

**IN THE COURT OF MS. VANDANA JAIN:
ADDL. SESSIONS JUDGE-03/SPECIAL JUDGE
(COMPANIES ACT), DWARKA COURTS, NEW DELHI.**

CNR No.DLSW01-006474-2023

CC No.539/2023

SEBI Vs. Kuber Planters Ltd. & Ors.

Security and Exchange Board of India

.....Complainant

Versus

1. Kuber Planters Ltd. (convict company/accused no.1)
(Represented by convict Rowena Sharma/accused no.3)

2. Ms. Rowena Sharma (convict/accused no.3)

.....Convicts

ORDER ON SENTENCE

22.10.2024

1. The present order shall decide the quantum of sentence to be imposed upon the convict company namely Kuber Planters Ltd. (Accused no.1) and convict Rowena Sharma (accused no.3).

2. The brief facts, as necessary, are that vide judgment dated 23.09.2024, convict company namely Kuber Planters Ltd. (Accused no.1) was convicted for the offence under Section 11B, 12(1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of CIS Regulations, punishable under Section 24 of SEBI Act and convict Rowena Sharma (accused No.3) was convicted for the offence under Section 11B, 12(1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of CIS Regulations, punishable under Section 24 r/w Section 27 of

SEBI Act. The said section attracts a maximum punishment of imprisonment for a period of one year or fine or both under the unamended provision. As per the amended provision (Section 24 of SEBI Act), the punishment provided is imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees or with both.

3. I have heard ld. counsel for the complainant as well as ld. Senior Advocate for convict company namely Kuber Planters Ltd. (Accused no.1) and convict Rowena Sharma (accused no.3) on the point of sentence.

4. Sh Ashish Aggarwal, ld. counsel for the complainant has argued that convict company should be sentenced to fine and convict Rowena Sharma be given maximum sentence as per the unamended provision as when the offence was committed, the Court could have imposed the said sentence. As per the unamended provision, the maximum punishment which this Court could impose is one year and there is no limit to the amount of fine which the Session Court can impose. It is submitted by ld. counsel for the complainant that in the present case, small time investors (general public) were lured to invest huge amount of Rs.87 crores in the scheme and that said money was never returned back by the convict company which was managed by the convict Rowena Sharma in the capacity of its director. It is submitted that this court while deciding the application seeking probation has categorically noted the aggravating circumstances and that convict company and convict

Rowena Sharma should be awarded maximum sentence in the present case.

5. On the other hand, Sh. Vikas Pahwa, Id. Senior Advocate for both convicts has argued that convict Rowena Sharma is a widow lady aged about 72 years and has faced trial for around quarter of a century. He has further argued that although this Court has disallowed her application under Probation of Offenders Act but no useful purpose will be served by sentencing her as she was never the Executive Director of the company. Id. Senior Advocate has argued that her husband was the main Director who has expired. He has further argued that convict Rowena Sharma was never the beneficiary of the scheme either directly or indirectly. In respect of medical condition of convict Rowena Sharma, Id. Senior Advocate has argued that she had given her one kidney to her husband in the year 2008 and is surviving only on a single kidney. She is having acute pain in her knee due to osteoarthritis. She has to undergo cataract surgery as well. Id. Senior Advocate has further submitted that considering the age and gender of the convict and the fact that she has faced trial for almost a quarter of century, a lenient view be taken. He has relied upon the following judgments in support of his submissions:-

- (i) ***George vs. State of Kerala, SLP(Crl.) 11041/2024 decided on 03.09.2024.***
- (ii) ***Surendran vs. State of Kerala (2021) 17 SCVC 799***
- (iii) ***Dharam Vir Singh vs. State of U.P. 1994 Supp (1) SCC 100***
- (iv) ***Purna Chandra Sen Gupta vs. Supdt. & Remembrancer of Legal Affairs (1994) 1 SCC 429***

- (v) *Vishwa Dev Sharma vs. State of Rajasthan (1993) 4 SCC 75*
- (vi) *Parkash Chandra Agnihotri vs. State of M.P. 1990 Supp. SCC 764*
- (vii) *Municipal Corporation of Delhi vs. Tek Chand Bhatia (1980) 1 SCC 158*
- (viii) *Venkatesh vs. State of Karanataka Crl.Rev. P. no.1178/2016 decided on 05.01.2024*
- (ix) *Arundhati Roy In Re, Suo Moto Contempt Petition (Crl.) No.10 of 2001 decided on 06.03.2002*
- (x) *State of H.P. vs. Nirmala Devi (2017) 7 SCC 262*
- (xi) *Sunita Devi vs. State of Bihar 2024 SCC Online SC 984*
- (xii) *Mohd. Giasuddin vs. State of A.P. (1977) 3 SCC 287*
- (xiii) *Santa Singh vs. State of Punjab (1976) 4 SCC 190*

6. I have considered the submissions made on behalf of parties and have perused the record.

7. So far as calling of Victim Impact Report, in compliance of direction of Hon'ble High Court of Delhi passed in Crl.A. No.352/2020 titled as 'Karan vs. State of NCT of Delhi', is concerned, vide order dated 16.10.2024, calling of Victim Impact Report was dispensed with.

8. In the present case, vide judgment dated 23.09.2024, convict company namely Kuber Planters Ltd. (Accused no.1) was convicted for the offence under Section 11B, 12(1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of CIS Regulations, punishable under Section 24 of SEBI Act and convict Rowena Sharma (accused No.3) was convicted for the offence under Section 11B, 12(1B) of SEBI Act and Regulation 5(1) r/w Regulation 68(1), 68(2), 73 and 74 of CIS Regulations, punishable under Section 24 r/w Section 27 of SEBI Act. The said Act was introduced to promote orderly and healthy

growth of securities market and for investor's protection. It was introduced to instill confidence in public in the growth and stability of capital market by ensuring investor's protection.

9. It is argued by ld. Senior Advocate for the convict that Ms. Rowena Sharma is a widow lady aged about 72 years and has been facing trial for the last quarter of a century and has faced a prolonged trial due to delay on part of everyone. A similar submission was made at the time of arguments on the application filed by convict Rowena Sharma under Section 4 of Probation of Offenders Act. The said application was dismissed vide order dated 19.10.2024. The relevant observations, made in the order dated 19.10.2024 passed on the aforesaid application, as necessary for the decision are herein noted below :-

“11. The circumstances which are required to be considered include gender & age of convict and delay in trial. The convict herein Rowena Sharma (A-3) is a lady aged around 72 years at present.

12. The instant complaint case was filed on 24.12.2001 before the Court of ld. ACMM, Delhi. Pursuant to the summons issued accused no.2 Pradyuman Kumar Sharma (since deceased) and convict herein Rowena Sharma appeared before the Court. Accused No.4 Ajit Edwin was already P.O. in other cases. On 29.05.2022 since accused no.2 and convict herein left the Court without permission, NBWs were issued against both of them. The said order dated 29.05.2022 issuing NBWs against accused no.2 and convict herein was challenged by filing a revision petition before the Court of Sessions and vide order dated 06.09.2003, the revision was allowed and accused no.2 and convict herein were admitted to bail. Thereafter considerable time was consumed for

declaring accused no.4 as Proclaimed Offender in the present case and ultimately, he was declared Proclaimed Offender on 24.11.2011. The record shows that on majority of the dates, exemption applications were filed by convict herein which was duly considered and allowed. Notice was framed against accused no.2 and convict herein on 01.03.2012 and matter was thereafter listed for complainant's evidence. The complainant's evidence started on 25.06.2012 and examination-in-chief of CW-1 was completed on 11.09.2012 and her cross examination was deferred at the request of accused no.2 and convict herein. Eight dates were taken for concluding the cross examination of CW-1 wherein on two dates, witness was not present and remaining adjournments were sought on behalf of convict herein. Cross examination of CW-1 was concluded on 01.11.2013. Complainant's evidence was closed thereafter and statement under Section 313 CrPC of accused no.2 and convict herein was recorded promptly by the Court on 11.02.2014 only after one date (on which exemption application of convict herein was moved). On 11.02.2014, matter was listed for defence evidence for all accused persons including convict herein and convict company. After 5-6 adjournments sought on behalf of accused no.2 and both the convicts, the statement of accused no.2/DW-1 (since expired) was completed on 13.08.2014 and matter was adjourned for 12.09.2014 for remaining D.E. It is pertinent to mention here that the defence evidence was led on behalf of all accused persons including convict herein Rowena Sharma. By next date i.e. 12.09.2014 amendment in SEBI Act came, pursuant to which the matter was transferred to Court of Sessions. 6-7 days were taken by accused no.2 and both the convicts to lead remaining D.E. and on 21.04.2015 an application for recalling DW-1 was filed on behalf of accused no.2 and both the convicts to prove certain documents. The said application was

allowed and matter was again listed on 21.05.2015 for D.E. On 21.05.2015, DW-1 was re-examined-in-chief and his cross examination was deferred at the request of proxy counsel for the complainant. On the next date i.e. on 07.07.2015 exemption was sought on behalf of accused No.2/DW-1 and matter was again listed for cross examination of DW-1 on 10.08.2015, on which date DW-1 was cross examined on behalf of complainant and matter was again listed for final arguments for 16.10.2015. After three dates of hearing when the final arguments were already heard, accused no.2 and both the convicts moved another application under Section 311 CrPC r/w Section 165 of Evidence Act for recalling DW-1. Vide order dated 04.03.2016, the application was allowed with direction to conclude the defence evidence only in one hearing and matter was listed for D.E. on 21.04.2016. Despite that four dates were taken for re-examination of DW-1. On 07.10.2016 DW-1 was reexamined and discharged and matter was posted again for final arguments on 28.10.2016. On the very next date another application under Section 311 CrPC was moved on behalf of accused no.2 and both the convicts. The said application was dismissed by the Court vide order dated 03.07.2017 and matter was posted again for final arguments. The order of dismissal of the application under Section 311 CrPC was challenged by accused no.2 and both the convicts by filing Crl.M.C. No.2863/2017 before Hon'ble High Court of Delhi and vide order dated 26.07.2017 the Hon'ble High Court of Delhi allowed the petition and granted an opportunity to accused no.2 and both the convicts to prove the documents from Ministry of Agriculture and Ministry of Industry & Development by summoning the relevant witnesses. Pursuant to the order dated 26.07.2017 of Hon'ble High Court of Delhi, the matter was again listed for D.E. on 21.09.2017. Thereafter, ten dates were taken by the accused no.2 and both the convicts to examine

DW-2 and DW-3 and on 06.12.2018, D.E. was closed and matter was finally listed for final arguments for 18.01.2019. From 08.01.2019 to 28.02.2020 three presiding officers were changed on transfer. After 28.02.2020, Covid Pandemic started and matter remained at the stage of final arguments. On 06.08.2022, part final arguments were heard by Id. Predecessor and thereafter on 16.12.2022, final arguments were concluded and matter was listed for orders/clarifications on 12.01.2023 by Id. Predecessor. The case remained at the stage of clarifications till 01.06.2023 and on the next date i.e. on 01.07.2023, this case was transferred to this Court (presided over by Id. Predecessor of this Court), being appointed as designated Court of SEBI Act, in terms of Order No.4888-4889/G-1/Gaz./DHC/2023 dated 13.06.2023 of Hon'ble High Court of Delhi. This case was first time listed before Id. Predecessor of this Court on 06.07.2023. Thereafter, vide order dated 12.10.2023 Hon'ble High Court of Delhi passed direction to expedite the hearing and disposal of the case preferably within six months. The learned Predecessor of this Court was transferred and Court remained vacant for more than one month. Undersigned joined this Court on 02.11.2023. This Court is a single designated Court of Company matters dealing with matter of Serious Fraud Investigation Office, having jurisdiction of entire Delhi. It is also relevant to mention here that in the cases filed under Companies Act by Serious Fraud Investigation Office (SFIO), the number of accused persons are in 100s, 200s and above. Apart from that this court also deals with criminal cases registered under various sections of Indian Penal Code including murder cases, criminal revisions and criminal appeals. Further, this Court is also a designated Court for MCOCA cases. As and when the order dated 12.10.2023 passed by Hon'ble High Court of Delhi in said Writ Petition was brought to the knowledge of this Court, hearing started and

judgment was passed convicting the applicant herein and the company.

10. This clearly shows all these factors have been duly considered by this Court and neither it can be mitigating factor either independently or collectively nor cannot be a ground to show any leniency or sympathy to the convicts.

11. The nature of offence shows intention of convicts to cheat small time, gullible investors. In the judgment dated 23.09.2024, this Court noted as under:-

“54. Accused no.3 has stated above that there was no default before 13.08.1998 and everything happened due to the order dated 13.08.1998. By virtue of said order, Kuber Mutual Benefit Ltd. and accused no.2 were restrained from disposing off their assets. At this juncture, it is worthwhile to note that the order dated 13.08.1998 was against Kuber Mutual Benefits Ltd. (i.e. one of the company of Kuber Groups) and accused no.2 and not against accused no.1 company. However, the record shows that the correspondence of accused no.1 with SEBI started much prior to that. Ex.PW1/1 is the letter dated 13.01.1998 addressed by accused no.1 company to SEBI submitting the details/information relating to existing CIS by accused no.1 company. It is relevant to note that the said letter was written by accused no.1 company in response to the public notice dated 18.12.1997 and press release dated 26.11.1997 issued by SEBI. In the said letter, accused No.1 company gave the details of the existing CIS alongwith specimen certificates of different schemes, its Memorandum of Articles & Association and the application form required to be filled by the proposed investors. Again accused no.1 in response to letter of SEBI dated

31.03.1998 furnished certain information vide its letter dated 27.04.1998 which was exhibited as Ex.PW1/2 (Colly). Alongwith the said letter, the list of directors was filed wherein the name of accused no.3 appeared. Apart from that, an undertaking was given that they were not floating any new CIS subsequent to the public notice, they had not mobilized any further funds and they ensured the compliance of any further direction on CIS. The auditor's report was also submitted with Ex.PW1/2 (Colly.) alongwith balance sheet of accused no.1 company as on 31.03.1997, its profit and loss account, schedules forming part of the accounts of the even date duly signed by auditors of accused no.1 company, balance sheet abstracts & companies general profile and fund flow statement. A careful perusal of the balance sheet filed as on 31.03.1997 shows that the liabilities of the companies were much more than the assets. The share capital (promoters) of the company was only Rs.57,000/-. The major amount which strengthened the balance sheet of accused no.1 company was from loans and advances to the tune of Rs.15,54,88,753/- (nearly Rs.15.5 Crores). Current liabilities were much more than the total assets including the loans and advances, share holders funds and the fixed assets, meaning thereby that as on the date of correspondence of accused no.1 company with SEBI i.e. much prior to the passing of the order dated 13.08.1998 by Hon'ble High Court of Delhi in PIL W.P. No.3944/1998, the company was not in a sound financial condition. Even in the special audit report Ex.PW1/7 (Colly.) identical findings were given with respect to the financial strength of the company. Therefore, the contention of learned Senior Counsel that everything happened due to order passed on 13.08.1998 is not correct. Accused No.1 company was not financially strong at the time when the funds were mobilized.

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62. *In order to see whether there is a mens rea or not, the conduct of the company while floating different schemes have to be seen. In this regard, the balance sheet filed by accused persons alongwith Ex.PW1/2 (Colly) as on 31.03.1997 is relevant. In the said balance sheet, the details of the assets and liabilities as on 31.03.1996 have also been given. The promoters/subscribers have infused only Rs.57,000/- as share capital while forming the company. The fixed assets in the year 1996 were Rs.40,57,104/- and the loans and advances received alongwith cash and bank balances in year 1996 were to the tune of Rs.1,58,14,547/-. It is surprising to note that the promoters capital remained the same, however, the fixed assets increased from approximately Rs.40 lakhs to Rs.6.74 crores (Rs.6,74,21,532/-). Cash and bank balance alongwith loans and advances rose upto Rs.25 crores (Rs.25,00,91,724/-), current assets rose from approximately Rs.1.5 crores to approximately Rs.25 crores in an year which clearly shows the extent of amount which was mobilized and even then the net worth was negative. The special audit report which was conducted at the behest of SEBI, the report of which is Ex.PW1/7 (Colly.) shows that amount of Rs.86.37 crores was raised from the public from 1995-96 to 1997-98 under seven investment schemes. About 167907 investors invested in various CIS of accused company, however, only 2 to 2.5 lakhs trees were planted as against 10,23,489 under various schemes. It was also mentioned in the said report that accused no.1 company in one of the schemes had promised personal accident insurance to the investors but except for making an advance payment of Rs.10,000/- to insurance company, no steps were taken in that regard. It was also reported that Rs.21.16 crores was given as interest free loans to the employees of group companies in the name of advances against expenses/payment*

of services. It was further reported that the company has siphoned off huge amount of Rs.2.40 crores by way of interest free loan as Advance against Advertisement to M/s Kuber Media Ltd., another group company, directors of which are directors/promoters of Kuber Planters Limited without complying with the provisions of the Companies Act, 1956. It was further reported that the company has made payment Rs.23 lacs to M/s Kuber Mutual Benefit Ltd., a group company, the directors of which are directors and promoters of Kuber Planters Ltd. and debited the same to "Service Charges" in its books. It was further reported that the company has siphoned off Rs.21.16 crores by way of interest free loans to employees of group companies or others and group companies and/or in the name of Advance against Expenses/ Payments for services without complying with the provisions of Companies Act, 1956. This report is regarding the floating of CIS by accused no.1 company and the immediate subsequent conduct of company after floating the scheme. Such huge number of innocent people were involved and despite that the basic work of planting the number of trees as promised was not even done. No questions were put to the witness (CW-1) regarding the report except one question regarding planting double the amount of trees than the ones alleged in special audit report which was denied by her. A suggestion was put to DW-1 that investors could not have been repaid as the net worth was negative, which he denied. However, in the response to another question, he admitted at the initial stage that net worth was less but thereafter he volunteered that an undertaking in the letter Ex.CW1/36 was given that the net worth will be increased to the desired level. The aforesaid discussion shows that the accused persons induced the general public to invest in their schemes which promised high returns without any base. The accused persons were never serious about the plantation business and accused

no.1 company was incorporated only in order to collect the funds from the public without having its own base/promoters capital. Despite having a complete embargo on running a CIS on the date of incorporation of accused no.1 company, it floated the Collective Investment Schemes, clearly establishes mens rea on their part. Therefore, this argument is completely misconceived and is hence, turned down.

12. Further while dismissing the application under Section 4 of Probation of Offenders Act moved by convict Rowena Sharma, this Court noted as under :-

“Now the nature of offence and character of the offender have to be seen. Convict trapped innocent public by promising them returns which were unrealistic and could never be given. It is a matter of record that there is no list of investors in the present case, however, the schemes which have been placed on record by convict company while corresponding with SEBI, indicate that marginalised people having small earnings had invested their hard earned money in the CIS of convict company. It is apparent from reading of the schemes that investment as small as to the tune of Rs.1250/- were invited in order to attract the maximum number of people in the country. Further perusal of the schemes indicated that even for the investors who wanted to invest only Rs.2500/-, there was a facility of paying it into five installments. It demonstrates the strata which was targeted by convict herein to invest in convict company. Nature of the scheme was made lucrative in order to attract small time investors by promising them such returns which they could not have earned in their entire life. It has already been discussed in the judgment that neither the number of trees as promised were planted nor any provision was made for contingencies so that these investors could have been refunded. Paras 54 and

62 of the judgment dated 23.09.2024 elaborately deals with these facts wherein it has been demonstrated that with virtually nil promoter's funds, the convict company was strengthened financially solely on the basis of public money. Even then the liabilities were so high that the net worth of convict company was negative. The convict was conscious of the fact that in the event of failure of the schemes, on account of individual investments being small, they would not even chose to file the complaints individually. But for the authorities like SEBI, the convict would have gone unpunished. It is a socio economic offence which has gone deep into the roots of the society affecting the innocent people at large.”

13. Under these circumstances it is clear that the convict was conscious of the fact that in the event of failure of the scheme there was no contingency fund to fall back upon to pay off the small time investors. There was no intention to return since the inception of the scheme. These investors had no individual voice independently. Had it not been for the authorities like SEBI, the crime would have never seen the light of the day.

14. The convicts have never disputed that an amount of Rs. 87 Crores was mobilized during the financial year 1995-1996 till 1997-1998 by the convict company. The defence taken by the convicts during trial was that they had exercised due diligence in order to prevent commission of offence. This defence was extensively dealt in the Judgment dated 23.09.24 and was rejected.

15. The irony of the present case is that the investors are

invisible/unidentifiable and cannot be compensated individually as the convicts did not provide the list either to SEBI or to this court. Undoubtedly, this is an economic offence which constitutes a class apart and needs to be visited with a different approach. The economic offences have deep rooted repercussions as they involve huge loss of public funds and shakes the confidence of general public. The offence is grave as it affects the community at large eventually posing serious threat to the financial health of the country.

16. The ratio of judgments relied upon by ld. Senior Advocate for the convicts on the point of prolonged trial is not at all disputed, however, most of the judgment are passed in cases under Section 304A/279/338 IPC and therefore, no applicable to the case in hand. In remaining judgments *Dharam Vir Singh* (Supra), *Purna Chandra Sen Gupta* (Supra) and *Municipal Corporation of Delhi vs. Tek Chand Bhatia* (Supra) are in cases under PC Act, PFA Act, Railway Property (Unlawful Possession) Act are concerned, the convicts had already undergone imprisonment for certain period, which is not the case herein, hence they are not applicable to the present case. As far as judgments *Arundhati Roy In Re* (Supra) and *State of H.P. vs. Nirmala Devi* (Supra) are concerned, they are not applicable to the case in hand as they were not passed in the cases of economic offence. So far as the judgments *Sunita Devi* (Supra), *Mohd. Giasuddin* (Supra) and *Santa Singh* (Supra) relied upon by learned Senior Advocate for convicts on the sentence policy are concerned, facts of each case are peculiar. Detailed

discussion has been made in the precedeing paragraphs regarding the nature of offence committed by the convict.

17. As per section 29 Cr.P.C. the power to impose fine on the convict by the Magistrate only has been restricted. There is no such restriction on the powers of the Session Court to impose fine on the convicts. Therefore, in view of the totality of facts and circumstances discussed hereinabove, **convict company i.e. Kuber Planters Ltd. (accused no.1) is sentenced with fine amounting to Rs.50 crores (Rupees Fifty Crores) to be deposited with SEBI. Convict Rowena Sharma (accused no.3) is sentenced to undergo simple imprisonment for a period of one year and fine to the tune of Rs.25 crores (Rupees Twenty Five Crores) to be deposited with SEBI and in default of payment of fine, convict Rowena Sharma shall further undergo simple imprisonment for a period of three months.** It is clarified that both the convicts i.e. convict company and convict Rowena Sharma are severally liable to pay the fine amount imposed herein above.

18. Ordered accordingly. Fine has not been deposited by the convicts.

19. The aforesaid amount of fine to be deposited by the convicts shall be transferred by SEBI in its Investors Protection Fund Account.

20. At this stage, an application under Section 430(3) of BNSS, 2023 has been moved on behalf of convict Rowena Sharma seeking suspension of her sentence till the expiry of

statutory period of appeal.

21. Submissions on the application heard.

22. In view of the submissions made on behalf of convict Rowena Sharma, the sentence awarded to convict Rowena Sharma (accused No.3) is suspended and she is admitted to bail on her furnishing PB/SB in the sum of Rs.20,000/- till the expiry of statutory of period of appeal.

23. Bailbonds have been furnished by convict Rowena Sharma which are accepted till the expiry of statutory of period of appeal.

24. Application under Section 430(3) of BNSS, 2023 stands disposed of accordingly.

25. A copy of this order be supplied to convict free of cost.

**Announced in the open Court
on 22.10.2024**

VANDANA
JAIN

Digitally signed
by VANDANA
JAIN
Date: 2024.10.22
15:38:58 +0530

(Vandana Jain)

ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/22.10.2024

**Note: This order contains seventeen (17) pages and having my
signature on each page.**

VANDANA
JAIN

Digitally signed by
VANDANA JAIN
Date: 2024.10.22
15:39:03 +0530

(Vandana Jain)

ASJ-03 & Special Judge (Companies Act)
Dwarka Courts (SW)/New Delhi/22.10.2024