



IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN

MAGISTRATE, DELHI

CC NO: 1168 QF 2003

6240R024042003

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.

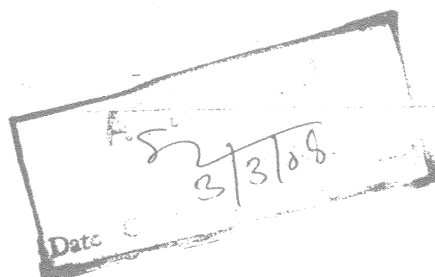
...Complainant

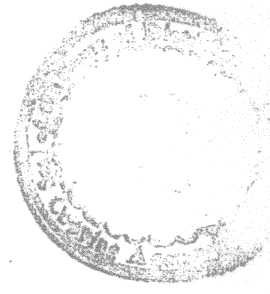
VERSUS.

1. Himachal Paryatan Avam Krishi Vikas
Ltd. Company incorporated under the
companies Act, 1956. Having its Regd.
Office at 28/1, Krishna Lodge, Lakkar
Bazaar, Simla.
2. Shri Suresh Kumar Barwal, Director of
Accused No.1, R/o: Shanti Niwas,
Lower Bharari Road, Simla. (H.P.)
3. Smt. Darshna Devi, Director of
Accused No.1, R/o: Shanti Niwas,
Lower Bharari Road, Simla. (H.P.).
4. Smt. Pranto Verma W/o J.N.Verma,
Director of Accused No.1, R/o: D-296,
Nehru Vihar, Delhi.

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.....Accused





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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

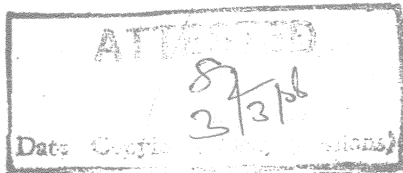
May It Please Your Honour:

ATTORNEY
6/3/88
Date 6/3/88 (Signature)

3-11-06.

Dr. Now for the SEBI
at this call
A 2-4 also for A1.
with counsel. Will
separate orders, ~~and~~
even date the acc'd
company and its
directors A 2-A4
have been found

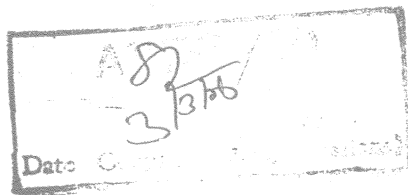
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guilty of the violation
of the regulations punishable
U/s 24/27 S.F.B.I. Act 1992.

They are entitled to
be heard on sentence.
Since it is 4.50 pm, let the
matter be taken up on
4.11.06 at 10 am for hearing
on sentence.

AN
ASS.
3.11.06.



1
IN THE COURT OF MS. ASHA MENON: ASJ: DELHI

CC NO.201/2005

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 Asst General Manager, Sh. Rakesh Bhanot.

... Complainant

VS.

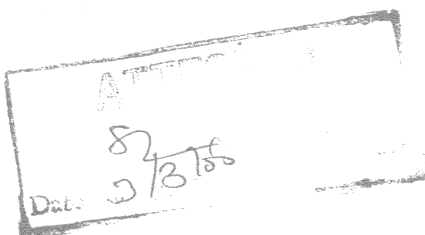
1. Himachal Paryatan Avam Krishi Vikas Ltd. Company incorporated under the companies Act, 1956 having its Regd. Office at 28/1, Krishna Lodge, Lakkar Bazar, Simla.
2. Sh. Suresh Kumar Barwal, Director of accused no.1, R/o Shanti Niwas, Lower Bharari Road, Simla. (H.P.)
3. Smt. Darshna Devi, Director of accused no.1, R/o Shanti Niwas, Lower Bharari Road, Simla. (H.P.)
4. Smt. Pranto Verma W/o J.N. Verma, Director of accused no.1, R/o D-296, Nehru Vihar, Delhi.

.... Accused

JUDGMENT:

BACKGROUND FACTS:

1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as the SEBI) for short, alleging violation of the SEBI (Collective Investment Schemes) Regulations, 1999.
2. To give a brief background to the case, the Government of India had set up the SEBI under the Securities and Exchange Board of India Act, 1992 with the aim of protecting investor interests, in the backdrop of large scale floating of plantation and agro bonds by companies with no



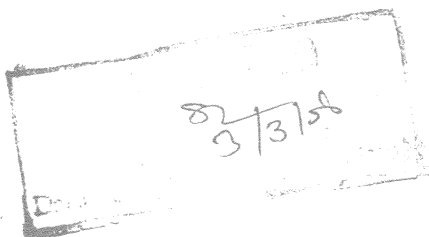
financial viability. The uncontrolled proliferation of such companies led to the duping of lakhs of gullible people who lost their money by investing in such non-viable projects.

3. This prompted the Government to intervene and the SEBI Act, 1992 came into force, under which SEBI itself was established. The SEBI has the obligation to regulate the securities and stock market and has been vested with extensive powers to discharge these obligations. Violations have been made criminal offences and the SEBI has to file criminal complaints against such violators.

ALLEGATIONS IN THE COMPLAINT

4. In order that the provisions of Section 11 (1) of the SEBI Act, were given effect to the government announced its intentions to bring out regulations in respect of Collective Investment Schemes specifically. It issued a public notice to this end on 26.11.1997 and 18.12.1997. Under the provisions of Section 12 of the SEBI Act, 1992 those entities which had been operating Collective Investment Schemes immediately prior to coming into effect of the provisions were given two month's time to apply for registration. By means of the public notice/press release, SEBI required all those interested in benefiting under the provisions of Section 12, to furnish all details about the company and the schemes and the amounts mobilized etc. to the SEBI.

- AM 5. The accused company had in response to the press release/public notice, apparently furnished their details to the SEBI. The SEBI (Collective Investment Scheme) Regulations were notified on 15.10.99.

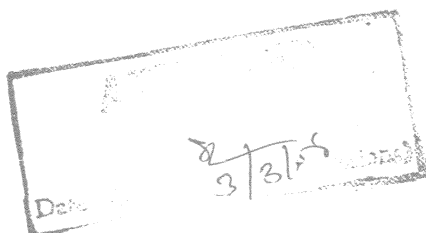


The SEBI asked all companies dealing with Collective Investment Schemes to issue information memorandum to all investors detailing the state of affairs of the schemes, the amount repayable to each investor and the manner in which such amount was determined. This was to be sent by 28.2.2000. This date was extended to 31.3.2000.

6. Under the regulations of 1999, 73(1) those existing Collective Investment Schemes which had not applied for registration were required to wind up their schemes and repay the investors. Under regulation 74 those entities which were not desirous of registering with the SEBI even provisionally were also obliged to draw up and formulate a scheme for repayment and make the repayment in terms of the regulation 73.

7. The allegation in the complaint is that the accused neither applied to the SEBI for registration nor took steps to wind up the schemes and repay the investors. Therefore, the SEBI Chairman directed the accused vide orders dated 7.12.2000 that they refund the money collected within a month in terms of the original offer. Yet, and despite repeated directions of the SEBI, the accused failed to comply with the regulations, as stated in the complaint.

8. On these allegations the SEBI submitted in the complaint that the accused had violated Regulations 68(1), 68(2), 73 & 74, read with Regulation 5 (1) of the SEBI Regulation 1999 read with Section 11B & 12(1B) of the SEBI Act, 1992 punishable under Section 24 read with Section 27 SEBI Act, 1992. Vide orders dated 16.12.2003, the accused Himachal Paryatan Avam Krishi Vikash Ltd. Company, and its directors



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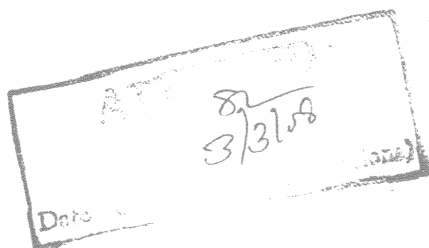
Sh. Suresh Kumar Barwal, Smt. Darshna Devi and Mrs. Pranto Verma were summoned to face trial for these violations.

9. On their appearance notice of allegations was served upon the accused under Section 251 Cr.P.C to which they pleaded not guilty. The complainant examined one witness Sh. Rakesh Bhanot.

EVIDENCE

10. Sh. Rakesh Bhanot was examined as CW-1 on behalf of the SEBI. He has referred to the press release dated 18.11.97 whereby the Government of India declared bonds which were in the nature of plantation bonds and agro bonds to be considered as Collective Investment Schemes under Section 11 of the SEBI Act, 1992. He has also referred to the press release dated 26.11.97 and a public notice dated 18.12.97 whereby the companies were directed to file information with SEBI regarding their Schemes with details of funds mobilized, names of Directors/Promoters in case they were desirous of obtaining benefits u/S 12(1B) of the SEBI Act.

11. The witness deposed that pursuant to the public notice and press release, the company filed information vide their letter dated 14.1.98 which is Ex1.CW1/1, alongwith a copy of the company's pamphlet. The letter also contained the names of the accused Suresh Kumar Barwal, Smt. Darshna Devi and Smt. Pranto Verma as the Directors. The witness deposed that the company had sent another undated letter received by the SEBI on 4.6.98, Ex1.CW1/2 which contained the annual report of the company dated 31.3.98 and certified copy of Memorandum and Articles of

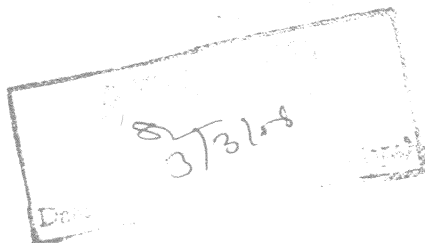


Association. The witness deposed that as per the Schedule-II of the balance sheets the accused had raised Rs.12,89,271 under its five schemes.

12. The witness deposed that the SEBI (CIS) Regulations, 1999 were notified. The witness deposed that in terms of the Regulations the company was required to apply for registration or wind up its schemes in terms of Regulations 73 & 74. The company was required to circulate information memorandum to its investors and to repay them and submit the winding up and repayment reports to the SEBI within five and a half months. The witness deposed that these regulatory obligations were communicated to the company vide specific letters dated 10.12.99 and 29.12.99 which returned undelivered to the SEBI. These were also published vide public notice dated 10.12.99 in the Hindustan Times on 19.12.99.

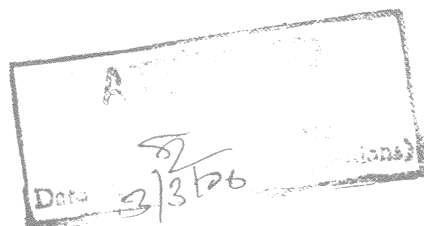
13. The witness deposed further that since the accused company neither applied for registration nor intimated regarding winding up of the scheme a show cause dated 12.5.2000 was issued to it which returned undelivered with the report the company had closed. The CW1 stated that the SEBI had sent to the company the format for submitting the winding up and repayment report vide its letter dated 31.7.2000. This too returned undelivered with the same remarks.

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14. The witness deposed that the SEBI Chairman issued order dated 7.12.2000 against this accused also since there was no compliance of the regulatory provisions of the Regulations. This order was communicated to the company vide letter dated 18.12.2000 which returned undelivered to



the SEBI. The witness stated that the contents of the order issued by the Chairman, SEBI u/S 11 of the SEBI Act was also published in leading national newspapers and vernacular newspapers on 14.1.2001. He deposed that vide this public notice SEBI had intimated all the CIS the obligations imposed on them under Regulations 73 and 74 in case they were not to apply for registration under the regulation. He deposed that SEBI had vide these notices also informed that failure to comply with the requirements would open the companies liable for further action including directions for debarment, initiation of prosecution etc. He deposed that the name of the accused company appeared at serial no.413 of the public notice. He deposed to the non-compliance by the accused company and its directors despite the public notice till the filing of the complaint.

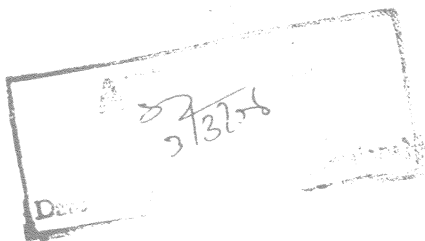
15. CW1 Sh. Rakesh Bhanot was cross-examined by Sh. A.K. Bansal. During this cross-examination, the witness deposed that since he had no information that day with him, he was unable to confirm if the SEBI had issued any public notice disclosing the States falling within the jurisdiction of its Regional Office Delhi. He deposed that in response to the SEBI's public notice and subsequent correspondence the company itself had confirmed that they had mobilized funds under CIS, and it was on that basis that the SEBI learnt that the accused company was dealing in CIS. The witness stated that even though in the letters Ext.CW1/1 & 2 there was no use of the words CIS, yet in the certificate attached to Ext.CW1/2, the company itself had stated that they had not floated any "new Collective Investment Scheme subsequent to the SEBI's public



notice dated 18.12.97" and they had also given the details of the amounts mobilized under the various schemes, which also suggested the collective nature of the schemes.

16. In further cross-examination the witness denied that they had presumed that the accused had been previously involved in CIS and relied on the balance sheet to reiterate that Rs.12.89 lakhs had been raised by the accused through their schemes. He stated that merely because a scheme was a recurring deposit scheme, it would not mean that the scheme was not a CIS Scheme. He admitted to have relied upon the information provided by the accused to file the complaint. The witness stated during his cross-examination that since the accused had not filed the winding up and repayment report he could not state whether the accused had repaid the investors. The witness stated that he did not know the number of persons who had invested in the company. He denied knowledge of any correspondence between the accused and the ROC and the SEBI and the ROC or whether the accused had furnished to the ROC a new address and that the ROC had forwarded that address to the SEBI.

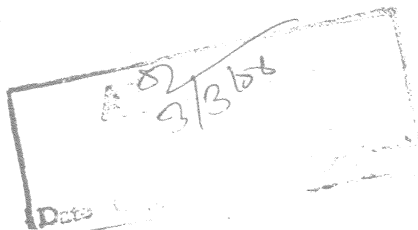
17. CWI denied the suggestion that the Regulations were not applicable to the accused. He denied the suggestion that no amount had been collected by the accused under CIS or that the amounts reflected loans obtained by the company under various schemes upto 1998. He stated that no complaints had been received from any person. He denied that he had filed a false complaint with the intention of harassing the Directors. The witness admitted that the SEBI had not received any

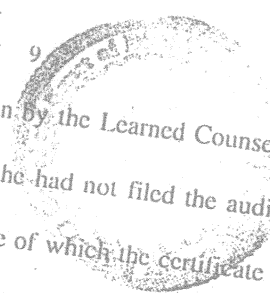


complaint from any investor against the company.

18. The statements of the accused were recorded u/S 313 Cr.P.C. The accused Darshna Devi and Pranto Verma claimed ignorance of the correspondence with SEBI. While the accused Darshna Devi stated that the investors have been repaid, Pranto Verma claimed that she had merely signed some papers and had nothing to do with affairs of the company. The accused Suresh Kumar admitted the correspondence with SEBI and stated that he had not received any letters from the SEBI as he had changed his residence. He claimed to have even informed the SEBI. He claimed that all investors had been repaid and the lapse occurred due to lack of correspondence.

19. The accused Suresh Kumar was examined as DW1 by the defence. During his examination in chief he deposed that they had started making refund to investors from the year 1997 and all investors had been refunded all amounts from 1.4.98 to 31.3.99 through cheques and in cash. He stated that the accounts were audited by Chartered Accountants M/s Dhawan and Company, Shimla and placed on record a certificate issued by Sh. I.K. Dhawan dated 24.8.06 as Ext.DW1/1. He deposed that the CA had verified the payments made to the investors, the list being Ext.DW1/2. He placed on record a letter addressed to their Bank and the statement of account supplied by the Bank as Ext.DW1/3 and 4. He filed 77 vouchers to substantiate the claim of payments made in cash. He filed an affidavit to show that family members had been paid. He stated that they had complied with all the directions of the SEBI.



9. 
20. During cross-examination by the Learned Counsel for the SEBI, the accused DW1 admitted that he had not filed the audit report of the Chartered Accountant in pursuance of which the certificate dated 28.4.06 had been issued. He admitted that he had not filed the account books of the company. He admitted that they have not filed the WRR in format till date. He claimed to have sent a reply to the show cause notice dated 12.5.2000. He stated that they had prepared the list of repayments to the investors. He stated that due to the fact that he lived in a village and had met with an accident he did not get the audit conducted from the year 2000 to the year 2006. He denied that the affidavit was false. He denied that persons mentioned in the affidavit were not investors and had been paid nothing. He denied that he was deposing falsely.

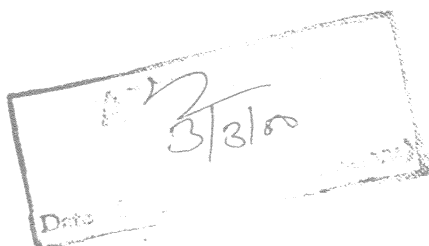
21. This is the entire evidence that has come on the record.

CONTENTIONS:

22. Sh. Sanjay Mann, counsel for the SEBI has submitted that the accused company and its Directors, accused 2,3, & 4 had floated various Collective Investment Schemes and had mobilized Rs.12,90,000/- from the public. He submitted that the CIS Regulations came into force in October, 1999. Under these Regulations there was a statutory obligation to apply for registration under Regulation 5 to continue operations. Since the accused did not apply for provisional registration, they were required to wind up. The company was reminded by letters and public notices. Yet the accused had not submitted compliance. Since no WRR had been filed despite issuance of show cause notice, the Chairman issued orders under

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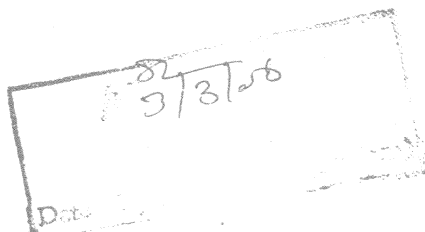

Date

Section 11B of the SEBI Act, 1992. Again there was no compliance.

Hence Sh. Mann has submitted that the case had been fully proved against the accused beyond any shadow of doubt. I.d. Counsel has argued that purpose of the enactment could not be lost sight of and compliance of a statutory obligation had to be strictly in the manner provided for and any violation could not be viewed lightly.

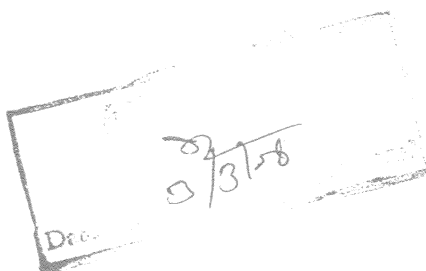
23. Written arguments have been filed by Sh.A.K.Bansal, I.d. Counsel for the accused, raising several contentions. It is contended by I.d. Counsel that the Court had without applying its judicial mind to each and every fact, had taken cognizance and had issued processes against so many companies including the accused in this case. It is contended that the summoning orders had been passed in a mechanical and cyclostyled manner which amounted to sheer abuse of process of law. Reliance has been placed on the judgement of M/S Pepsi Food Limited & Anr. Vrs Special Judicial Magistrate & Ors.

24. The second contention raised is that none of the accused could be convicted as the complainant has failed to aver in the complaint that the accused 2 to 4 are persons in charge of the affairs of the accused no.1/company and have failed to state in specific words what was the role of a particular Director in the Company. It is further submitted that even in the evidence led by the complainant there was not even a single word to show upto what extent a particular Director or officer was responsible and in what manner he was in charge of the company at the relevant time. Reliance has been placed on a catena of judgments rendered by the



Hon'ble Supreme Court and the Hon'ble Delhi High Court rendered cases relating to complaints filed under S.138 Negotiable Instruments Act against companies, submitting that S.141 of that Act was pari materia to S.27 of the SEBI Act. It has been submitted that it would be only after the prosecution had discharged its initial burden to prove that the accused was responsible for carrying on business that the obligation of the accused to prove that the offence had taken place without his knowledge or despite due diligence would arise. Reliance has been placed on the judgment of the Hon'ble Supreme Court in SHAM SUNDER & ORS. VS. STATE OF HARYANA (1989) 4 SCC 630. Submissions have been made that partners (sic) could be sleeping partners, there may be ladies or minors who are admitted to the benefits of partnership but they may not be knowing anything about the business. It has been submitted that it would be a travesty of justice to prosecute all "partners" and ask them to prove under the proviso to S27 (1) SEBI Act that the offence had been committed without their knowledge. It has been submitted that the SEBI should have investigated to find out who were the real offenders, instead of filing the complaint against all the accused.

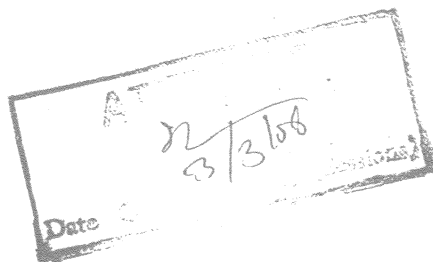
25. The next contention raised is that this Court had no jurisdiction to try the case. It is submitted that the complaint has been filed by the SEBI having its head office at Mumbai and the public notices had been issued from the Mumbai office and the orders of the Chairman were issued at Mumbai. According to the L.d. Counsel the office of the SEBI at New Delhi had not come into the picture. It is submitted that the investors



belonged to U.P. It has been submitted that the SEBI office was at Mumbai as mentioned in the complaint. Therefore, the Court at New Delhi could have no jurisdiction in the matter. It is submitted that either the Court at Mumbai or at Shimla had the jurisdiction to try this matter. Reliance has been placed on the judgement of the H'ble Supreme Court in 2004 (8) SCC 100 and in 2005 (SCCI... COM) 177 in support of this contention.

26. The next argument is that the complaint is time barred and the cognizance taken was bad in law. It is contended that in the absence of clear averments as regards the place time and date of occurrence no person could be convicted. According to the defence, since the orders of the Chairman was dated 7.12.2000, the cause of action arose on 7.1.2001 and the Court could not have taken cognizance upon the complaint filed on 16.12.2003.

27. It is submitted that the record made it evident that the accused No.1 company had made all the repayments to its investors much prior to the directions dated 7.12.2000. It is submitted that the relevant evidence has been brought on the record during the recording of the statement of the accused under S.313 CrPC, to show that the repayments had been effected upto March 1999. It is also submitted that the documents to prove repayment have been placed on record. It has been submitted that the statutory auditor of the company had issued the certificate verifying repayment. It is further claimed that the balance sheet of the company reflected that the company had advanced loans to investors against their



investment and none had come forward to repay the loan and ultimately they adjusted the loan amount against their investment to their full and final satisfaction.

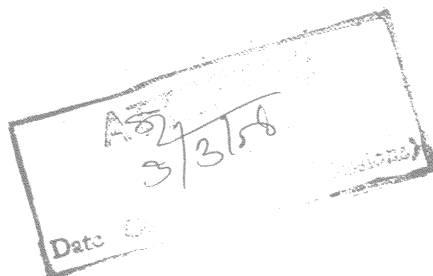
28. The accused through their counsel have submitted that the case has not been proved beyond reasonable doubt against them and they have prayed that they be acquitted.

FINDINGS

29. I have carefully considered the arguments both oral as well as written and I have carefully considered the evidence brought on the record by both sides:

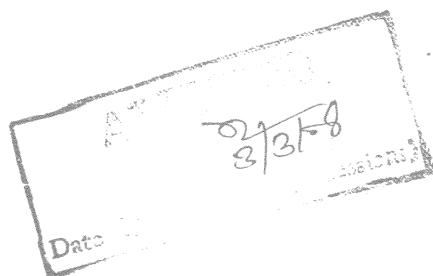
30. Turning to the case, the submissions made in respect of the cognizance that was taken and the grievance upon being summoned are really to be ignored. As has been held by the Hon'ble Supreme Court in Sethuraman's case, V (2004) SLT 708, once cognizance is taken and the notice of allegations served upon the accused, the trial has to reach its logical conclusion which is a determination on the merits. There can be no occasion for the trial court to set the clock back to start from the very beginning.

- AM. 31. The submissions in respect of jurisdiction are completely misplaced. Section 3 of the SEBI Act 1992 deals with the setting up of the Board. It provides that the Securities and Exchange Board of India is to be set up by notification and would sue and be sued by the said name. The



Statute provides vide S.3 sub-section 3 that the head office of the Board shall be at Bombay. At the same time, vide sub-section 4 of the same Section, it is provided that the Board may establish offices at other places in India. As of now, the offices of the SEBI have been set up at Mumbai (West Zone), New Delhi (North Zone), Chennai (South Zone) and Kolkata (East Zone). The jurisdiction of each zone covers specified regions and the State of Uttar Pradesh and Himachal Pradesh, and thus, over Shimla, falls within the jurisdiction of the North Zone Office of the SEBI, at New Delhi. Thus this court is vested with the jurisdiction to try cases arising out of violations caused within the said regional jurisdiction of the SEBI. It is pertinent to point out that the accused have themselves sent communications Ex CW1/1 & Ex.CW1/2 to the SEBI, pursuant to public notices, at the Delhi address of the SEBI. This submission is therefore rejected.

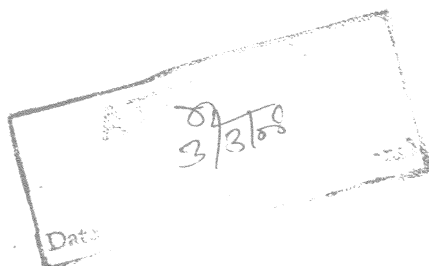
32. Coming next to the question of limitation, the contention on behalf of the SEBI that the offence is a continuing one has to be accepted. The purpose of the regulations is to regulate the functioning of collective investment schemes. The regulations required that collective investment schemes be registered with the SEBI. Stringent parameters have been provided for grant of registration with a view to ensure financial soundness of the company and to prevent the defrauding of investors. Those companies who did not wish to continue with their collective investment schemes or did not qualify for registration were required under the regulations to circulate an investor memorandum amongst their



investors.

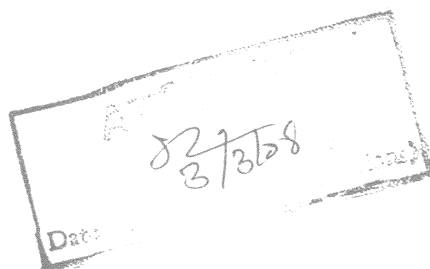
33. The companies were bound to disclose to the investors the schedule of repayment and simultaneously inform the SEBI about the scheme and schedule of repayment. The companies were also obliged by the regulations to wind up the schemes and submit a winding up and repayment report in a particular format to the SEBI. The Chairman's order of 7.1.00 directed that the repayment be done in terms of original offer, with interest and required the filing of the WRR within a month. The month's time can be said to prescribe the time for the commencement of the offence. It is after the lapse of a month w.e.f 7.12.00 that SEBI could prosecute any defaulter and not prior to that date. But equally, till the WRR has been filed with the SEBI to show that all investors have been repaid, the offence obviously continues. The offence comes to an end with the payments to the investors and the submission of the WRR with the SEBI and its acceptance by the SEBI. In these circumstances, since no WRR had been submitted to the SEBI by the accused till the filing of the complaint, the complaint is certainly not barred by time.

AM. 34. The defence has sought to escape liability by arguing that the complaint was silent about the roles of the Directors. Reliance has been placed on judgements dealing with cheque dishonour cases. No doubt the language used in S.27 of the SEBI Act is the same as has been used in S.141 of the Negotiable Instruments Act. But there are major differences between the two statutes and the offences they create, which cannot be ignored.



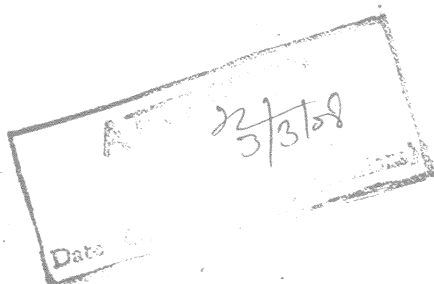
35. Section 12(1B) provides that no person shall sponsor or cause to be sponsored or carry on or cause to be carried on any Collective Investment Scheme unless he obtains a certificate of registration. The proviso allows those CIS operating in the securities market immediately before the Securities Law (Amendment), Act 1995 to continue operations till such time regulations are made. The section clearly does not limit the responsibility to Directors incharge of the affairs of the Company. It refers to "any person" who "causes" the "carrying" on of a CIS Scheme. That is why sponsors and promoters who may not be actually running the company are still governed and bound by the regulations and orders of the SEBI Chairman. There is no such provision in the Negotiable Instruments Act. The offence is created by Section 138 which refers to only the drawer and drawee of a cheque. Hence, it is not as wide in scope as Section 12 (1B) SEBI Act, 1992.

36. It has to be kept in mind that when the SEBI issued its initial public notices in November and December, 1997 it not only declared that all Agro and Plantation Bonds would be covered by the SEBI Act, 1992 as CIS defined u/S 11, but also sought information from the CIS to enable them to obtain benefit u/S 12(1B) i.e. either to obtain registration or to continue operations till the regulations were notified. When the accused responded to the public notice, they bound themselves to the regulations as well, which were subsequently notified. The responsibility on the accused no.2 and 4 as sponsors and promoters following from Section 12(1B) continues to attach to them. They are bound to comply with the



regulations 73 and 74 regarding winding up and repayment. The regulations having been formulated U/S 30 of the SEBI Act, 1992 have necessarily to be read in the context of Section 12(1B) of the Act of 1992. Therefore, when the accused had themselves furnished their details to the SEBI describing themselves as Directors (& thus persons causing the carrying on of a Collective Investment Scheme) the presumption of the SEBI that they were responsible for the commission of the offence will have to be rebutted by the accused by proving the applicability of the proviso to Section 27(1) of the SEBI Act. Such a situation does not exist under the Negotiable Instruments Act.

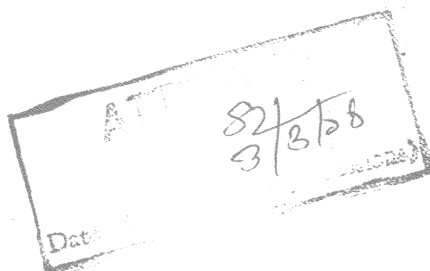
37. Going further, in case of the dishonour of a cheque, which has been issued in the course of a business dealing, it is reasonable to believe that the complainant would be aware as to who were in charge of the affairs of the company and with which of the Directors they had been dealing with, in respect of the transaction. Here the SEBI being a regulatory body has to rely only on the information furnished to it by the accused themselves in response to the demand of the SEBI for such information. Even if it was to have checked with the ROC, it would still not have obtained any information as to which Director was discharging what exact function, since no company furnishes such detailed information to the ROC. When a statutory, regulatory body calls for information, the presumption is that true and correct information would be submitted by persons called upon to do so. The SEBI would have no occasion to doubt the truth till such fact is revealed. So if the accused no.2 to 4 have been



merely described as Directors of the Company, that description, rests on the information provided to the SEBI by the accused and they are bound by the same. The argument that the SEBI should have not relied on the information submitted by the accused is spurious. If the accused have filed incorrect information with the SEBI, they will have to face the consequences. Therefore in such cases the cited judgments which all relate to the Negotiable Instruments Act are inapplicable.

38. The nature of the offence is also to be kept in mind. A cheque relates to a private transaction. A cheque is issued in connection with or in the course of a business transaction between two private parties. A complaint is thus filed in connection with a private transaction. That is not the case here. The offence committed and the complaint filed is in relation to public transactions involving the interest of the public at large. The public themselves as investors, in most cases would not have had a direct and personal dealing with the accused companies. To them the company would be faceless as are the investors to the company. Gullible people invested small or large sums, as per their capacity for promised high returns. Had the companies really carried out their promises, there would never have been an occasion for the investors to meet anyone in the company. Post and e-transfers would have ensured that the promised returns reached them. In case of a cheque, even when the cheque is honoured private and personal dealings continue but here once the investment is returned all dealings cease.

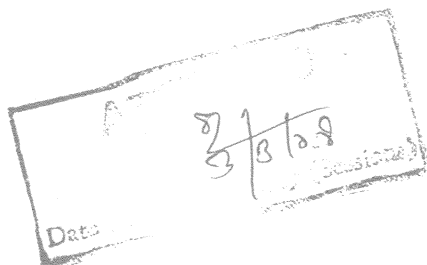
39. This basic difference in the nature of the cases also takes such



complaints out of the purview of the judgments relied upon by the Defence counsel. The very spirit of the law and its purpose would be defeated if such interpretation as is sought by the defence was to be accepted. The companies who are at least being compelled through these prosecutions to pay their investors would go scott free leaving innocent individuals, waiting for the promised massive returns after ten and twenty years, in the lurch. When it is difficult even now to trace out many such companies with the lapse of only a few years what would have happened in the absence of SEBI control on the frauds being played in the capital market is easily imagined. It is for these reasons but with due respect, that I find it appropriate to conclude that the judgments rendered by the Hon'ble Apex Court and the Hon'ble High Court are not applicable to the complaints filed by the SEBI against companies running collective investment schemes.

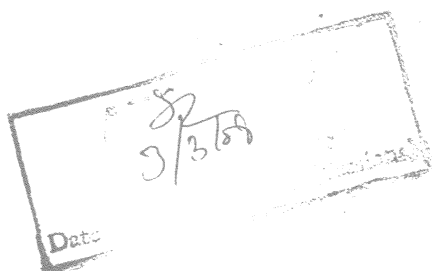
40. In the context set out above, keeping the nature and purpose of the enactment in mind, Section 27 of the SEBI Act, 1992 has to be interpreted with Section 12(1B) in mind. Thus, even if the language used in Section 27 SEBI Act is pari materia with those in other enactments, the nature of offences and the wider scope of responsibility make it imperative that at least in such complaints, the proviso to S.27 SEBI Act 1992 cannot be rendered redundant and it will have to be the accused alone upon whom will lie the burden of proving that the offence had been committed without his knowing and despite exercise of all due diligence.

41. It is not as if the accused have never been given an opportunity



before even the prosecution was launched to make their position clear. The accused got their first opportunity when the SEBI had called upon all the companies conducting Collective investment schemes to disclose all details of the Directors/ Sponsors/ promoters of the company. The accused could have while giving the names of the directors qualified the information by describing the roles assigned to each of them. But they did not chose to do so. When it was the time to obtain benefit of the provision of S12(1B) the accused were happy doing one thing and when they have become open to prosecution under the very same Act, they are seeking exclusion from responsibility. No one can be allowed to change stance to suit the need of the hour. Thus if the accused declared themselves to be Directors in Ex. CW1/1 they cannot claim immunity because the complaint does not specify their role. As CW1 explained, the SEBI has relied on the very information provided by the accused and if they acted in the belief that all the accused being directors of accused no.1 were responsible for the affairs of the company, it cannot defeat the complaint.

42. In the present case, the accused Suresh Kumar has admitted that he and the other two accused Darshana Devi and Pranto Verma were the Directors of the company. Therefore no such argument ought to have been raised that the complainant had failed to discharge the initial burden of proving that the accused were all directors of the company. It was for the accused to show how they had no role to play in the affairs of the company. That the accused have failed to prove. The accused Pranto Devi claims she had merely signed papers cleverly suppressing what those

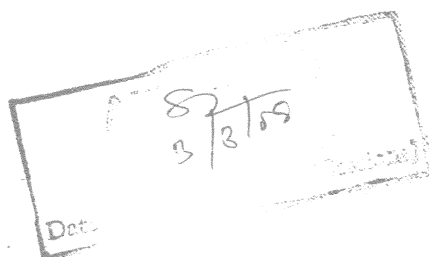


papers had been. There is no reason to presume in her favour that those papers may not have been connected with the running of the business. Darshana Devi, accused proclaimed her lack of interest in the affairs of the company. Then where was the due diligence on her part to prevent the violations? The contentions seeking acquittal on the ground that the role of the Directors have not been specified are liable to be rejected and are therefore, rejected.

43. The accused have taken a plea that they had already repaid investors by March, 1999 and were thus liable under the Regulations, either under new Schemes or under existing Schemes. The accused Suresh Kumar was examined as a defence witness and it is he who has stated that the company has refunded all payment to the investors between 1.4.98 and 31.3.99 through cheques and by cash. He placed on record the certificate of the Chartered Accountant and a list of investors and the bank statement of account. He has also filed vouchers and an affidavit. On the basis of all these documents, learned counsel for the accused argued that the accused had proved repayment.

44. The certificate of the Chartered Accountant Ext.DW1/1 states that the Chartered Accountants had verified the payments made to the depositors without referring to the material upon which and the manner in which such verification had been carried out. Therefore, this certificate is unreliable to conclude that the accused had repaid the investors prior to the coming into force of the Regulations.

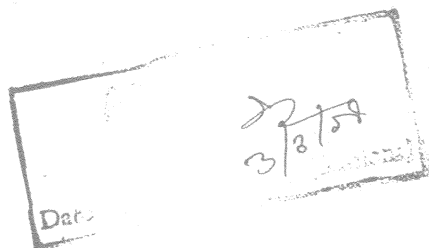
45. An interesting aspect of the case is that while the accused



including DW1 have claimed repayment to investors the learned defence counsel has argued that the company had only obtained loans. Even more interesting is his submission that after having obtained the money from the investors as loans the money had been returned to the investors as loans by the company and since no amount had been repaid to the company nothing remained payable to the investors. The investors of the accused company seem to be a set of fools if this argument is to be accepted for no one would give their money to someone else and allow the latter to lend it back at a profit to himself. In fact these submissions cast serious doubt on the authenticity of the documents reflecting alleged repayment.

46. It is in this background that the admission of DW1 accused that they had prepared the list of investors and the affidavit to reflect payments to his mother and other near relatives is to be viewed with suspicion. As regards the bank statement Ext.DW1/4 its authenticity has not been proved particularly in view of the absence of the certification under the Bankers Book of Evidence Act, even if they be computer extracts.

47. The accused DW1 claimed during cross examination that he did not get the company's accounts audited from the year 2000 to 2006 because he lived in a village and because he had suffered an accident. However, the present prosecution has encouraged him in that direction. However, even till date the accused have not submitted to the SEBI the winding up and repayment report in the prescribed format. It has been underlined by the Hon'ble Supreme Court that where the statutory requirements have to be met in a particular manner and format,



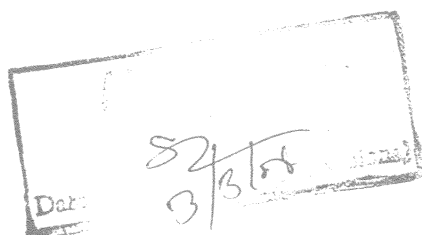
compliance would be only when the requirements are fulfilled in that prescribed manner and in no other manner. The disinclination of the accused to do so seems to stem from the possibility of scrutiny by the SEBI. Had the accused actually made repayments there should have been no hesitation to comply with the Regulation 73 and 74 and submit the repayment report to the satisfaction of the SEBI. The satisfaction of the SEBI is important for the simple reason that the Regulations have come into effect only for investor protection.

48. From the evidence on record, it is also apparent that the accused had initially responded to a public notice. Public notices were issued to bring to the notice of all defaulters that compliance of the Regulations was required. However, this time the accused chose not to comply. The accused can not pick and choose for themselves the public notices such as suited them for compliance and failing to comply with the main requirement under the Regulations for submission of winding up and repayment report.

49. Thus, it is clear that the accused were all responsible for the violations of the regulations of the SEBI and have failed to comply with the same. They are, therefore, liable for the violations.

CONCLUSION:

50. I, therefore, hold the accused company Himachal Paryatan Avam
 AM • Krishi Vikas, its Directors/accused Sh. Suresh Kr Barwal Smt. Darshna
 19 Devi and Smt. Pranto Verma 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. They are
entitled to be heard on sentence.

Announced in the Open Court.
Dated: 3.11.06

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

Copy given to the convict
in open court at. for
on 7/11/08.

S. 11/11/08

- (i) *S. J.*
- (ii) *Darshan*
- (iii) *P. Veerama*

