

MHCC020099272014



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Duration : Y M D
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IN THE DESIGNATED SPECIAL COURT UNDER SEBI ACT, 1992

FOR MAHARASHTRA STATE

AT COURT ROOM NO.22, SESSIONS COURT, GREATER MUMBAI

(Presided over by R. M. Jadhav, SEBI Special Judge, Mumbai)

SEBI SPECIAL CASE NO. 27 OF 2014

Exh. 139

Complainant	: Securities and Exchange Board of India
Represented by	: Ms. Sabiha Ansari, SPP
Accused	: 1.M/s Sagar Green Gold Plantation Group Pvt. Ltd., having its registered office at Vijay Talkies Road, Motinagar Ward, Sagar 470 002 MP. 2. Shri. Kamal Kumar Jain Director of accused No. 1 company. R/at : Vijay Talkies Road, Chandra Shekhar Ward, Sagar (MP) 3. Shri. Manoj Kumar Jain Director of accused No. 1 company. R/at : 84, Katra Bajar, Sagar (MP) 4. Shri. Anoop Kumar Jain (died)
Represented by	: Advocate Mr. Mayura Kale for accused No.2.

:2:

SEBI Spl Case No.27/14

		Advocate Mr. S. K. Tiwari for accused No. 3.
Date of offence	:	--
Date of FIR	:	--
Date of Chargesheet	:	--
Date of Framing of Charge	:	18.11.2017
Date of Commencement of Evidence	:	17.10.2024
Date on which judgment is reserved	:	06.05.2025
Date of the Judgment	:	06.05.2025
Date of the Sentencing Order, if any	:	--

Accused details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 Cr.PC
1.	M/s Sagar Green Gold Plantations Group Pvt. Ltd.	-	-	U.S. 24(1) r/w 27 of SEBI Act.	Accused No. 1 to 3 are Convicted	-	-
2.	Kamal Kumar Jain		12.02.2016				
3.	Manoj Kumar Jain		11.05.2016				

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE
C.W.1	Mr. Sudip Mishra	Witness

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE
D.W. 1	Mr. Manoj Kumar Jain	Witness
D.W. 2	Mr. Kamal Kumar Jain	Witness
D.W. 3	Mr. Sanjeev Keshav Kelkar	Witness
D.W. 4	Mr. Chandan Jain	Witness

C. Court Witnesses, if any : NIL**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****A. Prosecution :**

Sr.No.	Exhibit Number	Description
1	Article-A	Photocopy of press release by SEBI dated 26.11.1997.
2	Exh. 89 colly	Letter dated 05.05.1998
3	Exh.90 colly	The terms and conditions of CIS scheme
4	Exh.91	Letter dated 10.09.1998
5	Exh.92	Certified copy of memorandum and articles of association of the accused no.1 Company.
6	Exh. 93	Audit report of accused no.1 Company
7	Exh.94	List of name and addresses and occupation of all directors of the accused Company
8	Exh.95	Compliance certificate from Directors
9	Article B	Photocopy of letter dated 27.09.1999
10	Article C	Public notice issued by SEBI dated 10.12.1999
11	Article D	Photocopy of letter dated 12.05.2000

12	Exh. 96	AD Card
13	Exh.97	Photocopy of letter dated 18.12.2000
14	Article F	Photocopy of letter dated 10.07.2001

B. Defence :

Sr.No.	Exhibit Number	Description
1	Exh.106	Complaint given against accused Kamal Jain
2	Exh.127 colly	Documents relating to refund of the amount invested by D.W.3.
3	Exh.129 colly	Documents relating to refund of the amount invested by D.W.4.

C. Court Exhibits :

	Court Exhibits	Description
1	30	Charge
2	102 103	Statement of accused No. 2 u/s. 313 of Cr. P.C. Statement of accused No. 3 u/s. 313 of Cr. P.C.

D. Material Objects: - NIL**J U D G M E N T****(Delivered on 06.05.2025)**

The Accused No. 1 company and accused No. 2, 3 and 4 being directors of the said company are prosecuted for floating a CIS scheme violating the SEBI Act and Regulations and thereby committed the offence punishable under Section 24(1) r/w Section 27 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act"). The accused No. 4 Anoop Kumar subsequent to framing of charge died so, the proceeding stands dismissed against him as abated as per roznama order dated 23.08.2021.

2. The abridged facts of the prosecution case are as under :-

The complainant Sharad Bansode working as the legal officer with SEBI filed the present complaint. The SEBI was established under the SEBI Act, 1992 for providing protection of interest of the investors in securities and to promote the development of and to regulate the securities market and for matters connected there with or incidental thereto.

The last decade has witnessed the initiative by private entrepreneurs to undertake plantation activities on a commercial scale. However, it was noticed that the promoters themselves invested a minimal amount in such ventures and raised a majority of the funds from ordinary investors in the absence of any regulatory mechanism. The high returns promised by these schemes coupled with questionable claims of fiscal incentives and effective marketing helped many of these companies to mobilize large amount over a period of time. The initial success in mobilizing funds by some of these companies lead to a mushrooming of such schemes throughout the country.

The Government of India after detailed consultation with regulatory bodies decided that an appropriate regulatory framework for regulating entities, which issues instruments like Agro Bonds, Plantation Bonds etc. has to be put in place. Accordingly, a press release was issued by the Government on 18.11.1997 conveying that such schemes should be treated as Collective Investment Schemes coming under the SEBI Act, 1992. In order to regulate such collective investment scheme, both from the point of view of investor protection as well as promotion of legitimate investment activity, SEBI was asked to formulate the regulations for them.

SEBI in the year 1999 notified regulations for the regulations of the activities of collective investment schemes, titled as

Securities and Exchange Board of India (Collective Investment Schemes) Regulations 1999. (Herein after referred as CIS Regulations).

The accused No. 1 company is operating the Collective Investment Scheme and raised an amount of nearly Rs.0.29 Crores from the general public. It has filed the details with the SEBI regarding its collective investment Scheme pursuant to SEBI Press released dated 26.11.1997 or public notice dated 18.12.1997.

It is submitted that 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, shall wind up the existing collective investment schemes and repay the amount collected from the investors. Further, in terms of Regulation 74 of the said regulations, an existing collective investment scheme which is not desirous of obtaining provisional registration from SEBI shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73.

However, the 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 Securities and Exchange Board of India Act., 1992 and Regulation 5(1) r/w Section 68(1), 68(2), 73 and 74 of the said regulations and thereby committed offence punishable under Section 24(1) of SEBI Act.

The accused Nos. 2 to 4 are the directors of the accused No. 1 company and as such persons in charge of and responsible to the accused No.1 company for the conduct of its business and are liable for the violations of the accused No.1 company as provided under Section 27 of Securities and Exchange Board of India Act, 1992. The complaint containing above particular came to be filed.

3. Initially, complaint was filed before the Court of Ld. Additional Metropolitan Magistrate, 8th Court, Esplanade, Mumbai. Thereafter, in view of amendment in SEBI Act case is transferred to this Special Court constituted as per the SEBI Act.

4. My Ld. Predecessor framed charge below Exh.30 against accused No. 1 to 4 for the offence punishable under Section 24(1) r/w 27 of SEBI Act. The accused abjured the guilt and claimed trial. The defense of accused is of total denial and false implication. After framing of the charge during trial the accused No. 4 Mr. Anoop Kumar Jain died therefore the case stands dismissed as abated against him.

5. Amid trial the SEBI examined C.W. 1 Mr. Sudip Mishra below Exh. 88 and closed its evidence.

6. Apart from the oral evidence the complainant SEBI relied upon the following documentary evidence.

Sr.No.	Exhibit Number	Description
1	Article-A	Photocopy of press release by SEBI dated 26.11.1997
2	Exh. 89 colly	Letter dated 05.05.1998
3	Exh.90 colly	The terms and conditions of CIS scheme
4	Exh.91	Letter dated 10.09.1998
5	Exh.92	Certified copy of memorandum and articles of association of the accused no.1 Company.
6	Exh. 93	Audit report of accused no.1 Company
7	Exh.94	List of name and addresses and occupation of all directors of the accused Company
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9	Article B	Photocopy of letter dated 27.09.1999
10	Article C	Public notice issued by SEBI dated 10.12.1999
11	Article D	Photocopy of letter dated 12.05.2000
12	Exh. 96	AD Card
13	Exh.97	Photocopy of letter dated 18.12.2000
14	Article E	Photocopy of letter dated 10.07.2001

7. Towards the mandatory compliance of Section 313 (1) (b) of Cr. P. C. the incriminating circumstances appearing as evidence against the accused were explained to them and their responses to it were recorded. The defense of accused is of total denial.

8. The accused nos. 2 and 3 in support of their evidence stepped into the witness box. Further the accused no.2 Kamal Kumar Jain has examined 2 witnesses i.e. D.W.3 Sanjeev Keshav Kelkar and D.W. 4 Chandan Jain. Besides the oral evidence the accused relied upon

Sr.No.	Exhibit Number	Description
1	Exh.106	Complaint given against accused Kamal Jain
2	Exh.127 colly	Documents relating to refund of the amount invested by D.W.3.
3	Exh.129 colly	Documents relating to refund of the amount invested by D.W.4.

9. Heard Ms. Sabiha Ansari Ld. SPP for the complainant/SEBI and Ld. Advocate Mayura Kale for the accused No. 2 and Ld. Advocate Mr. Manoj Chauhan for accused No.3.

10. It is argued by Ld. SPP Ms. Ansari that the accused No.1 company was incorporated on 28.03.1995 i.e. the after the amendment

in SEBI Act so, it was required to obtain prior permission of the SEBI before floating any scheme. It is therefore, evident from the certificate of the incorporation of the company and the reply of the accused No.1 company below Exh. 91 collectively, that the Company has floated a CIS scheme and raised an amount of Rs.29.49 Lakhs. Further the accused No.1 Company has failed to wound up the scheme by refunding to its investors. Not only this it has not obtained any registration certificate. The SEBI has informed the accused No.1 company about the regulation but, it failed to comply the same. The offence is thus continuing one. The evidence of CW-01 is in the line of the case of the prosecution. His evidence remained unshattered and unshaken during the course of cross-examination. Therefore, the prosecution with the evidence on record established and proved that the accused No.1 has floated a CIS scheme without seeking prior permission of the SEBI and failed to wound up the scheme by refunding to its investors. The accused Kamal Jain and Manoj Jain being the directors of the accused No.1 company are liable to be punished. Hence, she prayed for conviction of the accused. The Ld. SPP filed written notes of argument.

11. As against this Ld. Advocate Mayura Kale for accused No. 2 argued that the accused have commenced the scheme in the year 1996 i.e. after insertion of Section 12(1)B of the SEBI Act therefore, the accused do not fall under the proviso category as per the decision of Supreme Court in **Gaurav Varshney's case**. Therefore, the accused have not violated the SEBI CIS regulation as alleged in the complaint. It is further argued that the alleged offence is committed in the year 1997 and the complaint is filed in the year 2001. The offence is punishable with one year imprisonment therefore, the period of limitation for taking cognizance of the offence is one year as per Section 468 of Cr.P.C.

As a result the complaint is filed beyond limitation. She further argued that the prosecution has not led any evidence to establish and prove as to how the accused are incharge and responsible for the day to day affairs of the company which is required to be proved to fasten the criminal liability as per the decision of the Bombay High Court in **Gautam Singhaniya Vs. State of Maharashtra**. Lastly, it is argued that the accused have refunded money to its investors. The SEBI was required to examine this aspect before filing of the complaint but, it failed to do so. There were no complaints of investors against the accused persons and no communication made by the SEBI to accused No. 1 company till filing of the complaint. Considering the above facts and the evidence on record and want of investigation which the SEBI was expected to make before filing of the complaint, the accused persons deserve to be acquitted. In addition to the oral argument the Ld. Advocate for accused placed on record the written notes of arguments below Exh.134. Ld. Adv for accused relied upon the following decisions which are placed on record in SEBI Spl Case No. 436/2014.

1. SEBI Vs. Gaurav Varshney & Anr. In Criminal Appeal Nos. 827-830 of 2012 and other connected appeals, decided on 15th July, 2016.
2. Gautam Singhaniya Vs. State of Maharashtra in Criminal Application No. 223 of 2023, decided on 08th June, 2023.

The Ld. Advocate for accused No. 3 filed written notes of argument below Exh. 133.

12. In view of the adumbrated facts, evidence on record and rival submission, following points arise for my determination I have recorded my findings thereon for the reasons stated below:-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Does the complainant proves that accused No.1, 2 and 3 along with deceased accused No. 4 floated a CIS scheme without obtaining registration certificate from the SEBI at the time of incorporation of the company or thereafter and failed to wound up the scheme by refunding to its investors and submitting the winding report to the SEBI has contravened the provisions of Section 12(1)B and the SEBI Regulations which are punishable under Section 24(1) r/w 27 of SEBI Act, 1992.	... In the affirmative
2.	What Order ?	... Accused are convicted as per the final Order.

: REASONS :

13. Before advertng to the evidence on record first of all it is necessary to reproduce here the Section 24(1) of SEBI Act which was in force on the date of commission of offence. It reads as under :

24. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

In view of the above penal provisions to hold the accused guilty the complainant shall have to prove beyond all reasonable doubt

that the accused contravene the provisions of the SEBI Act or the Regulations therein.

14. According to Section 12 (1B) of SEBI Act impose prohibition from sponsoring or running a collective investment scheme without obtaining a registration certificate from SEBI. Section 12 (1B) of SEBI Act is as below:-

(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.]

[Explanation- For the removal of doubts, it is hereby declared that, for purposes of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.]

15. On scrutinizing the evidence on record, it appears that the entire case to prove the guilt of the accused rests upon the evidence of CW-01 Sudip Mishra the officer of SEBI. CW-01 categorically deposed that he came across with the accused No.1 Company Sagar Green Gold Plantations Group Pvt. Ltd., during his tenure. The CW-01 deposed that Government of India has issued press released dated 26.11.1997 vide article-A. Further he deposed that letter from account No.1 company vide Exh. 89 colly was received. The accused No. 1 company along with Exh. 89 sent the terms and conditions of CIS scheme related documents below Exh. 90(colly). Thereafter SEBI received the letter dated 10.09.1998 from accused No.1 company below Exh. 91 along with four annexures Exh. 92 to Exh. 95 respectively.

16. The CW-01 deposed that the accused are the directors of the accused No.1 company. SEBI sent a letter dated 27.09.1999 to accused No.1 company vide article-B for asking information about the funds mobilized from the scheme, the funds repaid to the investors and outstanding liabilities. Further he deposed that SEBI issued public notice dated 10.12.1999 vide article-C to the accused No.1 company to wind up the scheme as it was not registered but the said company neither applied for registration with SEBI nor wound up the scheme. The CW-01 deposed that Mr. Suresh Gupta has issued letter dated 12.05.2000 vide article-D to accused No.1 company asking to show cause as to why action should not be taken against them in terms of the SEBI Act and CIS Regulations for their failure to apply for registration and also their failure to wind up the scheme and violation of Section 12(1)B of SEBI Act. Article-D was sent by post. The original AD card below Exh. 96. Thereafter, CW-01 issued letter dated 18.12.2000 vide Article-E which was sent by post. It was received to the accused. The

original AD card is filed below Exh. 97.

17. Thereafter, CW-01 deposed that he issued letter dated 10.07.2001 vide article-F to accused No.1 company informing that SEBI has debarred the accused No.1 company and its directors from operating in the capital market for the period of five years from the date of order which is annexed with the letter. Accused No.1 company has failed to wind up the scheme and make repayment to the investors. Therefore, the accused being the directors of the said company are responsible of the violation of Section 12 (1B) of the SEBI Act and regulation made therein. This is sum and substance of the evidence of the CW-01.

18. During the cross-examination of CW-01 it came on record that accused No.1 company was incorporated on 28.03.1995. The memorandum of association and article of association below Exh. 92 encloses the certificate of incorporation which goes to show that the accused No.1 company was incorporated on 28.03.1995 with accused its directors. The Section 12(1)B was inserted vide amendment occurred on 25.01.1995. After the above date any company or entities in order to float a CIS scheme was required to obtain registration certificate from the SEBI.

19. The evidence of CW-01 goes to show that the accused No.1 company has floated the CIS scheme after the incorporation i.e. 28.03.1995. This fact has not been seriously disputed at the hands of the accused persons. In fact it is the defense of the accused No.2 Kamal Jain that he raised an amount of Rs. 28,50,000/- under the collective investment scheme in between March and April 1995 and the said amount was refunded to its investors in between 1998 to 1999. Thus,

the floating of the CIS scheme after incorporation of the accused No.1 company is not disputed by the accused.

20. Significant to mention here that there is no registration certificate obtained by the accused No.1 company for floating the scheme. Such is not the defence of the accused and no registration certificate is being placed by accused to disprove the allegations of the SEBI that accused No.1 company has floated a CIS scheme without seeking permission/registration certificate from the SEBI. Consequently, it is proved by the SEBI that the accused No.1 company has floated a CIS scheme without obtaining registration certificate from SEBI.

21. The CW-01 has placed on record below Exh. 89 collectively the details of the amount raised under the scheme by the accused No.1 company supplied by the accused No. 2 Kamal Jain. The document below Exh. 89 and Exh. 91 collectively is not seriously disputed by the accused person. In fact, during the course of cross-examination of DW-2 Kamal Jain it has come on record that the document below Exh. 89 and Exh. 91 collectively bears signature of Kamal Jain. The circumstances came on record during the course of cross-examination of DW-02 Kamal Jain lends corroborations to the case of SEBI. As a result, I have the reason to hold that with the above piece of evidence below Exh. 89 and Exh. 91 collectively the SEBI has established and proved that the accused No.1 company has floated a CIS scheme and raised an amount as on 31.03.1998. The fact that Exh. 90 collectively i.e. terms and conditions of the scheme not signed any of the director and any one can prepared printed terms and conditions will not affect the case of SEBI, more particularly when the evidence of SEBI on the point of floating of a CIS scheme without registration certificate from SEBI and the raising

of amount under the scheme is not disputed by the accused as discussed supra.

22. Admittedly, the scheme in question being floated after 25.01.1995 without registration certificate of SEBI is illegal. The decision of Hon'ble Apex Court in **Gaurav Varshney's case** (relied by Ld. Adv. for accused No. 2) is very clear and precise on the point that the person govern by substantive provision of Section 12(1)B of the SEBI Act were permitted to commence the activities concerning collected investment only after obtaining a certificate of registration. So, the offence under Section 12(1)B of SEBI Act is proved to be committed by the accused No.1 company.

23. Since, the scheme is floated although illegally without obtaining the registration certificate, it ought to have been wound up by the accused No.1 company by refunding to its investors. The CIS regulations provides for wounding up the scheme by refunding to its investors. The Exh. 89 and Exh. 91 collectively goes to show the raising of amount under the scheme till 31.03.1998. However, no documentary proof i.e. winding up report by refunding to its investors was submitted by the accused No.1 company with the SEBI. The accused have not placed on record any documentary proof showing that it has furnished the winding up report and the details of the refund made to the investors to the SEBI before filing of the compliant.

24. Significant to mention here that the accused No.2 Kamal Jain stepped into the witness box and furnished the list of documents i.e. cheque, acknowledge and certificate of the investors below Exh. 119 and Exh. 120. However, the DW-02 Kamal Jain during the course of

cross-examination deposed that he has not given information to the SEBI about the refund made to the investors. Thus, circumstances came on record during the cross-examination of DW-02 lends corroborations to the evidence of CW-01 that the accused No.1 company failed to wound up the scheme by refunding to its investors and submitted the report to SEBI before filing of the complaint.

25. As such the violation of the regulations in winding up the scheme by refunding to its investors are being made. The violations are of continuous nature and continued till filing of the complaint. Therefore, in view of the decision of the Hon'ble Delhi High Court in *Samarpan Agro & Livestock Ltd & Ors. Vs. SEBI in Cri. M. C. 969/2010, decided on 25th October, 2010* the limitation as provided under Section 468 of Cr.P.C. would not be attracted.

26. The accused in support of their defence have examined one witness DW-03 Sanjiv Keshav Kelkar who deposed that he invested in the scheme of accused Kamal Jain and was refunded by Kamal Jain. Likewise, DW-04 Chandan Jain deposed that his father invested in scheme of accused Kamal Jain in his name and was refunded by accused Kamal Jain. The evidence of DW-03 and DW-4 is silent as to when, how they were refunded by the accused Kamal Jain. There evidence although goes to show that they were refunded by Kamal Jain but their evidence about refund is general and omnibus in nature.

27. Be that as it may, as discussed supra the accused have not given the details of the winding up of scheme and refund of its investors to SEBI before filing of the complaint. Therefore, technically the offence of violating the regulations in winding up of the scheme by refunding to

its investors to the knowledge of the SEBI is attributed.

28. To sum up the evidence on record goes to establish and prove that the accused No.1 company has floated the CIS scheme and raised amount under the scheme without obtaining registration certificate from the SEBI and failed to wound up the scheme by refunding to its investors. Therefore, the accused No.1 company is guilty of the offence.

29. The memorandum and article of association below Exh. 92 and the details provided below Exh. 89 collectively goes to show that the accused Kamal Kumar Jain and Manoj Kumar Jain are the directors of the accused No.1 company. The accused have not disputed the fact they are the directors of the accused No.1 company. It is worth to mention here that the DW-02 Kamal Jain during the course of his cross-examination deposed that he was the Managing Director and DW-01 Manoj Jain and deceased accused No. 4 Anoop Jain were the Directors of the accused No.1 company.

30. According to Section 27 of the SEBI Act the person who at the time of offence were incharge of and responsible to the company for conduct of the business are deem to be guilty of the offence. Provided that no person is liable to punishment if he proved that offence was committed without his knowledge or that he had exercise all due diligence to prevent commission of the offence.

31. The decision in **Gautam Singhaniya Vs. State of Maharashtra** (relied by Ld. Adv. for accused No. 2) was rendered under Legal Metrology Act 2009 and the rules made there under. The Section

49 of the legal Metrology Act provides for the liabilities of the person nominated in case of the offence committed by the company and where no such person is nominated the person who was incharge of and responsible to the company for the conduct of the business is responsible. The Section 49 of the Metrology Act prima facie is not identical to Section 27 of the SEBI Act. Further, it would be relevant to mention here that the accused No. 2 Kamal Jain who pressed the above decision into service is the Managing Director of the accused No.1 company. The correspondence below Exh. 89 and Exh. 91 collectively bears his signature. There is evidence to show that he was the incharge of and responsible person for the affairs and business of the accused No.1 company. Therefore, the above said decisions is not useful to him.

32. It is the defence of the accused DW-01 Manoj Jain that he has not concern with the present case and not acquainted with the accused No.1 company. The DW-01 Manoj Jain deposed that he come to know that he was shown as the director of the accused No.1 company in the year 2014 when he has secured bail in the present matter. The DW-02 deposed that he made complaint against accused No. 2 Kamal Jain vide Exh. 106. It would be relevant to mention here that the Exh. 106 is a complaint filed by the accused Manoj Jain against accused Kamal Kumar Jain which goes to show that the DW-01 has family relation with DW-02 and he is acquainted with him. Further, he stated in the complaint Exh. 106 he signed the documents of the scheme. The record below Exh. 89 collectively, the memorandum of association of the company below Exh. 92 goes to show that he is the director of accused No.1 company. No complaint appears to have been filed by the DW-01 before filing of the present complaint. Further, assuming that DW-01 got the knowledge of the fact that he was the director of the accused No.1

company in the year 2014, no complaint appears to have been made by DW-01 immediately. The Exh. 106 appears to have been filed on 14.09.2021 that is after more than 7 years, for which no explanation has been given. Prima facie the above defence appears to be have been taken by accused Manoj Jain to avoid the liability.

The act of present accused person floating the scheme since inception was illegal. The company was required to obtain the registration certificate from the SEBI. The accused DW-01 being the director of the accused No.1 company has not demonstrated by bringing on material that he exercised due diligence to prevent the floating of such a scheme without the obtaining registration certificate from the SEBI. Consequently, he is also responsible for the alleged violations. Hence, I hold both the accused guilty for the offence punishable under Section 24(1) r/w 27 of the SEBI Act. I stop here to hear accused and complainant on the point of sentence.

Date : 06.05.2025

(R. M. Jadhav)
SEBI Special Judge
City Civil & Sessions Court,
Gr. Bombay (C.R.No.22)

33. Heard the accused and the Ld. Advocate Shruti Tiwari h/f Adv. Mayura Kale for accused No. 2. The accused No. 2 Kamal Kumar Jain is absent. It is submitted on behalf of accused No. 2 that minimum sentence may be imposed considering the nature of offence, the period of violations and age of accused and the fact that accused refunded the investors.

34. The accused No. 3 Manoj Kumar Jain is present along with his advocate Mr. S. K. Tiwari. They submitted leniency may be shown while awarding the punishment considering the role of the accused.

35. As against this the Ld. SPP Ms. Ushajee Peri h/f SPP Ms. Sabiha Ansari submitted to impose punishment according to law.

36. Considered the rival submission.

37. The matter is of the year 2003. The alleged contravention were prior to the above said period and pertaining to 1998-99. Both the accused are old age persons. Considering the above fact and circumstances I found that the custodial incarceration would not be the proper punishment to be imposed upon the accused.

38. The accused Kamal Kuma Jain happens to be the MD of the accused No.1 company. The record would reveal that the accused Kamal Jain is the signatory of the correspondence relating to the floating of the scheme. At the same time it has to be born in mind that the accused led evidence on the refund of amount to the investors.

It appears that both the accused have failed to give explanation about the due diligence in preventing the commission of the offence i.e. floating the scheme without obtaining registration certificate and winding the same by refunding to its investors.

So, considering the independent role of the above accused in the commission of the offence the punishment of fine requires to be imposed upon the company as well as the above two accused being the directors of the company. In sequel, I pass following order :-

ORDER

1. Accused No.1 M/s. Sagar Green Gold Plantations Group Pvt. Ltd., company and its director accused No. 2 Kamal Kumar Jain, accused No. 3 Manoj Kumar Jain are convicted for the offence punishable under Section 24(1) r/w 27 of Securities Exchange Board of India,1992 vide Section 235(2) of Cr.PC.
2. The accused No. 1 company and accused No. 2 Kamal Kumar Jain are sentence to pay fine of Rs.5,00,000/-(Rs. Five Lakhs only), each in default of payment of fine, the accused No. 2 Kamal Jain is directed to undergo simple imprisonment for one month.
3. The accused No.3 Manoj Kumar Jain is sentence to pay fine of Rs.2,00,000/-(Rs. Two Lakhs only) in default of payment of fine, the accused is directed to undergo simple imprisonment for one month.
4. Accused shall surrender their bail bonds.
5. The accused No. 2 Kamal Kumar Jain is absent. But, since the accused is punished with only sentence of fine the judgment is pronounced in absence of accused No. 2 Kamal Jain as per Section 353(6) of Cr.PC.
6. Copy of judgment be supplied to the accused free of cost.
7. Accordingly, SEBI Special Case No. 27 of 2014 is disposed of.



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by RAVI
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(R. M. Jadhav)
SEBI Special Judge,
City Civil & Sessions Court,
Gr. Bombay (C.R.No.22)

Date : 06.05.2025

Directly dictated on computer on : 06.05.2025
HHJ signed on : 06.05.2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Name of Stenographer
06.05.2025	5.30 pm	Mrs. Manasi M. Kadam
Name of the Judge (With Court Room No.)		HHJ R. M. JADHAV (CR 22)
Date of Pronouncement of JUDGMENT /ORDER		06.05.2025
JUDGMENT /ORDER signed by P.O. on		06.05.2025
JUDGMENT /ORDER uploaded on		06.05.2025