



P/C. Mrs. Asha Menon
ADJ

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 1187 OF 2003

16/12/03

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,
Rajesh Bhanot.

...Complainant

VERSUS ..

1. Panchsheel Agro Forests Ltd.
Company incorporated under the
Companies Act, 1956, having its Head
Office at SCO 76, Swastik Vihar,
Panchkula, Chandigarh and Regd.
Office at 5498/1, Category-I, Modern
Residential Complex, Manimajra,
Chandigarh.
2. Smt. Asha Sharma W/o Shri
N.P.Sharma, Director of Accused No.1,
R/o: 5498/1, Modern Complex,
Manimajra Chandigarh.
3. Vimal Mehra S/o Shri B.B.Mehra,
Director of Accused No.1, R/o: 1314,

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91

24/8/06

Original

Sec.15/B, Chandigarh.

Shri Raja Babu, Director of Accused

No.1, R/o 60-A, Krishana Puri, Mathura

(U.P.).

.....Accused

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

May It Please Your Honour

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24/8/16

7-7-05
 Name for SEBI at this call.
 Smt. Asha Sharma, Vinod Mehta
 and Raja Babu with their
 counsel, on bail
 have separate orders given
 by the court, the accused are acquitted
 on being found guilty of
 violation of regulations
 31 (2) & 73 & 74 of
 [Collective Investment Scheme]
 Regulation, 1999, punishable
 under S. 24 (1) & 27 SEBI Act 1992.
 They are entitled to be heard
 on sentence.

On the order of sentence each of the accused i.e.
 Parag Mehta, Asha Sharma, Vinod Mehta, Raja Babu, Sh.
 Raja Babu and Raja Babu to a fine of Rs. 5,000/- each in default
 of payment to undergo SI for three months. On payment of fine
 the SI and surety bonds are cancelled. The sureties are
 discharged.

File be consigned to the records.

Debar Menon
 ASHA MENON
 Addl. Sessions Judge
 Delhi.

By 24/7/06

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

CC NO.104/2005

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 400 005 represented by its Asstt. General Manager, Rakesh Bhanot

Complainant
VS.

1. Panchsheel Agro Forests Ltd. Company incorporated under the Companies Act, 1956. having its Head Office at SCO 76, Swastik Vihar, Panchkula, Chandigarh and regd. Office at 5498/1, Category-I, Modern Residential Complex, Manimajra, Chandigarh.
2. Smt. Asha Sharma W/o N.P. Sharma, Director of Accused No.1, R/o 5498/1, Modern Residential Complex, Manimajra Chandigarh.
3. Sh. Vimal Mehra S/o Sh. S.S. Mehra, Director of accused No.1, R/o 1314 Sec.15/B, Chandigarh.
4. Sh. Raja Babu, Director of Accused No.1, R/o 60A, Krishna Puri, Mathura (U.P.).

Accused

JUDGMENT:

BRIEF FACTS:

1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as "SEBI") against Panchsheel Agro Forests Ltd and its Directors Smt. Asha Sharma, Sh. Vimal Mehra and Sh. Raja Babu for violation of SEBI Collective Investment Scheme/Regulations punishable under Section 24(1) and Section 27 of the Securities and Exchange Board of India Act, 1992.
2. To give a brief background in view of the large number of Agro and Plantation Bonds that were being floated and the impact it was having on the public the Government of India thought it fit to regulate Collective Investment Schemes. Thus, in the year 1999 the SEBI (Collective Investment Schemes) Regulations were notified. Prior to this

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notification, however, the Government of India issued a press release on 18 November, 1997 conveying that Schemes relating to issuance of Agro Bonds and Plantation Bonds etcetera would be treated as Collective Investment Schemes under SEBI Act, 1992. Under Section 12(1B) of the SEBI Act the Collective Investment Schemes could be operated only after registration was granted. As an interim arrangement the existing CIS were permitted to continue operations till notification of regulations.

3. Vide the press release dated 18.11.97 the Government extended this facility by inviting ~~all those who~~ desired to take the benefit of Section 12(1B) to declare to the SEBI the details of their Investment Schemes, the total amount collected, the profiles of company including the names of the Directors/Promoters. After the notifications of the regulations in 1999 no Collective Investment Scheme could continue without registration. The SEBI called upon all Collective Investment Schemes as listed in a public notice dated 15th December, 1999 to send information memorandum to all Investors detailing the affairs of Schemes, the amount repayable to each Investors and the manner in which the amount was determined by 28.2.2000. The last date of submitting application by existing entities was extended till March 3, 2000. Thereafter, on December 7, 2000 the SEBI Chairman exercising powers conferred under Section 11B of the SEBI Act, 1992 directed the accused no.1 in this case to refund the money collected under its various schemes to the investors within one month and thereafter to submit repayment and winding up report to the SEBI. It may be mentioned in this case that as per the complaint the accused themselves had informed the SEBI that they had collected Rs.10.6 lacs from the general public under its Collective Investment Schemes.

The present complaint has been filed by the SEBI against the accused for not seeking registration for running the Collective Investment Scheme and failing to submit in format the winding up and repayment report to the SEBI till the filing of the complaint. Vide orders dated

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16.12.2003 the accused were summoned to face trial for offences punishable under Section 240(1) and 27 of the SEBI Act, 1992. After the accused appeared notice of allegations under Section 251 Cr.P.C. was served upon the accused and the accused pleaded not guilty.

EVIDENCE:

The complainant examined Sh. Rakesh Bhanot as CW1 and Sant Jyoti Jindgar as CW2. Thereafter, the statements of the accused were recorded under Section 313 Cr.P.C. Sh. Deepak Lakham was examined as DW1 and accused Sh. Vimal Mehra himself examined as DW2 (also numbered as DW1).

6. CW1 Sh. Rakesh Bhanot deposed that he was authorized vide Ext.CW1/1 to file the complaint. He deposed to the issuance of the press release dated 18.11.97 and as per the same on the record as CW1/2. He brought on record a public notice Ext.CW1/3. He deposed that the public notice had been published in all leading newspapers and one vernacular newspaper. He brought on record Ext.CW1/4 the letter written by the company to the SEBI dated 14.1.98 that they had raised Rs 10.6 lacs through their scheme. He also placed on record the brochure is annexed to the letter Ext.CW1/5. He brought on record another letter of the company dated 30th January, 1999 Ext.CW1/6 forwarding a certificate from the Chartered Accountant which stated that till date the company had not mobilized any fund from the public investor and had not accepted any fund from the investors.

7. Sh. Rakesh Bhanot CW1 further deposed that SEBI wrote a letter to the company seeking clarifications in view of the discrepancies mentioned in the letter dated 14.1.98 Ext.CW1/4, the letter dated 30.1.99 Ext.CW1/6 and the auditor's certificate Ext.CW1/7. This letter was returned undelivered to the SEBI. Thereafter, the regulations had been notified on 15.10.99 and a press release was issued. The witness deposed that a copy of the press release had been sent to the company vide dated 21.10.99 and the same returned undelivered. Letter dated 16.12.99 and

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29.12.99 to the company were also returned back undelivered to the SEBI. Public notice was issued in all leading newspapers calling upon companies operating Collective Investment Scheme to either seek registration under the Regulations or wind up the scheme and repay the investors failing which SEBI would take action. This notice was published in the Hindustan Times and the Times of India on 19.12.99. Thereafter, as per the witness, a public notice dated 31.5.2000 was issued asking companies which had not filed winding up reports to file such reports and repay investors. The name of ~~Pandurangh Agra~~ was mentioned in this notice at serial no.375.

8. The witness deposed that show cause notice addressed to the company was issued on 12.5.2000 but the same returned undelivered with the reports "no such firm on our record returned to sender". SEBI sent a letter dated 31.7.2000 with a copy of the winding up and repayment report which also returned undelivered to the company. The witness has brought on record the copies of the orders of the Chairman as Ext.CW1/22 which had been dispatched to the accused company but once again returned undelivered. Public notice of the order dated 7.12.2000 of the SEBI Chairman had also been published in the Hindustan Times dated 14.1.2001 and in this the name of the accused company was mentioned at serial no.322.

9. In his cross-examination the witness stated that the documents placed on the record was certified by the Deputy General Manager of the SEBI. He disclosed that SEBI did not carry out any independent verification of the information provided by the company in response to the SEBI notices. He was not able to confirm whether any investor complaint had been received in this case. He further explained that statutory auditor had to be a Chartered Accountant and SEBI treated all those auditors appointed by the company in terms of the provisions of the Company Act as statutory auditors. He further stated that no letter dated 1st or 2nd March, 1999 had been received from the accused explaining the discrepancies between Ext.CW1/4 and Ext.CW1/7. He

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Further stated that he had called for the statement of account from the accused relating to the winding up of a scheme and the payment made to the investors. He further stated that since the company did not provide the balance sheet he had no occasion to see them. He was unaware of the company's bank account or the operation relating to it. He further deposed that after receiving the envelopes undelivered the SEBI had not taken any action to independently trace out the accused.

10 CW2 is Ms. Jyoti Jindgar. She has deposed that till the filing of the complaint the company had not filed the winding up and repayment report. In cross-examination she further stated that the company had itself furnished information regarding amount mobilized and the SEBI had relied on that information. She further stated that the company had not been required to submit the list of investors at the time of filing of the information pursuant to the SEBI press release dated 18.12.97. She further stated that she had not sought the details of the income tax returns filed by the company. She stated that she was not aware of the company account of the company or its operation. She also denied that the accused had sent a letter to the SEBI dated 1.3.99 explaining that the first letter dated 30th January, 1999 had contained only proposed amounts to be mobilized. She further stated that the balance sheet of the accused company had been called for vide letter dated 31.3.98. She further stated that in the present case since no winding up and repayment report had been received from the company till date, as such the occasion had not arisen for the appointment of an independent auditor by the SEBI. She further explained in her cross-examination that letters to the company had returned unserved but since the letters addressed to the accused Smt. Asha Sharma on the same address were being received, therefore, the letters calling for explanation of the discrepancy in the amount mentioned was sent to accused Smt. Asha Sharma which was duly acknowledged, yet no further response was received. Hence the SEBI did not accept the Chartered Accountant's report submitted by the accused company.

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11. The stand of the accused was that the company had been floated with a proposal of mobilizing 10.6 lac from the public but no money had been actually been received and the company had no investors. It was further claimed that the company had stopped functioning as no investment had been received. Hence all the accused have pleaded innocence.

12. DW1 Deepak Lakhani deposed that he had been authorized by Avnish Sharma Associates Chartered Accountants to sign papers and produce the documents in the Court but admitted in his cross-examination that he had never audited the accused company's account. He placed on record the balance sheet and annual returns and income tax returns of the company for the year 1998 to 2001 as per which the company had not raised any funds and nor had done any business during that period. He placed on record the certificate issued in this regard by Avnish Sharma and Associates, Chartered Accountant signed by Avnish Sharma as Ext.DA and the annual returns as Ext.DB collectively.

13. The accused Sh. Vimal Mehra placed on record his affidavit Ext.DW1/A to the effect that he had written letter dated 19.1.98 and 1.3.99 and affirmed the contents of these letters and identified his signatures appearing on these two letters. It is further stated in the affidavit that it was due to typing error that it was mentioned that a sum of Rs.10,60,000/- was collected by the company under the Collective Investment Scheme but actually it had not raised any fund. The witness has deposed that this fact was verified in the letters dated 19.1.98 and 1.3.99 brought on record as Ext.DW1/A and DW1/2. The UPC receipts being Ext.DW1/3 and Ext.CW1/4. It is further stated in this affidavit by the accused that M/s Avnish Sharma and Associates also certified that the company had not raised any funds and the necessary records had been enclosed with that letter dated 30.1.99. He has also brought on record the statement of account of the bank account of M/s Panchsheel Agro Forest Limited with PNB Chandigarh which reflects that the balance was never

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more than one lac.

He was cross examined by the learned counsel for the SEBI. When he deposed that the letter dated 14.1.98 may have been sent to the SEBI either through UPC or registered post. He stated that he was not in possession of the postal receipt. He deposed that the letter dated 13.1.99 was sent to him by his Chartered Accountant. He deposed that it was only their proposal to collect Rs.2 lac under the Scheme Cash Crop Fortune Lump Sum Plan no.1 and all amounts mentioned the various schemes were merely proposals. He deposed that they had filed their winding up report with the SEBI in July or August, 2000 but was not in possession of any receipt issued by the SEBI in this regard. He further stated that there was no requirement as per law for winding up the company as on 3.1.99. He further deposed that since they had filed the winding up report before the rules had come into force they did not do so after it had come into force. He denied the suggestion that they had not filed any winding up report.

CONTENTIONS:

15. The SEBI has argued that the evidence brought on record established that the accused had failed willfully to comply with the requirements of the regulations. It is submitted that the accused dispatched conflicting information to the SEBI and thereafter when the SEBI sought clarifications evaded all other notices of the SEBI for compliance of the regulations. The learned counsel for the SEBI has submitted that the production of the two letters Ext.DW1/1 and 2 dated 19.1.98 and 1.3.99 at this stage did not prove that these letters had ever been dispatched to the SEBI. It was contended that had there been any such dispatch the originals would not have remained in possession of the accused. It is further submitted that in any case the offence stood committed when the accused failed to furnish information as per format and the subsequent submission of the winding up report was not relevant as the offence stood committed when the accused failed in filing the winding up report in format till the

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time of filing of the complaint.

16. In the written arguments submitted on behalf of the accused no.1 and 3 it has been submitted that the complainant has failed to prove the allegations in the complaint. It is claimed that no amount has been mobilized from the public and information of this had been sent to the SEBI through two letters namely Ext.DW1/1 and DW1/2. It is further contended that as per the income tax returns filed and the bank statement it was clear that no transactions exceeding Rs.1 lac had been carried out by the company and therefore, it clearly established that it had not mobilized Rs.10,60,000/- and the same had been informed to the SEBI only as a proposal. It is also submitted that the SEBI had not made any investigation and had not carried out any verification before the complaint had been filed and the complaint was completely misplaced as the accused had not violated any provision of law. Hence they have prayed for an acquittal.

FINDINGS:

17. The question as to what was the exact amount mobilized whether Rs.70,000/- or Rs.10.6 lacs is not of serious relevance in this matter as the offence alleged to have been committed was that the company had failed to seek registration to conduct the Collective Investment Scheme and had further failed to comply with the directions issued by the SEBI for circulating information to the investors and to further repay them as per the original documents within the period specified and to submit the repayment and winding up report to the SEBI.
18. It is to be noticed that the accused themselves had responded to the public notice issued by the SEBI in the TRIBUNE (newspaper) on 22.12.97 calling upon all those entities interested in continuing with their Collective Investment Scheme to furnish information to the SEBI. This would reflect the accused were aware that the SEBI was regulating the Collective Investment Scheme and were in the know of all public notices issued by the SEBI. They can not claim lack of knowledge of the requirement of the regulations of 1999 since the SEBI had issued public

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noices naming this company as well in the publication of Times of India and Hindustan Times. Moreover CW2 has deposed that though the letters sent at the address of the accused company returned back undelivered those sent to the residence of the accused Smt. Asha Sharma never returned and she too chose to remain silent about the discrepancies in the communications sent to the SEBI by the accused company. Knowledge of the legal obligations have therefore be attributed to the accused despite which it is clear that they did not chose to comply with the regulations.

19. The plea that the SEBI had already been informed about the cessation of the affairs of the company cannot be accepted. The letters Ext.CW1/4 and Ext.CW1/6 were sent by the accused signed by the accused Sh. Vimal Mehra and accused Smt. Asha Sharma and the same have been duly received by the SEBI. These two letters do not appear to have been sent by UPC. Ext.DW1/1 and Ext.DW1/2 are however, described as having been sent by UPC. It was upon the accused to have shown that this was their usual mode of communication. It is claimed that a letter dated 19.1.98 had been dispatched to the SEBI claiming that in Ext.CW1/4 the amount collected was actually the amount proposed to be collected. However, in the letter dated 30.1.99 Ext.CW1/6 there is no mention of the letter dated 19.1.98 Ext.DW1/1. There is only a mention of the letter dated 14.1.99 sent by the SEBI. Had the letter dated 19.1.99 been actually dispatched it would have been normal for this fact to have found mention in the letter dated 30.1.99 Ext.DW1/2. The accused mentioned the date 19.1.98 and 30.1.99 and has referred to the SEBI letter dated 14.1.99. No clarification of the discrepancy between the letters dated 14.1.98 Ext.CW1/4 and the letter dated 30.1.99 Ext.CW1/6 has been offered by Ext.DW1/2. In Ext.DW1/1 there is only a claim that all amounts shown in the annexure to Ext.CW1/4 were proposed amounts to be collected. No amount mobilized from the promoters find mention. Yet in the letter dated 30.1.99 Ext.CW1/6 a sum of Rs.70,000/- is reflected as amount mobilized by the company from promoters/subscribers. By

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merely informing that the company was not continuing to transact any further business the company had not fulfilled the requirements of the regulations that the winding up and repayment reports be submitted in format.

20. The certificate of the Chartered Accountant Ext.CW1/7 does not support the letter Ext.CW1/6 since according to the certificate the accused had not mobilized any funds from the public investors and had also not accepted any funds from the promoters, while Ext.CW1/6 signed by the accused Smt. Asha Sharma reflects that Rs.70,000/- had been received from the promoters/subscribers. In the circumstances, the certificate of the auditor is itself without any credibility and such a certificate could not have sufficed as adequate information to the SEBI that the accused company had ceased its operation with regard to its Collective Investment Scheme. The certificate Ext.DA appears to be the reproduction of Ext.CW1/7 and suffers from the same infirmity.

21. From the entire material on record the conduct of the accused do not appear to be above board. They have willfully not disclosed to the SEBI the true facts relating to the investment scheme floated by them. They have failed to intimate the SEBI about the details of the investors and the repayment schedule as required under the SEBI regulations. They have also failed to make the repayment within time and submit the winding up report and repayment report in format to the SEBI. They have failed to submit to the SEBI all documents to have enabled the SEBI to verify through the statutory auditor the truth about the repayment and the winding up. In these circumstances the accused have clearly violated the regulations of 1999 punishable under Section 24(1) and Section 27 of the SEBI Act.

CONCLUSION :

22. In the circumstances, it has to be concluded that the accused had failed to submit the repayment report and winding up report in format to the SEBI though they were carrying on the business of Collective

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Investment Scheme and were fully aware of the fact that the SEBI was regulating the functioning of the Collective Investment Schemes. They have thus clearly violated the SEBI Regulations 1999 i.e, Regulation 68(I) (2) 73 and 74 and the Provisions of the SEBI Act 1992. They are found guilty accordingly and are liable for punishment under Section 24(1) R/W Section 27 of the SEBI Act.

The accused are entitled to be heard on sentence.

Announced in the Open Court.
Dated: 7.7.06

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

*Copy given to accused in the
Court at 11.07.06*

Prabhu
7/07/06
Asha Menon

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

20/07/05

SEBI

Vs.

Panchsheel Agro Forests Ltd. & Others

ORDER ON SENTENCE:

I have heard the learned counsel for the accused on quantum of sentence. The learned counsel submitted that as no amount had actually been raised a lenient view may be taken.

The accused were required under law to submit the details of the investment: howsoever meagre ^{and for} whatever be the source, to the SEBI. They could not have assumed unto themselves ^{that} ~~that~~ ^{they} had no obligations to discharge under the regulations, having themselves informed the SEBI that they were doing business including the Collective Investment Schemes relating to Agro and Plantation Bonds. However, keeping all the facts and circumstances in the mind, I am of the opinion that a sentence of fine would meet the ends of justice in this case.

I therefore, sentence each of the accused i.e. Panchsheel Agro Forests Limited Company, Smt. Asha Sharma, Sh. Vimal Mehra and Sh. Raja Babu to a fine of Rs.5,000/- each in ^{default of} ~~their~~ ^{for} which they shall undergo SI for three months. On payment of fine their personal bonds and surety bonds are cancelled. The sureties are discharged.

File be consigned to the records.

Announced in the Open Court.
Dated: 7.7.06

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

Copy to be given to the accused
in the Court of for credit 07/07/06
21.7.06

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P. Sharma
7/07/06

Asha Sharma
Rajababu

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