In the Court of ASJ. Addl. Sessions, DST, Delhi.

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, DELHI

CC NO: 41 OF 2004

14/01/04

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 Legal Officer, Shri Sharad Bansode.

...Complainant

VERSUS.

1. Shivram Pur Orchard & Plantation Ltd. a Company incorporated Under the Companies Act, 1956, having its Regd. Office at : 4th Floor,94, Mahatma Gandhi Marg, Hazratganj, Lucknow-226001, U.P.
2. Shri Udai Nath Pandey, Director of Accused No.1, R/o: 29K Sneh Nagar, Alambagh, Lucknow-226005.
3. Shri Virendra Pandey S/o Shri Shambhoo Nath Pandey, Director of Accused No.1, R/o:38, Ram Nagar, KNP Rd., Lucknow and also at:551/170 Ka, Nand Nagar, Natkhera, Alambagh Lucknow.

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4 Mrs. S.P. Dubey, Director of Accused No.1, R/o: 38, Ram Nagar, KNP Rd., Lucknow and also at:551/170 Ka, Nand Nagar, Natkhera, Alambagh Lucknow. .....Accused

COMPLAINT UNDER SECTION 190 AND SECTION 200 OF THE CODE OF CRIMINAL PROCEDURE, 1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

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May It Please Your Honour:

23/9/06.

AJT/Delhi:

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Pr.: All aced. present with counsel.

vide separate orders of even date the acd. company and acd. no. 2, 3, 4 are held guilty for the offence under the SEBI Act, 1992. They are entitled

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to be heard on sentence.

Put up after hearing args on sentence after lunch.

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File taken up again.

Pr: Sh Yashwant Singh and Sh Sharad Bansal with the accused Udai Nath Pandey, Virender Pandey and Smt S.P. Bubey who are present on bail.

After hearing the submissions of the ld counsel for accused, vide separate orders, the accused are sentenced to a fine of Rs 10000 each. In default of payment of fine accused 2-4 shall undergo SI for three months. Upon payment of fine, the personal bonds & surety bonds of the accused are cancelled and sureties discharged. File be consigned to records.

Announced in open court on 23-9-06.

Ashalkenoy
ASJ

29/9/06

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

CC NO.156/2005

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 Legal Officer, Sh. Sharad Bhansode.

...Complainant

VS.

1. Shivram Pur Orchard India Limited
Incorporated under the companies Act, 1958, having
its registered Office at : 4th, Floor,94, Mahatma Gandhi Marg, Hazratganj,
Lucknow-226001, U.P.

2. Sh. Udai Nath Pandey, Director of accused no.1, R/o 29K,
Sneh Nagar, Alambagh, Lucknow-226001, U.P.

3. Sh.Virendera Pandey S/o Sh. Shambhoo Nath Pandey, Director
of accused no.1, R/o 38, Ram Nagar, KNP Rd., Lucknow and also at
551/170 K, Nand Nagar, Natkhera, Alambagh, Lucknow.

4. Mrs. S.P. Dubey, Director of accused no.1, R/o 38, Ram Nagar KNP Rd.,
Lucknow and also at : 551/170 K, Nand Nagar, Natkhera, Alambagh,
Lucknow.

...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

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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. It is under that the provisions of Section 12 (1B) of the SEBI Act, 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.

5. The accused company had in response to the press release/public notice, apparently furnished their details to the SEBI. The SEBI

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(Collective Investment Schemes) Regulations were notified on 15.10.[illegible]

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 14.1.2004, the accused

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Shivram Pur Orchard and Plantations Ltd. Company, and its directors Sh. Udai Nath Pandey, Sh. Virender Pandey and Mrs. S.P. Pandey were summoned to face trial for these violations.

9. On their appearance notice of allegations were served upon the accused under Section 251 Cr.P.C to which they pleaded not guilty. The complainant examined Ms. Ruchi Agashe and Ms. Jyoti Jindgar as witnesses.

EVIDENCE

10. Smt. Ruchi Agashe was examined as CW-1 on behalf of the SEBI. She 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. She 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 has brought on record the letter sent by the company in response to the press release and public notice as Ext.CW1/1 alongwith its annexures. As per the letter the company had mobilized Rs 83,280/- under it CIS and Sh.Uday N. Pandey Sh. Virender Pandey and Smt. S.P. Dubey were the directors of the company. Vide the subsequent letter dated 24.7.98 Ext.CW1/2 the company submitted details of its promoters and

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directors. They also furnished the Memorandum of Association of the Company Ext.CW1/3. The witness stated that the company had filed letter dated 29.5.98 alongwith balance sheet which is Ext.CW1/4.

12. She deposed that SEBI CIS Regulations 1999 had been notified on 15.10.99 and intimation was sent vide letter dated 22.10.99 and public notice dated 20.10.99. She further deposed that the SEBI had sent various letters to the accused company informing it about the requirements under the regulations and which were returned undelivered to the SEBI with the report that "addressee had left". She brought on record all the undelivered letters along with their envelopes. She also deposed that when show cause notice dated 12.5.2000 was issued, that was also returned undelivered. She deposed that the format for winding up was also sent to the accused company and once again the communication returned undelivered to the SEBI.

13. 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. She 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. She deposed that

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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. She deposed that the name of the accused company appeared at serial no.413 of the public notice. She deposed to the non-compliance by the accused company and its directors despite the public notice till the filing of the complaint.

14. The witness was cross examined at length by Sh.A.K. Bansal on behalf of the accused. CW1 stated that according to letter dated 12.1.1998 Sh.Uday N. Pandey, Sh. Virendra Pandey and Smt. S.P. Dubey were the directors of the company and that the company had not submitted any document regarding change in directorship before and after 1998. She deposed that SEBI had not made any independent inquiry regarding directorship and they only relied on the document filed by the company. She deposed that the amount mobilized by the company as mentioned in the letter dated 12.1.98 till 31.12.97 was Rs.83,280/-. But in the letter dated 29.5.98 the amount mentioned was Rs.3,11,170/-. She deposed that the company had filed the initial information about its CIS in time with the SEBI.

15. The witness admitted that the SEBI had not received any complaint from any investor against the company. She deposed that the SEBI had no method and source for independent verification of what amount had been collected by the accused company from each investor and therefore, the SEBI relied on the information provided by the company. She further stated that since the accused company had not

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submitted the winding up and repayment report she was not in a position to affirm or deny whether the company had repaid the investors.

16. She further deposed that despite the company having furnished the individual addresses of the directors the SEBI had not served any show cause notice to the directors and had issued all its letters and notices to the company at its address. She further stated that she had not obtained any information from ROC regarding filing of balance sheet by the accused company for the year 1997-98 and 19998-99. She disputed the suggestion made by the defence that vide letter dated 27.4.98 Ext.CW1/2 the accused company had already intimated SEBI that it would not mobilize funds under its CIS. She stated that though in the public notice it was not mentioned whether compliance of the order dated 7.12.2000 had to be at the Delhi Office or Mumbai Office, the initial notice had also been silent on this aspect and yet the accused had corresponded with the Delhi Office of the SEBI. She stated that she was not aware of any correspondence the company may have had with the SEBI Office Mumbai before or after 7.7.05. She denied that the case was a false one.

17. CW2 is Ms. Jyoti Jindgar. She has deposed that the letter dated 18.12.2000 containing the Chairman's order dated 7.12.2000had been sent by her. She deposed that no winding up and repayment report had been filed by the accused pursuant to that order of 7.12.2000. She deposed that the company had informed the SEBI vide letter dated 7.7.2005 that they had refunded all investors before 31.3.99. She deposed that the accused company was advised vide letter dated 12.7.2005 to submit a statutory

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auditor's certificate in format which was also forwarded by the SEBI to the accused company. She has brought on record these two letters as Ext.CW2/1 and CW2/2. She deposed that no information had been received from the accused company thereafter. In her cross examination she deposed that under the Company's Act all companies were required to have a statutory auditor.

18. The statements of the accused were recorded under Section 313 Cr.P.C. The accused S.P. Dubey claimed that those she had become director of the company, she had learnt that the money had been returned and beyond that she did not know anything about the company and its affairs. The accused U.N. Pandey did not remember about the correspondence with the SEBI whereby information regarding the collection made under the CIS was given to the SEBI alongwith details of the directors/promoters of the accused company. However, he remembered and admitted that the accused had sent letter dated 29.5.98 alongwith balance sheet. He claimed that they had complied with the requirements under the regulations. He stated that as soon as they learnt that they could not carry out this business, they had stopped operations and had returned all money to the investors and had informed SEBI about the repayment. He claimed that the complaint had been filed only to harass him.

19. The accused Virender Pandey admitted the letters sent to the SEBI detailing the amounts received and the names of the directors and promoters but did not remember about letter dated 29.5.98. He claimed

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that though the company had been started and they had collected money when they learnt through SEBI notices that they could not carry out this business, they stopped it. He stated that the following year they had repaid the investors and had submitted the director's report to the ROC alongwith balance sheet for the year 1997-98 and 1998-99 in the year 2000. He claimed that SEBI had been sent a copy and had also been informed about the repayment in 1998. He claimed that the ROC had informed that the accused were intending to repay the investors and thereafter, they informed the ROC that repayments had also been made. He stated that he was advised to adhere to procedure by appointing C.A. when he had sought the winding up of the company. He stated that since he found it beyond his means he did not go through that procedure. He stated that he was not certain about the year when the balance sheets were submitted to the ROC and for which period.

20. The accused examined five witnesses including the accused Virendra Pandey. DW1 is Pradeep Kumar who deposed that he had invested Rs.50,400/- as fixed deposit with the Shivram Pur Orchard and Plantations Ltd. He deposed that this amount was refunded to him in cash on various occasions by the company and brought the vouchers on record as Ext.DW1/A to E explaining that he had put his signatures on these vouchers upon receiving the money. He stated that he had no complaint against the accused company. During his cross examination the witness deposed that he had no acknowledgment received by the company in respect of its investment. He deposed that he had made the payment by

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cheque but could not recall the cheque number. He could not recall the date of payment by the company to him. He denied the suggestion that he was neither the investor of the company nor had received any repayment.

21. DW2 is Sh. Triloki Nath who deposed that he had invested Rs.28,300/- in the accused company which had been refunded to him in cash. He stated that while making repayment the company had obtained its signatures on several cash vouchers Ext.DW2/A to E. He deposed that he had no complaint against the company. In cross examination the witness stated that he was working as an X-ray technician in District Hospital Unnau, UP and had invested the money in the recurring deposit scheme in December, 1997 for two and half months. He deposed that he had invested in cash. He deposed that he had not intimated the office about the transaction. He denied that he had never invested anything in the company.

22. DW3 is Pradeep Kumar Vajpayee. He is an advocate who has brought on record several affidavits stating that on various dates, various people had appeared before him to sign affidavits and he had identified the signatures of those who had appended their signatures in his presence. In cross examination he stated that he knew the deponents personally and some were his clients.

23. DW4 is Raj Kapoor, proprietor of M/s Kapoor Raj and Company, Chartered Accountant. He deposed that he had audited the balance sheet of the company Shivram Pur Orchard and Plantations firstly in the year 1997-98. He deposed that the company had obtained advance as from the

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unit holder to the tune of Rs.3,11,170/-. The witness stated that the balance sheet was signed by the directors of the company U.N. Pandey and Virendra Pandey. He deposed that he had audited the balance sheet on 29.5.98. He deposed that the balance sheet of the company as on 31.3.99 was also audited by him and according to that balance sheet there was no liability of unit holders against the advance taken in the financial year 1998. In cross examination the witness stated that he was not concerned with the preparation of account books of the company and the balance sheet was also prepared by him. He deposed that he carried out the audit on the basis of the accounts and vouchers produced before him by the company.

24. DW4 is Virendra Pandey, the accused. He deposed that he was a director of the company. He deposed that a letter dated 6.4.98 had been received by the company from the SEBI. He deposed that he was called for explaining the reason for not filing the requisite information with the SEBI and he had given reply vide letter dated 11.4.98 Ext.DW5/B. He deposed that the company had received letter dated 5.3.98 to the SEBI after which they did not collect any money from anyone. He deposed that he had sent reply to the SEBI vide letter dated 9.3.98 informing that they had stopped mobilizing money. He deposed that the company had received letter dated 29.9.99 advising them to furnish information asper the enclosed by 22.10.99 annexed with the format. The accused claimed that this letter was replied vide letter dated 20.10.99 Ext.DW5/I and complete format had been sent to the SEBI vide Ext.DW5/J and DW5/K.

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The witness/accused claimed that in the said formate they had shown liability against the investors as on 1.9.99 as nil.

25. DW5 accused further stated that he had approached the ROC for winding up and he had been advised to obtain no objection from SEBI and so he wrote a letter to SEBI which is Ext.DW5/L. He deposed that in response the SEBI sent letter Ext.DW5/M directing him to obtain the accounts audited from SEBI appointed auditors. He stated that he had issued public notice in Swatantra Chetna newspaper intimating his intention to close operations and inviting investors to come and collect any amount due to them and the newspaper publication had been brought on record by him as Ext.DW5/N. The witness has placed on record 107 vouchers stating that these vouchers were signed by him and bore the signatures of the investors as well.

26. In his cross examination the witness stated that they had not paid any interest to any investor. He admitted that Ext.DW5/M had not been complied with. He explained that when he had approached the SEBI office to clarify the contents of Ext.DW5/M he was told that since the case was pending the SEBI could not do anything in the matter. He deposed that the SEBI had requested him to get the accounts audited by an RBI approved auditor. He admitted that till date the RBI approved auditor had not audited the accounts of the company.

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

CONTENTIONS:

28. The Learned Counsel for the SEBI Sh. Sanjay Mann has argued

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that the complainant had fully proved the case against the accused. He has submitted that it was the accused which had provided details of its directors and the collections made under its schemes. He has argued that the accused failed to repay the investors as per the original offer and submit the winding up and repayment report with the SEBI. Sh. Mann has argued that the entire purpose of the regulations were to protect investor's interest. Learned Counsel has argued that the accused company had themselves furnished all details to the SEBI and could not now claim that they were not liable. The Learned Counsel for the SEBI had submitted that the public notices were intended to inform all regarding the obligations under the SEBI Regulations and merely because the SEBI had not addressed letters to the directors would be no reason to assume that they were not liable. It has been submitted that it was for the accused to show that they were not responsible for the day to day affairs of the company. It has been submitted that the SEBI had relied on all information provided by the accused and once it was admitted by the accused themselves that they were running CIS, they were bound by all the regulations. It was submitted that therefore, when the accused failed to submit the winding up and repayment report they had violated the regulations and were thus liable. It was submitted that the offence was a continuing offence. The Learned Counsel for the SEBI has submitted that the case has been fully proved against the accused who are liable to be convicted and punished.

29. Written arguments have been filed by Sh.A.K.Bansal, Ld.

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Counsel for the accused, raising several contentions. It is contended by Ld. Counsel that the Court had without applying its judicial mind to each and every fact, had taken cognizance and had issued processes against thousands of innocent persons 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.

30. 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 in 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. Submissions have been made "with an emphatic note of caution" 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.

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31. 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 is contended that it is only when the prosecution proved that the requisite condition in sub-section (1) existed that the obligation came upon the accused to prove the proviso.

32. 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 Ld. Counsel the office of the SEBI at New Delhi had not come into the picture. It is submitted that the investors belonged to Lucknow. Therefore, the Court at New Delhi could have no jurisdiction in the matter. Reliance has been placed on the judgement of the H'ble Supreme Court in 2004 (8) SCC 100 and in 2005 (5) CTC (COM) 177 in support of this contention.

33. 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 14.1.2001.

34. It is submitted that the record made it evident that the accused

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No.1 company had made all the repayments to its investors much prior to the directions dated 7.12.2006. It is submitted that the relevant evidence has been brought on the record to show that the repayments had been effected by Oct.1998. It is submitted that the necessary information in respect of WRR had been sent to the SEBI in the prescribed format. It is also submitted that the qualified and statutory Chartered Accountant of the company has verified this fact by verifying the balance sheets filed by the defence. It is argued that though the notice of the SEBI brought on the record as Ex.CW1/14 had permitted the continuation of the schemes where 25% of the investors desired it, the accused company had chosen to close its business It is submitted that no investor had made any complaint against the accused. The defence claims that it has successfully proved the repayments, It is submitted that since CW1 has herself admitted that the SEBI had not appointed any auditor the report of DW4 had to be accepted and relied upon.

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

FINDINGS

1. 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.

2. The hyperbolic words notwithstanding, bordering on the

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contemptuous, each of the contentions raised by the defence in its effort to obtain reprieve will be dealt with. It must however be underlined that the job of a pleader is to plead the case of his client and brinkmanship is certainly no quality.

3. Turning to the case, the submissions made in respect of the cognizance that was taken 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.

4. 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 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

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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.

5. 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.

6. 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 windup 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 filling 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

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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.

7. 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.

8 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

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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.

9. 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~~ flowing 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.

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10. 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. Therefore in such cases the cited judgments which all relate to the Negotiable Instruments Act are inapplicable.

11. 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

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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.

12. This basic difference in the nature of the cases also takes such complaints out of the purview of the judgments relied upon by the Ld. 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

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investment schemes.

13. 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 42(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.

14. 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

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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.

15. In the present case, considering the admissions made by the accused themselves while their statements were recorded under S.313 CrPC and as DW5 that they were the Directors of the company, such arguments ought not to have been raised at all. The contentions seeking acquittal on the ground that the role of the Directors have not been specified are liable to be rejected and are rejected..

16. The accused have taken a plea that they had already repaid investors by March, 1999 and were thus not covered by the regulations. They have examined two investors DW1 and DW2. They examined DW3 to show that several other investors have been repaid. They have placed on record 107 vouchers also to substantiate their claims. But, on the evidence the repayment has not been proved. The audited balance sheet for the year 1998 records that Rs.7,11,170/- had been received as advance from unit holders. But the balance sheet of 10.8.99 Ex.DW4/B stated to have been duly audited by DW4 does not mention about repayment made in 1998-1999. Even the Trading and profit and loss account makes no reference to payments made from May 1998 onwards. The affidavits placed on the record have no value as the contents of the same have not been proved. DW3 merely states that so-and-so had signed in his presence. But he has not sworn to the truth of the contents of the affidavits. The 107 vouchers thus do not prove repayment. Even though there is no document to prove

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that DW1 & 2 were actual investors with the accused. at best it could be said that two investors had been repaid by the accused over a period of several days and months. Beyond that the accused have failed to establish that all investors had been repaid by 1999 March.

17. The letter relied upon by the accused does not help the accused, for it only informs the SEBI that no further funds were being mobilized either under new Schemes or under existing Schemes. It makes no reference to winding up of existing schemes and repayments made to existing investors. Thus, on the basis of the letter dated 27.4.98 (part of Ext.CW1/2) it cannot be said that the SEBI had been informed even prior to the notification of regulations that the CIS had come to an end and had been wound up by the accused.

18. With regard to the Ext.DW5/D which is a carbon copy/office copy of a letter dated 9.3.98 purported to have been sent to the SEBI intimating about the stopping of mobilization of money by the accused This letter, on the face of it, cannot be relied upon. While all correspondence placed on the record by the SEBI and by the accused prior to 9.3.98 and sent by the accused to the SEBI have been addressed by the accused to the SEBI's Delhi Office, both at the Kasturba Gandhi ~~Marg~~ address as well as Rajendera Place address, inexplicably, Ext.DW5/D has been addressed to the Mumbai address. Assuming that the foot note correctly reflects that a copy had been sent to the Delhi Office, it is mysterious why this letter has not been referred to in Ext.CW1/2 dispatched by the accused to the SEBI's Delhi Office on 27.4.98 or in the letter dated 27.4.98 separately informing

about mobilization of funds in new existing schemes. In any case, even assuming that such a letter in fact had been sent, once again it no where mentions that this existing scheme had been wound up and the repayments made by 7.3.1998. Thus, neither of these letters support the claim of the accused that repayments had been made and the Schemes wound up well before the notification of the regulations or to conclude that the regulations were not applicable to the accused.

19. From the evidence on record, it is also apparent that the accused were not unaware of the requirements of filing the winding up and repayment in format. DW5 the accused Virender Pandey has admitted that the accused had received several communications from the SEBI. Public notices were issued to bring to the notice of all defaulters that compliance was required. The accused themselves responded to public notices such as suited them, failing to comply with the main requirement of submission of winding up and repayment report. The letter Ext.DW5/M sent by the SEBI to the accused is in response to the letter of accused to the SEBI to help wind up the company in response to some scheme under the Company's Act. As late as 12.7.05 the accused were again told by the SEBI to get the repayments verified by SEBI appointed auditors to ascertain their authenticity. The accused have failed to do so till date. 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:

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20. I, therefore, hold the accused company Shivram Pur Orchard & Plantation Limited, its Directors/accused Sh. Udai Nath Pandey, Sh. Virendra Pandey and Mrs. S.P. Dubey 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.

Asha Menon.

Announced in the Open Court. **(ASHA MENON)**
Dated: 23.9.06 **Addl. Sessions Judge: Delhi.**

Copy given to accused in the Court act Fail on dtd. 23/9/06 & 23/9/06

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Date 23/9/06

(1) (VIRENDRA PANDEY)

(2)

(4) S.P. Dubey

INTHE COURT OF SMT. ASHA MENON: ASJ : DELHI.

CC NO.156/2005

SEBI VS. SHIVRAMPUR ORCHARD LTD & ORS.

ORDER ON SENTENCE:

Sh. Yaswant Singh and Sh. Sharad Bansal Counsel on behalf of accused have submitted that the accused have been regular in attending the Courts ever since they have been summoned. It is submitted that the father of the three accused is about 90 years of age and therefore a lenient view be taken in the matter. Even though the law prescribes terms of imprisonment for violations of SEBI Regulations, In the facts and circumstances of the case, I am of the considered view that the ends of justice would be met if the accused would be sentenced to only fine. There is no call for internment imprison for the offence for which the accused have been found guilty, keeping in mind the amount of funds mobilized.

I, therefore, sentence the accused to a fine of Rs.10,000/- each in default of which they shall undergo SI for three months. Only payments of the fine the personal bonds and surety bonds of the accused shall stand cancelled, and sureties will stand discharged.

File be consigned to the records.

Announced in the open Court.
Dt.: 23.9.2006.

Asha Menon 23-9-06
(ASHA MENON)
Addl. Sessions Judge:
Delhi.

Copy given to accused in the Court of Sh. on dt. 23/9/06

S.P. Dubey

Office of The District & Sessions Judge
Delhi
Certified Copy
Date of Copy 29/9/06 (as per rule)
Authorised u/s 76 of the Indian Evidence Act 1872