

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. Oasis Plantations Ltd. Company incorporated under the Companies Act, 1956, having its Regd Office at SCO 473-7A, Sector-35-C, Chandigarh-160 022.
2. Sh.O.P. Verma S/o Sh.Sandhu Verma, Director of Accused no.1 R/o Kishan Niwas, Circular Road, Solan, HP.
3. Sh. Azim Khan S/o Sh. M.A. Khan, Director of Accused no.1 R/o H.No.B-7, 442, Malerkotla, (Punjab).
4. Sh.Jogar Nath S/o Sh. Bholu Ram, Director of Accused No.1, R/o Village Tonsa, Distt. Ropar (Punjab).

.... 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 Oasis Plantations Limited and against its Directors Sh.O.P. Verma, Sh.Azim Khan and Sh.Jogar Nath.
2. The complaint has been preferred under the Securities and Exchange Board of India Act, 1992 and the rules made thereunder.

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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 upto 31<sup>st</sup> March, 2000.

#### **ALLEGATIONS IN THE COMPLAINT**

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 7<sup>th</sup>, 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

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this letter also intimating that it had mobilized Rs.5.06.720 - in its Collective Investment Scheme. The witness deposed that the letter also contains names of Directors - Sh. C.P. Verma, Sh. Azim Khan and Sh. Jogar Nath.

9. The witness Sh. Rakesh Bhanot further deposed that the SEBI (CIS) Regulations, 1999 were notified on 15.10.99. He deposed that intimation regarding the notification of regulations had intimated to the Company vide public notice dated 20.10.99 and specific letter dated 21.10.99 were sent by registered post. He deposed that this letter returned with the remarks "left without address". The witness deposed that in terms of the regulations the Company was required to apply for registration or wind up its scheme in terms of Regulations 73 and 74 and was further required to circulate information memorandum to its Investors and to repay and wind up its scheme and submit the winding up and repayment report with the SEBI within five and half months. The witness deposed that these were communicated to the Company vide letters dated 10.12.99 and 29.12.99 and both these letters were also returned undelivered to the SEBI. The witness stated that the requirements were also communicated vide public notice dated 10.12.99.

10. The witness further deposed that as the Company neither applied for registration nor intimated regarding the winding up of its

accused wherein the accused have mentioned that they had not raised money from the general public and the money had been collected from the Directors only. He admitted to the filing of the

statutory auditor certificate dated 1.2.2005 alongwith statement of account of PNB with the SEBI and to the submission of the balance sheet of the accused company between 1997 to 2004, by the accused alongwith their letter dated 10.3.2005. He further deposed that no complaint had been received from any member of the general public against the accused company. He deposed that he do not know whether the company had shifted to Taunsa, Punjab from Chandigarh in the year 2001 since the SEBI had not informed about it. He denied the defence suggestion that since the accused had not raised any funds from the public, it was under no obligation to get itself registered with the SEBI or to formulate a scheme for repayment and winding up. He was also unable to affirm or deny that the accused had applied for winding up before ROC Jalandhar or the ROC had sought no objection from the SEBI.

12. CW2 is Jyoti Jindgar. She deposed that in response to the SEBI press release dated 26.11.97 the accused had submitted initial information vide letter dated 8.1.98 that it had mobilized Rs.5,06,720/- under its Investor Fund Schemes. She deposed that on account of the company's failure to comply with the directions issued on 7.12.2000 present prosecution was initiated against the

accused Company by this report. In cross examination the witness stated that it was only on 10.3.2005 that the Company had first submitted clarifications regarding mobilization of funds from the Directors and also denied the suggestion that the complaint was mis-placed and that the accused had not violated any regulations or provisions of the SEBI Act.

### **CONTENTIONS**

13. The accused have submitted their written arguments wherein it is contended that the accused company had never raised any funds from any member of the general public and submitted that the Company had sent information to the SEBI to the effect that it had raised Rs.5.1 lac from the general public on account of mis-interpretation of law. It is further submitted in the written arguments that a sum of Rs.5.1 lac had been generated only on account of issuance of cheque by Sh.O.P. Verma, one of the Directors amounting to Rs.5 lacs drawn on his account no.CA2069 at PNB Solan. It is submitted that this cheque was never encashed as has been affirmed by the Manager PNB Solan vide certificate dated 8.4.05. It is also submitted that the statutory auditor's certificate dated 1.2.2005 also confirmed that no interest was paid by the Company and there was no liability outstanding in the name of the Company under any CIS. It is also submitted that the accused had informed the SEBI that the accused Company had got

directions of the SEBI to wind up their operation, repay the Investors and submit the winding up and repayment report in format with the SEBI. It is contended that it was only after filing of the

complaint that the accused chose to submit their clarification regarding the mobilization of funds and had complied with the regulations by submitting all details alongwith statutory and auditor's certificate. It was submitted that the SEBI was justified in filing the complaint against the accused. Hence the SEBI has prayed for their conviction.

#### **FINDINGS.**

16. I have carefully considered the written arguments submitted by the accused and submissions made on behalf of the SEBI.

17. From the evidence certain facts seem admitted. The Government had notified in 1997 that companies which were running Collective Investment Schemes were required to file information with SEBI regarding their schemes along with details of amounts mobilized, the names of Directors/Promoters etc., in case they were desirous of obtaining benefit of Section 12 (1) B of the SEBI Act 1992. Section 12 of the SEBI 1992 requires the registration of Stock Broker, Sub Broker, Share Transfer Agents etc., and Section 12 (1) B relates to the requirements of registration certificate from the board by any person who was sponsoring or

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person could carry on a Collective Investment Scheme without the certificate of registration granted by the Board. The proviso permitted such person who was already carrying on Collective Investment Scheme before the commencing of the Securities Law (Amendment) Act 1995 to do so till such time regulations were made u/s 30 (d)(2) of the Act. Thus the proviso entitled a person to continue the collective investment scheme without registration only till the promulgation of the regulations in this case, that date is 15.10.99.

19. There is no doubt that the accused were running a Collective Investment Scheme Ext.CW1/1 is the submission of information by the accused in terms of press release dated 26.11.97. In this letter to the SEBI it is clearly mentioned that the Company had launched three types of Schemes for the mobilization of resources for investment in Agro Forestry business. The details of the three Schemes i.e. Investors Fund, Investors Fund no.1, Investors Fund no.2 and daily deposits do not mention that the funds were to be collected only from the Directors. In fact a reading of the letter Ext.CW1/1 would show that it does not lack the characteristic of a Collective Investment Scheme intended for collecting and mobilizing funds from the general public.

20. It is only after the present prosecution commenced and the accused appeared for trial that they sent communications to the

22. The SEBI had sent specific letters and issued public notices in newspapers regarding the notification of the regulations in 1999 and the requirements thereunder. The Company had noticed one press release. It is not possible that it would have missed out the subsequent ones. The letters sent by SEBI at the address provided by the accused in Ext.CW1/1 returned with the report that no such firm exists etc. A Company shifting its address would with ordinary prudence have made sufficient arrangement for collection of letters received at the office that was vacated by them. Letters sent in the year 1999 and up to December, 2000 returned undelivered to the SEBI. There is no explanation for why the accused had not informed the SEBI about the shifting of their office having once sent a letter to the SEBI Ext.CW1/1. The efforts made by the SEBI to reach the accused failed only on account of the lapses of the accused. Ignorance cannot therefore come as a defence in this case.

23. The accused were required to inform SEBI about the funds mobilized. If the accused had not been able to generate public funds they had to intimate SEBI about it. But the failure of a public response cannot lead to the conclusion that there was only a private mobilization of funds. It is only after the complaint case commenced against the accused that they took the trouble to inform the SEBI about the amounts mobilized by them explaining

Investment Scheme) Regulation 1999 R/W Section 11B and 12 (1)  
B of the SEBI Act 1992 punishable u/s 24(1) R/W Section 27 of the  
SEBI Act 1992.

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The accused are entitled to be heard on sentence.

Announced in the Open Court,  
Dated: 17.3.06

(ASHA MENON)  
Addl. Sessions Judge:  
Delhi.