

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl. Rev. Petition No. 88/2010**

% Reserved on: 23rd May, 2011

Decided on: 30th May, 2011

SURESH BATRA & ORS. Petitioners
Through: Mr. Anil Hooda, Advocate.

versus

SECURITIES & EXCHANGE BOARD OF INDIA Respondent
Through: Mr. Sanjay Mann, Advocate.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J.

1. By the present revision petition, the Petitioners seek setting aside of the order dated 12th November, 2009 passed by the learned Addl. Sessions Judge framing notice under Section 251 Cr.P.C. against them for offences punishable under Section 24(1) read with Section 27 of the Security and Exchange Board of India Act, 1992(in short “SEBI Act”).

2. Brief facts leading to the filing of the present petition are that M/s Master Green Forests Ltd. was incorporated on 3rd June, 1992 with three Directors Dayaram Verma, Santosh Verma and Amrit Lal Verma. Memorandum of Association was submitted to the Registrar of Companies Act, Punjab having its office at Jalandhar City. Thereafter, on 15th December, 2003 SEBI filed a complaint under Section 200 Cr.P.C. against the Company, Petitioners and the three other Directors of the Company. In the said complaint it is alleged that the said Company operated Collective Investment Schemes and raised huge amount from general public without complying with rules and regulations issued by SEBI in regard to the Collective Investment Schemes. Pursuant to the press release dated 26th November, 1997 and a public notice dated 18th December, 1997 notified by the SEBI the accused Company filed details with SEBI in regard to its Collective Investment Scheme. Thereafter, SEBI in the year 1999 vide its public notice dated 10th December, 1999 & letters dated 15th December, 1999 and 29th December, 1999 had intimated the Petitioners that they are required to send the information such as memorandum to all the investors detailing the statement of affairs of the C.I.S., the amount repayable to each investor and the manner in which such amount is determined latest by 28th February, 2000 which date was then extended upto 31st March, 2000 vide a press release. However, the accused Company neither applied for the registration under the

said regulation nor took any steps for winding up of the scheme nor repayment to the investors as provided under the regulations and as such had violated the provisions of Section 12(1B) of SEBI Act, 1992 and Regulation 5(1) read with Regulations 68(2), 73 and 74. On 7th December, 2000 SEBI directed the accused Company to refund the money collected under the C.I.S. to the persons who had invested the money within a period of one month from the date of said directions and a notice was served in this regard. However, despite repeated directions and reminders sent by SEBI, the accused Company did not comply with the said Regulations and thus has committed the violation of Sections 11(B), 12(B) r/w regulation 68(1), 68(2), 73 & 74 of SEBI(CIS) Regulation 1999 punishable under Section 24(1)8 SEBI Act. It is alleged that the accused Company and its promoters, Directors in-charge responsible for the conduct of its business are liable under Section 27 of SEBI Act, 1992.

3. Learned counsel for the Petitioners contends that the Petitioners herein are not the Directors, promoters or in-charge of the accused Company. They are only the shareholders and have no role to play in the day to day working of the Company. Their names appear in the Memorandum in the capacity of shareholders and not under the head of Directors, promoters or persons in-charge of the Company. It is also stated that there is no specific allegation qua the Petitioners in the complaint dated 15th December, 2003. In the year 2009 an application being CrI. M.C. 1367/2007 was filed by one of the

shareholders Sanjeev Kumar wherein this Court vide its order dated 20th October, 2009 had observed that there was no averment regarding the Petitioner therein and no specific role had been assigned to him by SEBI in their complaint and hence his petition was allowed. This Court held that the complaint qua the Petitioner therein was not maintainable and the trial Court was directed to proceed with the complaint case minus Sanjeev Kumar. It is contended that the case of the Petitioners herein is similar to that of Sanjeev Kumar and on parity the Petitioners be granted the relief prayed for.

4. A brief narration of facts relevant to the case is that the Government of India in order to regulate the excessive fund raising by the private entrepreneur and floating of multiple schemes throughout the country vide its press release dated 18th November, 1997 conveyed that such schemes should be treated as Collective Investment Schemes under the SEBI Act, 1992 and SEBI was asked to frame regulations in this regard. The Respondent SEBI in the year 1999, notified Securities and Exchange Board of India [Collective Investment Scheme] Regulations, 1999 to regulate the floating of Collective Investment Scheme (in short “C.I.S.”) by the Companies. The accused company is a registered company under the provisions of Companies Act. It operated a Collective Investment Scheme and raised huge amounts from general public. Pursuant to the press release dated 26th November, 1997 and public notice dated 18th December, 1997, the company filed information with

the respondent SEBI regarding its C.I.S. The accused company was then required to follow the provisions under Chapter IX of the Regulations which required any person who had been operating a C.I.S. at the time of commencement of the said Regulations to be an existing C.I.S. Also any person who immediately prior to commencement of the Regulations operating such scheme was required to make an application to the SEBI for grant of registration within a period of 2 months, from the date of notification of the said Regulations. As per the Regulation 73(1) if a company failed to make an application for the registration, it ought to have wound up the existing C.I.S. and repay the amount to the investors. Despite repeated directions and reminders sent by the SEBI, to the accused Company i.e. M/s Master Green Forest Limited, the said company failed to comply with the regulations and winding up the scheme. In the year 2003 complaint case No. 11/2009 was filed against the Company and the Petitioners. Taking cognizance of the said complaint learned Addl. Sessions Judge on 12th November, 2009 framed notice against the Petitioners along with the Directors of the said Company. This order of learned Addl. Sessions Judge is impugned in the present petition.

5. A perusal of the Memorandum of Association of the accused Company shows that the Petitioners herein are only the shareholders in the Company and were neither the promoters nor Directors nor in-charge and responsible

for the Company's day to day working. There is no specific role attributed to the Petitioners in the complaint dated 15th December, 2003 filed against the Petitioners and the accused Company. Hon'ble Supreme Court in *K.K. Ahuja vs. V.K. Vora & Anr., 2009 (10) SCC 48* has held that a mere averment that person is in-charge of the Company i.e. in-charge of the day to day management of the Company cannot make him vicariously liable. Their Lordships further clarified the position of directors who would be held responsible for the offences committed by the Company. In the case at hand, it is clear that the Petitioners are neither the Directors nor in anyway related/involved in the management or day to day affairs of the Company. They are only the shareholders and thus cannot be held liable for the offences committed by the Company.

6. In view of the facts and circumstances of the case, the order of learned Additional Sessions Judge dated 12th November, 2009 framing notice against the Petitioners is set aside

7. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 30, 2011
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