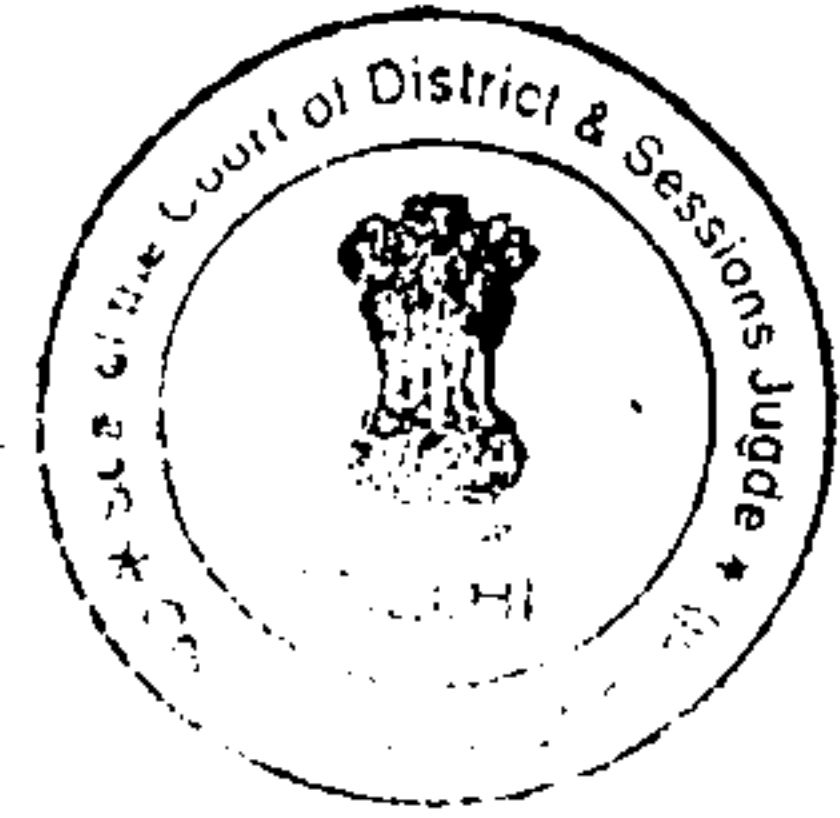
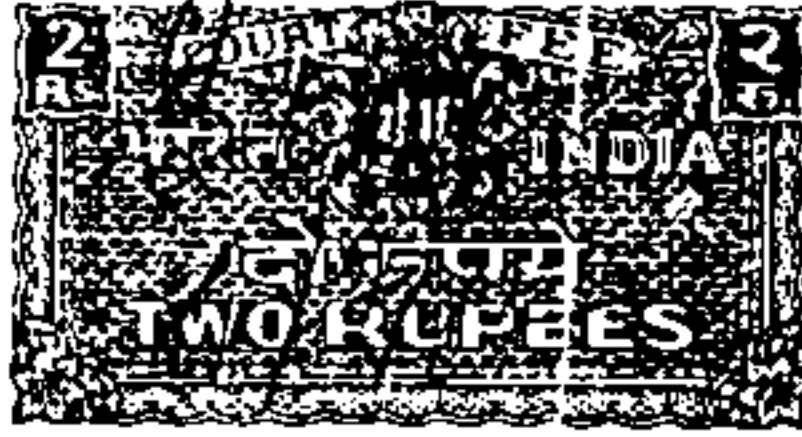


In The Court of Mr. D.K. Shari - 1 Acorny  
Delhi.



IN THE COURT OF THE CHIEF METROPOLITAN

MAGISTRATE,

TEES HAZARI, DELHI

CC NO:

4/5  
17-1-85  
213/HO  
C.D.  
S.D.  
22/01/85

e2401 R01 83-702002

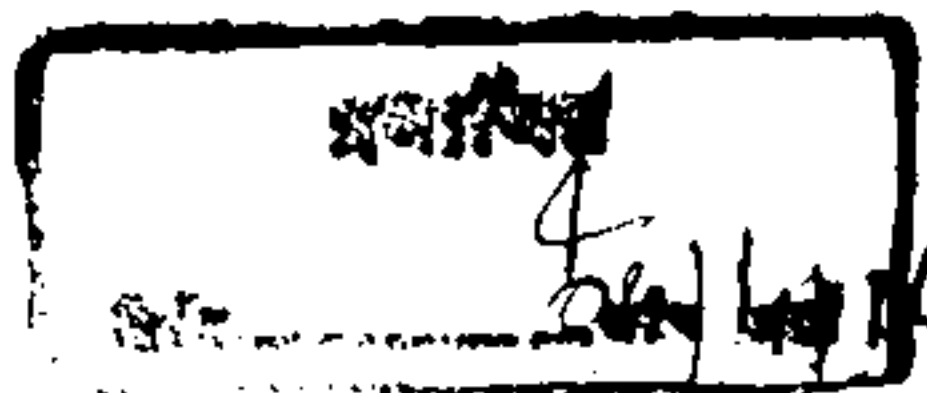
Securities and Exchange Board of India,  
a statutory body established under the  
provisions of Securities and Exchange  
Board of India Act, 1992, having its  
Head Office at 221, Nariman Point,  
Mittal Court, "B" Wing, Nariman Point,  
Mumbai- 400 072 and represented by its  
Asst. Legal Advisor (Prosecutions) Shri  
A. Chandra Sekhar Rao.

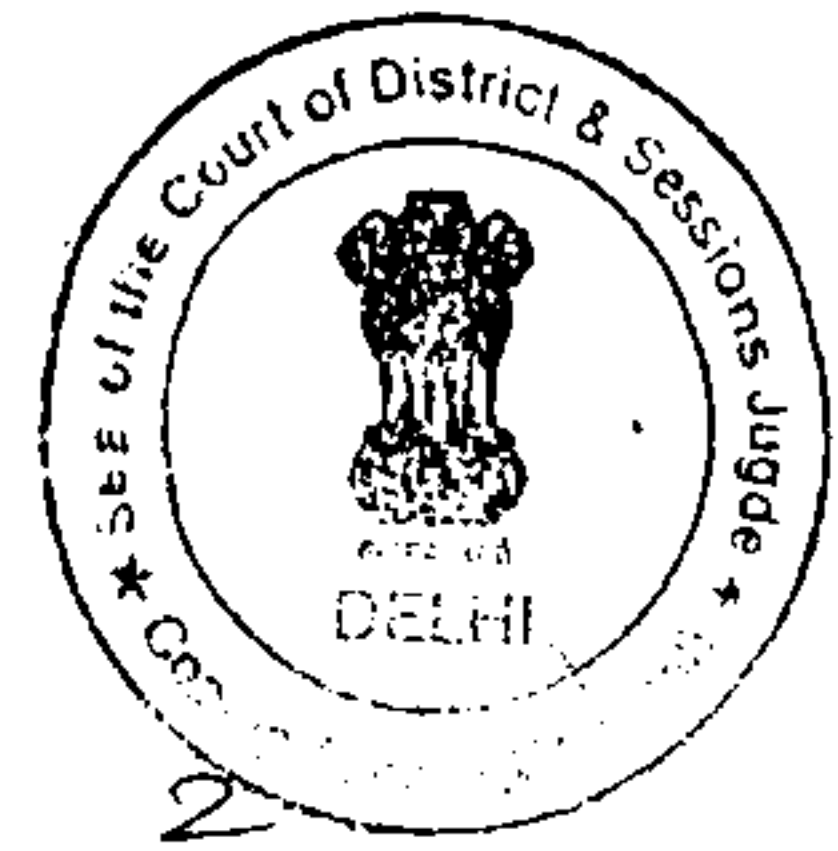
...Complainant

Vs.

1. Golden Projects Ltd., a company  
incorporated under the provisions of  
Companies Act, 1956 and having its  
registered office at Chandigarh  
Extension N H - 22, 36 Mile Stone,  
Chandigarh - Ambala Road, Near  
Lalru, Distt. Patiala (Punjab) Delhi.
2. Shri Amrit Lal, s/o Gurmani Lal;  
Occupation: Director of the Accused

215  
22/01/85





No.1; resident of H. No. 573, Sector  
- 12 Panchkula Haryana.

3. Ms. Pamila, D/o Shri Amril Lal Not;  
Occupation: Director of the Accused  
No.1; address as of accused no. 2.

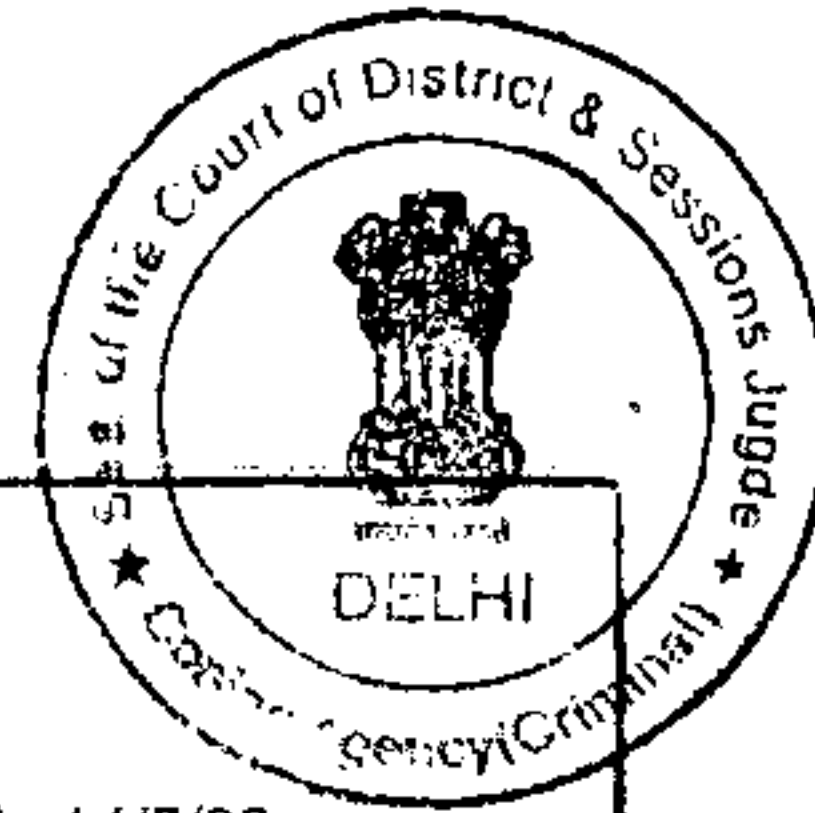
4. Ms. Neena, W/o Shri Rakesh Kant;  
Occupation Director of the Accused  
No.1; address : H. No. 570, Sector  
12, Panchkula, Haryana.

*Added*  
*2/12/2017*

....Accused

COMPLAINT UNDER SECTION 200 OF THE CODE OF  
CRIMINAL PROCEDURE, 1973 READ WITH SEC. 24(1)  
AND 27 OF SECURITIES AND EXCHANGE BOARD OF  
INDIA ACT, 1992





CC No.14/5/09  
SEBI Vs M/s Golden Project Ltd

29.03.2014

Present: Counsel for complainant.

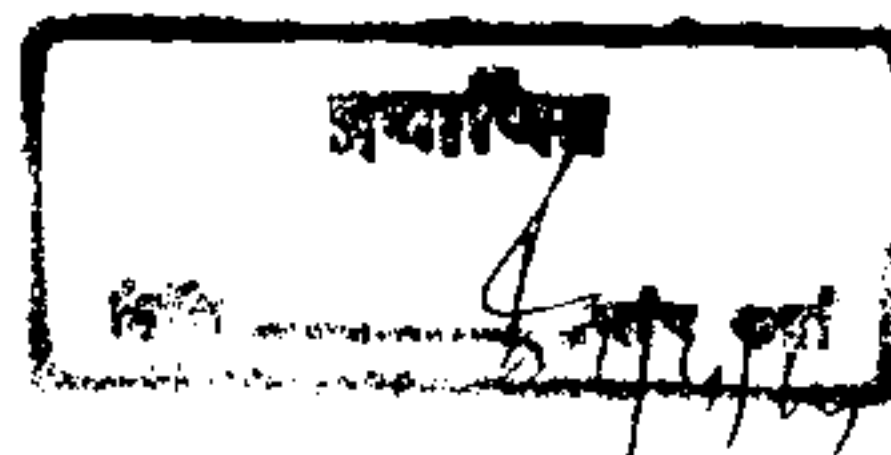
Convict No.1 company is stated to be under liquidation.

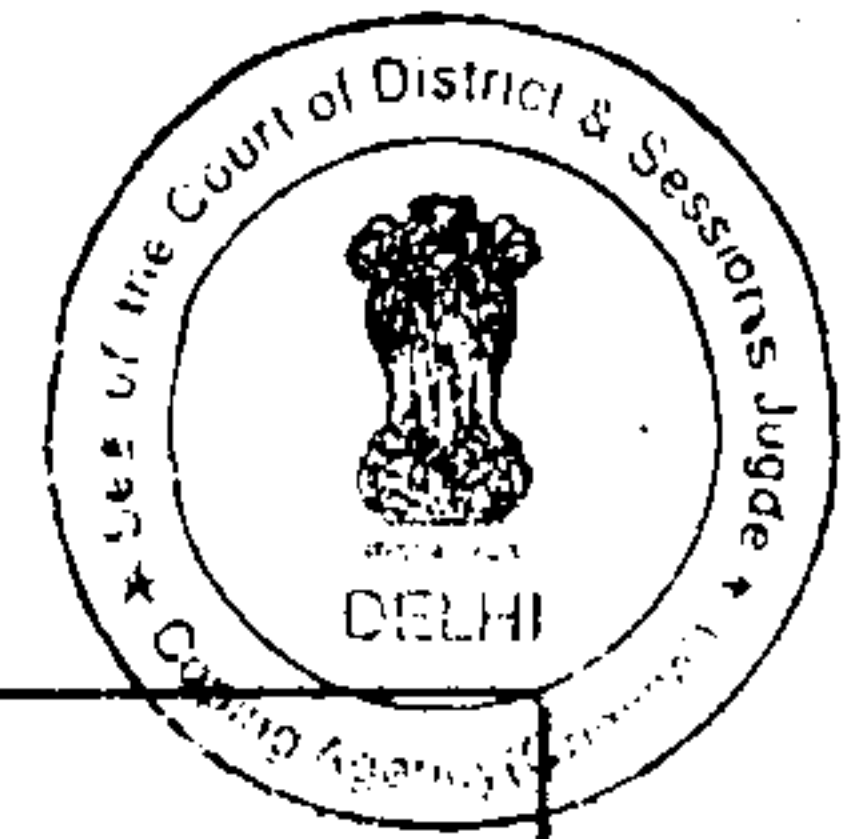
Convict No.3 Pamila produced from Hoshiarpur Jail.

Arguments on the point of sentence heard.

Vide separate orders dictated and announced in the open court, convicted has been sentenced for her conviction under Section 24(1) r/w Section 27 of the SEBI Act. File be consigned to record room after due completion.

(D.K. SHARMA)  
ACMM(SPL ACTS), CENTRAL  
DELHI/29.03.2014





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IN THE COURT OF SH. D.K.SHARMA  
ADDL CHIEF METROPOLITAN MAGISTRATE (Spl. Acts) CENTRAL  
TIS HAZARI COURTS DELHI.

SEBI vs M/s. Golden Project Ltd.& Ors  
CC No.14/05/09

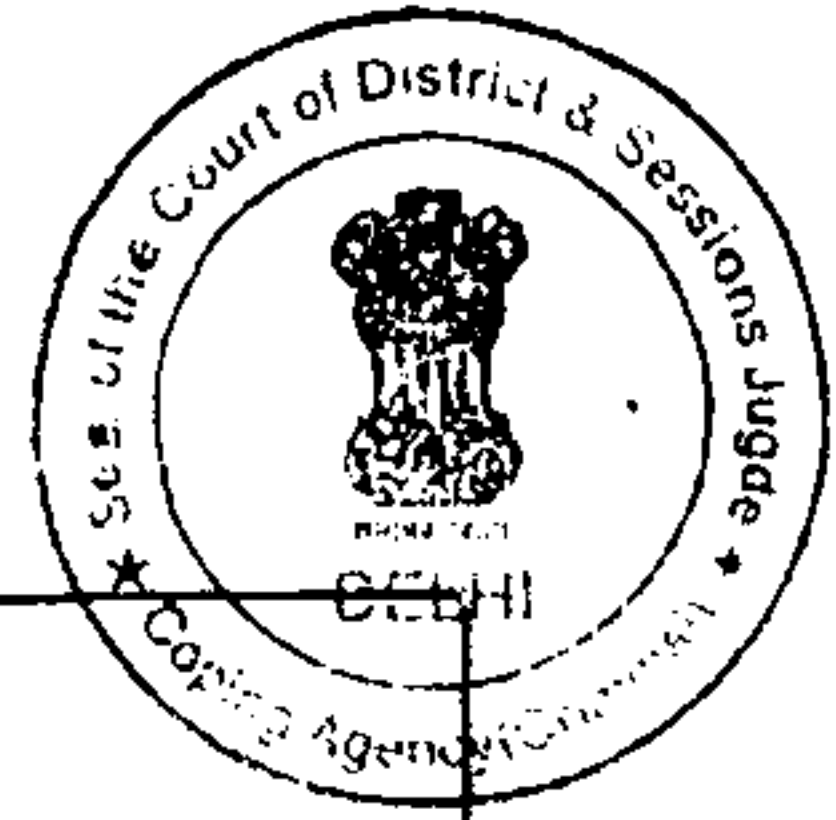
**JUDGMENT**

- (a) Serial no. of the case : 02401R0188802002s
- (b) Date of commission of offence : In the year 1999
- (c) Name of complainant : Securities and Exchange  
Board of India (SEBI)  
Having its Head office at  
221, Nariman Point, Mittal Court,  
'B' Wing, Nariman Point,  
Mumbai-400 072
- (d) Name, parentage, residence: 1) Golden Projects Ltd.  
having its registered office at  
36 Mile Stone, Ambala Road,  
near Lalru, Distt Patiala (Pun)  
2) Shri Amrit Lal S/o Gurmani Lal  
(case abated against accused  
no.2 vide order dated 09.04.2010)  
3) Ms Pamila D/o Shri Amrit Lal,  
Director of Accused No.1,  
R/o 573, Sector-12, Panchkula,  
Haryana and  
4) Ms Neena W/o Rakesh Kant  
(case abated against accused  
no.2 vide order dated 19.11.2013)
- (e) Offence complained of/ proved : U/s 24(1)/27 of SEBI Act, 1992

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(f) Plea of accused : Pledged not guilty.  
(g) Final order : Accused No.3 convicted  
(h) Date of such order : 24.03.2014

Date of Institution of complaint : 04.07.2002  
Date of final Arguments: 24.03.2014  
Date of Pronouncement of Judgment : 24.03.2014

**-: Brief statement of the reasons for the decision :-**

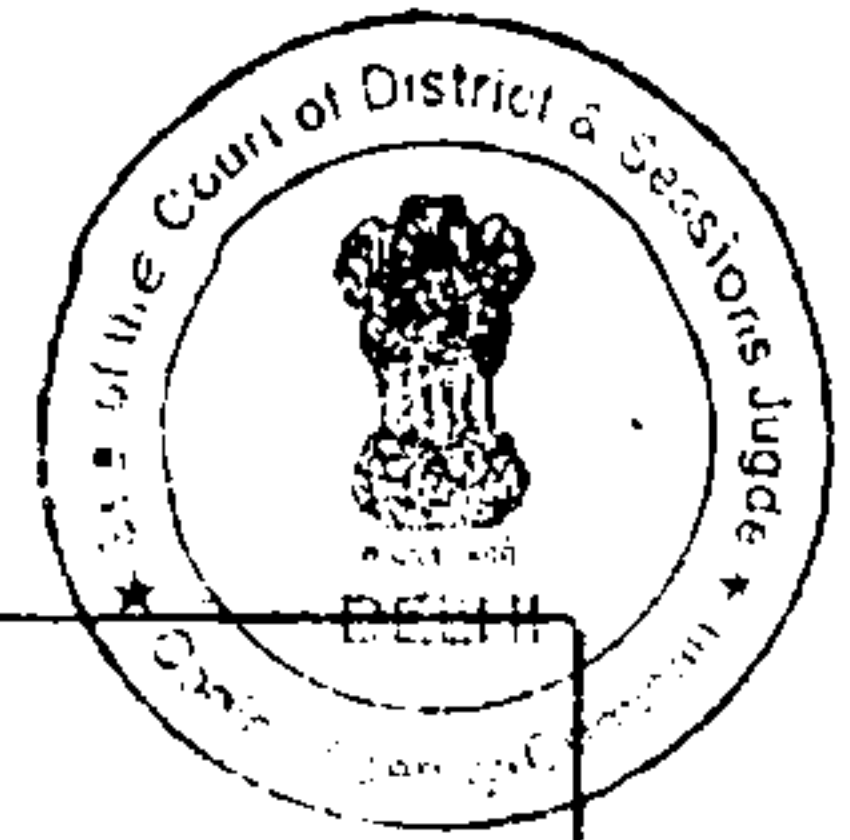
1. Present complaint was filed with the allegations that complainant is working as Assistant Legal Adviser (Prosecutions) with Securities and Exchange Board of India (hereinafter referred to as SEBI) and is duly authorized vide authority letter dated March 15, 1999 issued by the SEBI. SEBI was established under the Securities and Exchange Board of India Act, 1992 for (hereinafter referred to as the Act) providing protection of the interests of investors in securities and to promote the developments of and to regulate the securities markets and for matters connected therewith or incidental thereto.
2. It is further alleged in the complaint that section 11(1) of the Act, 1992 casts upon the SEBI the duty to take measures given as under:-

- a) Regulating the business in stock exchanges and any other securities market,
- b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers,

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*investment advisers and such other intermediaries who may be associated with securities market in any manner,*

*c)registering and regulating the working of collective investment schemes, including mutual funds,*

*d)promoting and regulating self-regulatory organizations,*

*e)prohibiting fraudulent and unfair trade practices in security market,*

*f)promoting investor education and training of intermediaries in securities market,*

*g)prohibiting insider trading in securities,*

*h)regulating substantial acquisition of shares and take-over of companies,*

*i)calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges and intermediaries and self-regulatory organizations in the securities market,*

*j)performing such functions and exercising such powers under the provisions of the Capital Issues (Control) Act, 1947., (subsequently repealed) and the Securities Contracts (Regulations) Act, 1956, as may be delegated to it by the Central Government.*

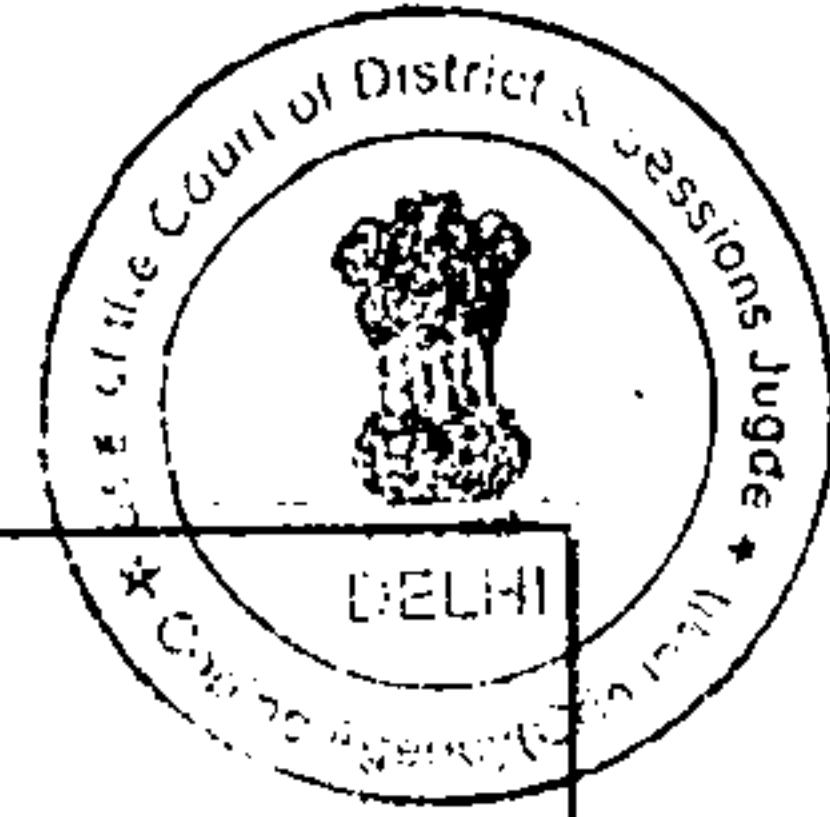
*k)levying fees or other charges for carrying out the purposes of Section 11 of the Act,*

*L)conducting research for the above purpose,*

*m)performing such other functions as may be prescribed by the government.*

It is further alleged that there was rampant activities of plantation on commercial scale. But it was noticed that the promoters themselves invested





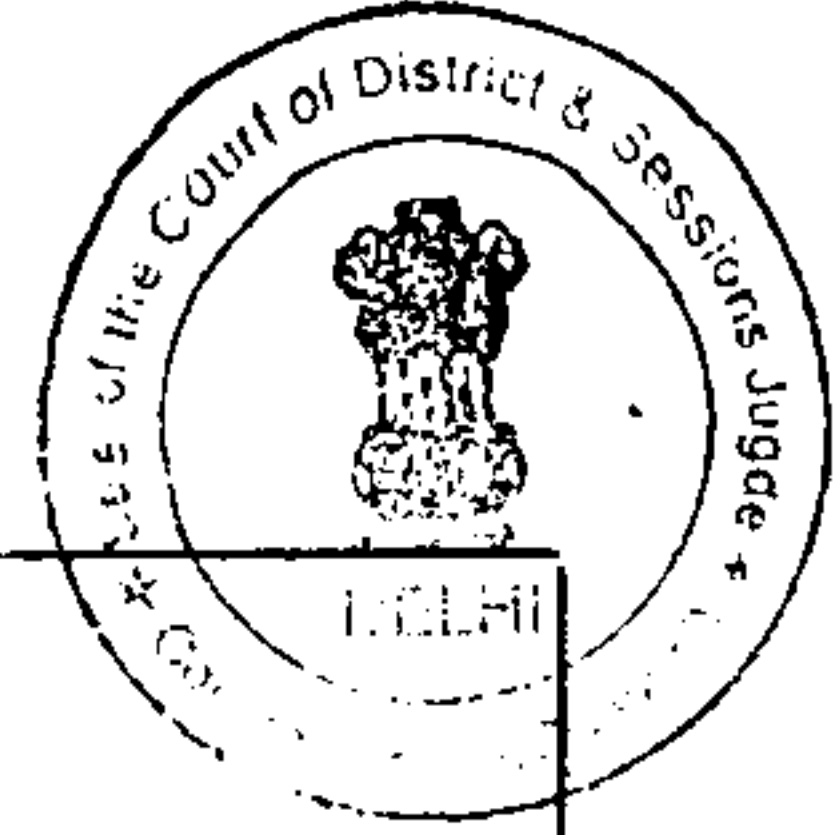
the minimal amount in such ventures and raised a majority of the funds from ordinary investors in the absence of any regulatory mechanism. The high returns promised by these schemes coupled with questionable claims of fiscal incentives and effective marketing helped many of these companies to mobilize large amounts over a period of time. The initial success in mobilizing funds by some of these companies led to mushrooming of such schemes throughout the country. Thus, to regulate these activities, Govt. of India, after detailed consultations with the regulatory bodies, decided for appropriate regulatory frame work for entities which issue instruments like Agro bonds, Plantation bonds etc., has to be put in place.

It is further alleged that in pursuant of the same, a press release was issued by the Govt. of India on Nov, 18, 1997, conveying that such schemes should be treated as quality investment schemes coming under the Act of 1992. In order to regulate such schemes, both from the company and from the investors as well as promoters of legitimate investment activity, complainant was asked to formulate the regulations for them. Accordingly in the year 1999, SEBI notified regulation for the activities of collective investment schemes, titled as "Securities and Exchange Board of India" (Collective Investment Scheme) Regulations, 1995 (for short CIS regulations).

The present case is against the accused persons with the allegations that accused no.2 to 4 are Directors of accused no.1 company and persons responsible for conduct of its business who failed to comply with Chapter IX of







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the said regulations issued by the SEBI in respect of the collective investment scheme (in short C.I.S. scheme) as the accused no.1 started running a collective investment scheme after 25.01.1995 in violation of Section 12(1B) of SEBI Act without obtaining any registration and has raised an aggregate sum of Rs.119.24 crores from the general public but failed to get the collective scheme registered with the complainant within a period of two months after notification of CIS Regulations in the year 1999 and further failed to make the re-payment of amount so received from the investors despite letter dated 15.12.1999, 29.12.1999, and public notice dated 10.12.1999 and 22.02.2000 given by the SEBI. Further notice dated 12.05.2000 was also ignored and money received from the investors was not re-paid as per the regulations and thus, they committed the offence punishable u/s 24 (1) r/w 27 of the SEBI Act. Hence, the present complaint.

After the service of summons, all the accused persons appeared. Notice u/s 251 Cr.P.C was framed against all the accused No.1 to 4, vide order dated 21.09.2004 to which all the accused persons pleaded not guilty and claimed trial. However, during pending proceeding, accused no.2 Mr. Amrit Lal and accused no.4 Ms Neena have expired and proceedings against them stands abated. Accused no.1 is under liquidation and complainant was allowed to continue with the criminal prosecution of the accused no.1. Thus, this order is directed against the accused no.1 and accused no.3 only.

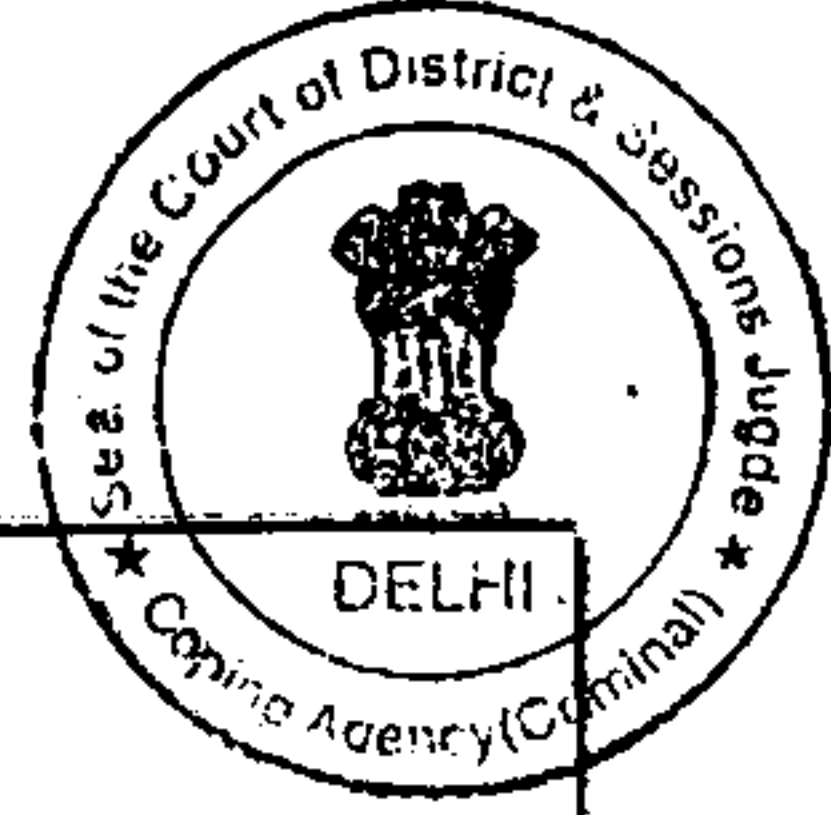
4. To substantiate its claim, the complainant produced Shri Ajay Srivastava

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as PW-1, AGM, SEBI, Shri Sanjay Vohara (Investor) as PW-2 and Ms Jyoti Jindgar, ADGM, SEBI as PW-3, in the witness box.

PW-1 Shri Ajay Srivastava, AGM, SEBI has deposed that he was handling Primary Market Department from November, 1997 to February, 2002 and that on 26.11.1997 and 18.12.1997 SEBI issued Public Notices in newspapers whereby it called and advised companies running collective Investment Schemes to file information regarding their schemes, promoters and amount mobilized under the schemes. Pursuant to the aforesaid press release, accused company filed information with SEBI vide letter dated 05.12.1997, certified copy of which is Ex.PW1/A. This witness has further deposed that time to time SEBI issued public notices to this effect and that in October, 1999 SEBI Collective Investment Scheme Regulations were notified in which the companies who were running CIS were required to get themselves registered with SEBI or otherwise to wind up their schemes and to repay the investors and they were supposed to furnish the information regarding winding up of the said schemes and repayment of amount duly audited by statutory auditors in the prescribed forms. This witness has further deposed that the accused company did not apply for registration nor filed rewinding and repayment report. Specific letters to the accused company were sent on the address furnished by the company with the SEBI. The certified copy of press release dated 26.11.1997 is Ex.PW1/B and of public notice dated 18.12.1997 is Ex.PW1/C. A show cause notice was issued to the accused

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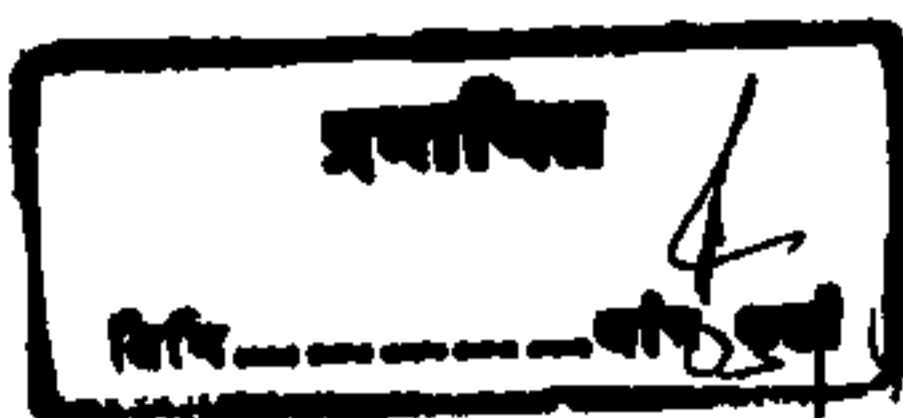


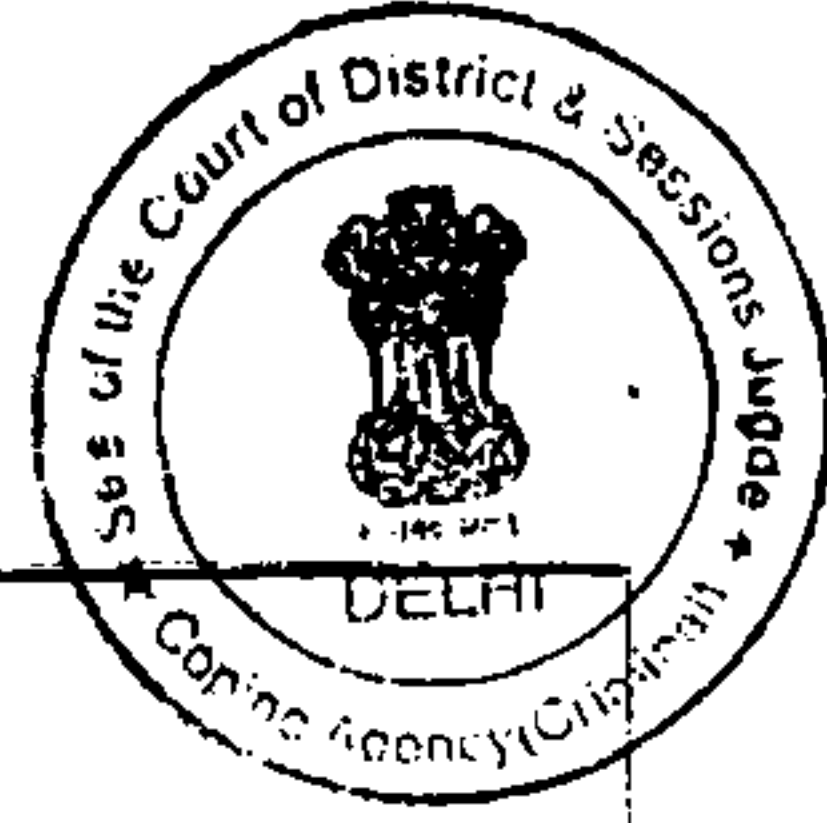
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company vide letter dated 12.05.2000, photocopy of which is Mark-A. This witness has further deposed that company sent a reply to the said notice, copy mark-B and thereafter company was given an opportunity of personal hearing but nobody appeared and that thereafter company did not avail the opportunity and finally SEBI vide its order dated 19.09.2001 advised the company to repay the investors within one month from the date of order failing which actions as mentioned in the order would follow, certified copy of the same has been proved as Ex.PW1/D. Copy of order was sent to the accused company but the same was returned back undelivered and a photocopy of AD is mark-D. Company was also intimated through public notice in newspaper. This witness has further deposed that till date the company has not furnished to the SEBI the required details nor the company has filed up winding up report nor the company has filed the duly audited winding up report on prescribed form.

PW-2 Shri Sanjay Vohra has testified that in January 1997 he had invested rupees five thousands with the company and in pursuance thereof, he was handed over a post dated cheque in the sum of Rs.15,000/- duly signed by Director of company. This witness has further testified that he presented the cheque before the Bank in April 2002 and the same was returned vide memo dated 17.04.2002 with remarks 'funds insufficient'. The cheque alongwith the return memo is Ex.PW2/1. This witness has further deposed that the company has also issued him a receipt cum allotment letter

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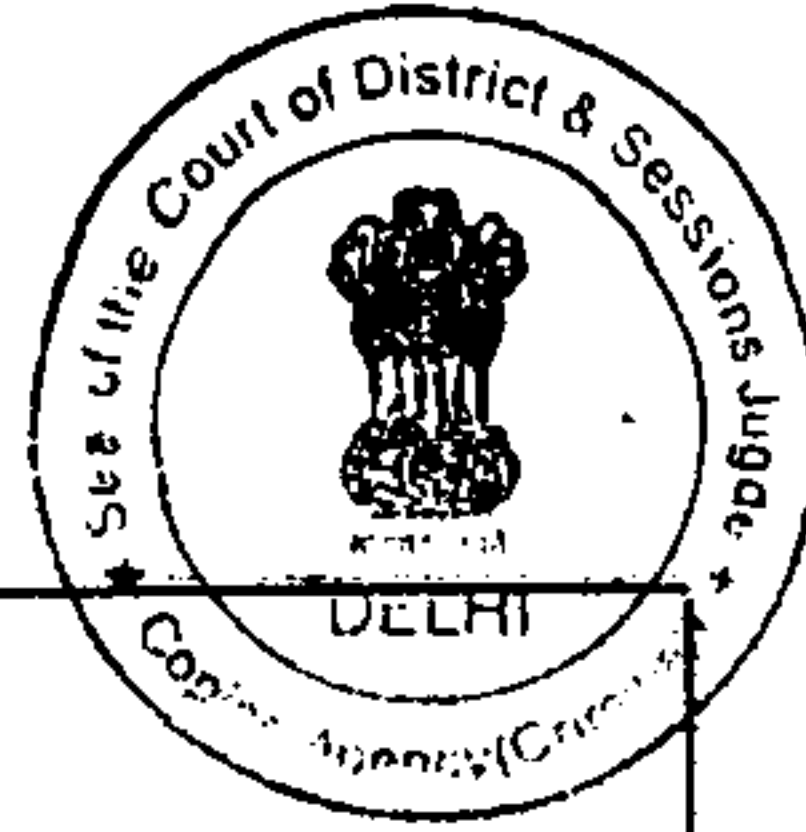
dated 28.03.1997 Ex.PW2/2. This witness has further deposed that he came to know about the said company through the advertisement and on good faith, he invested money, keeping in view that at the time of maturity, he will get the payment alongwith interest as assured by the company but no intimation was ever given to him regarding the status of the company. This witness has further testified that till date he had neither received the amount so invested in the company nor the interest as promised by the company at the time of investment. This witness has further deposed that his brother, sister in law, father and father of sister in law had also invested money in the company to the tune of Rs.5,000/- each and in pursuance to the same, they were also handed over post dated cheques. The cheques were presented but resulted into same fate. This witness has proved his complaint filed with SEBI as Ex.PW2/5 bearing his signature at point A. This witness has also filed original receipt cum allotment letter no.96/13406 amounting to Rs.15,000/- issued on 06/11/1996 Ex.PW2/6.

PW-3 Ms Jyoti Jindgal has deposed on the similar line of complaint. She deposed that she is the Authorized Representative of complainant vide letter of authority Ex.PW3/1. She has further deposed that the accused company initially filed the information vide letter dated 05.12.1997 Ex.PW1/A vide which the company filed information regarding its schemes and promoters of the company and as per the information the promoters of the company are Accused No.2 Shri Amrit Lal, Accused No.3 Ms Pamila and Accused No.4 Ms

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Neena and as per the information furnished by the company with the complainant, they have mobilized 119.24 crores from the public and as on date the company also filed Memorandum of Association as well as Article of Association of the accused company wherein Shri R.K. Sayal, Ms Pamila Sayal and Ms Vimala Sayal are shown as Directors of Accused No.1 company. This witness has further deposed that all these persons are incharge of day to day work of the company and, therefore, these are the persons responsible for the affairs of the company alongwith the promoters i.e. accused no.2,3 and 4. This witness has further deposed that the company has not filed any winding up and repayment report as per the requirement of SEBI regulations issued by its Chairman vide order dated 19.09.2001. This witness has also proved the letter dated 31.05.2000 of accused company addressed to SEBI, copy of which is Ex.PW3/2. This witness has also brought the original of Ex.PW1/A and Ex.PW1/D in court during her examination. The witnesses were cross examined on behalf of the accused at length.

5. Statement of accused persons was recorded on 20.07.2006 u/s 313 Cr.P.C in which they denied all the material allegations. It is stated by the accused persons during their statement under Section 313 Cr.PC that the public notices, if issued by the complainant, were never communicated to them and were not in their knowledge. Probably letter dated 05.12.1997 might have been issued on behalf of their company either by the Chartered Accountant or Company Secretary just for the purpose of getting clarification





from SEBI. It has also been added on behalf of the accused that CIS Regulations does not apply to them and this fact has been told by their company to SEBI vide various representations and that company is being governed by the Companies Act 1956 and they have not flouted any CIS. It is further stated by the accused persons that against the money received by them from the general public, they had issued them land receipts and land was allotted to them. It is further stated that they had issued cheques and as per the terms the depositors either has to take the land or at the time of maturity, he could surrender the land and could get the cheque en-cashed. The accused have preferred to lead the defence evidence.

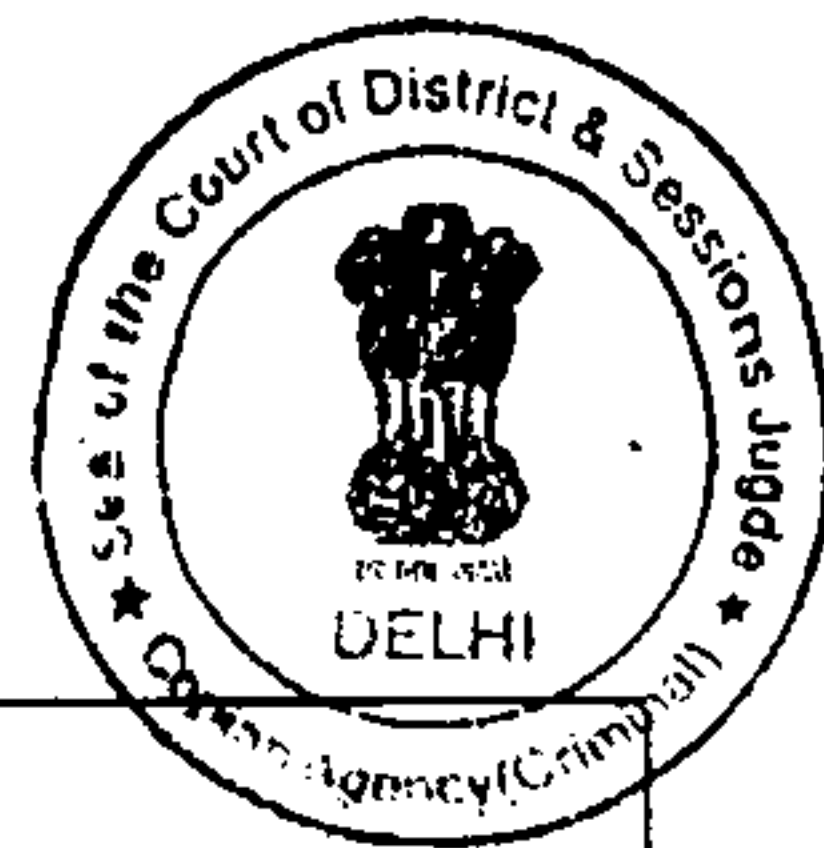
6. Though, during their statement under Section 313 Cr.PC, accused persons have preferred to lead evidence in defence but on the very next date i.e. 02.08.2006, Ld counsel for the accused has stated that he does not wish to examine any witness in defence and hence, the DE was closed.

7. I have given my thoughtful consideration to the submissions advanced on behalf of both the parties and have gone through the record of the case. I have also gone through the written submissions filed by the parties as well as case laws and relevant provisions of law.

8. For ready reference relevant provisions of SEBI Act and C.I.S. Regulations are reproduced as under:-

Section 12(1)(B): "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 including mutual funds, unless he





obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or cause to be sponsored, carrying 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 Laws (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 under clause (d) of subsection (2) of section 30.]”

Section 24: “Without prejudice to any award or penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both].”

Section 27: “Offences by Companies—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”

Regulations 68(1) of C.I.S Regulations provides that any person who has been operating a C.I.S. at the time of commencement of these regulations shall be deemed to be an existing CIS and shall







also comply with the provisions of this Chapter. Sub-Clause (2) directs the applicant to give a written undertaking to the SEBI to comply with the conditions specified in Regulation (5). Regulation 69 states that no existing collective investment scheme shall launch any new scheme or raise money from the investors even under the existing scheme, unless a certificate of registration is granted to it by the Board under Regulation 10. Regulation 71 states that an applicant who after grant of provisional registration fails to comply with the conditions as specified in sub-Regulation (1) and Regulation (9) shall not be considered eligible for the grant of certificate for registration under Regulation 10 and shall wind up the scheme in the manner specified under Regulation 73. Regulation 72 provides for grant of registration certificate to an existing C.I.S. scheme which satisfied the SEBI that requirements specified in Regulation 9 and the conditions specified under Regulation 71 have been fulfilled, upon the payment of Registration fees as specified by the SEBI. Sub-Regulation (2) of Regulation 72 permits the SEBI to grant the certificate to an existing CIS to float new schemes on such terms and conditions as may be specified by the Board.

Regulation 73: "provides for a complete mechanism for the manner of re-payment and winding up of the existing collective investment scheme. Regulation 73 states as under:

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.

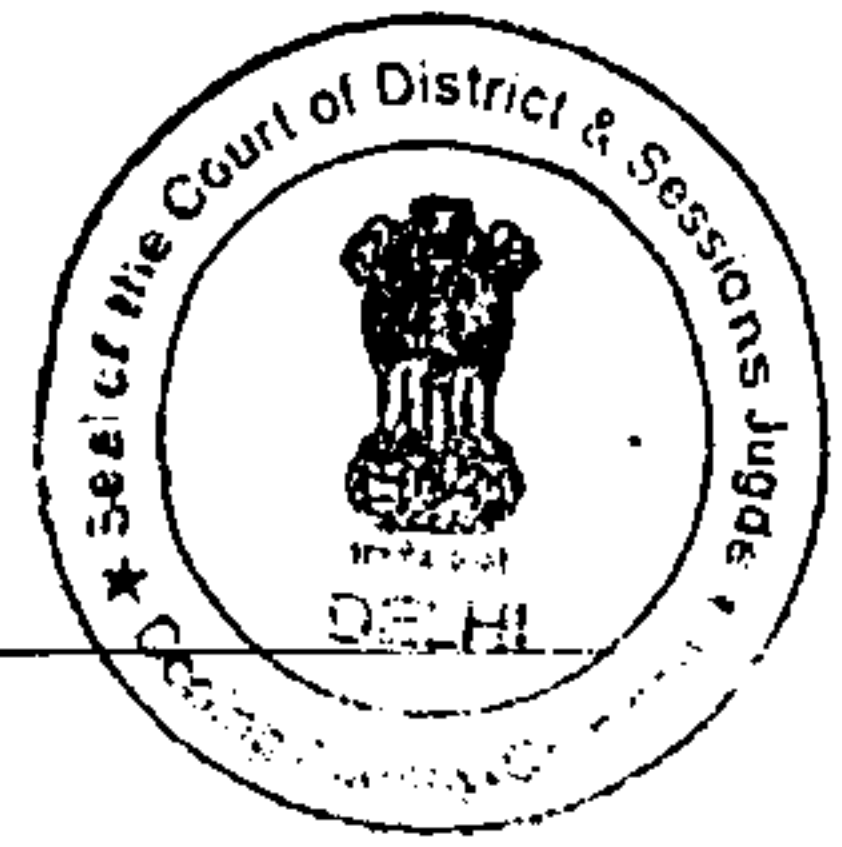
(3) The information memorandum referred to in sub-regulation (2) shall be dated and signed by all the directors of the scheme.

(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 states 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 same.

(7) The investors who given 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) 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.

Existing scheme not desirous of obtaining registration to repay

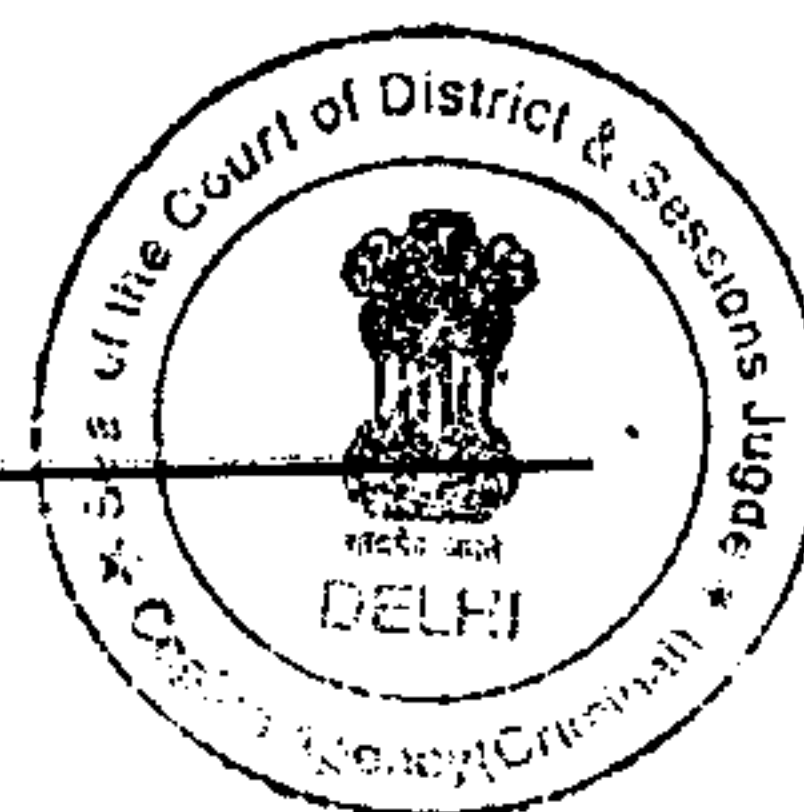
Regulation 74: "An existing collective investment scheme which is not desirous of obtaining provisional registration from the Board shall formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in regulation 73.

Thus from the above provision, it is clear that to constitute an offence under Section 12(1)(B) of SEBI Act following ingredients are necessary:-

- (i) that the accused company was incorporated after 25.01.1995 and started CIS Business and/or
- (ii) that though company was incorporated prior to 25.01.1995 but started C.I.S. business after 25.01.1995 and
- (iii) Said C.I.S was started without obtaining the registration.

To constitute the violation of C.I.S. Regulations, following ingredients are necessary:-





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- i) there should be a collective investment scheme already in existence prior to notification of C.I.S Regulation on 25.10.1999;
- ii) that said C.I.S scheme should be registered within 2 months from the date of notice of C.I.S regulation.
- iii) that if not so registered, same should be wound up in terms of regulation and winding up of scheme should be informed to the complainant.

Now, let the issues raised by accused in argument be discussed first

**(A) : JURISDICTION**

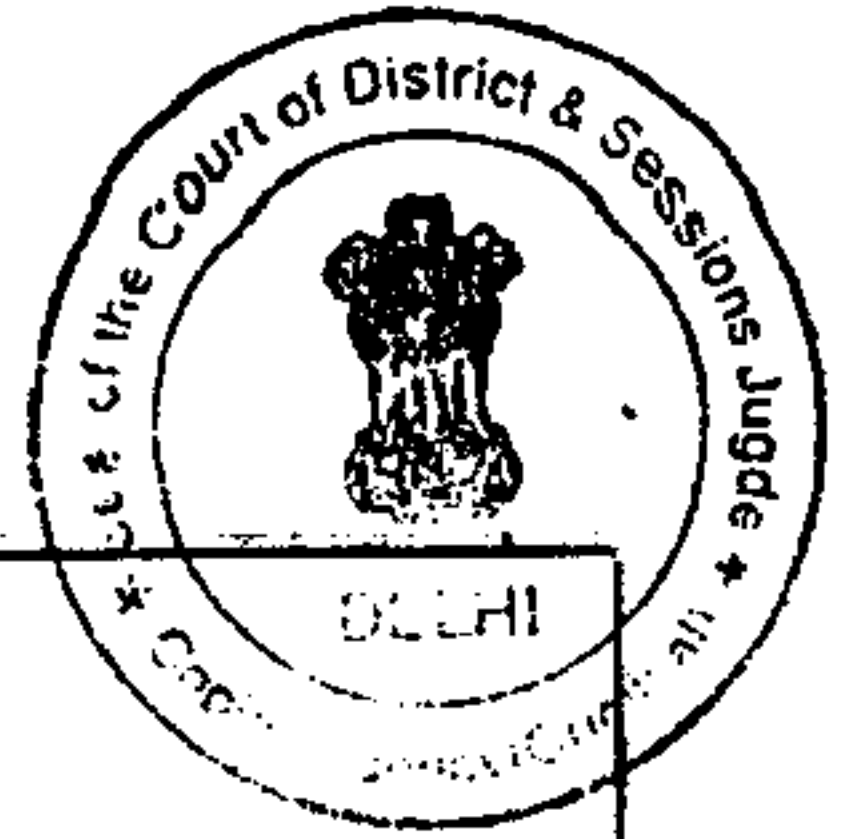
- (i). The first legal submission has been raised that this court has no jurisdiction as the registered office of the accused company is situated at Chandigarh and as per condition no.29 of the Agreement executed by the Investors, all the disputes were to be settled at Chandigarh.
- (ii). However, this issue was raised earlier by filing an application for recalling of the summoning order and discharge of the accused persons. While dismissing the said application, Ld predecessor court vide order dated 08.09.2004 held as under :-

*So far as the jurisdiction of this court is concerned, as per SEBI Act, the complaint regarding the Northern Region pertaining to the Northern States of India, the registered office of the SEBI at Delhi is empowered to file the complaint which comes within the jurisdiction of this court. Furthermore, the accused were required to get the CIS registered at the regional office of SEBI at Delhi and in the event of default in getting the registration and the report regarding the payment made to the investors was to be submitted at SEBI office at Delhi. Thus, in such circumstances, the court at Delhi*

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*has jurisdiction to try the present complaint."*

- (iii). This finding was never challenged and since it has already attained the finality, therefore, this issue of jurisdiction can not be allowed to be raised again and otherwise in view of the aforesaid finding, this court has jurisdiction to try the present complaint.

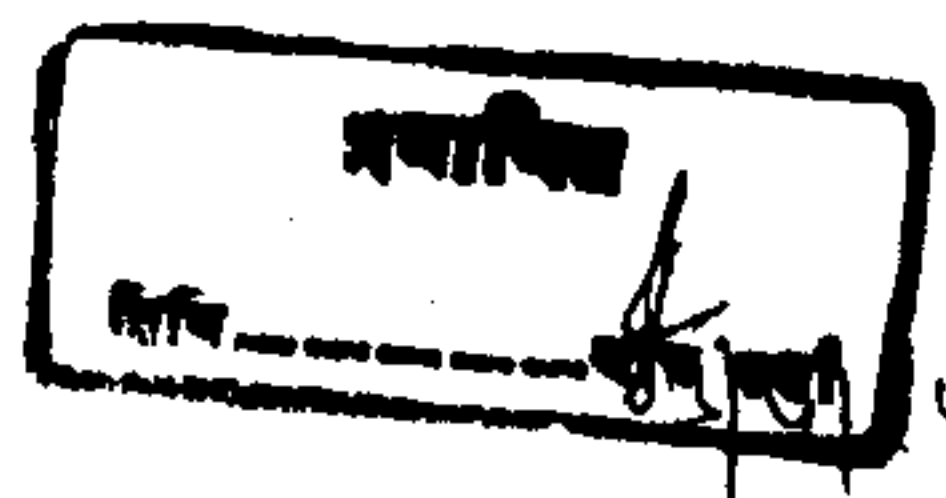
**(B) : CIS SCHEME**

- (i) The accused has disputed that any Collective Investment Scheme was being run by the accused company. It was contended that the accused company was never running any CIS Scheme and, therefore, present complaint is not maintainable. In support of contention, reliance has been placed upon Receipt-cum-Allotment letter stating that the accused company was to purchase the land, develop it and thereafter same was being allotted to the investors and there was condition that in case he wants cash, the land units have to be returned to the accused company. Thus, it has been contended that the accused were not running any CIS Scheme with sum assured to be returned after the maturity period.

For ready reference, the provisions under Section 11 AA dealing with definition of C.I.S. of the SEBI Act is reproduced as under :-

**[11AA. Collective Investment Scheme-** (1) Any scheme or arrangement which satisfies the condition referred to in sub-section (2) shall be a collective investment scheme.

(2) Any Scheme or arrangement made or offered by any company under which--





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

(3) Notwithstanding anything contained in sub-section (2), any scheme or arrangement---

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

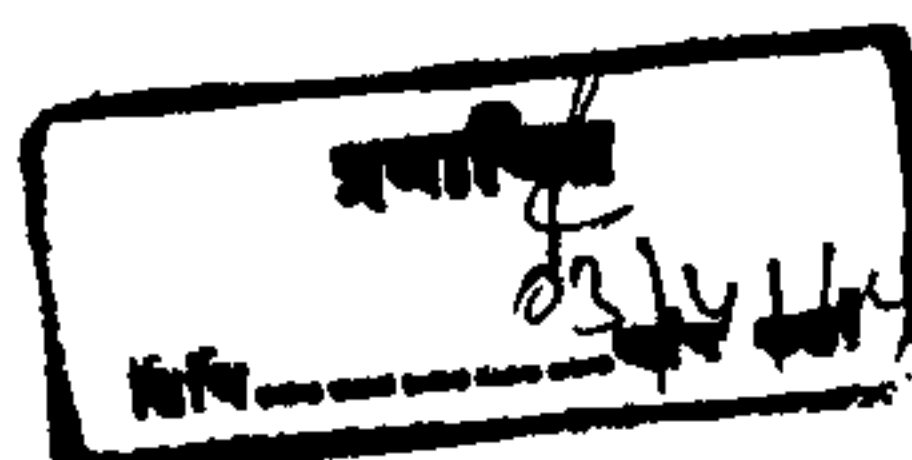
(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934(2 of 1934);

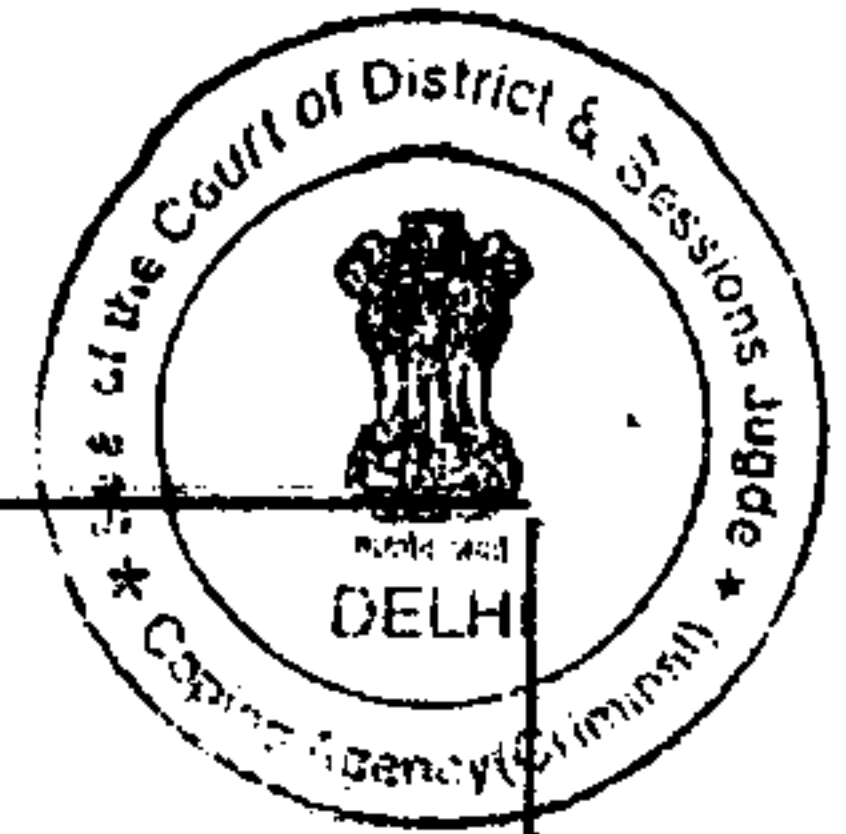
(iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;

(iv) providing for any scheme, pension scheme or the insurance scheme framed under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952);

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- (v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);
  - (vi) under which deposits are accepted by a company declared as a *Nidhi* or a Mutual Benefit Society under Section 620 A of the Companies Act, 1956 (1 of 1956);
  - (vii) falling within the meaning of chit business as defined in clause (e) of section 2 of the Chit Funds Act, 1982 (40 of 1982);
  - (viii) under which contributions made are in the nature of subscription to a mutual fund,
- shall not be collective investment scheme.]

- (ii) 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*





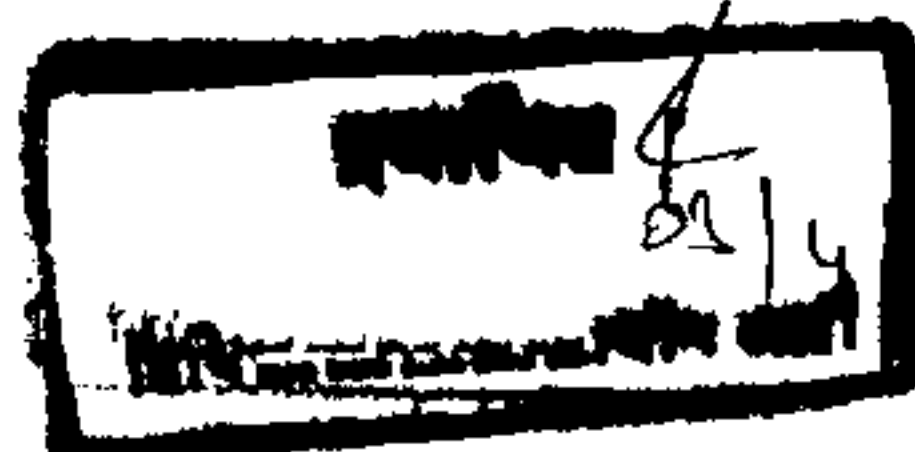


*the Statute, was generally understood to include such schemes as are floated for mobilization of money by way of contribution from the public at large and the corpus is invested in property with a view to share the benefits arising out of deployment of such common corpus. In the absence of the definition of collective investment scheme it can not be said that SEBI has no power to regulate such scheme."*

- (iii) The Apex Court in *M/s P.G.F. Ltd and others Vs Union of India and another* (AIR 2013 SC 3702) 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 alongwith 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."*

- (iv) Thus, from the bare provisions and the case laws discussed hereinabove, it is clear that to constitute a collective investment scheme sine qua non is that there should be any scheme or arrangement made or offered by the company seeking contribution or payment by the investors in any name and that contribution or payment is pooled and utilized for the purpose of said scheme



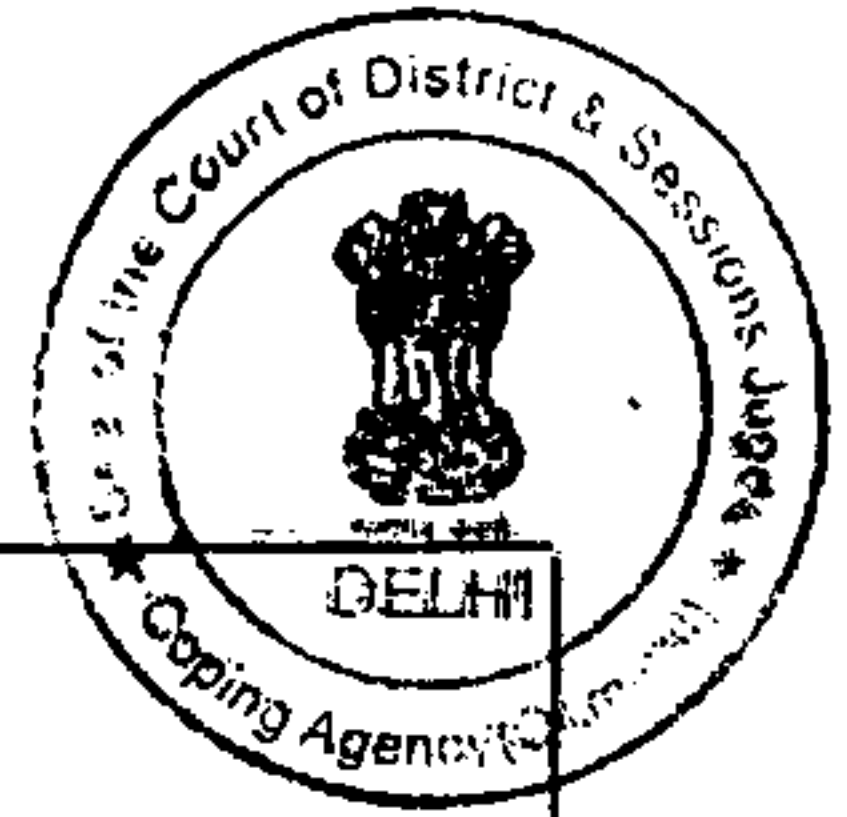


for arrangement. Further, such contribution or payment made to such scheme by the investors is with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement and said scheme is managed on behalf of the investors and investors have no control to the day to day management and operation of the scheme.

- (v) In the present case, scheme in question was floated by the accused for purchase/allotment of the land with the condition that at the time of application investors has two options i.e. to sell the unit of land allotted to him after the expiry of agreed plan duration and/or to get the land transferred in his name on the expiry of plan duration with the condition that in case applicant desires not to exercise any option, it is presumed that the option no.1 is accepted by him as stated in Ex.PW1/A (colly) at running page no.3. There was also guaranteed return assured in the said plan, chart of which is given at running page no.5 of Ex.PW1/A (colly). It is further clear from the terms and conditions as stated at running page no.7 of Ex.PW1/A (colly) in clause-12 that the money so paid or contributed by the investors will be utilized for the purposes of earnest money, service charges and consideration of land unit. Thus, it makes it clear that even the land was to be purchased from the contribution so made by the investors. It is further clear from the said document that investors were having no role to play in day to day management of the scheme and it is the company who will be having right over the land. Witness PW-2 has testified that neither he got the land allotted



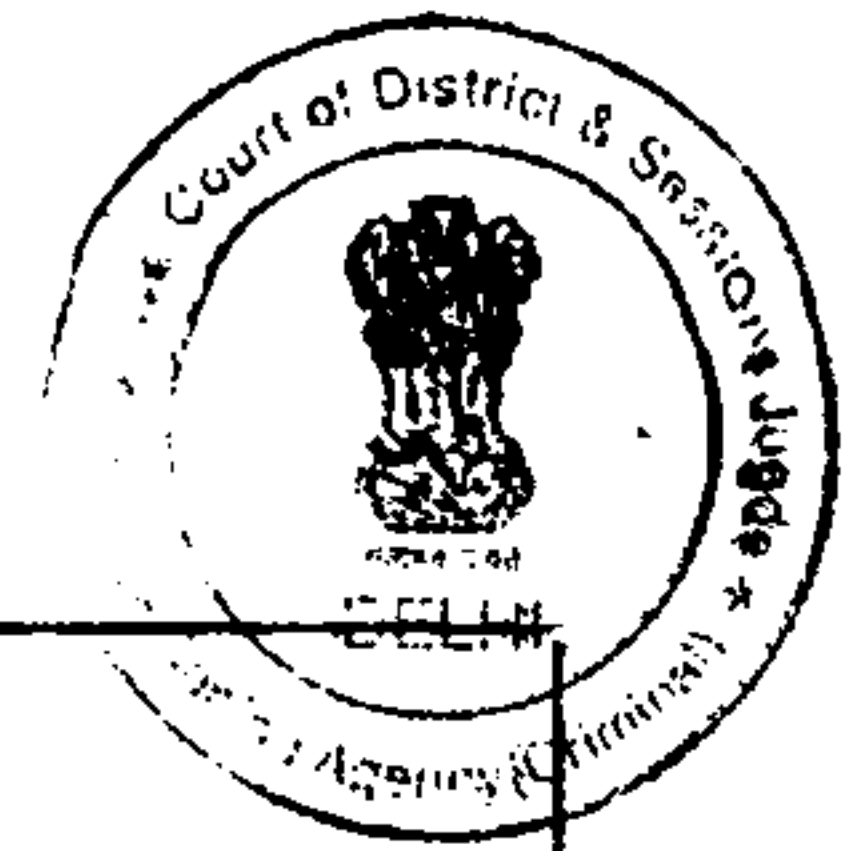




nor his money was returned. A specific question was put to him that the agreement with the company was only with a view to buy a piece of land by the company on behalf of investor to develop it and on the date of maturity to hand over the land to the investor or in alternative if the investor does not want the land, he will get the maturity amount paid by way of post dated cheque issued to him, the witness replied that it is incorrect and clause-23 of Receipt cum Allotment letter Ex.PW2/6 is ample clear. The said clause provides that the payment on account of receipt cum allotment letter through post dated cheque/DD/Pay order will fully discharge the company's liability to the land unit holder. Thus, this condition makes it clear that primarily the scheme was qua the assured/guaranteed repayment upon the investment and as an eye wash, there was a clause that the unit land will be allotted on the period of maturity as nothing has been placed on record or proved that any of the investors was asked to give his option one as stated herein above mentioned in Ex.PW1/A (colly) nor any such filled up form has been placed on record except a photocopy mark D1.

- (vi) Thus, from the above it is clear that essentially the scheme launched on behalf of the accused was a collective investment scheme within the meaning of Section 11AA of the SEBI Act inviting the payment/contribution which was to be pooled and utilized for a purpose to receive the immovable property from such scheme and said scheme was to be managed on behalf of the investors by the company and the investors were having no role in day to day





management of the said scheme.

- (vii) It was further contended that the said contribution was accepted by the company under Section 58A of the Companies Act 1956. However, the said contention is misplaced. The accused has failed to place or prove on record any authorization in their favour under Section 58 A of the said Act inviting deposits from the public issuing advertisement in conformity with the provision contained in the said Section. Even it has been proved on record that no repayment was made by the accused persons qua the deposits which is also punishable under the said provision up to five years of imprisonment with fine of twice of the amount of the deposit.

**(C) : NOTICE OF HEARING**

- (i) It was argued that no notice of hearing was given as provided under Section 11, 12(1)(B) and 15 A to 15 Z of the SEBI Act. The said contention is misplaced in the present case. Admitted fact is that the company accused was incorporated on 04.01.1996 and the contesting accused was the promoter director in view of the information given on behalf of the company vide Ex.PW1/A (colly) which fact has not been specifically denied by the accused even in her statement recorded under Section 313 Cr.PC. The restraint qua the running of CIS scheme without getting the scheme registered came into operation with effect from 25.01.1995 by any company which has not been running the said CIS scheme prior to that date. Admittedly in the present case the company itself was incorporated with the contesting accused as



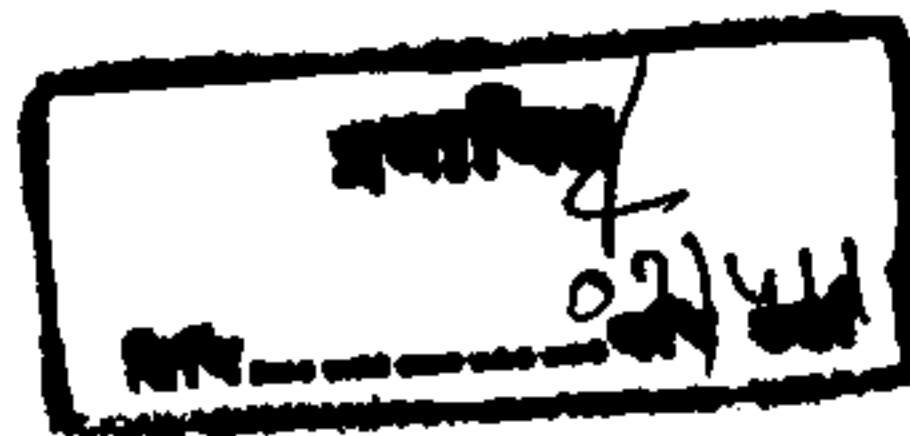


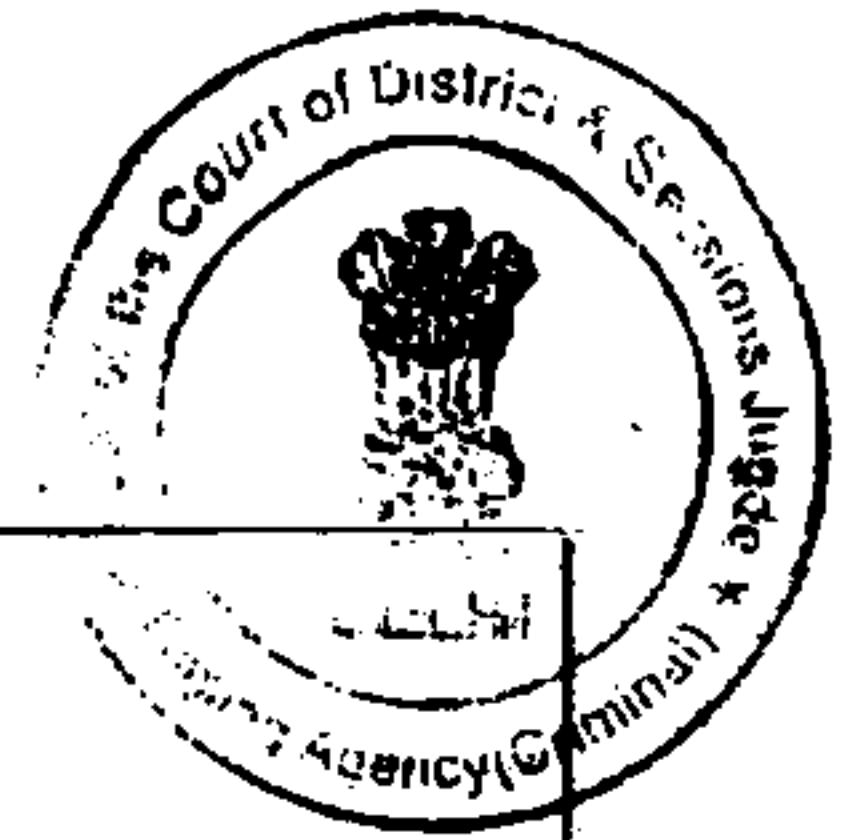
promoter/director and therefore, there was no question for issuing notice of being heard so far as offence under Section 12 (1)(B) of the SEBI Act is concerned.

- (ii) The SEBI Regulations in question came into effect from 25.10.1999 and it being statutory provision, there is no need for issuing any notice to any individual or company. Moreover, in the present case, the reply has been sent on behalf of the accused vide Ex.PW3/2 and this reply has not been denied specifically. Even the regulations have been notified vide public notice Ex.PW1/B, Ex.PW1/C and Ex.PW3/5 and by sending the same to the accused company vide Ex.PW3/3 and Ex.PW3/4. Further it has been proved on record that accused company was given opportunity of personal hearing vide Ex.PW3/6 and Ex.PW3/7. Thus, it stands proved that proper opportunity of being heard was given to the accused and otherwise also it is clear from own statement under Section 313 Cr.PC that the accused as well as company was well aware regarding the public notices for getting the CIS scheme registered or in alternatively to repay the amount and to wind up the scheme as she herself has stated that various representations were made by the company to the SEBI stating therein that CIS regulations does not apply to the accused company or its scheme. Thus her defence that she was in J.C. since 23.02.2000 also fails as Ex.PW3/6 is dated 18.08.2000.

**(D) LIMITATION**

- (i) It is argued on behalf of the accused that the present complaint has not been





filed within the limitation period as the offence is alleged to have been committed in the year 1999 and the present complaint was filed on 04.07.2000. Limitation period prescribed u/s 468(2) of Cr.PC r/w section 24(1) of the SEBI Act is one year as the maximum sentence is one year. The alleged cause of action shown in the complaint is dated 15.12.1999. Thus, there is delay in filing of complaint and no application for condonation of delay has been filed. In this regard, the accused has placed reliance upon judgment reported in 2000 VI AD (SC) 721.

(ii) On the other hand, it has been argued on behalf of the complainant that the offence alleged in the present case is a continuing offence. In this regard, complainant has placed reliance upon the judgment reported in (2010) 104 SCL 584 (Delhi).

(iii) In the judgment reported in (2010) 104 SCL, titled as "Samarpan Agro. and Livestock Ltd. Vs Securities and Exchange Board of India" it was held as under:-

Para 13: "In this case, under section 12 (1B) no person could have carried out a collective investment scheme unless he obtained a Certificate of registration from the Board in accordance with the Regulations framed under the Act. Regulations were framed in the year 1999 and notified to all concerned including the Petitioner. As per Regulation 68 any person operating a collective investment scheme at the commencement of the Regulations was under legal obligation to get the existing collective investment scheme registered with the Board and obtain a certificate of registration. If it failed to do so, it was a legal mandate to such person to wind up the existing collective investment scheme by following the procedure as





*prescribed under Regulation 73. Regulation 74 further provided that existing collective scheme which was not desirous of obtaining provisional registration from the Board was legally bound to formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73. Nothing has been placed on record to suggest that Petitioners had taken any step to get registered with the Board or wound up the collective investment scheme and made the payment to the investors. The amount still continues to be retained by the Petitioner/s, thus, infringement of Regulations 73 and 74 is continuing in nature and limitation envisaged under Section 468 of Cr.PC would not be attracted."*

(iv) In view of the law laid down by the Hon'ble High Court of Delhi discussed herein above, it is held that offence in the present case is continuing offence in its nature as in the present case collective investment scheme was there prior to notification of regulations and scheme was neither get registered nor repayment was made to investor. Thus, it is held that complaint is within limitation period.

**(E) VICARIOUS LIABILITY OF DIRECTORS**

(i) First and foremost thing which is to be seen as to whether there was any liability of the company or its Directors responsible for day to day affairs of the company to comply with provisions under SEBI Act and CIS Regulations or not. It is admitted fact that the company and the Officer Incharge of the company were bound to comply with the provisions as it was their statutory duties to get the scheme registered prior to floating any C.I.S. in terms of the Section 12 (1)(B) of SEBI Act and Regulations 5, 68 to 74 of C.I.S. Regulations for running such scheme or alternatively to get the scheme wound up in accordance with the procedure prescribed under the regulations and to





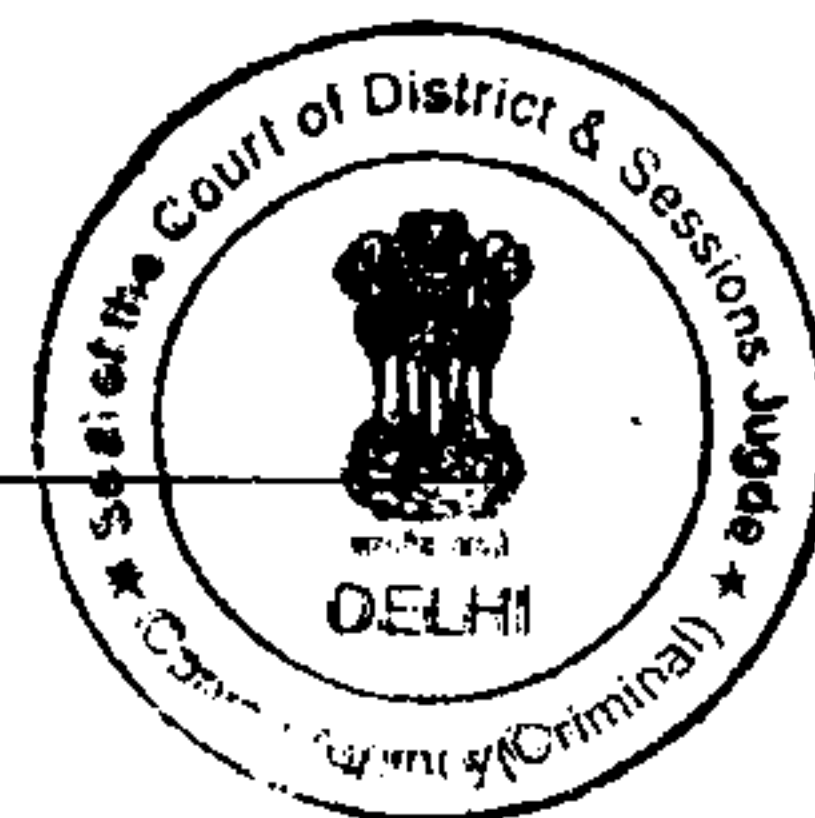


submit the report of the winding up of the scheme of with the complaint within the period prescribed it collective investment scheme on behalf of accused company was already in existence.

- (ii) The similar question as raised before this Court came up before the Hon'ble High Court of Delhi for consideration on the point of liability of directors in case titled as "Ankur Forest and Project Development India Ltd & Ors Vs SEBI reported in 2011 III AD Delhi 163" and the arguments of the accused was rejected. While discussing, it was held by the Hon'ble High Court of Delhi as under:-

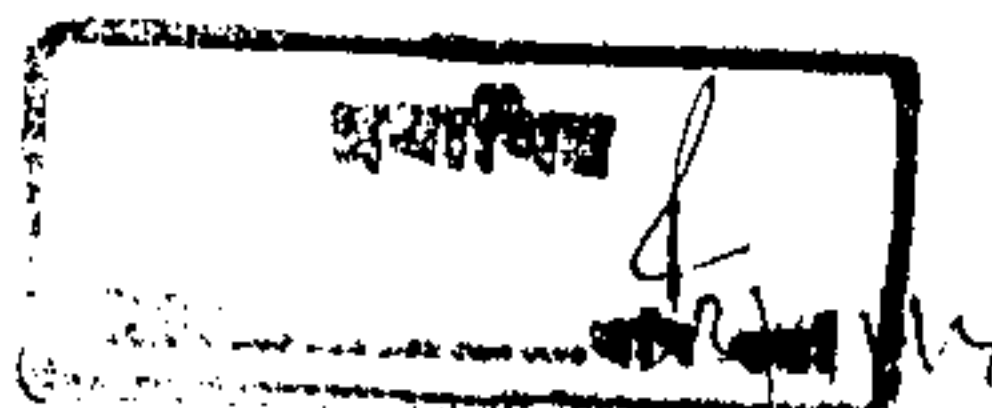
*Para 4:..... The complainant has produced no direct evidence nor any direct witness to the offence. Moreover, no role of commission of any offence has been attributed to any of the Appellants. In the cross-examination, PW1 has admitted that she did not know who was actually running the Company nor that the Company was directed to be wound up on 5<sup>th</sup> July, 2001. The Learned Trial Court erroneously came to the conclusion that the offence continued, however, the said offence could not have continued once the company was wound up. Notices sent by the SEBI were duly replied vide Ex. CW1/1 wherein it was specifically stated that the Company was desirous of taking the benefit of the provisions of Section 12(1B) of the SEBI Act. It is stated that a document cannot be read in piecemeal and it should be read as a whole. The respondent SEBI relies on the undertaking to ensure compliance as stated in the reply dated 28<sup>th</sup> July, 1998 but does not take into account the first two sub-paragraphs where it is stated that they have not floated any C.I.S. subsequent to the public notice issued on 18<sup>th</sup> December, 1997 and they were not mobilizing any further funds under the existing schemes. It is contended that the provision was applicable to the existing collective investment schemes only. The scheme of the Appellant being an old one*



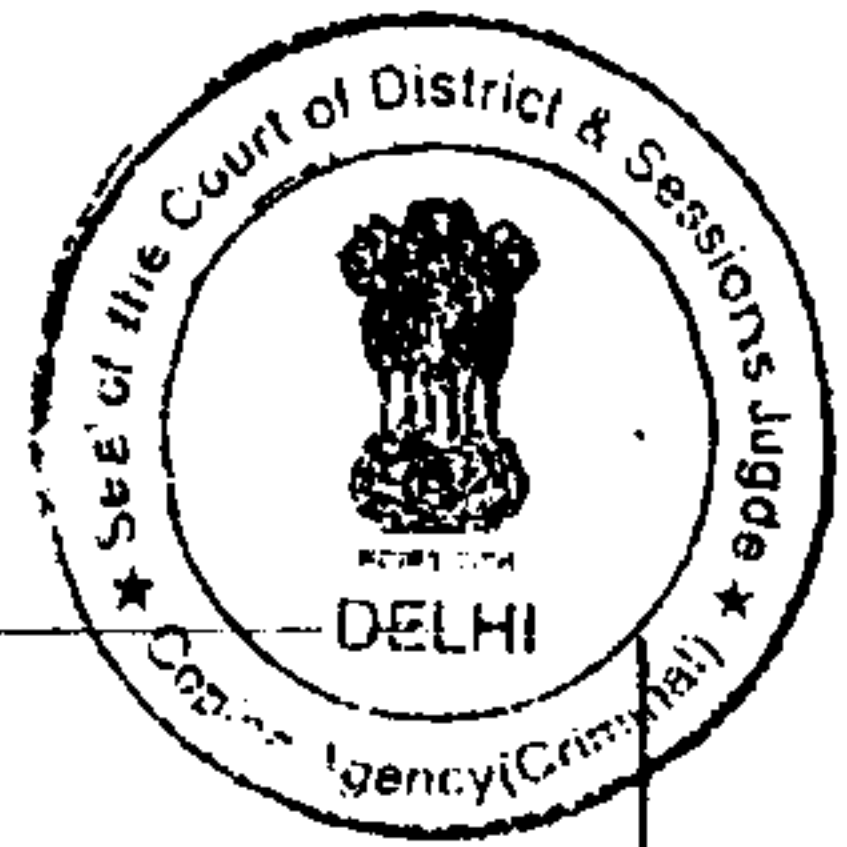


and no current funds being mobilized, the public notice did not relate to the Appellant. It is thus prayed that the learned Trial Court erroneously convicted the Appellants hence the appeal be allowed and the impugned order be set aside. In the alternative, the quantum of sentence is excessive as in the event of non-deposition of fine i.e. Rs.5,00,000/- per Appellant, Appellant Nos. 2 to 5 have been directed to undergo imprisonment for a period of six months.

Para 5: Learned Counsel for the Respondent contends that the Regulation 68,73 and 74 came into force on the 15<sup>th</sup> October, 1999 and under the Regulations it was clearly provided that a person can be prosecuted if he is running an existing collective investment scheme. To comply with Regulation 71, the grounds for winding up of the same existed before the Learned Trial Court. The winding up of the Company under the Companies Act is different from the winding up of the C.I.S. as contemplated under Regulation 73. The provision of Section 11C of the Act conferring powers of investigation on SEBI came into effect on 29<sup>th</sup> October, 2002 whereas the Company was directed to be wound up on the 15<sup>th</sup> July, 2001, thus no investigation could have been carried out by the SEBI in terms of Section 11C of the Act. The directions in terms of Section 11B of the Act were also passed on 7<sup>th</sup> November, 2000. The violation of Regulation 73 is continuing in nature till the amount is not paid back to the investors and the schemes is not wound up in terms of Regulation 73. Reliance is placed on Vishnu Prakash Vajpayee v. SEBI MANU/DE/0235/2010 to contend that the contravention of the provision of the Act by not refunding money collected by it from the persons who had invested the money in its collective investment schemes is a continuing offence till the time company complies with the Regulations and the directions issued by the SEBI by the refunding the money to the investors. Reliance is also placed on Sheoratan Aggarwal and Anr. v. State of Madhya Pradesh MANU/SC/0112/1984 : 1984(4) SCC 352 to contend that along with company its Directors can also be convicted. It is thus prayed that the appeal be dismissed being devoid of any merit.





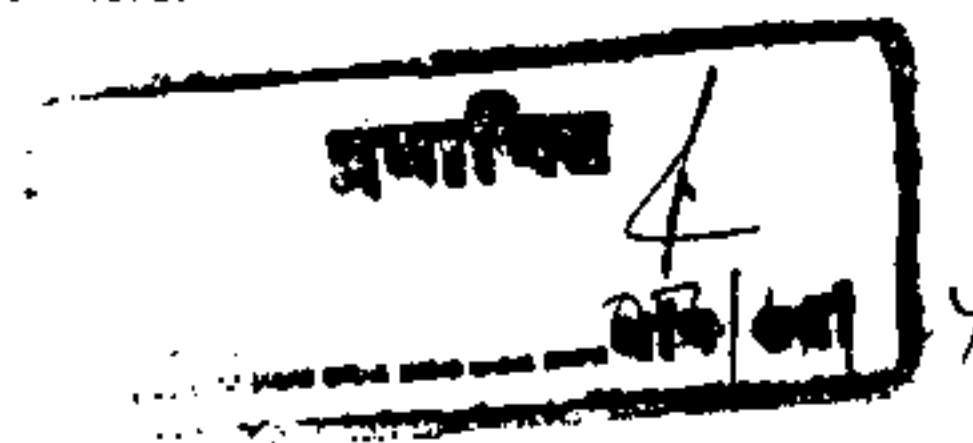


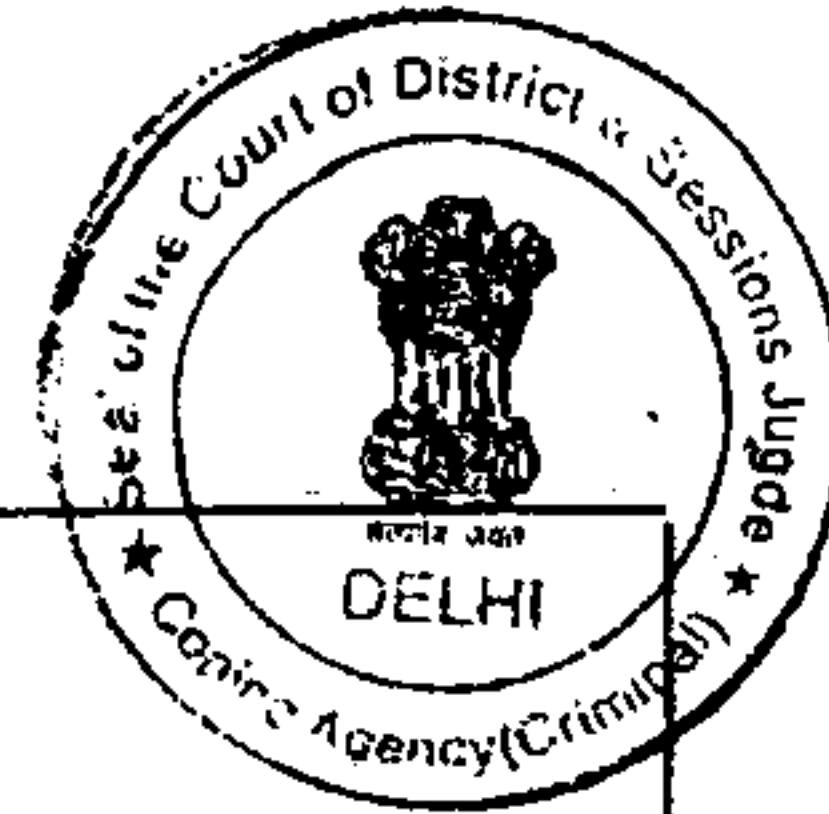
It was held while discussing the liability of company and its directors in para 11 of the said judgment as under:-

*"Moreover, Regulation 5(1) provides that prior to the date of coming into force of the Regulations, any person who was running an existing collective investment scheme should apply for grant of certificate within two months from such date. This Regulation was also not complied with by the Appellant. Thus, there is no merit in the contention of the learned counsel that there is no violation of Regulation 68(1), 68(2) 73 and 74."*

While discussing the status of directors and impact of winding up proceedings, it was held in para 12 of the said judgment as under:-

*Para 12: "I also do not find any force in the contention of learned counsel for the Appellant that since the Company was wound up vide order dated 5<sup>th</sup> July, 2001 no complaint could have been filed by the SEBI in December, 2002 as the Company which was juristic person was non-existent and its Directors had lost their identity. This contention of the Appellant is wholly fallacious. DW1 vide Ex. DW1/1 has proved that on 5<sup>th</sup> July, 2001 the High Court for the States of Punjab and Haryana in Company petition No.187/1999 directed the winding up of the Appellant Company as it was admitted by the Company that it was in debt and could not make the payment of the Petitioner therein due to financial crunch and further no secured assurance was given by the company. Under the provisions of company law till the time the company is dissolved i.e. the process of liquidation continues it does not lose its entity and hence, the directors, or person in charge would be liable for all the acts of the company. In the present case, it is proved fact that when the complaint was filed, the Appellant no.1 i.e., the company was under liquidation which means that not only on the date of offence but also on the date of filing of the complaint, the*

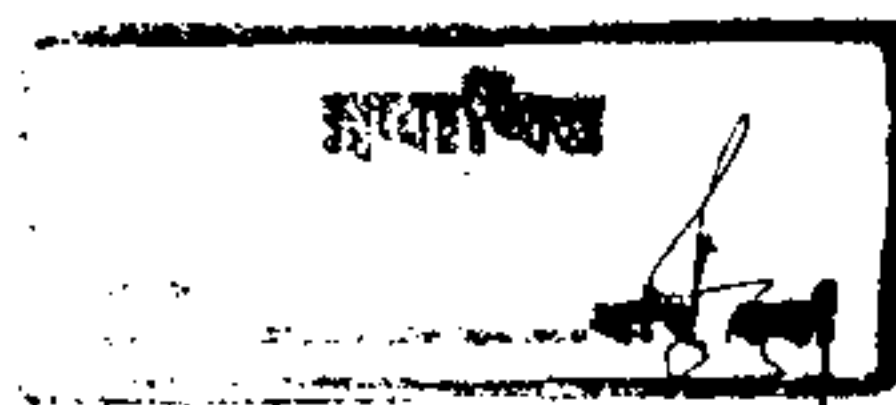


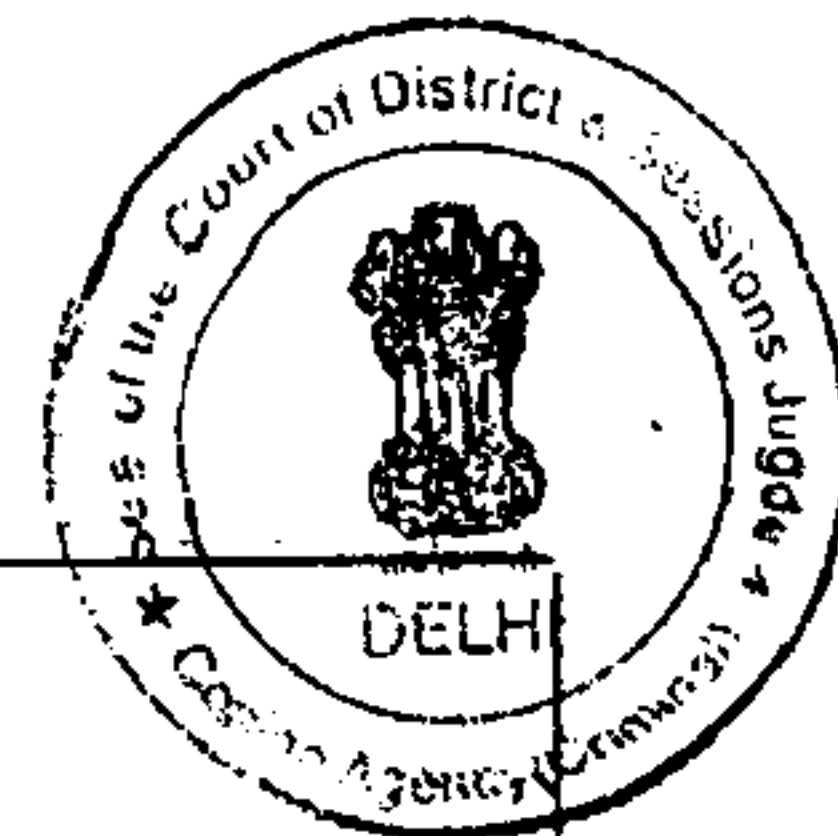


company was in existence and had not lost its entity as a juristic person and in terms of the Section 24 and 27 of the Act, the Appellant and its directors i.e., the persons responsible for day to day affairs of the company were liable for the offence committed by them for violation of the Act and Regulations. Similar view was taken in *The Official Liquidator Gannon Demkerley and Co.(Madras) Ltd v. The Assistant Commissioner Urban Land and Anr.* MLJ 1991 137 which reads as under:-

"In my view, the Company under liquidation does not lose its existence. The effect of an order of winding up is to place the affairs of the company into the hands of the official Liquidator for completing the process of winding up, the Official Liquidator being put in possession as 'custodia legis' and managing the affairs for the limited purpose. In the course of administration by the Liquidator, after meeting out the liabilities of the company, he moves the Court for appropriate orders to adjust the rights of contributories among themselves and distribute any assets among the persons entitled thereto. Till such an order of the Court for such distribution is obtained and actually the assets have been distributed, the properties continue to be that of the Company. The Company under liquidation continues to exist as a juristic personality until an order under section 481 of the Companies Act dissolving the Company is made by the Competent Court. It is only thereafter the Company can said to become non-existent in the eye of law.

Para 13: Learned Counsel has strenuously argued that since the Company was directed to be wound up pursuant to the order passed by the High Court of Punjab & Haryana which fact has been proved by the testimony of DW1 Sh. Tarsem Saini who has exhibited vide Ex. DW1/1 the certified copy of the order of the High Court of Punjab and Haryana dated 5<sup>th</sup> July, 2001 in Company petition No.187/1999 passing the order of winding up of the Appellant no.1, thus no separate winding up would be required under the provision of Regulation 73. This contention of the Ld. Counsel also deserves to be rejected. The winding up of the Company under the provisions of the Companies





*Act is not akin to the winding up contemplated under Regulation 73. Regulation 73 provides that an existing Collective Investment Scheme which has failed to make an application for registration to SEBI or which has not been granted ..... Thus, the winding up contemplated under the SEBI (CIS) Regulations, 1999 is a different mechanism of winding up the scheme than what is provided under the provisions of the Companies Act, 1956 which is winding up of the Company itself, and non-compliance thereof is punishable under section 24 read with section 27 of the Act.*

It was further argued that no notice was ever sent or served upon the accused no.4 and reliance has been placed upon. It was further argued that the present complaint is basically against the accused no.1 company as all the alleged notices were sent to the company and even those notices were returned with the remarks that premises found locked. It was further argued that since accused no.3 had no knowledge about the notices, therefore, there was no question of non compliance or violation of any circular or SEBI Regulation arises. It was further argued that the accused was not the Managing Director or the officer In-charge of the accused no.1 company and therefore, no criminal liability can be attached vicariously. It was further argued that after liquidation proceeding, accused became ex-director from the date of appointment of Official Liquidator, therefore she is entitled for acquittal.

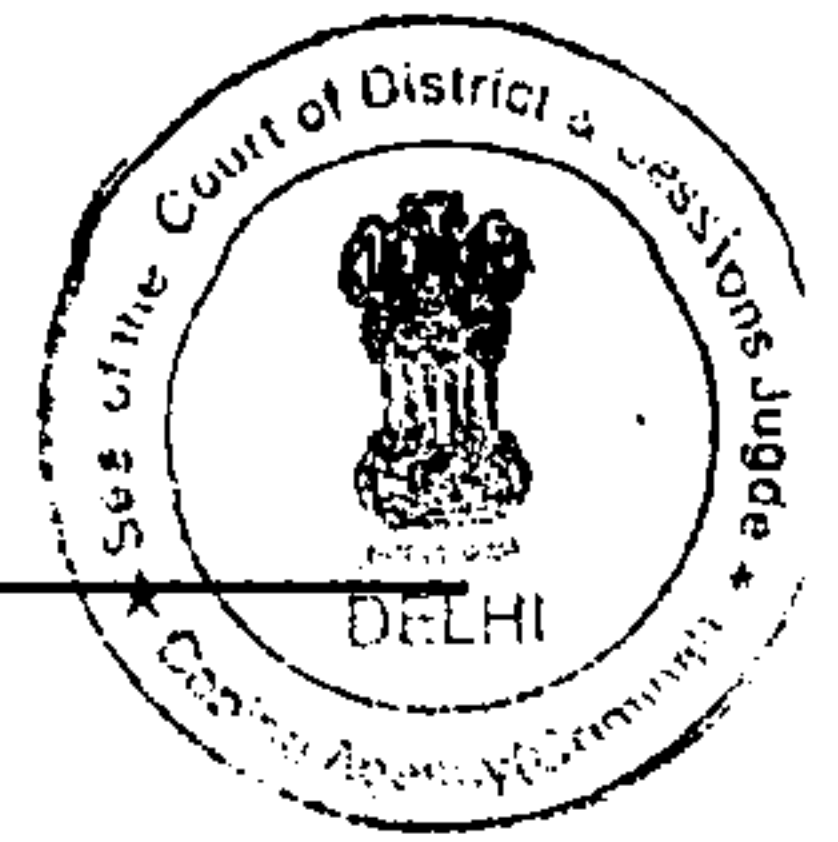
This argument advanced on behalf of the accused does not hold much water. There is no requirement to send notice to any of the accused for the compliance of statutory provision as contemplated under the SEBI Act and C.I.S





Regulations. It was the statutory duty which was to be discharged by the company and its directors. As per own admission of the accused no.3 and as per record proved the accused no.3 was promoter director of the accused company. Further, as on date she is the sole surviving director of the accused company and, therefore, it will be presumed that all the promoter Directors were responsible for day to day affairs of the company at the time when the C.I.S. was floated by the accused company. Thus, being one of the promoter Director, she was liable to get the C.I.S scheme registered prior to the inception of the business. Therefore, she can not escape from her liability to get the C.I.S. Regulation implemented in accordance with the C.I.S Regulation as she was not in judicial custody at the time of notification of the regulation on 25.10.1999 and, therefore, her contention that since she is in judicial custody from 23.12.2000 is of no help. Admittedly she failed to do so. Therefore, this Court is of the opinion that she was liable for getting the scheme registered prior to inception of the C.I.S and further getting the regulations implemented being the promoter Director of the accused no.1 company.

9. Thus, in the light of aforesaid discussions and from the testimony of the complainant witness along with the relevant documents duly exhibited together and in view of her statement u/s 313 Cr.PC, it can be safely inferred that there are sufficient evidence on record which show that accused no.3 was the promoter Director and person responsible for day to day affairs of the accused no.1 company at the time when the CIS scheme was launched by the accused



no.1 company without getting it registered in contravention of Section 12 (1)(B) of the SEBI Act and at the time violation of SEBI (CIS) Regulations was committed by the accused no.1 company.

10. Thus, the complainant has proved its case against the company and as well as accused no.3 for violation of provisions of section 12 (1)(B) and contravention of Regulations 5, 69, 72 and 73 of CIS Regulation by not getting the collective investment scheme floated by the accused company registered prior to the inception of business and by not getting the scheme registered in terms of C.I.S. Regulations and/or by not winding up the scheme in view of the CIS Regulation. Thus the accused no.1 company and accused no.3 have committed the offence punishable under Section 24 (1) r/w 27 of the SEBI Act. Accordingly the accused no.1 company and accused no.3 are convicted.

11. Put up for arguments on the quantum of sentence on **29.03.2014**.

12. Main file be consigned to Record Room.

13. Ahlmad to prepare a miscellaneous file for the purposes of arguments on the quantum of sentence.

Announced in the open court  
on 24.03.2014.

(D.K. SHARMA)  
ACMM(SPECIAL) ACTS, CENTRAL,  
TIS HAZARI COURTS DELHI







32

**IN THE COURT OF SH. D.K.SHARMA  
ADDL CHIEF METROPOLITAN MAGISTRATE (Spl. Acts) CENTRAL  
TIS HAZARI COURTS DELHI.**

**SEBI vs M/s. Golden Project Ltd.& Ors  
CC No.14/05/09**

**ORDER ON SENTENCE**

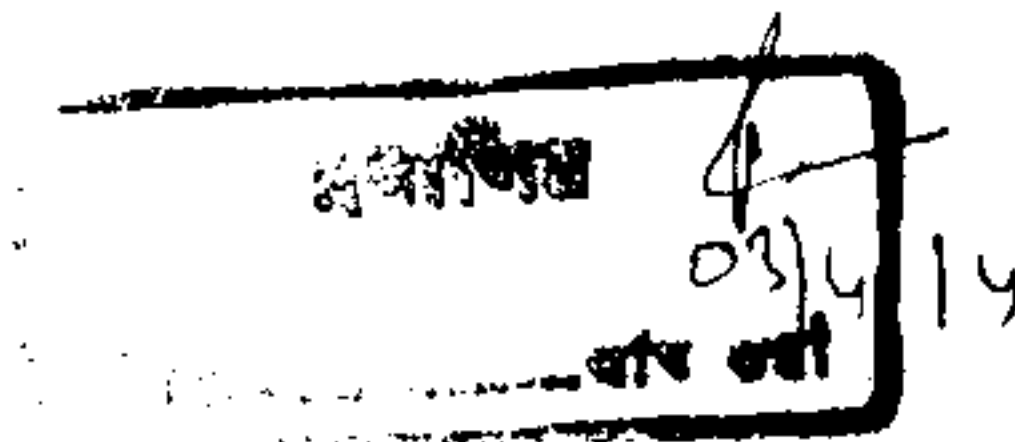
29.03.2014

Present: Counsel for the complainant.  
Convict Pamila produced from JC.  
The other convict company is under liquidation as stated.  
Fresh vakalatnama filed on behalf of convict Pamila.  
Arguments heard on the point of sentence.

1. Ld Counsel for the complainant has argued that the convict had mobilized funds to the tune of Rs.119.24 crores from general public in the year 1995 from marginalized and small investors by promising huge pecuniary gain and in violation of the provisions of SEBI Act. The amount mobilized reflects a huge amount in today's equivalent. The unsuspecting investors had been duped. No refund were made to the investors who had lost their hard earned money in the hands of the convict. It is also pertinent to mention that India is a capital starved country which requires huge capital influx to finance its growing need for industrialization and also for creative job opportunities for millions of

CC No.14/5/09

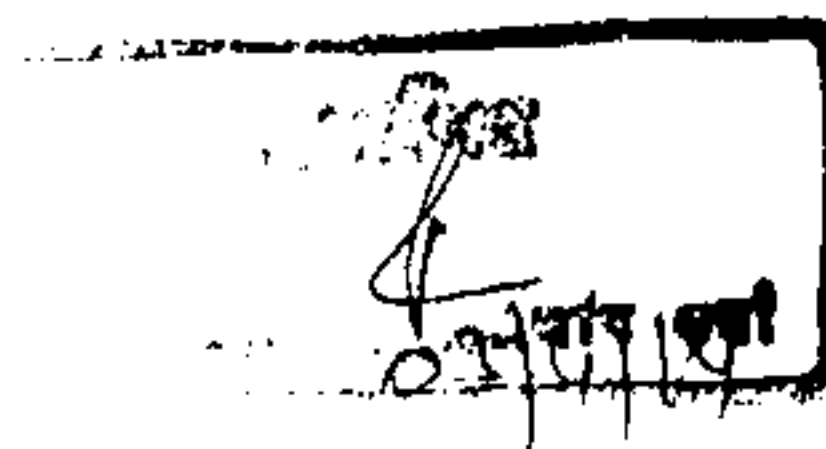
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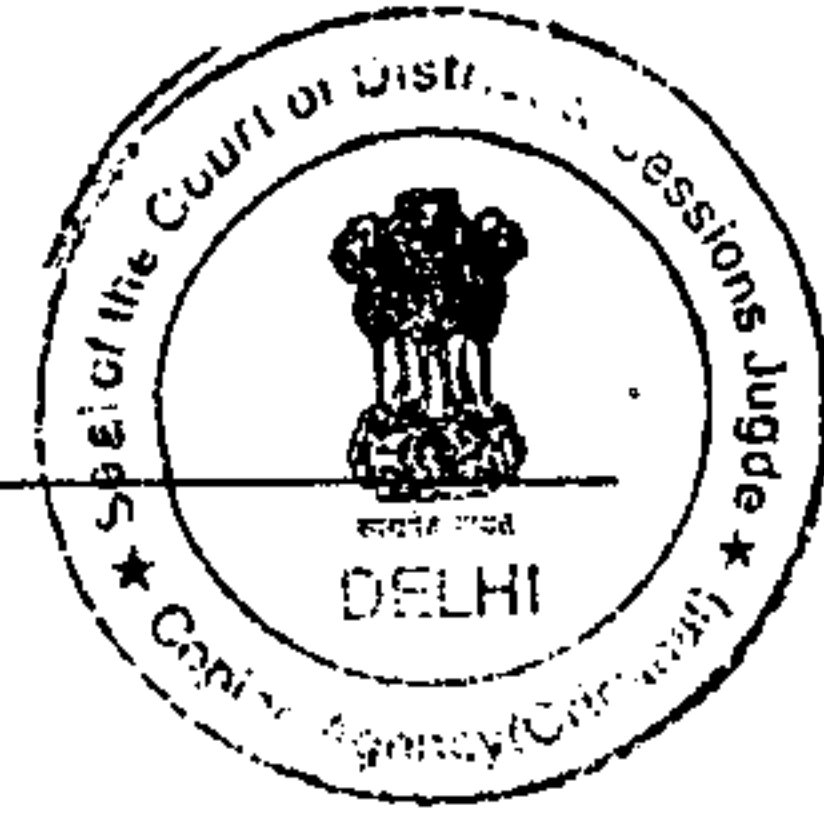


unemployed youth. The Hon'ble court may also take into account the intention of the parliament in enacting the SEBI Act which is primarily for creating favourable conditions for capital market and expansion of economy. The legislative intention is also writ large in the fact that the legislation had amended the provisions of SEBI Act w.e.f. 28.10.2002 *inter alia* warranting punishment of ten years imprisonment and fine up to Rs.25 crores for the violation of the provisions of SEBI Act. It is also of paramount importance that the Hon'ble Supreme Court and the Hon'ble High Court in catena of cases had held that punishment for an offence should be in consonance with the intention sought to be achieved by an enactment and the suffering to the society and should not be a mere punitive punishment. It is also of paramount importance that the money of the investors, small and marginalized, remained unpaid till date. Therefore, it is requested that maximum imprisonment prescribed for the offence i.e. One Year Imprisonment be awarded to the convict and also a fine be imposed.

2. On the other hand, it has been submitted by the convict that the said company was incorporated in 1996 and company was running very smoothly and was returning the money to the investors in time and there was no complaint from any investor till that time. Further even





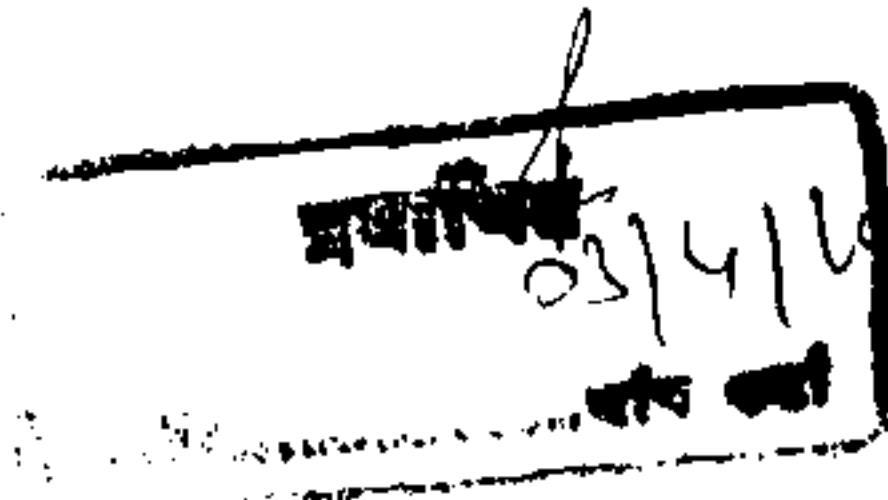


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those willing for allotment of the land were given the Receipt-cum-Allotment letter and land was allotted to them. The accused company is under liquidation and Official Liquidator has already been appointed and further the committee has been formed to redress the grievances of investors. That she is in judicial custody since 23.12.2000 and a lady. A lenient view may kindly be taken while awarding sentence.

2. Considering the facts of the present case that an amount of Rs.119.24 crores was collected and considering the fact that convict no.3 is aged about 59 years and is a lady and has faced trial for last about more than ten years and convict no.1 company is under liquidation, convict no.3 Pamila is awarded simple imprisonment of one year and a fine of rupees five lacs and in case of default in payment of fine, three months SI for the offence charged. Fine not paid.
3. Convict no.3 is already in custody since the date of her first appearance on 13.02.2004 till date. Thus, she has already served the sentence awarded today. Therefore, she is given benefit under Section 428 Cr.PC. She be released, if not wanted in any other case.
4. Copy of judgment and order on sentence be given to the convict free of costs.

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