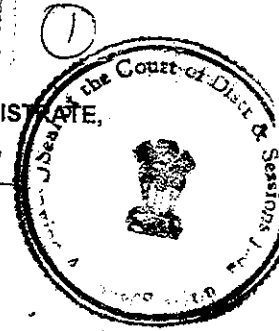


IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN MAGISTRATE,

Office of the *Shri R. R. Saxena*
DELHI

CC NO: OF 2004



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 Asst. General Manager,
Shri Rakesh Bhanot.

...Complainant

VERSUS.

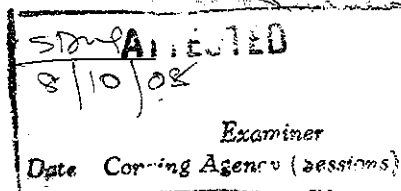
1. M/s Green Pearls, A
Company/Firm Having its office
at: A-529, J.J. Colony,
Uttamnagar, Delhi.

Shri Ashok Arora S/o Gurudutt,
Resident of: 11/532, Kalyan
Nagar, Sonapat, Haryana.

3. Shri Rajan Arora S/o Shri H.L.
Arora, Resident of: 45, Ram
Nagar, Eight Marla, Sonapat,
Haryana.

.....Accused

COMPLAINT UNDER SECTION 190 AND 200 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND
EXCHANGE BOARD OF INDIA ACT, 1992



CC No. 140/2005

29.09.2008

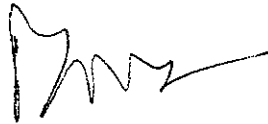
Present: None for SEBI.

Accused no.3 is present on bail for self and accused no.1
with Shri Amit Kumar, advocate.

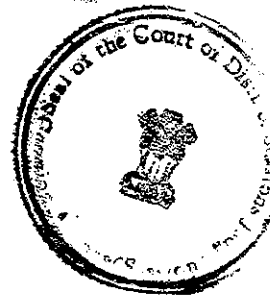
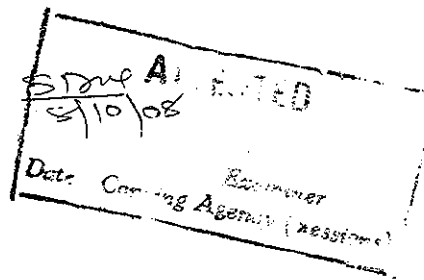
Accused no.2 is P.O.

Vide separate judgment of date, dictated and announced in
the open Court, accused nos. 1 & 3 stand acquitted.
Bail bonds of accused no. 3 are cancelled and surety bond
stands discharged.

As regards accused no.2, file be consigned to record room
under Section 299 Cr.P.C. 1973 with a liberty to SEBI
to get it reopened as and when the accused no. 2 is
arrested.



(PADAM KANT SAXENA)
ADDITIONAL SESSIONS JUDGE:
DELHI/29.09.2008



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



CC No.140/2005

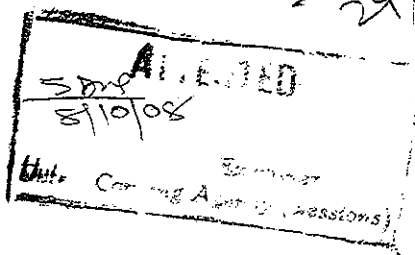
SECURITIES AND EXCHANGE
BOARD OF INDIA, (a statutory
body established under the provisions
of Securities and Exchange Board of
India Act, 1992). having its Regional
Office at Mittal Court, B-Wing
224 Nariman Point, Mumbai-400 021
represented by its Legal Officer,
Sh. Rakesh Bhanot.Complainant.

Versus

1. M/s Green Pearls,
a Company/Firm Having its office
at A-529, J.J. Colony,
Uttam Nagar, Delhi.
2. Shri Ashok Arora
son of Gurudutt
Resident of 11/532, Kalyan Nagar,
Sonapat, Haryana.
3. Sh. Rajan Arora
son of Sh. H.L. Arora,

Am
29/9/08

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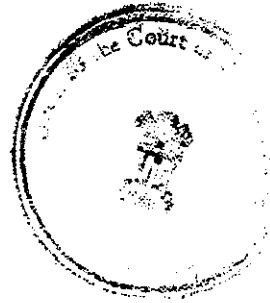


Resident of 45, Ram Nagar,

Eight Marla, Sonapat,

Haryana

..... Accused



Date of Institution : 30.10.2004

Date of Final Arguments : 26.09.2008

Judgment reserved on : 26.09.2008

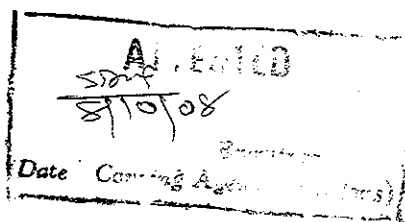
Date of Judgment : 29.09.2008

JUDGMENT

1. Accused nos. 2 & 3, who are stated to be directors, and therefore incharge of day to day affairs of accused no.1, have been facing trial for violation of Section 12 (1B), etc. of Securities and Exchange Board of India Act, 1992 (for short referred to as 'the Act') and Regulation Nos. 5, 68 etc. of Securities and Exchange Board of India Regulations, 1999 (for short referred to as "the Regulations"), in pursuance of the complaint dated 30.10.2004 filed by Securities and Exchange Board of India (for short referred to as 'SEBI') before Id. Additional CMM, Delhi .

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29/10/08

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2. Shorn of unnecessary details, the brief facts, as disclosed in the aforesaid complaint are as follows:

It was noticed that the private entrepreneurs had undertaken activities on a commercial scale and as such the Government of India, after detailed consultations with the regulatory bodies, decided that an appropriate regulatory framework for regulating entities, which issued instruments like Agro Bonds, Plantation Bonds etc. should be put in place. Therefore a press release was issued by the Government of India on November 18, 1997, conveying that such schemes should be treated as collective investment schemes coming under the Act. In pursuance thereof and SEBI press release dated November 26, 1997 and public notice dated December 18, 1997, accused no.1 filed information/details with SEBI stating that it had been operating collective investment schemes and had raised an aggregate amount of more than Rs. 2.37 lacs from the general public. According to SEBI, in terms of Chapter IX of the Regulations, any person who had been operating a collective investment scheme at the time of commencement of the said regulations, shall be deemed to be an existing

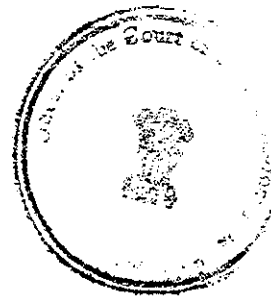


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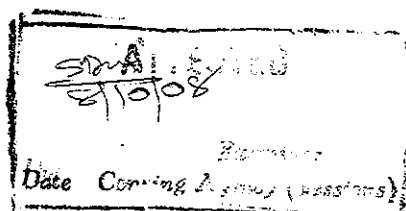
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SMP	
8/10/08	
Date	Conting Agency (Accessions)

collective investment scheme which shall comply with the provisions of the said Chapter and shall make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations. Thereafter, SEBI having regard to the interest of investors and the requests received from various persons operating collective investment schemes, extended the last date of submission of the application by existing entities, up to March 31, 2000. It was also averred that accused no.1 failed to make any application with SEBI for registration of the collective investment schemes being operated by it as per the said regulations and in terms of Regulation 73 (1) of the said regulations, an existing collective investment scheme which failed to make an application for registration with SEBI, had to wind up the existing collective investment schemes and repay the amounts collected from the investors. Further according to SEBI, in terms of Regulation no. 74 of the regulations, an existing collective investment scheme which was not desirous of obtaining provisional registration from SEBI, had to formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in



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Regulation 73. It was also specifically alleged in the complaint that accused no.1 neither applied for registration under the said regulations nor took any steps for winding up of the schemes and repayment to the investors as provided under the regulations and as such had violated the provisions of Section 12 (1B) of the Act and Regulation Nos. 5 (1) r/w 68 (1), 68 (2), 73 and 74 of the said regulations.



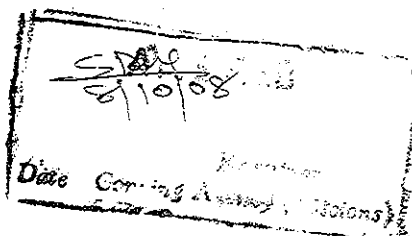
3. In pursuance of order no. F.3 (4)/ADJ/75650 dated 04.12.2004, passed by Hon'ble District and Sessions Judge, Delhi, the complaint case in question came to be transferred to this court by Ld. ACMM, Delhi vide order dated 19.03.2005.

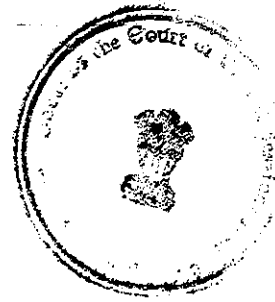
4. During the course of the proceedings before this Court, accused no. 2 was declared a proclaimed offender.

5. Notice of accusation had been given to accused nos. 1 and 3 on 25.05.2007 by Id. predecessor of this court, to which accused no. 3 pleaded not guilty for self and on behalf of accused no. 1 and claimed trial.

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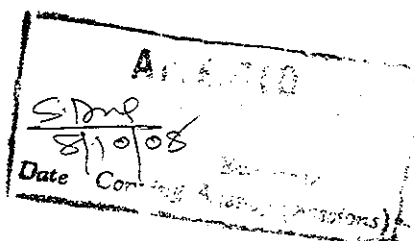
6. In support of its case, SEBI examined its solitary witness viz. CW.1 Ms. Versha Aggarwal whereafter Id. counsel closed its evidence. Thereafter, statements of accused no. 3 was recorded under Section 313 of Code of Criminal Procedure, 1973 wherein he pleaded false implication. Accused no. 3 did not lead any evidence in his defence.

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

8. Before proceeding further in the matter, it would be useful to remember that the Act had been enacted with a view to provide for establishment of a Board i.e. SEBI 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. Thereafter SEBI in exercise of its powers conferred by Section 30 of the Act read with Sections 11 and 19 thereof, made, the Regulations, which came into force w.e.f. 15.10.1999.

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9. Realities of truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise. This has been so held by Hon'ble Supreme Court in the case of

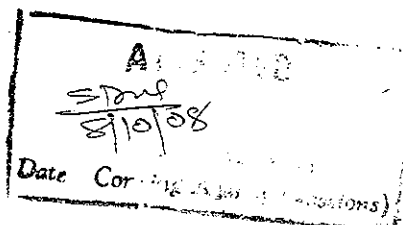
Ashish Vs. State, 2002 (3) JCC 1883.

10. Keeping in view the aforesaid law, let us analyse and assess the evidence available on record of this case for finding out, whether the case set up by SEBI, in the complaint in question, has been proved beyond reasonable doubts against the accused or not.

11. CW.1 Ms. Versha Aggarwal in her sworn deposition before this Court, had inter-alia deposed that pursuant to Govt. of India Press release dated 18.11.1997 which directed that the bonds which were considered as Collective Investment

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29/10/08

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Schemes under the meaning of Section 11 of the Act and SEBI press release dated 26.11.1997 and public notice dated 18.12.1997, accused no.1 filed the required information vide its letter dated 9.1.1998 ExCW1/2 running into 17 pages. As per Ex.CW1/2 and the documents accompanying the same, accused no.1 through its various Agro plantation Schemes had raised a sum of Rs.2.37 lakhs from the general public. CW.1 admitted in her cross-examination that the prosecution in question had been launched by SEBI in view of Ex.CW1/2 and other correspondence between the parties and no independent enquiry or investigation was conducted by it i.e. by SEBI. Further according to this witness, she had no personal knowledge about this case and she did not know who had signed Ex.CW1/2 on behalf of accused no.1. In response to a question by Id. defence counsel, this witness deposed that she could not say whether Ex.CW1/2 had been delivered on behalf of accused no.1 in the office of SEBI or had been received by post. In the cross-examination of this witness a suggestion was put to her to the effect that Ex.CW1/2 had not been sent by accused no.1 and somebody had played mischief, which she

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21/10/98

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8/10/98
Date Conting Agency (session)

claimed to be wrong. So, this clearly shows that the contesting accused, dispute the very existence of this document and its issuance by accused no.1.



12. A perusal of the aforesaid sworn deposition of CW 1 Ms. Versha Aggarwal would show that SEBI seeks conviction of accused nos. 1 and 3 in view of the contents of Ex.CW1/2 and its enclosures. In other words, this case is solely based on documentary evidence. The point that arises for consideration is whether the accused can be convicted on the aforesaid sole deposition of CW.1, particularly when according to accused Ex.CW1/2 had not been filed by accused no.1 and somebody had played the mischief.

13. It is well settled that when a document is tendered in evidence, the Court has to consider three aspects viz.

- i.) its authorship in order to ensure that it is a genuine document.
- ii.) the correctness of its contents and
- iii.) truthfulness of its contents.

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Date Conting Agency (sessions)



14. Section 61 of Evidence Act, 1872 (for short referred to as "Evidence Act"), lays down that the contents of a document may be proved either by primary or by secondary evidence. Section 62 of Evidence Act defines primary evidence as meaning the document itself produced for inspection of the court. Now in the instant case, the original documents viz. Ex.CW-1/2 and its annexures relied upon by SEBI, have been produced before this court. So, requirement of Section 62 of Evidence Act stands satisfied.

15. Then comes the most important question viz. the genuineness of a document produced in evidence i.e. it is a document that it purports to be and is dealt with in Sections 67 to 73 of Evidence Act. Section 67 of Evidence Act, refers to documents other than documents required in law to be attested. It simply requires that the signature of the person alleged to have signed a document (i.e. the executant) must be proved by the evidence that the signature purporting to be that of the executant, is in his handwriting. However, Section 67 in terms

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<p>ADDED</p> <p>S. Duf</p> <p>29/10/08</p> <p>Date Corrig Agent (Session)</p>

does not prescribe any particular mode of proof and any recognized mode of proof which satisfies the judge, will do. Thus the execution/authorship of a document may be proved by direct evidence i.e. by the writer or a person who saw the document written and signed or by circumstantial evidence which may be of various kinds, for example, by an expert or by the opinion of a non expert who is acquainted with the handwriting in any of the ways mentioned in explanation to Section 47 Evidence Act or even by comparison etc. In this regard, a reference may be made to a judgment of Hon'ble Delhi High Court reported as **State Vs. Brij Mohan 1985 RLR 204.**



16. However, sadly for SEBI, in the instant case it has failed to prove that Ex.CW1/2 and its annexures had been sent by accused no. 1 or that Ex.CW-1/2 had been signed by the person by whom it was purported to have been signed. As already stated, CW 1 had no personal knowledge about this case. Also according to her, no independent enquiry or investigation had been conducted in the matter in question by

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<i>SDUF</i>	
<i>8/10/08</i>	Examiner
Date	Conciling Agency (Resolving)



SEBI. It is also her admission that till then (i.e. till recording of her deposition in the court) SEBI had not received any complaint against the accused from any investor. So, by no stretch of imagination it can be said that SEBI has been able to prove the said documents particularly when accused have challenged the said document Ex.CW-1/2 in cross-examination of CW.1 Ms. Versha Aggarwal when it was put to her that it had not been sent by accused no.1 and somebody had played mischief. Apart from the above, there is no other evidence on record to show that accused no.1 had floated any collective investment scheme or that it had collected money from investors. Also, there is no evidence on record, either documentary or oral to show that accused no.3 was director of accused no.1.

17. Mere suspicion, however, strong or probable it may be, is no effective substitute for the legal proof required to substantiate the charge of commission of a crime. Court dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true and 'must be true' and this basic and golden rule only helps to maintain the

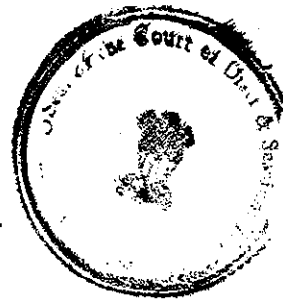
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 Date *[Handwritten date]* Corriging Agency (Sessions)

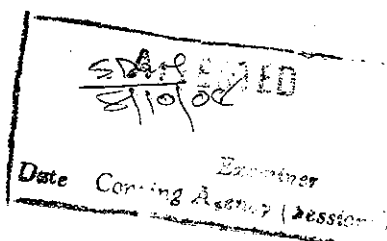
vital distinction between 'conjectures' and 'sure conclusions' to be arrived at, on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record. (Refer Ashish Batham (supra).



18. Resultantly I hold that SEBI has miserably failed to prove its case against accused no. 1 to the effect that it had floated any collective investment scheme or that it had collected any funds from general public. I also hold that in view of the aforesaid finding, SEBI has also failed to prove that at the time of the enforcement of the Regulations w.e.f. 15.10.1999, accused no. 1 had been operating any Collective Investment Scheme. SEBI has also failed to prove that at the relevant time, accused no. 3 was director of accused no.1. Consequently neither accused no. 1 nor accused no. 3 can be prosecuted or punished for non compliance of the Regulations.

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19. Resultantly accused nos. 1 and 3 stand acquitted of the charge levelled against them. Bail Bonds of accused no. 3 stand cancelled and surety bond pertaining to him stands discharged.



Dictated and announced
in the open court
today i.e. on 29.09.2008

(PADAM KANT SAXENA)
ADDITIONAL SESSIONS JUDGE:
DELHI.

Office of the District Sessions Judge	
Delhi	
C. S. No. 109 of 2008	
Date 29/09/08	
Auth. under section 78 of the Indian Evidence Act 1978	