

IN THE COURT OF THE ADDL CHIEF METROPOLITAN

MAGISTRATE,

TEESHAZARI, DELHI

CC NO:

IN THE MATTER OF:

Securities and Exchange Board of India

Vs.

Asian Plantation Ltd. and others

... Complainant

... Accused

COMPLAINT UNDER SECTION 190 AND 200 OF THE
CODE OF CRIMINAL PROCEDURE 1973 READ WITH
SEC. 24(1) AND 27 OF SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1956

ATTESTED

Examiner

late Copying Agency (Sessions)

भारतीय प्रतिष्ठान और विनिमय बोर्ड
Securities and Exchange Board of India
उत्तर, प्रादेशिक कार्यालय/Northern Regional Office
नई दिल्ली/New Delhi

18 JUN 2010
Twp/24655/2010
अंतर्गत सत्यापित नहीं की/Contents not verified
हस्ताक्षर/Signature
समय/Time



IN THE COURT OF THE ADDL. CHIEF METROPOLITAN
MAGISTRATE,
TEES HAZARI, DELHI

CC NO: 1344/22

27/8/05

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

Complainant

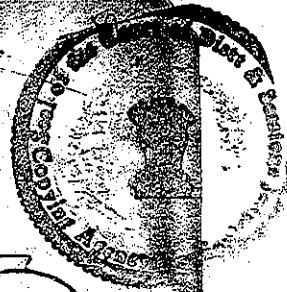
Vs.

1. Asian Plantations Ltd., a company
incorporated under the provisions of
Companies Act, 1956 and having its
Regd. office at 1170, Sector 22 B,
Chandigarh 160022.
- ✓ 2. Sh. Manoj Kapur, S/o Not known to the
complainant; Occupation Director of the
Accused No.1; resident of 1170, Sector
22 B, Chandigarh 160022.

ATTESTED

25/8/05
Examiner

Date Copying Agency (Sessions)



PO

3. Sh. Ashwani Berry, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of 1252, Sector 22 B, Chandigarh 160022.

✓ 4. Sh. S. P. ^{Kalia} Kalia, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of 2454, Sector 22 C, Chandigarh.

✓ 5. Sh. ^{Bajinder} Bajinder Makkar, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of -202, Sector 32 A, Chandigarh.

✓ 6. Sh. Shailendr Kaushik, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of H. NO. 231, Sector 30 A, Chandigarh.

✓ 7. Smt. Sudha Mittal, w/o Not known to the complainant; Occupation Director of the Accused No.1; resident of 1432, Sector 22 B, Chandigarh 160022. H. No - 13, Vihar - Abhaypur, Parachula - H.R. Booth No - 18-19 Sector - 8 Parachula - H.R.

✓ 8. Sh. Gulshan Rai Manuy, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of H No. 763, Sector 22 A, Chandigarh.

ATTESTED

25/5/10

Examiner

Date Copying Agency (Sessions)



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

1992

ATTESTED
92/5110
Examiner
Data Copying Agency (sessions)



CC No. 66/09

SEBI Vs. Asian Plantation

15.02.2010

Present: Sh. Sanjay Mann, counsel for SEBI.

Accused no. 1 is company.

Accused no. 3 is PO.

Other accused on bail with counsel

Vide separate judgment announced in the open court

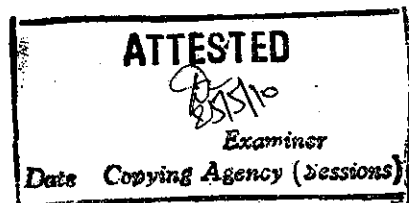
all accused have been convicted.

To come up for arguments on point of sentence on

23.02.2010.

(POONAM CHAUDHARY)
ASJ(Central - 01)/Delhi.

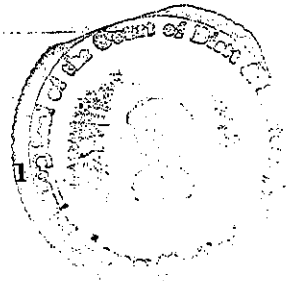
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CC No. 66/09

SEBI Vs. Asian Plantation Ltd. & Ors.



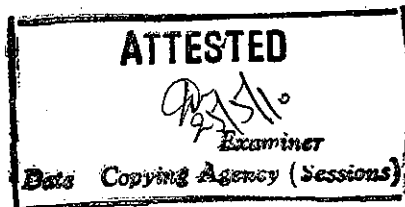
IN THE COURT OF MS. POONAM CHAUDHARY
ASJ (CENTRAL-01) : DELHI

CC No. 66/09

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its head Office at Mittal Court, B-Wing, 224 Nariman Point, Mumbai - 400021 represented by its Legal Officer, Shri Sharad Bansode.

VERSUS

- 1 **Asian Plantations Ltd.** a company incorporated under the provisions of Companies Act, 1956 and having its registered office at : 1170, Sector 22 B, Chandigarh 160022.
- 2 Sh. Manoj Kumar S/o not Known to the complainant; occupation Director of accused no. 1 ; R/o 1170, Sector 22 B, Chandigarh 160022.
- 3 Sh. Ashwani Berry S/o not Known to the complainant; occupation Director of accused no. 1 ; R/o 1252, Sector 22 B, Chandigarh 160022.
- 4 Sh. S. P. Kaila S/o not Known to the complainant; occupation Director of accused no. 1 ; R/o 2454, Sector 22 C, Chandigarh 160022.
- 5 Sh. Brijinder Makkar S/o not Known to the complainant; occupation Director of accused no. 1 ; R/o 202, Sector 32 A, Chandigarh 160022.
- 6 Sh. Shailnder Kaushik S/o not Known to the complainant; occupation Director



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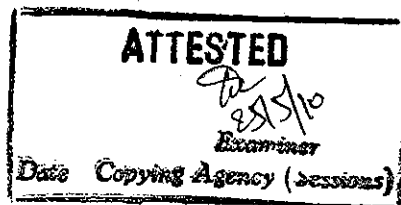
of accused no. 1 ; R/o House no.
231, Sector 30 A, Chandigarh 160022.

- 7 Smt. Sudha Mittal w/o not Known to the complainant; occupation Director of accused no. 1 ; R/o 1432, Sector 22 B, Chandigarh 160022.;
R/o House no. 13 Village Abhogpur Panchkula Haryana,;
R/o Booth no. 18-19 Sector 8 Panchkula Haryana
- 8 Sh. Gulshan Rai Manuy S/o not Known to the complainant; occupation Director of accused no. 1 ; R/o 763, Sector 22 A, Chandigarh 160022.

Arguments heard on : 29.01.2010
Judgments reserved for : 15.02.2010
Judgments announced on : 15.02.2010

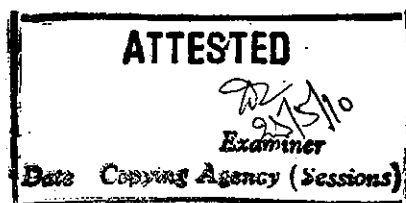
JUDGMENT

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 sort 'CIS') and collected Rs 32,37,220/- from the general public.
2. It is also averred that for the Regulations of CIS, being run by entrepreneurs, SEBI notified the Securities and Exchange Board of India



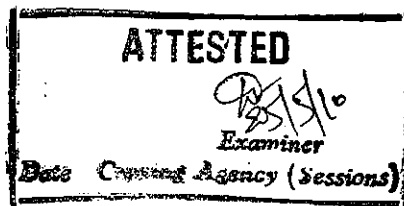
Regulation 1999 (herein after referred to as 'Regulations'). However, accused company did not apply for registration neither it took any step for winding up its CIS and repayment to the investors as per the Regulations. Therefore, according to the SEBI, accused company committed violations of Sections 11(b), 12(I)(b) of the Act read with Regulations 5(1), 68(1), 68(2), 73 & 74 punishable under Section 24(1) of the Act. SEBI has claimed that accused no. 2 to 8 being the directors of the accused no.1 company were responsible for conducting its business and, therefore, liable for the said violations under Section 27 of the Act.

3. After the filing of the complaint, all the accused were summoned vide order of Ld. ACM, Delhi dated 21.12.2002. Accused no. 3 was absconding and he was declared PO. Notice of accusation was given to accused no. 1, 2 and 4 to 8 to which they pleaded not guilty and claimed trial.
4. In support of its case the complainant/SEBI examined CW1 Ms. Jyoti Jindgar, and closed its evidence.
5. Statements of all the accused were thereafter recorded u/s 313 Cr.P.C.
6. I have heard the Ld. Counsel for parties and perused the record.
7. The questions for consideration is whether SEBI has been able to prove its case beyond reasonable doubt against the accused.



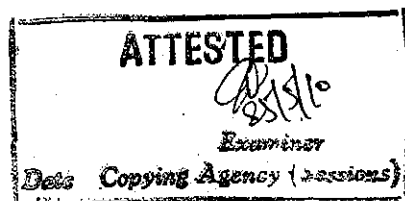


8. The present case hinges upon the admitted documents issued by SEBI and accused prior to the institution of the present case.
9. CW 1 Ms. Jyoti Jindgar deposed that the government of India vide press release dated 18.11.97 directed that bonds which were in nature of plantation bonds and agro bonds issued by the company would be considered as Collective Investment Scheme as stipulated u/s 11 of the SEBI Act. 1992. She further stated that SEBI issued press release dated 26.11.97 and public notice dated 18.12.97 directing companies which were running CIS to file the information with SEBI regarding their schemes such as details of funds mobilized, name of directors/promoters etc. in case they were desirous of obtaining registration under section 12 (1B) of the SEBI Act. In pursuance of this the company filed information with SEBI regarding its CIS vide letter dated nil which was received by SEBI on 18.12.97 and is Ex. CW 1/1. She further stated that as per this letter accused company had mobilized Rs. 32,37,220/- under its CIS. The Company also submitted the names and addresses of directors/ promoters, photocopy of application form, promises and assurance made in their various schemes. Subsequently, SEBI CIS Regulations 1999 were notified on 15.10.99 and intimation regarding notification of these regulations was intimated to the company vide public notice dated 20.10.99 and letter dated 21.10.99 sent by registered post. She further stated that letter was however returned undelivered with the remarks "No such firms", the undelivered envelope is ex. CW 1/2 and letter is Ex. CW





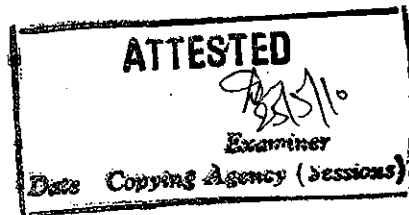
1/3. She further stated that in terms of the said regulation, the company was either required to file for registration or windup its schemes in terms of the regulations 73 and 74. She also stated that as per the procedure laid in the regulations the company was required to circulate information memorandum to its investors and wind up its schemes and submits the winding up and repayment report with SEBI within 5 ½ months. These regulatory obligations were communicated to the company vide letters dated 10.12.99 and 29.12.99 which were also returned undelivered with the remarks "no such firms". The undelivered envelope of letter dated 10.12.99 is Ex. CW 1/4 and letter is Ex. CW 1/5 and undelivered envelope of letter dated 29.12.99 is Ex. CW 1/6 and letter is Ex. CW 1/7. CW 1 further stated that as the company neither applied for registration nor intimated regarding its winding up of the schemes show cause notice dated 12.05.2000 was issued which was also returned undelivered with the remarks "left without address". The returned envelop is Ex. CW 1 /8 and letter is Ex. CW 1/ 9. CW 1 further testified that vide letter dated 31.07.2000 SEBI forwarded a format of the winding up and repayment report in which the companies were required to furnish information regarding winding up of the schemes and repayments done thereafter. The said letter was also returned undelivered with the remarks "No such firms" the returned envelop is Ex. CW1/10 and letter is Ex. CW 1/11. CW 1 further deposed that as the company failed to apply with the regulatory provisions of the regulations chairman SEBI vide order dated 7.12.2000 issued directions under section 11 B of the SEBI Act to repay the investors as per the original terms of offer within one month of the said order





The said order was communicated to the accused company vide letter dated 18.12.2000 which was also returned undelivered with the remarks "no such firms", the returned envelop is Ex. CW 1/12 and letter is Ex. CW 1/13. She also stated that contents of the letter issued by chairman SEBI u/s 11 of the SEBI Act were got published in all leading national newspapers and vernacular newspapers vide public notice dated 14.01.2001 Ex. CW 1/14 and the copy of the notice published in the "Hindustan Times" on 19.12.99 is Ex. CW 1/15. Name of the company appeared at serial no. 45 of public notice. CW 1 further stated that it was also intimated that in case they were failed to comply with the requirements they would be liable for further action including prosecution. CW 1 also deposed that the company did not file any application seeking registration under SEBI CIS Regulations neither the company furnished report to SEBI confirming compliance. Accordingly, the present complaint was filed. She also stated that no intimation was received from the accused till filing of the complaint.

10. In her cross examination she stated that Ex. CW 1/1 bears the signature of accused Ashwani Berry and also stated that annexure appended in to Ex. CW 1/1 no specific duties /responsibilities of accused no. 7 has been specified. She further stated that winding up and repayment report had been filed by accused no. 1 with SEBI and was signed by accused nos. 2, 4, 5 and 7 the same is Ex. CW 1/D1. In respect of the winding up and repayment report of the company certain deficiencies had been pointed out by SEBI vide letter dated 14.07.2008 vide Ex. CW 1/D2 and reply of the same is Ex. CW 1/D3. She



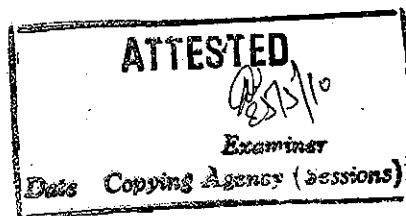


denied that accused no. 3 alone was responsible for day to day affairs of the accused no. 1 company. She also denied that accused nos. 2 and 4 to 8 were not responsible for the day to day affairs of the company. She denied that after 12.03.2000 accused company was not liable to make any further payment to the investors.

11. In support of their defence accused 4, 7 and 8 entered the witness box and thereafter closed their defence evidence.

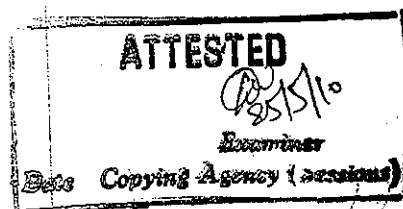
12. DW-1 stated he was never informed or made director in company and he never looked after the work of the company, his signatures were obtained on some documents by accused no 3. In his cross-examination he stated that he was not aware whether accused company had refunded the money to its investors. He also stated he had not filed any complaint against Ashwini Berry.

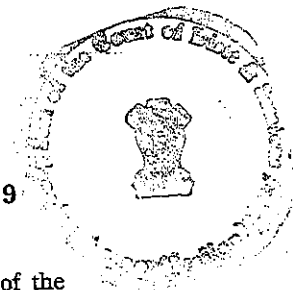
13. DW-2 stated accused no.3 obtained her signatures on some papers and she never participated in any affairs of accused company and was falsely implicated. In her cross-examination she stated that she was not aware of the business of the company. So she did not make any effort to ensure that investors had been repaid. She also stated that she did not make any effort to file WRR with SEBI. She also stated CW 1/DB bears her signatures and in the list of directors Ex. CW-1/1 her name was mentioned, the memorandum also bears her name as promoters.





14. DW-3 stated that accused no.3 obtained his signatures on some papers and he never participated in any meeting or affairs of the company. In his cross-examination he stated that as he was not aware of the business of the company, he did not make any effort to repay the investors. He also stated he did not notice any public notice issued by SEBI, nor did he make any effort to file WRR. He stated that Ex. CW-1/D3 bears his signatures. CW 1/1 bears his name as one of the director and memorandum also bears his name as one of the promoter and director of accused company.
15. DW-4 stated he had resigned from accused company in 1997 and WRR was filed. In his cross-examination he stated that at the time of the appointment as a director of accused company he had signed various papers. He further stated that he did not know when his resignation was accepted. He also stated all the investors had been repaid. He stated that CW-1/1 bears his name. He also stated Ex. CW 1/D1 dated 7.03.2009 and CW-1/D3 dated 22.02.2008 bears his signatures in the capacity as a director.
16. CW 1 proved the the letter issued by accused company which is Ex. CW 1/1. The genuineness and authenticity of this letter has not been challenged even by accused in the cross examination of CW 1. Therefore it is a deemed to be admitted as correct, according to the same accused nos. 2 to 7 were the directors of the company whereas accused no. 8 was a subscriber and accused company had mobilized as Rs. 32,37,220/- lacs upto 31.10.97. Along





with Ex. CW 1/1 issued on behalf of company certified true copy of the memorandum and articles of association of the accused company was also enclosed. As per the certificate of incorporation enclosed therein accused company was incorporated on 21.09.95.

17. 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"

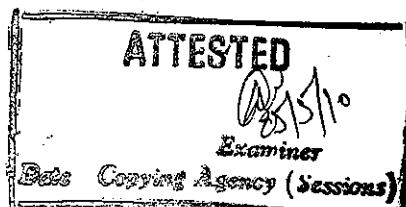
18. Therefore according to section 12(1B) of the Act no person could sponsor CIS without registration from SEBI in accordance with the regulations. The regulation came into force w.e.f. 15.10.99.

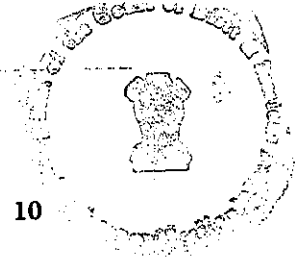
19. CIS has been defined in 11AA of the Act. which is as follows :-

"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;*

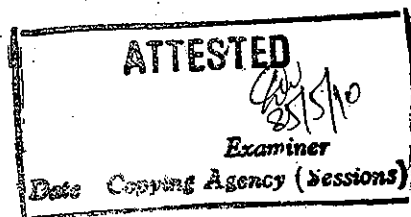




- (ii) *the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;*
- (iii) *the property, contribution or investment forming part of scheme or arrangement, 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.*

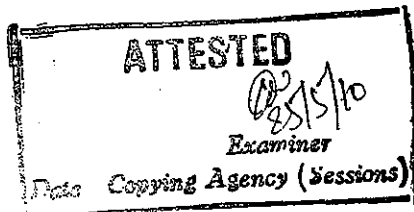
20. Thus as per the admitted document ex. Cw 1/1 and its enclosures accused company had invited general public to invest under its various schemes which were to be managed by it. So it is has been admitted fact that accused company had been running CIS as on 18.12.97 and had mobilized funds to the tune of Rs. 32,37, 220/- under its CIS. Therefore I have no hesitation in holding that accused company, of which accused no. 2 to 7 were the directors and accused no.8 was a subscriber had been running CIS after 1995 and collecting funds from general public.

21. As already stated that regulation came into force w.e.f. 15.10.99. After notification of regulations the intimation regarding notification of the regulations was sent to the company vide public notice dated 20.10.99 and letter dated 21.10.99 Ex. CW 1/3. By virtue of the same various provision of the regulations were brought to the notice of accused company. However correspondence was returned undelivered with the remarks "no such firms." As per regulations 5(1) of the regulation accused company had to apply for



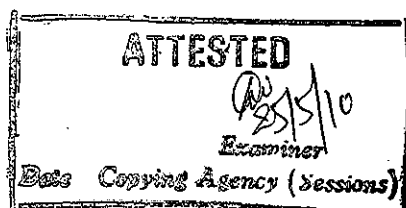
registration of its CIS till 31.03.2000. As per the regulation 73(1) CIS which failed to make an application with SEBI, would wind up the same and repay the investors. Apart from this as per Regulation 74, existing CIS which was not desirous of obtaining provisional registration from SEBI, would formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73.

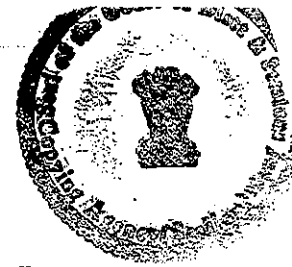
22. According to Regulation 73(2) the existing CIS to be wound up, shall send an information memorandum to the investors who had subscribed to the schemes, within two months from the date of receipt of intimation from SEBI.
23. In their statement under section 313 Cr. P.C. accused no. 2 and 4 to 8 stated that they had no knowledge about the notification, press releases, public notices and letters issued by SEBI. On the other hand Ld. Counsel for SEBI Sh. Sanjay Mann has contended that accused had not informed about the change of their address to SEBI and were themselves responsible for the non receipt of the communication from SEBI. He also contended that accused had ignored the public notices that were issued to remind the defaulters to comply with the SEBI regulations. In view of the submission of Ld. Counsel for SEBI I am of the view that accused failed to comply with the statutory obligations and cannot plead ignorance of law to save themselves from the liability.



24. In statement u/s 313 Cr.P.C. it was stated by accused no. 2, 4 to 8 that day to day affairs of the company have been looked after by accused no. 3. So it is an admitted fact that accused company was in existence and running CIS as on 18.11.97 the date of issue of CW1/1 by accused company. The contention of Ld. Counsel for accused that Sh. Ashwani Berry alone was looking after the affairs of the company is without any merits as along with CW 1/1 the accused company submitted a list of its directors in view thereof. I am of the view that accused no. 2 to 7 were directors of accused company were incharge of and looking after the affairs of accused company as on 18.12.1997 and accused no. 8 was a subscriber and had been running CIS and collecting funds from the general public, after section 12 (1) (B) was incorporated in the Act w.e.f. 25.01.95.

25. The accused have raised a defence that the entire money of the investors stood repaid and winding up and repayment report as per regulations had been filed with SEBI which is EX. CW 1/D1. In this regard it is important to note that SEBI had written a letter to accused company Ex. CW 1/D2 bringing to the notice of accused company that as per WRR submitted by it no interest had been paid to the inverters in any of the cases even when in many case repayment of amount invested had been done after 2-3 years, hence accused company did not comply with the order of chairman dated 07.12.2000. Moreover as per WRR the company had mobilized Rs. 42.5 lacs till 01.04.97, however as per letter Ex. CW-1/1 the company informed SEBI that it had mobilized Rs. 32.37 lacs till on 31.10.97, hence company was



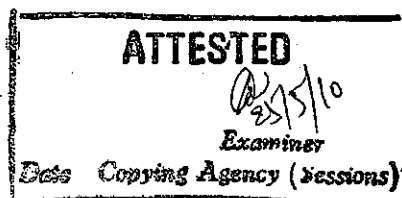


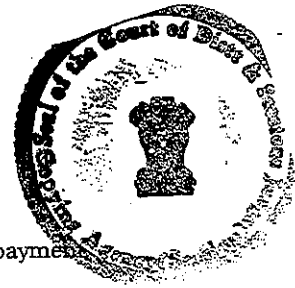
asked to explain the discrepancy. Moreover, the WRR was not signed by all the directors of the accused company, so the defective WRR filed by accused company during the pendency of the case would not save the accused company from the liability for violation of the Act.

26. Hence, the defence of accused that investors had been repaid, that too after the period specified in the regulations and not even in accordance therewith would not save the accused from liability. More so because no document had been filed by accused to show that entire money of investors stood repaid. Even no fee was paid by accused company to SEBI for statutory audit of WRR by its auditors.

27. Ld. Counsel for SEBI Sh. Sanjay Mann submitted that Ex. CW-1/D3 dated 22.02.2008 bears the signatures of accused no. 2, 4, 5 and 7 as director and as per Ex. CW 1/1 it is an admitted fact that accused company of which accused no. 2, 3, 4, 5 and 7 were directors and accused no. 8 a subscriber had started mobilizing funds w.e.f. 21.09.95 from the date of its incorporation and mobilized Rs. 32,37,220/- upto 31.10.97.

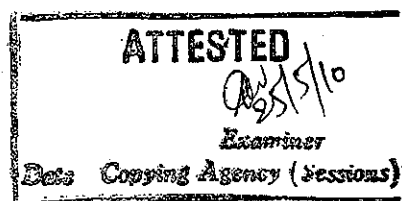
28. CW-1 had inter alia also testified that accused no. 2 to 8 were instrumental in mobilizing funds under CIS of accused company. CW-1 also stated that winding up and repayment report filed by accused no.1 Ex. CW 1/D 1 was not signed by all directors as such SEBI directed accused company to file WRR and repayment report duly signed by all directors in compliance





with directions under section 11. B of SEBI Act. The WRR and repayment report submitted by accused company with SEBI Ex. CW 1/D1 dated 7.03.2008 bears the signatures of accused no. 2, 4, 5 and 7 as directors. In respect of the winding up report SEBI pointed out discrepancy which were explained by accused vide CW-1/D3 received by SEBI on 26.08.08 signed by accused no. 2, 4, 5 and 7 as directors, hence it is also evident that accused no. 2, 4, 5 and 7 were directors of accused company. Ld. Counsel for SEBI alleged that violations of CIS regulations were also admitted by accused no. 8 who stated in his cross examination that he had not made any effort to file WRR and comply with the requirements of the act nor he made any effort to ensure that the accused company repaid the investors. In these circumstances accused no. 8 being director ^{Subscriber who caused the running of CIS} and in charge of affairs of the company was vicariously liable for the violation of the act. As per Ex. CW 1/1 the authenticity of which has not been challenged by accused, accused company of which accused no. 2 to 7 were the directors and accused no. 8 was a subscriber was running CIS even as on 18.12.97, the date of its issue u/s 12(1B) of the Act no person could run CIS or cause it to be run without registration.

29. It was alleged by Ld. Counsel for SEBI that promoter and sponsors of CIS would be covered u/s 12 (1B) of the Act as CIS was being run by them through others especially directors attending to the daily affairs of the company and thus 'causing' the running of CIS. They were responsible to ensure that the business of CIS was being run according to the Law and



CC No. 66/09

SEBI Vs. Asian Plantation Ltd. & Ors.



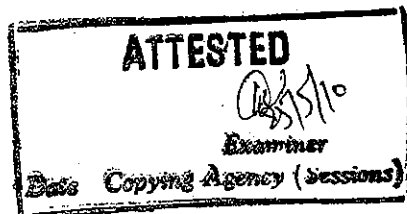
regulations. Therefore, none of the accused can claim exclusion. Therefore is an admitted fact that company started mobilizing funds since its incorporation on 22.09.95. Sec. 12 (1B) was incorporated in the act on 25.01.95. WRR filed by accused company was defective, hence accused company and directors were liable for violation of SEBI CIS regulations punishable u/s 24 of the Act.

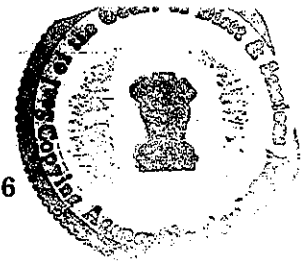
30. Section 27 of the Act deals with commission of offence by company, according to section (1) thereof

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

31. In view of the evidence as record, I am of the view that accused no. 2, 4 to 8 being incharge of the affairs of company had been running CIS after 22.09.95 till 2002. Regulations came into force w.e.f. 15.10.99. Accused no. 2 to 7 continued to be the directors of accused company and accused no. 8 a subscriber at the time of notification of regulations on 15.10.99.

32. For the foregoing reasons I hold that SEBI has been able to prove its case against the accused company of which accused no. 2-4 to 8 were its directors. It has been proved beyond reasonable doubt the CIS as contemplated by section 11 AA of the Act had been floated and fund





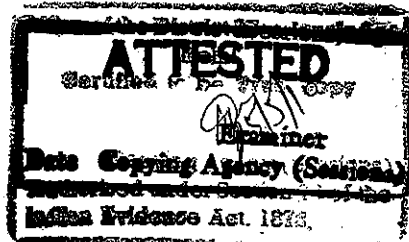
mobilized from general public without obtaining certificate of Registration as required u/s 12(1B) of that Act. Further it has been proved that despite notification of regulations on 15.10.99, accused company failed to apply for registrations of its CIS and did not wind up its CIS or repay the investors as per regulations 73 and 74.

33. I accordingly hold that accused company Asian Plantation Ltd. & ors. and its director accused no. 2 to 7 and subscriber accused no. 8 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 sentence on 23.02.2010.

Poonam Chaudhary

Announced in the open Court
On this day of 15th February 2010

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



- 1. *[Signature]*
- 2. *(MAINT) KAPOOR*
- 3.
- 4. *Dr. [Signature]*
- 5. *[Signature]*
- 6. *Anubha Kishor*
- 7. *Sudha Mishra*
- 8. *[Signature]*

75

CC No. 66/09

SEBI Vs. Asian Plantation Ltd. and ors.


3.02.2010.

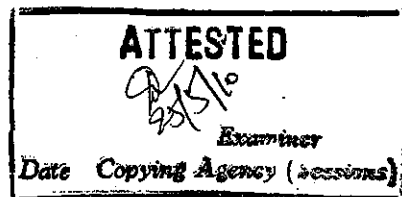
Present: Sh. Sanjay Mann, counsel for SEBI.

Convict no. 2, 4 to 8 with counsel Sh. Ajau Kumar Chopra.

Applications moved on behalf of convicts for suspension of sentence of imprisonment and fine till filing of the appeal.

Heard. In view of the section 389(3)(i) as the convict were on bail and intend to file an appeal, hence sentence of imprisonment and fine is suspended till 25.03.2010 till then all the convicts are admitted on bail on furnishing personal bonds in the sum of Rs. 10,000/- each with one surety each of the like amount. Personal bond furnished, accepted till 25.03.2010.


(POONAM CHAUDHARY)
ASJ(Central-01)/DELHI.
23.02.2010.



57

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



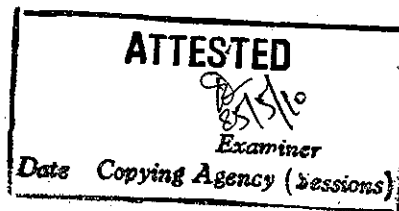
CC No. 66/09
SEBI Vs. Asian Plantation Ltd.
23.02.2010.

ORDER ON SENTENCE

Present : Sh. Sanjay Mann, counsel for SEBI.

Convict no. 2, 4 to 8 with counsel Sh. Ajay Kumar Chopra.

1. I have heard the Ld. Counsel for SEBI Sh. Sanjay Mann and Sh. counsel for convicts on the point of sentence.
2. It is submitted on behalf of convict no. 4 Sh. S. P. Kaila that he is 74 years of age and is suffering from various ailments and his wife is suffering from cancer. It is submitted on behalf of accused no. 7 Ms. Sudha Mittal that she is 64 years of age and is a housewife whereas other accused are the sole earning members of their family. It is prayed that lenient view may be taken.
3. Ld. Counsel for SEBI has strongly 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.
4. Ld. Counsel for SEBI Sh. Sanjay Mann 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.
5. 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.



6. According to section 12(1B) of the Act, the Collective Investment scheme could not be run without obtaining registration as per regulations.

7. Convicts no. 2, 4 to 7 were the directors and accused no. 8 was a subscriber 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.

8. 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 and fine up to Rs. 25 crores or both. This shows that the legislature has viewed the offences under the act and regulation very seriously. Hence in my view lenient view cannot be taken.

9. 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, 4 to 8 are sentenced to RI for 6 months each. In addition accused company and accused no. 2, 4 to 8 shall pay a fine of Rs. 5,00,000/- (Five lakh) each and in default thereof accused no. 2, 4 to 8 shall undergo SI for 6 months each u/s 24 read with section 27 of the Act. 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. Copy of order be given to convicts free of cost. File is consigned to record room under section 299 Cr.P.C..

Poonam Chaudhary

(POONAM CHAUDHARY)
ASJ(Central-01)/DELHI.
23.02.2010.

