IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.509 OF 2017

M/s. Green Gold Plantation Group Pvt. Ltd. & Ors. ...Applicants
vs.
Union of India and Ors. ...Respondents

WITH
CRIMINAL REVISION APPLICATION NO.510 OF 2017

M/s. Green Gold Plantation Group Pvt. Ltd. & Ors. ...Applicants
vs.
Union of India and Ors. ...Respondents

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None for the Applicants.
Mr. Omprakash Jha i/b. The Law Point, Advocate for the Respondent No.2 - SEBI.
Mr. A.D. Kamkhedkar, APP for Respondent No.3 - State.

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CORAM : S. M. MODAK, J.
DATE : 22nd FEBRUARY 2024

P. C. :-

1. Heard learned Advocate for the Respondent No.2 – SEBI.

2. The SEBI has filed private complaint before the Court of Additional Chief Metropolitan Magistrate. Now, the case is transferred to the Sessions Court, Greater Mumbai. There are four accused persons. One is the Company and 2 to 4 are the Directors. They have applied for discharge before the SEBI Special Court. It was rejected on

20th July 2017 (page 506). The complaint is filed for the offences under Sections 24(i) and 27 of the Securities and Exchange Board of India Act, 1992 (for short "**SEBI Act**").

3. The Applicants have pleaded (page 488) that majority of the Schemes have been issued to the family members and near relatives. They have further pleaded that they have refunded the amount raised by way of public raise funds to the tune of Rs.29,49,000/- (in Revn/510/2017) (pg.489) and Rs.6,51,500/-(in Revn/509/2017) (pg.489). Whereas, the averments in the complaint are there is a Certificate of Registration by which the Company was registered as per the amendment in Section 12(1B) of the SEBI Act. There is a ban on raising of funds unless the Company is registered with the SEBI. The amendment came into force w.e.f. 28th March 1995. In fact, SEBI has informed to Accused No.1 about the requirements of law. There was also deeming section when this amendment came into force. Existing Collective Investment Scheme were required to make an application for registration with SEBI which was not done by Accused No.1. It is further case of SEBI that documentary evidence is not submitted in support of the averments in the discharge application. They have also doubted the claim for repayment and the auditor's report as well as the certificate issued by the Chartered Accountant. That was plea taken in reply to discharge application. In view of the above, SEBI has opposed the prayer for discharge.

4. Learned Judge rejected the application on two grounds:-

i) One is registration with the SEBI is mandatory and

ii) Second is if the accused have paid their investors still they will have to face the consequences without any impediments.

5. In view of the above, I do not think that the grievance raised in the discharge application can be considered at the time of framing of charge. At that stage, the Court has to see whether there is a *prima facie* material for framing of charge. I find that there is no illegality committed in the impugned order. It is also submitted that now the complainant is about to start with the recording of evidence.

6. The Applicants – Accused are at liberty to put forth their case when the trial will go on. Hence, there is no merit in the Revision. Hence, disposed of.

[S. M. MODAK, J.]