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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 2677/2010

NEXUS FARMS LTD & ORS Petitioners
Through : Mr. Shaad Anwar, Adv.

versus

SEBI Respondent
Through : Mr. Sanjay Mann, Adv.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R
03.12.2010

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1. On the last date of hearing, an adjournment was sought by the counsel for the petitioner on the ground that another case, registered as **Crl.M.C. No.969/2010** entitled Samarpan Agro & Livestock Ltd. & Ors. Vs. Securities and Exchange Board of India, relating to the issue of limitation for filing of a complaint, was pending before another Bench and was listed on 21.10.2010 and the decision taken in the aforesaid case would be relevant for consideration in the present case.

2. Today, counsel for the respondent hands over a copy of the judgment dated 25.10.2010 passed by a Coordinate Bench of this Court(A.K. Pathak, J.) in Crl.MC No.969/2010, entitled Samarpan Agro

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& Livestock Ltd.(supra)", dismissing the petition preferred by the petitioner therein.

3. In the aforesaid case, the question which arose for consideration of the Single Judge was framed as below :

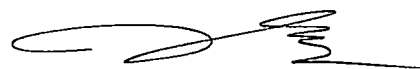
"whether violation of Regulations 73 and 74 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, punishable under Section 24 of the Securities and Exchange Board of India Act, 1992 is a continuing offence or not".

4. The learned Single Judge placed reliance on similar cases decided by the Supreme Court and High Courts of Delhi and Madras to hold that the offence in question is a continuing offence till the time the Company complies with the regulations and directions issued by SEBI by winding up the existing collective investment scheme and refunding the money to the investors.

5. In the present case also, the petitioners herein have sought quashing of the criminal proceedings arising from the Complaint Case No.41/2005 filed for contravention of SEBI Regulations and pending before the learned ASJ, on the ground that the petition filed by the respondent/complainant against the petitioner is barred by time and, therefore, the same ought to be quashed.

6. This Court is inclined to agree with the view taken in the aforesaid judgment Samarpan Agro & Livestock Ltd. (supra) rendered by a Coordinate Bench of this Court on an identical issue. Following the aforesaid judgment, the present petition is dismissed by holding that non-compliance with the provisions of SEBI, which requires an existing collective investment scheme to file an application for registration, and initiate winding up of such a scheme as per Regulation 73 while repaying the money collected to the investors as per Regulation 74, would be a continuing offence, and till the petitioner company complies with these regulations, the petition preferred by the complainant would not be barred by limitation and the provision of Section 468 of the Cr.P.C. would not be attracted.

7. The petition is therefore dismissed.



HIMA KOHLI,J

DECEMBER 03, 2010
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