

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

Reserved on: 18.02.2014

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Date of Decision: 24.02.2014

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Crl. A. No.563 of 2010

SACHIN GUPTA

....Appellant

Through: Mr. Vinod Kumar, Adv.

Versus

SECURITIES & EXCHANGE

BOARD OF INDIA & ANR.

....Respondents

Through: Mr. Sanjay Mann & Mr. R.K. Pillai,
Advs. for R-1.

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Crl. A. No.567 of 2010

GLITTER GOLD PLANTATION LTD. & ORS.

....Appellants

Through: Mr. Vinod Kumar, Adv.

Versus

STATE (NCT OF DELHI) & ANR.

....Respondents

Through: Mr. Sanjay Mann & Mr. R.K. Pillai,
Advs. for R-2.

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Crl. A. No.573 of 2010

YASHWANT JAIN

....Appellant

Through: Mr. Prag Chawla, Adv.

Versus

SECURITIES & EXCHANGE

BOARD OF INDIA & ORS.

....Respondents

Through: Mr. Sanjay Mann & Mr. R.K. Pillai,
Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The appellant No.1 in Crl. A. No.567/2010, Glitter Gold Plantation Limited (hereinafter referred to as 'the Company'), came to be incorporated on 31.1.1997 and appellants 2 & 3, Pankaj Jain & Deepak Jain are its Directors. The appellant in Crl. A. No.563/2010, namely Sachin Gupta and the appellant in Crl. A. No.573/2010, Yashwant Jain, are stated to be the subscribers to the memorandum of the aforesaid Company though they are not its Directors. The Company, as per the history provided to Securities & Exchange Board of India (for short 'SEBI'), vide communication (Ex.CW1/1), was engaged in Teak plantation activities and it offered opportunity to the members of the public to invest in Teak saplings on the land owned or leased directly or on behalf of others. The Company commenced its business on 9.2.1997. It came out with the schemes named as Glitter Teak Unit 1 and Glitter Teak Unit II and collected Rs.14.06 lakh from the investors till 30.11.1997. It was stated in the Brochure that the Company shall give Teak trees to the unit holders after 20 years and the share per unit, which at the time of offer was 2,500/-, was likely to be Rs.3.00 lakh per unit at the time Teak trees are given to the investors. Thus, it was represented

to the investors that investment of Rs.2,500/- was likely to grow to Rs.3.00 lakh in 20 years.

2. 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.

3. 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.

Pursuant to the SEBI press release dated 26.11.1997 and/or notice 18.12.1997, the Company furnished information with respect to its above-referred scheme to SEBI. Vide aforesaid information, the Company informed SEBI about Rs.14.06 lakh raised by it by way of its Glitter Teak Unit 1 and Glitter Teak Unit II which according to SEBI are Collective Investment Schemes (CIS). The information sent to SEBI was signed by the appellant S.K. Jain, Managing Director of the Company and the appellant Pankaj Jain, who was stated to be a whole time Director of the Company.

Vide letter received by SEBI on 29.4.1998, the Company, through Shri Pankaj Jain, whole time Director, furnished additional information to SEBI which included the copies of its balance sheet, a compliance certificate and a statement of deployment of funds mobilized under various schemes. The balance sheet was signed by the Managing Director Shri S.K. Jain and the while time Director Shri Pankaj Jain. It was also stated in the said information that Shri Deepak Jain was also a Director of the Company and that he was a businessman. The compliance certificate submitted to SEBI was signed by Shri Pankaj Jain.

4. The Securities and Exchange Board of India Regulations, 1999 (hereinafter referred to as 'the Regulations') came to be notified on 15.10.1999. In terms of the requirement of the Regulations, SEBI vide its letters dated 15.12.1999/29.12.1999 and by way of a public notice dated 10.12.1999, required the Company to send an information memorandum to all its investors detailing the state of affairs of the scheme, the amount repayable to each investor and the manner in which such amount was determined. The said information memorandum was required to be sent to the investors latest by 28.2.2000. However, neither the Company submitted any application to SEBI for registration of its CIS nor did it comply with the letters of SEBI dated 15.12.1999/29.12.1999 and its public notice dated 10.12.1999.

5. On 7.12.2000, SEBI in exercise of the powers conferred under Section 11(B) of the SEBI Act, directed the Company to refund the money collected under its CIS to the persons who had invested therein within a period of one (1) month from the date of the said direction.

6. Vide its letter received by SEBI on 9.1.2001 (Ex.CW1/16), the Company through its Director Shri Deepak Jain informed SEBI that the number of their investors was 1029 and since April, 1998, itself they had started refunding money to their investors. It was further stated in

the letter that 95 per cent of the investors were *jhuggi* dwellers with whom no correspondence was possible and that the Company had made full refund to 503 out of 1029 investors and had given Indira Vikas Patras (IVPs) to the remaining 526 investors. It was further stated that full refund was in progress from the side of the Company and only Rs.5,18,100/- was left with it out of the amount of Rs.14,07,500/- collected by it from the investors. The Company sought time till December, 2001, to refund money to the remaining 526 investors.

7. Vide letter dated 25.1.2001 (Ex.CW1/17), SEBI reminded the Company that it had not sent winding up and repayment report in terms of the letter of SEBI dated 31.7.2000. The Company was advised to submit the said report by 2.2.2001. Vide letter dated 30.3.2004 (Ex.CW1/18), the Company informed SEBI that they had already made payment to 876 investors and would be paying to the remaining 153 investors as soon as it was possible. Vide letter dated 10.11.2005 (Ex.CW1/19) sent through Shri Pankaj Jain, Director, the Company informed SEBI that they had already repaid Rs.11,88,400/- and only a sum of Rs.2,17,600/- remained to be paid.

8. Vide its letter dated 16.11.2005, SEBI advised the Company to complete repayment of the investors in terms of SEBI order dated

7.12.2000. It was also stated in the said letter that the Company was only repaying the principal sum to the investors whereas it was required to pay the principal sum along with promised return as per the original term of the offer. Responding to the said letter the Company informed SEBI that the balance amount payable to the investors as on 31.3.2003 was Rs.2,17,600/-. However, there was no reference to payment of returns promised by the Company to its investors.

Since the Company failed to comply with the Regulations of the SEBI and the directions issued by it a complaint against the Company and seven (7) other persons was filed before the Chief Metropolitan Magistrate, Delhi. Vide impugned judgement dated 30.3.2010, the Company and three (3) of its Directors, Shri Pankaj Jain, Shri Deepak Jain and Shrimati Manjul Jain and three (3) promoters namely, Arti Jain, Sachin Gupta and Yashwant Jain were convicted under Sections 24 & 27 of the SEBI Act. Vide Order on Sentence dated 9.4.2010, the Directors of the Company, namely Shri Pankaj Jain and Shri Deepak Jain as well as its subscribers Shri Sachin Gupta and Shri Yashwant Jain were sentenced to undergo RI for three (3) months each and to pay fine of Rs.1.00 lakh each or to undergo SI for three (3) months each in default. Shrimati Manjul Jain and Shrimati Arti Jain were sentenced to

pay fine of Rs.50,000/- each or to undergo SI for three (3) months each in default. The company was sentenced to pay fine of Rs.1 lac. Being aggrieved from their conviction and the sentence awarded to them, the appellants, Pankaj Jain, Deepak Jain, Sachin Gupta & Yashwant Jain are before this Court. The Company is also an appellant in Crl. A. No.567/2010.

9. The first question which comes up for consideration before this Court as to whether the scheme under which a sum of Rs.14.06 lakh was collected by the Company from various investors amounts to CIS or not.

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 in this regard was 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.”

10. A perusal of the brochure issued by the Company clearly shows that the Schemes floated by the Company were meant for mobilization of funds by way of contribution of public at large and the corpus was sought to be invested in property with a view to share the benefits arising out of deployment of such common corpus. Therefore, the Teak Unit Schemes of the Company were, in fact, CIS.

11. As noted earlier sub-section (1B) came to be inserted in Section 12 of the SEBI Act w.e.f. 25.1.1995. As noted earlier, the Company came to be incorporated only on 31.1.1997, which was much after sub-section (1B) of Section 12 had been notified. 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.

12. 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.

13. After notification of the Regulations, SEBI sent a letter dated 21.10.1999 (Ex.CW1/4) to the Company informing it of the Regulations having been notified. The Regulations were also notified by public notice in Hindustan Times, published on 19.12.1999, a copy of which is Ex.CW1/15. The said letter, however, was returned back unserved.

SEBI sent another letter dated 10.12.1999 (Ex.CW1/6) which also was received back unserved. The same was the position in respect of the letter dated 29.12.1999 (Ex.CW1/8).

14. Vide order dated 7.12.2000, directions were issued by the Chairman, SEBI to the Company under Section 11B of SEBI Act read with Regulations 65 & 73 of SEBI CIS Regulations, 1999, directing the Company to refund the money collected by it along with the returns promised to the investors within a period of one (1) month. The contents of the said letter were also notified by public notice, a copy of which is Ex.CW1/14.

15. 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.

16. The letter Ex.CW1/19, sent by the Company to SEBI would show that even on the date this letter dated 10.11.2005, was sent a sum of Rs.2,75,600/- was still due to the investors as on 31.3.2005. This was further admitted by the Company in its letter dated 21.11.2005 (Ex.CW1/21). Earlier vide its letter dated 30.4.2004 (Ex.CW1/18), the Company had admitted that it was yet to refund money to as many as 153 investors. The number of such investors was stated to be 526 in the letter dated 9.1.2001 (Ex.CW1/16). Thus, the Company clearly did not comply with the requirement of the Regulations to send information memorandum to the investors within two (2) months of receipt of intimation from SEBI and paying to them within three (3) months of the date of memorandum. The Company, therefore, clearly contravened not only the directions issued by the Chairman, SEBI but also the provisions of SEBI Regulations.

17. The learned counsel for SEBI has drawn my attention to the decision of Supreme Court in M/s P.G.F Ltd. and others vs. Union of

India and another [AIR 2013 SC 3702], wherein the direction was given by SEBI to a company which had collected money by way of Collective Investment Scheme, to collect any money from the investors or to launch any scheme with a further direction to refund the money collected by it within one month from the date of the order of SEBI. The aforesaid order was challenged by the appellant before the Apex Court, *inter alia*, on the ground that it was *ultra vires* of Section 11AA of SEBI Act. Rejecting the contention, the Apex Court, *inter alia*, held as under:

“53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 6.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the direction contained in last paragraph of the order of the second respondent dated 6.12.2002.”

18. For the reasons stated hereinabove, the Company has rightly been convicted for contravening sub-section (1B) of Section 12 of SEBI Act by collecting money from the investors under its CIS schemes without registration with SEBI and it also committed contravention of the provisions of Section 24 of the Act by not complying with the Regulations framed by SEBI and the directions issued by the Chairman. Therefore, no fault can be found with the conviction of the Company.

19. 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.

20. 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].

21. Admittedly, Pankaj Jain & Deepak Jain – the appellants in Crl. Appeal no.567/2010 are the whole-time Directors of the appellant – company Glitter Gold Plantation Ltd. Both have been corresponding with SEBI with respect to the CIS of the company. Additional information to the SEBI with respect to the CIS of the Company, including the balance sheet, balance sheet certificate and statement of deployment of funds were submitted by the appellant – Pankaj Jain vide letter received by the SEBI on 29.04.1998. The balance sheet of the company was signed by its Managing Director Mr. S.K. Jain as well as the appellant – Pankaj Jain, who is none other than son of the then

Managing Director Shri S.K. Jain. The compliance certificate submitted to SEBI was also signed by him on behalf of the company. The letter Ex.CW1/16, which SEBI received on 9.1.2001 submitted on behalf of the company and signed by the appellant – Deepak Jain. He also is the son of the Managing Director Shri S.K. Jain. The copy of Form-32 Ex.DW2/A, which is the document produced by the appellant shows that Mr. Deepak Jain became the Director of the Company at the time of its incorporation. Thus, both of them were actively involved in the business of the company and were also associated with the Collective Investment Schemes under which the money was collected by the company from various investors. In their statements under Section 313 Cr.P.C neither of them claimed that they were not connected with the day-to-day affairs of the business of the company. DW2 – Mr. Anil Bansal, who is the Chartered Accountant of the appellant company stated in his cross examination that Mr. Pankaj Jain and Mr. Deepak Jain are the only Directors of the Company known to him. When Mr. Deepak Jain came in the witness box as DW-3, he stated that he was doing office work in the office of the company and was one of its Directors. He did not claim that he was not involved in day-to-day business of the company and was not the person in-charge and

responsible to the company for conduct of its business. No evidence has been led by the appellants – Deepak Jain or by Pankaj Jain to prove that the contravention of sub section (1B) of Section 12 of SEBI Act and the CIS Regulation of SEBI was committed by the company without their knowledge or that they had exercised all due diligence to prevent the commission of the said offence by the company. In these circumstances, it can hardly be disputed that being the directors and persons in-charge and responsible to the company for conduct of its business, they are vicariously liable for the contravention of the provisions of SEBI Act and the Regulations framed thereunder. Therefore, no fault can be found with their conviction.

22. However, as far as the appellants – Yashwant Jain and Sachin Gupta are concerned, admittedly they have never been the directors of the company. There is no evidence to show that either of them was the person in-charge and responsible to the company for conduct of its business. This is not the case of SEBI that the offence by the Company was committed with the consent or connivance of Mr. Yashwant Jain and Mr. Sachin Gupta and is attributable to any neglect on their part. Moreover there is no evidence of their even being a Director, Manager, Secretary or officer of the Company. Therefore, sub-section (2) of

Section 27 would not apply to them. They cannot be said to be the persons in-charge of and responsible to the Company for conduct of its business only because they had subscribed to its memorandum and articles of association. In fact, the learned counsel for SEBI fairly conceded during the course of arguments that the charge against them could not be established during the course of trial. Mr. Yashwant Jain and Mr. Sachin Gupta, therefore, liable to be acquitted.

23. As regards the sentence, the appellants – Pankaj Jain and Deepak Jain have been sentenced to undergo imprisonment for three months each, which cannot at all be said to be harsh or excessive. If at all, the substantive sentence awarded to them is on the lower side. As regards the quantum of fine, though there was no maximum fine at the relevant time, 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.

24. Even otherwise, this is an admitted case that not all of the investors have been paid back the money which the company had raised from them. Vide their letter dated 30.3.2004, the appellants claimed that they had paid to 876 investors and only 153 investors were such who were yet to be paid, no documentary proof such as the receipts executed by the investors was submitted by them to SEBI. Vide letter dated 10.11.2005, the appellants claimed that they had already paid **Rs.11,88,400/-** and that a sum of **Rs.217600/-** remained to be paid. Again, no credible documentary proof such as receipts from the investors was submitted to SEBI. The case of the appellants was that they had returned the principal sum to the aforesaid investors in cash. No reason was given by the appellants for not paying by cheques/ demand drafts/ pay orders. Since they did not submit the receipts from the investors, it was not possible for SEBI to verify the payment which they claimed to have made to their investors.

25. Not only was it imperative for the appellants to refund the entire money collected from the investors along with the return promised by them while raising deposits, within the time stipulated in the

Regulations, they should also have submitted the proof of such payments to SEBI in order to enable it to verify the alleged payments. That having not been done, SEBI had no opportunity to verify their claim.

Even during the course of trial, neither the appellants examined any of the investors nor did they produced the receipts obtained from the investors. Thus, no genuine attempt was made by them to satisfy the learned trial Judge that they had refunded the substantial deposits to the investors.

26. The learned counsel for the appellants has filed affidavits of the appellant – Pankaj Jain enclosing thereto the details of the refund alleged to have been paid to the investors. As per the said statement, out of the principal sum of **Rs.14,07,500/-** an amount of **Rs.12,56,900/-** was paid to the investors who were traceable. It is further stated that a sum of **Rs.4,25,208/-** was paid as interest to the investors @ 12% per annum whereas Indira Vikas Patra worth **Rs.4,33,200/-** were given to some other investors. According to the appellants the principal amount due to the untraceable investors now is **Rs.1,50,600/-**, whereas the interest @ 12% per annum payable to such investors, as per interim order dated 10.5.2010, is **Rs.2,01,796/-**. It is also claimed that the alleged amount of

Rs.3,52,390/- was deposited in the trial court on 24.5.2010. The aforesaid statement, in my view, does not prove the payment of the amount alleged to have been made by the appellants. They ought to have produced the documentary proof such as the receipts obtained from the investors since according to them no payment was made by cheque/ demand draft/ pay order. No receipt executed by any of the investors in respect of the cash alleged to have been paid by the company nor in respect of IVPs alleged to have been given to the investors has been annexed to the affidavit of Mr. Deepak Jain. As noted earlier, none of the investors was produced during the course of trial to satisfy the court with respect to payments claimed by the appellants. Moreover, as rightly pointed out by the learned counsel for SEBI, the appellants, in terms of the order of SEBI were required to refund the principal amount collected from the investors along with the return which the company had promised to them. Admittedly, the amount payable to the investors along with returns as promised by the company would come to many times more than the amount of **Rs.16,87,300/-**, which the appellants claimed to have paid to the investors in cash as well as by way of IVPs.

27. During the course of arguments, the learned counsel for the appellants submits that pursuant to a letter dated 18.11.2010 received by

them from SEBI, they had issued a public notice to the investors informing them that the company had wound up its plantation scheme, had repaid to the investors and the balance amount of untraceable investors along with interest had been deposited with the trial court. A perusal of the letter of SEBI dated 18.11.2010 would show that the public notice was required to be published in one of the leading newspapers of the State where the registered office of the company is situated, as also in leading newspapers having country wide circulation. However, the advertisement issued by the company was a very small insertion published in “Pioneer” and “Veer Arjun”, neither of which can be said to be the leading newspapers and neither of which has a wide circulation in Delhi where the registered office of the company is situated. It is thus quite clear that the company issued a public notice only for the sake of complying with the letter of SEBI without really meaning to refund money to its investors. In these circumstances, no ground either for reducing the substantive sentence awarded to the appellants – Deepak Jain and Pankaj Jain or for reducing the fine imposed upon any of the appellant is made out.

28. The learned counsel for SEBI drew my attention to the report of the Chartered Accountant appointed by SEBI to examine the balance

sheet of the appellant company. The CA, in the aforesaid report, inter alia, stated as under:

- c) As pointed out in earlier paragraphs the company has not maintained any register of unit holders detailing the addresses.
- d) The company has not maintained the records of application form received from the unit holders detailing the addresses.
- e) All the repayments to the unit holders were made in cash only for which documentary evidence was not available.
- f) We have observed that only the signatures thumb impression was available on the unit certificate, there was no mention of the amount repaid, and we are unable to verify the amount paid to each unit holder in the absence of any documentary evidence.

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- i) Glitter Gold Plantations Ltd opened the bank account on 26.03.1996, most of the bank statements were manual as provided by company for the following period:

26.03.1996 to 17.06.1996

01.07.1996 to 01.03.1997

26.04.1997 to 04.05.2005

These Bank statements are not legible hence we could not verify any entries on it. We are unable to comment upon any payments made through Bank.”

The said report is a strong indicator that the company has not refunded the dues of the investors, in terms of the requirement of the Regulations and the order passed by SEBI.

29. For the reasons stated hereinabove, the Crl. Appeal nos.563/2010 and 573/2010 filed by Mr. Sachin Gupta and Yashwant Jain respectively are allowed and both of them are acquitted, whereas, Crl. Appeal no. 567/2010 filed by the company and two of its Directors namely Mr. Pankaj Jain and Deepak Jain is dismissed. The appellants Pankaj Jain and Deepak Jain are directed to surrender forthwith before the trial court in order to undergo the sentence awarded to them. The appellants – Pankaj Jain and Deepak Jain shall surrender forthwith. The trial court shall take necessary steps to procure their presence and commit them to prison to undergo the sentence awarded to them. The amount raised by the company, unless already deposited, shall be deposited within two (2) weeks from today.

Trial court record be returned with a copy of this order.

FEBRUARY 24, 2014
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V.K. JAIN, J.