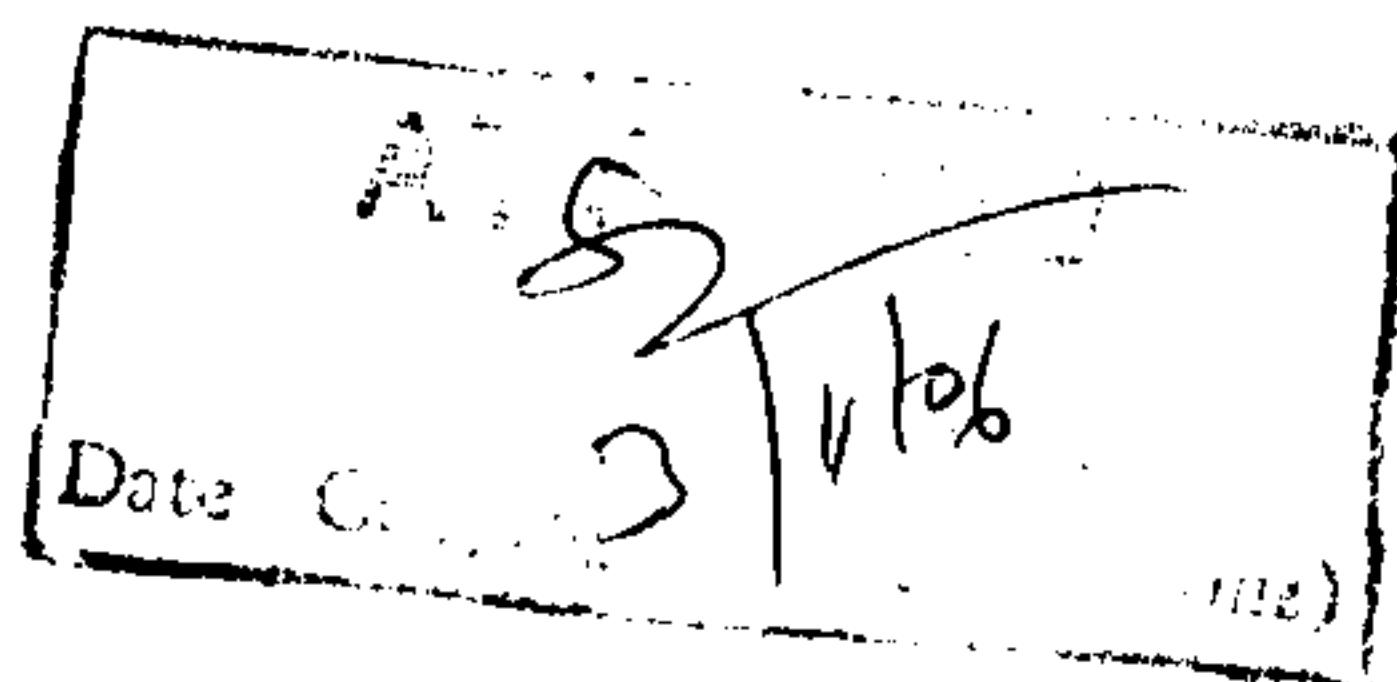


28/10/06

Pr.: Counsel Sh. Rajesh Kumar.
with accd. except accd. no. 8.

Vide separate orders the accd. company and accd. 2, 3, 4, Sh. Vijay Thakur, Sita Ram, and Ajmair Singh have been found guilty and have been sentenced to a fine of Rs. 30,000/- each. In default of payment of fine ~~the said company and~~ ^{IN} accd. 2, 3, 4 shall undergo SI for six months. The accd. no. 5 Smt. Pappi Devi A-6 Prem Singh and A-7 Karmam Singh have been acquitted. Even though proceedings u/s 22/23 Cr.P.C. had been initiated against A-8 Dethoj. In view of the fact that the accd. Vijay Thakur, Sita Ram, Ajmair Singh have been found

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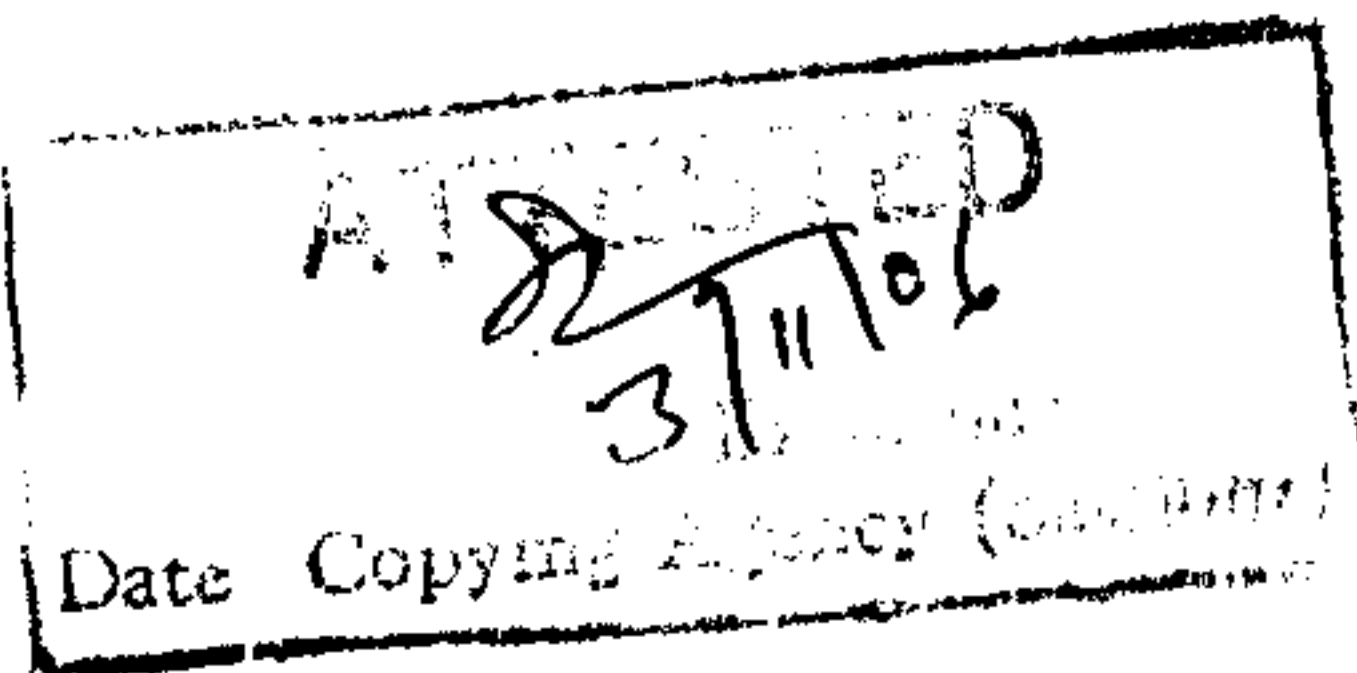
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guilty as directors and the others
were only promoters, Exercising
my powers U/S 258 Cr.P.C. the proceedings
against A-8 are stopped.

File be consigned to the records.

Announced in open Court
At: 28/10/06

Aphal Menon.
ASJ Delhi
28/10/06



CC 197/05

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

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General Manager, Ms.Jyoti Jindgar.

Versus

1.M/S FIVE STAR FORESTS LTD.

Having its Registered office at
Tehsil Mehra-Barsar,
Distt. Hamirpur (H.P)

2.SH.VIJAY THAKUR (Director/Promoter)

Village Railli, Jajari,
Tehsil Barsar, Distt. Hamirpur

3.SH. SITA RAM (Director/Promoter)

Village Changer,
Tehsil Barsar, Distt. Hamirpur

4.SH. AJMAIR SINGH (Director/Promoter)

PO Bargram,
Tehsil Barsar, Distt. Hamirpur

5.SMT. PAPPI DEVI (Director/Promoter)

Village Changer, PO Kuleshra
Tehsil Barsar, Distt. Hamirpur

6.SH.PREM SINGH(Director/Promoter)

VPO Bhakkeri,
Tehsil Barsar, Distt. Hamirpur

7.SH.HARNAM SINGH .(Director/Promoter)

Village Railli, PO Jajari
Tehsil Barsar, Distt. Hamirpur

8/11/06
Date

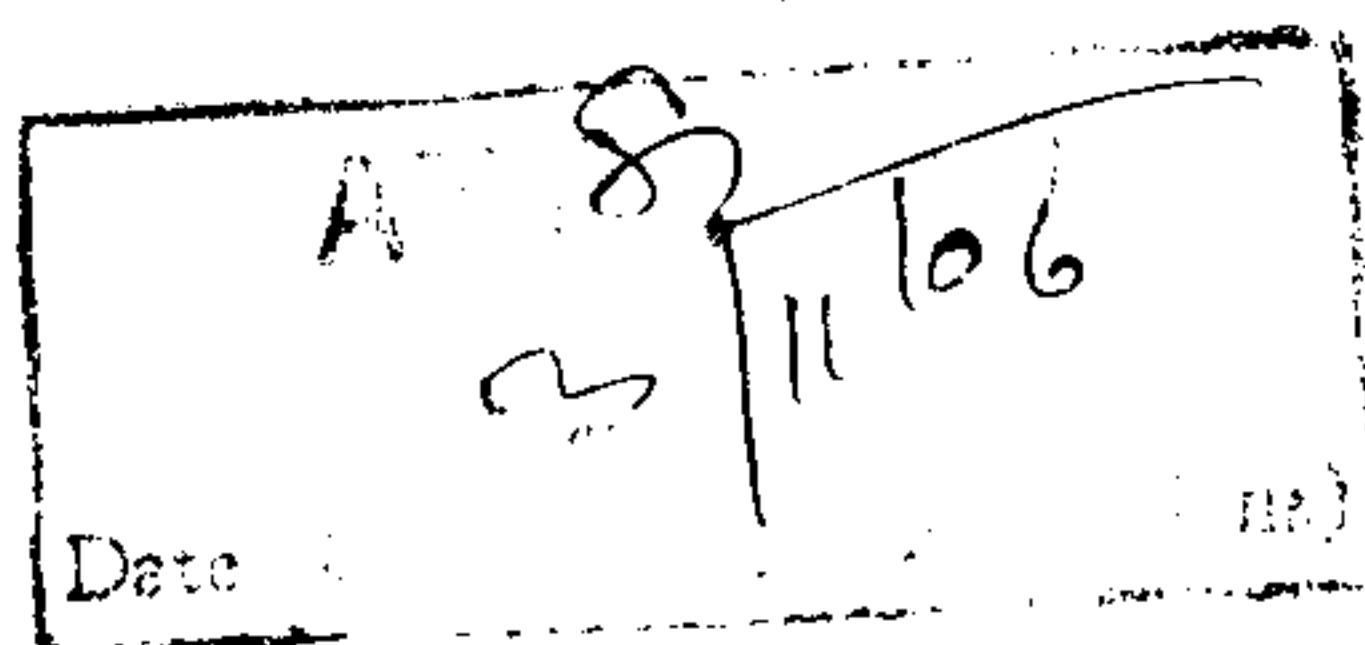
8. SH. DESHRAJ. (Director/Promoter)
Village Changer, PO Kulehra
Tehsil Barsar, Distt. Hamirpur

JUDGEMENT

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.

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.

Am. 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.



Thereafter, the Regulations were brought into force on 15.10.99. Under the regulations, stiff conditions have been prescribed for obtaining registration without which no collective investment scheme could be carried out. The regulations also provided that entities who were not seeking registration had to circulate information memorandum to its investors and repay the investors and wind up the schemes and submit a repayment and winding up report to the SEBI to its satisfaction. Violation of these regulations has been made punishable under S.24 read with S.27 of the SEBI Act 1992.

COMPLAINT

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.10.35 lacs were stated to have been mobilized by the company M/s Five Star Forests Limited and the accused Sh. Vijay Thakur, Sh.Sita Ram, Sh.Ajmair Singh, Smt. Pappi Devi, Sh.Prem Singh, Sh.Harnam Singh and Sh.Deshraj were named as Directors.

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.

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.

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Vide orders dated 15.12.2003, the accused were summoned to face trial. The notice of allegations was served to the accused under S.251 CrPC on 24.2.2006, to which the accused pleaded not guilty. The complainant has examined only one witness Ms. Versha Aggarwal. Thereafter the statements of the accused were recorded under S.313 CrPC. The accused have not examined any witness in defence.

EVIDENCE

As CW1 Ms. Versha Aggarwal 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. She deposed to the second press release dated 26.11.97 and to the public notice dated 18.12.97 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.

The CW1 deposed that pursuant to this the accused filed information with the SEBI vide letter Ex.CW1/1 dated 13.1.98. As per this letter dated 14.1.98, the accused company had mobilized about Rs. 10.35 lacs under its CIS. The letter also listed the names of accused 2-8 as the directors of the company. The witness deposed that thereafter the accused sent another letter dated 28.4.98 Ex.CW1/2 enclosing again details of the directors/promoters, and a certified copy of the Memorandum and Articles of Association.

The witness deposed further that subsequently the Regulations were notified on 15.10.99. Intimation about the notification was given by a public notice issued on 20.10.99 and by specific letter dated 21.10.99 sent to the company by registered post. The witness deposed that the accused did not respond to the letter. She 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. Once again no response was

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received from the accused to these letters or to the public notice in this regard issued on 10.12.99.

CW1 Ms.Versha Aggarwal deposed further that since the accused company had not applied for registration nor had submitted the winding up report, 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 no response was received from the accused once more. The witness deposed that the SEBI had sent reminders to the company vide letters dated 22.11.2000 and 20.3.2001. The accused did not respond to these letters also. CW1 deposed that the accused company was granted an opportunity for personal hearing on 9.7.01, but the communication sent by the SEBI to the accused returned back with the report that the office was closed. The Chairman SEBI then issued directions on 14.8.2001 directing the accused to repay the investors as per original offer within one month of the issuance of the order. The copy of the order sent to the accused vide letter dated 20.8.2001 was returned with the same report. The witness deposed that the accused had not filed the winding up and repayment report till that date.

The witness was cross examined by the Ld. Counsel for the accused. During her cross examination the witness stated that the letter dated 21.10.99 had not returned back to the SEBI, and no response had been sent by the accused. She denied the suggestion that the accused had not received the letters because the SEBI had sent them to the wrong address. She placed on record the reply sent by the accused to the show cause dated 12.5.2000, as Ex.CW1/D1. She deposed that the accused had merely informed that they had no money with them and had sought approval for the closure of the company. The witness explained that thereafter the SEBI had sent to the company the format for submitting the repayment and winding up report. She denied that no format had been sent to the accused. She denied that she was deposing falsely.

This constitutes the entire evidence that has been brought on the record.

CONTENTIONS

Sh.V.K. Singh for the SEBI has argued that the SEBI had given information to all entities running collective investment schemes through issuance of public notices despite which the accused had

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neither applied for registration nor had submitted any winding up and repayment report. Hence he has submitted that the SEBI (CIS) Regulations stood violated for which the accused ought to be punished

On the other hand, the Ld. Counsel for the accused Sh. Rajesh Kumar, has submitted that the company had always responded to the letters sent by the SEBI. It was argued that in the very first letter dated 1.5.98 full information had been given to the SEBI along with balance sheets. It was submitted that the company had not floated any new scheme after 18.12.97. It was submitted that the letters had been sent to some other company in the name of "Dhanvanti" in the same district. The Ld. Counsel argued that the winding up report had been submitted to the SEBI vide Ex.CW1/D1. It was submitted that the SEBI had not proved the dispatch of the format of the WRR. It was submitted that after the closure of the company's office, it did not receive any letter from the SEBI. Hence they did not know that such a report had to be submitted. It was pointed out that no investor had complained against the company. Hence he has prayed for the acquittal of the accused.

FINDINGS

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

There is no controversy that the accused 2-7 had joined together to float the company M/s Five Star Forest Ltd. with the aim of raising funds for their various activities as mentioned in the Memorandum and Articles of Association. There is no doubt either that the accused had raised a sum of Rs.10.35 lacs from the public. The dispute raised is in respect of the role of the accused in the affairs of the company. The statements made by the accused under S.313 CrPC each have disclaimed liability. However, apart from this universal disclaimer, the fact is that there is sufficient evidence to show that not all the promoters were involved in the running of the company.

AM The Memorandum of Association submitted along with Ex.CW1/1 reflects that the first Directors of the Company were Vijay Thakur, Sita Ram and Ajmair Singh. The same names have been reflected in the details furnished along with the letter dated 28.4.98, Ex.CW1/2 submitted by the accused to the SEBI. The accused Vijay Thakur, Sita Ram and Ajmair Singh have been described as the Directors of the Company. From this it is clear that as regards

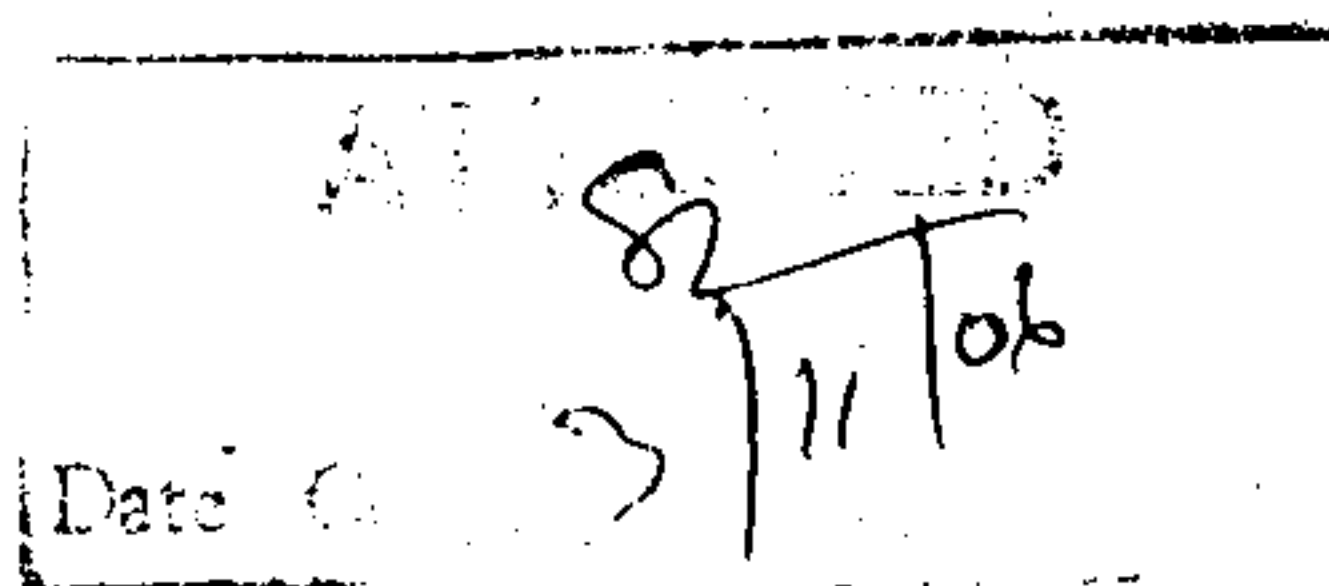
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accused Pappi Devi, Prem Singh , Harnam Singh and Deshraj even though they were promoters of the company and the schemes , they were not directors of the company and since the company had a Board of Directors, no presumption need be raised of their liability , in the capacity of promoters.

The accused Ajmair Singh has claimed that he had resigned from the Board of Directors in 1998 and that in any case from the very beginning he had nothing to do with the accounts of the company. The accused Ajmair Singh has not bothered to prove his resignation. Neither has the accused proved that he had tendered his resignation and that the Board had accepted his resignation. No record from the ROC has been produced to prove that any change had taken place in the Board of Directors reflecting the resignation of the accused Ajmair Singh. The signatures appearing on the balance sheets enclosed by the accused with Ex. CW1/2 nails the lie of Ajmair Singh that he had never been concerned with the accounts of the company.

The common defence otherwise raised is that the accused had repaid its investors. No proof has been submitted to substantiate this claim. No proof of payment, no accounts, no balance sheets no audit report or similar evidence has been laid before the Court. The Ld. Defence counsel has relied on the letter Ex.CW1/D1 to submit that repayments had been effected. However, the contents of the letter that the company had repaid all deposits collected under the CIS was required to be confirmed as per the procedure of the SEBI. The SEBI had infact asked the accused to send the winding up and repayment report in format. The format had also been sent to the accused. Even in the letter dated 30.5.2000, Ex.CW1/D1 , the accused have not disclosed the time period during which the repayments had been effected. No date has been mentioned since when the schemes stood wound up.

91 The SEBI required the information in a prescribed format which required the certificate of a Statutory auditor, which would have been verified and if found satisfactory accepted by the SEBI. The accused failed to furnish information in format thus preventing the verification of the repayments to investors. Had the accused proved the repayments, until and unless they had submitted the repayment and winding up report in format to the SEBI , the accused would still have been liable for non-compliance of the Regulations.



The Ld. Defence counsel has submitted that the accused had not been sent the letters by the SEBI regarding the obligations under the Regulations. But as pointed out by the Ld. Counsel for the SEBI, it appears that a copy of letters sent to another company by the SEBI had got mixed up with the copies supplied to the accused. There is nothing on the record in this case, to show that letters had been addressed by the SEBI at wrong addresses. In fact the accused have themselves admitted having received the show cause notice sent to them dated 12.5.2000 and to have replied the same vide Ex.CW1/D1. There is no reason why other letters sent by the SEBI at the same address should not have been received by the accused. The accused have not even considered it appropriate to disclose when they had closed the office, especially when vide letter dated 30.5.2000, they were seeking the approval of the SEBI to close the company.

It is thus clear that the accused have not complied with the Regulations. The explanation of non receipt of the format is not acceptable, since the letter dated 31.7.2000 had not been received back by the SEBI. Secondly, the SEBI had addressed letters to the accused at the very addresses furnished by them and if the communications were not received, it could be only due to the wrong address being furnished by the accused or because of their refusal to receive the letters. In either case, the accused are to be blamed. Despite reminders of the SEBI issued on 22.11.2000 and 20.3.2001, which incidentally did not return back undelivered to the SEBI, the accused kept silent and made absolutely no effort to comply with the regulatory obligations.

Thus, the accused Vijay Thakur, Sita Ram and Ajmair Singh have to be held liable for the lapse committed by them as directors of the accused company, in not furnishing the WRR to the SEBI in format as required under the Regulations of 1999.

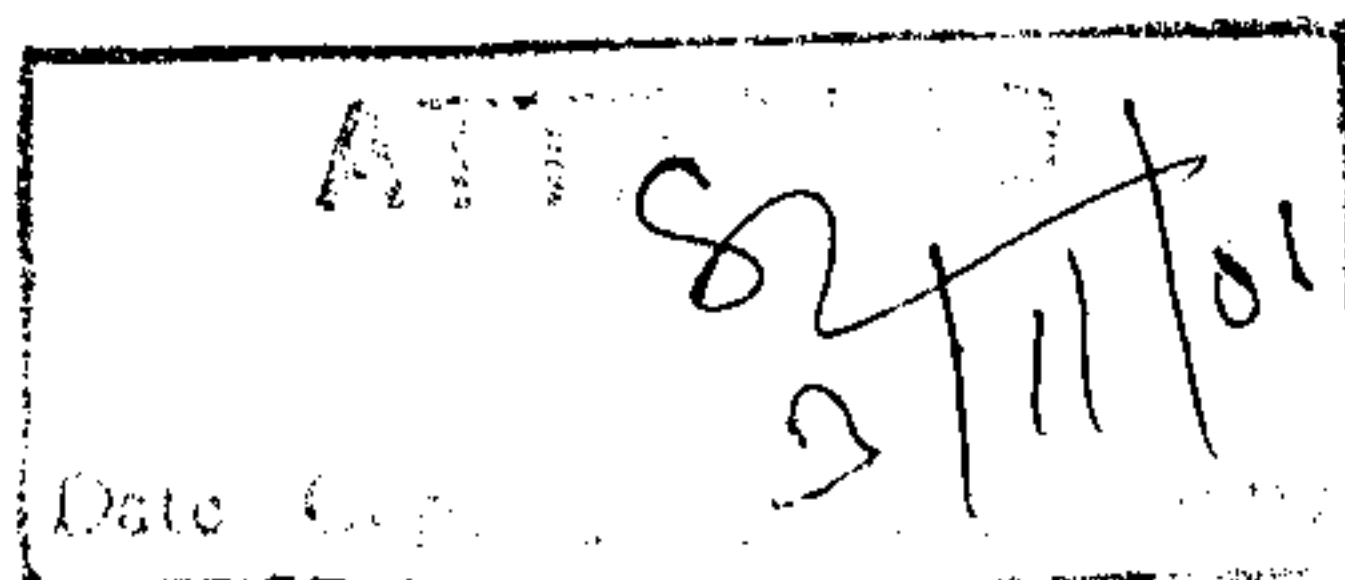
CONCLUSION

In the light of the foregoing discussions while I acquit the accused 5,6,7 viz. Smt Pappi Devi, Sh. Prem Singh and Sh. Harnam Singh of the charges against them, I hold the accused company M/S Five Star Forest Ltd and the accused Vijay Thakur, Sita Ram and Ajmair Singh who are its Directors guilty of the violations of the Regulations 73,74 read with Regulations 5,68 (1&2), of the SEBI (CIS) Regulations 1999 punishable under S.24/27 SEBI Act 1992. They are entitled to be heard on the quantum of the sentence to be awarded to them.

Announced in open Court
On 28-10-06.

by
Shri
S. K. Singh

Isha Menon
Asst. Secy.



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

CC NO.197/2005

SEBI VS. M/S FIVE STAR FORESTS LTD AND ORS

ORDER ON SENTENCE:

Heard learned counsel for the accused no.1 to 4 who have been convicted. Learned counsel submits that the accused are respectable persons being teachers and professor and that no other criminal case is pending against the accused and therefore, a lenient view be taken.

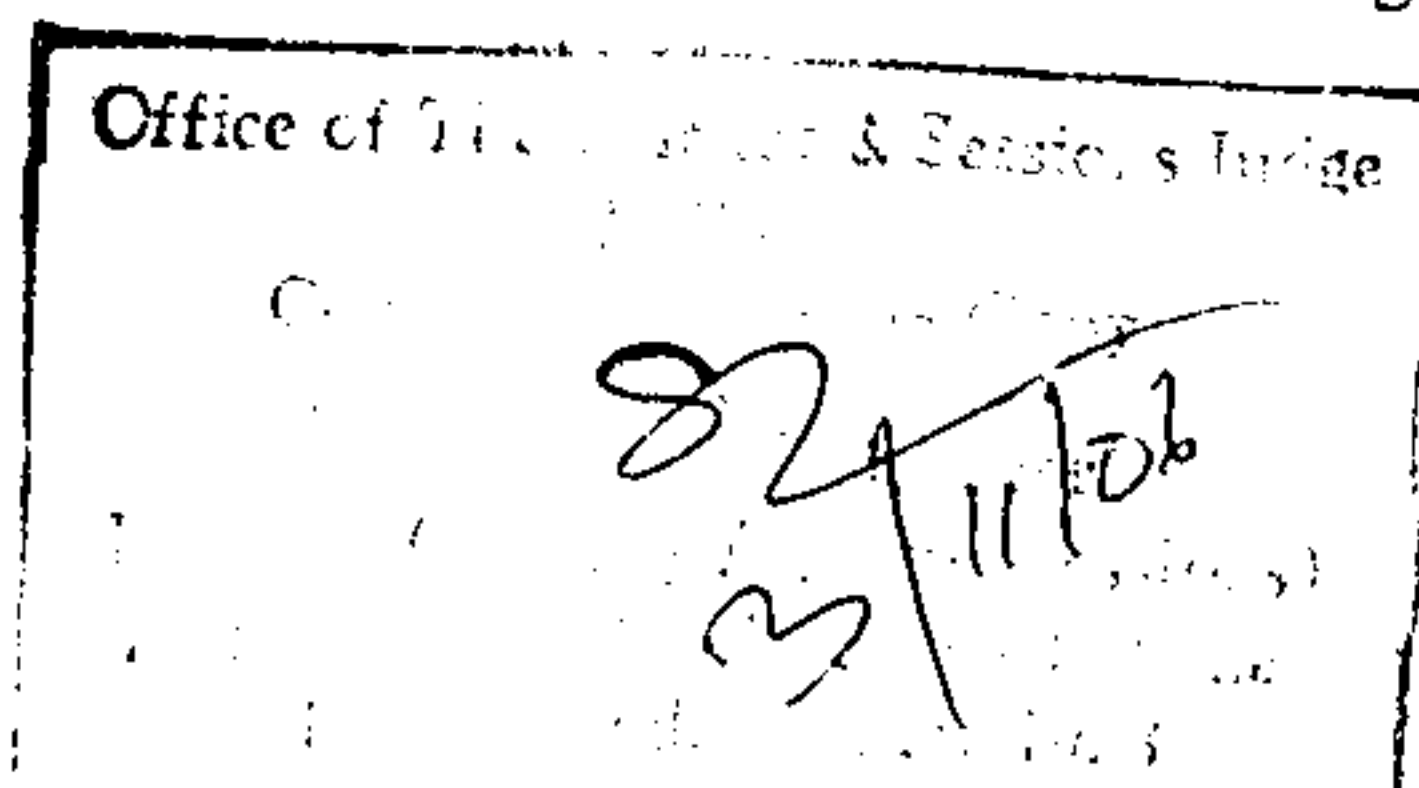
As observed in my judgment the accused having collected Rs.10.35 lacs from the general public through their CIS chose not to produce evidence of repayment and further chose not to submit in formatⁱⁿ the winding up and repayment report. No efforts seems to have made in this regard even during the pendency of this case. A ~~bold~~^{bold} statement that repayments had been effected cannot suffice. The regulations were intended to curb such activities ~~swallowed~~^{by} by unscrupulous people who were not even bothered about their obligations towards their investors. This is not a case where a conclusion could be reached that the non-compliance was only a technical one, the accused having failed to submit repayment report in formatⁱⁿ after having actually repaid the investors.

In the circumstances, the accused company and the accused no.2,3 and 4 Vijay Thakur, Sita Ram and Ajmair Singh are ~~therefore~~^{my} sentenced to a fine of Rs.30,000/- each in default of which the accused no.2,3 and 4 shall undergo six months SI. On payment of fine the personal bonds and surety bonds of accused shall stand cancelled and sureties are discharged.

Even though in this case proceedings u/S 82/83 Cr.P.C had been initiated against the accused Desh Raj, in view of the findings in the judgment that the accused Vijay Thakur, Sita Ram and Ajmair Singh were the directors of the company and the others were merely promoters, I consider it appropriate to stop proceedings against the accused Desh Raj by exercising powers u/S 258 Cr.P.C. File be consigned to the records.

Announced in the Open Court
Dated:28.10.06.

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



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Adl.