

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

**Miscellaneous Application No.3 of 2010
And
Appeal No.139 of 2008**

Date of decision: 24.2.2010

1. PGF Ltd.
SCO-1042-43, Sector 22-B,
Chandigarh – 160 022.
 2. Mr. Nirmal Singh Bhangoo
Managing Director,
PGF Ltd., House No.2138,
Phase – VII, SAS Nagar,
Mohali, District Roop Nagar,
(Punjab).
 3. Mr. Balvir Singh
Director,
PGF Ltd., VPO Samaspur,
Samrala, District Ludhiana (Punjab).
 4. Mr. Gurjant Singh
Director,
PGF Ltd., Village Khabra,
PO Singh Bhawantpur,
District Ropar (Punjab).
 5. Mr. Harchand Singh
Director,
PGF Ltd., Village Jhandiali,
PO Sirhand, District Fatehgarh Sahib,
(Punjab).
 6. Mr. Prem Seth
Company Secretary,
PGF Ltd., House No.202,
Bhera Enclave, Paschim Vihar,
New Delhi.
- Appellants

Versus

Securities and Exchange Board of India
SEBI Bhawan, Plot No.C-4A,
G- Block, Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051.

..... Respondent

Mr. Vinay Bhasin, Senior Advocate, Mr. Dippan Merchant, Senior Advocate, Mr. Rohit Tandon, Advocate, Mr. Subramaniam Prasad, Advocate, and Mr. Ruchir Tolat, Advocate for the Appellant.

Mr. J.J. Bhatt, Senior Advocate with Ms. Daya Gupta, Advocate and Ms. Chloris John, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

The short question that arises for our consideration in this appeal filed under section 15T of the Securities and Exchange Board of India Act, 1992 (for short the Act) is whether the appellant is guilty of violating the order dated December 6, 2002 passed by the then chairman of the Securities and Exchange Board of India (for short the Board) which order has since been affirmed by the High Court of Punjab and Haryana. By order dated December 6, 2002, the then chairman found that the appellants were continuing with the existing collective investment schemes without even obtaining provisional registration under the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter called the regulations) and that they continued to mobilise funds under those schemes without filing initial information and without obtaining credit rating. Accordingly, the appellant company was directed neither to collect any money from investors nor to launch any new schemes and was also directed to refund the money collected under different schemes which was due to the investors within one month from the date of the order. This order was challenged by the appellant in Writ Petition no. 188 of 2003 in the High Court of Punjab and Haryana. The primary stand taken by the appellants was that the schemes that were being run prior to the coming into force of the regulations were not collective investment schemes and, therefore, those were not covered by the regulations and that the Board had no jurisdiction to pass the order impugned in the writ petition. The writ petition was dismissed by order dated July 26, 2004 by a Division Bench of the High Court and the order dated December 6, 2002 was upheld. The schemes were held to be collective investment schemes. Since the appellants continued operating the schemes and also mobilised funds thereunder, a show cause notice dated November 19, 2004 was issued calling upon them to show cause why action be not taken for violating the order dated December 6, 2002. On a consideration of the reply filed on behalf of the appellant company and the material that was collected during the course of the enquiry, the whole time member by his order dated September 17, 2008 found that the appellant company

had failed to repay the entire amount mobilised by it under its joint venture schemes even after the extension of time granted to it on a few occasions. In respect of the company's second set of schemes pertaining to the sale, purchase and development of agricultural land, the whole time member found that the appellant company had not taken even a single step to refund the monies to the investors which was clearly in violation of the order dated December 6, 2002. The learned whole time member further found that the appellant company had mobilised a huge sum of money from hundreds of innocent investors and till date has not repaid the amount to them. The conduct of the appellant company was said to be detrimental to the investors at large and having regard to the facts and circumstances of the case and the provisions of the regulations, the appellant company and its directors were restrained from operating the schemes and also from accessing the securities market either directly or indirectly for a period of ten years. It is against this order that the present appeal has been filed.

2. We have heard the learned senior counsel on both the sides who have taken us through the impugned order and the records of the case.

3. The Government of India found that there were entities which were issuing instruments against the investments such as agro bonds, plantation bonds etc. by offering a very high rate of return not consistent with the normal returns in such schemes. Those entities were mobilising a huge amount from the public which amount was then misutilised for purposes not disclosed at the time of inviting investment thereby causing loss not only to the investors who lost their life savings but also eroded the confidence of the general public. It was then that the Central Government intervened in the matter and issued a press release dated November 18, 1997 communicating its decision that schemes through which instruments such as agro bonds, plantation bonds etc. are issued by entities would be treated as collective investment schemes and that they shall come under the regulatory control under the Act and the Board was directed to frame regulations in this regard. It is in pursuance to this direction that the regulations came to be framed. Simultaneously, the Parliament inserted section 11AA in the Act. Any person who immediately prior to the commencement of the regulations was operating a collective investment scheme was required to make an application to the Board for grant of registration within a period of two months from the date on which the regulations were

enforced. This period was subsequently extended and the last date for submitting an application by the existing schemes was extended upto March 31, 2000. Regulation 69 provides that no existing collective investment scheme could launch any new scheme or raise money from the investors even under the existing schemes unless a certificate of registration was granted to it by the Board. Regulation 73 of the regulations provides that an existing collective investment scheme which has failed to make an application for registration with the Board is required to wind up the existing scheme and repay the investors in the manner provided therein. The regulations further provide that an existing collective investment scheme which is not desirous of obtaining provisional registration from the Board is required to formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73. At this stage it is necessary to refer to the provisions of Regulation 73 of the regulations which provides for the manner of repayment and winding up of the schemes. It reads thus:

“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 fails 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 signed by all the directors 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.”

It is common ground between the parties that the appellant who was operating two sets of schemes namely, joint venture schemes and schemes pertaining to sale, purchase and development of agricultural land had not even applied for a provisional registration as required by the regulations. It was then issued a show cause notice which culminated in the passing of the order dated December 6, 2002 to which reference has already been made hereinabove. As already observed, the case as set up by the appellant company is that the schemes that it was operating are not collective investment schemes within the meaning of the Act. Since the High Court of Punjab and Haryana has held that the schemes operated by the appellants are collective investment schemes, it is not open to them to raise this issue before us. We are informed that the appellant company has filed a civil appeal in the Hon’ble Supreme Court of India which is pending. While granting leave, the learned judges of the Supreme Court passed the following order:-

“Leave granted.

We extend time by ten weeks to comply with the direction given in para 96 of the impugned Judgement pertaining to the joint venture scheme.

No orders on the stay at present.

We, however, clarify that the above does not mean that the Petitioners can stall proceedings under the Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992).”

The learned whole time member in the impugned order has observed that the appellant company has failed to repay the investors and that no steps had been taken by it in this regard. The learned senior counsel appearing on behalf of the appellant very strenuously

contended before us that the observations made by the whole time member were not correct and that all the investors in regard to the joint venture schemes have already been repaid. This fact is seriously disputed by the learned senior counsel appearing for the Board. On a query made by us from the learned senior counsel for the appellant as to whether an information memorandum was prepared and whether the payment was made in terms of Regulation 73 of the regulations, his answer is in the negative. It is obvious that the repayment, if any, has not been made to the investors as per Regulation 73. The appellant company at no stage prepared the information memorandum referred to in Regulation 73 nor was it sent to any investor. The investors had a right to know the amount that was due to them and the manner in which it had been worked out. They were also required to be informed about the state of affairs of the schemes. They have been kept in the dark. A copy of the information memorandum was also required to be sent to the Board to enable it to direct the company to make such other disclosures as it thought fit. Nothing of the sort was done. We do not know in what manner and to what extent have the investors been repaid. We cannot lose sight of the fact that the investors are poor farmers scattered all over the rural areas of the country who could not look after their interest and it is for this reason that the Government of India intervened and required the Board to frame the regulations. It is the bounden duty of the Board to protect their interest and how could it perform its statutory obligations when it was also kept in the dark. Repayment to the investors had to be made in a transparent manner as provided in Regulation 73. It is by now well settled that when the law prescribes a manner in which a thing is to be done, it shall be done only in that manner or not at all. In this view of the matter, we are unable to accept the plea raised on behalf of the appellant that the investors under the joint venture schemes have been repaid. This apart, it is the appellant company's own case in the memorandum of appeal that it continued to mobilise funds under the joint venture schemes from the year 2002 to 2004-05. This is what the appellants have stated in the memorandum of appeal:

“During the course of oral submissions, the learned Whole Time Member, SEBI was informed that the instalments received by the Appellant-Company from 2002 to 2004-05, aggregated to Rs.54 crores (approx.). This amount of Rs.54 crores was duly accounted for while making repayment to the joint venture investors.....”

This is a clear admission of the appellant company that it violated the order dated December 6, 2002 by which it had been restrained from continuing with the schemes and had been directed to refund the amount due to the investors. It is, thus, clear that the appellant not only flagrantly violated the order passed by the Board, it also failed to repay the amount to the investors under the joint venture schemes.

4. There is yet another set of schemes which the appellants are operating and these are pertaining to sale, purchase and development of agricultural land. It is the appellants' own case that not even a penny has been paid to the investors under these schemes. The stand of the appellants is that in regard to this set of schemes, the company had entered into irrevocable transactions with its customers by transferring the land in question and, therefore, those transactions could not be reversed and the question of repaying the amount to the investors does not arise. The learned senior counsel appearing for the appellant, however, pointed out during the course of the hearing that even in regard to this set of schemes the appellant is now taking steps to reverse the transactions and in the case of some of the investors the process has been completed. He further pointed out that in regard to these schemes as well the appellant company had stopped mobilizing funds from August, 2004. Since none of the investors has been repaid in accordance with the provisions of Regulation 73 of the regulations and the fact that the appellant company continued mobilising funds despite the restraint order passed by the Board on December 6, 2002, we are satisfied that the said order was violated. In this view of the matter, no fault can be found with the impugned order.

In the result, the appeal fails and the same stands dismissed with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

24.2.2010

Prepared and compared by
RHN

