

IN THE COURT OF THE ADDL. CHIEF METROPOLITAN MAGISTRATE,  
TEES HAZARI, DELHI

CC NO:

Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its regional office at Block No. 1, Rajendra Bhavan, Rajendra place district centre, New Delhi-110008, Represented by its Asst. General Manager Ms. Jyoti Jindger.

**...Complainant**

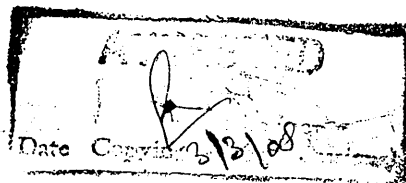
**Vs.**

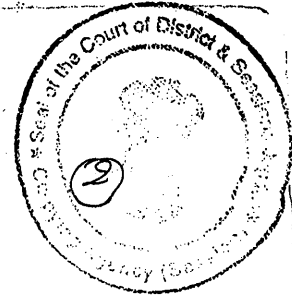
1. Ocean Agro Farms Ltd. a company incorporated under the provisions of Companies Act, 1956 and having its Registered Office at S.C.O.386 & 387, Sector 37-D, Chandigarh 160036.

2. Shri Bashir Ahmed Manhas, S/o Shri Mohd. Aslam Khan; Age- Major, Occupation: Director of the Accused No.1; resident of H.N.6083, Duplex, Manimajra, Chandigarh.

Also at :- House No. 5063/2 Category III,  
Modern Complex, Manimajra, Chandigarh.

3. Shri Gulam Mohd. Bhat, S/o Ali Mohd. Bhat, Age- Major, Occupation Director of





Accused No.1; resident of H.N.6150,  
Duplex, Manimajra, Chandigarh.

4. Shri Nazir Ahmed Bhat S/o Not known to  
the complainant; Age- Major, Occupation:  
Director of the Accused No.1; resident of  
H.N.5078, Cat.III, Manimajra, Chandigarh.

5. Satish Kapoor S/o late J. L. Kapoor,  
director of Accused No. 1, R/a. 233; Krishna  
Nagar, Canal Road, Jammu-Tawi, Jammu.  
(J.&K)

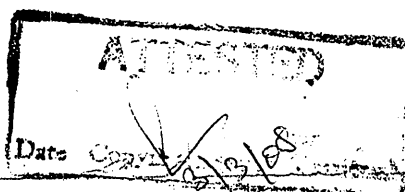
6. Shujay Amin Manhas, S/o Abdul Aziz  
Khan Manhas, director of Accused No. 1,  
R/a. Main Bazar, Thesil Suran Kote, Distt.  
Poonch (J.&K)

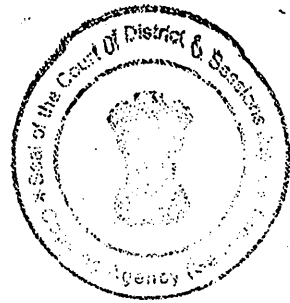
7. Faquir Hussai Shah S/o Ghulam Haider  
Shah, director of Accused No. 1, Village  
Potha, thesil Surankota, Distt. Poonch  
(J&K)

8. Mohd. Ayub Sheikh S/o K. Mohd. Sheikh,  
director of Accused No. 1, R/a Village  
Dialgam, Distt. Anantnag (J&K).

9. Ibrahim Shah S/o Mohd. Saeed, director  
of Accused No. 1, Gagrian Shaplan, Distt.  
Pulwana (J&K)

192 10. Virender Kumar Kaul, S/o T.N. Kaul  
director of Accused No. 1, R/a House No.  
5154/2 Category II, Modern Complex,  
Manimajra, Chandigarh.

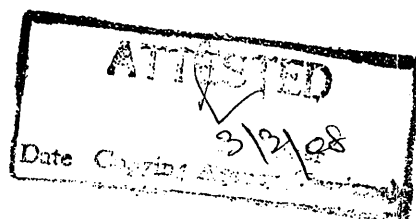




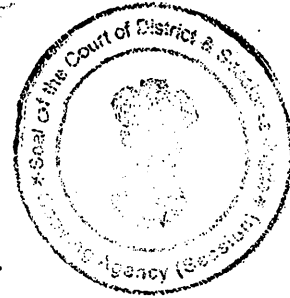
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1 Ramesh Kumar Sharma S/o  
P.R.Sharma. Age- Major, Occupation  
Director of the Accused No.1; resident of  
H.N.2449 Sector 37 C, Chandigarh.  
Also at :- 69, Apna Vihar, Jammu (J&K).

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



12.2.07



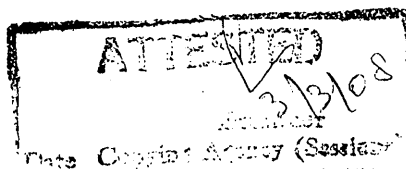
R. None for SEBI.

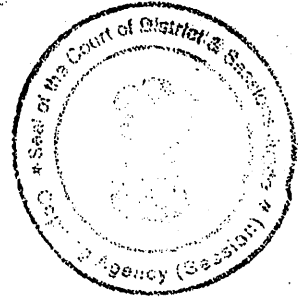
All accused are present in court with respective counsel. Vide separate orders of even date, the accused are acquitted. However, while so acquitting the accused the accused 1-9 are also directed to repay moneys within one month from today and submit repayment & winding up report to the SEBI. Further which the SEBI would be entitled to proceed afresh against these accused.

The personal bonds & surety bonds of the accused are cancelled & sureties are discharged. File be consigned to the records.

Announced on 12.2.07  
Court on 12.2.07

J. Shalkekar.  
A.S.J.  
12.02.07





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IN THE COURT OF SMT.ASHIA MENON:ASJ:DELHI

CO 37/05

Securities and Exchange Board of India, a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992, having its regional office at Block no.1, Rajendra bhavan, Rajendra Place district centre, New Delhi 110008, represented by its Asst. General Manager Ms. Jyoti Jidgar.

Vs

1.OCEAN AGRO FARMS LTD. a company incorporated under the provisions of Companies Act, 1956 and having its registered office at SCO 386 &387, Sector 37D, Chandigarh 160036.

2.SII.BASHIR AHMED MANHAS S/o Sh. Mohd. Aslam Khan, Age Major Occupation Director of the accused no.1 R/o H.No.6083 Duplex, Manimajra, Chandigarh 160036.

Also At: - House no.5063/2, Category III, Modern Complex Manimajra Chandigarh.

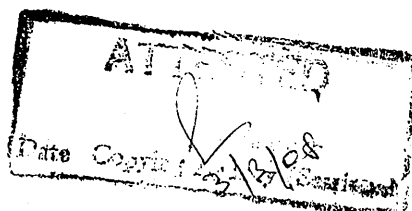
3.SII. GULAM MOHD.BHAT S/o Ali Mohd. Bhat, Age Major, occupation Director of accused no.1 R/o H.No.6150 Duplex Manimajra, Chandigarh 160036.

4.SII. NASIR AHMED BHAT S/o Not known to the complainant, Age Major, occupation Director of the accused no.1, R/o H.No.5078 Cat III, Manimajra Chandigarh 160036.

5.SII.SATISH KAPOOR S/o late J.L. Kapoor director of accused no.1 R/a 233 Krishna Nagar, Canal Road, Jammu Tavi Jammu (J&K).

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6.SII.SHUJAY AMIN MANHAS S/o Abdul Aziz Khan Manhas, director of accused no.1 R/a Main Bazar, Tehsil Suran Kote, Distt. Poonch (J&K).

Am.  
7.FAQIR HUSSAIN SHAH S/o Ghulam Haider Shah, director



of accused no.1, village Potsha, Tehsil Surankota, Distt. Poonch (J&K)

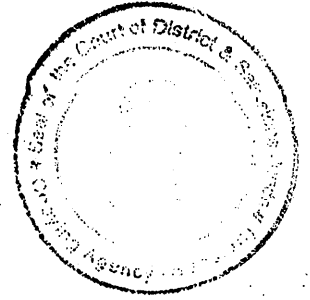
8. MOHD. AYUB SHEKH S/o K. Mohd. Sheikh director of accused no.1 R/a Village Dialgam, Distt. Anantnag (J&K).

9. SH. IBRAHIM SHAIH S/o Mohd. Saeed, director of accused no.1, Gagrian Shaplan, Distt. Pulwana (J&K)

10. SH. VIRENDER KUMAR KAUL S/o tropical agency .N. Kaul director of accused no.1 R/a H. No.5154/2 Category II, Modern Complex Manimajra Chandigarh.

11. SH. RAMESH KUMAR SHARMA, S/o P.R. Sharma, Age Major occupation director of the accused no.1, R/o H.No.2449 Sector 37C, Chandigarh

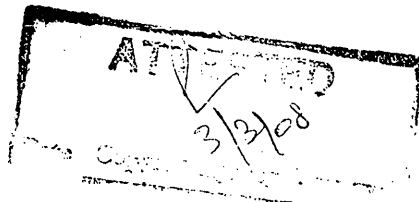
Also at : 69 Apna Vihar Jammu (J&K)

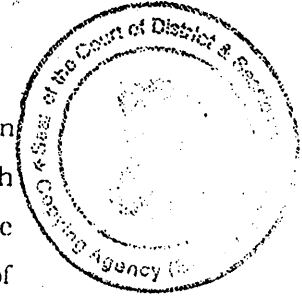


### JUDGEMENT

1. The complaint has been filed by the SEBI against the aforesaid accused being the company and its directors for violations of the SEBI Act 1992 and the SEBI ( Collective Investment Schemes Regulations ) 1999.

2. The brief background as is necessary for the disposal of the case may be stated. The Government of India passed the Securities and Exchange Board of India Act in 1992 and established the Securities and Exchange Board under the said Act (hereinafter referred to as SEBI) with the aim of providing protection of the interests of investors in securities and promote the development of and regulate the securities markets . S.11(1) of the Act provides for the duties of the Board. It was noticed by the Government that a large number of private entrepreneurs were undertaking plantation activities, raising the funds from ordinary investors from the capital market, themselves investing only





frugal amounts in such ventures. It was also noticed that in order to entice investors, these schemes promised very high returns. What was more concerning was the fact that the initial success of such schemes led to the mushrooming of such activities all over the country.

3. It was in this background that the Government of India decided that it had become necessary to regulate the activities of all those entities which were floating Agro and Plantation Bonds. By means of a Press release on 18.11.97, the Government first notified its intention to regulate this market by informing all those involved in such activities that schemes relating to Agro and Plantation Bonds would henceforth be treated as Collective Investment Schemes as defined under the SEBI Act 1992. This meant that all such schemes were to be governed by the provisions of S.12 (1) B of the Act. The entities were put on notice that regulations were to be issued for the running of such collective investment schemes and those entities who desired to take the benefit of the interim arrangement as provided under S.12(1B) of the Act should furnish to the SEBI all details of the company, its schemes and its promoters and directors.
4. Thereafter, the Regulations were brought into force on 15.10.99. Under the regulations, stiff conditions have been prescribed for obtaining registration without which no collective investment scheme could be carried out. The regulations also provided that entities who were not seeking registration had to circulate information memorandum to its investors and repay the investors and wind up the schemes and submit a repayment and winding up report to the SEBI to its satisfaction. Violation of these regulations has been made punishable under S.24 read with S.27 of the SEBI Act.

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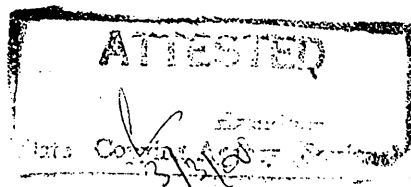
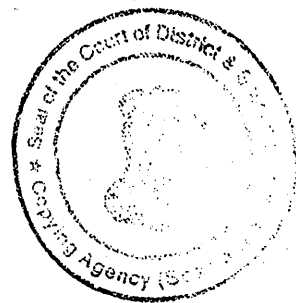
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1992. Initially the penalty prescribed was imprisonment for a maximum period of one year with or without fine. However, once the Government found the extent of operations involved and the lack of transparency in the operations of entities running collective investment schemes, the Act was amended and the punishment was enhanced to imprisonment for a term upto ten years and a fine of upto Rs.25 crores.

### COMPLAINT

5. According to the averments in the complaint, the accused company had raised a sum of Rs.7.76 crores under their collective investment schemes. The accused company had furnished details with the SEBI regarding its collective investment schemes pursuant to the SEBI notice and press release dated 26.11.1997 and 18.12.1997. It is alleged that after the coming into force of the Regulations in 1999, the SEBI had required that all existing entities running collective investment schemes apply for registration within two months from the date of notification of the regulations. This date was extended to 31.3.2000 which was declared vide press release and public notice.
6. It is averred in the complaint that the accused company applied for registration under the Regulations. However, on the basis of the details submitted the accused was not found to be fulfilling the requirements of the Regulations and therefore the application of the accused company was rejected on 11.4.2002. This was communicated to the accused company by the SEBI vide its letter dated 24.4.2002. The grounds of rejection were also mentioned. The accused company was also advised to that as a consequence of the rejection of their application for

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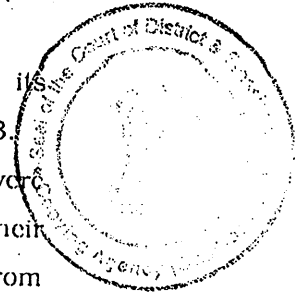
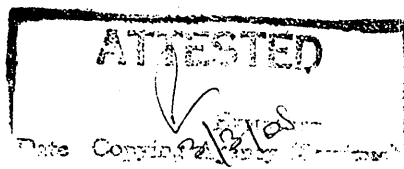
registration, the company was required to wind up its existing schemes in the manner specified in Regulation 73.

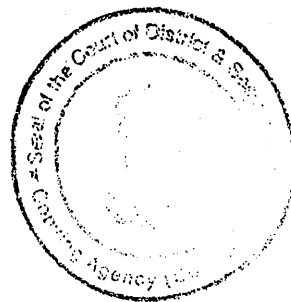
7. It is alleged in the complaint that the accused were advised to send information memorandum to all their investors within two months from the date of intimation from the SEBI and on completion of the repayment and winding up to submit a winding up and repayment report in the prescribed format with the SEBI within three and a half months from the date of the information memorandum. This letter sent by the SEBI at the registered address of the accused company returned undelivered to the SEBI. When the letter was sent at the new address the same returned with the report that the company had shifted.

8. On 3.12.2002 the SEBI Chairman directed the accused Company to refund the money collected from investors to the investors within a period of one month from the date of these directions. Since the company failed to comply with these directions and had also not refunded money to the investors, the complaint has been filed for violation of Regulations 5 (1), 68 (1), 68 (2), 73 & 74 of the SEBI (CIS) Regulations 1999 punishable under S.24 r/w S.27 of the SEBI Act 1992.

9. Vide orders dated 13.3.2003, the accused were summoned to face trial. The notice of allegations was served to the accused under S.251 CrPC on 21.4.2006, to which the accused pleaded not guilty. The complainant has examined only one witness Sh Aman Jain. Thereafter the statements of the accused were recorded under S.313 CrPC. The accused Ramesh Kumar examined one witness in defence.

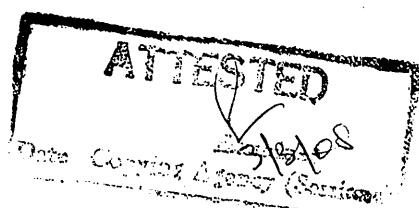
EVIDENCE

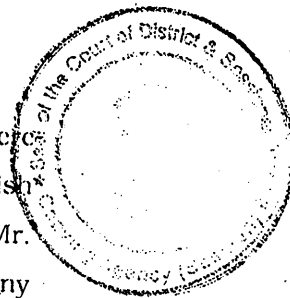




10. As CW1 Sh.Aman Jain has deposed to the issuance of the press release dated 26.11.97 by the SEBI calling upon the companies running collective investment schemes to file information with the SEBI. The CW1 deposed that in response the accused company vide letter Ex.CW1/1 received on 22.1.98 informed that they had mobilized Rs.5.11 crores. The letter also listed the names of accused G.M.Bhat, B.A.Manhas and N.A.Bhat as the directors of the company. The witness deposed that thereafter the accused sent another letter dated 27.4.98 Ex.CW1/2 submitting a certified copy of the Memorandum and Articles of Association. The names of the directors as per this letter were Sh. B.A. Manhas, Sh. G.M. Bhat and Sh. N.A. Bhat. The names of the promoters of the Company as per the MOA were Sh. B.A. Manhas, Sh. Romesh Sharma, Mrs. Saroj Bala, Sh. Zulfiqar Ahmed Manhas, Mohd. Ibrahim Shah, Ch. Mohd. Bhat and Mr. Ayub Sheikh. A special audit of the company was conducted by M/s Chaturvedi and Company and the copy of the same was forwarded to the SEBI by the accused company vide their letter dated 28.10.98, Ext.CW1/3.

11. The witness stated that the company vide its letter dated 19.9.98 Ext.CW1/4 submitted its paravise comments to the report. The company vide letter dated 24.9.98 Ext.CW1/5 submitted a statement of mobilization of funds according to which the amount mobilized from 27.1.97 to 31.3.98 was Rs.7.33 crores. He deposed that the SEBI (Collective Investment Scheme) Regulations were notified on October 15<sup>th</sup>, 1999. He deposed that the company vide letter dated 14.12.99 Ext.CW1/6, applied for provisional registration under the said regulations. He deposed that as

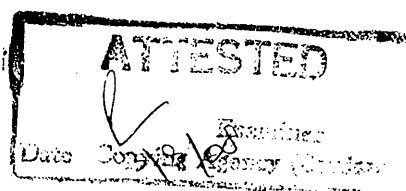




per this letter the Board of Directors of the company were Mr. B.A. Manhas, Sh. G.M. Bhat, Sh. N.A. Bhat, Mr. Satish Kapoor, Mr. Mohd. Ayub Sheikh, Mr. Ibrahim Shah and Mr. S.A. Manhas. He deposed that subsequently, the company vide letter dated 20.12.99 Ext.CW1/7 submitted audited balance sheet and profit and loss statement for the year 1998-99. He deposed that SEBI vide letter dated 23.2.2000 sought certain additional information from the company.

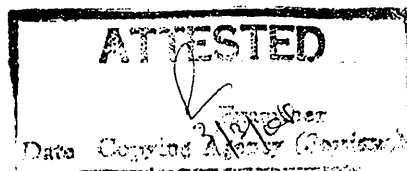
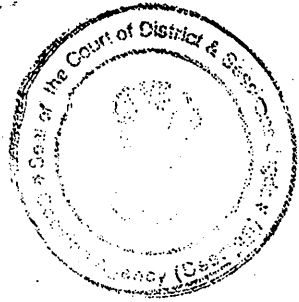
12. He stated that RBI vide letter dated 24.3.2000 forwarded a copy of letter from Works Union Jammu regarding misuse of funds by Directors of Captioned Company, formerly known as Endowment Investment India Ltd. He deposed that vide letter dated 27.3.2000 a declaration from the directors and a certificate from the statutory auditors was sought by SEBI. He deposed that in response to a letter dated 23.2.2000, the company vide letter Ext.CW1/11 received on 29.3.2000 by the SEBI filed additional information with SEBI. He deposed that vide letter dated 21.4.2000 Ext.CW1/12, the company filed statement signed by all the Directors and a certificate from the auditors of the company. He deposed that SEBI vide letter dated 5.5.2000 advised the company to file a certificate from the statutory Auditors. He deposed that it also stated that the certificate submitted by the internal auditors was incorrect. He deposed that further additional information was also sought from the company vide Ext.CW1/13. He deposed that in response to the said letter the company filed additional information vide letter dated 14.5.2000 which is Ext.CW1/14.

13. The witness deposed that SEBI vide letter dated 16.5.2000 granted an opportunity of personal hearing to the

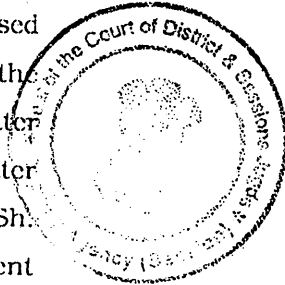


company before Chairman SEBI on 1.6.2000. He deposed that the company vide letter dated 19.5.2000 confirmed its attendance for the hearing. He deposed that vide letter dated 14.9.2000 the company furnished certain information sought at the time of hearing. He deposed that vide letter dated 30.10.2000 another opportunity for personal hearing was granted to the company on 9.11.2000. He deposed that the company vide letter dated 1.11.2000 confirmed its attendance. He deposed that vide letter dated 13.11.2000 the company was advised to file the information as desired during the personal hearing. He deposed that vide letter dated 17.11.2000 Ext.CW1/21 the company submitted certificate from the statutory auditors and also enclosed an affidavit and an indemnity bond in respect of purchase of property from the funds of the company. He deposed that vide letter dated 23.11.2000, the company was advised to file statutory auditor's certificate regarding the net worth of the company. He deposed that the company submitted the certificate vide letter dated 7.12.2000 Ext.CW1/23.

14. The witness deposed that RBI vide letter dated 8.11.2000 forwarded a petition by Nasir Ahmed Bhatt, director of the company against the managing director Sh. B.A. Manhas and Executive Director Sh. V.K. Kansal. He deposed that comments on the same were sought from the company vide letter dated 7.11.2000. He deposed that the company replied vide its letter dated 25.11.2000. He deposed that a complaint from Sh. G.H. Nabi was received on 27.11.2000. He deposed that comments of the company was sought on the complaint vide letter dated 30.11.2000. He deposed that reminder was also sent on 13.12.2000. He deposed that vide letter dated 16.12.2000 the company



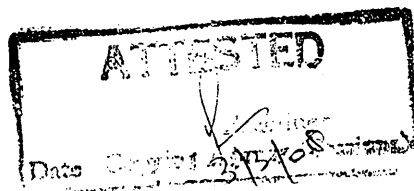
stated that it had not received the complaint. He deposed that the complaint was enclosed alongwith letter dated 19.12.2000 and received by Sh. K.K. Gupta <sup>as my</sup> authorised representative of the company. He deposed that the company then submitted its reply to the complaint vide letter dated 26.12.2000 Ext.CW1/32. He deposed that vide letter dated 2.12.2000 the company submitted an affidavit of Sh. B.A. Manhas. He deposed that Sh. N.A. Bhatt had sent another letter received by SEBI on 16.3.2001 informing about the fraudulent activities of the company.



15. The witness stated that vide letter dated 11.6.2001 an opportunity of personal hearing was granted to the company. He deposed that the letter returned undelivered with comments that the company has shifted. He deposed that the company vide letter dated 21.6.2001 intimated the change of address. He deposed that intimation about the personal hearing was sent to the new address of the company vide our letter dated 26.6.2001. He deposed that vide letter dated 27.7.2001 Ext.CW1/39 the company was advised to repay the entire outstanding amount to the investors within three months from the date of hearing. The witness stated further that vide letter dated 3.8.2001 comments of the company was sought on its merger with United Capital Services Limited, Endowment Agro Projects India Limited and United Agrotech India Limited. The reply of the company was received vide letter dated 14.8.2001 Ext.CW1/41. He deposed that SEBI vide letter dated 24.10.2001 advised the company to furnish auditor certificate regarding repayment to the investors and also an NOC from the Inspector General of Police, Jammu and Kashmir. He deposed that in response the company vide

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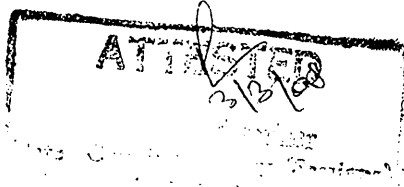


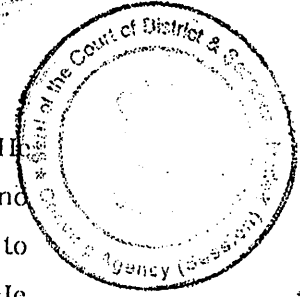


letter dated 8.11.2001 Ext.CW1/43 sought time to furnish the certificate. He deposed that vide letter dated 21.11.2001 SEBI informed the company about the opportunity for personal hearing. He deposed that vide letter dated 27.11.2001 the company was informed about the preponing of personal hearing to 7.12.2001. He deposed that this letter had returned undelivered with comments 'unclaimed'.

16. Sh. Aman Jain deposed that vide letter dated 24.4.2002 Ext.CW1/51 SEBI informed the company about the rejection of the application for provisional registration. The letter returned unclaimed. He deposed that a copy of the letter Ext.CW1/53 was also sent to the company at its KG Plaza address, but that letter also returned undelivered with comments 'door locked'. The witness stated that vide the said letters the company was also advised to wind up its schemes and file the winding up and repayment report with SEBI as per the enclosed format. He deposed that since no reply was received from the company, Chairman SEBI vide order dated 3.12.2002 issued directions to the company to repay the investors with returns due. He deposed that the said order was forwarded to the company vide SEBI's letter dated 16.12.2002 Exst.CW1/55. He deposed that the letter had returned undelivered with the comments 'house found empty'. He deposed that the copy of this letter Ext.CW1/57 sent to the KG Plaza address of the company returned with comments "addressee left". He deposed that the company had not complied the order dated 3.12.2002 of SEBI and had not filed any winding up report with SEBI.

17. In his cross examination by Sh. R.N. Tufail for the accused, the witness deposed that the letter sent to the accused intimating the rejection of their application for



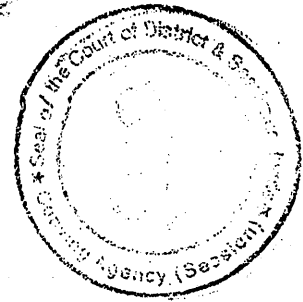


registration had returned to the SEBI undelivered. He deposed that apart from sending one letter to the accused no other mode of communication was adopted by the SEBI to inform the accused of the rejection of their application. He deposed that he could not say whether the cause of action arose at Chandigarh or Delhi. He deposed that he was not aware of any address of the accused company at Delhi and his records did not reflect any such address of the company at Delhi. He deposed that he was not aware if SEBI had received any complaint from any investor from Delhi. He deposed that he was not aware whether SEBI had received any complaint in the time intervening the dispatch of the letter of rejection of registration Ext.CW1/51 and the filing of the present complaint. He deposed that he was not aware whether any action other than sending the petition of Nasir Ahmed Bhat to the company for its comments had been initiated by the SEBI on the petition of Nasir Ahmed Bhatt. He deposed that he was not aware of the action, if any taken by the SEBI on the letter of the RBI Ext.CW1/12 and that the records he had brought did not disclose that any action had been taken by the SEBI. He deposed that he had brought the complete record relating the accused company available with the SEBI. He deposed that RBI never advised them to reject the application of the accused seeking registration with the SEBI. He deposed that he had stated so from the record. He deposed that as per the letter dated Ext.CW1/24 criminal proceedings were pending against the accused company and its directors but it was not disclosed where these were pending. He deposed that he was not aware whether these proceedings were pending at Jammu since he did not have anything to this effect in his record. He deposed that as per

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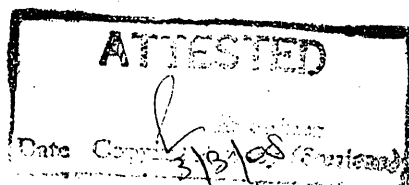
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his record there was no such information that the offices of the accused at Chandigarh and other places had been seized and the accused arrested by the Jammu police. He deposed that as per the record it could not be said whether any enquiry or investigation were carried out by SEBI on receipt of the RBI's letter.



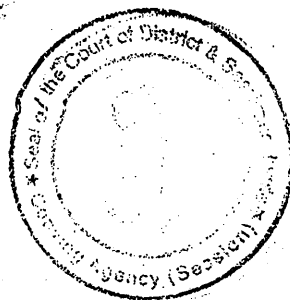
18. He deposed that the head office of SEBI is at Mumbai and there are three other Regional offices at Delhi, Kolkata and Chennai. He deposed that SEBI did not have offices in all states. He deposed that SEBI did not have offices at Punjab, Haryana and Jammu and Kashmir. The witness stated that all the activities in those states were monitored by SEBI from Delhi Regional Office. He deposed that monitoring was through correspondence from the Delhi office. He deposed that as per records, the activities of the accused were not monitored from Jammu. He denied the suggestion that he was deposing falsely or that they were aware of the arrest of the accused and sealing of their office by Jammu Police. He deposed that as per records the correspondence was only with the company and no letters were sent to the remaining accused at the addresses mentioned in the complaint. He denied the suggestion that he was deliberately withholding the facts from the court.

19. The accused Ramesh has examined one witness in defence. He is the Ahlmad of the Court of the Learned A.C.MM who produced the record in respect of SEBI Vs. United Capital Services India Limited and placed the certified copy of the complaint on the record as Ext.DW1/A. In cross examination, the witness admitted as correct that the accused Ramesh Kumar Sharma had been arrayed as accused no.2 in that case in his capacity as Director of



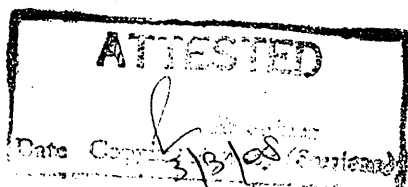


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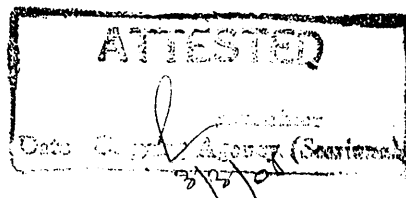
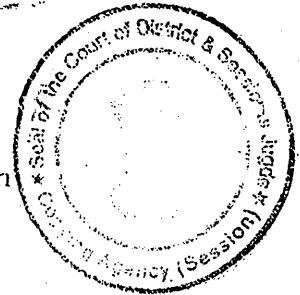


accused no.1 United Capital Services India Limited.

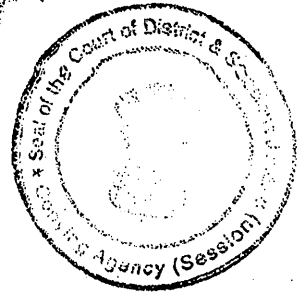
20. This constitutes the entire evidence that has been brought on the record by both sides

CONTENTIONS:

21. The learned counsel for all the accused except accused no.11 & 5, Sh.Tufail has argued that the accused were entitled to an acquittal. According to him this court had no jurisdiction to try the case since the accused had no office at Delhi and no correspondence had been sent to the accused at Delhi. It has been also argued that for the violation to have occurred it was essential to prove each of the accused had received the communications relied upon by the SEBI. Learned counsel submitted that no communication rejecting the registration application submitted by the accused company had been sent to the accused company despite the availability of the addresses of the accused with the SEBI. Learned counsel submitted that the very fact that the accused had appeared before the Court pursuant to summons established <sup>their</sup> ~~their~~ availability at the given address. Learned counsel submitted that under the Companies Act winding up of the company was called for only in the event of its inability to repay debts and no such event had occurred in the instant case since no creditor or shareholder had filed winding up petition against the company. Learned counsel submitted that the SEBI had been informed by the accused that the Jammu and Kashmir police had sealed all the offices of the accused and the accused were behind bars. Therefore, letters had returned with the report that premises were found locked. It was submitted that the SEBI should have verified the facts before filing the complaint. It was submitted that the SEBI ought



to have found out what had prevented the accused from submitting the details since the letter had been returned undelivered and not refused. It was submitted that there was no publication of the refusal of registration.

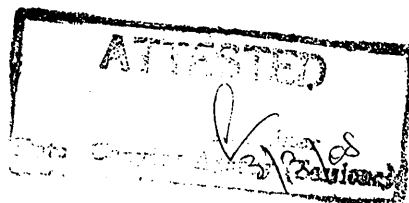


22. In short the learned counsel has submitted that firstly no default had occurred since the accused were unaware of the obligations to comply with the regulations and secondly the investigation and the sealing actions of the Jammu and Kashmir Police effectively prevented compliance and the default could not be attributed to the accused as a willful act.

23. Learned counsel for accused no.5 in addition submitted that the complaint in para no.15 itself mentioned that accused no.1 to 4 were liable for defaults and therefore, the accused no.5 had nothing to do with the violation. Learned counsel submitted that the accused no.5 had resigned in February 2001 and the ROC had been duly informed. Documents filed on behalf of the accused no.5 have been relied upon in this regard and learned counsel has prayed that the accused be acquitted.

24. Learned counsel for accused no.11 has also prayed for the acquittal of the accused submitting that even on the averments of the complaint this accused should be exonerated. Learned counsel submitted that the complainant had not proved the case beyond reasonable doubt. There is no allegation in the complaint that the accused no.11 was involved in the accused no.1 and in the light of the evidence brought on record by DW1 which showed that the accused no.11 was the Director of another company, he could not have been in charge of the affairs of the accused no.11 Ocean Agro Farms Limited. It was submitted that the SEBI knew

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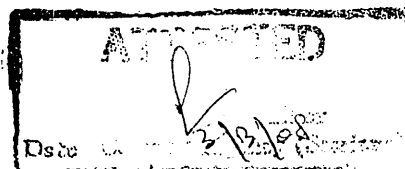


about the failed attempt to merge and was fully aware that the accused no.11 was the M.D of another company and had no concern with accused no.1 in this case despite which he has been involved by SEBI in these proceedings.



25. Sh. Mann on behalf of the SEBI highlighted the purpose of the legislation and the regulations underlining that these were intended for investor protection. He submitted that vast amounts had been mobilized as the public were enticed by unrealistic promises of huge returns. He submitted that the accused were fully governed by the SEBI (CIS ) Regulations, 1999 and were bound to comply with the regulations. Learned counsel submitted that therefore when the provisional registration was declined the accused were bound to repay the investors and submit the repayment report alongwith the winding up report to the SEBI which they had failed to do till the filing of the complaint and even thereafter. The learned counsel submitted that the SEBI was fully empowered to prescribe a format for submission of winding up and repayment report and compliance had to be necessarily in the prescribed form. Learned counsel for the SEBI submitted that SEBI had filed the present complaint at Delhi since its Northern Regional Office was located at Delhi with jurisdiction over all Northern Indian States and hence this Court had full jurisdiction.

Am 26. It was further submitted that the SEBI was not concerned with the winding up of the company but was interested in the winding up of Collective Investment Scheme by companies running the same without registration. It was submitted that the complaint had to be read as a whole and so accused no.5 to 11 were also liable as was proved by the



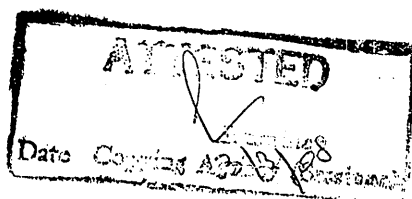
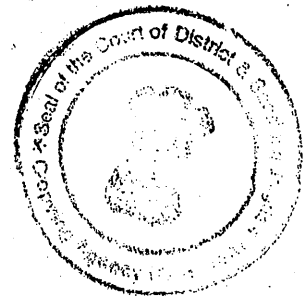
evidence. In any case, the learned counsel submitted that the promoters were equally liable under Section 11B of the SEBI Act, 1992. It was further submitted that the office was closed by the accused and it was for them to have informed the SEBI of any other address available and the failure of the accused cannot now be used to their advantage. Thus, the learned counsel for the SEBI has submitted that none of the accused could be exonerated and acquitted.

### FINDINGS

27. I have heard the counsel for both sides and I have carefully perused the evidence on the record.

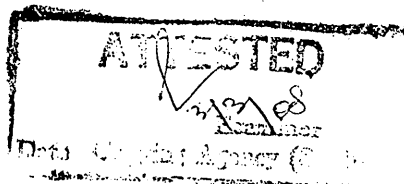
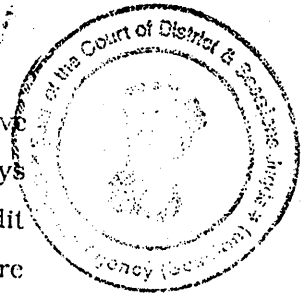
28. Before proceeding to the merits it would be worthwhile to dispose of the objection regarding jurisdiction. No doubt the accused have no office at Delhi and the registered office of accused no.1 is at Chandigarh. However, the SEBI has its regional office at Delhi and the jurisdiction of the Northern Region Office extends to all the Northern Indian States including the Union Territory of Chandigarh and the State of Jammu and Kashmir. The SEBI has corresponded with the accused from Delhi and it is an admitted fact that the accused company through accused B.A. Mannas had attended hearings at Delhi. The SEBI has no office in any of the Northern Indian States to vest jurisdiction in the local courts where the accused are residing. In these circumstances the objection raised in respect of the jurisdiction of this Court to try matters such as the present complaints are completely misplaced and are rejected.

29. That the accused no.1 was involved in Collective Investment Schemes is a fact not in dispute. It is a fact that is not disputed by the accused that they had even sought

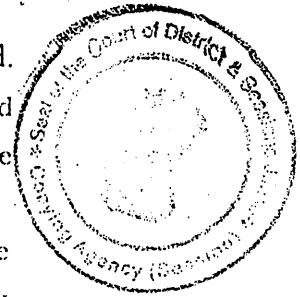


provisional registration with the SEBI for the Collective Investment Schemes. The accused have always communicated with the SEBI and have submitted audit certificates and other information to the SEBI (the letters are part of the record) describing itself as an entity involved in the CIS and were running various Agro Plantation Schemes. In these circumstances, it has to be concluded that the SEBI (CIS) Regulations are fully applicable to the accused company and the accused company as well as the directors and promoters were under an obligation to comply with the requirements under the regulations notified on 15.10.99.

30. The witness of the SEBI has brought on record several communications between the accused company previously known as Endowment Investment (I) Limited and subsequently known by the name Ocean Agro Farms Limited (accused no.1) including a letter dated 14.12.99 Ext.CW1/6 whereby Ocean Agro Farms Limited through its Managing Director, accused no.2 B.A. Manhas sought provisional registration certificate under SEBI (CIS) Regulations, 1999. It would appear therefore, at least initially the accused company had taken steps to comply with the regulations. According to the SEBI the registration was refused vide letter dated 24.4.2002. Exst.CW1/51 and 53. According to the SEBI thereafter the accused were to comply with the orders of the Chairman to repay the investors and submit winding up report as per enclosed format. According to the SEBI since no repayment was effected and neither was the winding up and repayment report submitted to the SEBI the regulations stood violated. According to the defence, however, the accused were unaware of the rejection of the application for provisional registration certificate and

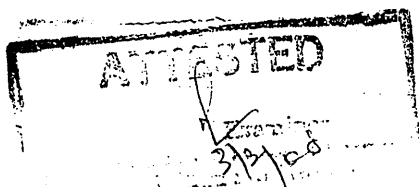


therefore, no liability could be attached upon the accused. This plea is of course apart from the claim of the accused other than accused no.2 that they had nothing to do with the affairs of the company.

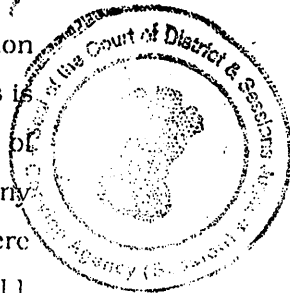


31. The question is also whether all the accused could be arrayed as accused in this case or held responsible for any violation of regulations that may have occurred. The accused no.5 has claimed that he had resigned from the directorship of the company and so could not be arrayed as an accused. However, the evidence that he has brought on record is far from satisfactory. The accused has failed to produce the resignation tendered to the Board of Directors and accepted by the Board of Directors nor has he placed on record, Form 32 reflecting the change in the Board of Directors occasioned by his resignation. His intimation to the Registrar of Companies on the letter head of the accused no.1 Ocean Agro dated 19.3.2001 does not suffice to prove that he had resigned. As regard the certificate relied upon by this accused, the same has been issued by a co-accused and is undated. It will not exonerate the accused from liability.

32. Coming to the other accused in various communications, the accused no.2 Bashir Ahmad <sup>Manhas</sup> Manhas in his capacity as Managing Director has informed the SEBI that these accused were the promoters or directors of the company, the accused no.1. However, in the letters sent by him to the SEBI in the year 2000 and 2001 he has given the names of himself Basir Ahmad Manhas, accused no.3 Gulam Mohd. Bhat, accused no.4 Nazir Ahmad Bhat, accused no.5 Satish Kapoor, accused no.6 Shujay Amin Manhas and accused no.7 Faquir Hussain <sup>Manhas</sup> Shah, accused no.8 Ayub Shekh and accused no.9 Ibrahim Shah as the



directors as on 21.4.2000 (the certificate/declaration required by the SEBI has been signed by these accused as is clear from Ext.CW1/12). In these circumstances the role of accused no.10 and 11 in the affairs of the company subsequent to 21.4.2000 has not been established. There had been a move to merge a company of accused no.11 namely United Capital Services India Limited with the accused no.1, which failed, but there is no prohibition in law that a person cannot be director of two or more companies. However, in the light of the communication sent by the managing director of accused no.1 listing the names of the directors excluding the names of accused no.10 and 11 there appears to be sufficient strength in the plea of these two accused that they had no concern with the affairs of the accused no.1 at the time the facts relevant to this complaint <sup>in</sup> <sup>and</sup> ~~accused~~ occurred.



33. It may be mentioned here that even though the accused no.2 Basir Ahmad Manhas has been appointed as the Managing Director of the accused no.1, the other accused cannot seek to exclude themselves from liability by claiming that they had no knowledge of the requirements under law or of compliance for two reasons. One, the accused no.2 has communicated to the SEBI on occasion that meeting of the Board of Directors have been requisitioned to deal with the complaint of accused no.4 Nasir Ahmad Bhat. Such meeting would have put them on notice of what was happening in respect of the Collective Investment Schemes of the company; and they all had also signed the declaration called for by the SEBI. Secondly the Memorandum and Articles of Association by clause 118 sets out that the Board would always exercise superintendence

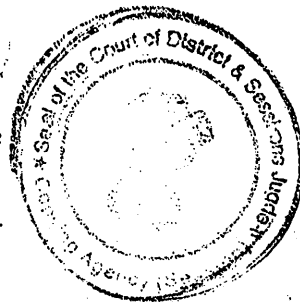
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and control and that the Managing Director would exercise his powers <sup>and</sup> under the directions of the Board. When events pleaded include institution of criminal cases against some of the Directors of this accused no.1 it cannot be believed that none of the other accused in this case being accused no.3 to 8 had <sup>any</sup> ~~not~~ knowledge or <sup>would have</sup> ~~showed~~ no concern for what was happening with the company and failed so utterly in ensuring compliance if they had so desired.



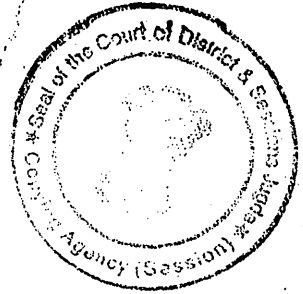
34. The accused no.2 has claimed that it was the criminal proceedings initiated by the Jammu and Kashmir police which had resulted in the sealing of the office and therefore, the accused had been prevented from compliance with the regulations. Though the accused have not produced any cogent evidence to show that in fact their offices had been sealed by the Jammu and Kashmir police. The fact that vide Ext.CW1/42, the SEBI had asked the accused no.2, on behalf of accused no.1 to produce a no objection certificate from the police in order to process the company's application for provisional registration, would reveal that the SEBI had been informed of some criminal case involving some of the directors of accused company/accused no.1. However, since there is a claim made on behalf of accused no.1 by accused no.2 that neither accused no.1 nor any of its directors were involved in any criminal case initiated by the Jammu and Kashmir police, it is not worthy of belief that this was the reason why compliance could not be effected. No proof of sealing of the offices has been produced.

35. In spite of all these facts and the shortcomings in the defence it is inescapable that the prosecution prove its case to the hilt. In the present case an important question that arises for consideration is as to when was the offence

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committed. This is not a case in which after the notification of the regulations the accused had made no effort to apply for registration or comply with the regulations. Rather the entire set of communication placed on the record by the SEBI would reveal that accused no.1 in fact applied for provisional registration and the SEBI was duly considering the same even up to the year 2002. On various dates the SEBI had asked for information and audit reports and certificates which the accused through accused no.2 had been submitting before the SEBI. Personal hearing had also been accorded to the accused which had been attended by the accused no.2. The accused no.2 had even complied with requirements made known to him during the hearing.

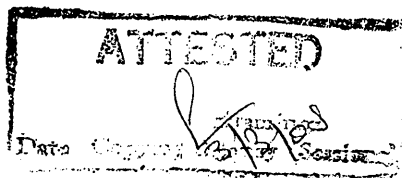
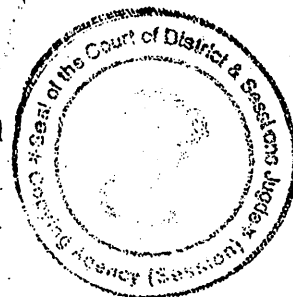
36. The record reveals that it was on 24.10.01 that the SEBI had asked for NOC from the Jammu and Kashmir police. This was replied by accused no.2 vide letter dated 8.11.2001 seeking time to produce the certificate since it involved the government agencies. Thereafter since 22.11.2001 the letters and communications sent by the SEBI have been returned to the SEBI as shifted, unclaimed, or due to locked premises. These letters had been addressed at the company's office. The record shows that the accused have been contacted by the SEBI through fax and telephone on occasions when the hearing were going on. When the SEBI was aware of some police action and had sought the NOC from the Jammu and Kashmir police, nothing prevented the SEBI from communicating with accused no.2 or any of the directors in respect of the rejection of the application for provisional registration (Ext.CW1/51) which had returned from the company's office as unclaimed. The accused were therefore, completely



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unaware of the rejection of their application for provisional registration. Similarly, the letter sent to the accused no. 2 at the K.G. Plaza address returned with the report that the door remained locked. The conduct of the accused till these letters had been sent showed that they had been disclosing to the SEBI the correct address. The SEBI ought to have therefore, made an effort to send the communications to the accused no.2 as Managing Director or to any of the remaining accused whose addresses were readily available with them as is borne out from the memo of parties.

37. Unlike in the other cases filed by the SEBI there is no public notice nor a newspaper publication of the order dated 3.12.2002 whereby the SEBI Chairman directed the accused to repay investors and submit the winding up and repayment report to the SEBI. Thus, there is nothing on which knowledge can be imputed to the accused of the orders of the SEBI Chairman issued under Section 11B for repayment to investors and submission of winding up and repayment report in format. The regulations can be found to have been violated only if these orders had been in the knowledge of the accused. Without knowledge there could have been no compliance. The fact that the accused were themselves lax in not finding out what had happened to their application for provisional registration cannot excuse the SEBI from discharging the obligation on them to have brought to the notice of the accused that they had been refused registration and were required to not only repay the investors but to submit the winding up and repayment report in format within three months. Had there been any publication of these requirements qua this company it would have been certainly a different matter.



CONCLUSION:

38. In these circumstances it has to be held that the SEBI has failed to prove its case against the accused beyond doubt. They have failed to prove that the accused had willfully violated the regulations with full knowledge of the fact that their application for provisional registration had been rejected and the SEBI Chairman had directed them to repay their investors within a month and submit the winding up and repayment report. Thus all the accused stand acquitted of the charges against them for having violated the Regulations 73,74 read with Regulations 5.68 (1&2), of the SEBI (CIS) Regulations 1999 punishable under S.24/27 SEBI Act 1992.

39. However, while so acquitting the accused I direct the accused no.1 and its directors accused no.2 to 9 to comply with the directions of the SEBI Chairman dated 3.12.2001 since they are now aware of that order and are also aware of the rejection of their application for provisional registration. The accused shall therefore repay their investors within one month from today and shall then submit the winding up and repayment report in format to the SEBI. On failure to do so the SEBI would be entitled to take fresh action against these accused for violation of the regulations namely SEBI (CIS) Regulations, 1999 read with SEBI Act, 1992.

40. The personal bonds and surety bonds of the accused are cancelled and the sureties are discharged. File be consigned to the records.

ANNOUNCED IN OPEN COURT ON

Dated: 12.2.2007

*Asha Menon*  
ASHA MENON

Addl. Sessions Judge: Delhi.

