



IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, DELHI

CC NO: 48 OF 2004

7/10/04

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

62401RS/1032004
112
17/9/04

...Complainant

VERSUS

1. Anjali Orchard India Ltd., a Company incorporated Under the Companies Act, 1956, having its Regd. Office at : 217, 2nd Floor, City Centre, China Bazar road, Lucknow,(U.P.)
2. Shri Ram Sinah Chauhan S/o Shri Chandrika Singh, Director of Accused No.1, R/o:19/261, Indira Nagar, Lucknow, (UP).
3. Shri Bhagwati Singh S/o Shri Chandrika Singh, Director of Accused No.1, R/o: Nagwamau Kalan, Asti, Lucknow..
4. Shri H.N. Singh S/o Shri Vrndheshwari Singh, Director of Accused No.1, R/o:

73
Received
Shri. Abhishek

ATTESTED
20/10/04
Examiner
Date Copying Agency Sessions

19/261, Indira Nagar, Lucknow.

.....Accused



**COMPLAINT UNDER SECTION 190 & 200 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1982**

May It Please Your Honour:





C.C. 49/10

09.02.2011

Present: Shri Sanjay Mann, Advocate for complainant SEBI
with Shri Prithvi Raj Nanjundappa Kale, Legal
Officer, SEBI.

Accused No. 1 Company is represented through
accused No.2 Ram Singh Chauhan who is present on
bail with Shri D.N. Pandey, Advocate.

Accused No. 3 Bhagwati Singh is also present on bail
with Shri D.N. Pandey, Advocate.

Accused No. 4 H.N. Singh has died.

The case is at the stage of cross-examination of CW-1
Manish Vashishth which was deferred on 05.03.2009. The defence
counsel submits that the accused persons want to admit their guilt and
do not wish to contest and, therefore, would like to forgo the right of
cross-examination of CW-1. They request for their statement to be
recorded.

Statement of Accused No. 2 Ram Singh Chauhan S/o Chandrika
Singh for himself and as authorised representative of accused No.
1 M/s Anjali Orchard India Ltd., and of accused No. 3 Bhagwati
Singh S/o Chandrika Singh.

We want to admit our guilt in this case and do not wish to

Signature of Ram Singh Chauhan
9/2/11

Signature of D.N. Pandey
9/2/11
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<i>Signature of Legal Officer</i>	
Date	Copying Agency Sessions



-2-

contest it any further. In this view we submit that the right of cross-examination of CW-1 Manish Kaushik is not to be exercised on our behalf and the same may be treated as closed with opportunity given.

We request for lenient view in the matter of punishment.

RO&AC
Richa
9/2/02/11

R.K. Gauba
(R.K. GAUBA)
ASJ-01/CENTRAL
DELHI/09.02.2011

Heard. The opportunity for cross-examination of CW-1 stands given and closed. The counsel for complainant submits that he closes his evidence.

Statement of accused recorded under Section 313 Cr.P.C. In their statements, the accused persons have admitted the guilt and do not wish to adduce any evidence in defence. As requested by both sides, arguments heard. Vide judgment dictated passed and pronounced in the open court in the presence of parties, accused No. 1, 2 and 3 are held guilty and convicted for the offence under Section 24 of SEBI Act.

Heard further on the question of sentence. Record perused. Vide order separately passed and pronounced the convicts No. 1, 2 and 3 are sentenced to fine of Rs.1,00,000/- (Rupees One Lakh Only) each.

ATTESTED
[Signature]
Date 09/02/11
Court of District & Sessions Judge, Delhi

[Signature]
09/02/11

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*1. Reliance for
fact on accused
Loo in
D.N. Pandey
9-2-11
- 2-1966 A/99*



IN THE COURT OF SHRI R.K. GUABA ADDITIONAL SESSIONS
JUDGE-01 (CENTRAL) DELHI

Complaint Case No. 49/10
ID No.: 02401R6176462004

U/S.: 190 & 200 of Cr.P.C.
read with Sec. 24(1) & 27
of SEBI Act.

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 Mittal Court, E -
Wing, 224, Nariman Point, Mumbai -
400 021, represented by its Legal
Officer Shri Sharad Bansode.

....Complainant.

Versus

1. M/s Anjali Orchard India Ltd. a
Company incorporated under the
Companies Act, 1956, having its
Regd. Office at 217, 2nd Floor, City
Centre, China Bazar Road, Lucknow,
(U.P.).

... Accused No. 1

CC No. 49/10 SEBI v. M/s Anjali Orchard India Ltd.

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2. Shri Ram Sinah Chauhan S/o Shri Chandrika Singh, Director of accused No. 1, R/o 19/261, Indira Nagar, Lucknow, (UP).

... Accused No. 2

3. Shri Bhagwati Singh S/o Shri Chandrika Singh, Director of accused No. 1, R/o Nagwamau Kalan, Asti, Lucknow.

... Accused No. 3

4. Shri H.N. Singh S/o Shri Vmdheshwari Singh, Director of accused No. 1, R/o 19/261, Indira Nagar, Lucknow.

... Accused No. 4

Date of Institution: 14.01.2004

Judgment reserved on : 09.02.2011

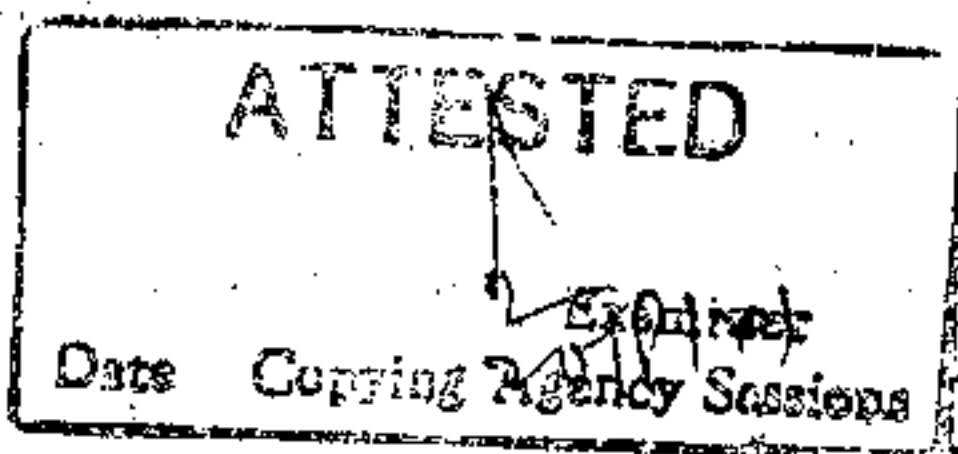
Judgment pronounced on : 09.02.2011

JUDGMENT

1. This criminal complaint was preferred by the Securities and Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on 14.01.2004 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the provisions of Sections 11 and 12 (1B) of Securities and Exchange Board of India

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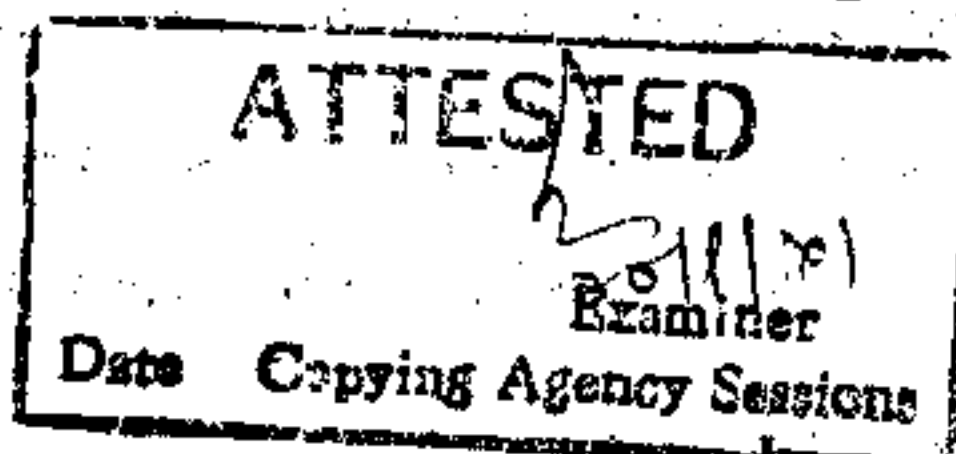
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Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

2. Four persons were arrayed as accused in the criminal complaint thus preferred under Section 200 Cr.P.C., they being M/s. Anjali Orchard India Limited (hereinafter, "A-1" or "the Company Accused"), besides accused no. 2 Ram Sinah Chauhan ("A-2"), accused no. 3 Bhagwati Singh ("A-3") and accused no. 4 H.N. Singh ("A-4"). It is alleged that A-2 to A-4 are Directors / Promoters of the Company Accused and as such persons in charge of, and responsible to, A1 for the conduct of its business within the meaning of the provision contained in Section 27 of the SEBI Act.

3. It is alleged in the complaint that the accused persons had floated, and had been operating, a Collective Investment Scheme ("CIS"), thereby raising an aggregate amount of Rs.2,15,000/- (Rupees Two Lakhs and Fifteen Thousand) from the general public, in violation of the restriction contained in Section 12 (1B) of the SEBI Act. It was also alleged that after coming into force of the CIS Regulations, and in





spite of a series of communications from SEBI including press release of 18.11.1997, 26.11.1997, public notice dated 18.12.1997 and 10.12.1999 and letters dated 10.12.1999, 29.12.1999, 12.05.2000, 31.07.2000, 31.07.2000, 07.12.2000, 08.12.2000 and public notice dated 14.01.2001 and in spite of notification and coming into force of the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999, failed to apply for registration of the said scheme or to inform the investors or to wind up and repay to the investors of the said deposited amount or to file the winding up report in prescribed format and thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

4. The cognizance on the complaint was taken by the ACMM vide order dated 14.01.2004 whereby process was 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. 29.10.2002, pursuant to administrative directions of Hon'ble High Court, under orders of the Sessions Judge, this case was transferred from the Court of ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, Addl. Sessions Judge, Delhi.





6. A-4 has died and thus proceedings against him have abated.
7. Following the procedure approved to be followed in such like cases as per the judgments of Hon'ble High Court of Delhi in **Panther Fincap and Management Services Ltd. & Ors. Vs. Securities and exchange Board of India (MANU/DE/9208/2006)** and **Mahender Singh Vs. High Court of Delhi and Anr. (MANU/DE/0987/2008)**, notice of accusations was served under section 251 Cr.P.C. on the accused persons on 19.03.2008 to which they pleaded not guilty. It may be mentioned here that accused No. 2 has appeared in these proceedings as the authorised representative of accused No. 1 Company.
8. During the trial that followed, the complainant examined Mr. Manish Vashishth, AGM, SEBI, authorised representative of the complainant as CW-1. His examination-in-chief was concluded on 05.03.2009 and thereafter remained pending.
9. The accused persons submitted on 09.02.2011 that they wanted to admit their guilt and did not wish to contest the case any further. They further submitted that they were forgoing the right of cross-examination of CW-1. Their formal statement was recorded to this effect and the opportunity for cross-examination of CW-1 was closed.





10. Statements of the accused persons have been recorded under Section 313 Cr.P.C. in which the incriminating evidence has been put to them. In answer to the questions put, the accused persons have admitted the same as correct, conceding their guilt and also submitting that they were not fully aware of the statutory requirements or the effect of CIS Regulations. They failed to take proper legal advice and thus defaulted in compliance with the law and CIS Regulations. The money was, however, repaid to all the investors by cash. They did not preserve any receipts or proof of such repayment and thus are unable to prove the same.

11. Accused persons chose not to lead any evidence in defence.

12. I have heard Shri Sanjay Mann, Advocate appearing with Shri Prithvi Raj Nanjundappa Kale, Legal Officer for complainant SEBI and Shri D.N. Pandey, Advocate for A-1, A-2 and A-3. I have gone through the record.

13. The SEBI Act was enacted by the Parliament in 1992 and came into force on 30.01.1992, with the object of providing for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

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14. Besides providing for SEBI (or "the Board") as the statutory authority, and the entrustment thereof with certain powers and functions, the SEBI Act also provided for a penal clause ("offences") under Section 24. As per sub-section (1) of Section 24 of the SEBI Act, as originally enacted, "any person" who contravenes, or attempt to contravene or abets the contravention of any of the provisions of the Act or of any rule or regulation made thereunder, can be visited with penal consequences, without prejudice to any award of penalty that may be imposed by the Adjudication Officer appointed under the law.

15. As originally enacted, the punishment provided for offence under Section 24(1) was imprisonment for a term which may extend to one year or with fine or with both. In case where any person fails to pay the penalty imposed by Adjudicating Officer or fails to comply with any of his directions or orders, sub-section (2) of Section 24 further provided for punishment in the form of imprisonment for a period which shall not be less than one month but which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both.

16. Section 27 deals with the matters relating to offences by companies.

It renders every such person liable to be proceeded against and



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punished for the aforementioned offences, as was in-charge or responsible to the company for conduct of its business at the relevant time, in addition to the company in question.

17. SEBI Act was amended by Act No. 59 of 2002 whereby punishment under both sub-sections of Section of 24 was enhanced to imprisonment for a term which may extend to 10 years or with fine which may extend to twenty five crore rupees or with both. The amendment came into effect from 29.10.2002.

18. Through amendments brought about by the Securities Laws (Amendment) Act, 1995 w.e.f. 25.01.1995, certain modifications had been made, amongst others, in Section 12 of the SEBI Act. What is of immediate interest here is sub-Section (1B) added to Section 12, which clause would read as under:-

“(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the securities Laws (Amendment) Act, 1995, for which no certificate of registration was required





prior to such commencement, may continue to operate till
such time regulations are made under clause (d) of sub-
section (2) of Section 30.” [emphasis
supplied]

19. The SEBI Act, as originally enacted did not define the expression
“Collective Investment Scheme”. An amendment carried through the
Securities Laws (Amendment) Act, 1999 brought in force w.e.f.
22.02.2000, *inter alia*, inserted Section 11 (AA) which deals
specifically with the subject of “Collective Investment Scheme”. It
was by way of the same Amendment Act that it was clarified in the
definition Clause in Section 2 (ba) that the expression “Collective
Investment Scheme” means any scheme or arrangement which
satisfies the conditions specified in Section 11AA.

20. The conditions upon the satisfaction of which a scheme or
arrangement is to be treated as a “Collective Investment Scheme” are
stipulated in Section 11AA (2) in the following manner:-

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

(i) the contribution, or payments 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





moveable or immoveable, 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."

21. Section 11AA (3) provides for excluding certain schemes or arrangements from the purview of CIS, with which one is not concerned in the case at hand.

22. It may be added here that the subsequent Amendment Act of 2002 had vested with the Board certain investigative powers (Section 11 C) in the matters related to its functions.

23. As indicated in the proviso to Section 12 (1B) referred to above, the power vested in SEBI to make regulations is provided in Section 30 of the SEBI. Section 30(1) is the general power to SEBI to make regulations consistent with the Act and also frame rules thereunder to carry out the purposes of the Act. Section 30(2) reads as under:-

"(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the times and places of meetings of the Board and the procedure to be followed at such meetings under subsection (1) of section 7 including quorum necessary for





the transaction of business;

(b) the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;

(c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;

(d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12." [emphasis supplied]

24.A conjoint reading of Section 12(1B) and Section 30(2) (d) under the law amended w.e.f. 25.01.1995, indicates that no person would be entitled to sponsor, carry on or cause to be carried on, amongst others, a collective investment scheme (CIS) "unless" it had been registered with the Board "in accordance with the regulations" to be framed under Section 30 (2) (d), the only exception (under the proviso) being in respect of a CIS operating in the securities market immediately before 25.01.1995, the date on which the law had been so amended and for which no such certificate of registration was required for it to be continued to be operated, though this permissive continuation was restricted till such time as the regulations had been framed under Section 30(2) (d).





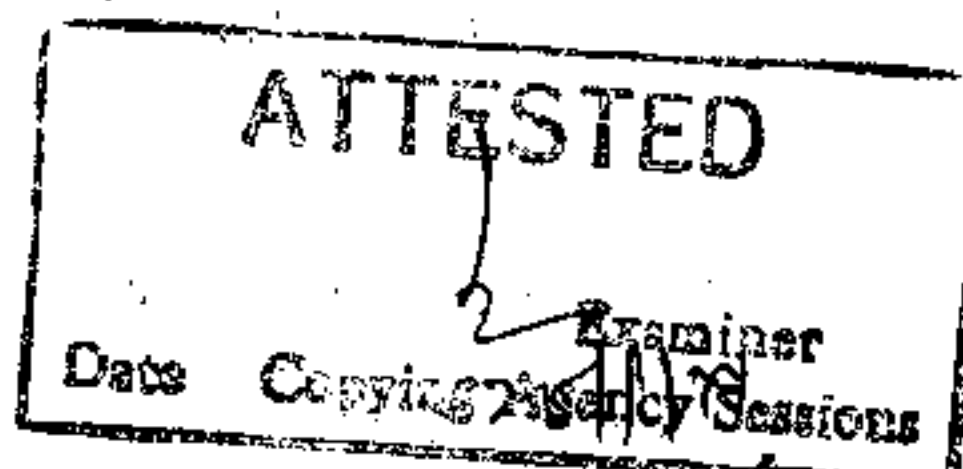
25. The effect of the above provisions is that w.e.f. (and after) 20.09.1995, under the amended SEBI Act, no new CIS could be floated by anyone unless a certificate of registration had been obtained from SEBI "in accordance with the regulations". Only such CIS, as had been operating before the amendment of the law, could continue, even without the certificate of registration, till the regulations in such regard had been framed and promulgated by SEBI.

26. SEBI framed the Regulations, under Section 30(2) (d), and brought them into force w.e.f. 15.10.1999, the date on which they are stated to have been published in the official gazette. These Regulations are known as the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (the CIS Regulations).

27. Noticeably, Chapter II of the CIS Regulations makes detailed provisions regarding registration of Collective Investment Management Companies. Regulation 9 deals with "conditions for eligibility".

28. Regulation 5 falling in Chapter II of CIS Regulations talks of the "Application by existing Collective Investment Scheme". It reads as under:-

"5. (1) 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.

(2) An application under sub-regulation (1) shall contain such particulars as are specified in Form A and shall be treated as an application made in pursuance of regulation 4 and dealt with accordingly.”

[emphasis supplied]

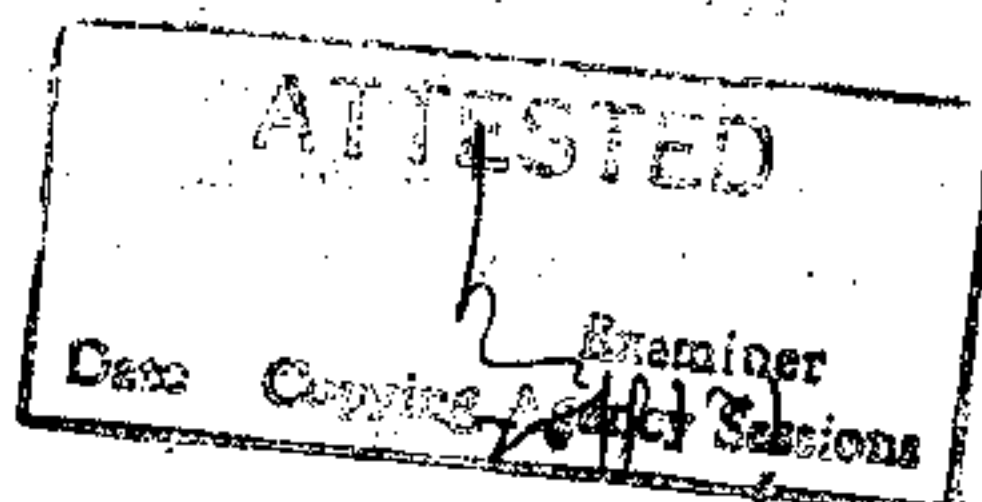
29. Chapter IX of the CIS Regulations deals with the subject of the “Existing Collective Investment Schemes”. Regulations 68, 69, 72, 73 and 74 are important and need to be noticed at length. They are as under:-

“68. (1) Any person who has been operating a collective investment scheme at the time of commencement of these regulations shall be deemed to be an existing collective investment scheme and shall also comply with the provisions of this Chapter.

Explanation: The expression ‘operating a collective investment scheme’ shall include carrying out the obligations undertaken in the various documents entered into with the investors who have subscribed to the scheme.

(2) An existing collective investment scheme shall make an application to the Board in the manner specified in regulation 5.

(3) The application made under sub-regulation (2) shall be dealt with in any of the following manner:





- (a) by grant of provisional registration by the Board under sub-regulation (1) of regulation 71;
- (b) by grant of a certificate of registration by the Board under regulation 10;
- (c) by rejection of the application for registration by the Board under regulation 12.

69. No existing collective investment scheme shall launch any new scheme or raise money from the investors even under the existing scheme, unless a certificate of registration is granted to it by the Board under regulation 10.

72. (1) An existing Collective Investment Scheme which satisfies the Board that the requirements specified in regulation 9 and the conditions specified under regulation 71 have been fulfilled, shall be granted a certificate of registration under regulation 10 upon payment of registration fees as specified in paragraph 2 of the Second Schedule and on such terms and conditions as may be specified by the Board.

(2) An existing Collective Investment Scheme which has been granted certificate of registration under sub-regulation (1) may be allowed to float new schemes on such terms and conditions as may be specified by the Board.

73. (1) An existing collective investment scheme which:
- (a) has failed to make an application for registration to the Board; or
 - (b) has not been granted provisional registration by

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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 schemes, 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 investor and the manner in which such amount is determined.

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

(4) The Board may specify such other disclosures 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 state that investors desirous of continuing with the scheme shall have to give a positive consent within one month from the date of the information memorandum 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



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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 by the Board.

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

[emphasis supplied]

30. As submitted during the course of hearing and also seen on bare reading of the aforementioned provisions the above Regulations in particular pertain to such collective investment schemes as were "existing" at the time of coming into force of the CIS Regulations. To put it with more clarity, a CIS must have been actually operating when the CIS Regulations, 1999 came into force for the necessity or occasion for compliance with the aforementioned requirements of its provisions to arise. To put it conversely, if a CIS was not operating at that point of time, and therefore, "not existing", the CIS Regulations would enjoin no obligation for compliance either with Regulation 5 or



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with Regulations 68 or 73.

31. The complainant through the unimpeachable evidence of CW-1 based, *inter alia*, on the document Ex.CW1/2 has proved that accused No. 2 as Managing Director on behalf of accused No. 1 had informed SEBI vide letter dated 25.04.1998 that accused No. 2 to 4 were Directors of accused No. 1 Company, evidenced by list Ex.CW1/4, and thus responsible for its affairs. The said letter was accompanied, amongst others, by memorandum of articles of association vide Ex.CW1/5, and details of collection of funds vide Ex.CW1/7 indicating the total amount of Rs.2,15,000/- had been collected under three different schemes during 01.09.1997 to 31.12.1997. The evidence of CW-1 further proved that accused No. 2 as Managing Director of accused No. 1 Company later informed SEBI through letter dated 28.08.1998 vide Ex.CW1/8, *inter alia*, that the amount mobilised by the Company upto 31.03.1998 was Rs.2,41,000/-.

32. The evidence of CW-1 that no application was made by the accused persons to get the CIS registered with SEBI in terms of the provision contained in SEBI Act or to repay the amount of money and wind up the company or its scheme in the wake of enforcement of CIS Regulations has gone unimpeached. It is rather candidly admitted by the accused persons in their statements that they had failed to abide by



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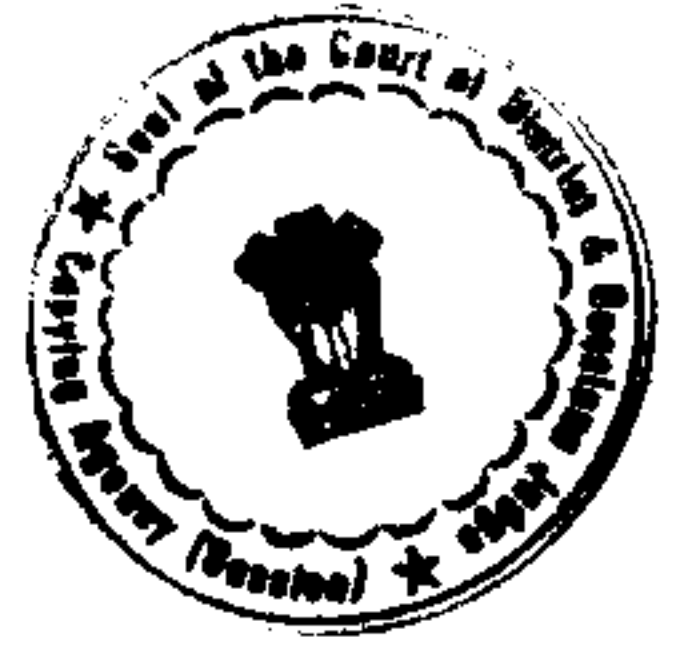
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33. In view of the restriction contained in section 12 (1B) of the SEBI Act, the business of collective investment scheme floated after the amendment of the law brought in force with effect from 01.09.1997 was "wholly illegal", as also laid down by Hon'ble Allahabad High Court in the case **Paramount Bio-Tech Industries Limited Versus Union of India**, 2003 Indlaw ALL 168. The defence plea in the statements under Section 313 Cr.P.C. that the money mobilised had been repaid to all the investors in cash is not substantiated by any proof. The defence plea that accused persons had not preserved any receipts or proof of any such payment cannot come to their rescue.

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33. In view of the restriction contained in section 12 (1B) of the SEBI Act, the business of collective investment scheme floated after the amendment of the law brought in force with effect from 01.09.1997 was "wholly illegal", as also laid down by Hon'ble Allahabad High Court in the case **Paramount Bio-Tech Industries Limited Versus Union of India, 2003 Indlaw ALL 168**. The defence plea in the statements under Section 313 Cr.P.C. that the money mobilised had been repaid to all the investors in cash is not substantiated by any proof. The defence plea that accused persons had not preserved any receipts or proof of any such payment cannot come to their rescue.

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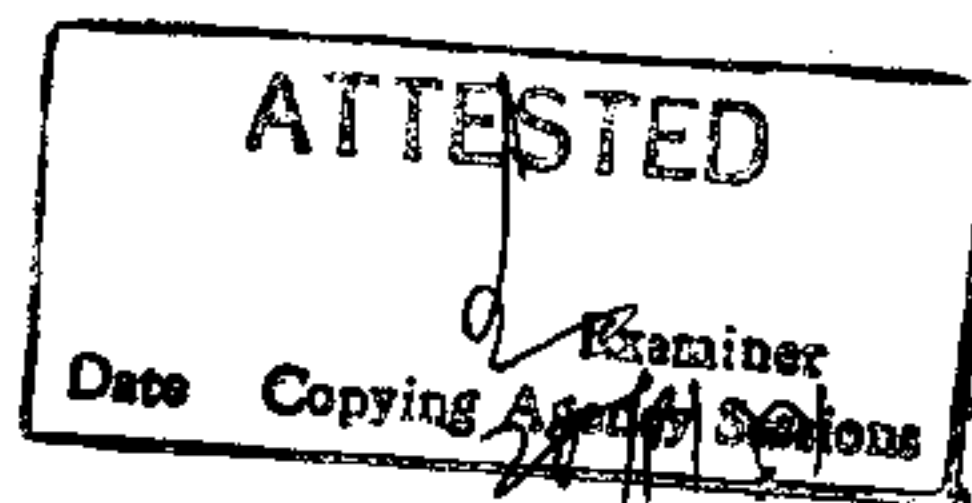
communications from SEBI and also coming into force of CIS regulations with effect from 15.10.1999 to either wind up the CIS or to inform the investors or to apply for registration of the scheme with SEBI or further to repay the deposited amount to the investors or file winding up report in prescribed format.

35. In view of the above facts and circumstances, the guilt of accused No. 1, accused No. 2 and accused No. 3 for the offence under Section 24 (1) read with Section 27 of Securities and Exchange Board of India Act, 1992 has thus been brought home. They are held guilty and convicted accordingly.

Announced in open court on
This 09th day of February, 2011


(R.K. GAUBA)

Addl. Sessions Judge -01
Central, Delhi



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IN THE COURT OF SHRI R.K. GUABA ADDITIONAL SESSIONS
JUDGE-01 (CENTRAL) DELHI

Complaint Case No. 49/10
ID No.: 02401R6176462004

U/S.: 190 & 200 of Cr.PC
read with Sec. 24(1) & 27
of SEBI Act.

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 Mittal Court, B -
Wing, 224, Nariman Point, Mumbai -
400 021, represented by its Legal
Officer Shri Sharad Bansode.

....Complainant.

Versus

1. M/s Anjali Orchard India Ltd. a
Company incorporated under the
Companies Act, 1956, having its
Regd. Office at 217, 2nd Floor, City
Centre, China Bazar Road, Lucknow,
(U.P.).

... Accused No. 1

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2. Shri Ram Sinah Chauhan S/o Shri Chandrika Singh, Director of accused No. 1, R/o 19/261, Indira Nagar, Lucknow, (UP).

... Accused No. 2

3. Shri Bhagwati Singh S/o Shri Chandrika Singh, Director of accused No. 1, R/o Nagwamau Kalan, Asti, Lucknow.

... Accused No. 3

4. Shri H.N. Singh S/o Shri Vmdheshwari Singh, Director of accused No. 1, R/o 19/261, Indira Nagar, Lucknow.

... Accused No. 4

ORDER ON SENTENCE

1. Vide judgment passed earlier today, accused No. 1 M/s. Anjali Orchard India Limited, accused no. 2 Ram Sinah Chauhan and accused no. 3 Bhagwati Singh have been held guilty and convicted for the offence under section 24 (1) read with section 27 of Security and Exchange Board of India Act 1992.
2. I have heard Shri Sanjay Mann, Advocate appearing with Shri Prithvi Raj Nanjundappa Kale, Legal Officer for complainant SEBI and Shri D.N. Pandey, Advocate for convicts on the question of sentence. I

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have gone through the record.

3. This complaint was filed in 2004. It could reach the stage of trial only on 19.03.2008 when notice under Section 251 Cr.P.C. was served. The complainant led evidence in 2009 but the proceedings thereafter remained held up. At the stage of evidence, the accused persons made submissions admitting their guilt and thus showing disinclination to contest the case further. On the basis of evidence led by the complainant and the candid admission of the correctness of the same, coming in their statements under Section 313 Cr.P.C., vide separate judgment they have been held guilty and convicted.
4. In such matters, the offence under section 24(1) of SEBI Act can be lawfully compounded with SEBI in terms of section 24 A of the SEBI Act. It has been seen by this court in a large number of matters that SEBI has been readily compounding the offences, on payment of certain amount of money along with legal expenses incurred by it in such prosecutions. Whenever SEBI compounds the offence, it claims to take into account the amount received in deposits mobilized by the offenders under collective investment scheme in contravention of the provisions of law and the regulations framed thereunder.
5. For illustration, it may be mentioned here that in complaint case no. 36/10 SEBI vs. Multibhumi Projects & Developments Ltd. & Ors. for

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identical offences, which was heard on 07.01.2011 in this court, on allegation of mobilization of the deposits to the extent of Rs. 2,90,000/- (Rupees Two Lakh and Ninety Thousand), SEBI had conceded its readiness to compound the offence with six out of nine accused persons on payment of Rs. 40,000/- (Rupees Forty Thousand) as compounding charges besides Rs. 60,000/- (Rupees Sixty Thousand) as legal offences.

6. The counsel for SEBI submitted that since the accused persons have voluntarily admitted their guilt, sparing the complainant further expenses in prosecuting the complaint through the process of trial, it would not insist on any substantive sentence of imprisonment and that the court may consider imposition of fine having regard to the amount mobilized through the collective investment scheme by the convicted persons.

7. Having regard to the aforementioned facts and circumstances, I impose a fine of Rs. 1,00,000/- (Rupees One Lakh) each on all the convicted persons. In case of default in payment of fine, they (except accused no. 1) shall undergo simple imprisonment for six months each. In view of the candid admission of guilt, as agreed by the counsel for complainant, no substantive sentence of imprisonment is being awarded.




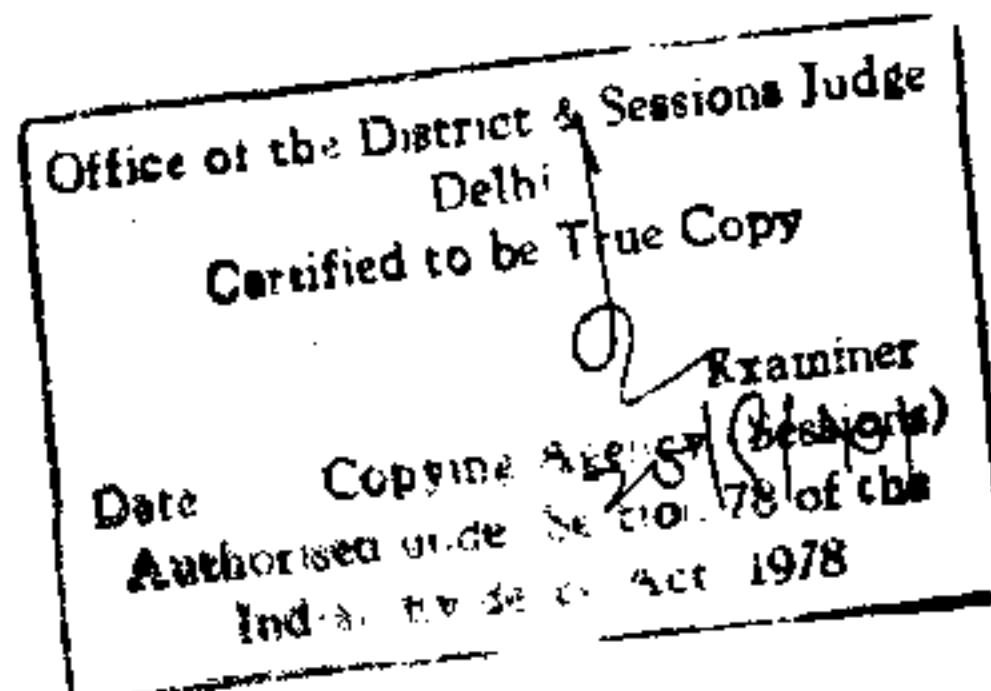
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8. On the amount of fine being realised, the file be consigned to the record room.

Announced in open court on
This 09th day of February, 2011


(R.K. GAUBA)
Addl. Sessions Judge -01
Central, Delhi



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