

IN THE COURT OF THE ADDL. CHIEF METROPOLITAN

MAGISTRATE,

TEES HAZARI, DELHI

CC NO:

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.

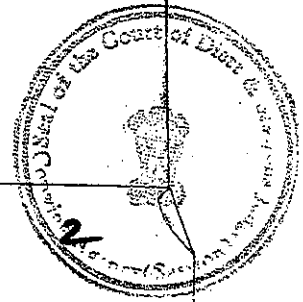
1. Goldstar Teak Forest India Ltd. , a company incorporated under the provisions of Companies Act, 1956 and having its Regd. office at 135, Mohammad Pur, New Delhi - 110066.
2. Sh. D. K Singh, S/o Not known to the complainant; Occupation Director of the Accused No.1; address as of Accused No. 1.
3. Sh. S. P. Singh, S/o Not known to the complainant; Occupation Director of the

P.O.

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P.O.

ATTESTED
<i>Strong</i>
<i>9/6/08</i>
Examiner
Date Copying Agency (Sessions)



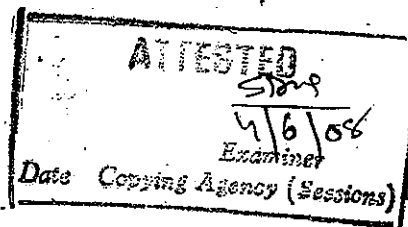
Accused No.1; address as of Accused  
No. 1.

4. Sh. J. D., S/o Not known to the  
complainant; Occupation Director of the  
Accused No.1; address as of Accused  
No. 1.

...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,

1992



CC No. 31/2005

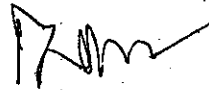
23.04.2008

Present: Sh. Sanjay Maan, Advocate for SEBI

Accused no. 4 is present on bail with Sh. Vijay Singh, Advocate.

Accused nos. 2 and 3 are proclaimed offenders.

Arguments have been heard. Put up for orders during the course of the day.



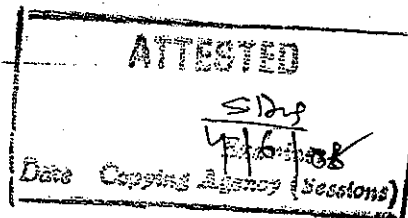
(PADAM KANT SAXENA)  
ADDL. SESSIONS JUDGE:  
DELHI/23.04.2008

23.04.2008

Present: Accused no. 4 is present on bail with Sh. Vijay Singh, Advocate.

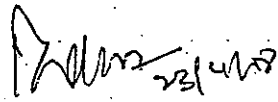
Accused nos. 2 and 3 are proclaimed offenders.

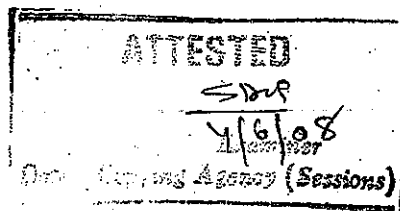
Vide separate judgment of date, dictated and announced, it is held that complainant has been able to prove its case against accused no.4 only to the effect that ~~on or~~ before 26.04.98 accused no.1 of which accused no.4 was director, had been running collective investment schemes without registration in violation of Section 12 <sup>SEAC 1997</sup> (1B) of the <sup>SEAC</sup> Act. Therefore, he i.e. accused no.4 held guilty and is liable to be punished under Section 24 r/w Section 27 of the Act, <sup>SEAC</sup> 1997.



Put up for arguments on the point of sentence on 23/4/08

2008.

  
(PADAM KANT SAXENA)  
ADDL. SESSIONS JUDGE:  
DELHI/23.04.2008



CC No. 31/2005

25.04.2008

Present: Shri Sanjay Maan, advocate for SEBI.

Convict no.4 in person on bail with Shri Vijay Singh,  
advocate.

Accused nos. 2 & 3 are P.O.

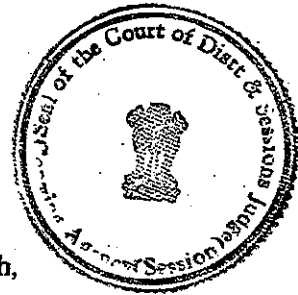
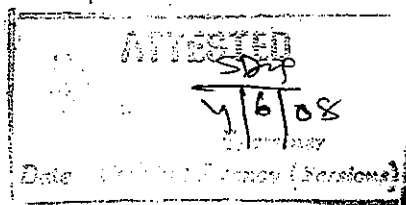
Arguments on sentence have been heard. Put up for orders  
during the course of day.

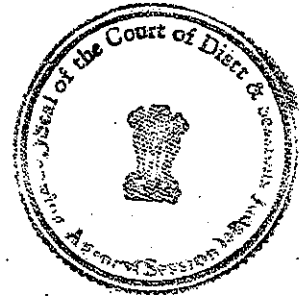
  
(PADAM KANT SAXENA)  
ADDL. SESSIONS JUDGE:  
Delhi:25.04.2008

25.04.2008

Present: Convict no.4 in person on bail with Shri Vijay Singh,  
advocate.

Vide separate order on sentence, convict no.4 has been  
ordered to undergo RI for six months under Section 24 r/w Section 27  
of the SEBI Act. In addition he has also been ordered to pay a fine of  
Rs.50,000/- and in default whereof he shall undergo simple  
imprisonment for two months. At this stage, the convict no.4 has paid  
a sum of Rs.10,000/- and an application has been moved by ld. counsel  
inter-alia stating that he be allowed 10 day's time to deposit the  
balance amount of fine. He also seeks suspension of sentence and  
release on bail since he intends to file an appeal.

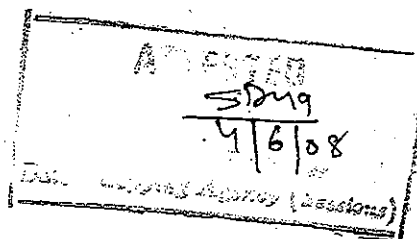




In view of the aforesaid, convict no.4 is allowed to pay the balance fine on or before 9<sup>th</sup> May, 2008. In exercise of my powers under Section 389(3) Cr.P.C., 1973, this convict no.4 is also ordered be released on bail till 30.5.2008 on his furnishing a personal bond in the sum of Rs.10,000/- . Personal bond has been furnished and accepted.

A copy of judgment and order on sentence be also given to the convict free of cost. As regards remaining accused, file be consigned to record room under Section 299 Cr.P.C. with a liberty to SEBI to get it reopened as and when they are traced.

  
(PADAM KANT SAXENA)  
ADDL. SESSIONS JUDGE:  
Delhi:25.04.2008



IN THE COURT OF Sh. PADAM KANT SAXENA,  
ADDITIONAL SESSIONS JUDGE: DELHI.



CC No.31/05

SECURITIES AND EXCHANGE  
BOARD OF INDIA, (a statutory  
body established under the provisions  
of Securities and Exchange Board of  
India Act, 1992). having its Regional  
Office at Mittal Court, B-Wing  
224 Nariman Point, Mumbai-400 021  
represented by its Legal Officer,  
Sh. Sharad Bansode.

.....Complainant.

Versus

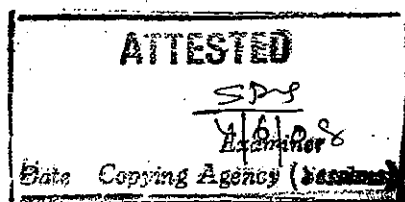
1. Goldstar Teak Forest India Ltd.  
a Company incorporated under  
the provisions of Companies Act, 1956,  
having its Registered Office at 138,  
Mohamadpur, Bhikaji Cama Place,  
New Delhi.
2. Sh. D.K. Singh, S/o Not known to the  
complainant; Occupation Director  
of the Accused no.1; R/o Quarter No. 383,  
Sector 1, R.K. Puram, New Delhi-66.

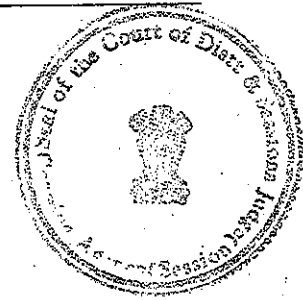
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3. Sh. Satya Prakash Singh,  
S/o Not known to the complainant;  
Occupation Director  
of the Accused no.1;  
Resident of RZI-389A, Raj Nagar II,  
Palam Colony, New Delhi 45.

(P.O.)

4. Shri Jagdev Sharma  
Occupation Director of the Accused no.1;  
R/o House No. 82, Katwaria Sarai,  
New Delhi.

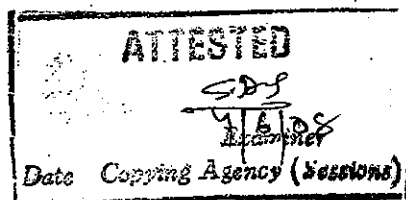
..... Accused

Date of Institution : 21.12.2002  
Date of Final Arguments : 23.04.2008  
Judgment reserved on : 23.04.2008  
Date of Judgment : 23.04.2008

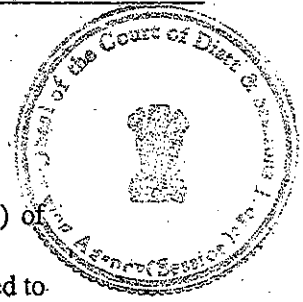
## JUDGMENT

1. In brief case of the complainant (hereinafter referred to as 'SEBI') as disclosed in the complaint dated 21.12.2002 is that accused nos. 2 to 4 being directors of accused no. 1 (for the sake of convenience hereinafter, it would be referred to as 'the company') had floated Collective Investment Schemes and collected Rs. 0.34 Crores

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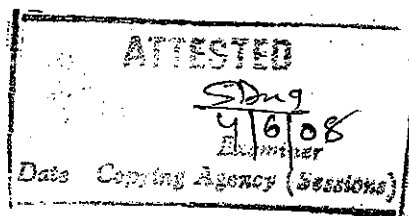
from the general public in violation of Sections 11 (B), 12 (1B) of Securities and Exchange Board of India Act, 1992 (for short referred to as "the Act") r/w regulations 5 (1), 68 (1), 68 (2), 73 and 74 of Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (for short referred to as "the Regulations") which is punishable under Section 24 (1) of the Act. SEBI has also claimed that accused nos. 2 to 4 being directors of the company were responsible to it for conduct of its business and therefore were liable for the said violations under Section 27 of the Act.

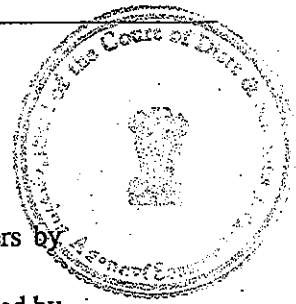
2. After filing of the complaint in question on 21.12.2002, all the accused were ordered to be summoned by Ld. A.C.M.M., Delhi on that very date.

3. In pursuance of order no. F.3 (4)/ADJ/75650 dated 04.12.2004, passed by Ld. District and Sessions Judge, Delhi, the complaint case in question came to be transferred to this court by Id. ACMM, Delhi vide order dated 07.02.2005.

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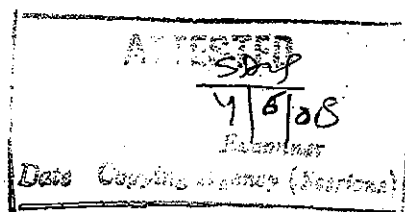


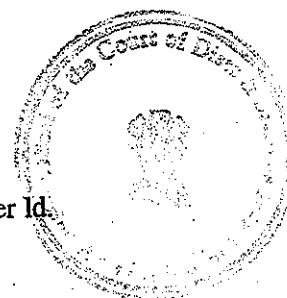
4. Accused nos.2 and 3 were declared proclaimed offenders by Ld. Predecessor of this Court. In the initial original complaint filed by SEBI, against accused no.4, alphabets ' J.D. S/o Not Known to the complainant, occupation director of the accused no.1, address as of accused no.1" were mentioned. But thereafter, SEBI moved an application dated 16.2.2006 for carrying out amendment in the 'Memo of Parties' and also for taking on record fresh addresses. The said application was allowed by Ld. Predecessor of this Court on that very date i.e. 16.02.2006 when amended memo of parties containing details of accused no. 4 was filed. Thereafter notice of accusation was given the company and accused no.4 on 7.12.2006 to which he i.e. accused no.4 on his behalf and also on behalf of the company pleaded not guilty and claimed trial.

5. During the course of trial, on behalf of SEBI, Ms. Versha Aggarwal entered the witness box and examined herself as CW.1 whereafter ld. counsel for SEBI closed his evidence.

6. Thereafter statement of accused no.4 was recorded under Section 313 Cr.P.C., 1973. In support of his defence, accused no.4

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entered the witness box and examined himself as DW1 where after Id  
defence counsel closed his evidence.

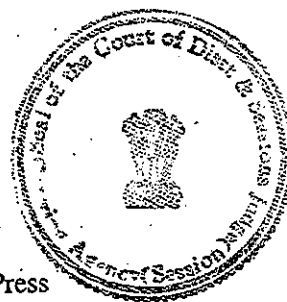
7. I have heard Ld. Counsel for the parties and have gone through the records carefully.

8. Ld. Counsel for SEBI has vociferously argued that the case against accused no.4 stands proved to the hilt and in view of the huge amount of money mobilized, he prays for imposition of stringent punishment. On the other hand Ld. defence counsel has argued that accused no.4 was neither incharge of affairs of the company nor was a share holder thereof. Further according to him, even various letters which had been sent by the company, were not signed by him i.e. accused no.4 and in view of the failure of SEBI to prove that accused no.4 was incharge of the affairs of the company, he prays for acquittal of this accused.

9. For appreciating the aforesaid rival contentions mentioned above, it would be useful to analyse the evidence available on record of this case.

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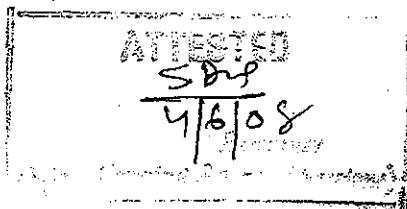
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Agency (Location)

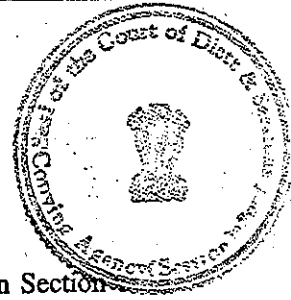


10. CW1 has inter-alia deposed that in pursuance of the Press Release dated 26.11.2007 the Company had sent a letter dated 16.12.2007 and proved on record the same as Ex.CW-1/2. As per appendix C attached thereto, the company had collected a sum of Rs.33,58,690/- (wrongly typed as Rs.33,58,190). Further as per the information appearing in Clause no. 130 of page no.29 of the Memorandum of Articles of Association appended to Ex.CW-1/2 dated 16.12.1997, Sh. Jai Dev Sharma , accused no.4, was a director of the company. Even accused no. 4 admitted in his statement under Section 313 Cr.P.C., 1973 that he was a director of the company. However, relying upon Ex.DW-1/A, the defence raised by him i.e. accused no.4 in his own evidence is, that he had resigned as director of the company on 24.06.1998. The other portion of the defence raised by accused no.4 is that he had no concern with the actual working of the company.

11. Now in the face of the aforesaid evidence, let us try to find out as to whether SEBI has been able to prove its case against the company and accused no.4 or not.

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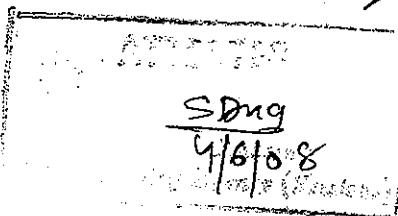


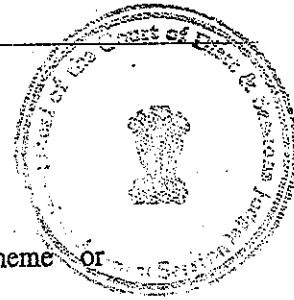
12. A collective investment scheme has been defined in Section 11 AA of the Act. According to sub-section (1) thereof, any scheme or arrangement which satisfied the conditions referred to in sub-section (2) thereof, shall be a collective investment scheme. The conditions specified in sub-section (2) thereof are as follows:-

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

- (i.) the contributions, 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 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

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management and operation of the scheme or arrangement."

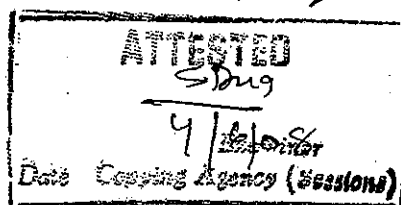
13. The next question that arises for consideration is whether on the basis of the materials available on record, has SEBI has been able to prove that the company had been running collective investment schemes within the meaning of Section 11 AA of the Act, or not.

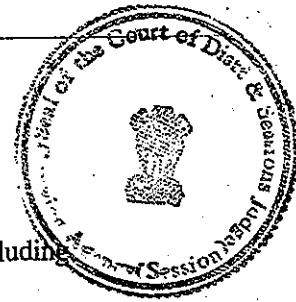
14. Section 12 (1B) of the Act, came into force w.e.f. 25.01.1995. According to it, no person could inter-alia run a collective investment scheme unless he had obtained a certificate of registration from SEBI in terms of the Regulations.

15. The company came into existence on 9<sup>th</sup> Dec., 1996 and its business commenced w.e.f. 15.01.1997 as mentioned in Appendix A attached to the aforesaid letter Ex. CW-1/2, dated 16.12.1997 sent by the company to SEBI. This was much after Section 12 (1B) stood added in the Act, w.e.f. 25.01.1995.

16. I have already referred to the ocular evidence of CW 1

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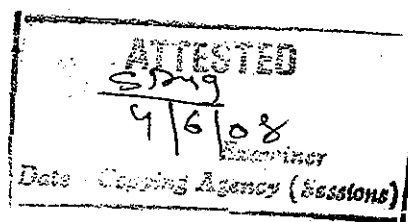


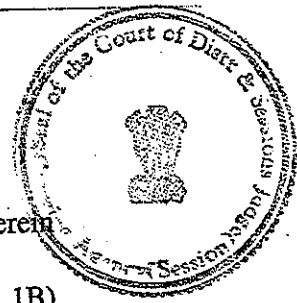
wherein inter-alia this witness had proved various documents including the letter dated 16.12.1997 Ex. CW-1/2 along with its annexures which was sent by the company. Genuineness and authenticity of the said documents viz. Ex.CW-1/2 dated 16.12.1997 and its annexures has not been challenged in the cross-examination of CW 1 and therefore these documents are deemed to have been admitted as correct. The said documents clearly show that the company had invited general public to invest in its various schemes to be managed by it wherein the said investors had no day to day control with an assurance about allotment of a particular portion of land. So admittedly the company had been running Collective Investment Schemes before that date i.e. 16.12.1997.

17. So, in view of the aforesaid discussion, it stands proved on record that before 16.12.1997 the company had floated collective investment schemes and had collected Rs.33,58,690/- from the general public and at that time inter-alia accused no. 4 was one of its directors.

18. Consequently floating of collective investment schemes by the company without obtaining a certificate of registration

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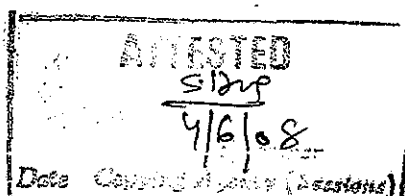
from SEBI in accordance with the Regulations mentioned therein and collecting funds thereunder was violative of Section 12(1B) of the Act.

19. Now, Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (for short referred to as 'the Regulations') came into force w.e.f. 15.10.99.

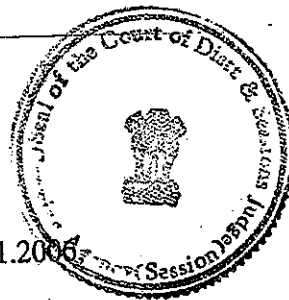
20. In terms of regulations of 73 and 74 as given in Chapter 9 of the Regulations, the accused company was either required to get its Collective Investment Schemes registered or wind up the same i.e. its Collective Investment Schemes. As per the procedure laid down in the Regulations, the accused company was required to circulate information memorandum to its investors and to repay and wind up its Collective Investment Schemes and submit the winding up and repayment report (for short referred to as 'the WRR') with SEBI within 5½ months.

21. SEBI in order to prove the fact that accused no.4

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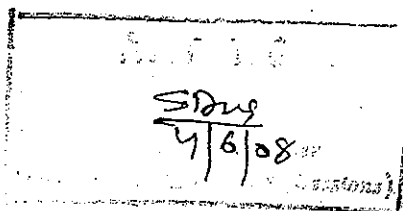


continued to be a director of the company as late as 27.01.2006 has relied upon Ex. CW-1/17 dated 27.01.2006. On the basis of this document, argument of Ld. Counsel for SEBI is that the Regulations were applicable to the company and accused no.4 after the same had come into force w.e.f. 15.10.1999. As against this, accused no.4 has relied upon Ex. DW-1/A, certified copy of Form No. 32, issued by Registrar of Companies (for short referred to as 'ROC') to show that he i.e. accused no.4 had resigned on 24.06.1998 as a director of the company and therefore the Regulations which came into force w.e.f 15.10.1999 would not be applicable to him. Also according to learned defence counsel, since the Regulations came into force w.e.f. 15.10.1999 before which date accused no.4 had already resigned, question of breach of Section 12 (1B) of the Act by him, obviously would not arise and he cannot be punished therefor.

22. Genuineness and authenticity of this document viz. Ex.DW-1/A has not been challenged by Ld. Counsel for SEBI. Therefore it is deemed to have been admitted as correct. This

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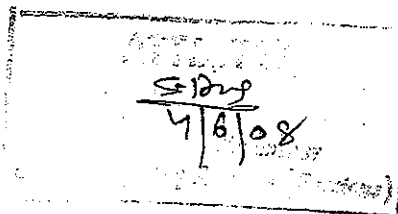


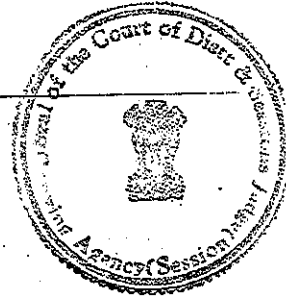


documentary evidence is of an impeccable character. The information contained in Ex. CW-1/17 is admittedly based on the record of ROC, Delhi. It is significant to note that SEBI did not examine any witness from the office of ROC or produce the relevant record on the basis of which Ex.CW-1/17 was prepared. So, in the absence of the original record of ROC, Ex.CW-1/17 does not have any significance particularly when accused no.4 has produced certified copy of form no. 32 Ex.DW-1/A to show that he had resigned as director of the company on 24.06.1998.

23. Hon'ble Delhi High Court in the case of Dr. (Mrs.) Sarla Kumar Vs. Srei International Finance Ltd., 132 (2006) Delhi Law Times 363, has inter-alia held that certified copy of Form no. 32 issued by ROC is conclusive of the fact that a certain Director had resigned from a particular date i.e. 20.08.1994 mentioned therein.

24. Therefore relying upon the law laid down in the case of Dr. (Mrs.) Sarla Kumar (Supra), I hold that accused no.4 had resigned as a director of the company on 24.06.1998, i.e. much

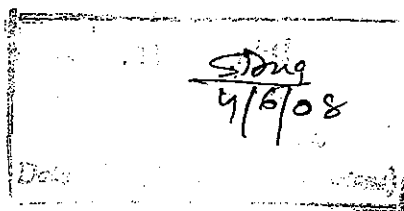




before the Regulations came into force on 15.10.1999. Consequently the Regulations were not applicable to accused no.4 and he cannot be made liable for breach thereof.

25. As already stated hereinbefore, as per Memorandum and Articles of Association of the Company attached with Ex. CW-1/2, dated 16.12.1997 accused no.4 was one of its directors since the inception. Accused no.4 claims that he was not incharge of day to day affairs of the company. Based on this, ld. counsel for accused no.4 claims that since SEBI has failed to prove that accused no.4 was in charge of affairs of the company, he is entitled to be acquitted.

26. Now 'Director' is a person who directs or governs. He is a manager, He is also a member of the board that manages the affairs of a company. In other words those persons who are responsible for conduct of the affairs of a company are generally referred to as directors, managers, secretaries, etc. With reference to Sections 291 to 293 of the Companies Act, 1956 it would be evident that what a board of directors of a





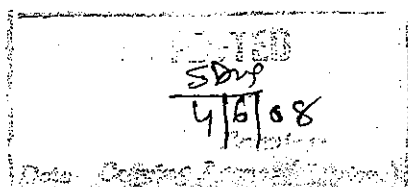
company is empowered to do, depends upon the roles and functions assigned to directors as per the memorandum & articles of association of a company.

27. In the case of N. Rangachari Vs. BSNL (2007) 5 SCC 108 it was inter-alia observed by the Apex Court that a person in the commercial world having a transaction with a company is entitled to presume that the Directors of the company are in charge of the affairs of the company. It was further observed that if any restriction is placed on their powers, by the Memorandum of Articles of Association, it is for the Director to establish it at the trial.

28. Now in the instant case in the face of Ex.CW1/2 dated 16.12.1997 and its aforesaid annexures which are admitted documents, it is clear that accused no.4 was 'Director' of the company and continued to be so till 24.06.1998. Now accused no.4 even in his oral evidence has not proved that during the period when he was director of the company, he was not incharge of day to day affairs thereof i.e. of the company. During the course of his cross examination, a suggestion was put to him by Ld. Counsel for SEBI to the effect that he was

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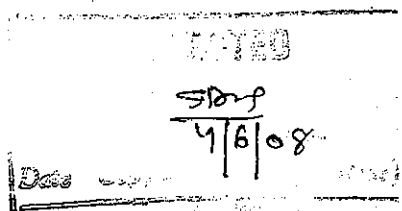


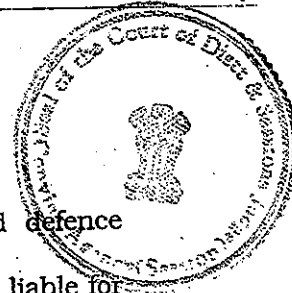
actively involved in day to day affairs of the company, which he claimed to be wrong. So virtually accused no.4 has not led any evidence with regard to this aspect of the matter and in the absence of any defence evidence in this regard, I hold that accused no.4 has failed to establish that he was not incharge of day to day affairs of the company or that any restriction had been placed on his powers in terms of Memorandum and Articles of Association of the Company. Hence, in the face of the aforesaid evidence and the law laid down in the case of N. Rangachari (Supra) I hold that at the relevant time, accused no.4 was in charge of affairs of the company and was also responsible to it for conduct of its business.

29. At the cost of repetition, I may state that case of SEBI is that in view of admission of the company and accused no.4 as contained in its letter dated 16.12.1997 Ex.CW1/2 and its annexures, the company had been running Collective Investment Schemes before that date. As per Section 12 (1B) of the Act, such Collective Investment Schemes could be run only after a certificate of Registration from SEBI had been obtained in accordance with Regulations. Admittedly the Regulations came into force w.e.f. 15.10.1999.

*M. K. M.*  
21/4/08

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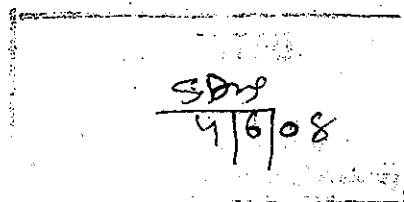


30. In view of this, as a last effort, learned defence counsel argued that accused no.4 could not be held liable for violation of Section 12(1B) of the Act also since he i.e. accused no.4 had resigned w.e.f. 24.06.1998 while the Regulations came into force thereafter i.e. w.e.f. 15.10.1999.

31. On the face of it, the said argument appears to be attractive but on a careful scrutiny turns out to be hollow. Why I say this, is based on the following reason. The Act came into force with effect from 30.1.1992 as mentioned in Section 1(3) thereof. Chapter V of the Act deals with Registration Certificate and Section 12(1B) thereof specifically lays down that no person shall carry on etc. a Collective Investment Scheme etc. unless he obtains a certificate of registration from SEBI in accordance with the Regulations. However proviso appended thereto states that any person who had been carrying on the said activity before commencement of securities laws (Amendment) Act, 1995 for which no certificate was required, could continue to do so, till regulations under Section 30(2) of the Act were framed. The said Securities Laws (Amendment) Act, 1995, came into force w.e.f. 25.1.1995. Now certified true copy of the certificate of business issued to the

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company and which is available in its Memorandum & Articles of Association annexed with Ex.CW1/2 shows that permission to commence business was granted to it w.e.f. 15.01.1997. So by no stretch of imagination it can be said that the company had been running its Collective Investment Schemes before enforcement of Securities Laws(Amendment) Act, 1995 i.e. before 25.1.1995. As per law, the company could have commenced its business including Collective Investment Schemes in question, only w.e.f. 15.01.1997 as mentioned above and this could have been done only after obtaining registration certificate as laid down by Section 12(1B) of the Act. Non obtaining of registration certificate by the company for running its Collective Investment Schemes after 15.01.1997 was violative of Section 12(1B) of the Act and therefore both the company & accused no.4 must be punished for the said lapse particularly in view of the intention of the Act which was to save the investors. However as regards the Regulations *per se*, since they came into force w.e.f. 15.10.1999, accused no.4 who had already resigned w.e.f. 24.06.1998 from directorship of the company, could not be held liable or punished for infraction of the provisions thereof.

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32. At this stage a reference may be made to Section 27 of the Act which deals with offences by companies. This provision of law reads as under:-

**"(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:**

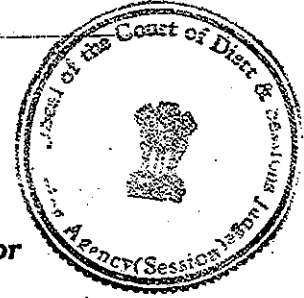
**Provided that nothing contained in this Sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.**

**(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on**

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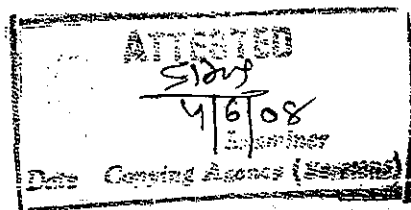


*the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."*

33. In the instant case, as discussed above, offence of running Collective Investment Schemes without registration as contemplated by Section 12 (1B) of the Act, had been committed by the company before 16.12.1997 when letter Ex.CW1/2 dated 16.12.1997 was sent by it to SEBI. Admittedly at that time accused no.4 was its Director and therefore incharge of its affairs. So, in accordance with Section 27(1) of the Act inter alia accused no.4 who is facing trial is also guilty of the offence. Accused no.4 has failed to prove that the said offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence.

34. Resultantly, I hold that SEBI has been able to prove its case against accused no.4 to the effect that on or before 16.12.1997, the company of which accused no.4 was a

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director, had been running Collective Investment Schemes without registration in violation of Section 12(1B) of the Act. Therefore, accused no.4 is held guilty and is liable to be punished under Section 24 read with Section 27 of the Act.

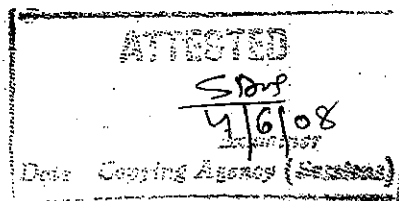
Dictated and announced  
in the open court  
today i.e. on 23.04.2008

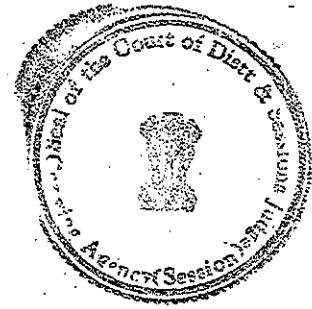
*Padam Kant Saxena*  
23/4/08

(PADAM KANT SAXENA)  
ADDITIONAL SESSIONS JUDGE:  
DELHI.

Copy given to convict  
in the court for  
on 25/4/08  
*25/4/08*

*25/4/08*





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IN THE COURT OF SH. PADAM KANT SAXENA,  
ADDITIONAL SESSIONS JUDGE: DELHI.

CC No.31/05

SEBI Vs. Goldstar Teak Forest India Ltd. etc.

**ORDER ON SENTENCE**

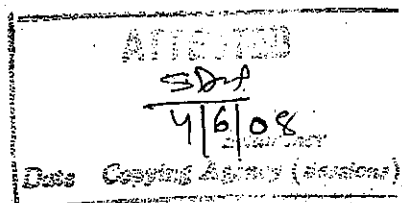
Vide judgment dated 23<sup>rd</sup> April, 2008 passed by this Court, Sh. Jagdev Sharma, accused no.4 who was director of M/s Gold Star Teak Forest India Ltd. (for short 'the company') had been held guilty for committing an offence under Section 12 (1B) of Securities and Exchange Board of India Act, 1992 (for short referred to as 'the Act') which is punishable under Section 24 read with Section 27 thereof.

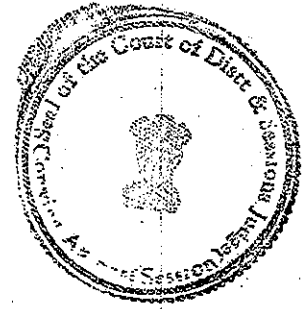
I have heard arguments of Sh. Sanjay Maan, Advocate for SEBI, Sh. Vijay Singh, Advocate for convict no. 4 and have gone through the records carefully.

Ld. counsel for convict no. 4 has vehemently argued that this convict who is a resident of Delhi after being taken into confidence by the other two directors, who were accused nos. 2 and 3 in the complaint case in question, was made a director of the company. Further according to him, convict no. 4 himself is a victim of the

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*Sanjay Maan*  
25/4/08





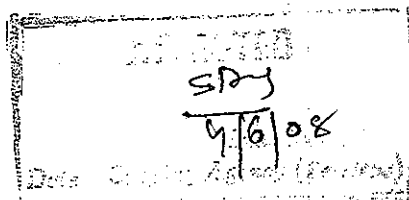
misdeeds of the said remaining directors of the company. Therefore he prays for a lenient view, since this convict has two minor children and is the sole bread earner of the family and is earning Rs.4,300/- per month.

The Act came into force w.e.f. 30.01.1992. It was enacted to provide 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. Section 12 (1B) was added thereto w.e.f. 25.01.1995. According to the said Section 12 (1B) of the Act, collective investment schemes could not be run without obtaining Registration as per Regulations.

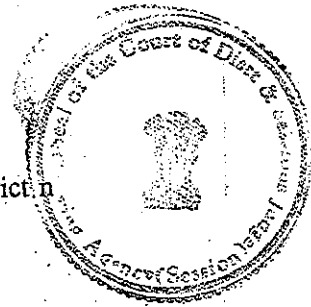
In the case in hand what do we find. Convict no. 4 was one of the directors of the company. The said company in violation of Section 12 (1B) of the Act, after 25.01.1995 floated collective investment schemes and collected Rs.33,58,690/- from the investors as per letter Ex. CW-1/2 dated 16.12.1997 sent by the company to SEBI. However, it stood proved on record that this convict no. 4 had resigned as a director of the company on 24.06.1998. It appears that money of the investors has still not been returned and at least no such proof has

*[Handwritten signature]*

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been filed in this Court. In the face to this factual scenario, convict no. 4 cannot be allowed to go scot free.



Section 24 of the Act, prior to its amendment w.e.f. 29.10.2002, provided punishment of fine or imprisonment of one year or with both.

Admittedly the offence in question was committed on or before 16.12.1997.

In the facts and circumstances of the present case, interests of justice would be fully met if convict no.4 is ordered to undergo rigorous imprisonment for six months. In addition he shall also pay a fine of Rs.50,000/- and in default thereof, he shall undergo simple imprisonment for two months. Out of the amount of fine, if realised, a sum of Rs.10,000/- be paid to SEBI after expiry of period of revision/appeal, towards the expenses incurred by it, in the prosecution of the present case.

Dictated and announced  
in the open court  
today i.e. on 25.04.2008

*[Signature]*  
25/4/08

(PADAM KANT SAXENA)  
ADDITIONAL SESSIONS JUDGE:  
DELHI

*Copy given to convicts  
in the Court at 10  
on 25/4/08*

*25/4/08*

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Office of the District & Sessions Judge	
Delhi	
Copy of the Judgment	
4/6/08	
Date	Conveying to the (Sessions)
Authorized under section 78 of the	
Indian Evidence Act 1973	