

IN THE COURT OF MS. POONAM CHAUDHARY ASJ (CENTRAL-01): DELHI

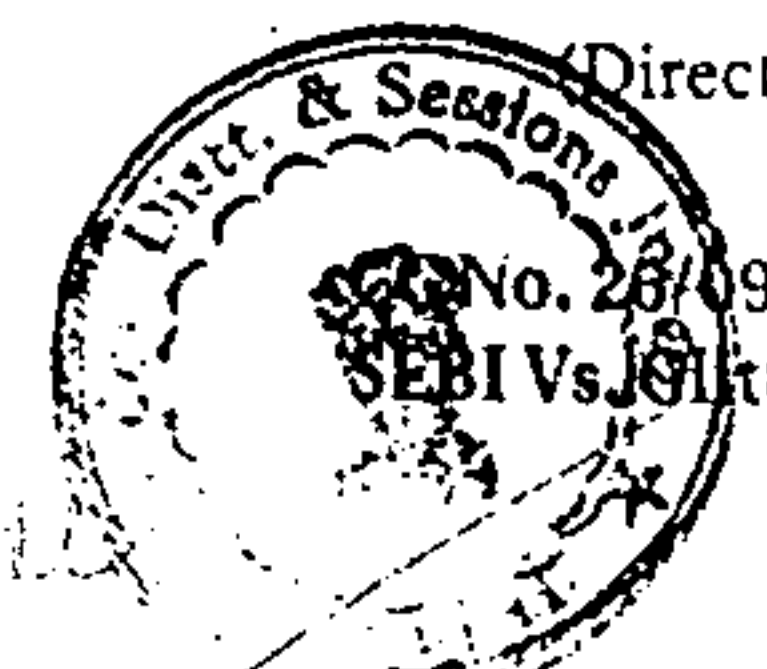
CC No. 26/09

**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, Dew
Lelhi represented by its Assistant General
Manager Ms. Jyoti Jindgar.

VERSUS

- 1 Glitter Gold Plantation Ltd. having
its registered office at : 307 Mukand
House, Commercial Complex, Azadpur,
Delhi 110085.
Also at:
B-7/14, Sector 18,
Rohini, Delhi -110085
Earlier at B-128, Shakarpur, Delhi.
- 2 Sh. Pankaj Jain (Director) / Promoter
B-7/14, Sector 18,
Rohini, Delhi 110085.
- 3 Sh. Deepak Jain (Director) / Promoter
B-7/14, Sector 18,
Rohini, Delhi 110085.
- 4 Smt. Manjul Jain (Director) / Promoter
B-7/14, Sector 18,
Rohini, Delhi 110085.

Sh. Sudershan Kumar Jain
(Director)/Promoter (alleged) u



SEBI Vs. Glitter Gold Plantation Ltd.

B-7/14, Sector 18,
Rohini, Delhi 110085.

- 6 Ms. Aarti Jain (Director)/ Promoter
AC-44 Sector Tagore Garuen
New Delhi 1100027.
- 7 Sh.Sachind Gupta, (Director)/Promoter
C-II/184, Lodhi Colony,
New Delhi-110003.
- 8 Sh.Yashwant Jain, (Promoter
/Director)
36, Priya Enclave,
Delhi-110092.

Arguments heard on : 27.03.2010
Judgments reserved for : 30.03.2010
Judgments announced on : 30.03.2010

JUDGMENT

1. In brief the case of the Securities and Exchange Board of India (herein after referred to as 'SEBI') a statutory body established under the provisions of Securities and Exchange Board of India Act 1992 (herein after referred to as the Act) as disclosed in the complaint is that accused no. 2 to 8 being the director of accused no. 1 (herein after referred to as accused company) floated Collective Investments Scheme (for short 'CIS') and collected Rs 14.06 lacs from the general public. It is also averred that for the Regulations of CIS, being run by entrepreneurs, SEBI notified the Securities and Exchange Board of India Regulation 1999 (herein after referred to as the 'Regulations'). However, 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 the

CC No. 26/09
SEBI Vs. Glitter Gold Plantation Ltd.

SEBI, accused company committed violations of Sections 11(B), 12(1B) of the Act read with Regulations 5(1), 68(1), 68(2), 73 & 74 punishable under Section 24(1) of the Act. SEBI also claimed that accused no. 2 to 8 being the directors of the accused no.1 company were responsible for the conduct of its business and, therefore, are liable for the said violations under Section 27 of the Act.

2. After filing of the complaint, all the accused were summoned vide order of Ld. ACMM, Delhi dated 15.12.2003. After appearance of the accused notice of accusation was given to them to which each of them pleaded not guilty on behalf of the company and self and claimed trial. Accused no. 5 expired during the pendency of the case and proceedings against him were abated.
3. In support of its case the complainant/SEBI examined Sh. Aman Jain Manager SEBI as CW 1 and thereafter closed its evidence.
4. The statements of all the accused were thereafter recorded u/s 313 Cr.P.C. Accused examined 3 witnesses in their defence and thereafter closed its defence evidence.
5. I have heard the Ld. Counsel for parties and perused the record.
6. The questions for consideration is whether SEBI has been able to prove its case beyond reasonable doubt against the accused.
7. CW 1 had proved letter Ex. CW 1/1 dated 15.01.98 issued by accused company in pursuance of the public notice issued by SEBI dated 26.11.97 furnishing information to the effect that company has mobilized funds to the tune of Rs. 14.06 lacks. CW 1 also proved Ex. CW 1/2 furnished by accused company to SEBI enclosing therewith the certified true copy of Memorandum and Articles of Associations, audited balance sheet, names of directors, compliance certificate, statement of deployment of funds mobilized under various schemes. As per the information furnished by the accused company Sh. Pankaj Jain, Deepak Jain and

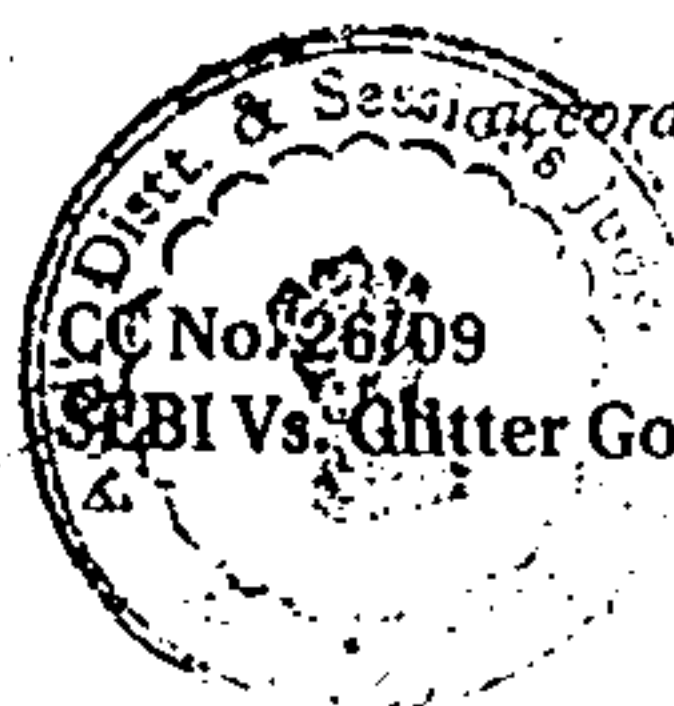
Manjul Jain were the directors of the company and as per the certified true copy of Memorandum and Articles of associations Sh. Sudershan Kumar Jain, Sh. Deepak Jain, Smt. Manjul Jain, Smt. Arti Verma, Sh. Pankaj Jain, Sh. Sachin Gupta and Sh. Yashwant Jain were the promoters of the accused company. CW 1 also deposed that as per Ex. CW 1/2 and its enclosure the company had mobilized funds of Rs. 3.81 Lacs as on 31.03.97. CW 1 also stated that vide letter dated 9.10.98 accused company had informed SEBI about the change of address of its registered office from 307 Mukand House, Azadpur Commercial Complex Delhi to B-128 Shakur Pur Delhi.

8. The genuineness and authenticity of Ex. CW 1/1 and Ex. CW 1/2 has not been challenged by the accused in the cross examination of CW 1. Therefore in view of the admitted documents Ex. CW 1/1 on the date of its issue which is 15.01.98 accused company had mobilized funds to the tune of Rs. 14.06 lacs and accused no. 2, 3 and 4 were the directors of the accused company. As per the Memorandum and Articles of Associations accused no. 2 to 8 were the subscribers of the company. As per the certificate of incorporation appearing in the Memorandum and Articles of Association accused company was incorporated on 31.01.96.

9. SEBI Act came into force w.e.f. 30.01.92 chapter V relates to the Registration certificate. Section 12(1B) was incorporated on 25.01.95 and provides that

"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"



CC No. 26/09
SEBI Vs. Glitter Gold Plantation Ltd.

10. Therefore according to section 12(1B) of the Act no person could sponsor CIS without registration from SEBI in accordance with the regulations. The regulation came into force w.e.f. 15.10.99.

11. CIS has been defined in 11AA of the Act. which is as follows :-

"Collective Investment Scheme – (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

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

- (i) the contributions, or payment made by the investors, by whatever name called, are pooled and 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.*



SEBI v. Glitter Gold Plantation Ltd.

12. As per the admitted letter Ex. CW 1/1 and its enclosures accused company had invited general public to invest in its various schemes which were to be managed by it. So it is an admitted fact that accused company had been running CIS as on date of issue of Ex. CW 1/1 which is 15.01.98, vide said letter company also disclosed its promises and assurances made to the investors in their schemes. As per the testimony of CW 1 the company had mobilized funds from the general public under its CIS. In their statement u/s 313 Cr.P.C. accused no. 2 MD and 3 admitted that company had mobilized funds under its CIS to the tune of Rs. 14.06 lacks. Accused no. 2 and 3 admitted in their statement u/s 313 Cr.P.C. that accused company did not get its CIS registered. Moreover accused no. 3 entered into the witness box and examined as DW 3, in his cross examination he stated that Ex. CW 1/ 16 did not bear the signature of the investors who received back the payment. He also stated that balance amount was still payable to the investors who did not respond to the letters sent by accused company to them. Hence it is an admitted fact that entire amount of investors had not been repaid. However they further stated that the schemes had been wound up and no collection was made after 1.04.98.

13. It is pertinent to note that as per Ex. CW 1/1 dated 15.01.98 company had investors funds to the tune of Rs. 14.06 lacks, therefore I have no hesitation in holding that accused company of which accused no. 2 to 4 were the directors had been running CIS after its incorporation on 30.01.96 and collecting funds from the general public. Accused no. 4 had given evasive reply in her statement u/s 313 Cr.P.C. that she was never associated with the accused company and did not know about the affairs of the company. However this submission of accused no. 4 cannot be accepted as, in view of the admitted document Ex. CW 1/2 and its enclosure she



the director of accused company at the time when offence was committed and

incharge and responsible to the company for the conduct of its business and she would be vicariously liable for the period during which she was managing and controlling the affairs of the company.

14. The SEBI CIS Regulation came into force w.e.f. 15.10.99. After notification of regulation SEBI sent letter to the accused company which is Ex. CW 1/ 4 dated 21.10.99 by virtue of this letter various provisions of regulations were brought to the notice of the accused company. As per regulations 5(1) of the regulation accused company had to apply for registration of its CIS till 31.03.2000. As per the regulation 73(1) CIS which failed to make an application with 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 repayment and make such repayment to the existing investors in the manner specified in Regulation 73.

15. 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.

16. Section 5(1) of the regulations is as follows:

"Any person who immediately prior to the commencement of these regulations was operating a scheme, shall subject to the provisions of Chapter IX of these regulations make an application to the Board for the grant of a certificate within a period of two months from such date."

17. Regulations 73 and 74 of SEBI Act reads as under.

73 (1) An existing collective investment scheme



SEBI Vs. Glitter Gold Plantation Ltd.

which :

- (a) has failed to make an application for registration to the Board ;or
 - (b) has not been granted provisional registration by the Board; or
 - (c) having obtained provisional registration fails to comply with the provisions of regulation 71;
- shall wind up the existing scheme.

(2) The existing Collective Investment Scheme to be wound up under sub-regulation (1) shall send an information memorandum to the investors who have subscribed to the scheme, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the scheme, the amount repayable to each investors and the manner in which such amount is determined.

(3) The information memorandum referred to in sub-regulations (2) shall be dated and signed by all the directors of the scheme.

(4) The Board may specify such other disclosure to be made in the information memorandum, as it deems fit.

(5) The information memorandum shall be sent to the investors within one week from the date of the information memorandum.

(6) The information memorandum shall explicitly



Glitter Gold Plantation Ltd.

stated that investors desirous of continuing with the scheme shall have to give a positive consent within one month from the date of the information to continue with the scheme.

(7) The investors who give positive consent under sub-regulation (6) shall continue with the scheme at their risk and responsibility:

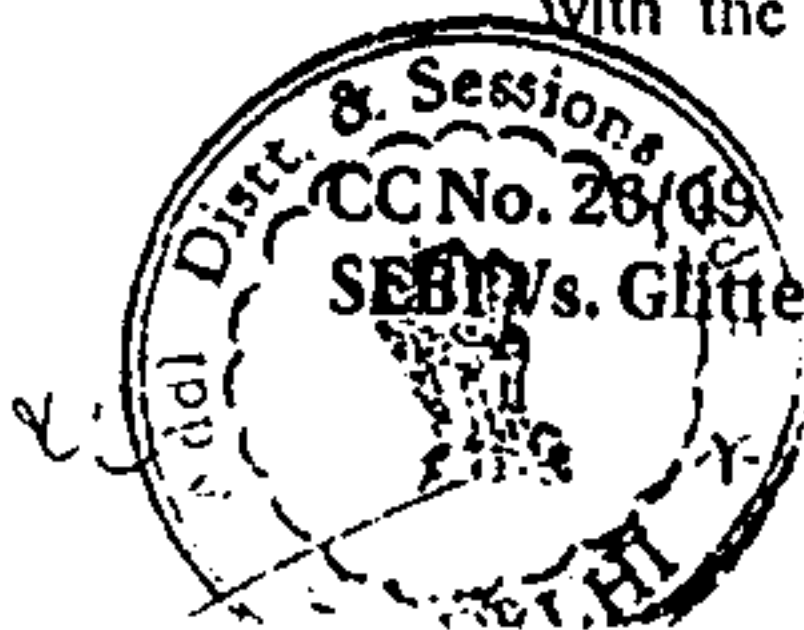
Provided that if the positive consent to continue with the scheme, is received from only twenty-five per cent or less of the total number of existing investors, the scheme shall be wound up.

(8) The payment to the investors, shall be made within three months of the date of the information memorandum.

(9) On completion of the winding up the existing collective investment scheme shall file with the Board such reports, as may be specified.

74. An existing collective investment scheme which is not desirous of obtaining provisional registration from the Board shall formulate a scheme or repayment and make such payment to the existing investors in the manner specified in regulations 73.

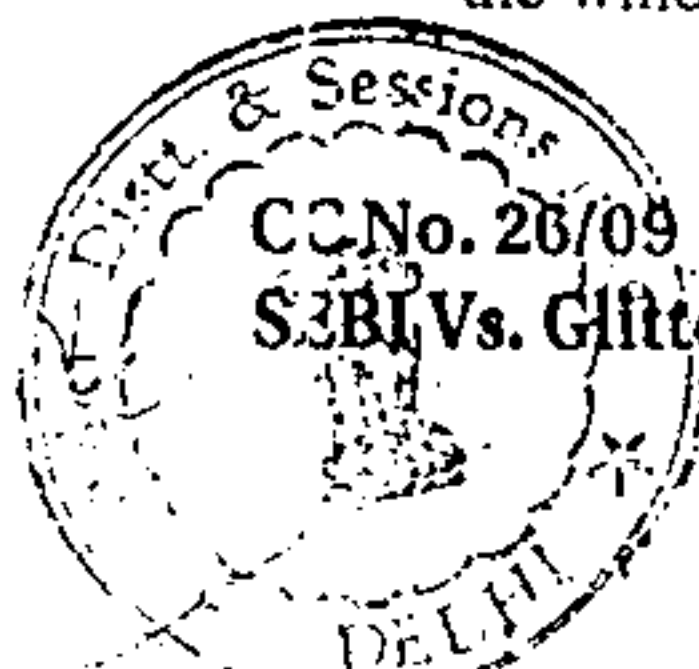
18. The question for consideration is whether accused company had complied with the regulations or not. CW 1 deposed that after the notification of the



SEBI vs. Glitter Gold Plantation Ltd.

25

regulations SEBI sent a copy of the same by registered post to the accused company which is Ex. CW 1/4. The regulatory obligations were also communicated to accused company vide letter Ex. CW 1/6. However the accused company neither applied for registration nor intimated SEBI regarding winding up of its schemes, hence show cause notice dated 12.05.2000 was issued to the accused company which is Ex. CW 1/10. CW 1 also deposed that SEBI received a letter dated 24.05.2000 sent by accused company informing about their change of address which is Ex. CW 1/11. Thereafter vide letter dated 31.07.2000 SEBI forwarded a format of winding up and repayment report in which companies were required to furnish information regarding winding up of their schemes and payments made thereafter which is Ex. CW 1/12. However as accused company failed to furnish the winding up and repayment report, the Chairman SEBI vide letter dated 7.12.2000 issued directions to the company u/s 11 (B) of the SEBI Act, 1992 read with Regulation 65 and 73 of SEBI CIS Regulations directing the company to refund money collected under the schemes with returns to the investors within one month from the date of the order. The above said letter of chairman SEBI was also notified vide public notice dated 14.01.2001 which is Ex. CW 1/14. Regulations were notified vide public notice dated 10.12.99 which is Ex. CW 1/15. In response of the said correspondence accused company vide letter Ex. CW 1/16 dated 9.01.2000 informed SEBI that it has closed its schemes in February 1998 and started repaying its investors and out of the total amount of Rs. 14,07,500/- 5,18,100/- remain unpaid. CW 1 also stated that SEBI vide letter Ex. CW 1/17 again forwarded the format of winding up and repayment report but the accused company did not comply with the order of SEBI dated 7.12.2000 and did not wind up its scheme. The accused company along with Ex. CW 1/18 submitted the winding up and repayment report till March 2004 duly certified by its auditors



CC No. 26/09
SEBI Vs. Glitter Gold Plantation Ltd.

26

and also enclosed the WRR till 2004 and copies of balance sheet for the year 2000-2001, 2001-2002, 2002-2003. Accused company vide letter Ex. CW 1/19 informed SEBI that it had repaid Rs. 11,88,000/- out of rs. 14,06,000/-. CW 1 also proved letter Ex. CW 1/ 21 dated 21.11.2005 of the accused company received by SEBI wherein it was stated that rs. 2, 17,600/- was the balance amount repayable to the investors, the same letter was also proved by CW 1 as Ex. CW 1/DA in her cross examination. Thus in view of the said document, admittedly the entire amount of the investors had not been repaid. However SEBI vide letter Ex. CW 1/ 20 asked the company to repay all the investors and submit the final Winding up and Repayment report. CW 1 also stated that no WRR had been filed till filing of the complaint.

19. In this regard it is pertinent to mention that accused no. 2 had admitted in his statement u/s 313 Cr.P.C. that winding up and repayment report was submitted upto March 2004 and also admitted that as per the auditor's report and balance sheet of the accused company for the year 2004 Rs. 11,88,400/- stood repaid. Accused no. 2 also admitted in his statement u/s 313 Cr. P.C. that accused company did not get its CIS registered whereas other director accused no. 3, 4, 6, 7 and 8 gave evasive reply to the same. Accused no. 2 and 3 also admitted in their statement u/s 313 Cr.P.C. that final WRR was not filed, whereas accused no. 4 had given evasive reply to the same. Thus in view of the testimony of CW 1, admission of accused no.2 the document Ex. CW 1/19, CW 1/ 21 and Ex. CW 1/DA which is correspondence between the parties, it has been proved by SEBI that CIS was not returned not company had been wound up nor entire money of investors has been repaid till date.

As already stated that as per section 12 (1B) of the act any person carrying

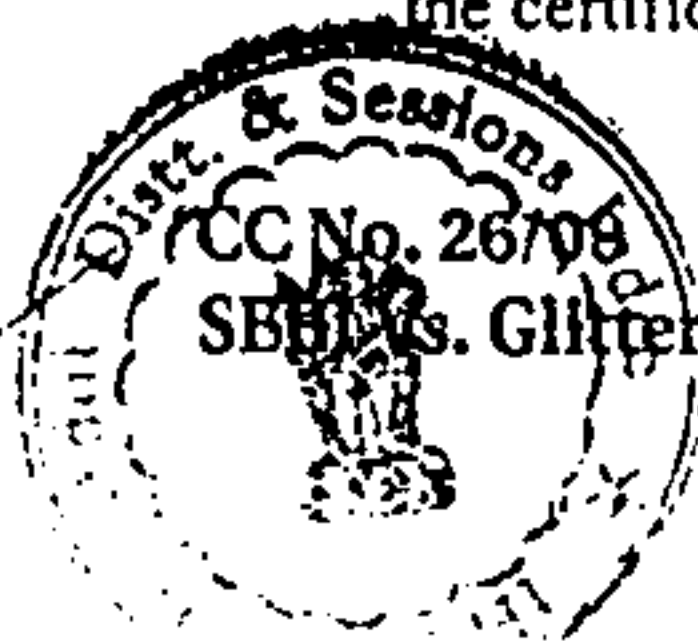


SEBI vs. Glitter Gold Plantation Ltd.

11/17

on CIS without certificate of registration from SEBI in accordance with the regulation is liable to be punished under section 24 of the Act. Thus accused company bound to submit the final WRR to SEBI in terms of the regulation 73 and 74 which they admittedly failed to do so till filing of the complaint. Accused no. 2 had admitted in his statement u/s 313 Cr.P.C. that final WRR was not filed with SEBI. In these circumstances as final WRR was not submitted to SEBI even granting that accused company had repaid some of the investors accused are guilty for violation of the regulations.

21. It is contented on behalf of accused no. 6, 7 and 8 that they were never a director of accused company and never associated with the day to day affairs of the company hence they cannot be held vicariously liable for the violation of SEBI CIS regulations and Act.
22. Defence taken by accused no. 6, 7 and 8 is that they were never a director and incharge of the affairs of the accused company. It was also alleged that they were never in control of the affairs of the accused company but were subscriber to the Memorandum.
23. Accused no. 8 entered the witness box and deposed that he was never a director of the company. He stated that as per certified copy of the Memorandum and Articles of association of accused company Ex. D8W 1/1 and Form 32 Ex. D8W 1/2 and annual returns for the year 1998 and for the year 2002 Ex. D8W 1/3 and D8W 1/4 respectively he was not a director of the company. However as this witness was tender for cross examination his testimony cannot be read in evidence.
24. Accused no. 7 and 8 had sought to raise the defence that CW 1 stated in her cross examination that no document was filed by SEBI to show that they were the directors of the accused company. It is further alleged on their behalf that as per the certified copy of Memorandum and Articles of Association they were only the



SEBI vs. Glitter Gold Plantation Ltd.

12/17

28

promoters of the company. However I am of the view that SEBI has been able to prove that accused no. 7 and 8 were the promoters in view of the Memorandum and Articles of Association of the accused company.

25. On the other hand Ld. Counsel for SEBI argued that by use of word 'Promoter' it could not be said that accused no. 7 and 8 were not responsible for the affairs of the company. It is also alleged 'promoter' is a person in charge of affairs of the company.

26. Accused also examined DW 2 in their defence who stated that he was working as a Chartered Accountant of the accused company and stated that the audit report and account of the company for the financial year 2003-2004 of accused company was Ex. DW 2/A and auditors report and copy of account for the financial year 2007-2008 is Ex. DW 2/B. He further stated that as per Ex. DW 2/ D Rs. 1,65,600/- was payable to the unit holder as on 31.02.2008 and further stated that he did not know the amount payable to the unit holders as on date.

27. Accused no. 3 also entered the witness box and stated that he was one of the director of the accused company and as per the SEBI directions company had started returning unit amount to the investors after closing its business. He also stated that letters were sent to the investors which are Ex. DW 3/A 1 to DW 3/A 40 and UPC certificate is Ex. DW 3/ 41. In his cross examination he stated that in the year 97-98 the company had investors funds to the tune of Rs. 14 lacs. He also stated that balance amount was payable to the investors who did not respond to the letters. He also stated that Ex. CW 1/ 16 did not bear the signature of investors who received back the amount. Thus it is an admitted fact that entire amount of investors was not repaid.

28. In support of his contention Ld. Counsel for accused has placed reliance upon;



Glitter Gold Plantation Ltd.

2010 1 AD (CRL.) SC 633

Wherein it has been held as follows:

"Negotiable Instrument Act, 1881 – Sec. 138, 141 and 142- Companies Act, 1956-Sec. 5 and 291- Code of Criminal Procedure, 1973-Sec. 482-High court quashed the summoning orders passed by the trial Court against respondent no. 1/ director w/s 138 read with Section 141 of NI Act after finding that the averments against respondent no. 1 are unspecific and general and no particular role is assigned to the appellant- Issue-What should be the averments in the complaint under Section 138 read with Section 141 of the Act against the Director of a Company before he can be subjected to criminal proceedings- HELD – Complaint should spell out as to how and in what manner Respondent no. 1 was in-charge of or was responsible to the accused company for the conduct of its business- Persons responsible to the company for the conduct of the business of the company- Vicarious liability on the part of a person must be pleaded and proved and not inferred."

29. Ld. Counsel for accused no. 7 has placed reliance upon:

167 (2010) DELHI LAW TIMES 428

M.L. Gupta & Ors.

Vs.

DCM Financial Services Ltd.

wherein it has been held as follows:



Glitter Gold Plantation Ltd.

(1), Negotiable Instrument Act. 1881-Sections 138 and 141
 141(2)- Criminal Procedure Code 1973 -Section 482-
 Dishonour of Cheque-Offence by Company -Quashing of
 complaint ground- Petitioners had resigned from
 Directorship of company much prior to dates on which
 cheques in question were presented to bank for encashment
 -Even if resignation was not given by petitioner under
 intimation to complainant, that would not make any
 difference, once court relying upon certified copy of Form 32
 accepts their plea that they were not Directors of company on
 the date offence under section 138 was committed- They
 having resigned from Directorship much prior to even
 presentation of cheque for encashment, they cannot be
 vicariously liable for offence committed by Company unless it
 is alleged and shown that even after resigning , they
 continued to be person in charge of an responsible to
 company for conduct of its business- Petitioner were not in a
 position to compel Company to ensure that cheques when
 presented to bank were honoured as after resigning
 petitioners did not continue to control affairs of company-
 Petitioner not covered even under sub -section (2) of Section
 141 -Criminal complaints quashed. "

30. Ld. Counsel for accused no. 7 has placed reliance upon the decision of
 Hon'ble High court in Cr/ M.C. 3937/2009 , Shri Raj Chawla Vs. Securities and
 Exchange Board of India (SEBI) and anr.



SEBI Vs. Gitter Gold Plantation Ltd.

31

31. On the other hand Ld. counsel for SEBI Sh. Vinod Kumar has argued that from the evidence on record SEBI has proved beyond reasonable doubt that as per the Memorandum and Articles of Association of accused company accused no. 7 and 8 were the promoters/ subscriber to the Memorandum of the accused company. In view of the submissions of Ld. Counsel for SEBI, I am of the view that promoters were also responsible to ensure that CIS was being run as per the law and regulations.

32. It is significant to note that according to section 12 (1B) of the act no person could run CIS or cause it to be run without registration, promoters and sponsors of CIS would be covered u/s 12(1B) of the Act as the CIS was being run by them through others specially directors of the accused company. Hence the promoters were also responsible to ensure that the business of CIS was being run according to the law and regulation. Therefore in my view none of the accused can claim exclusion.

33. It is argued by Ld. Counsel for SEBI that aim and object of legislature could not be overlooked. It is alleged that public notice were issued to remind the defaulters that they were required to confirm compliance. It is further submitted from the totality of the evidence it has been proved that accused had been running CIS which had not been wound up neither all the investors had been repaid. Thus there was existing CIS at the time of notification of regulation. Accused company was therefore bound to submit the final WRR to SEBI which they admittedly failed to do so.

34. Hence at the time of filing of complaint the violation of Act continued, as final winding up and repayment report had not been submitted to SEBI under regulation 73 and 74. Accused were under obligation to intimate SEBI in the prescribed format payment made by them and submit the winding up and



32
repayment report also in format.

35. For the foregoing reasons I am of the view that SEBI has proved its case against the accused company of which accused no. 2 to 4 were the directors and accused no. 6 to 8 being promoters to the effect that CIS as contemplated by section 11 AA of the Act, had been floated funds mobilized from general public without obtaining certificate of registration as required by section 12(1B) of the Act. It has also been proved that despite coming into force of the regulations w.e.f. 15.10.99 accused company failed to make an application for registration of its CIS within the statutory period as contemplated by regulations. Apart from this SEBI has also proved beyond reasonable doubt that accused company failed to apply for registrations of its CIS and did not wind up its CIS or repay the investors as per regulations 73 and 74.

36. I accordingly hold that accused company Glitter Gold Plantation Ltd. and accused no. 2 to 4 being directors and accused no. 6 to 8 promoters of company are guilty for violation of Regulation 5(1) read with regulations 68 (1), 68(2), 73 & 74 of SEBI CIS regulations 1999 r/w section 24 & 27 of the SEBI Act, 1992. Accused to be heard on the point of sentence on 9.04.2010.

Announced in the open Court
On this day of 30th March 2010



(POONAM CHAUDHARY)
ASJ (Central-01) : DELHI

Addl. Sessions Judge
(Central)-01
Tis Hazari Courts, Delhi

Ms. POONAM CHAUDHARY
Addl. Sessions Judge, (Central)-01
Room No. 345,
Tis Hazar Courts, Delhi

33

IN THE COURT OF MS. POONAM CHAUDHARY
ASJ (CENTRAL-01) : DELHI

CC No. 26/09

SEBI Vs. Glitter Gold Ltd.

13.03.2010.

ORDER ON SENTENCE

Present : Sh. Varun Mehlawat , counsel for SEBI.
Convict no. 2 to 4 and 6 to 8 on bail.
Sh. Vinod Sethi counsel for accused no. 7.
Sh. N. S. Jain counsel for accused no. 8.
Sh. R. P. Tyagi counsel for remaining convicts.

1. I have heard the Ld. Counsel for SEBI Sh. Varun Mehlawat and Ld. counsels for convicts on the point of sentence.
2. It is submitted on behalf of convict no. 7 that he is 33 years of age and his family comprises of his wife, minor child and widowed mother and he is the sole earning member of the family. It is submitted on behalf of convict no. 8 that he is 50 years of age and his family comprises of his wife and two minor children and he is also sole earning member of the family. It is prayed that lenient view may be taken.
3. It is submitted by Ld. Counsel Sh. R. P. Tyagi for remaining convicts that they had moved an application to SEBI for deposit of balance amount of Rs. 1,50,600/- . However it is an admitted fact that final WRR has not been filed. It has been held in the judgment that accused company of which accused no. 2 to 4 were the directors and accused no. 6 to 8 were the promoters was running CIS after its incorporation on 31.01.96 and had floated CIS without obtaining registration certificate as per Section 12 (1B) of the Act and had mobilized funds to the tune of Rs. 14.06 lacs from the general public. It was further held in the judgment that despite coming into fore of the regulation w.e.f. 15.10.99 convicts failed to get its registered . It was further held in the judgment that final WRR was not filed neither entire money of the investors had been returned. The convicts illegally collected and misused the funds collected from general public in violation of



34

provision of SEBI CIS regulations.

4. Ld. Counsel for SEBI has opposed the submission made by Ld. Counsel for convicts and submits that accused had mobilized funds from general public in violations of SEBI CIS regulations.
5. Ld. Counsel for SEBI Sh. Varun Mehlawat states that the Act came into force in 1992 to provide for establishment of a Board to protect the the interest of investors in securities and to promote the development of, and regulate securities market and matters connected therewith.
6. I am of the view that convict had sufficient time to comply with the provisions of the act and regulations made thereunder however violation continued till filing of the complaint and even as till date.
7. According to section 12(1B) of the Act, the Collective Investment scheme could not be run without obtaining registration as per regulations.
8. Convicts no. 2 to 4 were the directors and accused no. 6 to 8 were the promoters of accused no. 1 company and accused company in violations of section 12(1B) of the SEBI Act floated Collective Investment Scheme and collected amount from general public. The promoters were also responsible to ensure that CIS was being run as per the law and regulations.
9. It is significant to mention that w.e.f. 29.10.2002 section 24 of the Act was amended and provides imprisonment extending up to 10 years an fine up to Rs. 25 crores or both. This shows that the the legislature has viewed the offences under the act and regulation very seriously. As convict no. 4 Smt. Manjul Jain and accused no. 6 Ms. Aarti Jain are woman and keeping in view the facts and circumstances of the case I am of the view that it would not be in the interest of justice to send them to jail, their prayer for taking lenient view is considered.
10. However as the offence in question was committed before the amendment came into force hence, in these facts and circumstances of the present case accused no. 2, 3, 5, 7, and 8 are sentenced to RI for 3 months each. In addition accused company and convicts no. 2, 3, 5, 7, and 8 shall also pay a fine of Rs. 1,00,000/- (One lakh) each and in default thereof convicts 2, 3, 5, 7, and 8 (except accused



35

company) shall undergo SI for 3 months each u/s 24 read with section 27 of the Act.

11. As far as accused no. 4. Smt. Manjul Jain and accused no. 6 Ms. Aarti Jain are concerned, I am of the view that it would not be in the interest of justice to send accused no. 4 and 6 to Jail, accordingly they are sentenced to pay fine of Rs. 50,000/- each and in default thereof they shall undergo SI for 3 months each. Convict shall file WRR in the format with SEBI within 2 months from today. Out of the amount of fine realised a sum of Rs. 30,000/- be paid to SEBI after expiry of period of revision, appeal, towards the expenses incurred by it. Fine has been paid by accused no 4 and 6. Copy of order be given to convicts free of cost. File is



Poonam Chaudhary

(POONAM CHAUDHARY)
ASJ (Gen. Secy) DELHI.
(13.04.2010)
T: Hazari Court, Delhi