



THE COURT OF MS. MADHU JAIN, A.C.M.M. TIS HAZARI, DELHI.

COMPLAINT NO. 66/2004.

IN THE MATTER OF:

14/01/04

cc. 16/05

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 New Delhi, represented
by its Legal Officer/Manager/Asst.
General Manager Mr. Sharad Sansode.

COMPLAINANT

VERSUS

1. SOHAM PLANTATIONS LTD.
203, II Floor, Vardhman Tower,
Preet Vihar, Delhi-110092.
2. Shri. Sunil Agarwal,
S/o. Late Kailash Chand Aggarwal,
R/o. 23, Hailkara Kuan,
Jwala Nagar, Shahdara,
Delhi-110032.
3. Smt. Anju Agarwal,
D/o. Not Known,
R/o. 23, Hailkara Kuan,
Jwala Nagar, Shahdara,
Delhi-110032.
4. Shri. Manoj Agarwal,
S/o. Sh. Suresh Chand Aggarwal,
R/o. 23, Hailkara Kuan,
Jwala Nagar, Shahdara,
Delhi-110032.

ACCUSED

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

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CS-19-25

15/06/06

(Sanyasani) - p.s. file

15/06/06

4.4.2006

Present: All accused on bail.

Vide separate orders, the accused are found guilty for the offence under Section 24 read with Section 27(1) of the SEBI Act, 1992. The accused are let off after due admonition and warning that they should comply with legal requirement in letter and spirit.

The personal bonds and surety bonds of the accused are cancelled. Sureties stand discharged. File be consigned to records.

Announced in the Open Court.

Dated: 4.4.2006.

Asri Menon

ASRIA MENON

Addl. Sessions Judge: Delhi.

13.4.06

IN THE COURT OF MS. ASHA MENON: ADDL. SESSIONS
JUDGE: DELHI.

CC NO.16/2004

SECURITIES & 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, Sh. Sharad Bansode.

VS. Complainant

1. Soham Plantations Ltd.
203, II Floor, Vardhman Tower,
Preet Vihar, Delhi-110092.
2. Sh. Sunil Agarwal,
S/o Late Kailash Chand Agarwal
R/o 23, Halikara Kuan,
Jwala Nagar, Shahdara,
Delhi-110032.
3. Smt. Anju Agarwal,
W/o Not known,
R/o 23, Halikara Kuan,
Jwala Nagar, Shahdara,
Delhi-110032.
4. Sh. Manoj Agarwal,
S/o Sh. Suresh Chand Agarwal,
R/o 23, Halikara Kuan,
Jwala Nagar, Shahdara,
Delhi-110032.

. Accused

JUDGMENT:

BACKGROUND FACTS:

1. The complaint has been filed by the
Securities and Exchange Board of India
(hereinafter referred to as the SEBI) through its

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Legal Officer, Sh. Sharad Bansode against Soham Plantations Ltd. and against its Directors Sh. Sunil Agarwal, Smt. Anju Agarwal and Sh. Manoj Agarwal.

2. The complaint has been preferred under the Securities and Exchange Board of India Act, 1992 and the rules made thereunder. The case as set out in the complaint is that the Government of India after detailed consultations with the regulatory bodies decided that an appropriate regulatory frame work for regulating entities which issued instruments such as Agro Bonds and Plantation Bonds etc., was requires to be created. Thereafter, the Government notified on November 1997, through a press release, that such schemes relating to issue of Agro Bonds etc., would be treated as Collective Investment Scheme governed by the SEBI Act 1992.
3. The aim of these regulations were to ensure investor protection and to promote legitimate investment activities. The regulations were notified in 1999 as the SEBI (Collective Investment Scheme) Regulation 1999.
4. The entities involving any Collective

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Investment Scheme were required, vide the press release dated 26.11.97 and 18.12.97 to file information with the SEBI giving the detail of the Company, its Scheme and nature of Investment

etc. In response the accused in this case i.e.

Soham Plantations Ltd. informed that they had collected Rs.60,000/- from the general public. It also informed who the Directors were.

5. It has been stated in the complaint that after the regulations came into force, the SEBI issued letters dated 15.12.99 and 29.12.99 and also issued public notices dated 10.12.99 informing the accused company of the notification and the regulations and directing it to send information memorandum to all Investors detailing the state of affairs of the Schemes, the amount repayable to each Investors and the manner in which such amount was determined. This information was to be sent by 28.2.2000. Subsequently, the last date for furnishing details was extended up to 31st March, 2000.

ALLEGATIONS IN THE COMPLAINT

6. According to the complainant, the accused No. 1 failed to apply for registration and also

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failed to submit the repayment report nor did it furnish details for winding up the schemes. Therefore, on December 7th, 2000, orders were issued by SEBI u/s 11 B of the SEBI Act 1992, to ~~the accused company to refund the money collected~~ to the investors within one month and submit the report of repayment and winding up to the SEBI. According to the complainant since there was no compliance of this order, the accused company and its Directors had violated the Regulations No. 68(1) and (2) 73 and 74 R/W Regulation 5 (1) of the SEBI (Collective Investment Scheme) Regulation 1999 and had also violated Section 11 B and 12 (1) B of the SEBI 1992 which were all violation punishable U/s 24 (1) of the SEBI 1992 R/W Section 27 of the said Act.

7. Vide orders dated 14.1.2004 the accused were summoned for trial. The notice of allegations under Section 251 Cr.P.C was served on accused on 13.12.2005 and they pleaded not guilty. The complainant examined Sh. Rakesh Bhanot, AGM as CW-1 in support of the complaint. The statements of the accused were recorded u/s 313 Cr.P.C. The accused relied only on documents for their

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defence.

EVIDENCE

3. Sh. Rakesh Bhanor as CW1 deposed to the Government of India press release dated 18.11.97, directing that all bonds in the nature of plantation bonds and agro bonds would be considered as Collective Investment Schemes as stipulated under Section 11 of the SEBI Act, 1992 and to the subsequent press release dated 26.11.97 and public notice dated 18.12.97, directing the companies running such Collective Investment Schemes to file information regarding their schemes, details of fund mobilized, names of directors/promoters with the SEBI, in case they were desirous of obtaining benefits under Section 12 (1)(B) of the SEBI Act, 1992. The witness deposed to the response of the accused vide their letter dated 15.12.97 Ex.CW1/1 wherein the accused informed the SEBI that they had mobilized Rs.62,600 under its Collective Investment Scheme and furnished copy of its Memorandum and Articles of Association and names and addresses of its promoters, specimen application form etc. He brought on record the

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letter of the company dated 8.4.98 intimating the change of their address to 23, Halikara Kuan, Jwala Nagar, Shahdara, Delhi-32 as Ex.CW1/2. He brought on record another letter of the company dated 27.5.98 sent to the SEBI containing the latest balance sheet, auditor's report, statement of deployment of funds informing that they had raised about Rs.1,19,950/- during the period 12.11.97 to 31.3.98, which is Ex.CW1/3. The company further informed the SEBI on 17.9.98 vide Ex.CW1/4 detailing the breakup of number of investors and amount received till 31.1.98 totaling Rs,88,000/-.

9. The witness further deposed to the notification of the SEBI Collective Investment Scheme Regulations, 1999 on 15.10.99 and the due intimation of these regulations to the company vide letter dated 21.10.99 and public notice dated 20.10.99. He deposed that these were again communicated to the company vide letters dated 10.12.99 and 29.12.99 and public notice dated 10.12.99 and stated that the company neither applied for registration nor intimated regarding its winding up of the scheme. Hence, show cause

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dated 12.5.2000 was sent. The accused company replied to the show cause notice Ex.CW1/5 vide its letter dated 25.5.2000 Ex.CW1/6 to the effect that it had repaid all amounts deposited under the Collective Investment Schemes ~~without~~ interest. The witness stated that vide letter dated 31.7.2000 SEBI forwarded the format of winding up and repayment report in which the companies were required to furnish information about the winding up of the scheme and repayments done thereafter. The witness deposed that the SEBI sent another letter dated 22.11.2000 asking the company to submit the copy of the winding up and repayment report in prescribed format by 4.12.2000. Another reminder was sent on 20.3.2001 and yet another remainder was issued on 22.6.2001 giving the accused company an opportunity of personal hearing before final decision was taken in the matter. The witness stated that the last letter returned from the Shahdara address of the accused company undelivered. He further deposed that since no one appeared on 9.7.2001 at 3 pm on the date fixed for hearing, the SEBI Chairman passed directions under Section 11 (B) of the

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SEBI Act, directing the company to return the money collected from the investors as per original terms of the offer within a period of one month from the date of the order, which was dated 14.8.2001. This letter was sent to the company vide covering letter dated 20.8.2001. The SEBI Chairman also issued further directions under Section 11(B) of the SEBI Act, 1992 debarring the company and its directors/promoters, managers, person in-charge from operating the capital market for a period of five years from the date of the orders i.e, 5.10.2001. This was also communicated to the company vide letter dated 23.10.2001.

10. The witness stated that on 25.10.2001 the SEBI received the copy of the winding up and repayment report which was undated, as per which principal amount to the extent of Rs.1,19,950/- had been repaid to eighteen investors but no interest had been paid despite directions of the SEBI Chairman. He deposed that till the filing of the complaint, no intimation regarding payment of interest had been received from the company.

11. In cross-examination, the witness deposed

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that the SEBI had not received any receipts along with the winding up and repayment report submitted by the accused. He denied that the SEBI had filed the complaint despite having received information from the accused company of full payment to investors.

CONTENTIONS:

12. I have heard the submissions made by the accused and written submissions filed on behalf of the SEBI.

13. In the written submissions filed on behalf of the SEBI, it has been submitted that the SEBI has brought on record evidence to show that the accused had been duly served with letters and with the format in which the winding up and repayment report had to be submitted and had even been given an opportunity for personal hearing which the accused did not avail off. It is also submitted that the accused persons were in-charge of the affairs of the company as per their own communication to the SEBI and were, thus, liable for the violations. In respect of the limitation it has been submitted, relying on the judgment of the Hon'ble Supreme Court in Bhagirath Kanoria

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& Others Vs. State of Madhya Pradesh & Others AIR 1984 SC 1688 that this was an offence where it continued to occur till compliance of the regulations. Hence, the SEBI has prayed for conviction of the accused for the violations of the SEBI Regulations and for the commission of the offences alleged.

14. The submission of the accused on the other hand has been that within three months of the scheme, the money received from the investors had been returned to them and the investors had been satisfied with the principal amount without interest on account of the short time the deposit remained with the accused company. They also claimed that they had informed the SEBI about the return of the money despite which the complaint was filed. The accused submitted that if at all any lapse had occurred, it was only on account of mistake as they had already complied with the requirements of the regulations but had failed to fulfill all formalities on account of lack of knowledge.

FINDINGS:

15. In this case, there is no dispute that the

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accused Soham Plantations Ltd were carrying out a Collective Investment Scheme relating to plantation and agro bonds. Ex.CW1/1 forwarded all the required information to the SEBI in response to the press release dated 26.11.97. The accused need not have responded, had it not been carrying out the Collective Investment Scheme.

16. The accused company had also duly informed the SEBI vide Ex.CW1/1 that it had mobilized Rs.62,600/- under its Collective Investment Scheme. The company not only informed about, who the promoters were but subsequently vide letter Ex.CW1/2, they also intimated to the SEBI their change in address. Subsequently, the accused further informed the SEBI vide Ex.CW1/3 dated 27.5.98 that the directors of the company were the accused Sunil Agarwal, Anju Agarwal and Sh. Manoj Agarwal. On 17.9.98, they informed that it had raised deposits to the tune of Rs.1,19,950/- in the Collective Investment Scheme prior to 24.2.98. On 17.9.98 vide Ex.CW1/4 it furnished the detailed breakup of the amount received from the investors under five of its schemes totaling a sum of Rs.88,000/-.

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17. The accused company had vide Ex.CW1/4 notified the SEBI about its further obligations as well. It was in respect of the further communications from the SEBI regarding the ~~notification of regulations in respect of running~~ of Collective Investment Schemes. Therefore, the accused were fully aware of their obligations under the regulations requiring them to inform the SEBI either of their intentions to register with the SEBI or in the alternative to submit a repayment report along with winding up report of its operations. Despite this knowledge, till the show cause notice dated 12.5.2000 Ex.CW1/5 was sent to the accused company, they did not choose to act. The accused company sent a reply to the show cause notice of 12.5.2000 vide their letter dated 25.5.2000 stating therein that it had repaid all amount deposited in the Collective Investment Schemes without interest. The accused *had* also sent an audited copy of the balance sheet along with this letter Ex.CW1/6.

18. The SEBI in response forwarded to the accused vide its letter dated 31.7.2000, the format of the winding up and repayment report.

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For no reason, the accused seem to have failed to comply with this requirement of submitting the winding up and repayment report in format.

19. The accused Sunil Agarwal in his statement under Section 313 Cr.P.C has admitted that the SEBI had sent reminders dated 22.11.2000 and 20.3.2000 calling upon the accused company to submit the repayment and winding up report in format. They stated that the letter dated 22.6.2001 informing them about the personal hearing fixed on 9.7.2001 at 3 pm had not been received by them. This letter had been sent at the Shahdara address of the accused. When the accused were communicating with the SEBI, there was no reason why they should have not informed the SEBI about the change in address. Therefore, ignorance cannot be claimed by them.

20. Though the accused produced certain receipts of the investors, the fact remains that the accused, for some unfathomable reason had not felt the need to submit the repayment and winding up report in format, which had been sent to them by the SEBI. All that the SEBI wanted was a formatted report and had not only sent the format

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but had also sent reminders for submission of the repayment report and winding up report in format. When the accused failed to comply with these requirements they were directed to repay with interest, the investors. Admittedly, no interest had been paid. Thus, there is clearly non-compliance of the regulations by the accused for which they are liable under Section 24 read with Section 27(1) of the SEBI Act, 1992.

Announced in the open Court
on 4.4.2006

Asha Menon
(ASHA MENON)
ADDL. SESSIONS JUDGE:
DELHI.

*Copy given to the accused
in open court at f.c.
on 4/4/06.*

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IN THE COURT OF MS ASHA MENON: ASJ: DELHI.

CC NO.16/04

SEBI VS. SOHAM PLANTATIONS Ltd. & Others

ORDER ON SENTENCE

I have heard the accused on the quantum of sentence. The accused submit that they had not received the last letter and hence could not reply the same. At the same time they concede that they had themselves furnished the Shahdara address to the SEBI. They maintain that they had repaid the investors and submit that they had been regularly corresponding with the SEBI except in respect of the last letter.

In the present case, as observed in the judgment the accused had informed the SEBI about the repayment when the show cause notice had been issued to them. The mistake they had committed is limited to the aspect that they did not submit all the information in format as desired by the SEBI. They had however, submitted an audited copy of the balance sheet which reflected the repayment of the investors and the closing down of operations. Therefore, by the time the SEBI Chairman had issued directions dated 14.8.2001, the accused had already met the requirements of the regulations except in respect of the formality of submitting the details in format. They have done so now.

Keeping all these facts and circumstances in mind, I am of the considered view that the ends of justice would be met in this case even if the accused are let off after due admonition. The accused are duly admonished and are warned that they should comply with legal requirement in letter and spirit.

The personal bonds and surety bonds of the accused are cancelled. Sureties stand discharged. File be consigned to records.

Announced in the Open Court.
Dated: 4.4.2006.

Asha Menon
(ASHA MENON)
Addl. Sessions Judge: Delhi.

*Copy given to the accused
in open court at FOC
On 4/4/06*

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