

IN THE COURT OF THE ADDL. CHIEF METROPOLITAN

MAGISTRATE,

TEES HAZARI, DELHI

CC NO:

1299/02
21/12/02

02401202055/2002

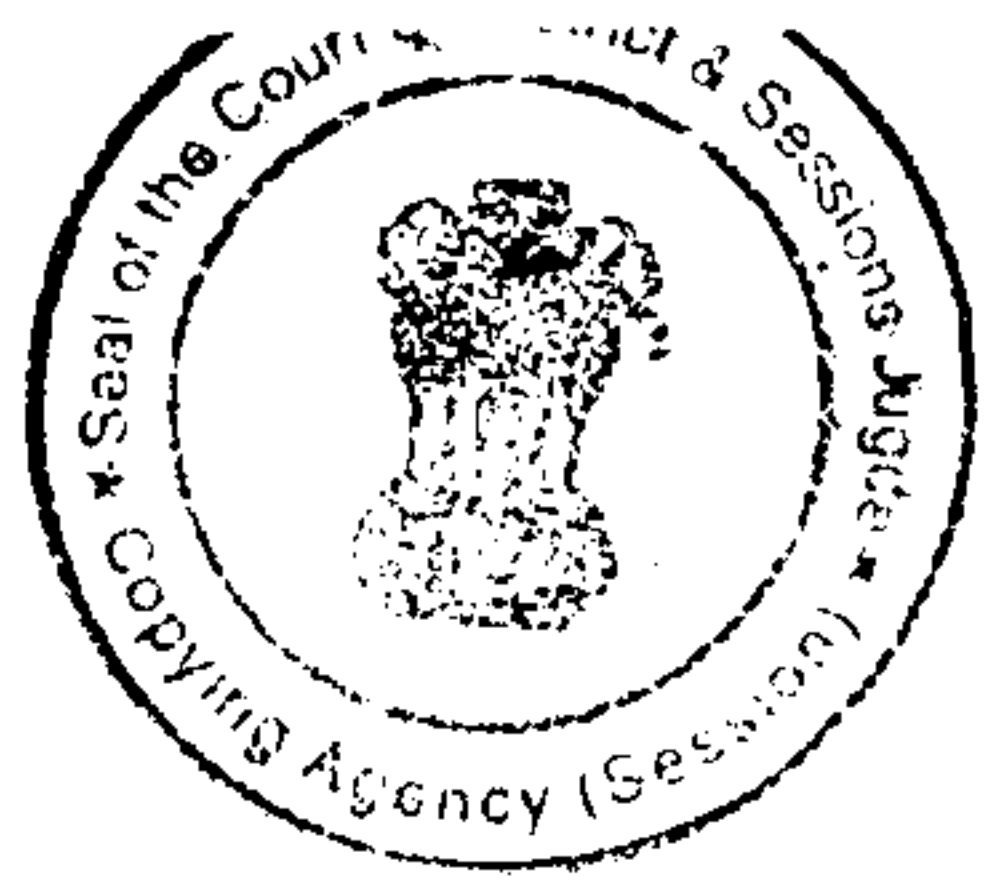
Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head Office at Mittal Court, B - Wing, 224 Nariman Point, Mumbai - 400 021 represented by its Legal Officer, Shri Sharad Bansode.

Vs

...Complainant

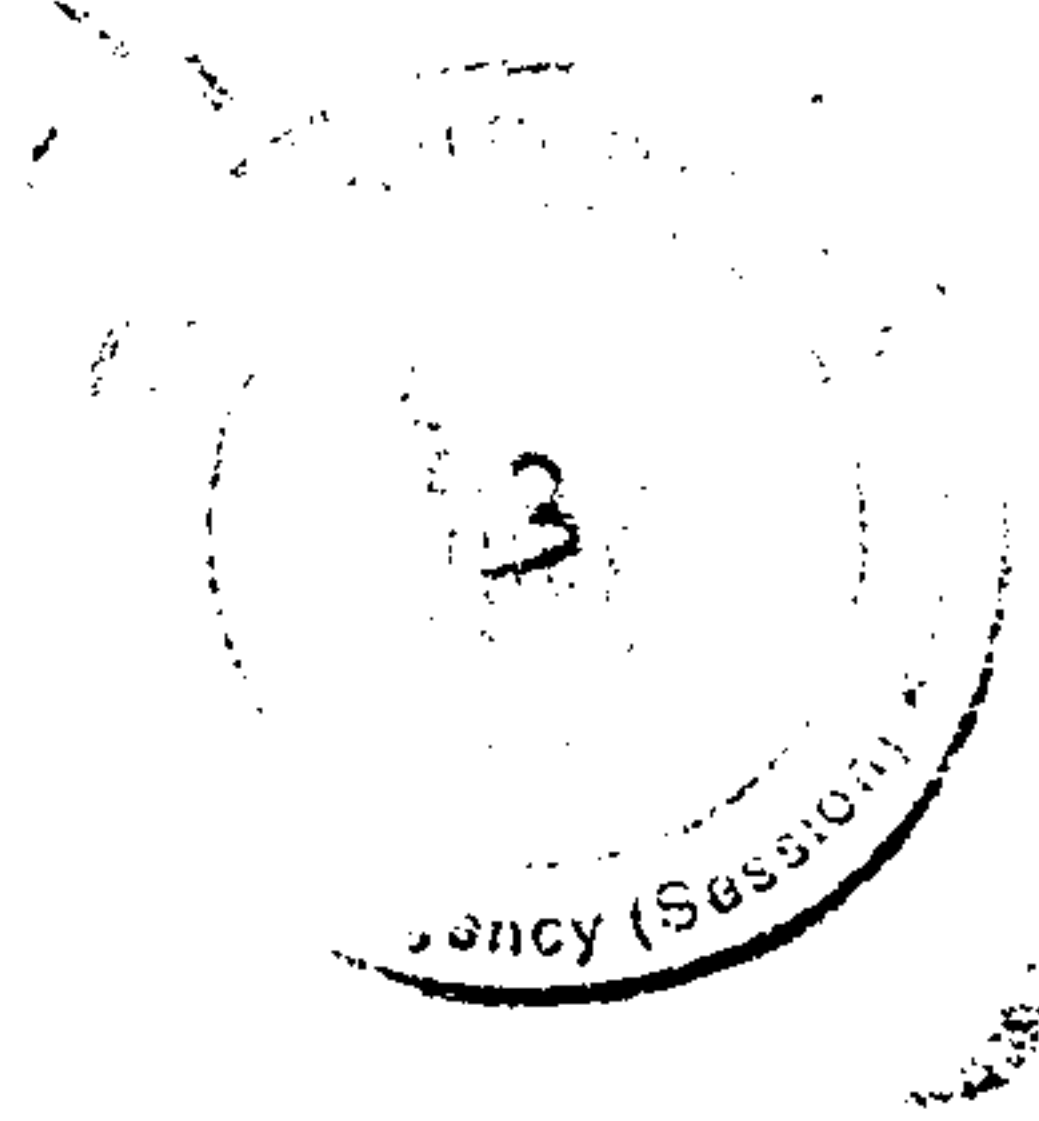
1. Parakeet Green Forests Ltd. a company incorporated under the provisions of Companies Act, 1956 and having its Head Office at SCO No. 272, 1st Floor, Sector 35 - D, Chandigarh - 160022.
2. Sh. Ranjit Singh, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of 332/A. Anand Nagar, Patiala.





3. Sh. N N Sharma, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of Ashirwad Bhawan, Tej Bagh Colony, Patiala. (P.D.)
4. Sh. Kulwant Singh, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of H.No. 445, G. T. Road, Sirhind, Dist. Fatehgarh Sahib.
5. Sh. Bhagwan Sing Cheema, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of Vill. Naraingarg, Distt. Fatehgarh sahib. P.E. Certificate 25/11/08
6. Sh. Balwan Kumar Sood S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of B - 1/4581, Sham Nagar, Rajpura Dist. Patiala.
7. Smt Yashoda Devi, S/o Not known to the complainant; Occupation Director of the Accused No.1; resident of Vill Thapal, The Kasauli, Dist. Solan, H.P. X





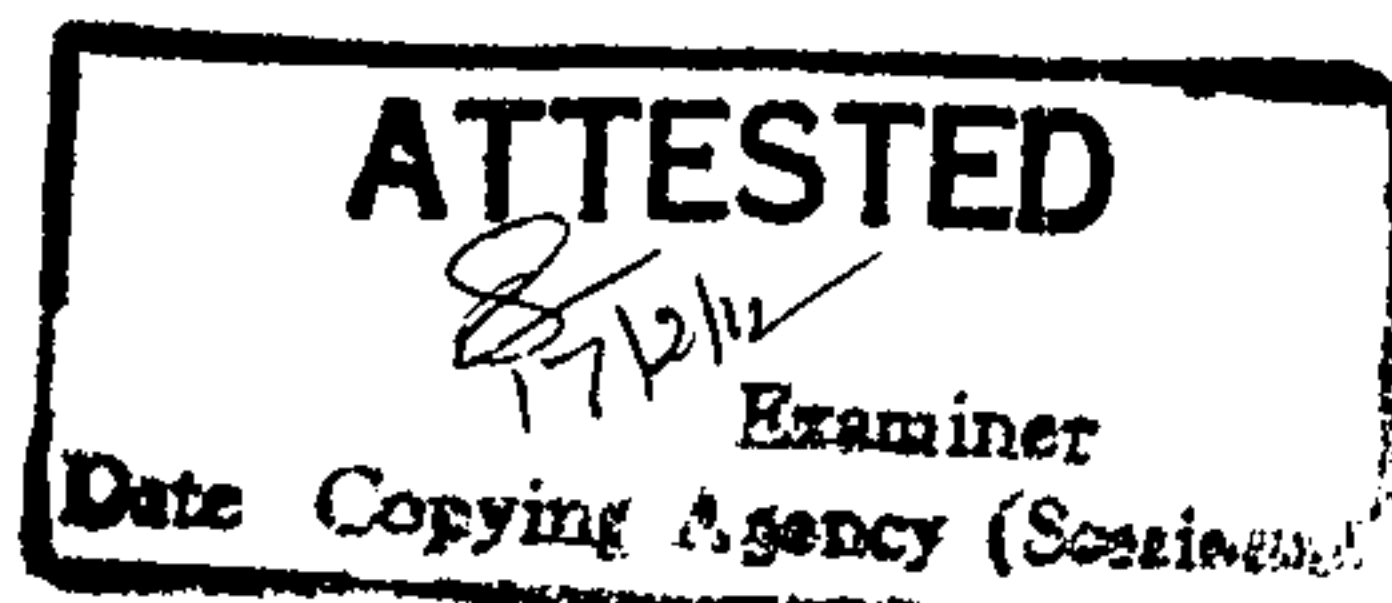
8. Sh. Pushap Raj Sharma, S/o Not known
to the complainant; Occupation Director
of the Accused No.1; resident of Vill.
Kalranwali, The. Kasauli, Dist. Solan, H.
P.

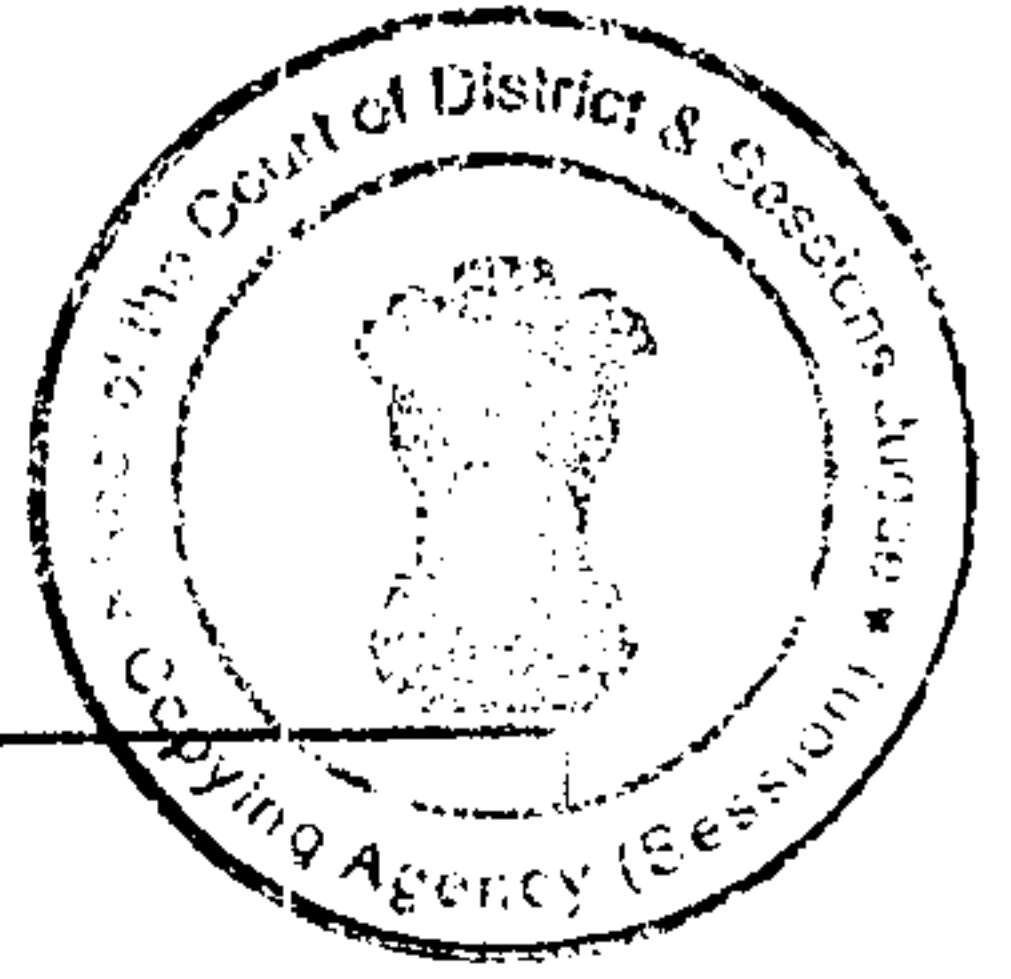
9. Sh. Bhupinder Kumar, S/o Not known to
the complainant; Occupation Director of
the Accused No.1; resident of Vill.
Mundran, the. Kasuli, Dist. Solan, H.P.

...Accused

COMPLAINT UNDER SECTION 190 and 200 OF THE CODE OF
CRIMINAL PROCEDURE, 1973 READ WITH SEC. 24(1) AND
27 OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,

1992





Item No. 13

CC no. 82/10

14.02.2012

Present: Sh. Sanjay Mann, Advocate Counsel for SEBI.
Accused no. 1 is company and represented by none.
Accused no. 2 and 3 are PO vide order dated 07.12.2006.
Accused no. 5 is PO vide order dated 25.01.2008.
Sh. Manish Sharma, Advocate, counsel for accused no.4
who is in person
Accused no. 6 is person with Counsel Ms. Pooja Bhaskar,
Advocate.
Accused no. 7, 8, 9 are with Counsel Sh. Padam Dogra,
Advocate

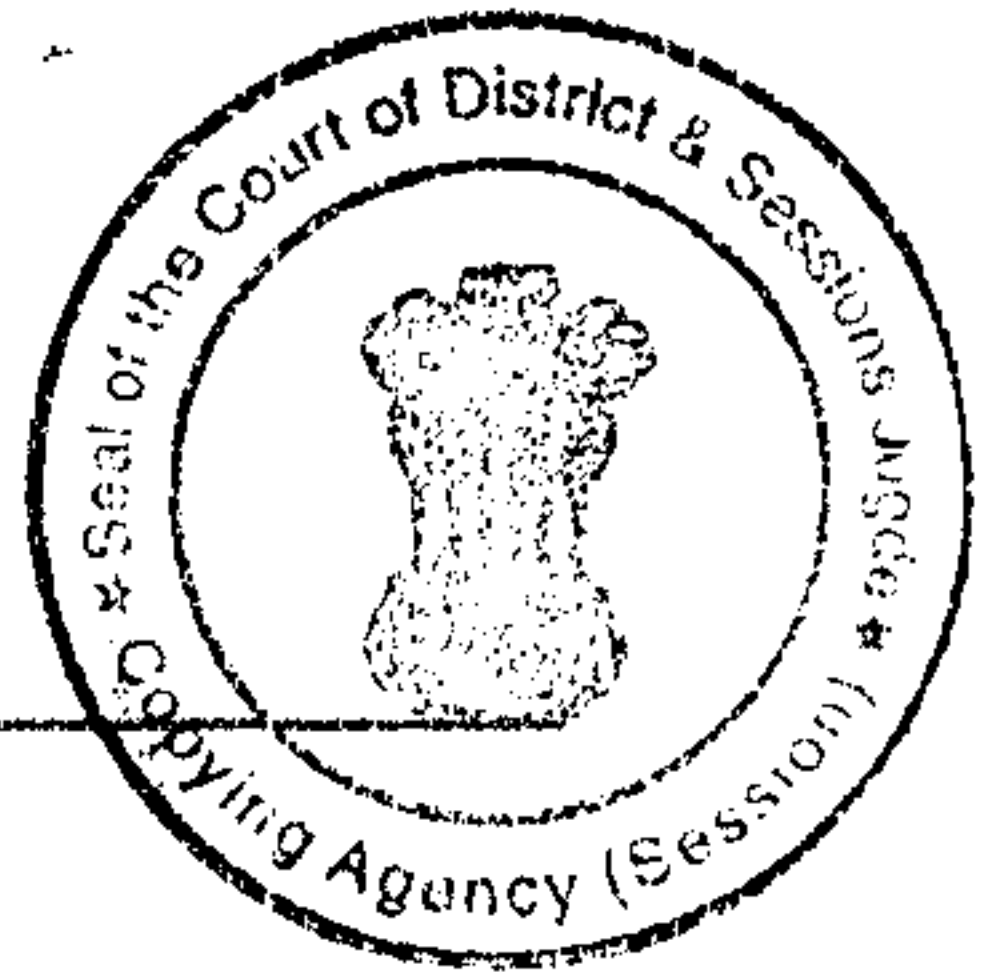
Vide separate judgment A1 i.e. M/s Parakeet Green Forests Ltd., A4
Mr. Kulwant Singh, A8 Mr. Pushap Raj Sharma and A9 Mr. Bhupender Kumar
have been held guilty for the offence punishable under Section 24 (1) read
with Section 27 of the SEBI Act. However, A6 Balwant Kumar Sood and A7
Smt. Yashoda Devi are acquitted from all the charges.

Arguments heard advanced by counsel for both the parties on the
point of sentence.

Vide separate order on the point of sentence, convict no. 2 to 4 are
sentenced rigorous imprisonment for a period of six months and a fine of
₹ 3 lac each is imposed in default convict no. 2 to 4 shall undergo further
three months simple imprisonment for the offence punishable under Section


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24(1) of the SEBI Act. Convict no.1 is also burdened with a fine of ₹ 5 lac for the offence punishable under Section 24(1) of the SEBI Act.

Compensation from the fine amount, if realised, is also awarded to the investors under Section 357 of the Code of Criminal Procedure as per the conditions referred to in the order on the point of sentence.

Learned counsel for SEBI submits that presently SEBI is not aware about the assets of company accused and states that as and when SEBI will come to know about the assets of company accused, SEBI shall take appropriate steps for the realization of the fine amount.

At this stage, learned counsel for convict no. 2 to 4 moves a separate application for suspension of the sentence of imprisonment.

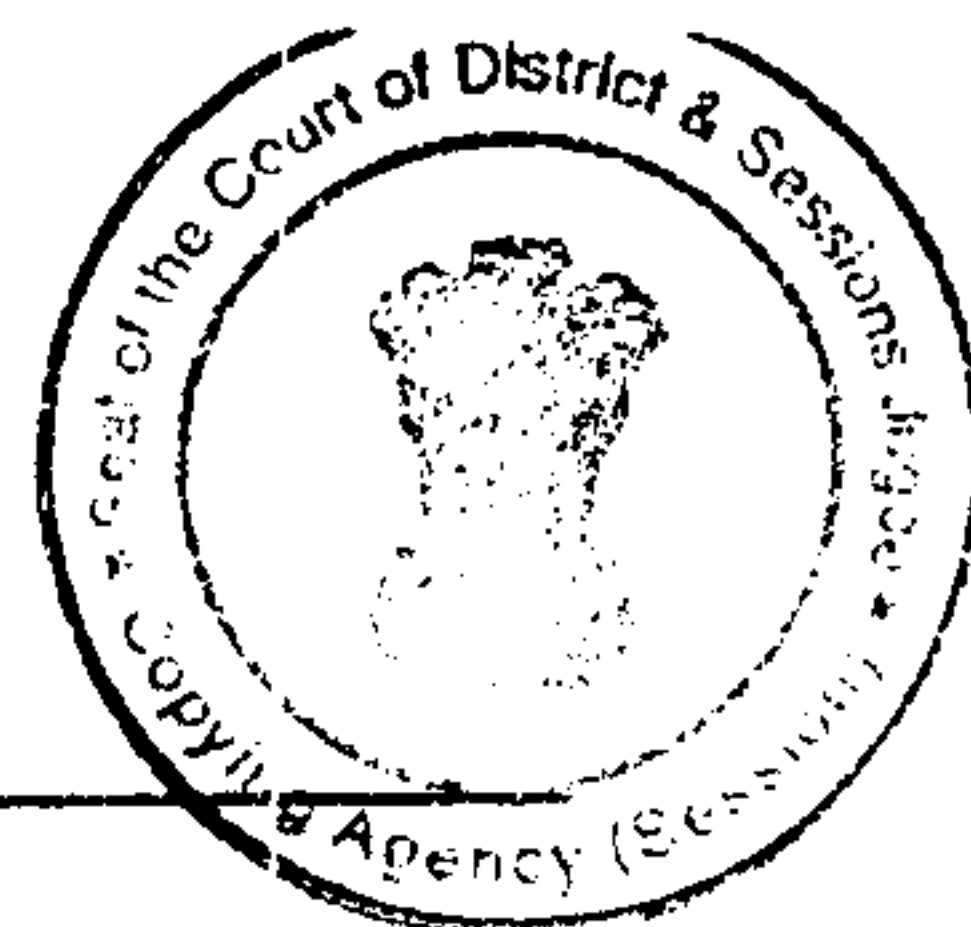
Heard. Considering the fact that convicts were on bail during trial. Accordingly, their substantial sentence of rigorous imprisonment is suspended for a period of one month from today to enable them to file an appeal or revision, furnishing a personal bond in the sum of ₹ 5000/- with one surety in the like amount, subject to the condition that they shall deposit the fine amount

Fine amount is not paid.

Copy of judgment along with order on the point of sentence be given to the convicts/their counsel free of cost.

[Signature]
14/12/11





Since accused no.2, 3 & A5 are proclaimed offenders, file be
consigned to record room with direction that same be revived as and when
they apprehended.


[PAWAN KUMAR JAIN]
ASJ-01/CENTRAL/DELHI
14.02.2012.

ATTESTED

17/2/12
Examiner
Date Copying Agency (Sessions)



SEBI Vs. Parakeet Green Forest Ltd.

**IN THE COURT OF SH. PAWAN KUMAR JAIN,
ADDITIONAL SESSIONS JUDGE-01(CENTRAL):DELHI**

**Complaint Case No. 82 of 2010
ID No: 02401R0205512002**

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B-Wing, 224 Nariman Point, Mumbai 400 021 represented by its Legal Officer, Ms. Rekha Verma, Manager, SEBI.

Versus

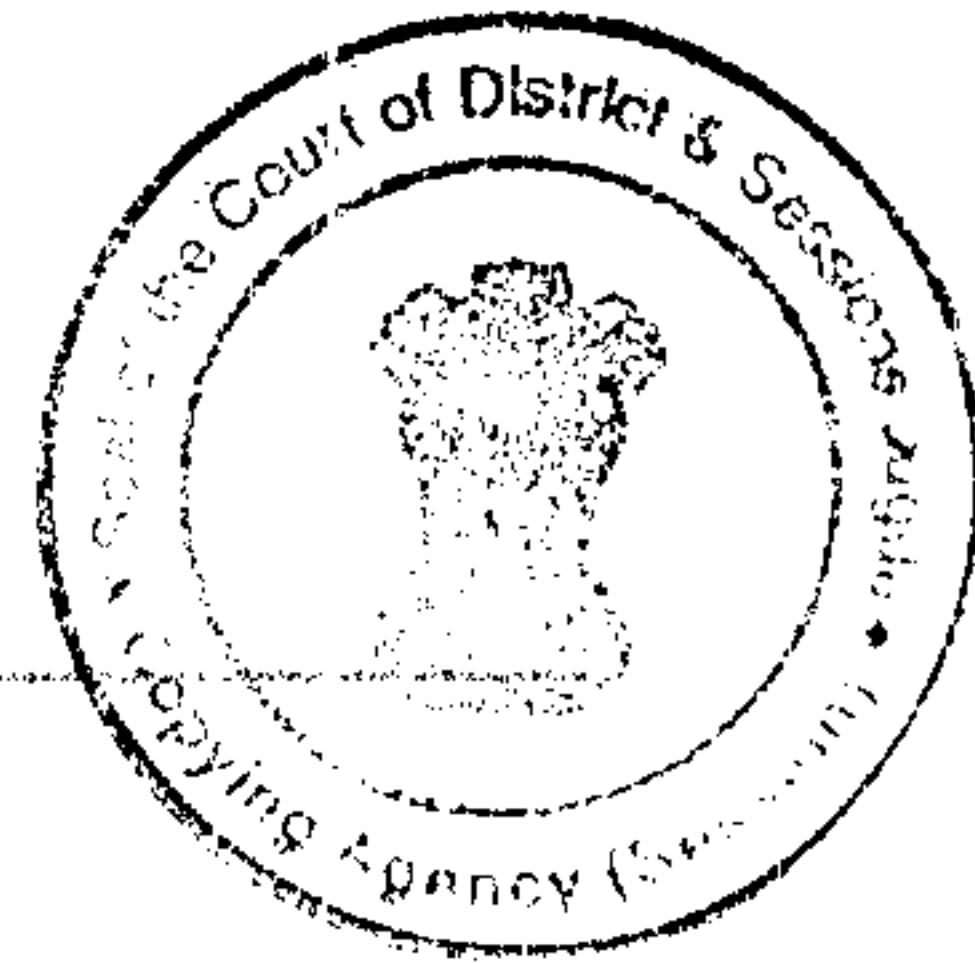
1. **Parakeet Green Forests Ltd.**
A company incorporated under the provisions of Companies Act, 1956 and having Head office SCO No. 272, 1st Floor, Sector-35-D, Chandigarh-160022

.....Accused no.1
2. **Sh. Ranjt Singh**
S/o Not known to the complainant,
Occupation Director of the Accused no.1
R/o 332/A, Anand Nagar, Patiala.

.....Accused no.2
3. **Sh. N.N Sharma (Director)**
S/o Not known to the complainant
Occupation Director of the Accused no.1
R/o Ashirwad Bhawan, Tej Bagh Colony
Patiala

.....Accused no.3
4. **Sh. Kulwant Singh,**
S/o Late Sh. Piara Singh
Occupation Director of the Accused no.1





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R/o H. No. 445, G.T.Road, Sirhind,
Dist. Fatehgarh Sahib

.....Accused no.4

5. **Sh. Bhagwan Singh Chemma**
S/o Not known to the complainant,
Occupation Director of the Accused no.1
R/o Village Naraingarg, Fatehgarh Sahib

.....Accused no.5

6. **Sh. Balwant Kumar Sood**
S/o Late Sh. Ram Lakha Mal
Occupation Director of the Accused no.1
R/o B-1/4581, Sham Nagar, Rajpura Distt.
Patiala

.....Accused no.6

7. **Smt. Yashoda Devi**
w/o Sh. Subhash Chand
Occupation Director of the Accused no.1
R/o Village Thapal, Tehsil Kasauli, Distt. Solan, H. P.

.....Accused no.7

8. **Sh. Pushap Raj Sharma,**
S/o Sh. Mohan Dutt Sharma
Occupation Director of the Accused no.1
R/o Village Kalranwali, Tehsi Kasauli,
Distt. Solan H. P.

.....Accused no.8

9. **Sh. Bhupinder Kumar**
S/o Sh. Lekh Ram
Occupation Director of the Accused no.1
R/o Village Mundran, Tehsil Kasuli,
Distt. Solan H. P.

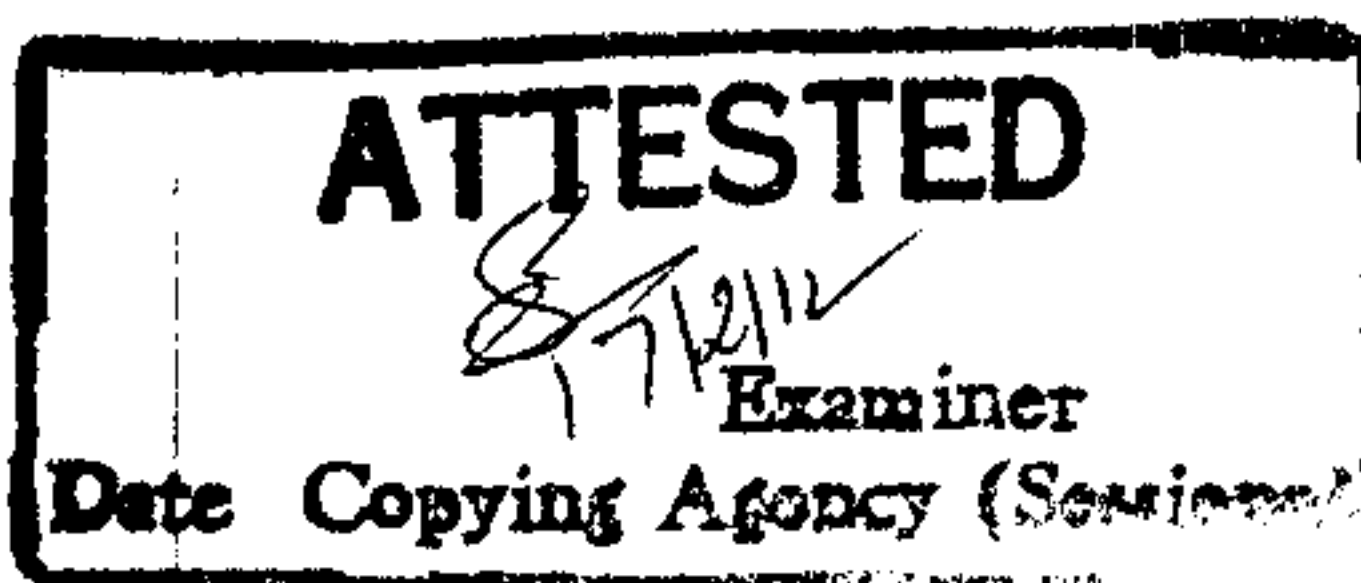
.....Accused no.9

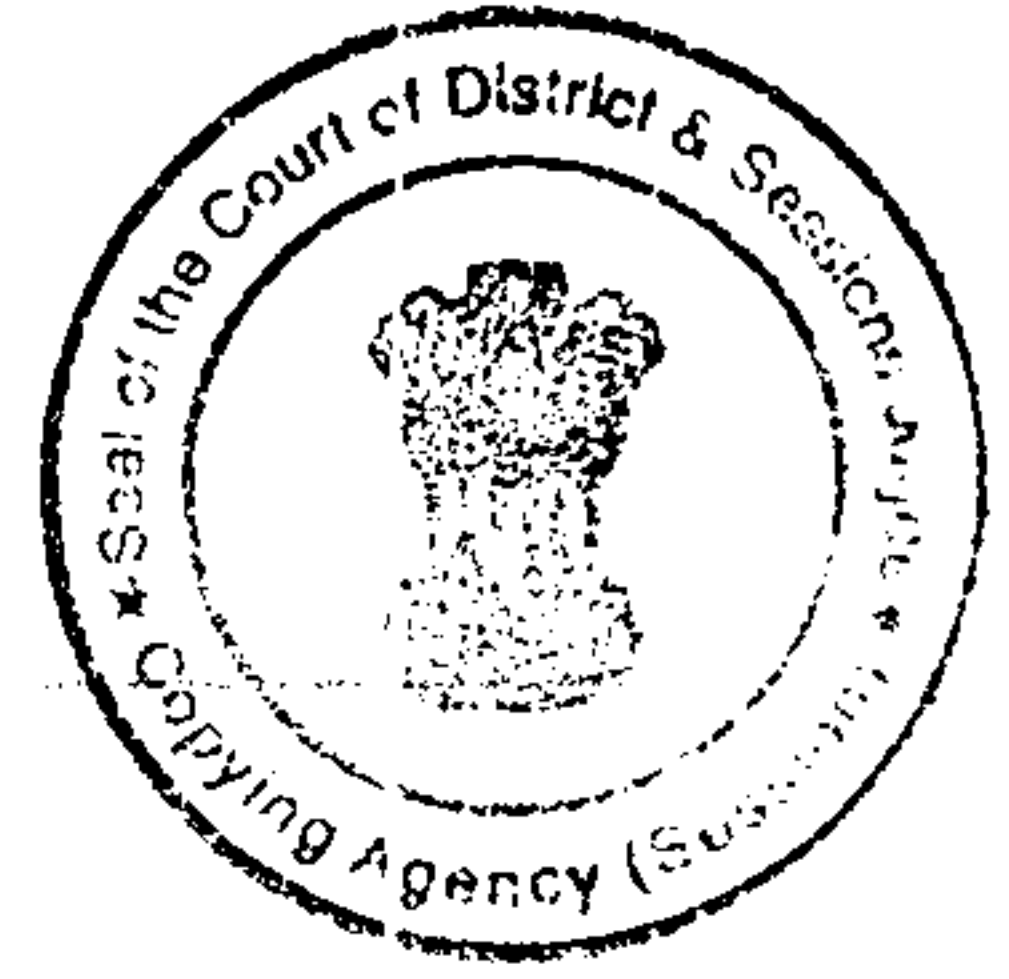
Date of Institution : 21.12.2002
Date of committal to Session Court : 04.01.2005
Judgment reserved on : 03.02.2012
Date of pronouncement of judgment : 14.02.2012

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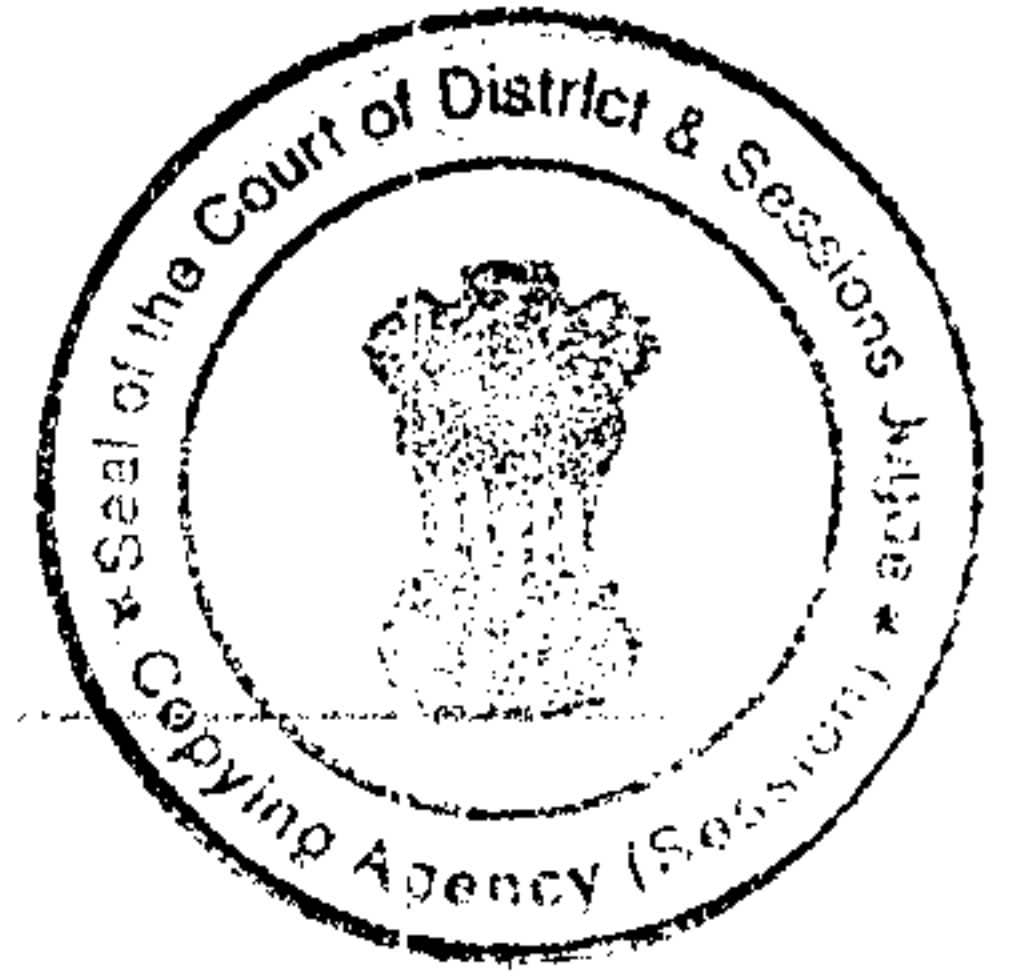
Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. Manish Sharma, Advocate, Counsel for
accused no. 4
Ms. Pooja Bhaskar, Advocate, Counsel for accused no. 6
Sh. Padam Dogra, Advocate, Counsel for accused no. 7
8 & 9

J U D G M E N T :

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on December 21, 2002 in the Court of Additional Chief Metropolitan Magistrate (ACMM), alleging violation of the provisions of Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.
2. Nine persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being Parakeet Green Forests Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Ranjit Singh ("A2"), accused No.3 Sh. N.N.Sharma ("A3"), accused No.4 Sh. Kulwant Singh ("A4"), accused No.5 Sh. Bhagwan Singh Cheema ("A5"), accused No.6 Sh. Balwant Kumar("A6"), accused No.7 Smt. Yashoda Devi ("A7"), accused No.8 Sh. Pushap Raj Sharma ("A8") and accused No.9 Sh. Bhupinder

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Kumar ("A9") It is alleged that A2 to A9 were Directors of the company accused and as such persons were in charge of, and responsible to, A1 for the conduct of its business within the meaning of the provision contained in Section 27 of the SEBI Act.

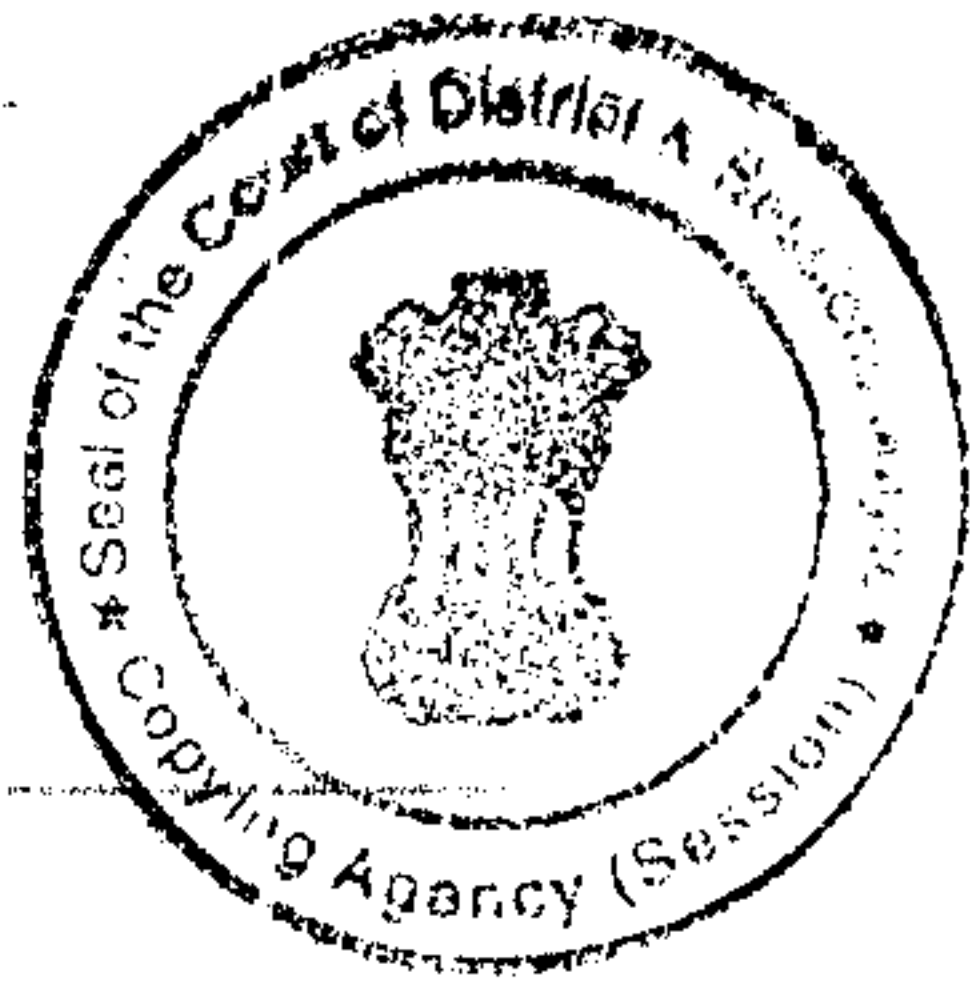
3. It was alleged that A1 had floated the Collective Investment Scheme (CIS) and raised amount approximately ₹ 0.43 Crores from general public, in violation of the provisions contained in Section 12 (1B) of the SEBI Act. It was also alleged that after coming into force of the CIS Regulations and in spite of public notice dated December 18, 1997, the accused persons had failed to get the Collective Investment Scheme registered with SEBI or to wind up the said scheme or repay the amount collected from the investors in terms of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

4. **Cognizance** on the complaint was taken by the learned ACMM vide order dated December 21, 2002 whereby process were issued under Section 204 Cr.P.C. against all the accused persons.

5. On account of the amendment, particularly in Sections 24 and 26 of the SEBI Act, through Amendment Act which came into force w.e.f. November 24, 2002, pursuant to Administrative Directions of Hon'ble High Court, under orders of the Ld. District & Sessions Judge, this case was transferred on January 4, 2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Additional Sessions Judge, Delhi.

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6. Vide order dated December 7, 2006, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company), A4, A6, A7 A8 & A9 while on the same date, A2 was declared proclaimed offender on account of his non-appearance. Vide order dated August 31, 1996 & January 25, 2008, A3 and A5 respectively were also declared proclaimed offender on account of their non-appearance.

7. To prove its case, complainant has examined only one witness namely Ms. Deepika Jaggi, Manager, SEBI as CW1. Thereafter, A4, A6 to A9 were examined under Section 313 Cr.P.C. A4 took the plea that he had never participated in the affairs of the company accused and he had resigned from the directorship w.e.f. December 13, 2000. Similarly A6 took the plea that he had never held the post of director in the company accused and he had no relation with the company accused and he did not know anything about the company accused. A7 took the plea that she had resigned from the directorship w.e.f. May 27, 1999 and was not involved in the affairs of the company accused. A8 & A9 took the plea that they had resigned from the directorship in the month of July 1999 and June 14, 1999 respectively and were not involved in the day to day affairs of the company accused. It was submitted that Mr. N.N. Sharma and Bhagwan Singh used to look after the affairs of the company accused. It was submitted that at the time of incorporation of the company accused, they were minor and studying in a school. In support of their evidence, accused persons examined themselves as witnesses namely, DW1 Balwant Singh (A6), DW2 Mr. Bhupender Kumar (A9),

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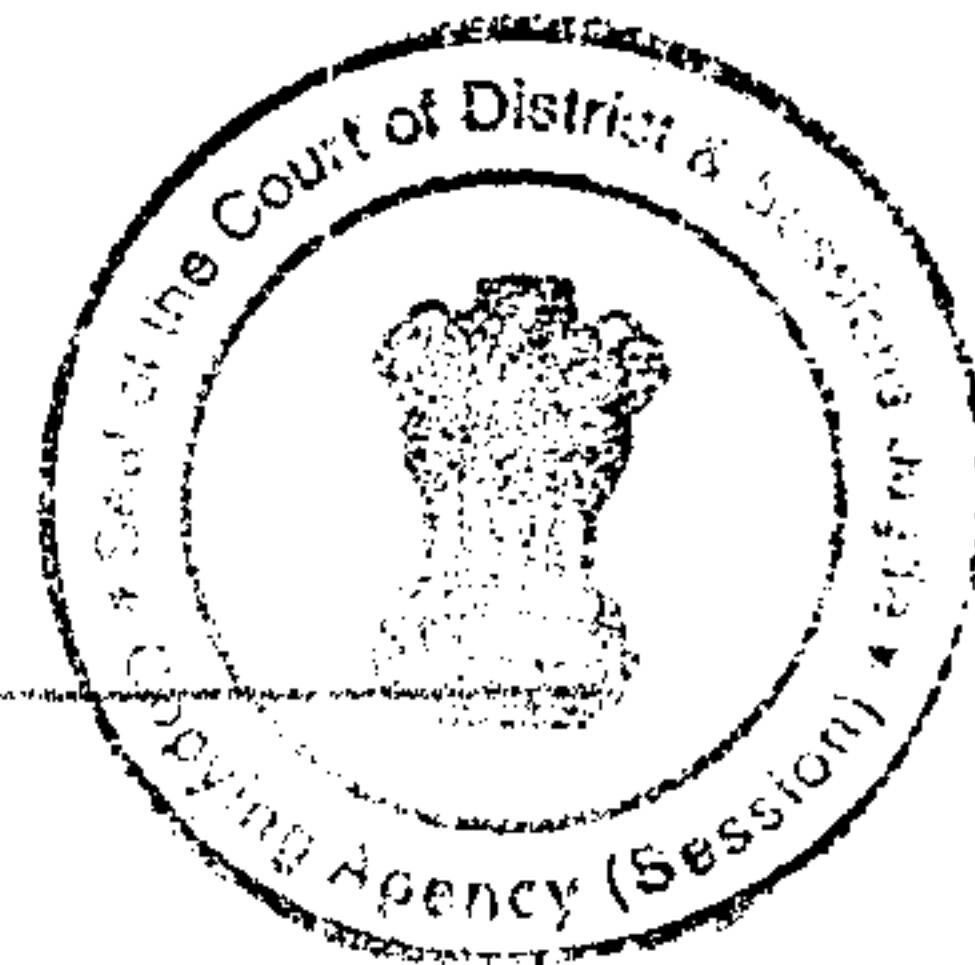


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DW3 Pushap Raj (A8) and DW4 Yashoda (A7). A4 did not lead any evidence in his defence.

8. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, counsel for complainant, Mr. Manish Sharma Advocate, counsel for A4, Ms. Pooja Bhaskar Advocate, counsel for A6 and Mr. Padam Dogra Advocate, counsel for A7 to A9 and perused the record carefully.
9. **Learned** counsel appearing for A4 and A6 vehemently contended that there is no iota of evidence that A4 and A6 were person in-charge of, and responsible to, the company accused for the conduct of its business and due to that reason no question was put to them during examination under Section 313 Cr.P.C. It was contended that A4 had joined the company accused in 1997 but was not involved effectively and regularly in the affairs of the company. It was submitted that A6 had resigned from company accused on May 9, 1998 and was not involved in the affairs of the company accused. Both learned counsel relied upon the judgments title *Mrs. Anita Malhotra v. Apparel Export Promotion Council & another decided by the Apex Court on October 8, 2011 in SLP (Crl.) No. 85 of 2011 and Thermax Ltd & others v. K.M. Jony & others, 2011 (4) JCC 2893.*
10. **Learned** counsel appearing for A7 to A9 vigorously contended that A8 and A9 were minor at the time of incorporation of the company accused as A8 was born on September 4, 1978 whereas A9 was born on March 4, 1979. It was submitted that company





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accused was incorporated on December 13, 1995. It was further contended that A8 and A9 had resigned from the company accused on June 1999 and June, 14, 1999 respectively. It was further submitted that A7 had resigned from the company accused w.e.f. May 27, 1999. It was further contended that they had never participated in the affairs of the company accused. It was thus, contended that A7 to A9 can not be held liable for the violations, if any committed by the company accused.

11. **Per contra**, learned counsel appearing for the SEBI sagaciously contended that all the accused were directors of the company accused at the relevant time, thus they cannot be escaped from their liability mere fact that they had resigned from the directorship under the advice of their counsels. It was further contended that A8 and A9 may be minor at the time when company was incorporated but they were major when company accused had committed the offence by mobilizing funds in violations of the provisions of the SEBI Act. It was contended that being directors of the accused company they were in charge of and responsible to the company accused for the conduct of its business at the time when offence was committed by the company accused.

12. **Since**, A8 and A9 have taken an additional plea that since they were minor at the time of incorporation of the company accused, they can not be held guilty for the offence, if any, committed by the company accused, I deem it appropriate to deal it with first. A8 Pushap Raj took the plea that he was born on September 4, 1978 whereas A9 Bhupinder Kumar took the plea that he was born on

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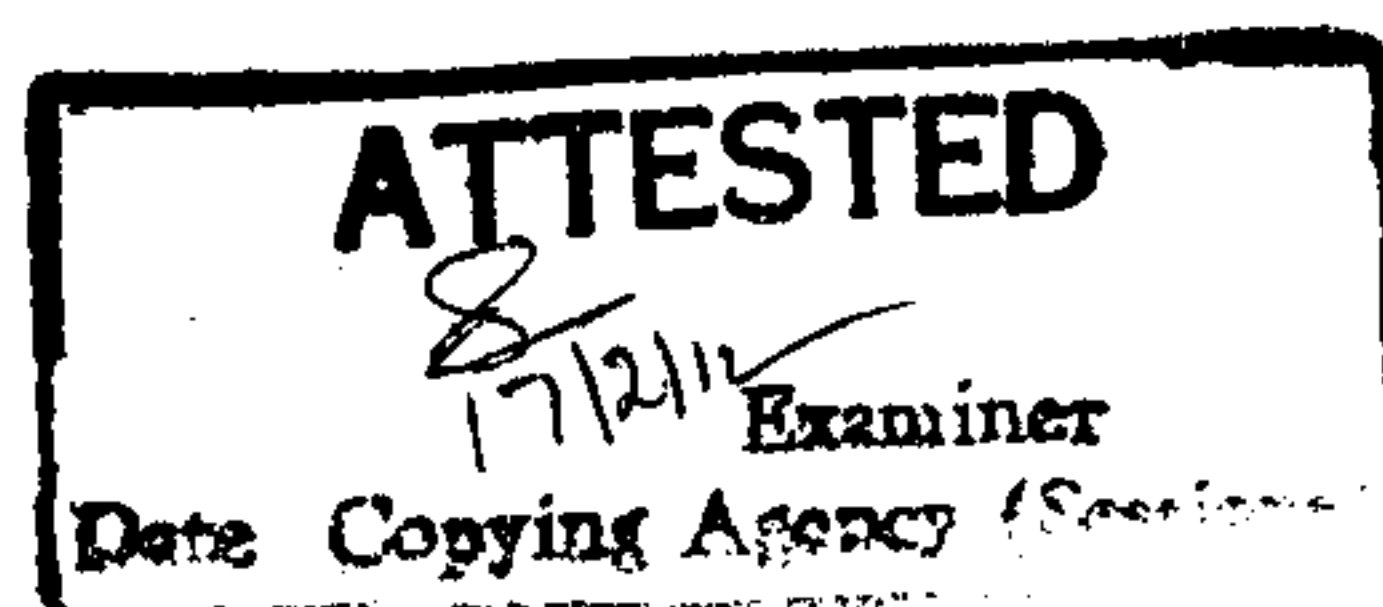


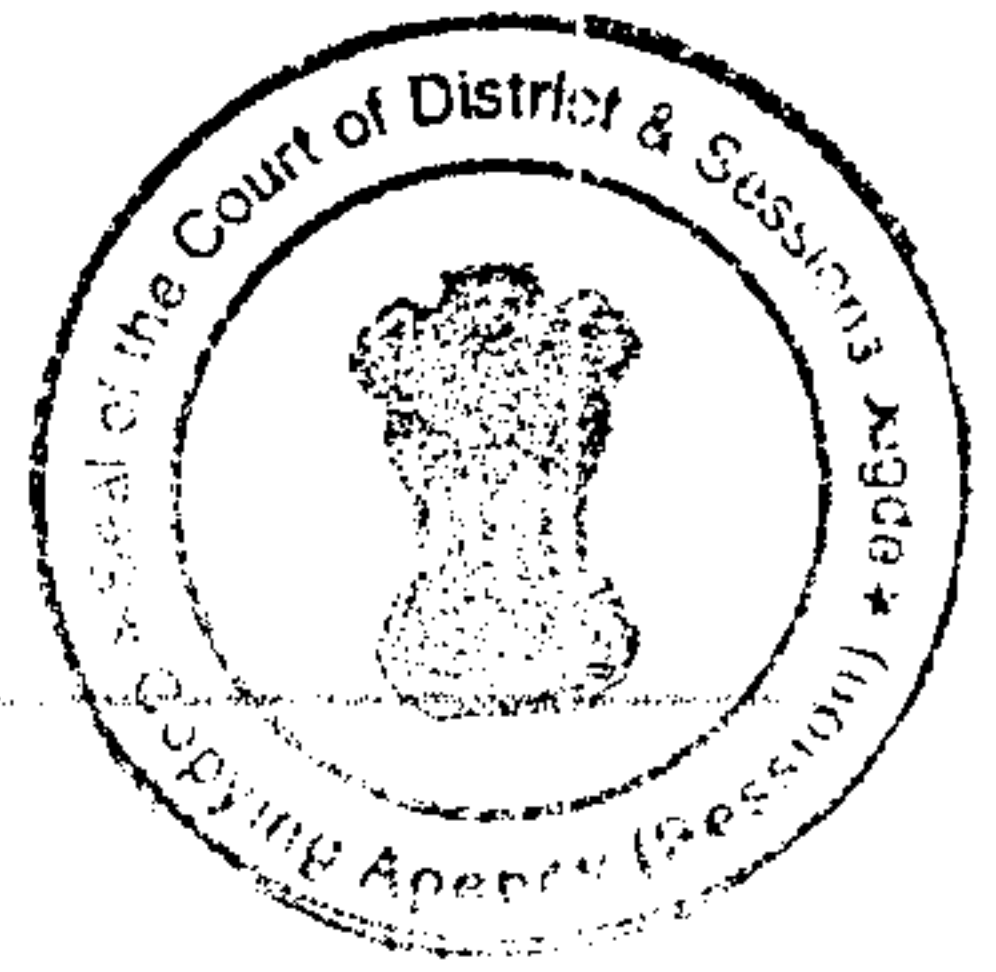


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March, 4, 1979. Both appeared in the witness box as DW3 and DW2 respectively. DW3 filed the matriculation certificate, which is exhibited as Ex. DW3/A to prove that he was born on September 4, 1978. Similarly, DW2 also filed his matriculation certificate, which is exhibited as Ex. DW2/A to prove that he was born on March 4, 1979. During trial, SEBI failed to produce any contrary evidence to the said documents, thus it is established that DOB of A8 and A9 was September 4, 1979 and March 4, 1979 respectively. It is also undisputed fact that company accused was incorporated on December 13, 1995. Thus, A8 was just 17 years 3 months and 9 days old whereas A9 was 16 years 9 months and 9 days old at the time when company accused was incorporated. During the course of arguments, learned counsel for the accused persons failed to bring any provisions in the notice of this Court that minor can not become the director of a company. It is admitted case of the both the accused persons that they had resigned from the company accused in June 1999. Thus, as per their version, they were between 20-21 years of age when they resigned from the directorship. If we assume that they were inducted on the board of directors against their wishes, they should have resigned from the board of directors as and when they attained the age of majority, but admittedly they had not opted to resign from the company accused at the time of attaining majority. On the converse, they submitted their resignation subsequently. Since, they continued to be the directors of the company accused after attaining the age of majority, they can not escape from their liability, if any, by merely taking the plea that they were minor at the time of incorporation of the company accused. Now, question arises as to whether they were minor at the time when alleged offence was committed or not?

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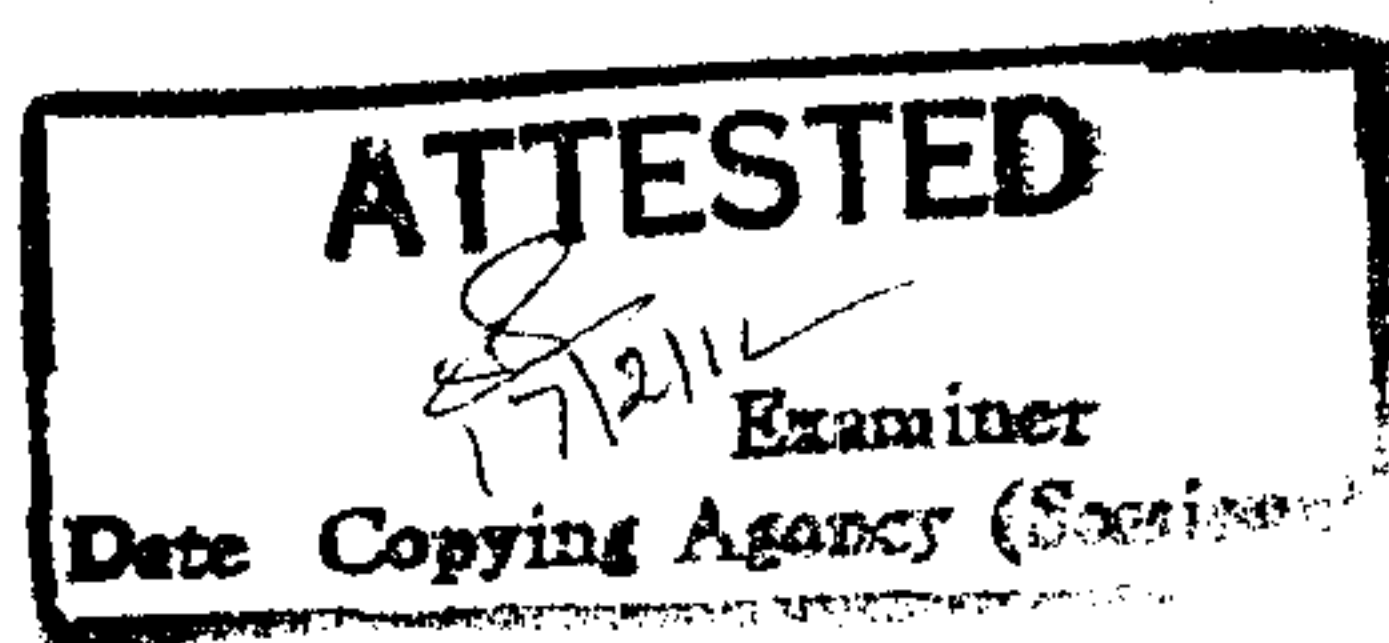


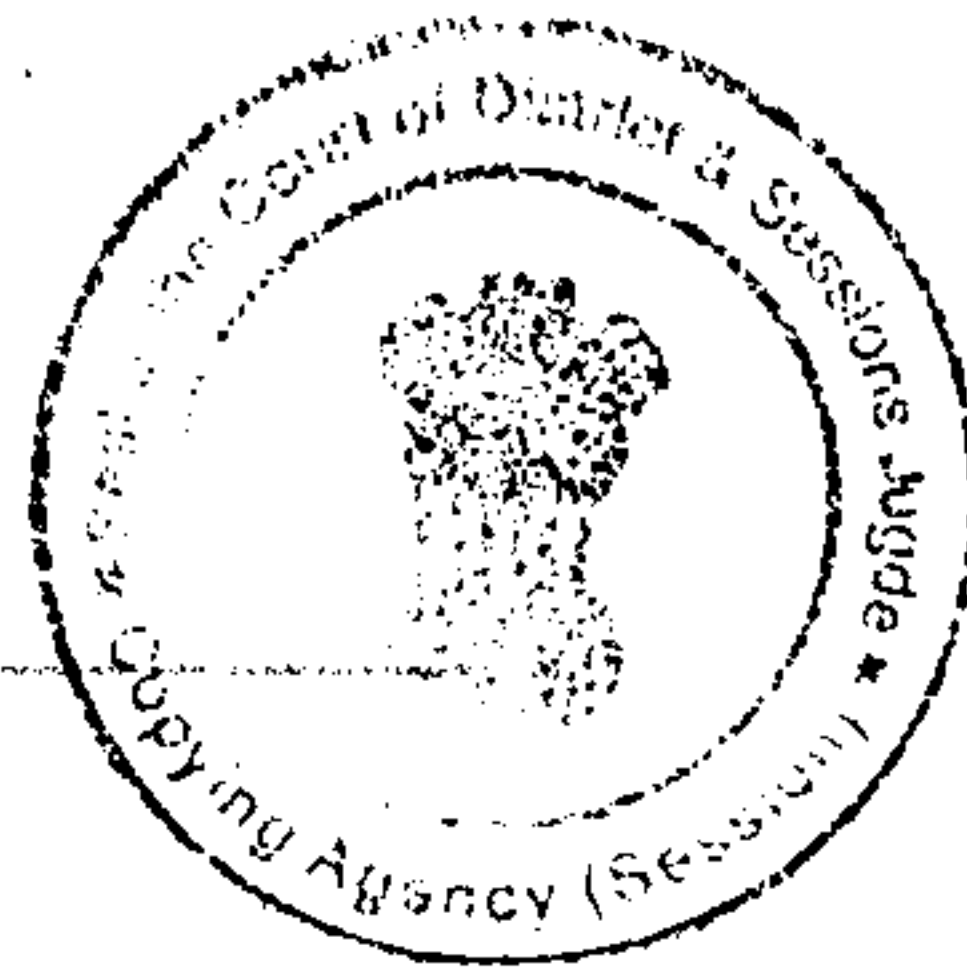
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13. **Company** accused had sent a letter dated January 6, 1998 to the SEBI, which is exhibited as Ex. CW1/2 wherein company intimated the SEBI that company accused had mobilized funds from general public in the form of recurring deposits and fixed deposits to the tune of ₹ 43,25,419/- till March, 31, 1997. Company accused had also sent another letter dated May 31, 1998 exhibited as Ex. CW1/6 intimating the SEBI that company accused had not raised any fund after December 18, 1997. Since, company accused was incorporated on December 13, 1995, it means company accused had raised funds between December 14, 1995 to March 31, 1997. Admittedly, both the above accused were major as on March 31, 1997. If complainant succeeds to establish that company accused had committed an offence after attaining the majority by A8 and A9 but before resigning from the Board of Directors, accused persons would be liable for the violations committed by the company accused.

14. **Section 12(1B)** was inserted in the Act w.e.f January 25, 1995. As per Section 12(1B) of SEBI Act, no person could sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtained a certificate of registration from the Board in accordance with the regulations. Since the company accused was incorporated only in December 13, 1995, thus as per Section 12(1B) of the Act, company accused was not supposed to mobilize any fund unless it obtained a certificate of registration from the SEBI. Admittedly, company accused had not obtained any such certificate from the SEBI, thus company accused had violated the provisions of

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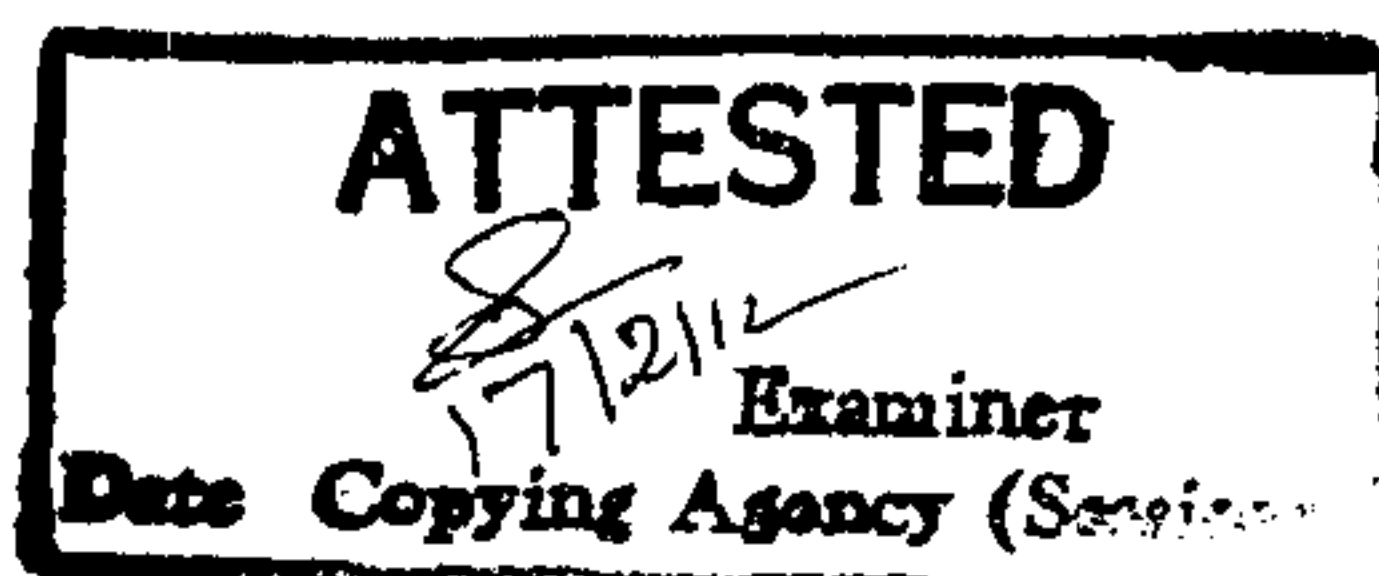
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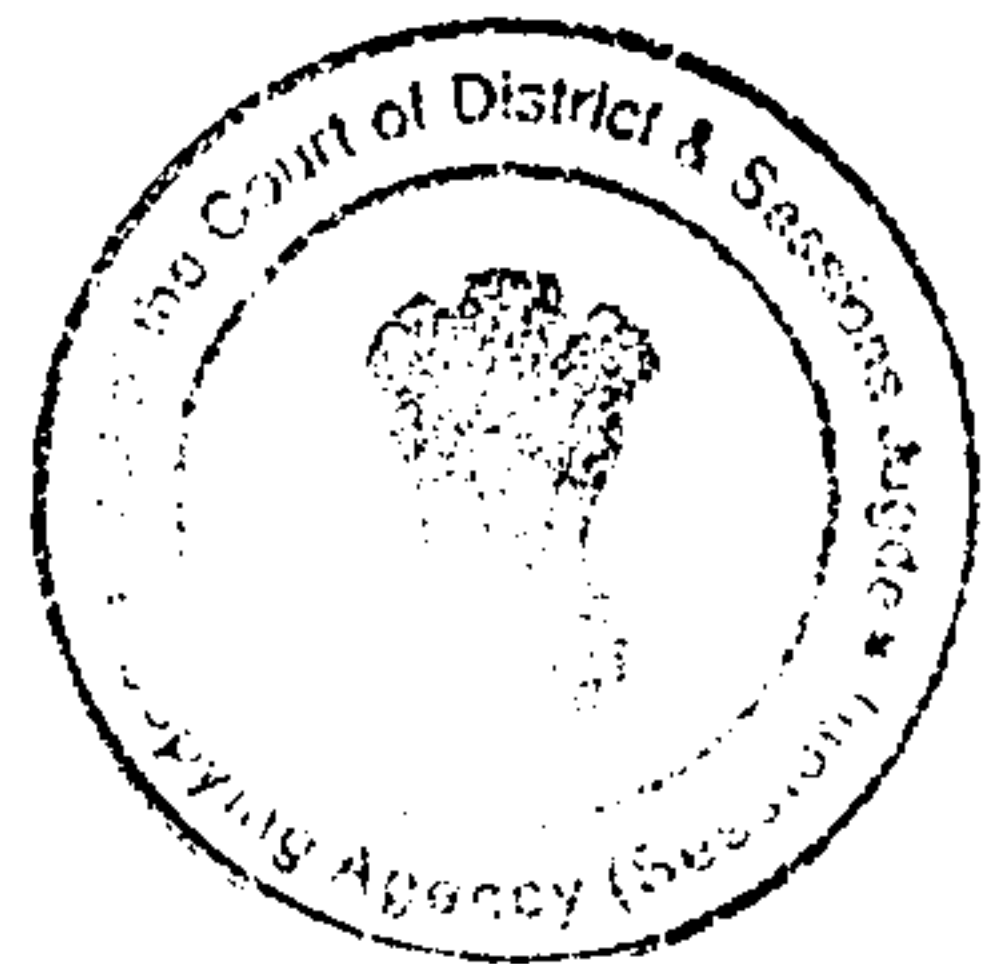
Section 12(1B) in the year 1995 and onwards by mobilizing funds without obtaining certificate of registration from the SEBI. As already discussed that company accused had raised the funds till March 31, 1997. It means that company accused had committed the offence during the period December 1995 to March 1997. Since, A8 and A9 were major in March 1997, they will be liable for the violations committed by the company accused, if complainant succeeds to establish their role within the four corners of Section 27 of the SEBI Act.

15. Before dealing with the contentions raised by learned counsel for the accused persons, I deem it appropriate to consider as to whether company accused is governed by the relaxation provided under proviso to Section 12(1B) of the Act or violated any provisions of CIS Regulations.

16. As per proviso to Section 12 (1B) any person sponsoring or cause to be sponsored, carrying on or causing to be carried on any venture capital funds or collective investment scheme operating in the securities market immediately before the 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 by the SEBI. To seek the relaxation as provided under the proviso to Section 12 (1B) of the Act, two pre-conditions are to be fulfilled i.e. (i) scheme must be in operation prior to 1995 (ii) such schemes were not required to have a certificate of registration. If any person fulfilled these two pre-conditions, such person was permitted under proviso to Section 12

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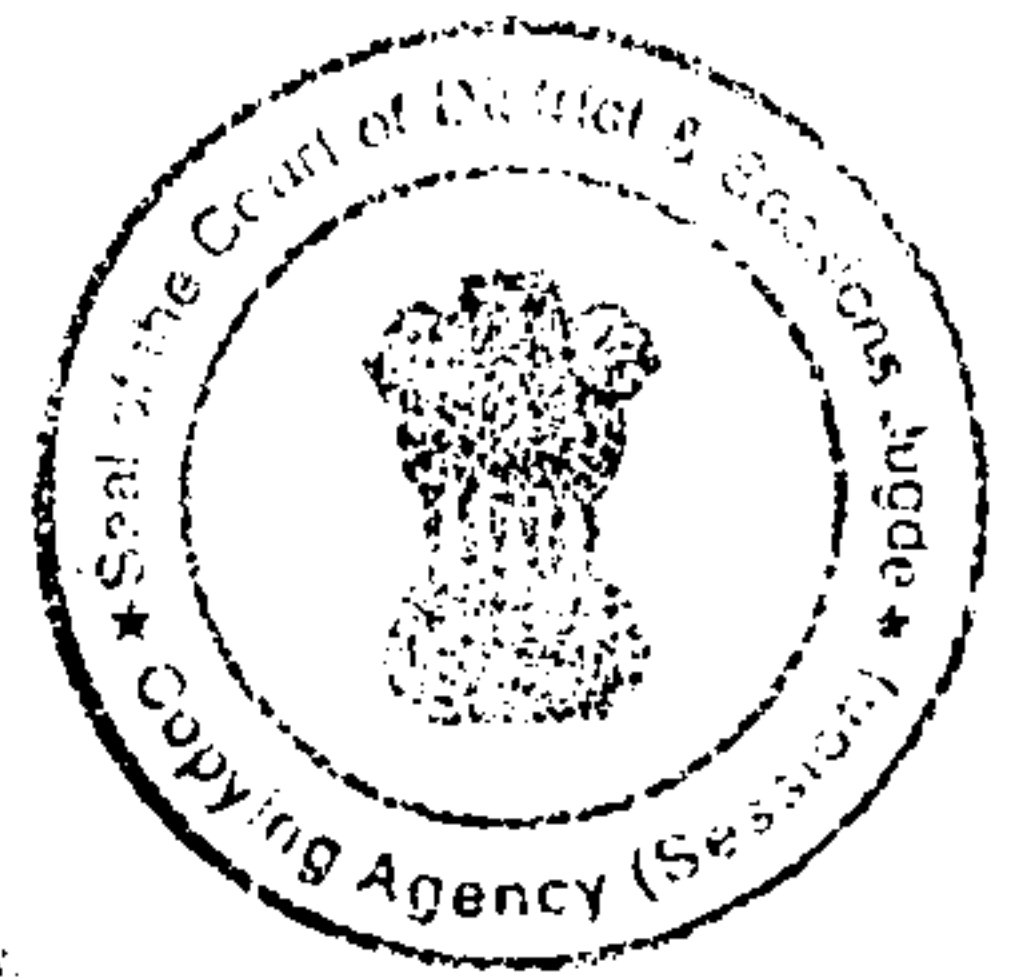
(1B) of the Act, to continue with such schemes till such time, regulations are made by the SEBI. Admittedly, in the instant case, company accused was incorporated only on December 13, 1995. Since, company was incorporated after January 25, 1995 when Section 12 (1B) was inserted in the Act by way of amendment Act, 1995, company accused is not entitled to seek relaxation as provided under proviso to Section 12 (1B) of the Act.

17. It is undisputed fact that CIS Regulations were notified w.e.f October 15, 1999 and as per Regulation 5 of the CIS Regulations, any person who was operating the collective investment schemes has to make an application to the Board within two months from the date of regulations to seek registration of certificate. But admittedly, in the present case, company accused had not moved any such application. Since, company accused had not moved any application in accordance with regulation 5 of the CIS Regulations, thus, as per regulation 73 of CIS Regulations, company accused was liable to refund the amount to the investors and submit the winding up and repayment report with the SEBI on prescribed format. Admittedly, company accused has not submitted any such report till the filing of the present criminal complaint, thus, company accused had also violated Regulation 5 and 73 of the CIS Regulations which amounts violation of Section 24(1) of the SEBI Act.

18. From the ongoing discussion, it becomes crystal clear that company accused had not only violated provisions of Section 12(1B) of the SEBI Act by mobilizing fund without obtaining necessary certificate of registration but also violated regulation 5 and 73 of CIS

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Regulations. Thus, company accused has committed an offence punishable under Section 24 (1) of the SEBI Act.

19. Now coming to the question as to whether A4, A6 to A9 were persons in charge of, and responsible to, the company accused for the conduct of its business or not at the time when company accused had committed the offence punishable under Section 24 (1) of the SEBI Act.

20. It is undisputed fact the above accused were directors of the company accused. Their plea is that since they had resigned much prior to the directions dated December 7, 2000 issued by the Chairman of the SEBI, they can not be held liable for the violations committed by the company accused. They further contended that ex-directors of the company accused can not be held liable for the violations committed by the company accused. In support of their contentions, they strongly relied upon the judgments *Anita Malhotra v. Apparel Export Promotion Council & others (supra)* and *M/s Thermax Ltd. (supra)*.

21. I have gone through both the judgments (supra) and of the opinion that the above judgments are not helpful to the accused persons in any manner as the facts of both the cases were totally different from the facts in hand. In both the judgments ex-directors were prosecuted for the acts done by the company accused, when they had already ceased to be directors of the company accused and this fact was in the knowledge of the complainant. On the contrary, in the instant case accused persons have been prosecuted for the

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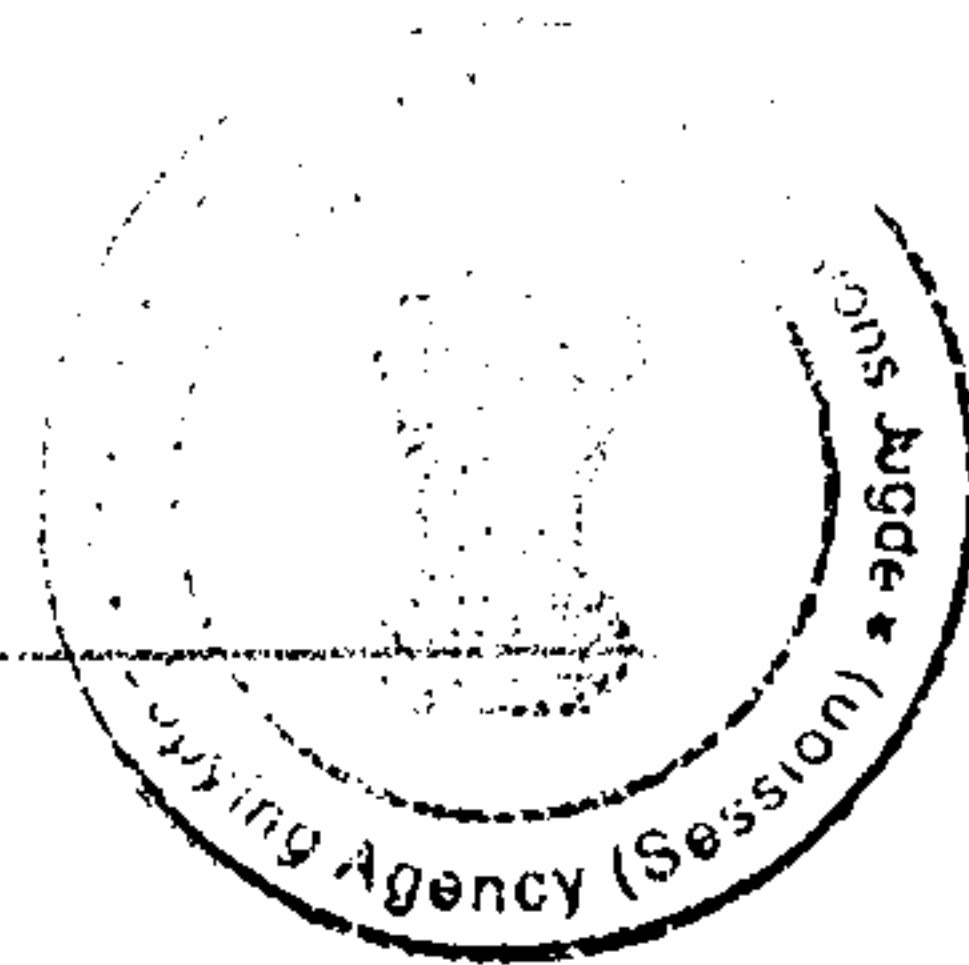
SEBI Vs. Parakeet Green Forest Ltd.

violations committed by the company accused, when the above accused were on the board of directors of company accused. Section 27 of the Act also states that when an offence has been committed by a company, every person who at the time of offence was committed was in charge or responsible to, the company for the conduct of its business shall also be deemed guilty of the offence. It is admitted case of the accused persons that A6 had resigned w.e.f. May 9, 1998, A7 resigned w.e.f. May 27, 1999, A8 resigned w.e.f. July 1999, A9 resigned w.e.f. June 19, 1999 and A4 resigned w.e.f. December 13, 2000. In other words, they all resigned during May 1999 to December 2000 i.e. much after the commission of offence. As already discussed, offence was committed by the company accused during the period December 1995 to March 31, 1997 when company accused had mobilized funds in violations of Section 12 (1B) of the Act, which is punishable under Section 24 (1) of the Act. Thus, accused persons can not be allowed to escape from their liability on the pretext that subsequently they had resigned from the company accused.

22. Now, I proceed to examine the case of individual accused. Firstly, I will take the case of A6 Balwant Kumar Sood and A7 Yashoda Devi. Admittedly, name of A6 and A7 is not mentioned in the list of first directors. To rope them with the aid of Section 27 of Act for the violations committed by company accused, SEBI has relied upon the letters exhibited as Ex. CW1/2 and Ex. CW1/6, Ex. DW1/A and Ex. DW4/A. I have perused the same. Letters Ex. CW1/2 and Ex. CW1/6 were sent by the company accused to the SEBI on January 6, 1998 and May 31, 1998 respectively. In the said letters, company accused had furnished the list of directors of the company accused.

17/4/12



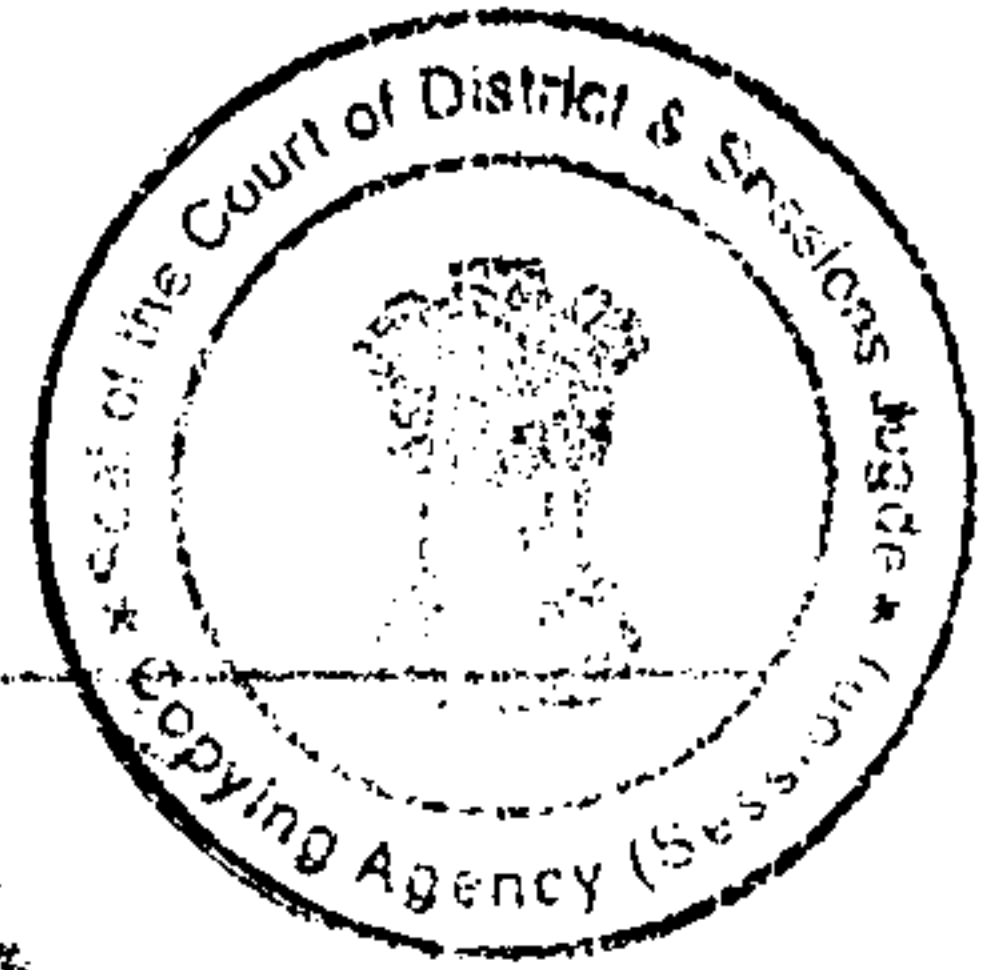


SEBI Vs. Parakeet Green Forest Ltd.

Admittedly, the name of A6 and A7 is mentioned in the said lists. But from the said list it is not clear when A6 and A7 were inducted as directors in the company accused. As already discussed, company accused had committed an offence during December 1995 to March 31, 1997. To impose vicarious liability with the aid of Section 27 of the Act, SEBI is bound to establish beyond doubt that A6 and A7 were on the board of directors of company accused during the said period. But letters exhibited as Ex. CW1/2 and Ex. CW1/6 do not prove that they were on the board of directors of the company accused during December, 1995 to March 1997. Letter exhibited as Ex. DW1/A reveals that the salary for the period of October 1997 to December 1997 was released in favour of A6 Balwant Kumar Sood being director of the company accused. But again this letter does prove that A6 was also director during the period December 1995 to March 1997. At the most, from the said letter an inference can be drawn that A6 was one of the directors during October 1997 to December 1997. Thus, there is no admissible evidence that A6 was one of the directors during the period December 1995 to March 1997, when company accused had committed an offence. Similarly, the form 32 exhibited as Ex. DW4/A proves that A7 had resigned from the directorship w.e.f. May 27, 1999. But this also does not prove that A7 was also director during December 1995 to March, 1997. During trial, SEBI has not produced any cogent evidence to establish that A6 and A7 were on the board of directors during the period December 1995 to March 1997. Since, there is no admissible evidence on record to prove that they were holding any position in the company accused during the relevant period, I am of the opinion that A6 and A7 were not persons in-charge of, and responsible to, the company accused for the violations

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SEBI Vs. Parakeet Green Forest Ltd.

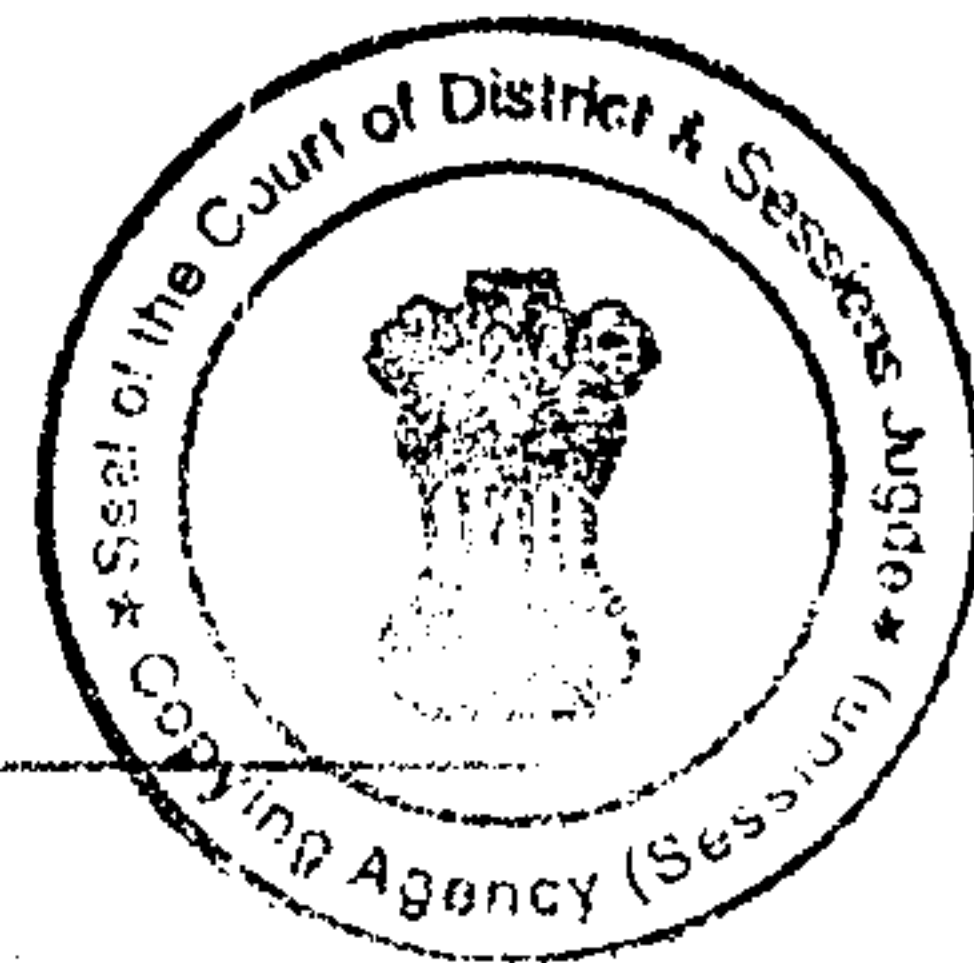
committed by the company accused by raising funds in violations of Section 12 (1B) of the Act.

23. Now coming to the case of A4, A8 and A9. Admittedly, their name is mentioned in the Articles of Associations of the company accused as first directors. This proves that they were directors in the company accused from the date of its incorporation. Their name is also mentioned in the list of directors furnished by the company accused vide letters exhibited as Ex. CW1/2 and Ex. CW1/6. It further proves that they were on the board of directors of company accused till May 1998. In other words, they were directors of the company accused, when company accused had mobilized funds in violations of Section 12 (1B) of the Act. It is admitted case of accused persons that A4 had resigned w.e.f. December 13, 2000, A8 resigned w.e.f. July 1999 and A9 resigned w.e.f. June 14, 1999. It means that the said accused persons resigned from their directorships much after the commission of offence.

24. Now, question arises as to whether A4, A8 and A9 were responsible for the funds mobilized by the company accused or not. Clause 60 and 61 of the Articles of Associations of the company accused authorised the board of directors to raise fund. It means that only board of directors were competent to take the decision to mobilize fund on behalf of company through various CISs. Since, A4, A8 and A9 were directors in the company accused from the date of its incorporation, they were members of the board, who took the decision to raise fund through various CISs. It also clarifies that no individual director was authorised to raise fund on behalf of company. This

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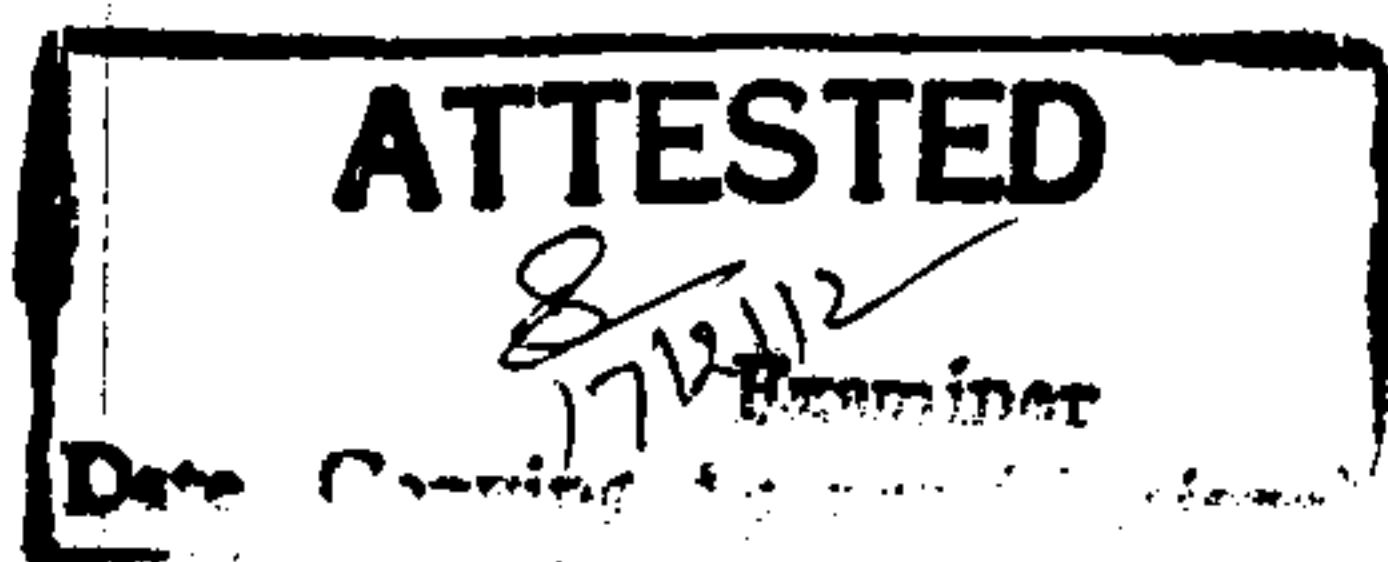


SEBI Vs. Parakeet Green Forest Ltd.

power was vested only in the board of directors. Since, above accused were part of the decision taken by the board, they were person in-charge of and responsible to, the company accused for the conduct of its business (to mobilize fund through various CISs). Once, SEBI has succeeded to establish that the above accused were persons in-charge of and responsible to the company accused for the conduct of its business, under proviso to Section 27 of the Act, onus is shifted upon the accused persons to establish that the offence was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such offence. But they failed to produce any cogent evidence in this regard.

25. A4 has not led any evidence. A8 and A9 examined themselves as DW3 and DW2 respectively. In their deposition, they only deposed that they were minor at the time of incorporation of the company accused and had resigned from the directorship in the year 1999. A8 in his cross-examination admitted that he had resigned from the directorship under the advice of his friend whereas A9 in his cross-examination deposed that he had resigned from the directorship under the advice of his counsel. Thus, it becomes clear that both the accused had resigned from the directorship of the company after obtaining advice from legal brain just to avoid their liability. Moreover, from the documents filed by the accused persons i.e. Ex. DW4/A and Ex. DW4/P-1 it is manifested that the A7 Yashoda Devi had submitted her resignation letter to A8 Pushap Raj being director of the company. Similarly, form 32 of A9 was also sent to ROC by A8 Pushap Raj Sharma. This further clarifies that A8 was not only a director of the company accused but also actively involved in day to day affairs of the

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14/7/12





SEBI Vs. Parakeet Green Forest Ltd.

company accused.

26. In view of the above discussion, I am of the opinion that A4, A8 and A9 were persons in-charge of, and responsible to, the company accused for the conduct of its business (to mobilize fund through various CISs), thus they are also guilty for the violations committed by the company accused in terms of Section 27 of the Act.

27. Pondering over the ongoing discussion, I am of the considered opinion that complainant has succeeded to prove beyond the shadow of doubt that company accused had mobilized ₹ 43,25,419 through various collective investment schemes in violations of Section 12(1B) of the Act and also violated regulations 5 and 73 of CIS Regulations. Complainant has also succeeded to establish beyond the shadow of doubt that at the time of commission of offence, A4, A8 and A9 were persons in-charge of, and responsible to, the company accused for the conduct of its business. Thus, they are also liable for the said violations in terms of Section 27 of the Act. Thus, I hereby hold A1 M/s Parakeet Green Forests Ltd., A4 Mr. Kulwant Singh, A8 Mr. Pushap Raj Sharma and A9 Mr. Bhupender Kumar guilty for the offence punishable under Section 24 (1) read with Section 27 of the Act. However, complainant has failed to bring home the guilt of A6 Balwant Kumar Sood and A7 Smt. Yashoda Devi beyond the shadow of doubt. Thus, I hereby acquit them from all the charges.

Announced in the open Court
on this 14th day of February 2012

(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

Copy given to the convicts
in open court at 14/2/12.

CC No. 82/10

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14/2/12
anil kumar
anil kumar
Pusp Kaj
Sd/-
14/2

Recd order copy
on behalf of
ACC. Kulwant Singh

ATTESTED
17/2/12
Examiner
Date Copying Agency (Sessions)



SEBI Vs. Parakeet Green Forest Ltd.

**IN THE COURT OF SH. PAWAN KUMAR JAIN,
ADDITIONAL SESSIONS JUDGE-01(CENTRAL):DELHI**

**Complaint Case No. 82 of 2010
ID No: 02401R0205512002**

SECURITIES AND EXCHANGE BOARD OF INDIA, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its Head office at Mittal Court, B-Wing, 224 Nariman Point, Mumbai 400 021 represented by its Legal Officer, Ms. Rekha Verma, Manager, SEBI.

Versus

1. Parakeet Green Forests Ltd.

A company incorporated under the provisions of Companies Act, 1956 and having Head office SCO No. 272, 1st Floor, Sector-35-D, Chandigarh-160022

.....Convict no.1

2. Sh. Kulwant Singh,

S/o Late Sh. Piara Singh
Occupation Director of the Accused no.1
R/o H. No. 445, G.T.Road, Sirhind,
Dist. Fatehgarh Sahib

.....Convict no.2

3. Sh. Pushap Raj Sharma,

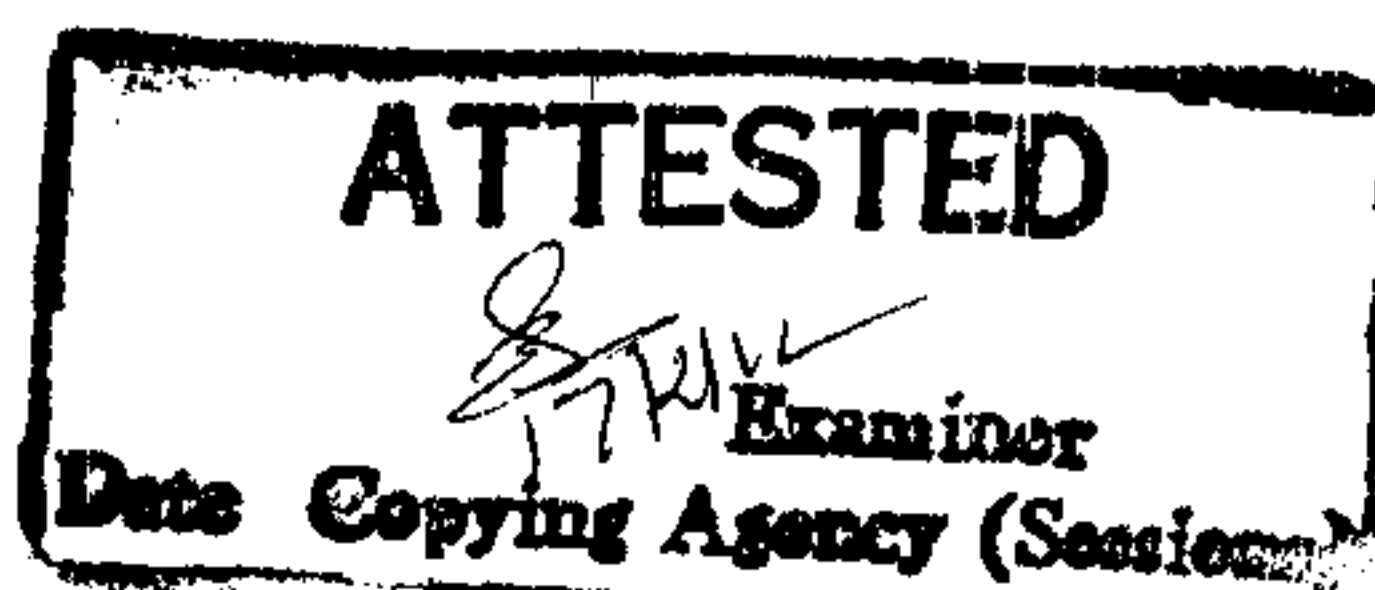
S/o Sh. Mohan Dutt Sharma
Occupation Director of the Accused no.1
R/o Village Kalranwali, Tehsi Kasauli,
Distt. Solan H. P.

.....Convict no.3


14/4/12

CC No. 82/10

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4. **Sh. Bhupinder Kumar**
S/o Sh. Lekh Ram
Occupation Director of the Accused no.1
R/o Village Mundran, Tehsil Kasuli,
Distt. Solan H. P.

.....Convict no.4

Present: Sh. Sanjay Mann, Advocate, Counsel for SEBI.
Sh. Munish Sharma, Advocate, Counsel for
convict no.2
Sh. Padam Dogra, Advocate, Counsel for convict no. 3
& 4

ORDER ON THE POINT OF SENTENCE(ORAL):

1. Vide separate judgment A1 i.e. M/s Parakeet Green Forests Ltd., A4 Mr. Kulwant Singh, A8 Mr. Pushap Raj Sharma and A9 Mr. Bhupender Kumar have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.
2. Learned counsel appearing for convicts requests for a lenient view on the ground that there is no criminal antecedents of either of the convicts and they are sole bread earner of their respective families and having school going children. It is further submitted that wife of convict no. 2 Kulwant Singh is suffering from cancer and he is the only person to look after her. On the other hand, learned counsel appearing for complainant requests for maximum punishment and substantial amount of fine on the grounds inter-alia that convicts had mobilized funds to the tune of ₹ 43,25,419/-from the general public and till date

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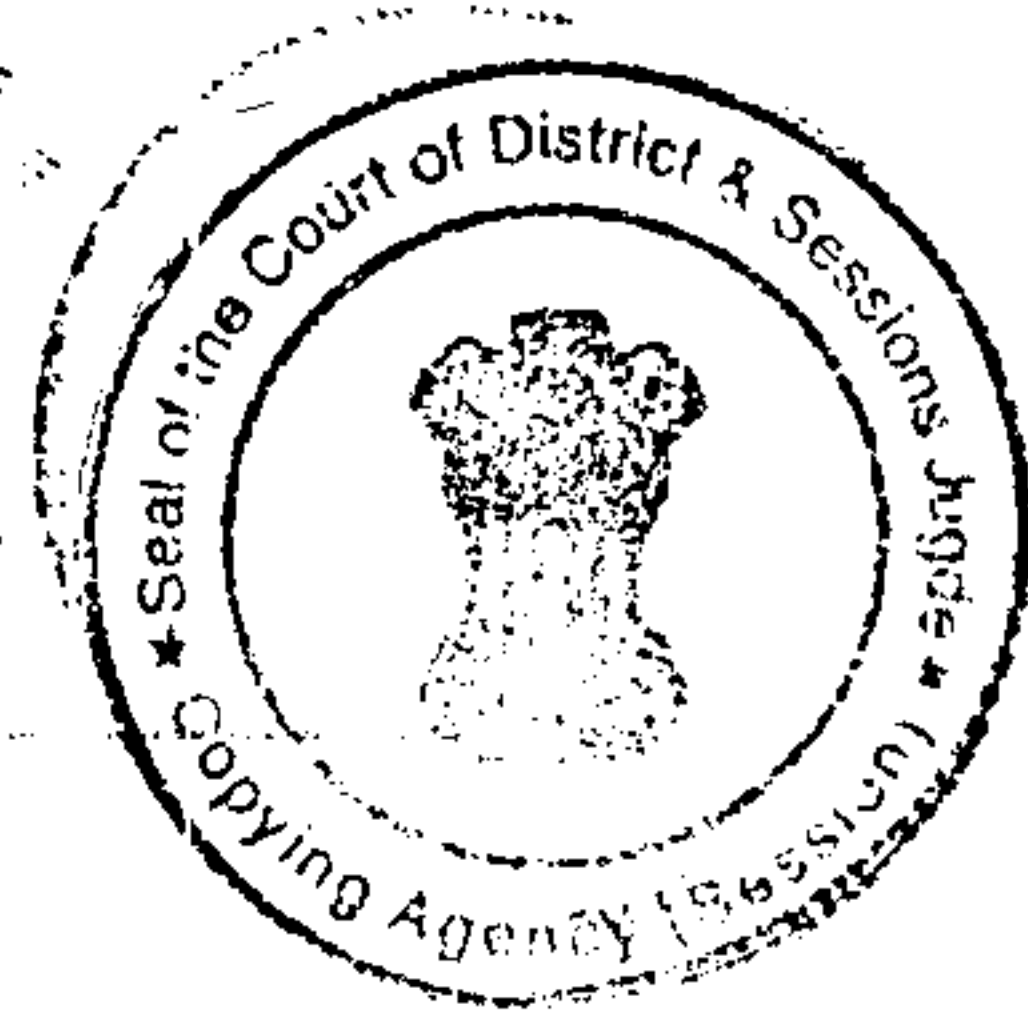
company accused had not refunded the amount to the investors.

3. I have heard Counsel for both parties, perused the record carefully and gave my thoughtful consideration to their submissions.

4. As per record produced during trial, company accused had mobilized funds to the tune of ₹ 43 lac through various CISs and during trial, company accused failed to produce any document to show that the company accused had refunded even a single penny to the investors. Even company accused had not filed WRR till date. By way of amendment in Act 59 of 2002, sentence of one year as mentioned under Section 24(1) of the SEBI Act has been enhanced to the extent of 10 years or to fine to the extent of ₹ 25 crore or both. This shows that legislature has considered the violations of provisions of the SEBI Act quite serious. Needless to say that ultimate victim of the violations are innocent investors. In the instant case, company accused had neither filed WRR till date nor paid the amount to the investors. Considering the quantum of fund mobilized by the company accused and the fact that till date, company accused had not refunded a single penny to the investors, I am of the opinion that convicts do not deserve any leniency. Accordingly, I hereby sentence convict no. 2 to 4 for rigorous imprisonment for a period of six months and also impose a fine of ₹ 3 lac each in default convict no. 2 to 4 shall under go simple imprisonment for a period of three months for the offence punishable under Section 24(1) of the SEBI Act. Company accused (convict no.1) is also burdened with a fine of ₹ 5 lac for the offence punishable under Section 24(1) of the SEBI Act.

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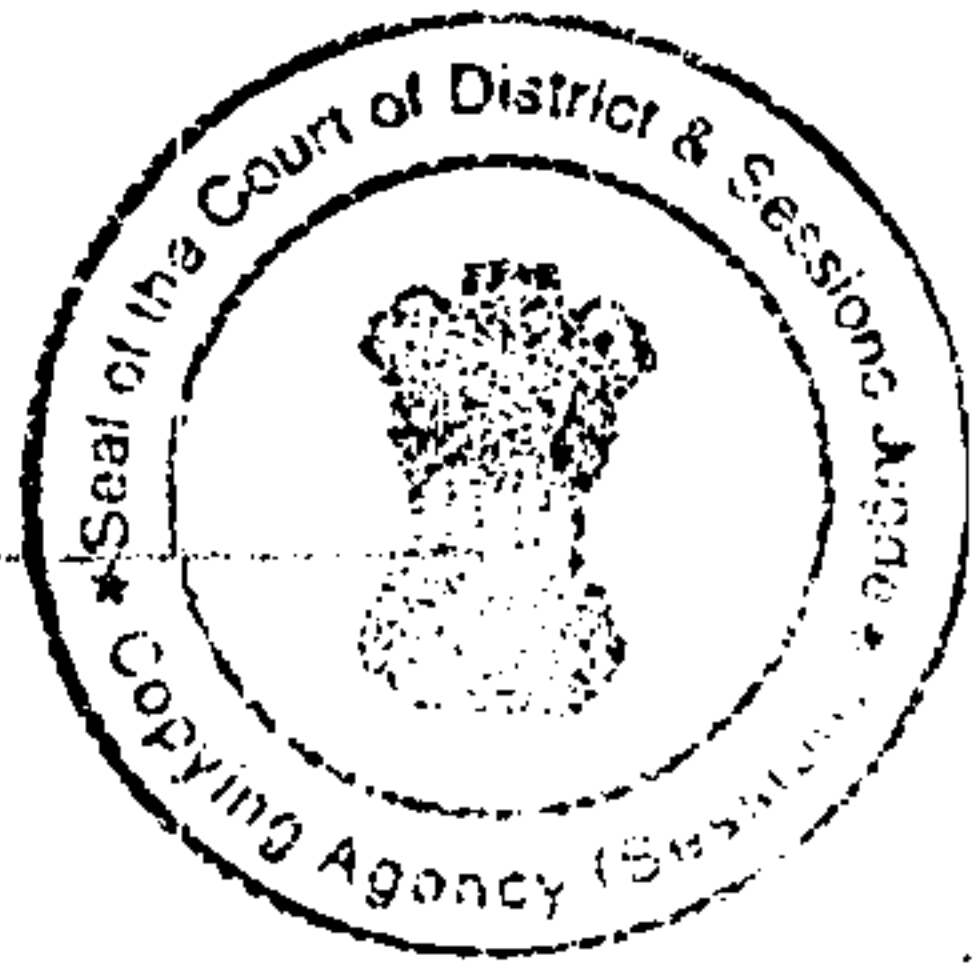




SEBI Vs. Parakeet Green Forest Ltd.

5. Since, the real victims of the offence committed by the convicts are innocent investors, who invested their hard earned money in the hope that they would get handsome return of their investment, but in the hope of attractive returns, they lost their actual investment. Thus, justice demands that such investors should be compensated from the said fine amount if realized. Accordingly, I hereby direct that the said amount of fine, if realised shall be utilized to compensate the investors proportionately under Section 357 of the Code of Criminal Procedure. After realization of the fine amount, SEBI shall issue public notices through print media and other modes to find out the investors. After verification of documents of investors, SEBI shall submit a report in the Court for realization of the amount to the investors. If the total amount to be paid to the investors is found more than the realised fine amount, compensation shall be made proportionately to the investors. However, amount of compensation shall be released to the investors only after the expiry of period of appeal or revision, or if any appeal or revision is filed, then after the decision of such appeal or revision.
6. Learned counsel for SEBI submits that presently SEBI is not aware about the assets of company accused and states that as and when SEBI will come to know about the assets of company accused, SEBI shall take appropriate steps for the realization of the fine amount.
7. Fine amount is not paid.
8. Copy of judgment along with order on the point of sentence be given to the convicts/their counsel free of cost.

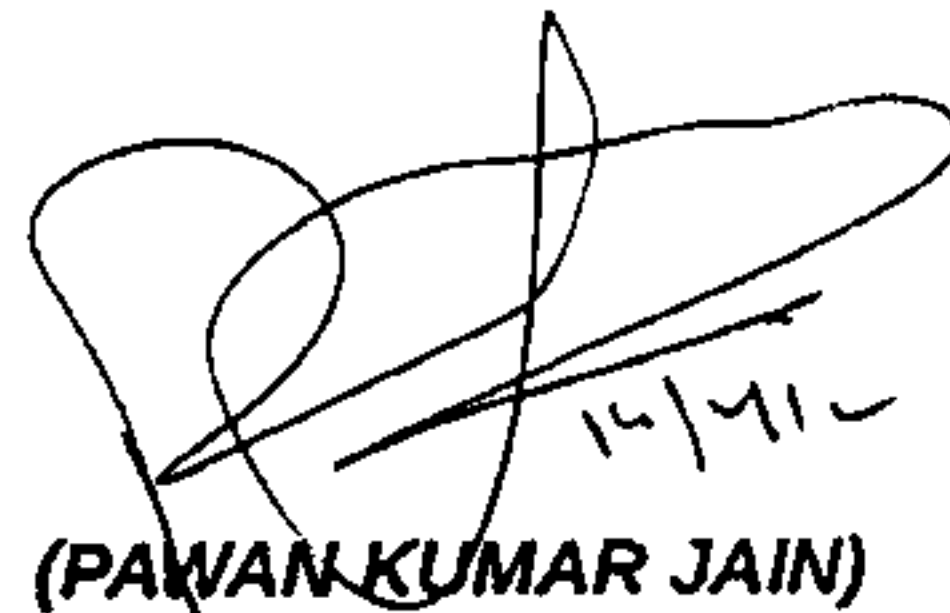




SEBI Vs. Parakeet Green Forest Ltd.

9. Since A2, A3 and A5 are proclaimed offenders, file be consigned to record room with direction that same be revived as and when they apprehended.

Announced in the open Court
on this 14th day of February 2012


14/2/12

(PAWAN KUMAR JAIN)
ADDITIONAL SESSIONS JUDGE-01
CENTRAL/THC/DELHI

Copy given to the convicts
in open court at for
14/2/12

in behalf of Housed Blimpinder

S.S. Dapra
14/2

Recd copy of order dt 14/2/12
on behalf of A.C. Kumar
for

CC No. 82/10

Office of the District Judge Delhi	
Certified to be true	
Date	Copying Agency
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