



IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, DELHI

CC NO: 83 OF 2004

14/01/04

02401RS171782004

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.

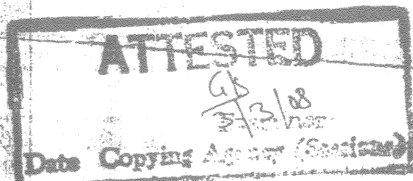
...Complainant

VERSUS.

1. Basant Farms & Resorts India Ltd. a
Company incorporated Under the
Companies Act, 1956, having its Regd.
Office at : Block 57/2, B-14 Kaveri
Centre, opp. Azad Petro Pump, Sanjay
Place, Agra-282002 and also at : BBC-
B-14 Kaveri Centre, Sanjay Place,
Agra.
2. Shri Shankar Singh Kushwaha S/o
Late Shri Budh Singh Kushwaha,
Director of Accused No.1, R/o: 1,
Roshan Bagh, Dayal Bagh, Agra, U.P.
3. Shri Basant Singh Kushwaha S/o Shri
Shankar Singh Kushwaha, Director of
Accused No.1, R/o: 1, Roshan Bagh,

(11)

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Date Copying Agent (Solicitor)



(2)

Dayal Bagh, Agra. U.P.

4. Shri Gulshan Kumar Ajmani S/o Shri

Mangal Sain Ajmani, Director of

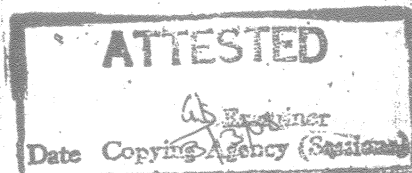
Accused No.1, R/o: 5/226 Shanti Kunj

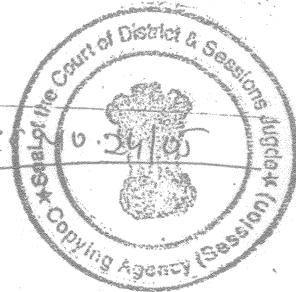
Nagar, Agra. U.P.

.....Accused

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

May It Please Your Honour:





29.11.06

Present: None for the SEBI.

All accused present on bail with counsel.

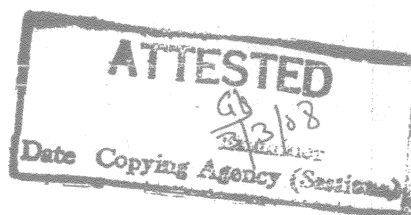
Vide separate order the accused Basant Farms and Resorts (I) Ltd and its directors Shankar Singh Kushwaha, Sh. Basant Singh Kushwaha and Sh. Gulshan Kumar Ajmani are sentenced to a fine of Rs.25,000/- each. In default of payment of fine the accused Shankar Singh Kushwaha, Sh. Basant Singh Kushwaha and Sh. Gulshan Kumar Ajmani shall undergo SI for a period of three months.

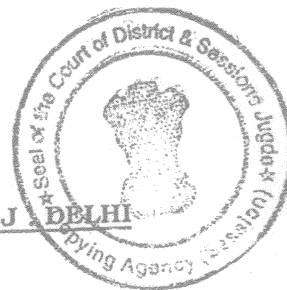
On payment of fine the personal bonds and surety bonds of the accused shall stand cancelled and the sureties will stand discharged.

File be consigned to the records.

Announced in the Open Court
Dated: 29.11.06.

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





IN THE COURT OF SMT. ASHA MENON : ASJ DELHI

CC 24/05

SEBI Vs. Basant Farms & Resorts (I) 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. Basant Farms & Resorts Ltd.

A Company incorporated under the Companies Act, 1956, having its Regd. Office at : Block 57/2, B-14, Kaveri Centre, Opp. Azad Petrol Pump, Sanjay Place, Agra 282002 & also at BBC-B-14, Kaveri Centre, Sanjay Place, Agra.

2. Shri Shankar Singh Kushwaha

S/o Late shri Budh Singh Kushwaha,
Director of Accused No. 1,

R/o 1, Roshan Bagh, Dayal Bagh, Agra, U.P.

3. Shri Basant Singh Kushwaha

S/o Shri Shankar Singh Kushwaha,
Director of Accused No. 1,

R/o 1, Roshan Bagh, Dayal Bagh, Agra U.P.

4. Shri Gulshan Kumar Ajmani

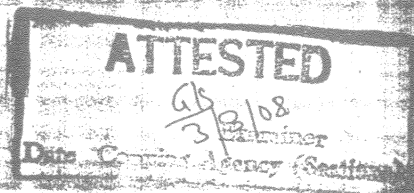
S/o Shri Mangal Sain Ajmani,
Director of Accused No. 1,

R/o 5/226, Shanti Kunj Nagar, Agra, U.P.

JUDGMENT

1. 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

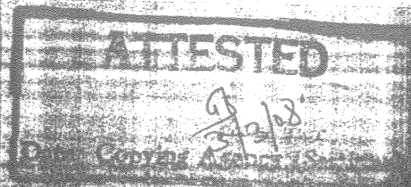




said Act (hereinafter referred to as SEBI) with the aim of providing protection of the interests of investors in securities and promote the development of and regulate the securities markets. S.11(1) of the Act provides for the duties of the Board. It was noticed by the Government that a large number 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 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, in response to the first press release, the accused of the present complaint had submitted details which included the names of the promoters and directors of the schemes and the amount mobilized by the company in various schemes. A sum of Rs.7.98 lacs were stated to have been mobilized by the company Basant Farms & Resorts India Ltd. and the accused Sh. Shankar Singh Kushwaha, Sh. Basant Singh Kushwaha and Sh. Gulshan Kumar Ajmani.
6. It is alleged that after the coming into force of the Regulations in 1999, the SEBI had sent registered letters in December 1999 at the address of the company. Public notice was also issued, in order to inform the accused of the obligations that existed under the regulations, calling upon them to comply with the same. Apart from asking the company to circulate information memorandum to all investors, the SEBI directed ^{the M}to entities to register the schemes with the SEBI. The time for doing so was extended up to 31st March 2000.
7. It is alleged in the complaint that the accused failed to register with the SEBI. Therefore, under the Regulations,

ATTESTED
3/3/08
[Signature]
[Stamp]



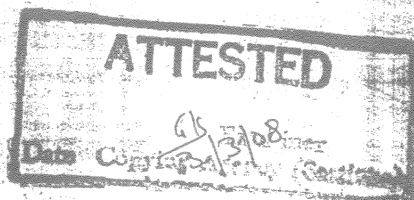
73 & 74, the accused were directed to wind up operations and repay the investors. On 7.12.2000 the SEBI Chairman directed the accused Company to refund the money collected from investors to the investors within a period of one month from the date of these directions. Since the company failed to comply 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 14.1.04, the accused were summoned to face trial. The notice of allegations was served to the accused under S.251 Cr.P.C on 15.7.2005, 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 Cr.P.C, the accused have examined three witnesses in 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

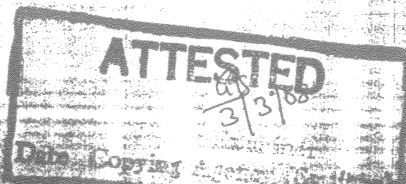


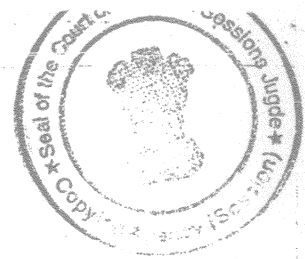


and public notice the accused company had submitted their details vide their letter Ex.CW-1/1 dated 26.12.97 alongwith brochure and a copy of the Memorandum and Articles of Association of the Company. As per this letter, the accused company had mobilized about Rs.7,98,350/- under its CIS. Subsequently the company vide another letter dated 28.5.98 furnished the details of the directors of the company as Sh.S.S. Kushwaha, B.S. Kushwaha and G.K. Ajmani.

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 did not return to the SEBI. 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.

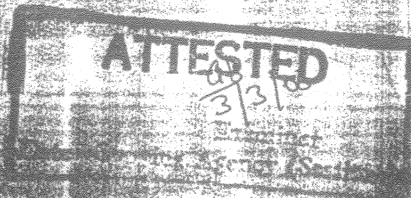




13. CW-1 Smt. Jyoti Jindgar deposed further that as the accused company neither applied for registration nor intimated regarding the winding up of their schemes, show cause dated 12.5.2000 was issued to it. The witness stated that the accused company then sent a letter dated 1.6.2000 submitting that they had repaid all the investors and nothing was pending with them. Vide letter dated 31.7.2000 the SEBI forwarded the format for submission of the winding up and repayment reports to it. But when no such report was received, the SEBI advised the accused company vide letter dated 22.11.2000 to submit the report by 4.12.2000. The witness deposed that as no response was received, the company was given a final opportunity vide letter dated 20.3.2001 to show cause as to why appropriate action should not be taken. Though no response was received, the company was again granted an opportunity and was called for personal hearing before the chairman on 9.7.2001.

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 14.8.2001 to repay its investors as per the original terms of offer within one month of the date of the order. The order was communicated vide letter dated 20.8.2001 which returned to the SEBI with the report "left without address". The witness deposed that till the filing of the complaint the accused had not filed the repayment and winding up report. However, during the trial the accused had filed a WRR which had been sent to an independent auditor to verify the contents and veracity of the winding up and repayment report.

15. The witness was cross examined by the Ld. Counsel for the accused. During her cross examination the witness



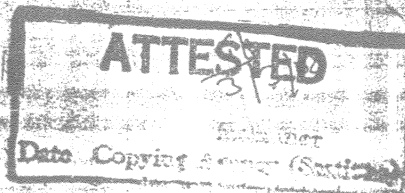


stated that till the filing of the complaint no complaints were received from the investors against the company. The witness stated that the SEBI had appointed auditors vide letter Ex. CW-1/D1. She placed the copy of the interim report of the auditors as Ex. CW-1/D2. She stated that the auditors had found various discrepancies as noticed in the documents filed by the company. The witness admitted that auditor's report had no annexures to it.

16. The witness also filed the final report as Ex. CW-1/9 stating that as per this report the accused had not repaid all the investors. During further cross examination, CW-1 admitted that the SEBI had not written to any investor seeking clarifications as to whether the amounts had been repaid to them. The witness admitted to the receipt of letters Ex. CW-1/D4, 5 & 6 alongwith unaudited balance sheet, by the SEBI. She admitted that she had not participated in the proceedings before the auditor. She stated that the original documents were with the auditors. The witness denied the suggestions that the auditor's report did not state the true facts and had wrongly recorded that the investors had not been properly repaid.

17. The accused examined three witnesses one of whom was the accused Shanker Singh. DW-1 is Smt. Priyank Manjari Singh who deposed that she had invested Rs.600 in one of the schemes of the accused company by name Suraksha. She placed on the record the certificate issued to her reflecting her investment in the company. She deposed that she had received Rs.1200 from the company.

18. DW-2 is Sh. Rihashu who deposed that he too had invested Rs.600 and identified the certificate that had been issued to him allegedly at the time of the investment. He

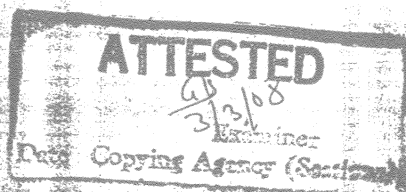


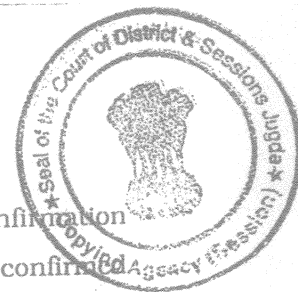


deposed that after he had learnt that the company was closing and therefore he had demanded his money. He deposed that the company had demanded his money back.

19. DW-3 is the accused Shankar Singh. He deposed that he was the chairman and Managing Director of the accused company and the co-accused, though had been the directors had not been working directors and that he was the person who used to look after the affairs of the company. He deposed that the company had two schemes one for fixed deposits and the other recurring deposits. He deposed that the company had commenced the schemes in 1997. He admitted that they had not applied for registration because to get a rating was expensive and their collections were not commensurate to the expenses involved. He deposed that the company had collected a sum of Rs.6,40,800 and wound up the scheme and begun repayment. The witness brought on the record the minute book and the resolutions of the company.

20. DW-3 deposed that the SEBI had been informed about the winding up of the schemes and the process of repayment vide the letter dated 25.3.98 Ex. CW-1/C. He stated that even in the year 2005 the SEBI had been informed about the winding up. He stated that the repayment had commenced in the year 1997 and had been completed in the year 2000. He deposed that the payments had been made in cash and that the recipients had signed receipts in token of the repayments. He placed on the record 187 receipts. He deposed that they had submitted all the balance sheets minute books etc. to the auditor. He placed on the record the entire list of investors with their addresses. He deposed that the auditor's report was not genuine and was a false





report. He stated that the auditors had sought confirmation of payment on maturity whereas he should have confirmed the payments made by the company. He stated that the auditor had not sought any clarifications from them before reaching their conclusions erroneously.

21. During his cross examination the witness admitted that the other accused used to attend the board meetings. He was confronted with the communication of the company where by the witness claimed that the SEBI had been informed of the winding up of the schemes. He stated that the last payment had been made in the year 2002. He stated that the amounts in respect of the recurring scheme and the payment made in 2002 were of a matured amount. He admitted that no WRR had been submitted to the SEBI either in the year 2001 or in the year 2002. He denied the suggestion that all investors had not been fully paid.

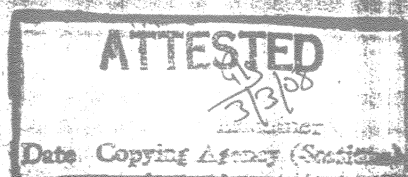
22. This constitutes the entire evidence that has been brought on the record by both sides.

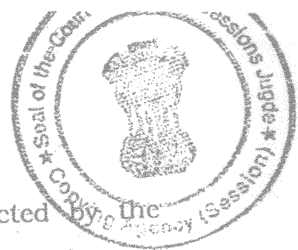
CONTENTIONS

23. Sh. Sanjay Mann for the SEBI has argued that the prosecution had proved the allegations against the accused, that they were running Collective Investment Schemes and that the accused 2-4 were the directors of the accused company. The accused themselves had furnished information to the SEBI about the collection of Rs.7.98 lacs from the public through their collective investment schemes. It was submitted that the accused had however failed to comply with the regulations and fulfill the norms set by the SEBI. He submitted that there was no memorandum of repayment submitted to the SEBI. He pointed out that the WRR that was filed during trial had been audited and the

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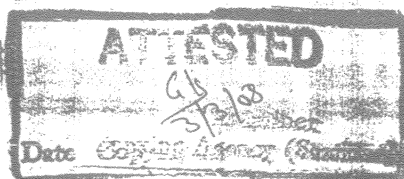


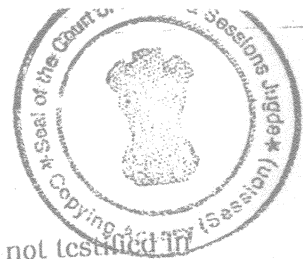


claims made by the accused had been rejected by the auditor. The investors had replied to the randomly sent letters of the auditor by denying receipt of any repayment by the accused company. Therefore, the mala fide intentions of the accused had been brought on the record. Hence Ld. Counsel for the SEBI has prayed that the accused be dealt with strictly.

24. The Ld. Defence counsel Sh. Rajiv Singh Chauhan has argued that the accused company had collected Rs. 6 lacs approximately. The costs of registration were very high and therefore the schemes were not registered. The Ld. Counsel submitted that the Minute Book of the accused showed the resolutions had been passed in 1998 to make repayments. Ld. Counsel has submitted that when in response to the public notices the accused company had send letter Ex. CW-1/1, it had furnished all the required information to the SEBI and had thus fully complied with the regulations. Ld Counsel has argued that the SEBI had wanted repayments to be made by 14.9.2001 whereas the accused company had completed the major portion of repayments by that time and it was only on account of difficulties in tracing out rural investors that time was taken till December 2001 to complete repayments to all investors. Ld. Counsel submitted that the SEBI had been informed vide letter dated 1.7.2000 about the repayment.

25. According to the Ld. Defence Counsel the lapse that had occurred was that the company had not furnished details of repayment in format. This, according to him was on account of ignorance, since the company was a small company. He submitted that there had been no investor complaints till date. He submitted that the auditor's report



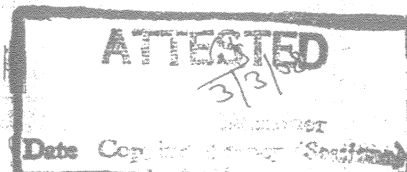


could not be considered since the auditor had not testified in the court. Ld. Counsel contended that the auditor's report was an expert's report and without the expert, i.e. the C.A. testifying in respect of it, it could not be relied upon. Ld. Counsel has assailed the findings recorded in the auditor's report submitting that the denial by investors could be attributable only to greed and malafides of the investors. On these contentions, the Ld. Defence counsel has prayed that the accused be acquitted.

FINDINGS

26. There is no room for doubt in the face of the defence version itself, that the accused company was running Collective Investment Schemes, and that they had raised money from the public: Whether it was Rs.7.98 Lacs or only Rs.6 Lacs, it is not very significant. Therefore, the SEBI (CIS) Regulations 1999 would be fully applicable to the company. The accused also agree that they were bound to comply with the regulations, their claim is only that they had repaid their investors and had even informed the SEBI about it. The lapse they claim had occurred because the company was small.

27. A perusal of the statement of CW-1 would reveal that the accused had received all the communications sent by the SEBI. Yet it chose to reply to only two communications, one in response to the public notices of November 1997 and the second in response to the show cause notice dated 12.5.2000. How the size of the company prevented compliance is mystifying, and that too when the company was sent the winding up format in which the winding up and repayment report was to be submitted to the SEBI. Ignorance of law is certainly no defence, and in any case, the





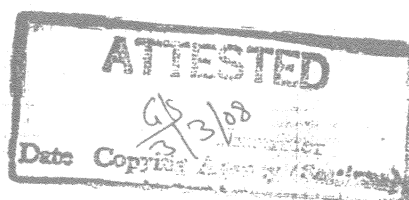
accused cannot claim ignorance, in the face of the receipt of the communication sent to it by the SEBI.

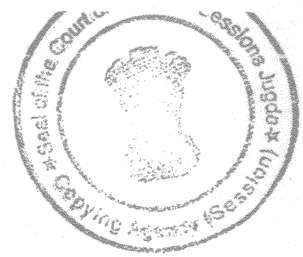
28. The purpose of the Regulations is investor protection.

Therefore, whenever a company claims repayment to investors, it is obliged under Regulations 73 & 74 and submit the details to the SEBI. For convenient submission of such details, the SEBI has prescribed a format. Compliance entailed the filing of the winding up and repayment report in that format and in no other. Finally, the SEBI must be satisfied that indeed all investors have been repaid by the company & there are no dues left. It is only when the SEBI accepts the WRR submitted by a company that full and complete compliance with the Regulations can be recorded.

29. In the present case, the accused have failed to explain as to why they chose not to submit the WRR when the format was forwarded to it on 31.7.2000. That apart, the claim of repayment is also on shaky grounds. There is no clarity as to when repayments were in fact completed. While being examined as DW-3, the accused Shankar Singh has stated that repayments have continued till 2002. He claimed that amounts invested in the recurring deposit scheme of the company had been repaid on maturity in the year 2002. The details of amounts mobilized, as filed by the accused on the Judicial record as Ex. DW-3/204 (Collectively), show that the company had continued to mobilize funds upto 2002. Then how are the accused claiming closure and repayment?

30. The report of the auditor has been placed on the record by CW-1. The report reveals that ^{complete} confirmation of payments could be made. The contentions that the auditor's report should be ignored because the auditor has not been

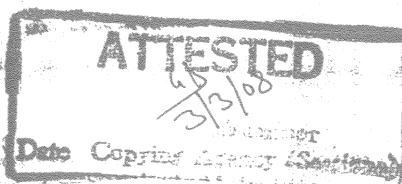


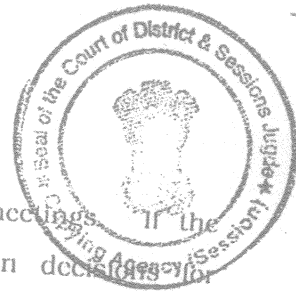


examined, have no merit. The report is relevant to prove that the WRR submitted by the accused to the SEBI has not been accepted ^{by the SEBI} ~~as~~ SEBI. Thus, it only proves that the accused have yet to comply with the Regulations. The accused could have themselves proved repayments as claimed by them. But the evidence that they have themselves brought on record is contradictory. DW-3 has stated in his testimony that the greed of investors had prevented their acknowledging repayment. However, the auditors have reported that letters sent to some of the persons named by the accused company as its investors replied that they had nothing to do with the accused company. Even as per the details provided by the accused in Ex. DW-3/204, the entire amount has not been repaid. The balance sheets refer to liability to promoters, not towards the investors.

31. In short, what is of significance ^{is} ~~is~~ the lack of credibility in the claims & statements made by the accused. In any case, whatever be the position in respect of the repayments made, there can be no other conclusion that can be drawn but that the accused had not completed repayments at the time of notification of the SEBI (CIS) Regulations 1999 and that despite complete knowledge of their obligations thereunder, the accused willfully failed to comply with the Regulations and submit that WRR in the prescribed format, once it was clear to them that the costs of registration would render their venture inviable. The effort at compliance during trial has also not been fruitful.

32. The accused No.2 has tried to rescue accused Nos. 3 & 4 from responsibility by stating as DW-3 that he alone had been ^{concerned} ~~conceived~~ with the working of the company. However, he has admitted (and the ^{minute} ~~invite~~ book reflects this) that these





accused used to attend to the Board meetings. If the company's Board of Directors had taken decisions for repayment because of the high costs of registration, it is impossible to believe that the Board was in the dark about the consequent obligations of submission to the SEBI of the winding up and repayment report in format. Thus, the only conclusion that can be drawn is that the accused A-2-A-4 are responsible for the violations of the regulations.

CONCLUSION:

33. I, therefore, hold the accused company Basant Farms & Resorts (I) Ltd., its Directors/accused Shankar Singh Kushwaha, Basant Singh Kushwaha and Gulshan Kumar Ajmani 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: 28.11.06

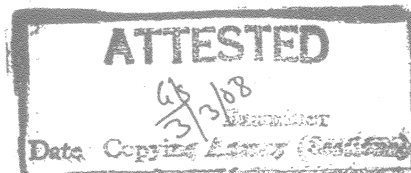
Asham Menon
(ASHA MENON)
Addl. Sessions Judge:
Delhi.

Copy given to the convict
in open court at 10
on 29/11/06

21/11/06
27/11/06

[Signature]

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

CC NO.24/2005

SEBI VS.

Basant Farms & Resorts (I) Ltd. and others

ORDER ON SENTENCE:

The learned counsel for the accused has submitted that a lenient view may be taken since the lapse has only been a technical one. Learned counsel has again contended that repayments had been made and there were no investor complaint till date against the accused company. It was also submitted that the accused Shankar Singh and Gulshan Kumar Ajmani were elderly persons while the accused Basant Singh Kushwaha was the sole bread earner of the family. It has been submitted that the accused are not persons with any criminal records and this is the first case against them.

I have heard the submissions of learned counsel. As regards the question of repayments and the lapse on the part of the accused in failing to file WRR before the SEBI, I have already discussed these issues in the judgment. It has only to be re-affirmed here that repayments have not been satisfactorily proved and nor does the lapse appear to be due to oversight. Nevertheless keeping in mind the nature of the case and the background of the accused as submitted by the learned counsel on their behalf, I am of the considered view that a jail term is not called for in the present case. Yet the punishment can not be a mere flea-bite.

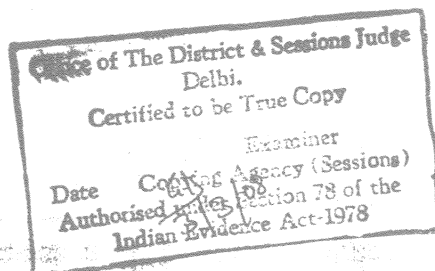
I therefore, sentence the accused Basant Farms and Resorts (I) Ltd and its directors Shankar Singh Kushwaha, Sh. Basant Singh Kushaha and Sh. Gulshan Kumar Ajmani to a fine of Rs.25,000/- each. In default of payment of fine the accused Shankar Singh Kushwaha, Sh. Basant Singh Kushwaha and Sh. Gulshan Kumar Ajmani shall undergo SI for a period of three months.

On payment of fine the personal bond and surety bond of the accused shall stand cancelled and the sureties will stand discharged.

File be consigned to the records.

Announced in the Open Court
Dated:29.11.06.

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



*Copy given
to the court
in open court
at 10
on 29/11/06
29/11/06*

*29/11/06
Hosur
PMM*

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