

**IN THE COURT OF SH. PAWAN KUMAR JAIN
ADDITIONAL SESSIONS JUDGE-01(CENTRAL):DELHI**

**Complaint Case No. 17 of 2010
ID No: 02401R0210412002**

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 Ms. Versha Aggarwal, AGM, SEBI.

Versus

- 1. Green Virdraban Farms Ltd.,**
a company incorporated under the provisions of Companies Act, 1956 and having its head office at S.B. Saini Building, Clock Tower, Hoshiarpur, Punjab

.....Accused no.1

- 2. Sh. Harbans Lal**
S/o Not Known to the complainant;
Occupation Director of the Accused No. 1
R/o VPO: Bajwara Kalan, Distt. Hoshiarpur, Punjab.

.....Accused no.2

- 3. Sh. Jagir Ram**
S/o Sh. Ujagar Ram
Occupation Director of the Accused No. 1
R/o VPO Manko, Distt. Jalandhar, Punjab

.....Accused no.3

4. **Sh. Baldev Singh**
S/o Sh. Mangha Singh
Occupation Director of the Accused No. 1
R/o H.N. 717, Ward No.3, Balachaur,
Distt. Nawa Shahar, Shaheed Bhagat Singh Nagar,
Punjab.

.....Accused no.4

5. **Sh. Nirmaljit Singh**
S/o Not known to the complainant
Occupation Director of the Accused No. 1
R/o Plot No. 180, H. No. 3490, Model House
Jalandhar, Punjab.

.....Accused no.5

6. **Sh. Sheetal Singh,**
S/o Sh. Karam Chand
Occupation Director of the Accused No. 1
R/o VPO: Narurl, The Phagwara, Distt. Kapurthala,
Punjab.

.....Accused no.6

7. **Sh. Charan Dass,**
S/o Sh. Kartara Ram
Occupation Director of the Accused No. 1
R/o Vill. Kalewal (Lallian), PO Garhshankar,
Distt. Hoshiarpur.

.....Accused no.7

Date of Institution	:	21.12.2002
Date of committal to Session Court	:	01.02.2005
Date of judgment reserved on	:	12.12.2012
Date of pronouncement of judgment	:	20.12.2012

Present: Sh.Sanjay Mann, Advocate, Counsel for SEBI.
Sh. A.K.Bansal, Advocate, counsel for A3, A4, A6
and A7

JUDGMENT :

- 1.** This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on December 21, 2002 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the provisions of Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.
- 2.** Seven persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Green Virdraban Farms Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Harbans Lal, ("A2"), accused No.3 Sh. Jagir Ram ("A3"), accused No.4 Sh. Baldev Singh ("A4"), accused No.5 Sh. Nirmaljit Singh ("A5"), accused No.6 Sh. Sheetal ("A6") and accused No.7 Sh. Charan Dass ("A7") It is alleged that A2 to A7 were Directors of the company accused and as such persons were in-charge of, and responsible to, A1 for the conduct of its business within the meaning of the provisions contained in Section 27 of the SEBI Act.
- 3.** It is alleged in the complaint that A1 had floated the Collective Investment Schemes (CIS) and raised amount approximately

₹ 0.29 crores from general public, in violation of the provisions contained in Section 12 (1B) of the SEBI Act. It is also alleged that after coming into force of the CIS Regulations and in spite of public notice dated December 18, 1997, the accused persons had failed to get the Collective Investment Scheme registered with SEBI or to wind up the said scheme or repay the amount collected from the investors in terms of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

4. **Cognizance** on the complaint was taken by the learned ACMM vide order dated December 21, 2002 whereby process were issued under Section 204 Cr.P.C. against all the accused persons.
5. **On account of the amendment**, particularly in Sections 24 and 26 of the SEBI Act, through Amendment Act which came into force w.e.f. November 24, 2002, pursuant to Administrative Directions of Hon'ble High Court, under orders of the Ld. District & Sessions Judge, this case was transferred on February 1, 2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Additional Sessions Judge, Delhi.
6. **Vide order dated August 5, 2004** passed by the Hon'ble Punjab & Haryana High Court in C.P. No. 13 of 2003, proceedings against company accused were stayed as company accused was wound up by the order of Punjab & Haryana High Court, Chandigarh and all the assets and liabilities had been taken by the official liquidator appointed by the Hon'ble High Court, Chandigarh.

Thereafter company accused was represented by its official liquidator. Vide order August 3, 2006, proceedings against A5 had been abated on account of his death. Vide order dated February 20, 2009 A2 was declared proclaimed offender on account of his non-appearance. Vide order dated April 16, 2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company) & A3, A4, A6 & A7 wherein all accused persons pleaded not guilty and claimed trial. Vide order dated March 15, 2012, Hon`ble High Court of Punjab & Haryana stayed the proceedings qua official liquidator of company accused.

7. To bring home the guilt of accused, complainant has examined two witnesses namely Ms. Versha Aggarwal, Asstt. General Manager as CW1 and Ms. Jyoti Jindgar, DGM, SEBI as CW2. Thereafter, A3, A4, A6 & A7 were examined under Section 313 Cr.P.C. wherein A3 & A6 took the plea that though they were directors in the company accused, yet they were not involved in day to day affairs of the company accused at the relevant time. They further submitted that company accused was wound up by the order of Punjab & Haryana High Court, Chandigarh and all the assets and liabilities had been taken over by the official liquidator appointed by the Hon`ble High Court, Chandigarh. They further submitted that they could not say what was being done by official liquidator as he was responsible to satisfy the repayment to the investors. A4 admitted that company accused was incorporated on November 29, 1996 and took the plea that he had joined the company accused as Branch Manager in 1996 and remained in the company accused till March 1998. He further submitted that he was not in-charge of, and responsible to for day to

day affairs of the company accused. A7 took the plea that he was inducted in the company accused as a Director by Harbans Lal, Managing Director of the company accused, who was his relative but took the plea that he had signed the paper at the instance of Harbans Lal and he was not involved in day to day affairs of the company accused and did not aware about the funds generated by the company accused and submitted that he was settled in the abroad. To prove their innocence, accused persons have examined one witness named Sh. M. C. Panday, Company Paid Asstt. of Official Liquidator as DW1.

8. **Learned** counsel appearing for accused persons vehemently contended that there is no iota of evidence to show that company accused had mobilised any fund through collective investment schemes as alleged by the SEBI. It was submitted that the SEBI has relied upon the balance-sheet for the year ending March 31, 1997, wherein unsecured loan to the tune of ₹ 29,32,393.50 has been shown. It was submitted that assuming for the sake of arguments that company accused had raised the said amount, even then SEBI failed to establish that company accused had violated any provisions of SEBI Act because the said amount was raised under the heading of 'Unsecured Loan' and not under the 'Collective Investment Schemes'.
9. It was contended that there is no evidence on record to establish that A4, A6 and A7 were first directors in the company accused at the relevant time, thus it was argued that they can not be held liable for the violations, if any, on the part of company accused.
10. **Per contra**, learned counsel appearing for SEBI contended

that there are sufficient evidence on record to establish that company accused had raised the amount of ₹ 29,32,393.50 through various collective investment schemes. It was contented that company accused had sent a letter to the SEBI on April 25, 1998 (Ex. CW1/1) wherein company accused had sent the brochure of various Collective Investment Schemes. Similarly, in its letter dated May 28, 1998 (Ex. CW1/2), company accused intimated the SEBI that company accused had not floated any new scheme but company accused was continuing with existing schemes, which proves that company accused was carrying on collective investment schemes. Similarly, company accused had also sent a letter dated June 19, 1998 (Ex. CW1/3) wherein company accused had sent the list of investors to the SEBI, from whom money was raised and to whom the money was refunded and further intimated the SEBI that accused company had not launched any new scheme. Company accused had also sent the brochure of the scheme. Similarly, in its letter dated July 7, 1998 (Ex. CW1/4), company accused intimated the SEBI that they had stopped mobilisation of funds from the investors as directed by the SEBI. It was further contended that even from the documents filed by the accused persons in their defence evidence which are collectively exhibited as Ex. DW1/A, it is established that company accused had mobilized funds from the investors. It was further contended that no doubt, the name of A4, A6 and A7 are not mentioned in the list of first Directors but contended that company accused had furnished the detail of its directors to the SEBI vide its letter Ex. CW1/2 and Ex. CW1/3, which clearly shows that A4, A6 & A7 were also directors, thus liable for the violations committed by the company accused.

11. I have heard rival submissions advanced by learned counsel for both the parties, perused the record carefully and gave my thoughtful consideration to their contentions.
12. **Company** accused was incorporated on November 29, 1996 and this fact is proved from the Memorandum and Articles of Associations of the company accused, which was sent through letter Ex. CW1/2 by the company accused to the SEBI. Moreover, this fact is not disputed by the accused persons during trial.
13. **Section 12(1B)** was inserted in the statute *w.e.f* January 25, 1995 by way of amendment Act 9 of 1995. After insertion of Section 12(1B) in the statute, no person was supposed to sponsor or caused to be sponsored or carry on or caused to be carried on any collective investment schemes unless he obtains a certificate of registration from the Board in accordance with the regulations. In other words, *w.e.f* January 25, 1995, a person was required to obtain a certificate of registration from the SEBI before mobilizing any fund through collective investment scheme. Since, company accused was incorporated in November 1996, company accused was not supposed to raise any fund through collective investment schemes unless it obtained a certificate of registration in terms of Section 12(1B) of the Act. Admittedly, in the instant case, company accused had not obtained any such certificate.
14. **No** doubt, under proviso to Section 12(1B), some relaxation has been provided by the statute from obtaining the certificate of registration but that relaxation is applicable only to those companies

which were in existence on January 25, 1995 and were carrying an any collective investment scheme, such companies were permitted to continue with the existing schemes till the notification of regulations. Since, company accused was not in existence on January 25, 1995 when Section 12(1B) was inserted, company accused is not entitled for the relaxation as provided under proviso to Section 12(1B) of the SEBI Act.

15. Now question arises as to whether company accused had mobilized any fund or not?

16. Admittedly, company accused had furnished certain information to the SEBI through its letter dated May 28, 1998 (Ex. CW1/2), which also includes the balance-sheet for the year ending March 31, 1997. The said balance-sheet was again furnished to the SEBI vide letter Ex. CW1/5. In the said balance-sheet, company accused had showed contributors collection to the tune of ₹ 29,32,393.50 under the heading of 'Unsecured loans'. It is pertinent to mention here that though the amount was shown under the heading of 'Unsecured loans' but it is mentioned as 'contributors collections' which establishes that the said amount was collected from different persons. Company accused had also sent brochure of the Collective Investment Schemes to the SEBI through its letter Ex. CW1/1 & Ex. CW1/3. In Ex. CW1/3, company accused intimated the SEBI that company accused had not launched any new scheme and further intimated that on receipt of information from the SEBI, company accused had approached the Credit Rating Agency to seek rating of their schemes and further furnished the list of investors to the SEBI

and also intimated the detail of amount paid on maturity to the investors. If company accused had not raised any fund through collective investment schemes where was the occasion for the company accused to intimate such facts to the SEBI. Similar facts were also disclosed by the company accused to the SEBI through its letter Ex. CW1/2.

17. During trial, accused persons have filed certain documents, which are collectively exhibited as Ex. DW1/A. These documents also includes the receipts, issued by the company accused to the investors, which shows that the company accused had collected the amount from different investors in lieu of the units purchased by the investors from the company accused. This further corroborated the complainant's version that company accused had mobilized the funds through collective investment schemes from public. Mere fact that the said collected amount has been shown under the heading of 'Unsecured loans' does not make the said amount as unsecured loan. The said amount remained as amount collected by the company accused through its collective investment schemes launched from time to time. Thus, I do not find any substance in the contention of learned counsel that company accused had taken 'unsecured loan' to the tune of ₹ 29,32,393.50 from different persons and the said amount was not mobilized through collective investment schemes.

18. As already held that company accused had not obtained the certificate of registration at the time of mobilizing the said amount, thus company accused had violated the mandatory provisions of Section 12(1B) of the SEBI Act at the time of mobilizing the said funds.

19. Indisputably, the CIS Regulations were notified w.e.f October 15, 1999. In terms of Regulation 5, the companies which were operating any collective investment scheme at the time of notification of Regulations, were supposed to apply within two months to obtain the certificate of registration with the SEBI but company accused failed to make any such application. Once, company accused failed to make any such application, company accused was bound to refund the amount to the investors and to submit the winding up and repayment report with the SEBI on the prescribe formate in terms of Regulation 73 of CIS Regulations. Admittedly, company accused failed to submit winding up and repayment report on the prescribed format, thus company accused had also violated Regulations 5 & 73 of CIS Regulations, which are punishable under Section 24(1) of SEBI Act.

20.. Now coming to the liabilities of individual directors?

21. As per the Memorandum and Articles of Associations of company accused, A3 Jagir Ram was one of the first directors. No doubt, the name of A4, A6 & A7 is not mentioned in the Articles of Associations of the company accused as first directors. But this fact is not sufficient to hold that they were not the directors in the company accused. Indisputably, company accused had furnished the detail of its directors to the SEBI from time to time; firstly on May 28, 1998 vide its letter Ex. CW1/2; secondly on June 29, 1998 vide its letter Ex. CW1/3 and thirdly on July 31, 1998 vide its letter Ex. CW1/6. In all the said communications, company accused had categorically stated that besides A3 Mr. Jagir Ram, A4, A6 and A7 were also the directors in

the company accused. A3 & A6 in their examination under Section 313 Cr.P.C, took the plea that though they were directors in the company accused, yet they were not involved in day to day affairs of company accused. A4 took the plea that he had joined the company accused in the year 1996 as Branch Manager and remained there till March 1998 and further stated that he was not in-charge of, and responsible to for the day to day affairs of the company accused. A7 took the plea that he was inducted in the company accused as a director by Mr. Harbans Lal, Managing Director of company, who was his relative but he was not involved in the day to day affairs of the company accused. Thus, all the accused persons except A4 admitted that they were directors in the company accused but not involved in the day to day affairs of the company accused. Though, A4 Baldev Singh took the plea that he was Branch Manager and not the director in the company accused but during trial, he failed to produce any evidence in this regard. In the absence of any cogent evidence on record, the defence version does not inspire any confidence. As per the Article of Associations of the company accused, only Board of Directors was empowered to raise or borrow money from public. Board is comprising of all the directors of the company accused, thus the accused company could raise the funds through collective investment schemes only pursuant to the decision taken by the Board of Directors, thus all the directors who were members of the Board were liable for the said decision. Being the directors of the company accused, it was the responsibility of accused persons to ensure that company accused had not violated any mandatory provisions of SEBI Act at the time of mobilizing funds. Simultaneously, it is also their duty to ensure that company accused had complied with all the provisions

of CIS Regulations but accused persons failed to ensure the same. Since, they were directors of the company accused, they were also in-charge of, and responsible to, the company accused for the conduct of its business *i.e* raising money from public and complying with the provisions of CIS Regulations. Thus, they cannot escape from their vicarious liabilities for the said violations.

22. In view of the above, I am of the opinion that A3, A4, A6 & A7 are also liable for the said violations committed by the company accused in terms of Section 27(1) & Section 27 (2) of the SEBI Act.

23. Pondering over the ongoing discussion, I am of the considered opinion that SEBI has succeeded to establish beyond the shadow of all reasonable doubts that company accused had mobilized funds in violation of Section 12(1B) of the SEBI Act and also violated Regulations 5 & 73 of CIS Regulations which are punishable under Section 24(1) of the SEBI Act. Simultaneously, SEBI has also succeeded to establish beyond the shadow of all reasonable doubts that A3, A4, A6 & A7 being the directors of company accused are also liable in terms of Section 27 (1) & 27(2) of SEBI Act for the said violations committed by the company accused, thus, I hereby hold A3 Sh. Jagir Ram , A4 Sh. Baldev Singh, A6 Sh. Sheetal and A 7 Sh. Charan Dass guilty for the offence punishable under Section 24(1) of SEBI Act read with Section 27 (1) & 27(2) of the SEBI Act.

***Announced in the open Court
on this 20th day of December 2012*** (PAWAN KUMAR JAIN)
**ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI**

IN THE COURT OF SH. PAWAN KUMAR JAIN
ADDITIONAL SESSIONS JUDGE-01(CENTRAL):DELHI

Complaint Case No. 17 of 2010
ID No: 02401R0210412002

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 Ms. Versha Aggarwal, AGM, SEBI.

Versus

1. **Sh. Jagir Ram**
S/o Sh. Ujagar Ram
Occupation Director of the Accused No. 1
R/o VPO Manko, Distt. Jalandhar, Punjab

.....Convict no.1
2. **Sh. Baldev Singh**
S/o Sh. Mangha Singh
Occupation Director of the Accused No. 1
R/o H.N. 717, Ward No.3, Balachaur,
Distt. Nawa Shahar, Shaheed Bhagat Singh Nagar,
Punjab.

.....Convict no.2
3. **Sh. Sheetal Singh,**
S/o Sh. Karam Chand
Occupation Director of the Accused No. 1
R/o VPO: Narurl, The Phagwara, Distt. Kapurthala,
Punjab.

.....Convict no.3
4. **Sh. Charan Dass,**
S/o Sh. Kartara Ram
Occupation Director of the Accused No. 1
R/o Vill. Kalewal (Lallian), PO Garhshankar,
Distt. Hoshiarpur.

.....Convict no. 4

Present: Sh. R. K. Pillai, Advocate, counsel for the SEBI
Sh. A.K. Bansal, Advocate, counsel for convicts no. 1 to 4

ORDER ON THE POINT OF SENTENCE(ORAL):

1. **Vide** separate judgment dated, December 20, 2012, A3, A4, A6 & A7 were held guilty for the offence punishable under Section 24(1) r/w Section 27 (1) and 27 (2) of SEBI Act.

2. **Learned** counsel appearing for convicts requests for a lenient view on the grounds that convicts are law abiding citizens and they have no criminal antecedents. It is further submitted that company accused had already refunded the amount to the investors and this fact is proved by DW1. He had also submitted the list of investors to whom the amount was refunded and the total amount refunded to the investors is above ₹ 92 lac. It is further submitted that there is no complaint from any of the investors to show that he had not received the amount. It is further submitted that moreover 3 acres land of company accused is with the Official Liquidator of the company accused, thus official liquidator has sufficient assets of the company accused to make the payment to the investors, if any investor approaches the official liquidator. It is further submitted that convict no. 2 Baldev Singh is a retired Army Subedar and senior citizen and he is also suffering some brain disease. It is further submitted that convict no. 3 Sheetal Singh has been operated twice and convict no. 4 Charan Dass is a senior citizen and convict no. 1 Jagir Ram has family problem as his son and daughter-in-law are HIV patients.

3. **Per Contra**, counsel appearing for SEBI requests for some substantial punishment on the grounds that during trial, company accused failed to produce any document to show that company accused had refunded the amount to the investors.

4. I have heard rival submissions advanced by counsel for the parties, perused the record carefully and gave my thoughtful consideration to their contentions.

5. **During** the trial, convicts have examined DW1, Company Paid Assistant to the Official Liquidator and he filed the list of payments made by the company accused to the investors on the date of maturities and from the said list, it appears that company accused had made the payment above ₹ 92 lac to the investors. SEBI has failed to produce any complaint of the investors showing that the investors had not received their amount. This is a substantial mitigating factor in favour of the convicts.

6. **Considering** the facts and circumstances of the case, I am of the view that convicts deserve a lenient view and ends of justice will be met, if convicts be burdened with the fine amount. Accordingly, I hereby, impose a fine of ₹ 50,000/- upon each convict in default they shall undergo three months simple imprisonment for the offence punishable under Section 24 (1) of SEBI Act.

7. **Copy** of judgment along with the order on the point of sentence be given to the convicts/their counsel free of cost.
8. **Since**, accused No. 2 is proclaimed offender and the proceedings qua accused no. 1 have been stayed by the Hon`ble High Court of Punjab & Haryana, Chandigarh, file be consigned to record room with direction the same be revived as and when accused no. 2 is apprehended or as and when the stay is vacated by the Hon`ble High Court of Punjab & Haryana, Chandigarh.

***Announced in the open Court
On this 22nd day of December, 2012***

***(Pawan Kumar Jain)
Additional Sessions Judge-01,
Central, THC/Delhi***