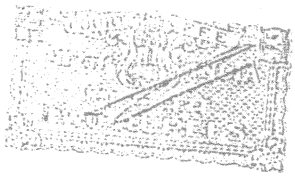
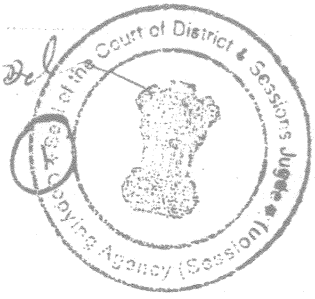
In the court of Ms. Madhu Jain ASJ Delhi





IN THE COURT OF MS.MADHU JAIN, ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, DELHI.

Complaint Case No. ____ of 2005.

538/05
3/6/05

IN THE MATTER OF :

Securities & Exchange Board of India (statutory body established under the provisions of Securities and Exchange Board of India Act, 1992) having its Head Office at Mittal Court B Wing, Nariman Point, Mumbai represented by Ms.Jyoti Jindgar, Deputy General Manager.

C-3 0240/Raj045/2005

... ... Complainant

Versus

(1) M/s Pace Forest India Limited
Pushpanjali Complex,
Shahi Market, Cinema Road,
Gorakhpur 275001.

(2) Shri Sailesh Kumar Gupta
son of Shri Prem Chand Gupta
resident of :
C 184/ 298, Turkmanpur,
Gorakhpur-273001.

(3) Smt.Radha Gupta
wife of Shri Sheonarain Gupta
resident of :
298, Turkmanpur,
Gorakhpur-273001.

(4) Smt.Indra Raina
wife of Shri Deepak Raina
546, Kauua Bagh,
Railway Colony,
Gorakhpur.

(5) Shri Sanjay Kumar Gupta
son of Shri Prem Chand Gupta
resident of :
C 184/ 298, Turkmanpur,
Gorakhpur-273001.

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(6) Shri Somnath Muju
son of PT Jia Lal Muja
resident of 546, Kauua Bagh,
Railway Colony,
Gorakhpur.

(7) Shri Ashish Gupta
son of Shri Sheonarain Gupta
resident of :
298, Turkmanpur,
Gorakhpur-273001.

... ... Accused

COMPLAINT UNDER SECTION 190 READ WITH SECTION 200 OF THE CODE OF CRIMINAL PROCEDURE, 1973 FOR VIOLATION OF SECTIONS 12 (1B) AND 11 B OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT AND REGULATIONS 68 (1), 68(2), 73 AND 74 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (COLLECTIVE INVESTMENT SCHEMES), REGULATIONS, 1999 PUNISHABLE UNDER SECTION 24 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

Most respectfully sheweth :-

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12.2006

Present: All accused are present with counsel. SR A. Aggarwal for SEBI.

Vide separate order the accused no.1 company M/s Pace Forest India Limited, its Directors/accused: Sh. Shailesh Kumar Gupta, Smt. Radha Gupta, Smt. Indra Raina, Sh. Sanjay Kumar Gupta, and Sh. Ashish Gupta has been sentenced to a fine of Rs.25,000/- each. On failure to pay the fine M/s Pace Forest India Limited, its Directors/accused Sh. Shailesh Kumar Gupta, Smt. Radha Gupta, Smt. Indra Raina, Sh. Sanjay Kumar Gupta, and Sh. Ashish Gupta shall undergo simple imprisonment for three months.

On deposit of fine the personal bonds and surety bonds of accused shall stand cancelled and sureties are discharged.

File be consigned to the records.

Asha Menon

Announced in the Open Court (ASHA MENON)

Dated:9.12.06. Addl. Sessions Judge: Delhi.

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

CC 199/05

SEBI Vs. M/s Pace Forest India Ltd. & Ors.

SECURITIES & EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head Office at Mittal Court, B-Wing, 224, Nariman Point, Mumbai 400 021 represented by its Legal Officer, Sh. Sharad Bansode.

VERSUS

1. M/s Pace Forest India Limited
   Pushpanjali Complex,
   Shahi Market Cinema Road, Gorakhpur-275001.

2. Sh. Sailesh Kumar Gupta
   S/o Sh. Prem Chand Gupta,
   R/o C184/298 Turkmanpur,
   Gorakhpur-273001.

3. Smt. Radha Gupta W/o Sh. Sheonarain Gupta
   R/o 298 Turkmanpur,
   Gorakhpur-273001.

4. Smt. Indra Raina W/o Sh. Deepak Raina
   R/o 546, Kauua Bagh, Rly Colony, Gorakhpur,

5. Sh. Sanjay Kumar Gupta
   S/o Sh. Prem Chand Gupta
   R/o R/o C184/298 Turkmanpur,
   Gorakhpur-273001.

6. Sh. Somnath Muju S/o Pt. Jia Lal Muju
   R/o 546, Kauua Bagh, Rly Colony Gorakhpur (Died)

7. Sh. Ashish Gupta S/o Sh. Sheonarain Gupta
   R/o 298 Turkmanpur,
   Gorakhpur-273001.

....Accused

JUDGMENT

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This complaint has been filed by the SEBI against the aforesaid accused being the company and its directors for violations of the SEBI Act 1992 and the SEBI (Collective Investment Schemes Regulations) 1999.

2. The brief background as is necessary for the disposal of the case may be stated. The Government of India passed the Securities and Exchange Board of India Act in 1992 and established the Securities and Exchange Board under the said Act (hereinafter referred to as SEBI) with the aim of providing protection of the interests of investors in securities and promote the development of and regulate the securities markets. S.11(1) of the Act provides for the duties of the Board. It was noticed by the Government that a large number of private entrepreneurs were undertaking plantation activities, raising the funds from ordinary investors from the capital market, themselves investing only frugal amounts in such ventures. It was also noticed that in order to entice investors, these schemes promised very high returns. What was more concerning was the fact that the initial success of such schemes led to the mushrooming of such activities all over the country.

3. It was in this background that the Government of India decided that it had become necessary to regulate the activities of all those entities which were floating Agro and Plantation Bonds. By means of a Press release on 18.11.97, the Government first notified its intention to regulate this market by informing all those involved in such activities that schemes relating to Agro and Plantation Bonds would henceforth be treated as Collective Investment Schemes as defined under the SEBI Act 1992. This meant that all such

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schemes were to be governed by the provisions of S.12(1) B of the Act. The entities were put on notice that regulations were to be issued for the running of such collective investment schemes and those entities who desired to take the benefit of the interim arrangement as provided under S.12 (1B) of the Act should furnish to the SEBI all details of the company, its schemes and its promoters and directors.

4. Thereafter, the Regulations were brought into force on 15.10.99. Under the regulations, stiff conditions have been prescribed for obtaining registration without which no collective investment scheme could be carried out. The regulations also provided that entities who were not seeking registration had to circulate information memorandum to its investors and repay the investors and wind up the schemes and submit a repayment and winding up report to the SEBI to its satisfaction. Violation of these regulations has been made punishable under S.24 read with S.27 of the SEBI Act 1992.

COMPLAINT

5. According to the averments in the complaint, the SEBI had first issue a press release dated 18.11.97 conveying that entities issuing instruments like agro bonds, plantation bonds etc would be treated as Collective Investment Schemes under the SEBI Act, 1992. it is also stated in the complaint that regulations for investor protection and promotion of legitimate investment activity were notified on 15.10.99. The accused company had raised Rs.4.40 lacs from the general public. It is stated in the complaint that under chapter IX the accused were required to apply for registration but they failed to do so.

6. It is alleged that after the coming into force of the

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Regulations in 1999, the SEBI had sent registered letters in December 1999 at the address of the company. Public notice was also issued on 22.2.2000, in order to inform the accused of the obligations that existed under the regulations, calling upon them to comply with the same. However, the accused neither applied for registration nor took any steps for winding up its schemes and making repayments to its investors. It has been submitted in the complaint that time was extended for apply for registration till 31.3.2000 and upto 28.5.2000 for repayment to the investors vide press releases dated 27.3.2000 and 31.3.2000.

7. It is alleged in the complaint that the accused failed to register with the SEBI. Therefore, under the Regulations, 73 & 74, the accused were issued show cause dated 12.5.2000 and reminder dated 31.7.2000 enclosing the format for submission of winding up and repayment report which returned to the SEBI refused. On 7.12.2000 the SEBI Chairman directed the accused Company to refund the money collected from investors to the investors within a period of one month from the date of these directions. Since the company failed to comply with these directions and had also not sought registration with the SEBI, the complaint has been filed for violation of Regulations 5 (1), 68 (1), 68 (2), 73 & 74 of the SEBI (CIS) Regulations 1999 punishable under S.24 r/w S.27 of the SEBI Act 1992.

8. Vide orders dated 3.6.2001, the accused were summoned to face trial. The notice of allegations was served to the accused under S.251 Cr.P.C on 9.12.2005, to which the accused pleaded not guilty. The complainant has examined only one witness Smt. Jyoti Jindgar. After the statements of the accused were recorded under S. 313

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Cr.P.C. the accused have examined the accused Sanjay Kumar Gupta as the sole witness in their defence.

EVIDENCE

9. As CW-1 Smt. Jyoti Jindgar has deposed to the issuance of the press release on 18.11.97, by the Government of India directing that bonds which were in the nature of Agro and Plantation bonds issued by the companies would be treated as Collective Investment Schemes as stipulated under S-11 of the SEBI Act, 1992. She deposed to the second press release issued by the SEBI calling upon the companies running collective investment schemes to submit details to the SEBI relating to the funds mobilized, names of directors/promoters, in case they were desirous of obtaining benefits under S.12(1B) of the Act.

10. The CW-1 deposed that pursuant to this press release and public notice the accused company had submitted their details vide their letter Ex.CW-1/1 received by the SEBI on 16.1.98. She deposed that the subsequent letter dated 11.11.98 sent to the company by the SEBI returned undelivered. Thereafter the SEBI obtained the address of the company from the ROC Kanpur and the address of the company was found to be at C/184/298. The witness deposed that the SEBI sent a letter at this address alongwith previous letters sent at the earlier address but the same returned undelivered to the SEBI.

11. The witness deposed further that after the notification of the Regulations on 15.10.99, a public notice was issued on 20.10.99 and the company was sent specific letter dated 21.10.99 by registered post to inform them about the notification. She deposed that the letter returned to the SEBI with the report that receipt was refused by the recepient.

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She deposed that in terms of Regulations 73 and 74 the company was required to apply for registration or wind up its operations. It was also required to circulate information memorandum to its investors and to repay them. The accused was also required to submit the winding up and repayment report within five and a half months to the SEBI. The witness stated that the accused company had been sent these regulatory obligations vide letters dated 10.12.99 and 29.12.99. Neither the letters returned back to the SEBI nor did the company respond to them.

12. She deposed that these requirements were also communication vide public notice dated 10.12.99 published in the Hindustan Times on 19.12.99. She stated that vide the notice SEBI had intimated all the persons running collective investment schemes of their obligations under the Regulations in case they were not to apply for registration and were warned that in case they failed to do so, further action including debarment and prosecution would follow.

13. CW-1 Smt. Jyoti Jindgar deposed further that as the accused company neither applied for registration nor intimated regarding the winding up of their schemes, show cause dated 12.5.2000 was issued to it. The witness stated that the letter returned undelivered to the SEBI. Vide letter dated 31.7.2000 the SEBI forwarded the format for submission of the winding up and repayment reports to it which returned to the SEBI refused.

14. The witness stated that as the company failed to comply with the regulatory provisions the company was directed by the SEBI Chairman vide orders dated 7.12.2000 to repay its investors as per the original terms of offer within one month of the date of the order. The order was

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communicated vide letter dated 18.12.2000. The witness deposed that the contents of the order issued by Chairman SEBI U/S 11 of SEBI Act was also published in leading National and Vernacular Newspaper on 14.1.01. The witness deposed that a public notice dated 10.12.99 had been published in the Hindustan Times on 19.12.99 bringing to the notice of all concerned their obligations under the Act and the possibility of further action such as debarment and prosecution in case of failure to comply.

15. The witness deposed that pursuant to the SEBI Order dated 7.12.2000 the company vide letter dated 10.1.2001 submitted an interim repayment report indicating that out of Rs.4.4 lacs raised, Rs.0.74 lacs has been repaid. The witness deposed that the SEBI however had intimated the company vide letter dated 9.3.01 that it had failed to comply with the directions issued by chairman SEBI and had thereby rendered themselves liable for further action by the SEBI. The witness further deposed that the company did not respond. Witness also deposed that the company had not provided the details of its directors/promoters and the same had been obtained by the SEBI from ROC Kanpur and the details were to the effect that the first directors of the company were Sh. Shailesh Kumar Gupta, Smt. Radha Gupta, Smt. Indra Raina (who had resigned on 20.3.01) and Sh. Ashish Gupta (who was appointed on 20.3.01). The promoters were Sh. Shailesh Kumar Gupta, Sh. Sanjay Kumar Gupta, Smt. Radha Gupta, Smt. Indra Raina and Sh. Som Nath Mujju.

16. The witness was cross examined by the Ld. Counsel for the accused. During her cross examination the witness stated that Ex. CW-1/2 dated 11.11.98 had been sent at the

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address mentioned in the letter and the same had returned undelivered. She deposed that the letter Ex. CW-1/A had been sent at the address obtained from ROC but that she had not brought that letter addressed by the ROC to the SEBI furnishing addresses. She further stated that Ex. CW-1/14 was the first reply received from the accused company which had also borne the address furnished by the ROC. She stated as correct that all correspondence were addressed to the company's address and no specific letters had been returned to the directors. She deposed that she was not aware whether the office had shifted on 19.9.2000. She admitted that the ROC had informed that Smt. Indra Raina had resigned on 22.3.01. The witness further stated that the company had filed a WRR and explained that the WRR submitted had not been in compliance with the directions of the chairman SEBI and the accused company had been advised to submit full compliance. She brought on record the correspondence in this regard as Ex. CW-1/D1 to D4.

17. The accused examined only one witness being one of the accused namely Sanjay Kumar Gupta, DW-1. DW-1 deposed that he has started the company in September 1996 and they had started collecting money from the investors from 1996 November onwards. He deposed that the office of the company was at Shahi Market, Gole Ghar, Gorakhpur. He deposed that thereafter, they had purchased land with the amount received from the investors for plantation and agricultural purposes. He deposed that they had received a letter dated March 1998 from the SEBI after which they had stopped collections in March 1998 itself. The witness stated that they had written letters to investors informing them to exercise their option of taking back their investments or

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continuing with it. DW-1 deposed that as the investors wanted their money back they were repaid.

18. DW-1 deposed that they had been filing the balance sheets every year with the SEBI. He placed on record the certified copies of the balance sheets for the period 1999 to 2002. He deposed that they also disposed of land to repay investors and placed on record a photocopy of the Sale Deed. He placed on record the vouchers in respect of repayment. He deposed that they had shifted the office premises on 18.9.2000 and had informed the ROC. He deposed that the company had received a letter from SEBI only in the year 1997 which had been duly replied and the second letter received from the SEBI was dated 18.12.2000 which was duly replied in January 2001. The witness stated that after appearing in the Court the winding up report had also been filed as per the directions of the SEBI. The witness stated that no investor had complained against them.

19. During his cross examination DW1 Sanjay Kumar Gupta deposed that the land mentioned in the sale deed Ext.DW1/D1 had been purchased in April, 1997 from the money paid by the investors and the amount paid was approximately about Rs.3 lacs. He admitted as correct that the original sale deed had not been produced by him in respect of the purchase of the land. He admitted that the land had been purchased from out of the funds of the company/accused no.1. He further deposed that the land in question had been sold in the year 2002 and the consideration for the sale of land had been received during the period 2000-2002 on various dates. He admitted as correct that Ext.CW1/D1 did not mention that any amount had been received prior to the execution of the sale deed. The

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witness explained that the description given after the name Shailesh Kumar Gupta, as Managing Director of the company itself indicated that the land belonged to the company. He denied the suggestion put to him that the land in Ext.CW1/D1 was his personal property and did not belong to the company. He denied the suggestion that no amount had been received in respect of the land mentioned in Ext.CW1/D1 prior to 11.4.2002 and as such no documents had been filed in respect thereto. The witness further deposed that even on 11.4.2002 at the time of execution of the sale deed some amount had been received but he was not able to recall the exact amount. The witness stated that the amount that had been received on 11.4.2002 had also been utilized to pay the investors and the amount paid to the investors had been made after the sale of the land. He further admitted as correct that as per the winding up report dated 20.3.06, the last payment had been made on 20.3.02. He denied the suggestion that the vouchers were forged and fabricated documents. He deposed that the letter Ext.DW1/C had been distributed by hand and information had also been given verbally since the investors had been close friends and relatives. He further stated that the response to this letter had been received verbally and no response in writing had been received from the investors. He admitted as correct that as per Ext.DW1/D2 as on 31.3.01 a sum of Rs.3,49,500/- was due and payable by the company to the investors.

20. The witness further admitted as correct that he had not filed in the court balance sheet and returns of the company after 31.3.2001 and for the period prior to 31.3.99. He admitted that no interest or profit had been paid to the

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investors and explained that the investors themselves had agreed for repayment without interest as they were family friends and relatives. The witness stated that no winding up report had been filed with the SEBI since they had been under the impression that the same was to be filed with the ROC and it had been only after coming to the court that they had come to know that the winding up report was to be filed with the SEBI. He claimed that till coming to the court he had not been aware that any rules or regulations have been violated. He admitted that the auditor's report for the year ending 30.3.01 Ext.DW1/D1 did mention specifically in paras 1 to 3 and 13 that the company had not complied with various regulations under the SEBI (Collective Investment Scheme) Regulations, 1999. The witness admitted as correct that vide Ext.CW1/02 they had undertaken to the SEBI to submit the copy of the consent of the investors if required.

21. The witness further deposed that the premises bearing no.C/184/298 Turkmanpur, Gorakhpur was rented premises and Sh. S.N Gupta was owner of that premises. He stated that Sh. S.N. Gupta was his father's younger brother. He refuted the suggestion that the accused company had been functioning at C/184/298, Turkmanpur, Gorakhpur prior to September, 2000. The witness stated that prior to September 2000 his uncle Sh. S.N. Gupta was in occupation of the premises for about 30 years. He denied that this was the address that the company had furnished with the ROC Kanpur. He denied the suggestion that they had deliberately avoided to receive the letters issued by the SEBI at C/184/298 Turkmanpur Gorakhpur. He denied the suggestion that repayment report submitted by them with the SEBI in March, 2006 was incorrect and that investors

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had not been repaid. He denied the suggestion that he had mis-utilized the funds of the company by purchasing the property in his personal name. He denied the suggestion as incorrect that the winding up report dated 20.3.2006 was not as per the regulations of the SEBI. He denied the suggestion that they had deliberately and intentionally not filed the consent of the investors either with the SEBI or in the Court.

22. This constitutes the entire evidence that has been brought on the record by both sides.

CONTENTIONS

23. The learned counsel for the SEBI Sh. Ashish Aggarwal had sought to file the written arguments today which was opposed by Sh.Vinod Trishal. However, in the interest of justice I had permitted Sh. Ashish Aggarwal to submit in brief his oral arguments. Sh. Vinod Trishal had also been heard in response to the submissions of Sh. Ashish Aggarwal.

24. Learned counsel for the SEBI has submitted that the accused have sought to exclude liability on ground that they had repaid the investors. However, according to the learned counsel the claim of repayment was liable to be rejected. Learned counsel has pointed out that the sale deed dated 11.4.2002 whereas in the auditor's report it is claimed that the repayments had been effected by 20.3.2002. The learned counsel has submitted that though the vouchers had been placed on the record, no pass book has been produced by the accused. It is submitted that the accused have not submitted the winding up and repayment report to conclusively prove repayment. Therefore it is prayed that the accused be convicted.

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25. On behalf of the accused learned defence counsel has submitted that the complaint was time bared and on this short ground the complaint ought to be dismissed. The learned counsel has submitted that even though vide order dated 11.11.05 this court had condoned the delay in filing the complaint since the evidence did not substantiate the claim of the SEBI that investigation had consumed time, this court should dismiss this case on grounds of delay. The learned counsel has submitted that the evidence showed that no officer had investigated the company and no official of the SEBI had ever visited the company till date. It was submitted that the evidence disclosed that no complaint had been received by any authority including SEBI against the company or the directors as filed by the investors or any other third party.

26. The learned counsel has submitted further that the company had received only letter dated 7.12.2000 and the company had replied to this letter vide Ext.CW1/14. Learned counsel submitted that in the reply to the SEBI the accused had pointed out repayments had been effected by the year 2000. It was further submitted that the evidence clearly proved that the accused had not received any letters sent at the Pushpanjali Complex except for the letter dated 5.3.98 and one letter at the Turkmanpur address. The learned counsel submitted that the accused company had duly informed the ROC regarding the shifting of the company and therefore, the accused company had no malafides. Learned Counsel has argued that all balance sheets have been filed which reflected that proper accounts were being maintained by the company. Learned counsel has submitted that though a a major portion of the investors had been repaid in the

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year 2000 whatever balance remained had been repaid in the year 2002 after disposing of property and from out of the consideration of the sale deed which had been received prior to the execution of the sale deed. The learned counsel has submitted that the atmosphere in Gorakhpur discourage people from carrying large amounts to the sub-registrar's office and that was why payments had been received prior to the execution of the sale deed. Learned counsel submitted that the difference between 20.3.2002 when the last payment was made and the date of execution of sale deed i.e. 11.4.2002 was not so great to disprove repayments.

27. The learned counsel has submitted that since the company had been required to make repayments by March 31st, 2000 and while the company had started repayments in 1999 the company had no need to apply for registration. The learned counsel has submitted that the wringing up and repayment report was finally filed in March, 2006 annexing a list of 77 investors and the receipts of the investors. Learned counsel submitted that all investors were friends and family members with no outsiders. Hence payment had been made in cash since at that point of time there had been no faith in cheques. Hence it was submitted that the receipts reflected full repayment. In the light of all these facts the learned defence counsel has submitted that the accused were entitled to be acquitted as no rules and regulations have been violated by them.

FINDINGS

28. It is not possible to reopen the question of delay, once the matter stands settled by the order dated 1.11.05 which was never challenged by the accused. Nevertheless, the submission of the Ld counsel in this regard is noticed only to

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record a rejection. Since the issue of delay was disposed of condoning it, the complainant could not have been expected to bring on record any evidence to explain the delay in the filing of the complaint. Therefore to say that the complainant did not prove how much time was consumed during investigation and to seek the dismissal of the complaint on this ground is misdirected and misplaced . Irrespective of the absence of such evidence, it may be observed that the very fact that the accused have themselves furnished a winding up and repayment report in March, 2006 to the SEBI, is an acknowledgment that under the Regulations of 1999, the violations continue till the filing of the WRR as required to the satisfaction of the SEBI. The offence is in fact a continuing one. There is no occasion to dismiss the complaint as time barred.

29. The learned counsel for the accused has sought to exclude the liability of the accused on the ground of lack of knowledge of the regulations and the need for compliance as well as the absence of any investor complaint which is juxtaposed with repayments made. Neither of the pleas are convincing. On neither ground can the accused be acquitted.

30. Ignorance of law is no defence. That apart when the default can be clearly ascribed to the wanton act of the accused there can be no cause to excuse the accused from liability under the regulations. The accused have themselves admitted to have responded to the public notice issued by the SEBI in Dainik Jagran as the letter dated 13.1.98 Ext.CW1/1 states as much. This letter is signed by Shailesh Kumar accused. The letter refers to the public notice of 18.12.97. Vide this notice, as deposed to by the CW1, the companies running Collective Investment Scheme were

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required to file information with the SEBI regarding their scheme, funds mobilized, the names of directors/promoters in case they were desirous of obtaining benefits of Section 12 (1B) of the SEBI Act. Section 12 (1B) provides for an interim arrangement pending registration. It provides for the regulations of the business activity in respect of Venture or Collective Investment Scheme requiring that in future such activity could be carried out only with registration and till such times regulations are made under Clause d of sub Section 2 of Section 30 the entities conducting business could continue to do so.

31. This was sufficient to put the accused company on notice that regulations would govern the running of Collective Investment Schemes. Thus, any subsequent notice seen in the newspapers in ordinary course would have aroused sufficient curiosity or interest in the accused directors which would have reminded them of their obligations under the SEBI Act, 1992 and SEBI (CIS) Regulations, 1999. When the accused could notice the SEBI advertisement of 1997 and respond to it vide letter dated 13.1.98, it is impossible to believe that they would not have seen the subsequent public notices issued by SEBI dated 20.10.99 and 10.12.99 or the further publication of 14.1.2001.

32. The accused have contended that they had shifted their office in September, 2000 and had informed the ROC about this shifting. According to the balance sheets submitted by the accused which are Ext.DW1/1 to D3 the accused company was conducting its business from Shahi Market, Cinema Road, Golcghar, Gorakhpur which was the address mentioned in their letter to the SEBI dated 13.1.98

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Ext.CW1/1. The company's business according to the accused continued from this premises till 18.9.2000. If that was so there would have been no occasion for the letter sent by the SEBI on 11.11.98 at the Pushpanjali Complex. Shahi Market Cinema Road office of the accused . to return with the report "Dukan Bahut Dino Se Band Para hai". Moreover CW1 has deposed that when this letter returned undelivered back to the SEBI, the SEBI had confirmed the address from the ROC Kanpur which provided the address of C/184/298 Turkmanpur, Gorakhpur to the SEBI. However, the letters sent at this latter address returned "refused".

33. According to the accused they had shifted to C/184/298 Turkmanpur w.e.f. 19.9.2000 and had informed the ROC Kanpur vide Ext.DW1/G enclosing the form 18. However, the SEBI had sent the letter dated 23.12.98 at the Turkmanpur address having obtained the information from ROC Kanpur. Clearly the accused are suppressing the truth. Unless and until they had informed the ROC in 1998 about the Turkmanpur address, the ROC Kanpur could not have provided this address to the SEBI in August, 1998. The ROC has not provided a fictitious address for. the accused as DW1 has admitted that C/184/298 Turkmanpur Gorakhpur is their office address. They only claim that they shifted into these premises in the year 2000 which appears false on the record.

34. It is also significant to note that DW1 accused Sanjay Kumar Gupta has admitted that this address C/184/298 Turkmanpur Gorakhpur belongs to his uncle (chacha) as owner. He has also admitted that for 30 years the premises had been in the possession of the said uncle. There appears no ill will between the uncle and nephew particularly so

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because DW1 has deposed that the company was a tenant of his uncle, albeit from 18.9.2000 onward. There is no reason to believe that the uncle would have returned all correspondence from a statutory body only to spite his nephew and to put him into trouble. On the other hand, it is reasonable to believe that the accused in order to avoid liability and obligations and to feign ignorance would have willfully refused to receive such communication.

35. Thus, if it is to be believed on the basis of the balance sheet that the company continued to function and also make profit at the Pushpanjali Complex Shahi Market Cinema Road Gorakhpur,the return of the communication of the SEBI from that address appears willful. If on the other hand, it is accepted on the basis of the information given by the ROC to the statutory body i.e. the SEBI that the company had shifted to C/184/298 Turkmanpur Gorakhpur in August, 1998, the return of communications of the SEBI from the second address has also to be attributed to the willfulness of the accused. If the accused assumed to themselves that they need not comply with the regulations as brought to their notice through the publication in newspapers they have themselves opted for the risk of prosecution and as noticed above can not seek to raise the shield of ignorance.

36. With regard to repayment the evidence is just as unsatisfactory. The evidence is full of contradictions and the claim of full repayment lacks credibility. In the first place it is impossible to believe that the 77 investors did not belong to the public and were close friends and relatives of the accused as claimed by the accused and deposed to by DW1. Such a plea also contradicts the contents of the auditor's

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report Ext.DW1/D1 where it is recorded that the company was doing agricultural activities and had accepted deposits from public (para no.6 of the report). This also knocks the bottom of the explanation offered by DW1 in in his cross examination that investors had been repaid in cash because they were not member of the general public.

37. The claim that all 77 investors have been repaid in cash fully also appears sham, for the list of investors shows that certain investors had deposited Rs.75,000/-, Rs.20,000/-, Rs.30,000/- and Rs.10,000/- which are all purported to have been returned in cash. The repayments of Rs.75,000/- to Shakuntla Devi for instance on 12.2.2002 is not corroborated by the cash vouchers placed on the record collectively as Ext.DW1/F since such a voucher is missing. There are other similar examples. However, the purpose here is not to verify repayment but to consider the plea of repayment for purpose of applicability of the regulations and compliance thereunder.

38. The purpose of the regulations was investor protection and compliance under the regulations can be held complete only after the SEBI accepted the winding up and repayment report submitted to it by the accused. The SEBI has not accepted the winding up and repayment report submitted by the accused on 20.3.2006 and re-submitted in July, 2006. The contradictions apart regarding the last payment DW1 accused himself concedes that the last payment was made only in the year 2002 . This means that under Regulation 68 the accused was an existing CIS entity. Under this regulation even those entities which were in existence only for purpose of carrying out the obligations on documents entered into with investors, such as repayment,

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were also governed by the regulations. Thus if the accused took a conscious decision despite knowing that company's Collective Investment Scheme had to be wound up when they had not applied for registration and failed to do so they have to face the consequences of their decision.

39. The evidence produced by the accused in respect of the repayment does not evoke confidence. The letter Ext.DW1/C appears to have prepared for the purposes of this case. The witness claims that this had been distributed by hand and the investors had verbally sought repayment. This is a statement of convenience. The explanation or the difference in the dates of final payment and execution of the sale deed is far from convincing. It does not appear logical that unspecified amounts were paid before the execution of the sale deed without mention of details in the deed itself. The utilization of the land for repayment does not appear conclusive.

40. However, as noticed above the question of repayment could have only help in determining whether or not the regulations were applicable to the accused. Since at the time of notification complete repayment had not been effected clearly the Regulations of 1999 governed the activities of the accused company. Compliance is full and complete only with the acceptance of the WRR by the SEBI which has not occurred in this case. Obviously SEBI would accept the WRR only on being satisfied that investors had been repaid. Even the belated submission of the WRR has not led to complete compliance by the accused.

41. The plea was taken by accused Ashish Gupta that he had joined the company's Board of Directors on 20.3.01 in place of Smt. Indra Raina who had resigned on 20.3.2001.

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Neither can be excluded from liability for noncompliance of the regulations , since Smt. Indira Raina did not ensure the submission of the WRR till 20.3.2001 while Sh. Ashish Gupta let matters stand till the WRR were submitted in March. 2006.

CONCLUSION:

42. I, therefore, hold the accused company M/s Pace Forest India Limited , its Directors/accused Sh. Shailesh Kumar Gupta, Smt. Radha gupta, Smt. Indra Raina; Sh. Sanjay Kumar Gupta, and Sh. Ashish Gupta 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: 7.12.06

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

Copy given to the convicts in open court at 4pm on 9/12/06

9/12/06
(I) Shailesh
(II) Radha Gupta
(III) Indra Raina
(IV) Sanjay Kumar
(V) Ashish Gupta

ATTESTED
15/12/6
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IN THE COURT OF MS. ASHA MENON: ASJ: DELHI.

CC NO.199/2005

SEBI VS. M/s Pace Forest India Ltd and Ors

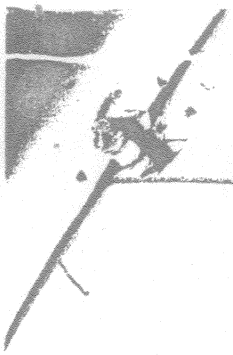
ORDER ON SENTENCE:

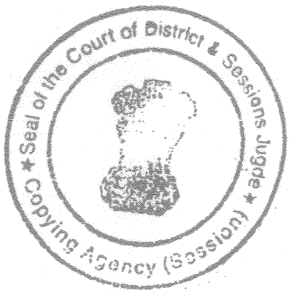
I have heard Sh. Trishal counsel for the accused on the quantum of sentence. Learned counsel submits that the accused have failed in their duties only on account of ignorance. Learned counsel has submitted that the accused had also fully repaid the investors. Hence he has prayed for a lenient view.

I have taken into consideration the submissions made by the leaned counsel for the accused. As discussed in the judgment the acts of the accused appear willful and not as a bonafide mistake. On the one hand the accused responded to an advertisement in the Dainik Jagran and yet at the same time the learned counsel claims that the area was a remote one and hence information did not reach the accused about compliance under the regulations. The refusal to receive communication from the SEBI is also reflected of the attitude of the accused . As ~~sregrd~~ regards the repayments the matter has already been discussed in the judgment showing that no confidence can be placed in the claim of the accused. Admittedly the public money was utilized by the accused to create assets such as land . Yet when it comes to the discharge of obligations the accused are quick to distance themselves. The accused cannot be permitted to benefit from unbridled activities which had benefited only themselves.

In the circumstances, I sentence the accused no.1 company M/s Pace Forest India Limited , its Directors/accused Sh. Shailesh Kumar Gupta, Smt. Radha Gupta, Smt. Indra Raina, Sh. Sanjay Kumar Gupta, and Sh. Ashish Gupta to a fine of Rs.25,000/- each. On failure to pay the fine M/s Pace Forest India Limited , its Directors/accused Sh. Shailesh Kumar Gupta, Smt. Radha gupta, Smt. Indra Raina, Sh. Sanjay Kumar Gupta, and Sh. Ashish Gupta shall undergo simple imprisonment for three months.

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On deposit of fine the personal bonds and surety bonds of accused shall stand cancelled and sureties are discharged.

File be consigned to the records.

Asha Menon.

Announced in the Open Court (ASHA MENON)

Dated:9.12.06. Addl. Sessions Judge: Delhi.

Copy given to the convict in open court at 6pm on 9/12/06

9/12/06

(i) Sheikh

(ii) Radha Gupta

(iii) Indra Rai

(iv) Sanjay Kumar

(v) Ashish Gupta

