

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. No. 1043/2011

% Judgment reserved on: 9th January, 2012
Judgment delivered on: 27th March, 2012

BRIJESHWAR JAISWAL Petitioner
Through: Mr. V.P. Katiyar , Adv.

versus

SEBI Respondent
Through: Mr. Sanjay Mann, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioner has sought to quash the complaint case No. 19/05 dated 26.11.2009 and its subsequent proceedings pending before the trial court, titled as “Securities and Exchange Board of India v. Maha Bhairav Plantation and Finance ltd.”.

2. The facts of the instant case, in brief, are that the petitioner incorporated a company in the year 1995 under the name and style of Maha Bhairav Plantation Pvt. Ltd. having its registered office at 308, Vinay Place, 11, Ashoka Marg, Lucknow-226001. The Government of India issued a Press Release on 26.11.1997 and, thereafter, a public notice dated 18.12.1997 was issued calling upon all the companies engaged in collective investment scheme to file their details. In the year 1998 the petitioner sent

its reply to the Government of India and intimated that the petitioner company is not going to raise any fund in future from the public under the collective investment scheme and is going to wind up the company and going to return the money to the investors.

3. Ld. Counsel for the petitioner submitted that, thereafter, the respondent filed a complaint case in the Court of ACMM, Delhi without having territorial jurisdiction which was subsequently re-numbered as CC No.19/5 on 26.11.2009.

4. Vide its order dated 16.09.2009 the Id. Trial Court dispensed with the statement of the accused under Section 313 of the Cr.PC and fixed the case for D.E.

5. Being aggrieved, the petitioner filed a Revision Petition bearing No.51/2009 in the Court of District and Sessions Judge, Delhi. The same was dismissed vide order dated 19.10.2010.

6. Ld. Counsel for the petitioner submitted that had the respondent filed the complaint case at Lucknow, the petitioner would have produced all the investors who have received their amount but they are not ready to come to Delhi to depose in favour of the petitioner. In fact, the Delhi Courts have no jurisdiction to try and adjudicate upon the complaint case filed by the respondent because of the fact that the petitioner is working at Lucknow, has its registered office at Lucknow and the alleged offence was also committed at Lucknow. The complaint case is barred by section 181(4) of the Cr.PC. Therefore, in view of the Regulation No.73(1) of the respondent, the

petitioner opted not to get itself registered with the respondent, therefore, no offence is committed by the petitioner.

7. The Respondent No.1, in the reply to the petition, has stated that the nature of the offence is 'commission and omission' wherein the company sponsored and caused to be sponsored collective investment schemes without obtaining registration and failed to file the statutory report with SEBI as prescribed in regulation 73 of SEBI CIS Regulations 1999.

8. Further it is stated that Delhi Court has the territorial jurisdiction to try the present case. The offence alleged in the complaint is that the Accused Company sponsored and caused to be sponsored collective investment schemes without obtaining registration from SEBI and failed to file the prescribed report with SEBI after complying with the procedure laid down in the Regulation 73 of SEBI CIS Regulations 1999, as they have failed to obtain registration with the SEBI.

9. Further stated that the Northern Regional office of the Complainant SEBI having jurisdiction over Haryana, Himachal Pradesh, J & K Punjab, Rajasthan, Uttar Pradesh, Chandigarh and Delhi, and is situated in Delhi within the jurisdiction of the Delhi Court and the application for registration as Collective Investment Management Company was required to be filed in prescribed format by the petitioner at the Delhi office of the Complainant Board. Report prescribed was also to be filed at Delhi office. More so, there is no office of SEBI in Utter Pradesh.

10. Ld. Counsel for the Respondent No.1 has submitted that all correspondence/dealing by the Petitioner with the Complainant Board in this

regard has been with the Northern Regional Office at New Delhi, within the jurisdiction of Delhi Courts. Since the petitioner did not make application for registration with SEBI as required under statutory obligation to wind up the schemes and repay the investors as prescribed under regulation 73 of SEBI CIS Regulations 1999. As per the said regulation, the petitioner was required to file a report with the SEBI on prescribed format. He did not do so. The statutory report (Winding up and repayment report) has not been filed by the accused till date. The cause of action therefore, has accrued in Delhi.

11. Ld. Counsel for the Respondent No.1 has further contended that it is also pertinent to mention that the Accused Company also had its office at New Delhi at B-30, Safdurjang Enclave, New Delhi, within territorial jurisdiction of Delhi Courts. The Communication received on the letter head of the company thereby disclosing the office of the accused company is on record.

12. It is also pertinent to mention that the SEBI vide its public notice dated 18.12.1997 had informed the respective entities to furnish the requisite details to the respective regional offices of the SEBI, and in the present case it happened to be the Northern Regional office at New Delhi.

13. Ld. Counsel for the Respondent No.1 has pointed out that the Present petition is hopelessly time bared as the complaint was filed before the Ld. ACMM on 24.12.2001, and the present petition is preferred in the year 2011 when the case is at fag end of trial and when the matte is fixed for defence evidence. The Petition is liable to be dismissed on this account alone.

14. Ld. Counsel for the Respondent No.1 has asserted that the offence committed by the Petitioner/accused is act of omission and commission whereby the accused have failed to comply with statutory provisions. The Petitioner and the Co. Accused sponsored and caused to be sponsored collective investment Schemes hereinafter called as C.I.S. without getting the mandatory registration from Complainant/Respondent SEBI, and thereby violated the provisions of section 12 (1B) of the SEBI Act, 1992.

15. Furthermore in the present case the Petitioner/accused being promoter of the accused company and person in-charge of the affairs of the Accused Company and other persons in charge of the affairs of the Accused Company, were required to wind up the existing Collective Investment Schemes and after repayment to the investors in the process prescribed in Regulation 73, the company was required to file a report with the SEBI on prescribed format as laid down under regulation SEBI 73 (C.I.S.) Regulations, 1999, when the Petitioner/accused Company failed to get registered its existing CIS with the SEBI as required under regulation 5(1) of the SEBI (C.I.S.) Regulation 1999.

16. The petitioner and other accused were informed through Public Notices/Press Releases/letter from time to time about their statutory obligations in pursuance of the SEBI Collective Investment Schemes (C.I.S.) Regulations 1999. Petitioner did not file the statutory reports on Prescribed format in compliance of the requirement caused upon the accused in regulation 73 after adhering to the procedure laid down therein pursuant to repayments to the investors, with the Securities and Exchange Board of India at its regional office at New Delhi showing that existing Collective

Investment Schemes were wound up and payments made to the investors as per the procedure laid down in regulation 73 and 74 of SEBI (Collective Investment Schemes) regulations 1999.

17. That admittedly the Petitioner/Accused have not repaid to each investors till date, and have not filed the statutory report and failed to fulfill the requirement of filing of such report, dully audited after making final payment to all the investors, with the regional office of SEBI as was required as such the accused company had failed to comply with statutory provisions and as such violated the provisions of law.

18. Ld. Counsel for the Respondent No.1 pointed out that the accused till date have not complied with the provisions of the SEBI(CIS) Regulations 1999 by filing of the requisite report with SEBI as laid down in the regulation 73.

19. Ld. Counsel for the Respondent No.1 submitted that the present case against the petitioner and the co accused is for violation of provision of SEBI Act, non compliance of SEBI Collective investment schemes and non compliance of the directions issued by SEBI under section 11B of the SEBI Act. The said compliance was to be done at New Delhi and not at Lucknow. Therefore, the Section 181(4) Cr. P.C. has no bearing or application in the present case and section 179 of the Cr. P.C. shall apply in the present facts and circumstances. That the Hon'ble Supreme Court in the matter titled as **K. Bhaskaran Vs. Sankaran Vaidhyan Balan** 7SCC 510 in Para 11 and 12 have held as under:-

“11. We fail to comprehend as to how the trial court have found so regarding the jurisdiction question. Under Section 177 of the Code “every offence shall ordinarily be enquired into and tried in a court within whose jurisdiction it was committed”. The locality where the Bank (which dishonoured the cheque) is situated cannot be regarded as the sole criterion to determine the place of offence. It must be remembered the offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in Clause (c) of the proviso to section 138 of the Act. It is normally difficult to fix up a particular locality as the place of failure to pay the amount covered by the cheque. A place, for that purpose, would depend upon a variety of factors. It can either be at the place where the drawer resides or at the place where the payee resides or at the place where either of them carries on business. Hence the difficulty to fix up any particular locality as the place of occurrence for the offence under Section 138 of the Act.

20. Even otherwise, that every offence shall be tried by a court within whose jurisdiction it was committed, not an unexceptional or unchangeable principle. Section 177 itself has been framed by the legislature thoughtfully by using the precautionary word “ordinarily” to indicate that the rule is not invariable in all case. Section 178 of the Code suggests that if there is uncertainty as to where, among different localities, the offence committed, the trial can be held in a court having jurisdiction over any of those localities. The provision has further widened the scope by stating that in case wherein the offence was committed partly in one local area the court either of the localities can exercise jurisdiction to try the case. Further again,

Section 179 of the Code stretches its scope to a suit wider horizon. It reads thus:

178. Offence triable where act is done or consequence ensues
- when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be enquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued.”

21. Ld. Counsel for the Respondent No.1 pointed out that this Hon’ble High Court has observed in Crl. Appeal No.220/2010 in the case titled as **Ankur Forest and Project Development India Ltd. and others vs. SEBI** 2011 III AD (Delhi) 163 wherein it is held as under:

“Under Section 27 of the Act, in cases of offences by companies, every person who at the time when the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence.

As per Section 12(1B) of the Act, 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 obtains a certificate of registration from the SEBI in accordance with the Regulations. The proviso to this sub-section provides that any person sponsoring or cause to be sponsored, carrying or causing to be carried on any venture capital fund or Collective Investment Scheme operating in the securities market immediately before commencement of the Securities Law (Amendment) Act, 1995 for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under Clause (b) sub-Section (2) of Section 30. Regulations 68(1) provides that any person who has been operating a C.I.S. at the time of commencement of

these regulations, shall be deemed to be an existing CIS and shall also comply with the provisions of this chapter. Sub-clause(2) directs the applicant to give a written undertaking to the SEBI to comply with the conditions specified in Regulation (5). In terms of sub-Regulation (3) of Regulation 71 the applicant who has been considered eligible for the grant of provisional registration by the SEBI shall pay provisional registration fee as per second schedule. Sub-Regulation (4) of Regulation 71 states that an applicant who after grant of provisional registration fails to comply with the conditions as specified in sub-Regulation (1) and Regulation (9) shall not be considered eligible for the grant of certificate for registration under Regulation 10 and shall wind up the scheme in the manner specified in Regulation 73. Regulation 72 provides for grant of registration certificate to an existing CIS which satisfies the SEBI that the requirements specified in Regulation 9 and the conditions specified under Regulations 71 have been fulfilled, upon the payment of registration fees as specified in para 2 of 2nd schedule and on such terms and conditions as may be specified by the SEBI. Sub-Regulation (2) of Regulation 72 permits the SEBI to grant the certificate to an existing CIS to float new schemes on such terms and conditions as may be specified by the Board. Regulation 73 provides for a complete mechanism for the manner of re-payment and winding up of the existing collective investment scheme. Regulation 73 & 74 states as under: “Manner of repayment and winding up 73. (1) An existing collective investment scheme which: (a) has failed to make an application for registration to the Board; or (b) has not been granted provisional registration by the Board; or (c) having obtained provisional registration failed to comply with the provisions of regulation 71; shall wind up the existing scheme. (2) the existing Collective Investment Scheme to be wound up under sub-regulation (1) shall send an information memorandum to the investors who have subscribed to the schemes, within two months from the date of receipt of intimation from the Board, detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such

amount is determined. (3) The information memorandum referred to in sub-regulation (2) shall be dated and specify such other disclosures of the scheme. (4) The Board may specify such other disclosures to be made in the information memorandum, as it deems fit (5) The information memorandum shall be sent to the investors within one week from the date of the information memorandum. (6) The information memorandum shall explicitly state that investors desirous of continuing with the scheme shall have to give a positive consent within one month from the date of the information memorandum to continue with the scheme. (7) The investors who give positive consent under sub-regulation (6) shall continue with the scheme at their risk and responsibility: Provided that if the positive consent to continue with the scheme, is received from only twenty-five per cent or less of the total number of existing investors, the scheme shall be wound up. (8) The payment to the investors shall be made within three months of the date of the information memorandum. (9) On completion of the winding up, the existing collective investment scheme shall file with the Board such reports, as may be specified by the Board.

Existing scheme not desirous of obtaining registration to repay 74. *An existing collective investment scheme which is not desirous of obtaining provisional registration from the Board shall formulate a scheme of repayment and make such repayment to the existing investors in the matter specified in regulation 73”*

22. Similar views were also expressed by the Hon’ble Delhi High Court in ***Religare Finvest Limited v. State and Anr. 173(2010) DLT 185. In Hartraj Singh Vs. Godrej Agrovet Ltd. and Anr.170(2010) DLT 623*** have adhered the Judgment of the Hon’ble Supreme Court.

23. Ld. Counsel for the respondent submitted that the Hon’ble Supreme Court has dealt with the issue of Jurisdiction in **Sunita Kumari Kashyap Vs. State of Bihar and Anr.** *AIR 2011 SC 1674* and the present case of the

Respondents is squarely covered by the said Judgement. The petitioner and the accused company have failed to comply with the requirements/statutory obligations caused upon them.

24. Ld. Counsel for the Respondent No.1 finally submitted that the present case is at the fag-end of trial and now is fixed for defence evidence and as such there is no difficulty or prejudice caused to the petitioner herein. Furthermore the present proceedings are under section 482 Cr. P.C. wherein this issue cannot be adjudicated upon.

25. Ld. Counsel for the respondent has prayed that in the facts and circumstances of the case, in the interest of justice, the instant petition be dismissed with exemplary costs.

26. I have heard Ld. Counsels appearing for the parties.

27. The main issue raised vide the instant petition is that Delhi Courts have no territorial jurisdiction to try and adjudicate upon the complaint case filed by the respondent because of the fact that petitioner is working at Lucknow has its registered office at Lucknow and the alleged offence was committed at Lucknow.

28. The case of respondent no. 1 is that all correspondence / dealing by the petitioner with the Complainant Board in this regard have been with the Northern Regional office at New Delhi, within territorial jurisdiction of Delhi Courts. The petitioner did not make application for registration with SEBI as required under statutory obligation to wind up the schemes and repay the investors as prescribed Under Section 73 of SEBI (CIS) Regulations 1999. As per the said Regulation, petitioner was required to

file report with SEBI on prescribed format. He did not do so. The statutory report (Winding up and Repayment Report) has also not been filed till date. The cause of action therefore, accrued in Delhi. The petitioner also had its Office at Delhi at B-30, Safdarjung Enclave, New Delhi, within the territorial jurisdiction of Delhi Courts. More so, the communication received on the letter head of the company thereby disclosing the office of accused company is on record, at Delhi.

29. It is pertinent to mention here that respondent no. 2 SEBI vide its public notice dated 18.12.1997, had informed the respective entities to furnish the requisite details to the respective Regional Offices of the SEBI, from Delhi itself.

30. In the present case, even the Lucknow happens to be in Northern Region, therefore, Delhi courts have no jurisdiction. It is also an important factor that SEBI do not have its Office at Lucknow. The petitioner and the co-accused sponsored and caused to be sponsored Collective Investment Schemes called as CIS without getting the mandatory registration from Complainant/Respondent SEBI, and thereby violated the provisions of section 12 (1B) of the SEBI Act, 1992.

31. The petitioner and other person persons in charge of the affairs of the Accused Company, were required to wind up the existing Collective Investment Schemes and after repayment to the investors in the process prescribed in Regulation 73, the company was required to file a report with the SEBI on prescribed format as laid down under regulation SEBI 73 (C.I.S.) Regulations, 1999, however the Petitioner/accused Company failed

to get registered its existing CIS with the SEBI as required under regulation 5(1) of the SEBI (C.I.S.) Regulation 1999.

32. The Petitioner even did not file the statutory reports on Prescribed format in compliance of the requirement caused upon the accused in regulation 73 after adhering to the procedure laid down therein pursuant to repayments to the investors, with the Securities and Exchange Board of India at its regional office at New Delhi, showing that existing Collective Investment Schemes were wound up and payments made to the investors as per the procedure laid down. More so, the petitioner has not repaid to each investors till date.

33. The important factor of this case is that it is at the fag end of the trial now fixed for the defence evidence and as such there is no difficulty or prejudice caused to the petitioner to proceed further.

34. In the facts and circumstances of the case, I am not inclined to quash the complaint no. 19/05 dated 26.11.2009 and subsequent proceedings.

35. CrI. M.C. 1043/2011 is dismissed on the above terms.

36. No order as to cost.

SURESH KAIT, J

MARCH 27, 2012

Mk/Jg