

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

Reserved on: 27.01.2014
% Date of Decision: 29.01.2014

+ **CRL. A. No.442 of 2010**

SUNITA BHAGAT Appellant

Through: Mr. Sanjeev Kumar, Adv.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA..... Respondent

Through: Mr. Sanjay Mann, SPP &
Mr. R.K. Pillai, Adv.

+ **CRL. A. No.464 of 2010**

MAJOR P.C. THAKUR Appellant

Through: Mr. Rahul Bhagat, Adv.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA..... Respondent

Through: Mr. Sanjay Mann, SPP &
Mr. R.K. Pillai, Adv.

+ **CRL. A. No.473 of 2010**

RAJAN RAI Appellant

Through: Mr. Sanjeev Kumar, Adv.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA..... Respondent

Through: Mr. Sanjay Mann, SPP &
Mr. R.K. Pillai, Adv.

+ **CRL. A. No.474 of 2010**

AJAY VOHRA

..... Appellant

Through: Mr. Sanjeev Kumar, Adv.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA..... Respondent

Through: Mr. Sanjay Mann, SPP &
Mr. R.K. Pillai, Advs.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGEMENT

V.K.JAIN, J.

Section 12 (1B) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'the Act'), which came to be inserted w.e.f. 25.1.1995, provides that 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 (for short 'CIS') including mutual funds, unless he obtains a certificate of registration from the Securities and Exchange Board of India (for short 'SEBI') in accordance with the regulations. The proviso to the aforesaid sub-section, permits any person, sponsoring or causing to be sponsored, carrying or causing to be carried on any such fund or scheme operating in the security market immediately before 25.1.1995, for which no certificate of registration was required prior to the said date, to continue to operate till such time Regulations are made under clause (d) of sub-section (2) of Section 30, which to the extent it is relevant, permits SEBI to make Regulations *inter alia* providing for the conditions subject to which certificate of registration is to be issued, the amount of fee is to be paid

for certificate of registration and the manner of suspension or cancellation of certificate of registration under Section 12 of the Act.

2. Vide press release dated 18.11.1997, the Government of India conveyed that instruments such as agro bonds, plantation bonds, etc. shall be treated as CIS coming under the Act and SEBI was asked to formulate its Regulations for such schemes.

The Accord Plantation Limited (hereinafter referred to as 'the Company') vide its letter dated 9.12.1997 (Ex.CW1/1), submitted information to SEBI, pursuant to its press release dated 26.11.1997 and/or public notice dated 18.11.1997. The aforesaid information was signed by the appellant, Sunita Gupta, one of the Directors of the Company at that time. The main objects of the Company were stated in the said communication dated 7.12.1997 and SEBI was informed that the Company had collected Rs.60,86,061/- under its CIS. The main objects of the company, as delineated in the letter dated 9.12.1997 were (i) To acquire by purchase, lease, grant of license or otherwise land and cultivate, grow, produce or deal in teak and/or in any plantation, agriculture crops, vegetables, fruits products, trees of all kinds and own manage and sell under different schemes the same with or without land, both in India and abroad; (ii) To carry on business of agriculture, horticultural, floricultural and forestry related activities and to carry on business of farming, agriculture, nursery, sericulture, been farming and tissue culture; (iii) to assist any person in possessing land and render all services as lease, manager, agents and consultants and advisors and to develop them to make suitable for cultivation of agriculture crops,

plantation, plantations and forestry; and (iv) For its purpose of forestry business to negotiate under different schemes for forestry development business. The standard application form for purchase of land and forest development, the brochure issued to the prospective investors as well as bio data of the Directors of the Company, namely, Ajay Vohra, Sunita Bhagat and Tejinder Singh, was annexed to the said communication. Later, vide its letter dated 25.8.1998, responding to a communication from SEBI, the Company through its Director, Ajay Vohra, submitted its audited balance sheet of the Company on 31.3.1998, compliance report, statement of utilization of funds and their utilization certified by its auditors and name and address and occupation of all its Directors. It was also stated in the communication of the Company dated 28.5.1998 that they had not floated any new CIS subsequent to public notice of SEBI dated 18.11.1997 and they were not mobilizing any further funds under the existing schemes. It was further stated that they shall be mobilizing further funds only after obtaining a rating of their existing schemes. The amount of funds mobilized till 31.3.1998 was stated to be Rs.80.64 lakh, meaning thereby that the Company had mobilized additional money between 9.12.1997 when the earlier communication was sent and 31.3.1998. The names of four (4) persons, namely, Ajay Vohra, P.C. Thakur, Sunita Bhagat and Rajan Rai, were disclosed as the Directors of the Company. It was further stated that Mr. P.C. Thakur was an agriculturist whereas the remaining Directors were in business.

3. The Securities and Exchange Board of India Regulations, 1999, (hereinafter referred to as 'the Regulations') came to be notified only on 15.10.1999. After notification of SEBI CIS Regulations on 15.10.1999,

the Company was informed in this regard vide letter dated 21.10.1999 (Ex.CW1/4). The Company vide its letter dated 7.2.2000 informed SEBI that they were no more interested in operating their CIS due to stringent guidelines of SEBI and, therefore, intended to pay all the deposits from sale of tree on due date. A year-wise detail of income and payment of maturities was annexed to the said letter. As per the details annexed to the letter, the Company intended to realize Rs.4,14,45,000/- between 2001 and 2004 and intended to pay Rs.3,58,92,617/- during the said period.

4. Since the Company neither sought registration in terms of the Regulations nor intimated winding up of its scheme, a show cause notice dated 12.5.2000 (Ex.CW1/6) was issued to it by SEBI. The Company vide its letter dated 23.5.2000 referred to its earlier letter dated 7.2.2000 about winding up of the schemes. A copy of the said letter was annexed to the letter dated 23.5.2000. Vide letter dated 29.5.2000 (Ex.CW1/8), the Company was informed by SEBI that it was not complying with the Regulations since it was proposing to repay to the investors between 2001 and 2004 which was not in conformity with the schedule stipulated in the Regulations. Thereupon the Company vide letter dated 10.6.2000 (Ex.CW1/9) submitted yet another schedule which also envisaged payment on maturity of the amount of Rs.1,78,21,593/- along with escalation @ 11 per cent amounting to Rs.19,60,375/- thereby making a total sum of Rs.1,97,81,968/- between June, 2000 and December, 2002.

5. Vide its letter dated 27.11.2000 (Ex.CW1/2), SEBI informed the Company that its reply was not in conformity with the requirement of the Regulations and it had not filed the winding up and repayment report in the prescribed format. The Company was given an opportunity of personal hearing on 5.12.2000. It appears that the aforesaid letter returned unserved with the report “unclaimed”. Since the Company failed to comply with the requirement of the Regulations, an order was passed by the Chairman, SEBI on 31.1.2001 directing payment to investors as per the original terms of the offer, within one (1) month of the said letter. The order was sent to the Company vide letter dated 5.2.2001 (Ex.CW1/14), which also was returned undelivered with the remarks “left without address”. A notice was then published in the Hindustan Times on 19.12.1999 besides a public notice dated 10.12.1999 intimating that in case of failure to comply with the requirement of the Regulations, the proceedings, including prosecution, shall be initiated. Since the Company did not comply with the direction issued by the Chairman, SEBI and did not furnish the winding up and repayment report, a copy of the order dated 31.1.2001 of the Chairman, SEBI was again forwarded to the Head Office of the Company at Shimla vide letter dated 13.3.2001 (Ex.CW1/15). Responding to the said letter, the Company vide its letter dated 30.3.2001 (CW1/16) informed SEBI that they had sent detailed information with regard to repayment, to its investors and had also informed it that 30 per cent of the existing investors had sent positive consent to continue with the scheme at their own risk and responsibility. It was further stated that the plantation of the Company would be ready, for cutting, by the end of 2001 and

repayment to the investors would commence from that date and would be completed by the end of 2003.

6. Since the Company neither obtained registration nor complied with the requirement of the Regulations, a complaint came to be filed before the learned ACMM, Delhi.

SEBI examined only one (1) witness in support of the complaint, whereas nine (9) witnesses were examined in defence.

7. Vide impugned judgment and order on sentence dated 25.3.2010 and 26.3.2010 respectively, the appellants were sentenced to under RI for six months each and to pay fine of Rs.10 lac each or to undergo simple imprisonment for three months each in default.

8. A perusal of the Certificate of Incorporation of the Company would show that the Company came to be incorporated on 16.10.1996, at Jalandhar, which was much after sub-section (1B) of Section 12 of the Act came to be notified.

The expression 'Collective Investment Scheme' has been defined in Section 2(ba) to mean any scheme or arrangement which satisfies the conditions specified in Section 11AA. Sub-section (2) of Section 11AA provides that any scheme or arrangement made or offered by any company under which—

(i) the contributions, or payment made by the investors, by whatever name called, are pooled and utilized for the purposes of the such or arrangement;

- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;
- (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
- (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement shall be a collective investment scheme. Though the aforesaid Section came to be inserted with effect from only 22.02.2000, the expression 'Collective Investment Scheme (CIS) even before the aforesaid incorporation was understood to mean any scheme, whereby funds were raised from the members of the general public for the purpose of making investment in any property.

The following view taken in **Paramount Bio-Tech Industries Limited vs. Union of India** 2003 Law Suit (All) 1206:-

“The Dave Committee in its report observed that the ‘collective investment scheme’ is a generic term, and therefore would encapsulate within its fold various activities which have been found to have certain specific characteristics. It is alleged that the definition of collective investment schemes as inserted by the Securities Laws (Amendment) Act, 1999 is substantially the same as mentioned in the Dave Committee report. The expression 'collective investment scheme' though not initially defined under the Statute, was generally understood to include such schemes as are floated for mobilisation of money by way of contribution from the public at large and the corpus is invested in property with a view to share the benefits arising out of deployment of such common corpus. In the absence of the definition of

collective investment scheme it cannot be said that SEBI has no power to regulate such scheme.”

The scheme of the company, therefore, constituted Collective Investment Scheme within the meaning of SEBI Act, 1992.

A perusal of the brochure annexed to the letter of the company dated 09.12.1997 (Ex.CW-1/1) would show that applications from the members of the public, in general, were invited for making investment in the Plantation Scheme of the company. The company proposed to purchase property and plant and grow trees on such land. It offered high returns, mortgage of land against investment and tax free agricultural income to the investors.

In view of the absolute bar contained in the aforesaid sub-section, the Company could not have come out with such a scheme, without obtaining a certificate of registration from SEBI, in accordance with its Regulations on the subject. Admittedly, no such registration was even applied for by the Company before it came out with its scheme. As far as the proviso is concerned, it is evident from its bare perusal that it applies to only those schemes which were already in operation on 25.1.1995 when Security Laws (Amendment) Act, 1995, came into force. Though really not necessary, a reference in this regard may be made to a judgement of the Allahabad High Court in Paramount Biotech Industries Limited Vs. Union of India 2003 LawSuit (All.) 1206 where noticing that petitioner No.1 was incorporated in 1996, and, therefore, was not carrying on business on 25.1.1995, it was held that the proviso to sub-section (1B) of Section 12 of the Act was not applicable to it and was not entitled to the benefit of the said proviso. Therefore, by coming

out with its CIS, the Company contravened the provisions of Section 12 (1B) of the Act which is punishable under Section 24 of the Act.

9. Regulation 74 of the SEBI CIS Regulations, which came into force on 15.10.1999, provides that an existing CIS which is not desirous of obtaining provisional registration from the Board shall formulate a scheme of repayment to the existing investors in the manner specified in Regulation 73. Moreover, Regulation 69 provides that if prior to the date of coming into force the Regulations, any person was running an existing collective investment scheme he should apply for grant of certificate within two months from such date. Regulation 69 contains a prohibition against launching any new CIS or raising money from the investors, under the existing Scheme, without registration with SEBI. Since the scheme of the Company was in operation at the time the aforesaid Regulations came into force, the Company was under an obligation to formulate a scheme of repayment and make such repayment to its investors in terms of Regulation 73, which *inter alia* required the scheme to be wound up and the investors to be intimated within two (2) months from the date of receipt of intimation from SEBI, detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount was determined. The information memorandum was to explicitly state that the investors desirous of continuing with the scheme shall have to give a positive consent within one (1) month from the date of the information memorandum to continue with the scheme. The payment to the investors was to be made within three (3) months from the date of the information memorandum and on completion of winding up a report as specified by the Board was to be filed with it.

10. Admittedly vide letter dated 21.10.1999 (Ex.CW1/4), SEBI informed the Company that its CIS Regulations, 1999, were posted on its website. A copy of the press release issued in this regard was enclosed to the said letter. The aforesaid communication by SEBI was responded to by the Company vide its letter dated 7.2.2000 annexing therewith a schedule which envisaged payment to the investors between 2001 and 2004. There is no evidence of the Company sending the Information Memorandum to its investors, within two (2) months from the date of receipt of intimation from SEBI. The said memorandum was required to give details such as state of affairs of the scheme, the amount repayable to each investor and the manner in which the said amount was determined. No copy of the information memorandum, if any, sent to the investors has been proved by the appellant. As noted earlier, in terms of Regulation 73, the payment to the investors was to be made within three (3) months from the date of the information memorandum. This is not even the case of the appellants that the Company had actually sent information memorandum in terms of the Regulations to all its investors within two (2) months of receipt of intimation from SEBI and the said memorandum envisaged payment to the investors within three (3) months from its date. In fact, the details annexed to the letter dated 7.2.2000 clearly show that the Company did not even intend to pay to its investors within the time frame stipulated in the Regulations. The schedule of payment drawn up by the Company from time to time did not comply with the requirements of the Regulations to send information memorandum to the investors within two (2) months of receipt of intimation from SEBI and then paying to them within three

(3) months of the date of the memorandum. Even the revised schedule sent by the Company to SEBI did not comply with the requirements of the Regulations since it envisaged payment between 2000 and 2002. In fact, later on the Company did not seek to adhere even to the aforesaid schedule and wanted the payment to the investors to complete by 2003.

11. Mr. AjayVohra, the Director of the company who, admittedly was also a person incharge of and responsible to the company for conduct of its business came in the witness box as DW1 and stated that there were about 350 investors in the scheme floated by the company and they had refunded deposits of 316 investors. In his cross examination, he stated that there are about 24 investors who have who have filed winding up petition in Punjab and Haryana High Court on the ground that they have not been repaid. He also admitted that the aforesaid petition was filed in the year 2003 and at that time about Rs.12 lac to Rs.13 lac was still outstanding towards the aforesaid investors. Thus, it is an admitted position that all the investors who participated in the CIS Scheme of the company were not paid within the time stipulated in the CIS Regulations of SEBI.

12. The Company, therefore, clearly contravened the provisions of SEBI CIS Regulations, 1999 by not sending memorandum as per the requirement of the Regulations to its investors within two (2) months of receipt of intimation from SEBI and not making payment to all its investors within three (3) months of the date of memorandum.

13. Even as regards 316 investors who according to Mr. AjayVohra were refunded their deposits, no receipt issued by them has been filed by the appellants. In his deposition Mr. AjayVohra admitted that out of 316 investors, no one had acknowledged receipt of cash from the company. No account books were produced by the company before SEBI to satisfy it that the deposits collected from 316 depositors were refunded to them. It is difficult to accept that as regards 316 depositors were refunded, in cash, without even taking the receipt from them. There is no evidence of payment having been made to any investors by way of cheques.

The appellants placed on record 16 affidavits purporting to be sworn by some of the investors and acknowledging the receipts of payment from the company. Even if it is presumed that 16 investors by whom the aforesaid affidavits purport to be sworn were paid by the company, there is no documentary proof of as many as 316 investors having been paid, as claimed by Mr. AjayVohra. Moreover, there would be contravention of Regulations if even a single investor was not paid within three months of the date of the Information Memorandum, which the company was required to send to all its investors, and it is admitted even by Mr. AjayVohra that as many as 24 investors were not paid even by the time they filed a winding up petition in the year 2003. In his cross examination, Mr. Ajay Vohra admitted that they had not filed the winding up repayment report with SEBI even till the date he was examined. Had the company made payments to 316 investors, as is claimed by Mr. Ajay Vohra, it ought to have produced its account books and supporting documents with SEBI so that enable it to verify the alleged payments. DW8 Mr. Dinesh Gupta, who had invested

Rs.20,000/- in the company claimed to have received back his money on 22.12.2002, in cash, in installments between July, 2002 to December, 2002. But, neither he signed any voucher nor did he issue any receipt to the company despite receiving his dues in cash. However, presuming that he was repaid the amount invested by him between July, 2002 to December, 2002, there was a violation of CIS Regulations even in respect of his deposit since the payment to him was not made within the time stipulated in the Regulations. DW9 also claimed to have invested Rs.10,000/- in the company and received it in installments by May, 2003. There was violation of Regulations in his case as well, on account of payment having not been made within the period stipulated in the Regulations. As noted earlier, in view of the prohibition contained in Regulation 69, the company could not have raised money under its existing Scheme, after coming into force of the Regulations. It has come in the deposition of DW8 Dinesh Gupta that he invested money in the company in the month of December, 2000 whereas according to DW9 Hari Om Gupta, he had reinvested Rs.20,000/- in the company on 7.5.2001. In view of the prohibition contained in Regulation 69 of SEBI CIS Regulations, the company could not have raised money from them, after the Regulations came to be notified on 15.10.1999.

14. Coming to the vicarious liability of the appellants, the question which comes up for consideration is as to whether they, at the time the provisions of Section 12(1B) and/or CIS Regulations were contravened by the Company, were in-charge of and responsible to the Company for conduct of its business or not. Of Course, even if they were in-charge of and responsible to the Company for conduct of its business they would

not to be guilty of commission of offence if they are able to prove that the offence by the Company was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such offence. If SEBI is able to prove that the offence by the Company was committed with the consent or connivance of any of the appellants or is attributable to any neglect on their part, they shall be guilty in terms of sub-section (2) of Section 27 even if they were not persons in-charge of and responsible to the Company for conduct of its business.

15. It was held by this Court in Vishnu Prakash Bajpai versus Securities and Exchange Board of India [2010 (2) Crimes 394 (Del.)] that the offence punishable under Section 24 of the Act is a continuous offence, till the time the company complies with the Regulations and the directions issued by SEBI by refund of money to the investors. Similar view was taken by another Bench of this Court in Samarpan Agro and Livestock Ltd. Versus SEBI [2010 (104) SCL 584].

16. As far as the appellant, Ajay Vohra, is concerned, the learned counsel for the appellants did not dispute during the course of arguments that he was a person in-charge of and responsible to the Company for conduct of its business. Even otherwise, not only has, Mr. Ajay Vohra, been corresponding with SEBI, he also signed the balance sheet, profit & loss account, schedule of deposits, schedule of fixed assets, schedule of cash and bank, notes on account forming part of the balance sheet, etc. of the Company for the year 1997-1998, a copy of which the Company had submitted to SEBI along with its letter dated 28.5.1998

(Ex.CW1/2). The CIS of the company was promulgated and in fact even the company was formed later. Even when he came in the witness box, Mr. AjayVohra did not claim that he was not the person incharge of and responsible to the company for conduct of its business. This would clearly show that he was a person in-charge of and responsible to the Company for conduct of its business.

17. As far as the appellant, Sunita Bhagat is concerned, admittedly she was a Director of the appellant Company on 25.01.1995 when sub-section (1B) of Section 12 of the Act came to be notified, she having resigned only on 20.9.1999. He has also been operating the bank account of the company. Therefore, the offence to the extent of contravention of sub section (IB) of Section 12 by the Company was committed during the period she was its Director. The first letter sent to SEBI on 9.12.1997, stating therein the main objects of the Company and giving information with respect to the funds mobilized from the investors and also enclosing returns, copies of offer documents and bio datas of Promoters was sent by her. She was also a Promoter of the Company and one of its first directors, as stated by DW6 Vikram besides being a Director in another Company, Blue Peaks Floriculture Limited. A perusal of the balance sheet of the Company would show that she was also paid remuneration by the Company during the financial year 1997-1998. All these documents leave no reasonable doubt that she also was a person in-charge of and responsible to the Company for conduct of its business. No evidence has been led by her to prove that the contravention of sub-section (1B) of Section 12 of the Act was committed without her knowledge or that she had exercised all

due diligence to prevent the commission of the aforesaid offence by the Company.

18. As far as appellant P.C. Thakur is concerned, as stated by DW4, the Accountant of the company, he was a director in the company in the year 1999. He resigned from the company only on 20.2.2000. His name appeared in the list of directors sent by the company to SEBI vide its letter dated 28.5.1998. meaning thereby that he became director prior to the aforesaid date. As noted earlier, the company vide its letter dated 7.12.1997 had intimated SEBI that it had collected Rs.6086061/- under its CIS. The aforesaid amount was stated to be Rs.80.64 lac till 31.3.1998, in the letter of the company dated 28.5.1998, meaning thereby that the company raised fund from its depositors even after 7.12.1997. In fact, according to DW8 Mr. Dinesh Gupta, he made investments in the company in December, 2000 whereas DW9 Mr. Hari Om Gupta claimed to have reinvested his money with the company on 7.5.2001. The depositions of the witnesses produced by the appellants themselves clearly show that the company continued to accept the money from members of the public at least till 7.5.2001. In view of the prohibition contained in Sub Section (IB) of Section 12 of the Act, the company could not have collected any payment under its CIS on and after 25.01.1995. Therefore, contravention of Sub Section (IB) of Section 12 took place at the time Major P.C. Thakur was a director of the company is made out.

As noted earlier, SEBI had, vide its letter dated 21.10.1999 informed the company of its CIS Regulations notified on 15.10.1999. In

terms of the Regulation 73, the scheme was required to be wound up and an Information Memorandum was to be sent to all the investors within two months of intimation from SEBI. Since neither the scheme was wound up nor the Information Memorandum was sent to the investors within two months of receipt of intimation from SEBI, the contravention of CIS Regulations of SEBI also took place at the time Mr. P.C. Thakur was the director of the company.

As would be evident from the balance sheet of the company, remuneration was being paid by it to Mr. P.C. Thakur. It has also come in the deposition of DW2, an official form Punjab and Sind Bank that an authority letter from the company was received stating therein that Major P.C. Thakur was its director as on 24.2.1998 and he was authorized to operate the accounts of the company with the aforesaid bank. A copy of the account opening form is Ex.DW2/B, whereas a copy of the extract from the minutes of the meeting of Board of Directors of the company is Ex.DW2/C. A copy of the authority letter is Ex.DW2/D. The fact that Mr. P.C. Thakur was getting remuneration from the company and was also authorized to operate its bank accounts clearly shows that he was also a person incharge and responsible to the company for conduct of its business, during the period he was its director.

19. As far as appellant – Rajan Rai is concerned, according to him, he was appointed as director of the company six months before it was closed. Since the offence punishable under Section 24 of the Act is a continuous offence till the time all the investors of the company are

repaid in terms of CIS Regulations of SEBI, it can hardly be disputed that contravention of the provisions of the Act continued to take place at the time he was the director of the company. A perusal of the annual return of the company would show that it was also signed by appellant Rajan Rai. There was no legal requirement of the annual return of the company being signed by all the directors of the company. In my view, it can safely be inferred, from Mr.Rajan Rai signing the annual return of the company that he was also the person in charge and responsible to the company for conduct of its business.

20. No evidence has been led by any of the appellants to prove that offence punishable under section 24 of the Act was committed by the company without their knowledge or that they had exercised all due diligence to prevent commission of the said offence. Therefore, being the persons in charge of and responsible to the company for conduct of its business at the time the offence punishable under Section 24 of the Act committed by the company, the appellants have rightly been convicted under Section 24 of the Act read with section 27 thereof.

21. For the reasons stated hereinabove, I find no reason to interfere with the conviction of the appellants under Section 24 of the Act read with Section 27 thereof.

22. Section 24 has since been amended so as to enhance the maximum substantive sentence to ten (10) years, and to prescribe a fine up to Rs.25.00 crore. The amendment clearly indicates the seriousness,

which the Legislature attaches to such contraventions. The purpose obviously is to deter persons such as the appellants from trapping the gullible investors, by promising them returns which are unrealistic and can never be given. Any unwarranted leniency towards such persons will be highly misplaced, besides being detrimental to the larger interest of the society.

23. In the facts and circumstances of the case, when admittedly all the investors have not been paid and there is no documentary evidence of even a substantial number of them having been paid, I find no good ground for reducing the substantive sentences awarded to the appellants or the fine imposed on them. The appeals are, therefore, dismissed. The appellants are directed to surrender forthwith before the trial court. If they do not surrender forthwith, the trial court shall take steps to secure their presence and commit them to jail. The amount of fine, unless already paid, shall be paid within three weeks from today, failing which the appellants shall undergo the sentence awarded to them by the trial court, in default of payment of fine.

All the appeals stand disposed of accordingly.

JANUARY 29, 2014
b'nesh/rd

V.K. JAIN, J.