

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 173 OF 2003

16/11/02

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. Karambhumi Forests (India) Ltd.,
Company incorporated under the
Companies Act, 1956 having its Regd.
Office at F No.22, C/8, Near
Madhubadn Chowk, Opp. Shiva
Market, Sector-8, Rohini (Delhi-85) and
also 170-B/S, 83 to 86, III Floor, Shiva
Market, Madhuban Chowk, Pitampura,
Delhi-110034.
2. Shri Chander Sharma S/o Late Shri
Tek Chand, Director of the Accused
No.1, R/o: 4/215, Gali Inder Lok, Anaj
Mandi, Sonapat (Haryana).
3. Mrs. Chander Kanta W/o Shri Chander

ATTESTED,
5/3/08

Examined
Copying Agency (S...)

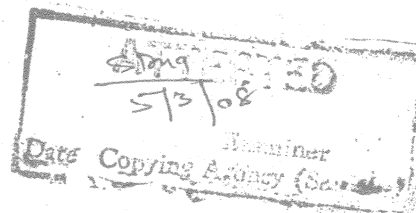
Sharma, Director of Accused No.1,
R/o: 4/215, Gali Inder Lok, Anaj Mandi,
Sonapat (Haryana).

4. Mr. Kamal Kant Sharma, S/o Shri Bhan
Sarup Sharma, Director of Accused
No.1, R/o: A-174, Weavers Colony,
Panipat (Haryana).

.....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:



A85.

29-9-06

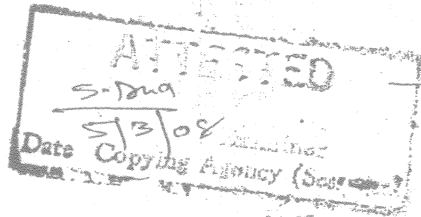
Pr: None for SEBT at this
call.

Accused Kamalkant for
himself & A1.

A2 & A3 are P.O.

Vide separate orders,
accused company &

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AL Kamal Kant have been held
guilty of the violations of the
regulations & are convicted
for the offences punishable
U/s 24 & 27(1) SEBI Act 1992.
Hence as entitled to be heard on
sentence. Heard.

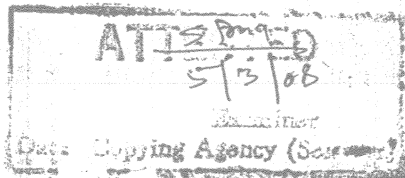
Under separate orders the
accused have been sentenced to a
fine of Rs 5000 each. On failure
to pay the fine the accused
Kamal Kant will undergo SI
for 4 months.

One. payment of fine
the personal bond & surety bond
of the accused will stand cancelled
& the surety will stand
discharged.

File be consigned to the records
to be revived upon apprehension
of accused Chandu Sharma &/or
acc'd Chandu Kantu.

Announced in per
Court on 29-5-06

AshatKeno
453.



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

CC NO.92/2005

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 400 021 represented by its Asstt. General Manager, Rakesh Bhanot.

... Complainant

VS.

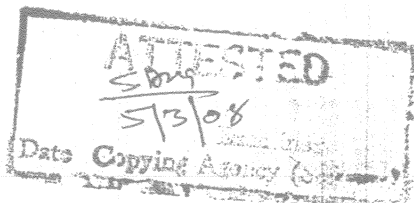
1. Karambhum Forest India Limited Company incorporated under the Companies Act, 1956 having its Regd. Office at F. No.22, C/8, Near Mudhuban Chowk, Opp. Shiva Mkt, Sector-8, Rohini (Delhi-85) and
2. Chander Sharma S/o Late Sh. Tek Chand, Director of the accused no.1 R/o 4/215, Gali Inder Lok, Anaj Mandi, Sonapat (Haryana).
3. Mrs. Chander Kanta W/o Sh. Chander Sharma, Director of accused no.1, R/o 4/215, Gali Inder Lok, Anaj Mandi, Sonapat (Haryana).
4. Mr. Kamal Kant Sharma, S/o Sh. Bhan Sarup Sharma, Director of accused no.1, R/o A-174, Weavers Colony, Panipat (Haryana).

... Accused

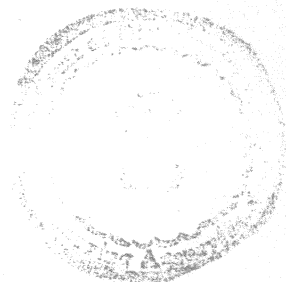
JUDGMENT:

BACKGROUND FACTS:

1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as the SEBI) through its Assistant General Manager Sh. Rakesh Bhanot against Karambhum Forests (India) Ltd. and its Directors Sh. Chander Sharma, Smt Chanderkanta and Sh. Kamal Kant Sharma. It may be mentioned here that the accused Chander Sharma and



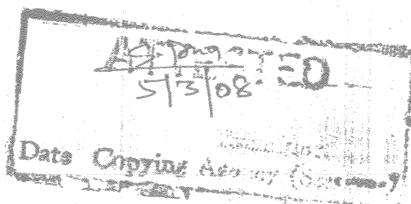
ChanderKanta have been declared proclaimed offenders and the judgement is in respect of the accused Company and accused Kamal Kant Sharma.



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 required 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.

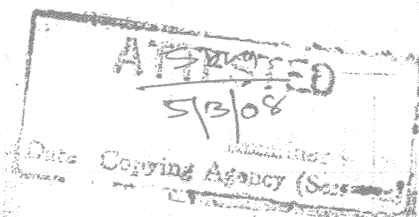
4. The entities involving any Collective Investment Scheme were required, vide the press releases dated 26.11.97, and 18.12.97 to file information with the SEBI giving the detail of the Company, its Scheme and nature of Investment. In response the accused in this case had sent information to the SEBI that they had collected Rs.9.2 lacs under its schemes. It also informed that the accused



Sh.Chander Sharma , Smt Chanderkanta and Sh.Kamal Kant Sharma were its Directors .

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 10.2.99 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.

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



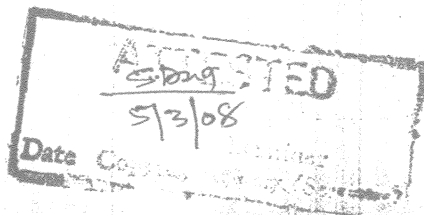
violated Section 11 B and 12 (1) B of the SEBI 1992 which were all violation punishable U/s 24 (1) of the SEBI 1992 R/W Section 27 of the said Act.

7. Vide orders dated 16.12.2003 the accused were summoned for trial. The notice of allegations under Section 251 Cr.P.C was served up on the accused company and Kamal Kant Sharma for having failed to comply with the regulations and for thus committing offences punishable under Section 24(1) SEBI Act read with Section 27 of the said Act. The accused pleaded not guilty.

EVIDENCE

8. Sh. Rakesh Bhanot, AGM was examined as CW-1 on behalf of the SEBI. During his testimony he has brought on record the letter dated 10.12.97 sent by the accused to the SEBI as Ex.cw1/1. The letter contained the names of the accused Chander Sharma, Chander Kanta and Kamal Kant Sharma as directors. It also contained the information that the company had raised about Rs 9.2 lacs under its schemes.

9. He further deposed that the SEBI had sent various letters to the accused company informing it about the requirements under the regulations and which were returned undelivered to the SEBI. He brought on record all the undelivered letters along with their envelopes. He also deposed that when show cause notice dated 12.5.2000 was issued, that was also returned undelivered. He

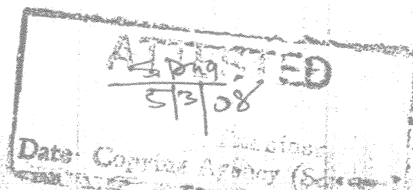


deposed that the format for winding up was also sent to the accused company and once again the communication returned undelivered to the SEBI. Each time the report was that the company had left without address. He deposed to the public notice issued in the Hindustan Times listing the accused company at serial no.237. He deposed to the non-compliance of the regulations by the accused company and the accused directors till the filing of the complaint.

10. The witness was not cross-examined by the accused.

11. After the evidence was recorded, the statements of the accused has been recorded under Section 313 Cr.P.C. The accused Kamal Kant Sharma has submitted that he had no concern with the accused company since from a very young age he had been running a workshop in the name and style of Sharma Engineering Works at Panipat. He examined three witnesses in this connection.

12. DW1 Sh. Jai Bhagwan has stated that he has known the accused for several years since the accused had been running a workshop in his neighbourhood. DW2 Sh. Tilak Raj has deposed that he knew the accused as he had his shop adjacent to the workshop of the accused Kamal Kant. He also deposed that the accused did not have any other business or source of income. DW3 Sh. Jagdish Prasad is the uncle of the accused and he has vouched for his



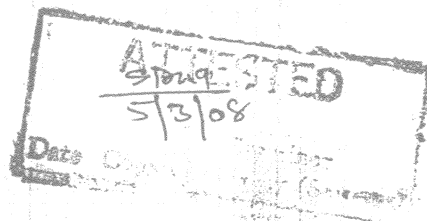
good behaviour and sound upbringing which according to the witness would not have led the accused into any criminal activity. He too deposed that the accused did not have any other source of income and livelihood apart from the workshop that he was running.

13. This is the entire evidence that has come on the record.

CONTENTIONS:

14. Sh. Sanjay Mann has argued on behalf of the SEBI that the rules and regulations in respect of Collective Investment Scheme had been introduced as many such CIS had been floated into market and the gullible public had been duped by companies who vanished with the funds that had been raised from the market. It was submitted that it was only because investors were being swindled that the SEBI had brought out the rule to the effect that the companies running Collective Investment Schemes had to register their schemes with the SEBI if they wished to continue with their Collective Investment Scheme.

15. It was submitted that thereafter, the regulations were notified in 1999. It was submitted that only those CIS which had the intention of continuing in the future were required to furnish information and accused in this case had also submitted their information in 1998 which showed that the accused were involved in the CIS and were desirous of taking advantages of the regulations which were to be notified. Sh. Mann further submitted



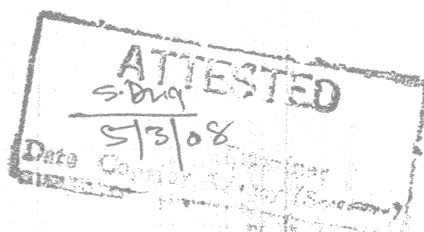
that thereafter once the regulations were notified the SEBI had sent various letters to the company which were all returned to the SEBI. It was submitted that the SEBI had taken steps to publish the information in newspaper despite which the accused did not chose to comply with the requirements of law. He therefore submitted that the accused were liable for the violation.

16. On the other hand, the accused Kamal Kant has submitted that since he had been running his workshop at Panipat, there was no occasion for him to have been involved in the setting up of a company such as the accused no.1 and to be its director and be involved in the business of the company. Hence he has prayed for his acquittal.

FINDINGS:

17. The mere fact that the accused Kamal Kant was running his work shop at Panipat would be no reason to infer that he had no role to play in running the accused company Karambhumi Forest (India) Ltd. It is impossible to believe that without the consent of the accused Kamal Kant he had been appointed director of the company. No doubt Ext.CW1/1 does not appear to be signed by him. But that again cannot suffice to exclude his liability.

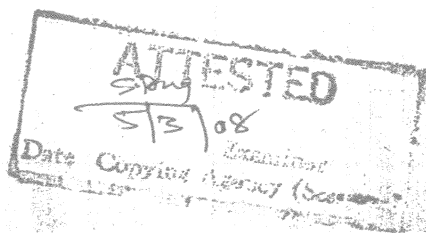
18. Under Section 12 (1B) of the SEBI Act, 1992 a person who runs or causes to run a CIS is bound by the regulations. The accused has failed to prove that though he was a director of a



company which had raised about Rs.9.2 lacs from the public he had nothing to do with the affairs of the company. He has failed to prove that the failure of the company to comply with the regulations of the SEBI intended for the protection of investor interests, had been without his connivance and inspite of his diligence.

19. Rather it appears that when the co-accused Chander Sharma and Chander Kanta have vanished as absconders from law, the accused Kamal Kant has tried to absolve himself of all responsibilities by claiming non-involvement. In the absence of cogent and credible evidence no conclusion at least on the material on record brought by the accused through the testimony of his three defence witnesses can be drawn in favour of the contention of the accused.

20. The document furnished by the company itself shows that the accused Kamalakant alongwith the others were directors of the Company. The evidence shows that the company was aware of its responsibilities under the regulations. As director the accused Kamalkant has to be attached with the knowledge of the regulations in the light of the public notices and press releases of the SEBI. The name of the accused company has also been mentioned in the list of defaulters which should have cautioned the accused Kamalkant and encouraged him to ensure compliance. Despite knowledge the accused no.1 and accused no.4 have failed to carry



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out the directions of the SEBI Chairman whereby investors were to be repaid and the schemes wound up and the WRR submitted to the SEBI. Clearly the accused have violated the regulations for which they have to be held responsible.

CONCLUSION:

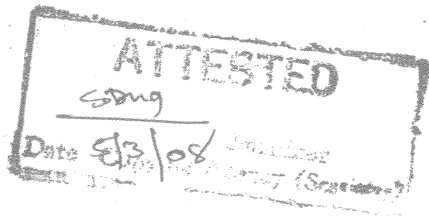
21. I, therefore, hold the accused company Karambhumi Forest (India) Limited and its Director/accused Sh. Kamal Kant Sharma guilty for the violations of Regulation 5(1) read with Regulations 68(1), 68(2), 73 & 74 of the SEBI (CIS) Regulations 1999 read with Section 24 r/w S.27 of the SEBI Act 1992. He is entitled to be heard on sentence.

Announced in the Open Court.
Dated: 29.9.06

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

Copy given to convicts in the Court
and for in dt: 29/9/06
29/9/06

Kamal Kant Sharma
29/9/06.



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

CC NO.92/2005

SEBI VS.

KARAMBHUMI FOREST INDIA LTD & ORS.

ORDER ON SENTENCE:

I have heard the accused who prays for a lenient view submitting again that he had no involvement in the affairs of the company.

Having heard the accused and his plea for clemency I am of the opinion, that the ends of justice would be met if the accused company and the accused no.4 Kamal Kant were to be sentenced to fine without any term of imprisonment. I accordingly, sentence the accused no.1 Karambhumi Forest India Ltd and the accused no.4 Kamalkant Sharma to a fine of Rs.5,000/- each. In default of the fine the accused no.4 Kamalkant Sharma shall undergo simple imprisonment for four months. Apart from payment of the fine the personal bond and surety bond of the accused shall be cancelled and his surety will stand discharged.

File be consigned to the records to be revived upon the apprehension of the accused Chander Sharma and or Chander Kanta.

Announced in the Open Court
Dated: 29.9.06.

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

Copy given to convicts in the court
at 10.00 AM on 29/9/06

*Kamal Kant
Sharma.
29/9/06.*

Office of The District & Sessions Judge	
Certified	Copy
5/3/06	
Date	Copy to be sent to (Sessions)
Authorised by the District Judge of the	
District Encl. No. A-1-1973	