

IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, DELHI

CC NO: 1193 OF 2003
16/11/03

02401R 023975203

Securities and Exchange Board of India, a
statutory body established under the
provisions of Securities and Exchange
Board of India Act, 1992, having its Head
office at Mittal Court, B - Wing, 224
Nariman Point, Mumbai 400 021
represented by its Asst. General Manager,
Rajesh Bhanot.

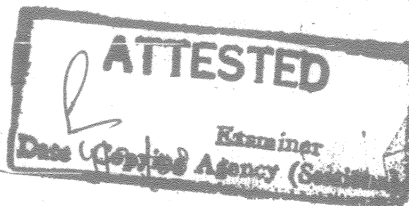
...Complainant

VERSUS.

1. Indus Spices & Herbs Ltd. Company
incorporated under the Companies
Act, 1956, having its Regd. Office at
H-14, Kasturba Apts. Pitampura,
Delhi-110 034. And having its
Corporate Office B-101, III Fl.
Lajpatnagar Part-I, New Delhi-110
024.
2. Shri Vikas Kaushik S/o Shri Chander
Bhushan Sharma, Director of Accused
No.1, R/o: 60, Sunshine Apartment,
A-3, Paschim Vihar, New Delhi-
110063.
3. Shri Hemant Arora, S/o Shri Tilak Raj

DP

HT





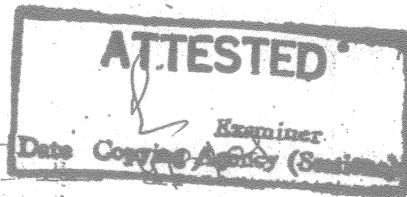
Arora, Director of Accused No.1 R/o:
A/C-III, 23B, Shalimar Bagh, New
Delhi-110052.

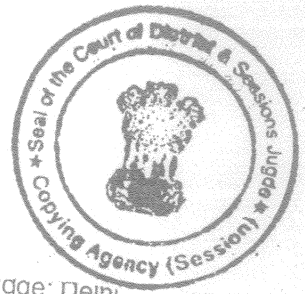
4. Shri Manish Bahadur Mathur, S/o Shri
Pukhraj Bahadur Mathur, Director of
Accused No.1, H-14, Kasturba
Apartments, Parvana Road, Pitam
Pura, New Delhi-110034.

.....Accused

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

May It Please Your Honour:



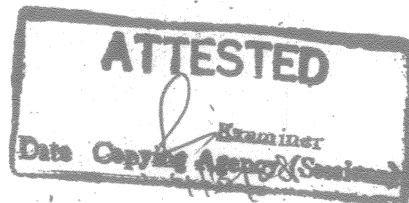


Adl. Sessions Judge: Delhi.

30-1-06

Mr. Sh. Rakesh Bhanot for SEBI.
Accused Vikas Kanshik
Hemant Asra and Manish
Bahadur Mathur, also for AI.
Vide separate orders, the
accused A1-A4 are
sentenced to fine of Rs 6000
each, in default of fine
A2-A4 shall undergo SI
for one month. I also
sentence the accused 2-4.

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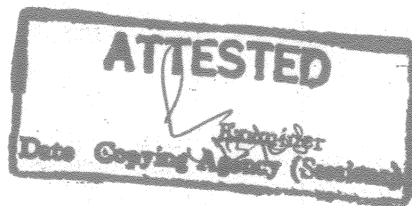


to imprisonment till rising
of the Court.

The personal bonds
and surety bonds of the
accused are cancelled.
Sureties are discharged.
File be consigned to records.

Announced in
open court on.
30.1.06.

Johanna Nency
Jss.





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

CC NO.47/2005

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.

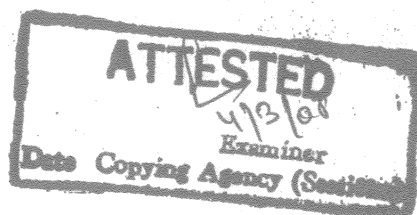
1. INDUS SPICE AND HERBS LIMITED Company incorporated under the Companies Act, 1956, having its Regd. Office at H . 14, Kasturba Apts. PitamPura, Delhi 110 034. And having its Corporate Office B-101, III Fl, Lajpatnagar Part-I, New Delhi 110 024
2. Sh. Vikas Kaushik s/o Sh. Chander Bhushan Sharma , Director of Accused No. 1, r/o 60, Sunshine Apartment, A. 3 , Paschim Vihar, New Delhi-110063
3. Hemant Arora s/o Sh. Tilak Raj Arora, Director of Accused No. 1 r/o A/C.III, 23B , Shalimar Bagh, New Delhi – 110052.
4. Sh. Manish Bahadur Mathur s/o Sh. Pukhraj Bahadur Mathur, Director of Accused No. 1, H.14, Kasturba Apartment, Parvan Road, Pitam Pura, New Delhi – 110034.

.... Accused

JUDGMENT:

BACKGROUND FACTS:

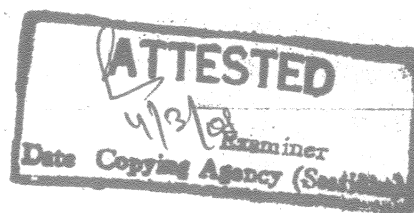
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1. The complaint has been filed by the Securities and Exchange Board of India (hereinafter referred to as the SEBI) through its Assistant General Manager Sh. Rakesh Bhanot against Indus Spice and Herbs Limited and against its Directors Sh. Vikash Kaushik, Sh. Hemant Arora and Sh. Manish Bahadur Mathur.
 2. The complaint has been preferred under the Securities and





Exchange Board of India Act, 1992 and the rules made thereunder. The case as set out in the complaint is that the Government of India after detailed consultations with the regulatory bodies decided that an appropriate regulatory frame work for regulating entities which issued instruments such as Agro Bonds and Plantation Bonds etc., was required to be created. Thereafter, the Government notified on November 1997, through a press release, that such schemes relating to issue of Agro Bonds etc., would be treated as Collective Investment Scheme governed by the SEBI Act 1992.

3. The aim of these regulations were to ensure investor protection and to promote legitimate investment activities. The regulations were notified in 1999 as the SEBI (Collective Investment Scheme) Regulation 1999.
4. Under these, pursuant to press releases dated 26.11.97/18.12.97, requiring the entities involved in such collective investment scheme, to file information and details of the company , scheme and investment with the SEBI, the accused in the present case , i.e, Indus Spice and Herbs Limited informed the SEBI that it had collected about Rs. 3 lacs from the general public . It also informed the SEBI as to who the Directors were.
5. According to the complainant SEBI, the SEBI had issued press releases and public notices on various dates being 15.12.99/29.12.99, 10.12.99 and subsequently calling upon entities to furnish information regarding investors and apply for registration with the SEBI if immediately prior to the commencement of the regulations of 1999, it was operating a collective investment

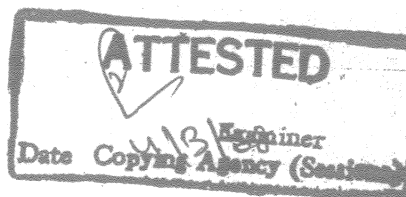




scheme. Initially, the information was to be furnished within two months of the notification of the Regulations. This time period was extended to 28.2.2000 when it was also required of all the entities to detail the state of affairs of the scheme, amount repayable to each investor, and the manner in which such amount was determined, in cases where registration was not sought by the entity with the SEBI. Subsequently the last date for furnishing details or applying for registration was extended upto 31.3.2000.

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 7th, 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 violations punishable U/s 24 (1) of the SEBI 1992 R/W Section 27 of the said Act.

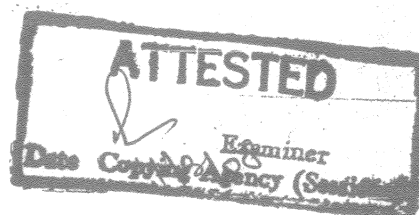




7. After the complaint was submitted, vide orders dated 16.12.03, the accused were summoned for trial. After all the accused appeared, notice of allegations u/s 251 Cr.P.C, was served to all the accused on 29.4.05 and they pleaded not guilty. The complainant examined Sh. Rakesh Bhanot as CW. 1 and Ms. Jyoti Jindgar as CW 2. The statements of the accused were recorded u/s 313 Cr.P.C. The accused relied on documents already brought on the record for their defence.

EVIDENCE

8. CW. 1 Rakesh Bhanot has deposed to facts affirming the complaint and has brought on record the communication sent by the SEBI to the accused which were received undelivered, He has also brought on record the letter of the accused in response to the first public notice detailing the amount received under their Collective Investment Scheme and informing the names of the Directors. The witness has also referred to various public notices issued in the Newspaper reminding the accused of the obligations under the Regulations and has deposed that no compliance was made by the accused company because till the filing of the complaint neither was the repayment schedule submitted in format nor was the winding up report submitted in format.
9. During his cross examination, the witness deposed that under the SEBI Act the company had to have a net worth of atleast





Rs. Five Crores in order to register with the SEBI. He deposed that a company did not become a Collective Investment Scheme, merely because it registered with the SEBI, but further stated that any company carrying on a Collective Investment Scheme without registration with the SEBI was doing so in violation of law. He affirmed in the cross examination that the accused was doing Collective Investment Scheme business in violation of SEBI Act and SEBI(Collective Investment Scheme) Regulations 1999. He also submitted that certain communications had been received from the accused company regarding NOC's and balance sheet from investors and an auditor had also been appointed by the SEBI for looking into the matter. He affirmed that no complaints have been received from any investor.

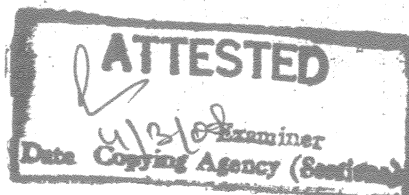
10. CW.2 Jyoti Jindgar was examined only in respect of letter EX CW 1 /4 which she had signed whereby winding up and repayment report was called for from the company. She stated that she had dealt with this case for some time.

AM

CONTENTIONS

11. Both sides have submitted written arguments. In the written arguments on behalf of the complainant, it has been submitted that the complainant had brought on record all communications and Notifications asking the accused company and persons incharge of its affairs to comply with the regulations. It has been submitted that

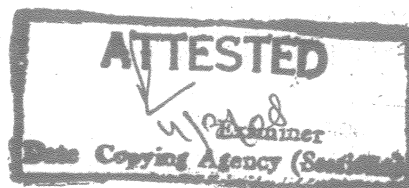
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despite show cause the notice dated 12.05.2000, again calling upon the accused to comply with the regulations and the letter dated 31.07.2000, granting the accused further opportunity for compliance, the accused company did not file the winding up and repayment report with the SEBI as a result of which the order dated 7.12.2000 had to be issued. Hence, according to SEBI the case has been fully proved against the accused.

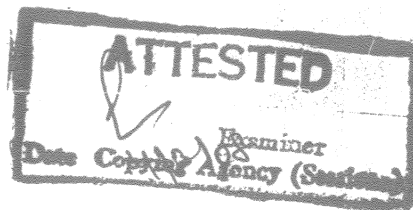
12. It has been also submitted that the complaint was not time barred as the offence was continuing and reliance has been placed on the judgment of the Hon'ble Supreme Court in State of Bihar Vs. Dev Karan Nenshi (1973) at SCR 1004 and Bhagirath Kanoria and other Vs. State of Madhya Pradesh and others AIR 1984, Supreme Court 1688. It has been held by the by the Hon'ble Supreme Court in these cases that where the offences arise out of a failure to obey or comply with the rule or its requirements , the liability continued till such obedience or compliance and the offence, subject matter of this complaint was thus a continuing offence. On that basis, it has been submitted that since the accused filed the winding and repayment report vide its letter dated 15.12.05, ^{my} it had been filed subsequent to the filing of the complaint and hence the violation of the SEBI Act and Regulations continued till that date and the accused were liable for the offences committed. Hence, the SEBI has prayed for conviction.





13. On the other hand, in the written arguments submitted on behalf of accused, it has been submitted that the money received from various investors have been returned to them to their full satisfaction much prior to the directions/letter dated 7.12.2000 issued by D.R. Mehta, Chairman SEBI i.e. about 5 or 6 years prior to the filing of the complaint. It has been submitted that despite such repayment the accused had made further payments and had submitted winding up and repayment report on 7.12.05 to the SEBI. It has been contended that under Regulation 9 of the SEBI (Collective Investment Scheme) Regulations 1999, there was no need for the accused to get themselves registered with the SEBI since the company did not have the prescribed net worth. Hence, it is argued that as the accused was not entitled for Registration with SEBI, the accused was not required to get registered with the SEBI and, therefore, the accused have not committed any offence by not applying for registration with SEBI.

14. It has been submitted in the written arguments on behalf of the accused that a sum of Rs. 2,26,000/- alone had been collected by the accused under only ^{two} ~~one~~ of its three schemes viz. Plan II and Plan III and when it transpired that on the basis of such meager amount no registration could be effected and no scheme could be floated, the accused had themselves repaid the said amount to the investors way back in the year 1998-99 and 2000 itself and as on





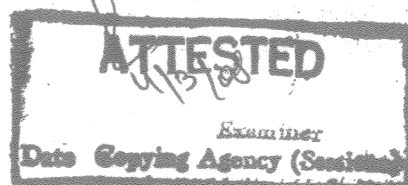
date there was not even a single investor whose money had not been repaid. Hence, it has been submitted that nothing survived in the complaint and the accused had not breached any regulations and were, therefore, entitled to be acquitted.

FINDINGS:

15. I have carefully considered the evidence brought on record on behalf of both sides. I have carefully considered the written arguments submitted by both sides.

16. 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 carrying on venture, capital funds or Collective Investment Scheme including mutual funds. Section 12 (1) B of the SEBI 1992 reads as under:

"No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he



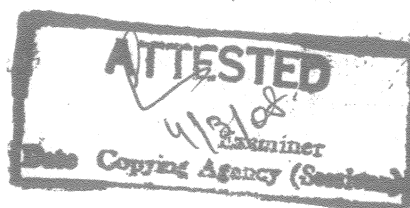


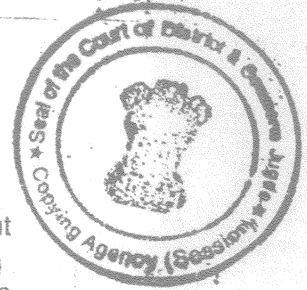
obtain a certificate of registration from the Board in accordance with the regulations :

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment scheme operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act 1995, for which no certificate or registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub -section (2) of section 30"

17. Even as per regulation 3 of the SEBI (Collective Investment Scheme) Regulations, there is complete bar on any person other than a collective Investment Management Company which has obtained a certificate carrying on or sponsoring or launching a CIS.

18 It is thus amply clear that under the SEBI Act 1992 no 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 Laws(amendment) Act 1995 to do so till such time regulations were made u/s 30 (d)(2) if the Act. Thus the proviso entitled a



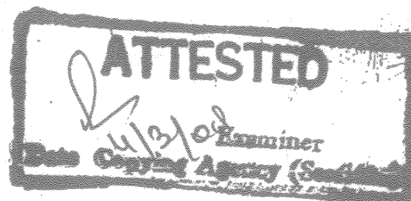


person to continue the collective investment scheme without registration only till the promulgation of the regulations in this case that date is 15.10.99.

19. The accused company had responded to the public notice. The letter dated 12.01.98 EX CW 1/1 is its response to the public notice of the SEBI in Times of India on 22.12.97. The subject mentioned in this application is that, it was an application for registration of Indus Spices and Herbs Limited. It informed vide Ex CW 1/1 that it had raised Rs. 3 lacs under plan 2 and also informed that the promoters were Vikas Kaushik, Manish Mathur, Hemant Arora, R.S. Uniyal and V.C. Soti and also enclosed the details separately in annexure 1 and 2 to this letter. Thereafter on 26.8.98 it gave further details and occupation of there directors of the company viz Vikas Kaushik, Manish Mathur, Hemant Arora and the statement of deployment of funds under various schemes for the period 31.3.98 to 30.6.98.

20. In the circumstances, there can be no doubt left in the mind that the accused No. 1 was carrying on the business of Collective Investment Scheme and the accused Vikas Kaushik, Hemant Arora and Manish Mathur were the Directors of the accused company as distinct from the Promoters first named.

21. The letter EX CW 1/1, discloses that the accused were aware of public notices in the newspapers and, therefore, can-not

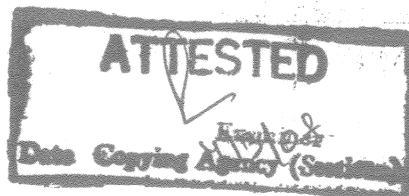




claim lack of information merely because the letters sent to the address of the accused No. 1 were being returned undelivered to the SEBI. This letter would also disclose that the accused were conscious of the need for registering the Collective Investment Scheme which they had floated whereby they actually collected Rs. 3 lacs. The contentions of the defence that as the accused is net worth of the company was not Rs. Five crores, it had no need to register and that, therefore, by not applying for registration, it had committed no violation, is a submission that can only be rejected.

22. As noticed above u/s 12 (1) B a certificate of registration issued by the Board was compulsory before a collective Investment Scheme could be conducted. Since the aim of the Regulations were to protect the interests of Investors a minimum standard was no doubt prescribed u/s 9 of the SEBI (Collective Investment Scheme) Regulation 1999 that the net worth was to be Rs. 3 crores before a company could qualify to seek registration. This would signify that only a company with a net worth of Rs. 3 crores or Rs. 5 Crores as the case may be, could continue to run a collective investment scheme and others who would not be qualified for obtaining the certificate of registration with SEBI were barred from continuing such business, once the regulations came into force. By no stretch of interpretation can it be said that the prescription of

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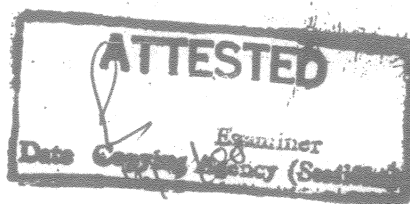




minimum net worth excused the accused company from the applicability of the Act or the Regulations of 1992 and 1999 respectively.

23. No dispute has been raised to the effect that the communication sent to the accused company was not at the correct address. Moreover public notices in newspapers were issued clearly requiring that those companies who had not applied for grant of registration were required to submit details of the state of affairs of their schemes and also disclose the repayment plans and also wind up the collective Investment Scheme. The accused company was named at serial No. 219 in the public notice issued in the newspaper i.e Hindustan Times on 14.1.2000. Yet the accused did not do so. It was only after the case was filed that they submitted the details of repayments made, to the SEBI. It is also relevant to note that in the various NOCs filed in the court record by the accused detailing, repayment, the repayments have been made not only in the year 1998 but also thereafter upto the year 2005. Nothing prevented the accused from informing the SEBI as required about the various repayments made to the Investors upto March 2000 and to detail the further plans of repayment which were finally made in the year 2005. SEBI had only required that the accused either register themselves or if they could not be

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

CC NO.47/05

SEBI

VS.

INDUS SPICE AND HERS LTD & OTHERS



ORDER ON SENTENCE

I have heard the submissions of learned counsel for the accused and today the submissions of Sh. Bhanot on behalf of SEBI. Learned counsel for the accused has argued that the amount received by the company has already been returned to the Investors and only a technical violation has occurred and therefore, a lenient view be taken in the matter. Sh. Bhanot, on the other hand, has emphasized on the fact that it was only after the filing of the complaint that compliance has taken place and that it is still being verified whether all Investors have paid.

Keeping in mind all the facts and circumstances of this case since it has come on record that despite having knowledge of the requirement of registration and despite the fact that some information had been given by the company itself to the SEBI pursuant to press notices, the accused had nevertheless failed to intimate the SEBI about the repayment already made and the repayment schedule for the future and further keeping in mind the fact that the accused no.2 to 4 are not illiterate people without any qualifications, unaware of consequences of violation of regulations, I consider it appropriate to sentence all the accused to a fine of Rs.6,000/- each. Additionally, accused no.2 to 4 are also sentenced to Simple Imprisonment till rising of the Court. In default of payment of fine there shall be simple imprisonment for one month.

The personal bonds and surety bonds of the accused are cancelled. Sureties stand discharged. File be consigned.

Announced in the Open Court.
Dated: 30.1.2006.

Asha Menon
(ASHA MENON)

Addl. Sessions Judge: Delhi.

Copy be give to
accused in the court
at FIC

