

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

CC NO.120/2005

SECURITIES & 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 Asstt. General Manager, Rakesh Bhanot.

... Complainant

VS.

1. Paramount Forests (I) Ltd. Company incorporated under the Companies Act, 1956, having its Regd. Office at SCO 832, NAC, Manimajra, Chandigarh and also at SCO 802, 2nd Floor, NAC, Manimajra, Chandigarh.
2. Dr. G.S. Dhillon, Director of Accused No.1, R/o 533, Sector-10D, Chandigarh.
3. Sh. Virinder Kumar S/o Sh. Radhe Kirshan, Director of Accused No.1, R/o 1643/1, Near Flort, Manimajra, Chandigarh-160 101.
4. Sh.D.K. Gupta, S/o Sh. Late C.R. Gupta, Director of Accused No.1, R/o H.No.5, Swastik Vihar, Panchkula (Haryana). (died)

.... Accused

JUDGMENT:

BACKGROUND FACTS:

1. The SEBI has filed this complaint against Paramount Forests (I) Ltd. and three others. as its Directors viz. Dr. G.S.Dhillon, Sh.

Virender Kumar and Sh.D.K.Gupta. The proceedings have abated in respect of Sh. D.K.Gupta, since it was reported that he had died.

2. To give a background to the case, when a large number of plantation and agriculture bonds were floated in the securities market, it was noticed that companies floating such bonds were vanishing with the money of the gullible public. These companies promised very lucrative returns to its investors. But none of the companies kept up their promises. The investors were not even repaid their own initial deposits, what to talk of interest at the promised rates.

3. It is then that the Government of India decided to regulate such collective investment schemes . It issued public notices through the SEBI that these kinds of schemes would be governed by the SEBI Act 1992 and would require registration and a credit rating to continue. The SEBI (CIS) Regulations were also notified in Oct.1999 under which the SEBI has powers to call for various information from the companies running Collective Investment Schemes in order to ensure that they are functioning within the parameters of the law and investors do not lose their money on account of irresponsible functioning of such companies or their malafide intentions to dupe them.

AVERMENTS IN THE COMPLAINT

4. The complaint has been preferred under the Securities and Exchange Board of India Act, 1992 and the rules made thereunder. The case as set out in the complaint is that the Government of India after

detailed consultations with the regulatory bodies decided that an appropriate regulatory frame work for regulating entities which issued instruments such as Agro Bonds and Plantation Bonds etc., was required to be created. Thereafter, the Government notified on November 1997, through a press release, that such schemes relating to issue of Agro Bonds etc., would be treated as Collective Investment Scheme governed by the SEBI Act 1992.

5. The aim of these regulations were to ensure investor protection and to promote legitimate investment activities. The regulations were notified in 1999 as the SEBI (Collective Investment Scheme) Regulation 1999.
6. The entities involving any Collective Investment Scheme were required, vide the press releases dated 26.11.97, and 18.12.97 to file information with the SEBI giving the detail of the Company, its Scheme and nature of Investment. In response the accused in this case i.e. Paramount Forests (I) Limited informed that they had collected Rs.20 lacs from their Schemes. It also informed who the Directors were.
7. It has been stated in the complaint that after the regulations came into force, the SEBI issued letters dated 15.12.99 and 29.12.99 and also issued public notices dated 10.2.99 informing the accused company of the notification and the regulations and directing it to send information memorandum to all Investors detailing the state of affairs of the Schemes, the amount repayable to each Investors and the manner in which such

amount was determined. This information was to be sent by 28.2.2000. Subsequently, the last date for furnishing details was extended up to 31st March, 2000.

8. According to the complainant, the accused No. 1 failed to apply for registration and also failed to submit the repayment report nor did it furnish details for winding up the schemes. Therefore, on December 7th, 2000, orders were issued by SEBI u/s 11 B of the SEBI Act 1992, to the accused company to refund the money collected to the investors within one month and submit the report of repayment and winding up to the SEBI. According to the complainant since there was no compliance of this order, the accused company and its Directors had violated the Regulations No. 68(1) and (2) 73 and 74 R/W Regulation 5 (1) of the SEBI (Collective Investment Scheme) Regulation 1999 and had also violated Section 11 B and 12 (1) B of the SEBI 1992 which were all violation punishable U/s 24 (1) of the SEBI 1992 R/W Section 27 of the said Act.

9. Vide orders dated 16.12.2003 the accused were summoned for trial. The notice of allegations under Section 251 Cr.P.C was served up on accused Dr.G.S. Dhillon, Sh. Virinder Kumar and the company PARAMOUNT FORESTS (I) LIMITED through them for having failed to comply with the regulations and for thus committing offences punishable under Section 24(1) SEBI Act read with Section 27 of the said Act. The accused pleaded not guilty.

EVIDENCE

10. Sh. Rakesh Bhanot, AGM was examined as CW-1 on behalf of the SEBI. During his testimony he has brought on record the letter sent by the accused to the SEBI received on 14.1.98 as Ex.PW1/B. The letter contained the names of the directors. It also contained the information that the company had raised about Rs.20,00,000/- under their different schemes.

11. He has testified that thereafter, the SEBI had sent various letters to the accused company informing it about the requirements under the regulations and which were returned undelivered to the SEBI. He brought on record all the undelivered letters along with their envelopes. He also deposed that when show cause notice dated 12.5.2000 was issued, that was also returned undelivered. He deposed that the format for winding up was also sent to the accused company and once again the communication returned undelivered to the SEBI. He deposed to the public notice issued in the Hindustan Times listing the accused company at serial no.326. He deposed to the non-compliance despite the public notice, by the accused company and the accused directors till the filing of the complaint.

12. In the cross-examination, the witness deposed that letter dated 21.12.98 was sent to the accused company and this letter was also sent at H.No.533 Sector 10D Chandigarh. He also deposed that a letter dated 11.11.98 was sent to the company at SCO 802, Second Floor, NSC Mani Majra Chandigarh. The witness affirmed the suggestion of the

defence that SEBI had received letter dated 28.12.98 informing that the accused had resigned as Director of the Company as on 6.10.97 and that the accused had submitted the resignation to the Chairman and Managing Director Sh.S.C. Gupta at the address SCO 802, IInd Floor, NSC, Mani Majra, Chandigarh. The witness also affirmed that the accused also informed the SEBI that he had not dealt with the affairs of the company. The witness showed his ignorance whether the accused no.2 had informed vide letter dated 1.6.2001 to the Asst. Registrar of Companies about his resignation in response to a letter dated 28.5.2001 sent by the Assistant Registrar of Companies. The witness testified that according to their records SEBI had not sent any letter to Sh. S.C. Gupta. The witness deposed that a copy of the resignation letter was sent to the SEBI as annexure to Ext.CW1/DC i.e. letter dated 28.12.98. The witness denied the suggestion that SEBI had not communicated with Sh.S.C. Gupta in collusion with him. The witness deposed that they had not verified who had operated the company's accounts as they relied on the information supplied to them by the company. The witness stated that according to his record no letter dated 10.1.98 was received from the company informing that Sh. S.C. Gupta was the Chairman and Managing Director of the Company and that he was running the affairs of the company appointing its authority.

13. The witness showed his ignorance about issuance of a cheque no.546136 for Rs.1 lac, account no.2348 with Punjab and Sindh

Bank, Sector 22B, Chandigarh issued on 14.1.06 in favour of Virender Kumar, accused no.3 by Sh. S.C. Gupta in his capacity of Chairman and Managing Director of the Company. The witness further deposed that as the SEBI had sought verification regarding resignation of Sh.G.S. Dhillon, a letter dated 30.9.2005 was received by them from the ROC. The witness further deposed that as this letter dated 30.9.05 contained that form 32 had not been submitted by the company till that date in respect of resignation of Sh.G.S. Dhillon, the SEBI believed that the company is still in existence. He deposed that from his record he could not state the address from which the company was functioning as on date. The witness further showed his ignorance regarding the public notice issued by the company to the investors in respect of repayments in the Tribune Chandigarh on 6.9.05 giving the present address of the Company at SCO 858, IIInd Floor, NSC, Manimajra, Chandigarh-I. He denied the suggestion that SEBI in collusion with Sh.S.C. Gupta had falsely implicated Sh.G.S. Dhillon in this case. The witness affirmed that according to his record he has no document bearing the signatures of Sh.G.S. Dhillon subsequent to 6.10.97.

14. The witness affirmed that copy of letter of resignation dated 6.10.97 had formed an annexure of letter dated 28.12.98 and was subsequent to the letter dated 14.1.98 and testified that at that time they did not verify as to which fact was true. He denied the defence suggestion that they had received the resignation letter dated 6.10.97 prior to the receipt of letter Ext.CW1/1. The witness stated that apart from letter

Ext.CW1/1 the SEBI had not received the profile of accused no.2. The witness testified that according to certificate of incorporation enclosed in the Memorandum the company had come into existence on 19th June, 1997. He deposed that the profile of accused no.2 as in the year 1994 had been submitted by the company they did not make further enquiries in respect of the profile as on 19th June, 1997..He stated that SEBI did not call uptodate profile of the Directors after receipt of letter Ext.CW1/1. He denied the defence suggestion that the SEBI intentionally did not file complaint against Sh.S.C. Gupta to save him from the prosecution and that they have falsely named the accused G.S. Dhillon.

15. The witness deposed that SEBI had three complaints filed by investors against the Company but names were not mentioned in the complaint. The witness stated that the Department relating to investor complaint was separate, and so he could not state about the action taken on the investor complaints. He stated that a letter dated 27.4.98 was received by the SEBI to the effect that the company had stopped accepting deposits from public till the ratings were done by agencies approved by SEBI. He denied that he has no document reflecting receipt of deposits by the company subsequent to 27.4.98. The witness denied the suggestion that the company has not violated any regulations of the SEBI and stated that since the company had informed vide letter Ext.CW1/1 about its collection of Rs.20 lacs, it was required to repay its investors but no such report was submitted to the SEBI. The witness was not aware of the

repayments claimed to have been made. The witness stated that before filing the complaint his duty was only to ascertain whether the company existed. He deposed that the addresses were obtained from the records but he did not make any separate inquiries to find out the present address of the company.

16. The witness further stated that as per the Memorandum the first directors are Sh.R.Bali, Sh. Avtar Singh and Sh.G.S. Dhillon. He stated that letter dated 21.12.98 was sent to Sh.G.S. Dhillon, R. Bali and Sh. Avtar Singh but the SEBI has not mentioned the names of R. Bali and Avtar Singh as Directors in the complaint. The witness stated that SEBI did not place on the record the letter dated 21.12.98 alongwith the complaint. He stated that he could not confirm the reason why the letter dated 21.12.98 had not been sent to other Directors Sh.Virender Kumar and D.K. Gupta.

17. The witness deposed that letter dated 24.4.98 was received on 6.1.99 alongwith letter dated 28.9.98 but he did not discuss the matter with Sh. Ajay Srivastava even after perusing the letter 28.9.98. The witness stated that before filing the complaint the record is examined and letters dated 27.2.98, 19.5.98, 30.6.98, 27.8.98, 11.9.98 and 11.11.98 had been sent to the company's address. He deposed that letter dated 27.2.98 was sent to the residence of Sh.Virender Kumar. He stated that according to their record letters dated 11.9.98, 19.5.98 and 30.6.98 were returned undelivered. He stated that none of these letters were addressed in the

name of Directors and that the names were chosen in accordance with letter Ext.CW1/1. The witness deposed that SEBI had not sent any letter to the General Manager under whose signature letter Ext.cW1/1 was sent to the SEBI. The witness testified that out of the seven subscribers mentioned in the Memorandum SEBI had sent letter dated 21.12.98 to three of them because the others were not mentioned anywhere in the correspondence with the Company. He stated that as there were no uniformity regarding this, the SEBI received profiles of Directors in different cases with or without signatures though invariably the covering letters were signed, the SEBI assumed that the response on behalf of the company to their public notice contained correct particulars.

18. The witness stated that the SEBI did not correspond with Mukesh Kumar son of Sh.Jagdish Singh R/o houseNo.443/2, Sector 45A, Chandigarh, Ganga Pd. Tiwari S/o Sh. Ram Narain Tiwari, Sh. Ashok Kumar S/o Sh. Ramesh lal and Sarita Bali W/o Sh. R. Bali before filing the complaint. The witness clarified that since the names of Sh. Avtar Singh and Sh. R. Bali were not mentioned in the letter Ext.CW1/1 they had not been made accused in the present case. The witness stated that SEBI had no record of the directorship of Sh.Avtar Singh and Sh. R. Bali whether they had brought them at any stage by the company as Directors or were discharged as such except for the particulars mentioned in the Memorandum. The witness denied the suggestion that at the instance of Sh.S.C. Gupta all the persons mentioned in the Memorandum except for

G.S. Dhillon had been excluded in the complaint. The witness stated that SEBI had filed complaint against directors or promoters incharge of the company and Sh. Virinder Kumar has been shown as a Director of the company in the letter as Ext.CW1/1 but not in the Memorandum. The witness deposed that he did not have any other document showing that accused Sh. Virinder Kumar had been incharge of the affairs of the company except the letter Ext.CW1/1. He stated that SEBI is not in possession of any letter signed by Sh. Virinder Kumar as Director. He stated that apart from relying on the material in the file he did not make any inquiries before naming accused Virinder Kumar in the complaint. He denied the suggestion that his complaint is baseless and frivolous and that accused Virinder Kumar has been named at the instance of Sh.S.C. Gupta. The witness stated that SEBI had received no reply from Sh.Virender Kumar to their letter dated 27.2.98 sent to his residence. The witness deposed that no letter was addressed to accused Sh. Virinder Kumar for compliance of the regulations. The witness stated that a letter dated 27.2.98 was sent to Sh.D.K. Gupta as well as to accused Virinder Kumar. The witness denied the defence suggestion that despite information that Sh.S.C. Gupta a Chairman and Managing Director he was not made accused in the present case and that in conspiracy of the senior officials of the SEBI the accused were named in the complaint.

19. He stated that SEBI has only one letter from Sh.G.S. Dhillon alleging that Sh. S.C. Gupta is the Chairman and Managing

Director of the Company. The witness deposed that according to their records no efforts were made to find out who was the Chairman and Managing Director of the Company. He deposed that SEBI had not communicated with Sh.S.C. Gupta despite receipt of copy of letter dated 6.10.97. He deposed that since the SEBI had communicated with the company at the very same address mentioned in the letter dated 6.10.97, he could not confirm the reason why SEBI did not communicate with Sh.S.C. Gupta despite the mentioning of his address in the said letter. The witness stated that they had written to the company and had not addressed the CMD.

20. He stated that the the letter dated 14.1.98 mentioning mobilization of Rs.20 lac was signed by Group Captain Pradeep Kinra General Manager on behalf of the company. He deposed that as the complaints are not dealt by him, he is not in a position to give the names of the investors who have complained. He affirmed that he did not verify from the investors about the company. He stated that since the company had not filed any winding up and repayment report, he could not confirm if any repayment had been done to the investors. He denied the suggestion that before filing the complaint he did not discussed the matter with the SEBI Officers. He deposed that the profile of Virender Kumar submitted to the SEBI vide letter dated 14.1.98 does not bear his signatures. He denied the suggestion that accused Virender Kumar had not submitted his profile to the SEBI and that SEBI had concocted the same either itself or

with the aid of someone else. He also denied the suggestion that accused Virender Kumar was not a Director in the Company and was merely an investor.

21. After the evidence was recorded, the statements of the accused have been recorded under Section 313 Cr.P.C. One witness from the ROC was examined in defence and the witness have brought on record the details and the changes in the Board of Directors of this company as intimated to the ROC. He deposed that no information regarding resignation of either accused no.2 and 3 was received by the ROC.

CONTENTIONS

22. The Ld. Counsel for the SEBI Sh. Sanjay Mann has submitted that the case against the accused had been proved by the complainant. It is submitted that the purpose of the enactment of the Regulations of 1999 could not be overlooked. It is submitted that the accused company was bound by the regulations and the requirements of filing with the SEBI the winding up and the repayment report. It was submitted that the accused had been individually informed of the need to comply with the regulations despite which they failed to do so. It was pointed out that the accused Dr.G.S.Dhillon had failed to prove that he had resigned from the Board of Directors as there was no such resolution accepting his resignation. In the circumstances, the Ld. Counsel prayed for the conviction of the accused.

23. The Ld. Counsel for the accused however submitted that the accused Dr. G.S. Dhillon could not be held liable for any violation as he had resigned on 6.10.97 and he had informed the SEBI about his resignation in 1998 itself. He has submitted that the SEBI as the complainant had not proved that either the accused no.2 or the accused no.3 were directly responsible for the affairs of the company. It was argued that the accused Virender was only an investor. It was argued that the communication sent on behalf of the company had not been signed by either of them and hence was not authorized by them. It was argued that the members of the Board of Directors who held office at the time of the notification of the regulations in the year 1999 or at the time of the filing of the complaint alone could be held responsible for any violation. Hence he has prayed for the acquittal of the two accused.

FINDINGS:

24. It is only in the statement of the accused Dr.G.S. Dhillon that it has been disclosed that the company is still functioning and its address is at SCO 858 , II Floor , NAC, Manimajra Chandigarh 160101. In the circumstances, the liability of the accused company is not being determined by this judgment. The complaint will stand disposed of only in respect of the accused 2 & 3.
25. There is no dispute that collective investment schemes relating to plantation and agro bonds were brought under the SEBI Act 1992. Under S12, of this Act, no investment schemes could be run

having once been notified of the obligations of the company under the SEBI Act.

30. While the accused Virender has failed to explain his inaction, and has not provided any information as to how the violations had taken place without his knowledge, the position in respect of the accused Dr.G.S. Dhillon is slightly different. Thus, while there is no evidence to show a valid resignation by this accused from the Board of Directors, there is sufficient material on the record to hold that the violations had taken place without his knowledge. The SEBI had written a letter to accused Dr. G.S.Dhillon , Ex.CW!/DA calling upon him to furnish the requisite information called for from the company.

31. The accused sent a reply to the SEBI which is dated 28.12.1998. This letter was admittedly received by the SEBI. In this letter, the accused informed the SEBI that he had resigned from the post of Director on 6.10.1997 . He also informed the SEBI that thereafter, he had not dealt with the company and neither knew its whereabouts. The notifications came into effect only on 15.10.1999. There could have been no possibility of the accused to have had a premonition of the present prosecution, to be said to have laid out a false alibi way back in 1998. There is no reason to disbelieve him when he has stated that he had no connection with the affairs of the company, even if it has to be held that he was a director of the accused company.

CONCLUSION:

in the ... of Ms Asha Menon AD Jm



IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 11761 OF 2003

16/11/03

2401R0272972003

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
Marimar Point, Mumbai 400 021
represented by its Asst. General Manager,
Rajesh Bhanot.

...Complainant

VERSUS.

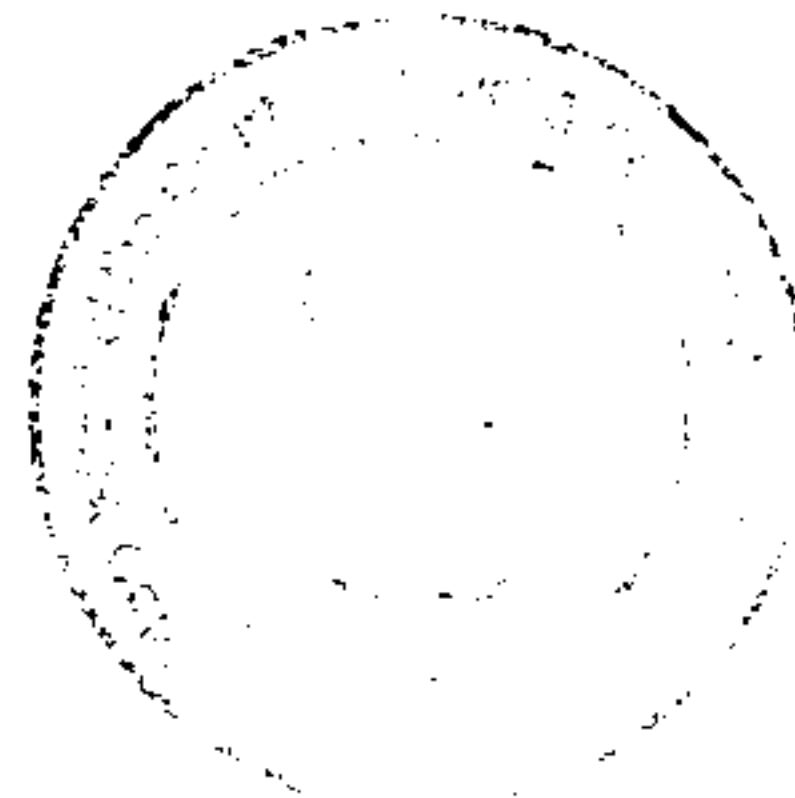
1. Paramount Forests (I) Ltd. Company
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Floor, NAC, Manimajra, Chandigarh.
2. Dr. G.S. Dhillon, Director of Accused
No.1, R/o: 533, Sector-10-D,
Chandigarh.
3. Shri Virinder Kumar, S/o Shri Radhe
Kirshan, Director of Accused No.1,
R/o: 1643/1, Near Fort, Manimajra,
Chandigarh-160 101.

Abul G. Ahmed

Shri D.K.Gupta, S/o Shri Late C.R.



30/11/03



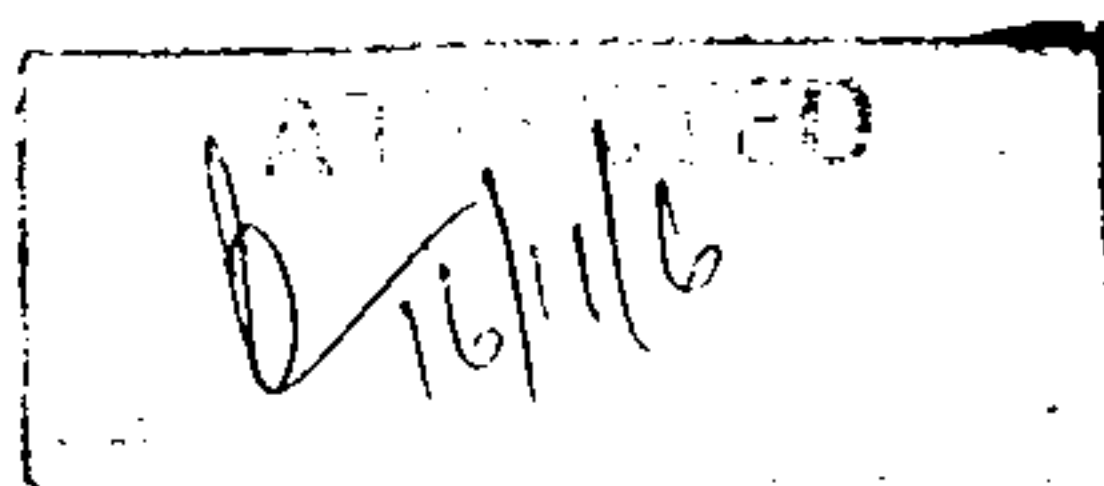
Gupta, Director of Accused No.1. R/o

H.No.5, Swastik Vihar, Panchkula

(Haryana).

.....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



9/11/06

15. 9. 06

The report is respect of acid. no. 1

S/O 858 2nd Floor New Main Majara,
Chandigarh. In this case apart from
accd. no. 1, 2 & 3 ^{the accused Nos} had faced trial and
accd. no. 2 has been acquitted and accd.
no. 3 convicted by the order dt. 15/9/06.

ATTESTED
[Signature]
 Examiner
 Date Copying Agency (See...)

In view of the latest report in
respect of accd. no. 1 the file be
committed to the records be revised
in case the SEBI is able to provide
further details of the accd. ^{of company} and move
appropriate application in this regard.

Announced in
open court on 9-11-06.

J. Shakti
ASJ/Delhi
9/11/06.

