

IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE, TIS  
HAZARI COURTS, DELHI.

CC NO. 1219 OF 2003 15/12/03

**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 Rajendra  
Place, New Delhi represented by its Asst.  
General Manager, Mr. JYOTI JINDGAR.

...COMPLAINANT

VERSUS

1. M/s Akansha Agrotech (I) Ltd.  
Having its Resgitered Office at  
Malik Mau,  
Sultanpur, Road, Rae Bareli – 229 001.

2. Shri Nagesh Kumar Singh (Director) ✓  
S/o Shri B.B.Singh  
8/7, Pwd Colony, Doorbhash Nagar,  
Rai Bareilly – 229 010.

3. Shri Om Praksh Singh (Director) ✓  
S/o Shri Bishwander Singh.  
324, Sector II, Iti Colony,  
Doorbhash Nagar,  
Rai Breili – 229 010.

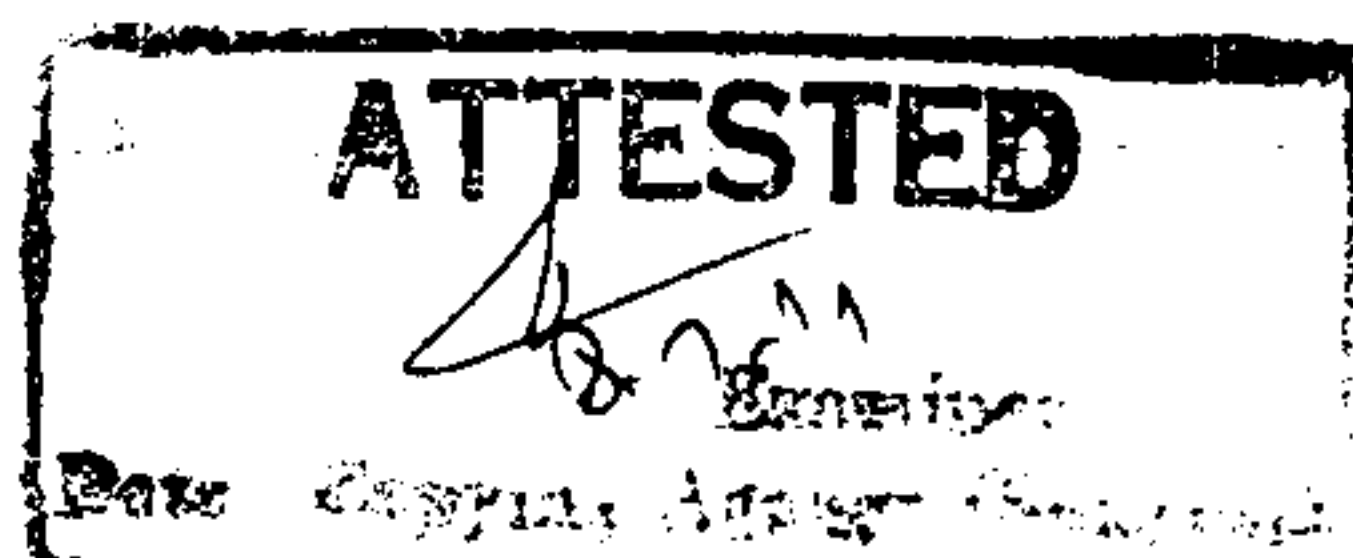
ALSO AT  
101, Malik Man Colony,  
Rai Barelli.

4. Ms. Nirupama Singh (Director) x H No. 198, Ward No. 4  
W/o Shri A.K. Singh  
C-67, PWD Colony,  
Doorbhash Nagar,  
Rai Breli – 229 010. Shakti Nagar, Azimoodya Compound,  
Rai Bareli. U.P.

5. Mod. Salim (Promoter/Director) ✓  
12, P/S, Nanpara, Distt. Bahraich.

6. Rakesh Kumar Singh x  
(Promoter/Director)  
Anapur, Semarpaha  
Raebareli.

7. Mahendra Bahadur Singh --  
(Promoter/Director)  
Malik Mann, Raebareli.





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8. Sabhajeet Singh (Promoter/Director)  
1266, Sivaji Nagar,  
Dorabhash Nagar,  
Raebareli.

.....ACCUSED

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

MAY IT PLEASE YOUR HONOUR:





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Item no.12  
04.07.2011

Present: Sh. Sanjay Mann, Advocate, Counsel for complainant  
SEBI.  
Sh. S. K. Pandey, Advocate, Counsel for all convicts.

Vide separate judgment dated 04.07.2011, A1 i.e. Company accused and A2 to A4 have been held guilty for the offence punishable under Section 24(1) read with Section 27 of the SEBI Act while A5 to A8 have been acquitted from the alleged charged.

Arguments heard advanced by the Counsels for both parties on the point of Sentence.

Vide separate order on the point of Sentence dated 04.07.2011, a fine of Rs. 1.50 lac each on convicts no. 1 to 4 is imposed in default 3 months Simple Imprisonment for the offence punishable under Section 24 (1) of the SEBI Act.

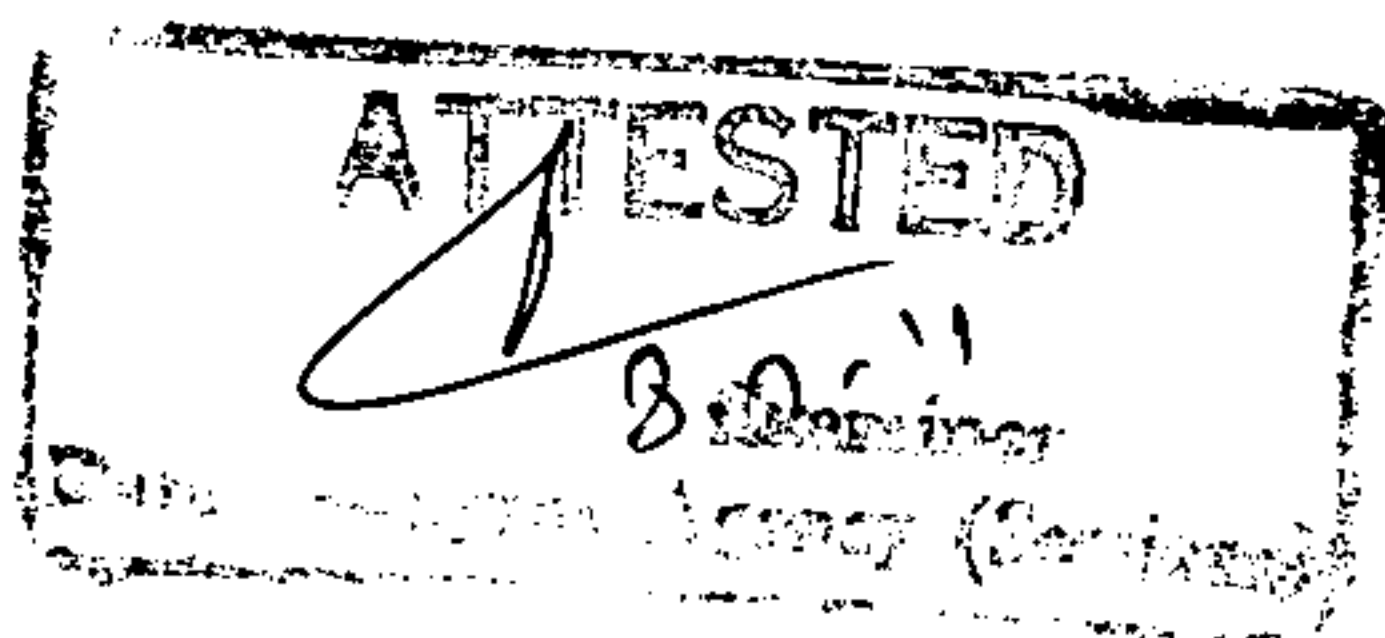
Fine paid.

Bail bond and surety bond of the convicts stands cancelled. Sureties are discharged. Original documents, if any be returned to their respective sureties.

Copy of judgment alongwith order on the point of Sentence be given to the convicts free of cost.

File be consigned to record room.

  
(Pawan Kumar Jain)  
Addl. Sessions Judge-01/  
Central/THC/Delhi





SEBI Vs. M/S Akansha Agrotech (I) Ltd.

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

**Complaint Case No. 59/10  
ID No: 02401R0230732003**

**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 Rajendra Place, New Delhi and represented by its Manager Ms. Rekha Verma.

**Versus**

1. **M/S Akansha Agrotech (1) Ltd.** having its Registered office at Malik Mau, Sultanpur, Road, Rae Bareli-229001

.....Accused no.1

2. **Sh. Nagesh Kumar Singh (Director)** S/o Sh. B. B. Singh, 8/7, PWD Colony, Doorbhash Nagar, Rai Bareilly-229 010

.....Accused no.2

3. **Sh. Om Prakash Singh (Director)** S/o Sh. Bishwander Singh, 324, Sector II, Iti Colony, Doorbhash Nagar, Rai Breili-2290101  
Also at: 101, Malik Man Colony, Rai Barelli.

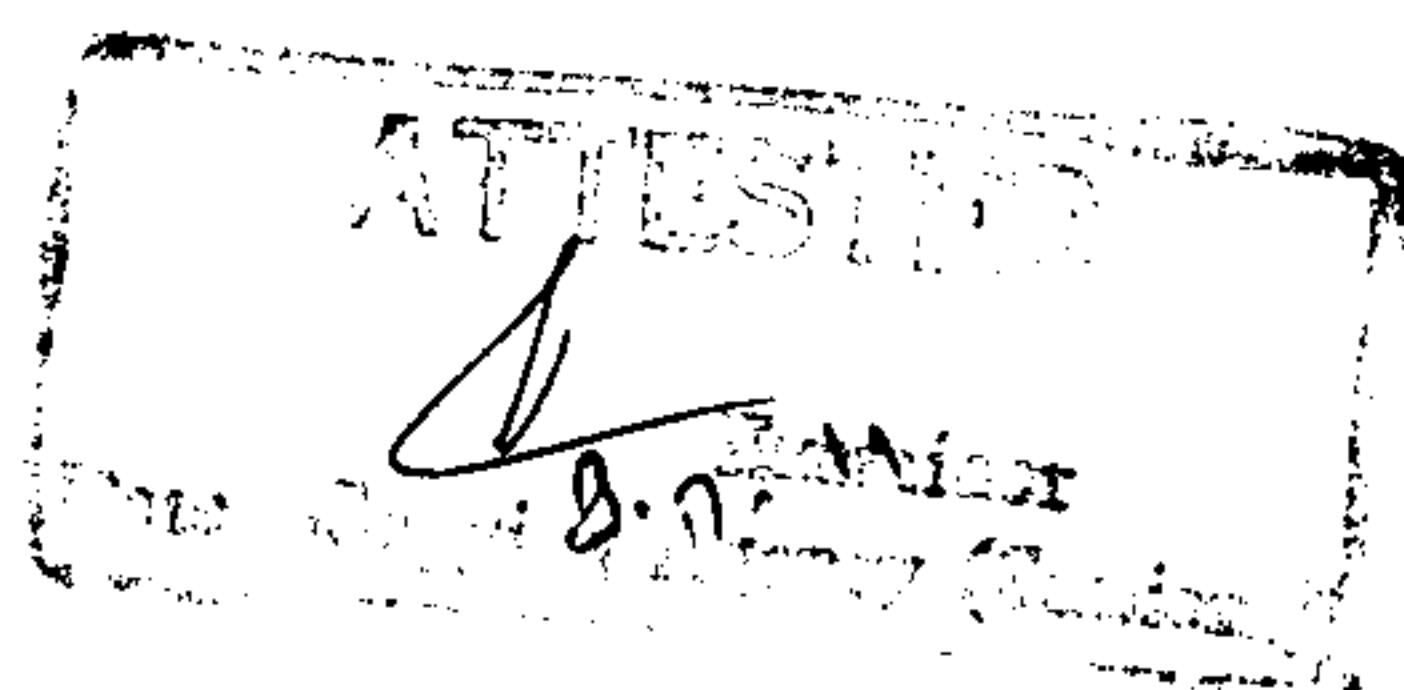
.....Accused no.3

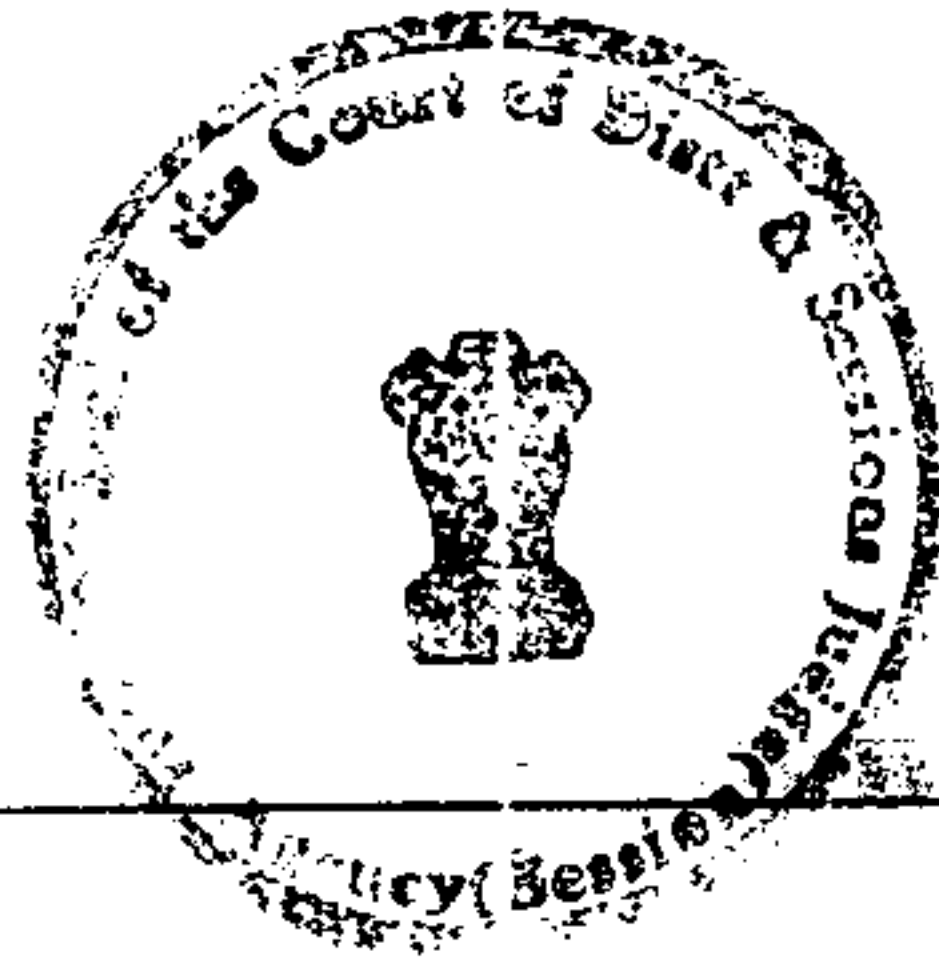
4. **Ms. Nirupama Singh (Director)** W/o Sh. A. K. Singh, C-67, PWD Colony, Doorbhash Nagar, Rai Barelli -229 010

.....Accused no.4

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5. Mohd. Salim (Promoter/Director), 12, P/S, Nanpara, District Bahraich.

.....Accused no.5

6. Sh. Rakesh Kumar Singh (Promoter/Director), Anapur, Semarpaha Raebareli.

.....Accused no.6

7. Sh. Mahendra Baha, (Director)/Promoter, Malik Mann, Raebareli.

.....Accused no.7

8. Sh. Sabhajeet Singh, (Director)/Promoter, 1266, Sivaji Nagar, Doorbhash Nagar, Raebareli.

.....Accused no.8

Date of Institution : 15.12.2003

Date of Judgment reserved on : 06.06.2011

Date of pronouncing of judgment : 04.07.2011

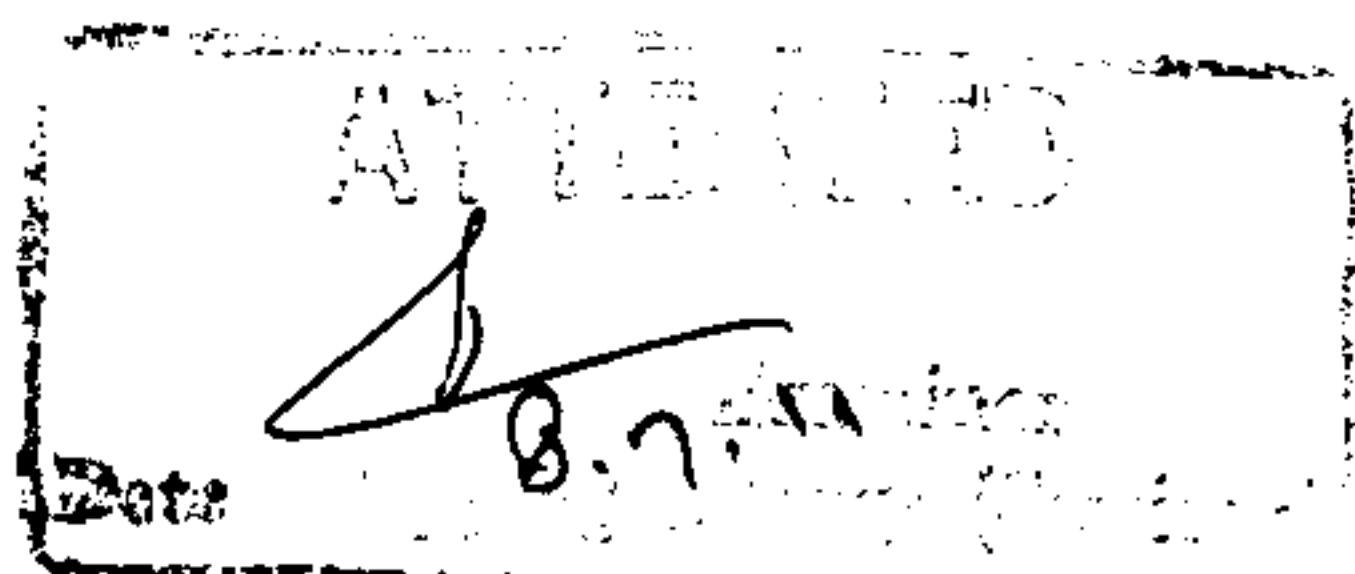
Present: Sh. Sanjay Mann, Advocate for the SEBI  
Sh. S.K. Pandey & Sh. A.K. Singh, Advocates,  
Counsel for accused no. 1, 2, 3,4,5 & 8  
Accused no. 6 & 7 have already been declared PO

## JUDGMENT:

1. This criminal complaint was preferred by the Securities & Exchange Board of India (hereinafter referred to as "SEBI" or "the complainant"), on 15.12.2003 in the Court of Additional Chief

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**SEBI Vs. M/S Akansha Agrotech (I) Ltd.**

Metropolitan Magistrate (ACMM), alleging violation of the provisions of Section 12 (1B) of Securities & Exchange Board of India Act, 1992 (hereinafter, "the SEBI Act") and Regulation Nos. 5(1) read with 68(1), 68(2), 73 and 74 of the Securities & Exchange Board of India (Collective Investment Schemes) Regulations, 1999 (hereinafter referred to as "the CIS Regulations" or "the said Regulations"), constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act.

2. Eight persons were arrayed as accused in the criminal complaint preferred under Section 200 Cr.P.C., they being M/s M/S Akansha Agrotech (I) Ltd. (hereinafter, "A1" or "the Company Accused"), accused No. 2 Sh. Nagesh Kumar Singh ("A2"), accused No. 3 Sh. Om Parkash Singh ("A3"), accused No. 4 Ms. Nirupama Singh ("A4"), accused No. 5 Mohd. Salim ("A5"), accused No. 6 Sh. Rakesh Kumar Singh ("A6"), accused No. 7 Sh. Mahendra Baha ("A7") & accused No. 8 Sh. Sabhajeet Singh ("A8"). It is alleged that A2 to A8 were Directors of the company accused and as such persons were in charge of, and responsible to, A1 for the conduct of its business within the meaning of the provision contained in Section 27 of the SEBI Act.

3. It is alleged in the complaint that A1 had floated the

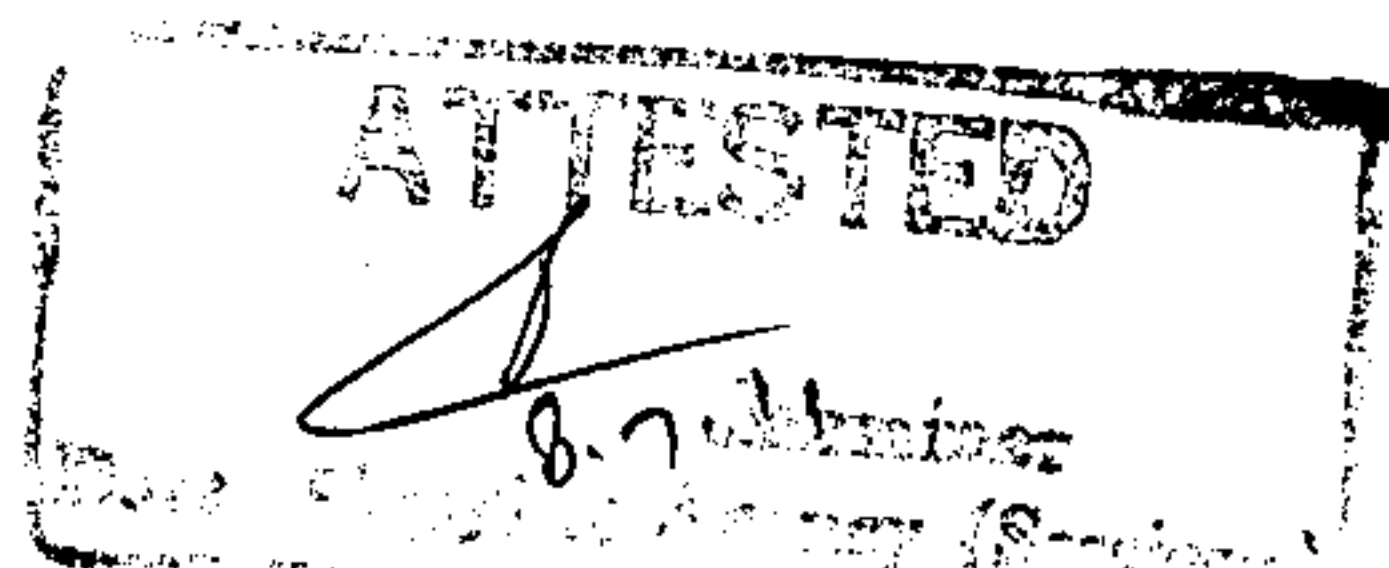


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Collective Investment Scheme (CIS) and raised amount approximately Rs.23,80,000/- from general public, in violation of the provisions contained in Section 12 (1B) of the SEBI Act. It is also alleged that after coming into force of the CIS Regulations and in spite of public notice dated 18.12.1997, the accused persons had failed to get the Collective Investment Scheme registered with SEBI or to wind up the said scheme or repay the amount collected from the investors in terms of the CIS Regulations, thus constituting violation of the law and regulations framed thereunder and thereby committing the offence alleged as above.

4. Cognizance on the complaint was taken by the learned ACMM vide order dated 15.12.2003 whereby process was issued under Section 204 Cr.P.C. against all the accused persons.
5. On account of the amendment, particularly in Sections 24 and 26 of the SEBI Act, through Amendment Act which came into force w.e.f. 24.11.02, pursuant to Administrative Directions of Hon'ble High Court, under orders of the Ld. Distt. & Sessions Judge, this case was transferred on 05.02.2005 from the Court of Ld. ACMM to the Court of Sessions, then presided over by Ms. Asha Menon, the then Addl. Sessions Judge, Delhi.

6. Vide order dated 22.08.2008, A6 & A7 were declared

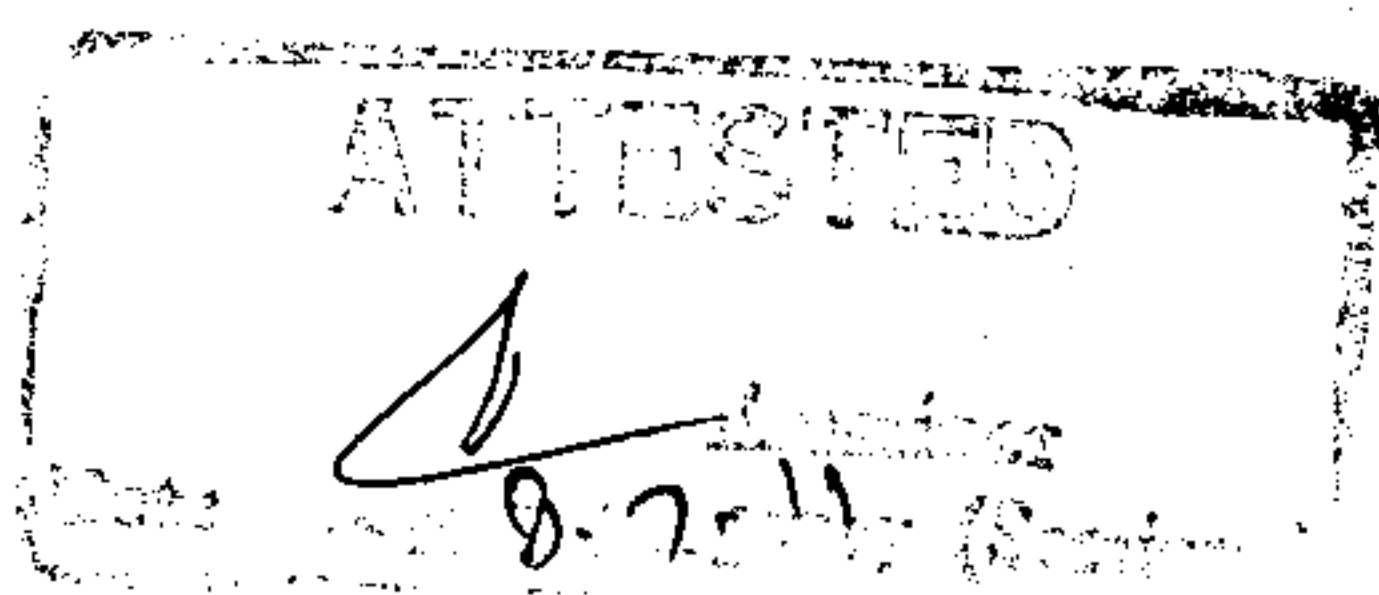


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proclaimed offender on account of their non-appearance. Thereafter, vide order dated 16.07.2009, a notice for the offence punishable under Section 24 read with section 27 of the SEBI Act was served upon the A1(company), A2 to A5 & A8. Since A2 represented A1 company accused, he also responded to the notice on behalf of company. They all pleaded not guilty and claimed trial.

7. To prove its case, complainant examined only one witness named Ms. Rekha Verma, Manager of SEBI. Thereafter, all accused persons were examined under section 313 Cr.P.C. In their examination under Section 313 Cr.P.C, all accused persons admitted that the company accused had sent the letter Ex. CW1/6 under the the signature of A2 to the SEBI and also admitted the press release and public notice issued by SEBI and further stated that all directions were duly complied with by company accused and money was refunded to the investors. They also admitted the letter Ex. CW1/8, CW1/9 & CW1/10. Accused persons took the defence that no fresh investment was received after 20.05.1999 and the collected amount had already been refunded to the investors up to 20.05.1999 before the notification of CIS Regulations. All the accused persons submitted that SEBI had filed the complaint only to harass them.





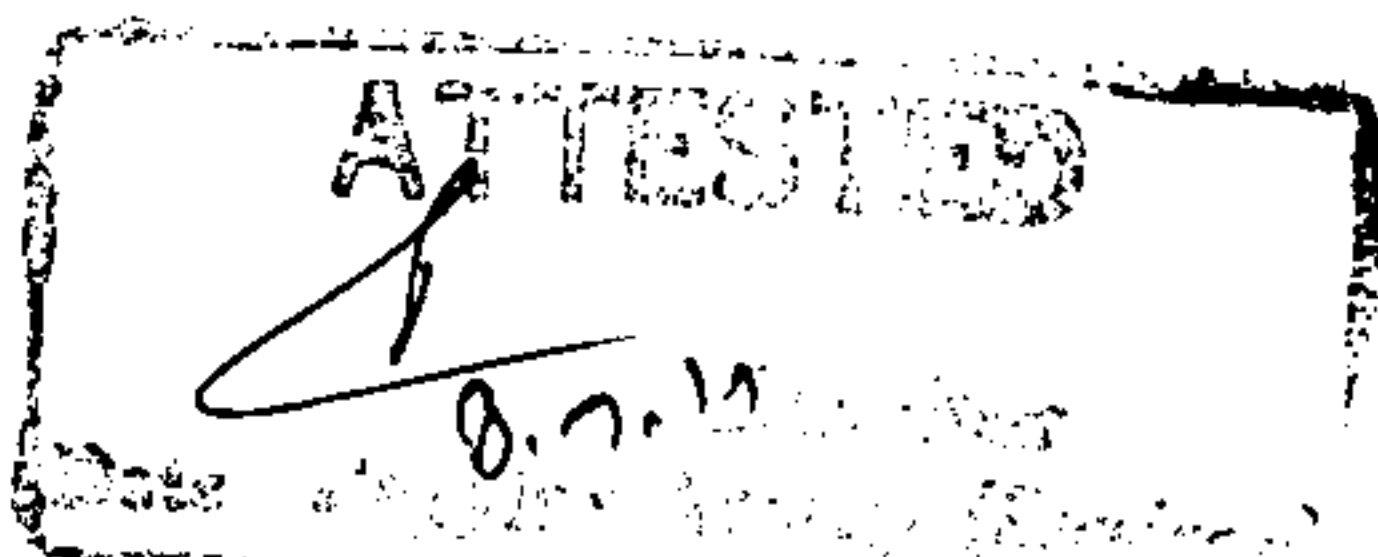




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8. To prove their innocence, accused persons examined seven witness in their defence namely Sh. Arun Kumar Singh (investor) as DW1, Sh. Ghanshyam Singh (investor) as DW2, Sh. Rajender Parshad (investor) as DW3, Sh. Ram Bali Singh (investor) as DW4, Sh. Surya Baksh Singh (investor) as DW5, Sh. Ram Naresh Singh (investor) as DW6, and Sh. Om Prakash Singh ("A3") as DW7.
9. I have heard arguments advanced by Sh. Sanjay Mann, Advocate, Counsel for complainant and Sh. S.K. Pandey & Sh. A. K. Singh, Advocates, Counsels for A1 to 5 & A8, perused the record carefully and gave my thoughtful consideration to their contentions.
10. Learned Defence Counsels for accused persons raised three contentions, firstly that there is no violation on the part of company accused as the term 'CIS' was not defined by the SEBI till 18.12.1997 when the Notification was issued by the government whereas the company accused had mobilized the funds during the period July 7, 1997 to December 14, 1997, thus it was submitted that company accused had not violated any provision of SEBI Act. Secondly, that the name of only three accused has been mentioned in the Memorandum and Articles of Associations of the company accused as directors of the company







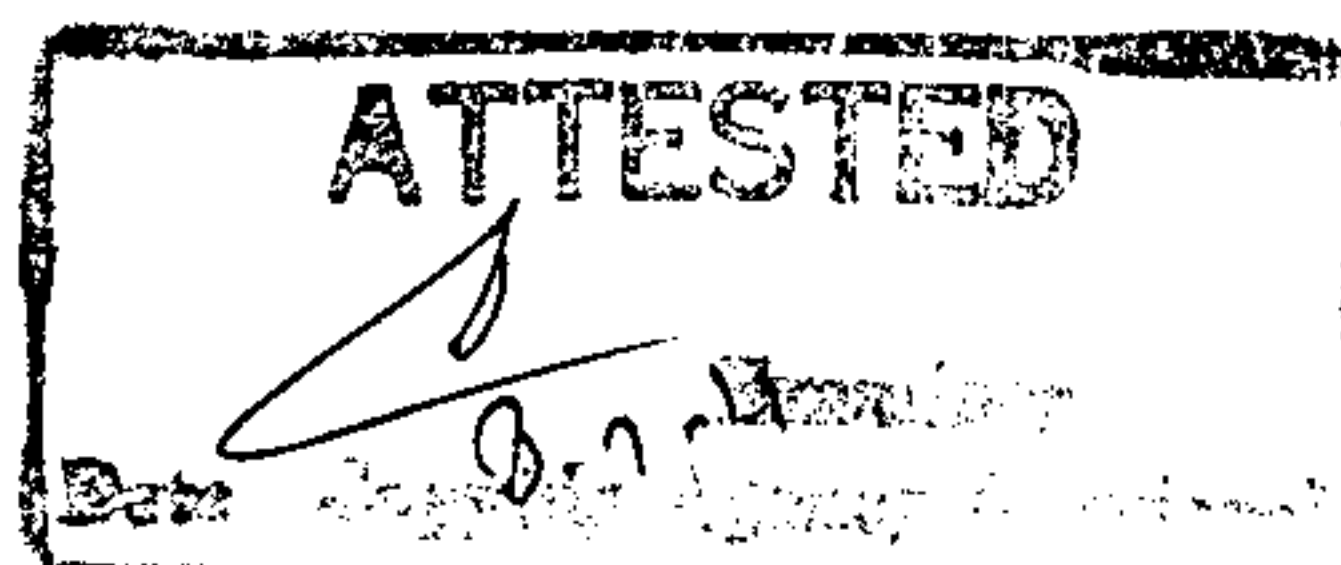
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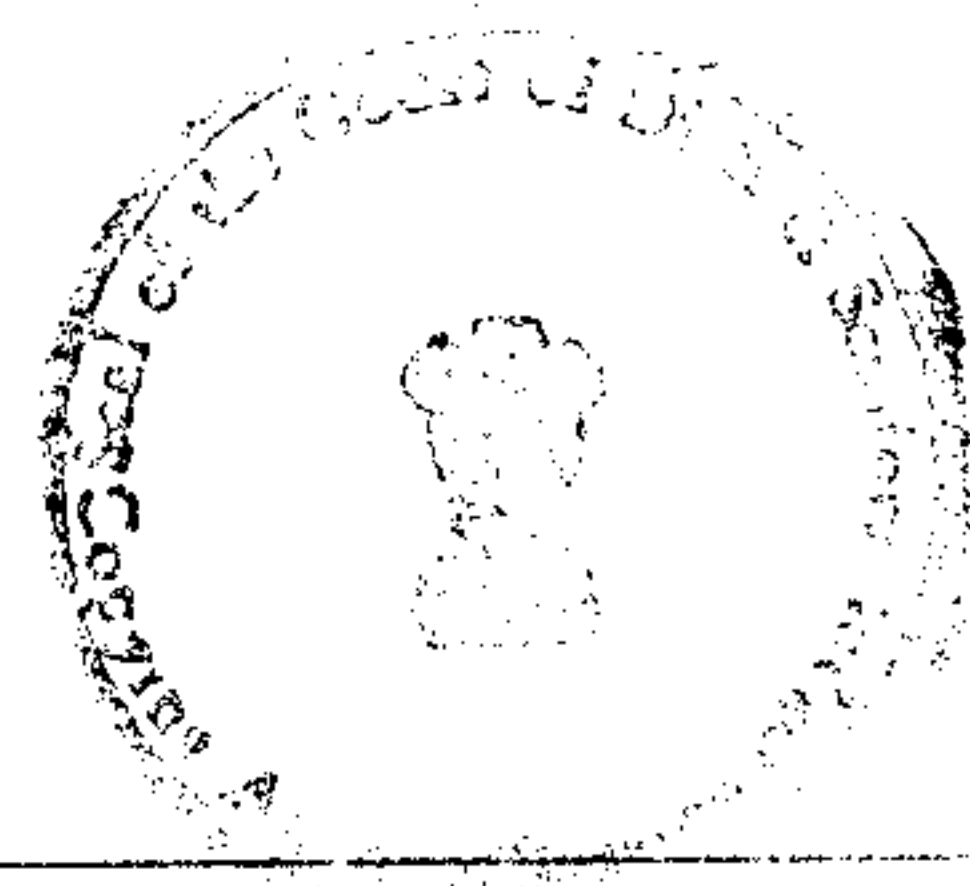
accused. Thus, it is argued that other accused persons were not in charge of, and responsible to, the conduct of company accused, thus they are not liable for the violations if any, committed by the company accused. Thirdly, it is argued that since the directors of the company accused had not received any notice from the SEBI, they are not liable for any violation. It is further argued that since company accused has already refunded the amount to the investors and had filed the winding up and repayment report with the SEBI on February 1, 2011, company accused is not otherwise liable for any violation.

11. On the other hand, Counsel for complainant controverted the said contentions on the ground inter-alia that the alleged winding up and repayment report was not filed on the prescribed format in terms of Regulations 73. It is further urged that company accused failed to produce any concrete evidence on record to prove that company accused had refunded the amount to the investors. Sh. Sanjay Mann, Counsel for complainant, further submitted that since the company was incorporated in the year 1997, company accused was not supposed to launch any CIS unless the company obtained registration certificate from the SEBI.

12. Admittedly, Section 12 (1B) was inserted in the SEBI Act by way of Amendment in the year 1995 whereas the Section 11AA

*4/7/11*



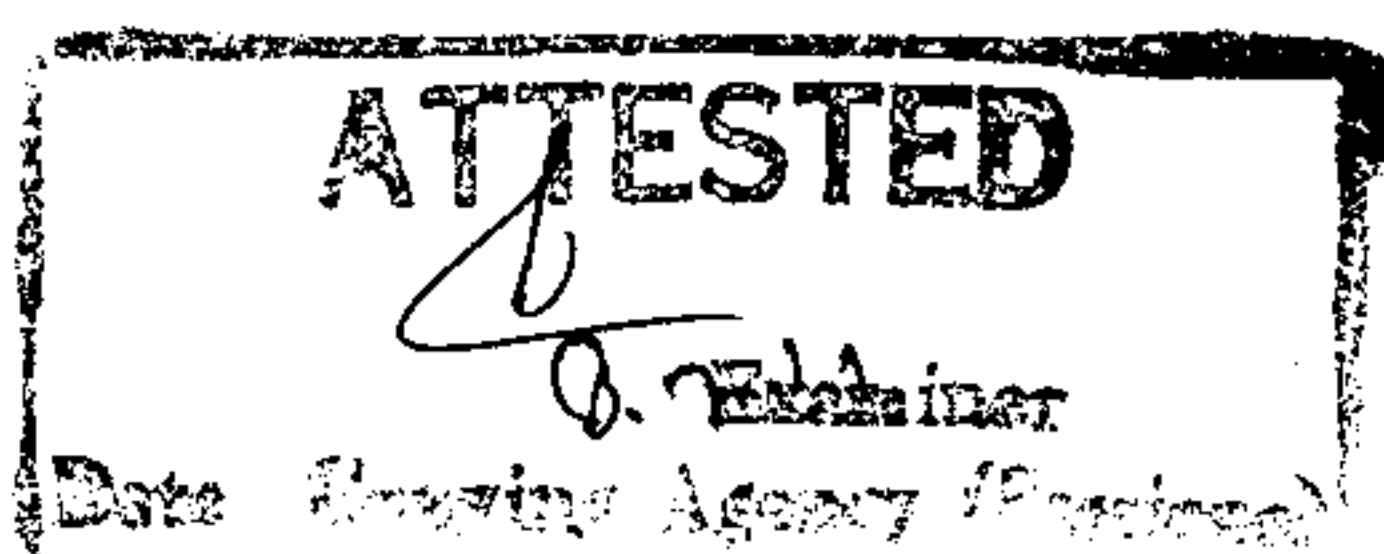


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wherein CIS is defined, was inserted in the Act by way of Securities Laws (Amendment) 1999 w.e.f. January 22, 2000. As per provision of Section 12 (1B) of the Act, "No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations." In view of the Section 12 (1B) of the Act, it is argued that since CIS was not defined in the Act prior to inserting Section 11AA in the SEBI Act, company accused was not bound to obtain the registration certificate from the SEBI. The same question had arisen before Allahabad High Court (Lucknow Bench) in case **Paramount Bio-Tech Industries Limited Vs. Union of India**, **INDLAW ALL 168**. In para 53 & 67 of the said judgment the said question was dealt with thus, the same are reproduced as under:-

**Para 53:**

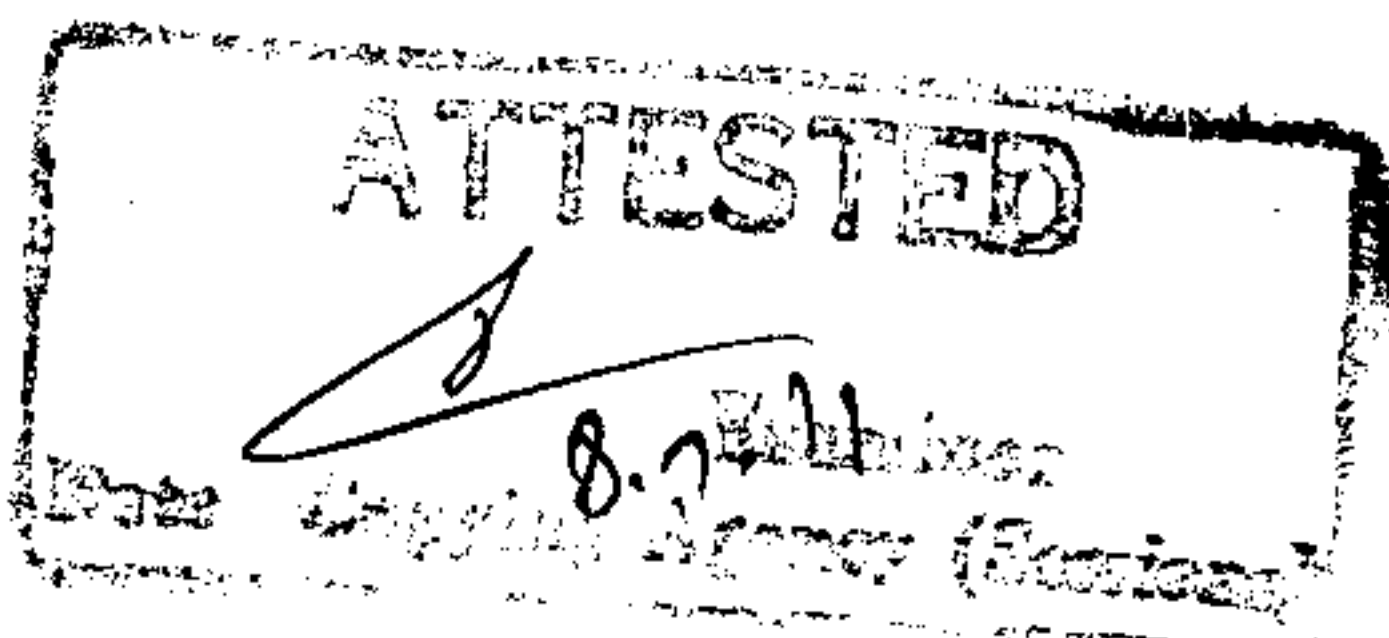
*"In paragraph 54 of the counter-affidavit, it is stated that the expression 'collective investment schemes' is concept, which was known throughout the world in financial circles. The Dave Committee in its report observed that 'collective investment scheme' is a generic term, and, therefore,*



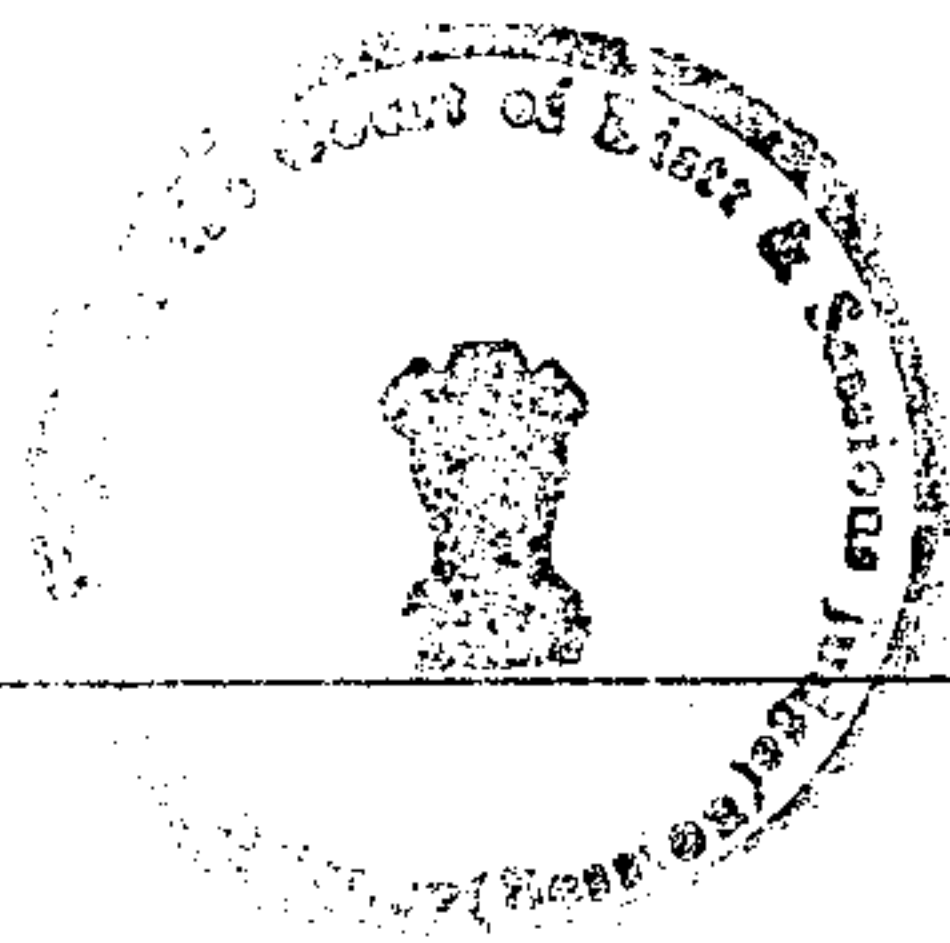


would encapsulate within its fold various activities, which have been found to have certain specific characteristics. It is alleged that the definition of collective investment schemes as inserted by the Securities Laws (Amendment) Act, 1999, is substantially the same as mentioned in the Dave Committee Report. The expression 'collective investment scheme' though not initially defined under the statute, was generally understood to include such schemes as all floated for mobilisation 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 employment of such common corpus. In the absence of the definition of 'collective investment scheme' it cannot be said that the SEBI has no power to regulate such scheme. In fact, such power is conferred under section 11 (2) (c) of the SEBI Act. The Securities Laws (Amendment) Act, 1999, defines the 'collective investment scheme' by inserting section 11AA and section 2(h) (ib).









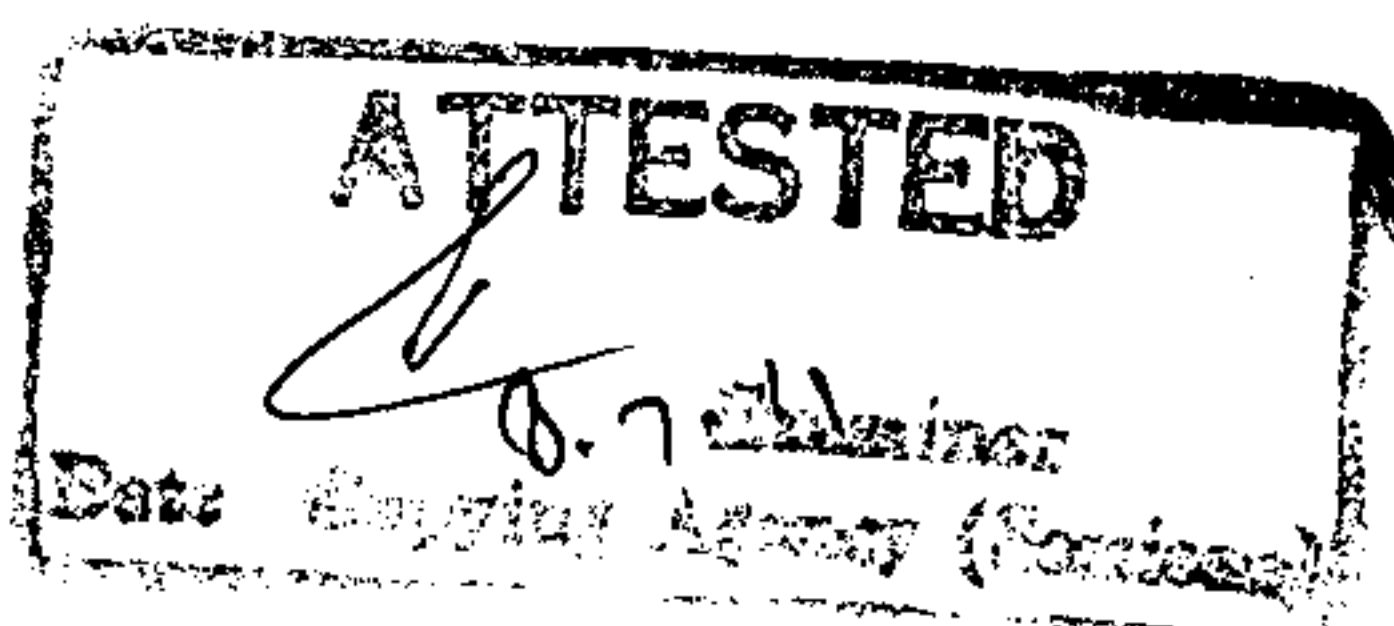
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**Para 67:**

*"The expression 'collective investment scheme' was not defined initially in the SEBI Act. However, it was used in section II(2)(c), and its meaning explained in Chapter 2 of the Dave Committee Report (vide Annexure CA 12), which refers to the How they Test 3 as laid down by the U.S. Supreme Court. We are of the opinion that in the absence of a statutory definition before 1999-the definition given by the Dave Committee Report should be accepted as it is the opinion of experts. The court should ordinarily defer to the opinion of experts. In the commercial world, this expression had almost the same meaning which has now been specifically given in Section 11 AA which has been introduced by the Securities Laws (Amendment) Act, 1999, which is as follows:*

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

*(2) Any scheme or arrangement made or*



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*offered by any company under which-*

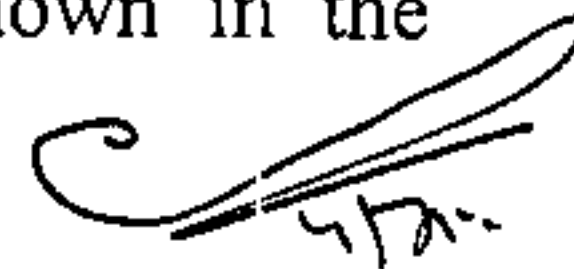
*(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilised for the purpose of the scheme or arrangement;*

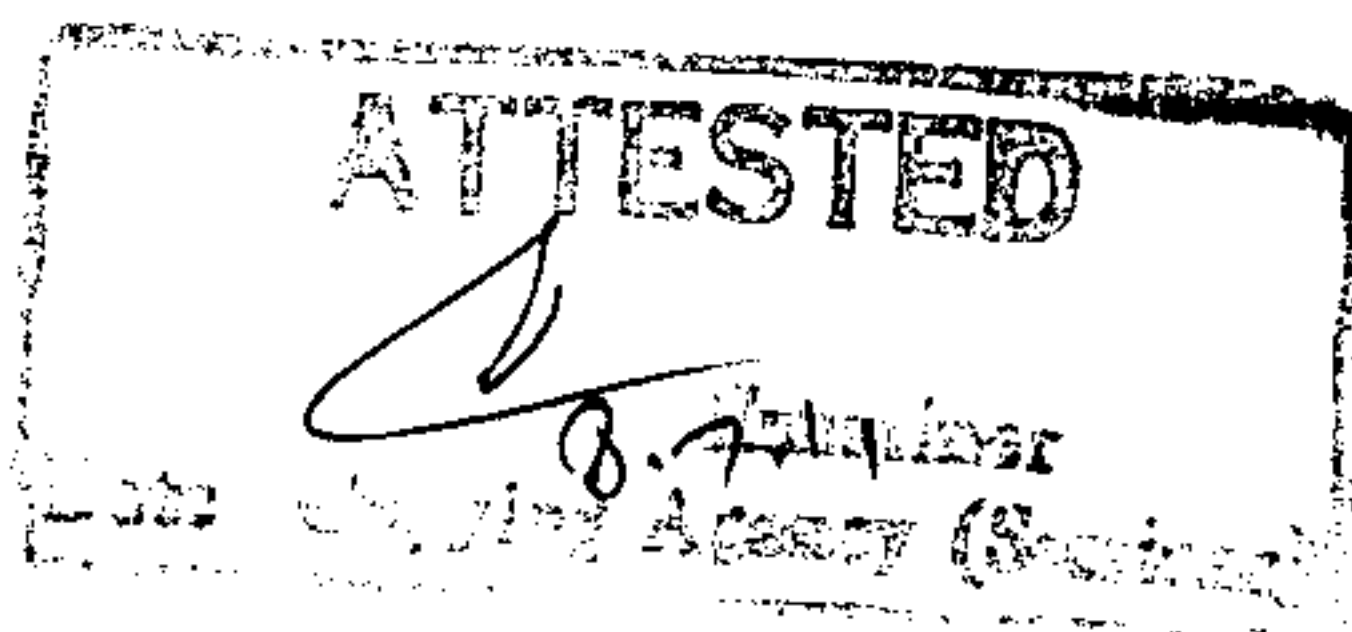
*(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;*

*(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.*

13. In view of the law laid down in the aforesaid case, I do not find any substance in the contention of counsel for the accused persons. Merely, fact that CIS was not defined in the Act prior to insertion of Section 11AA in the SEBI Act does not mean that CIS was not in existence. Since the CIS was well known in the



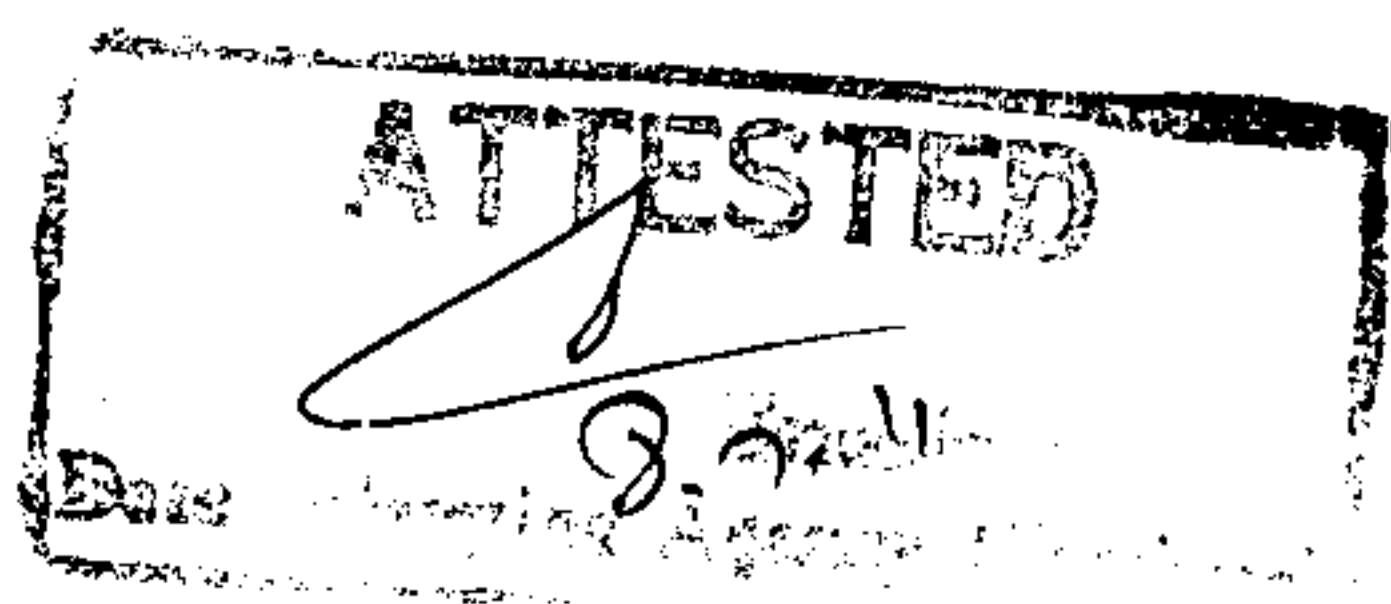


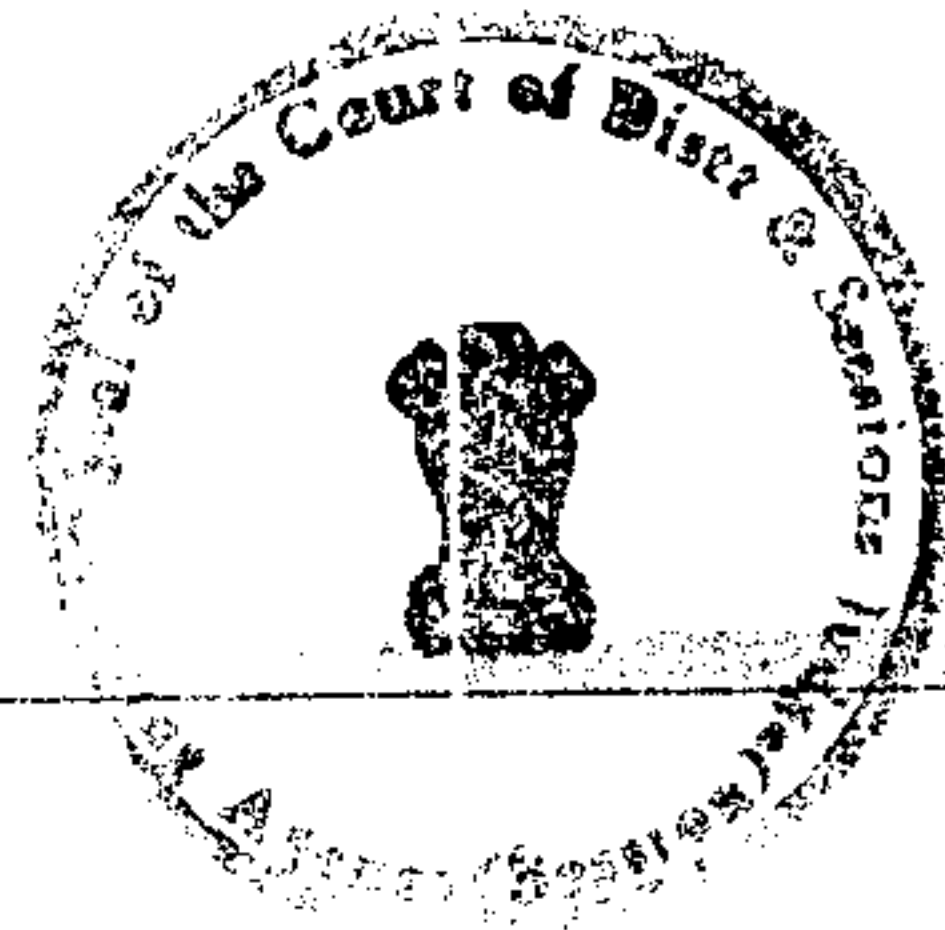
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commercial world and specifically defined in Dave Committee Report which was also similar to the definition as mentioned in Section 11AA of the SEBI Act, thus, it cannot be said that company accused was not aware about the CIS as referred to in Section 12 (1B) of the Act.

14. It is undisputed fact that company accused was incorporated in March, 1997 and had started its business on April 10, 1997 whereas company accused had mobilised the funds through CIS during July 1997 to December 14, 1997. In view of provision of Section 12 (1B) of the Act, after 1995, company accused was not supposed to launch any CIS unless obtained the certificate of registration from the Board of the SEBI in accordance with the Regulations. Thus, by mobilizing the funds through CIS without obtaining the certificate from SEBI, company accused had violated the Section 12 (1B) of the SEBI Act.

15. Admittedly the company accused had sent a letter dated 28.04.1998 which is already exhibited as Ex. CW1/8 to the SEBI intimating the SEBI that Sh. Nagesh Kumar Singh ("A2"), Sh. Om Parkash Singh ("A3") & Ms. Nirupama Singh ("A4") were the directors of the company accused. Even their names are also mentioned in the Article of Associations of the company accused. Even this fact is not disputed by the counsel for the accused





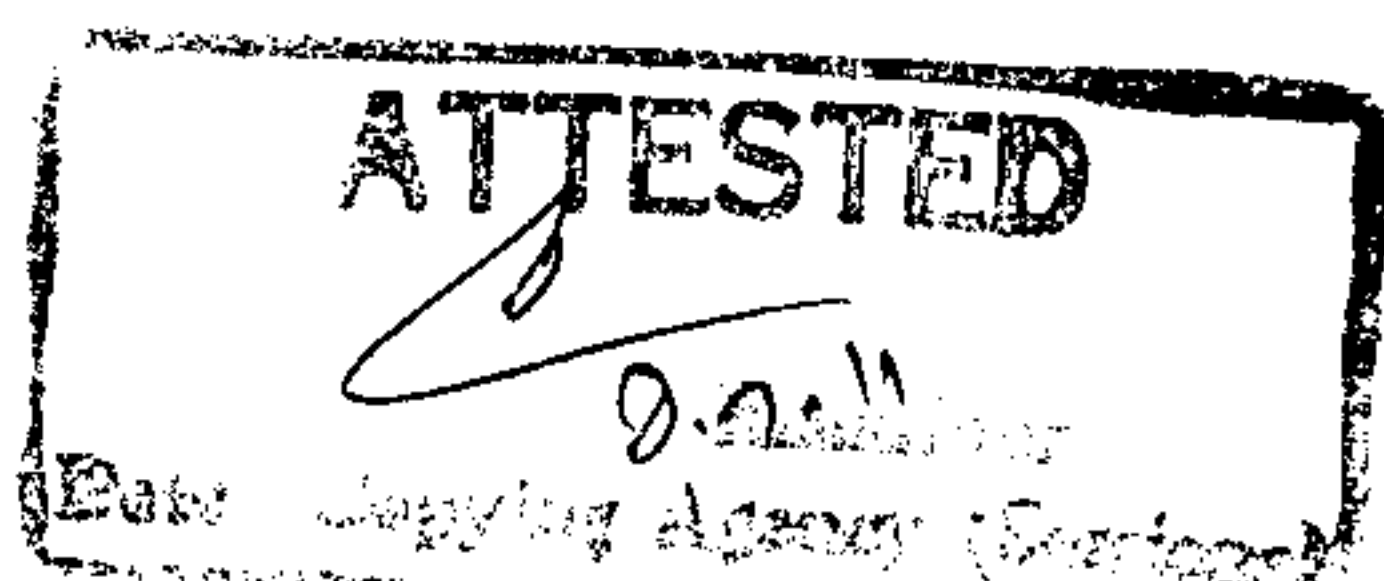
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persons. Though, complainant has also prosecuted A5 to A8 alleging that they were also in charge of, and responsible to, the conduct of the company accused, yet during the course of arguments, counsel for complainant SEBI, fairly conceded that A5 to A8 were merely the share holders in the company accused, thus they were not in charge of, and responsible to, the conduct of the company accused. Perusal of the Article of Associations of the company accused, reveals that A5 to A8 were only the subscriber/shareholders of the company accused. During the trial, complainant failed to establish that A5 to A8 were in charge of, and responsible to, the conduct of the company accused. Thus, they cannot be held liable for the violation if any, committed by the company accused. However, there are sufficient evidence on record to establish that A2 to A4 were the directors of the company accused and being the directors they were in charge of, and responsible to, the conduct of the company accused. Thus, they would be liable for the violation, if any, committed by the company accused. Even this fact is also fairly conceded by the counsels for accused persons.

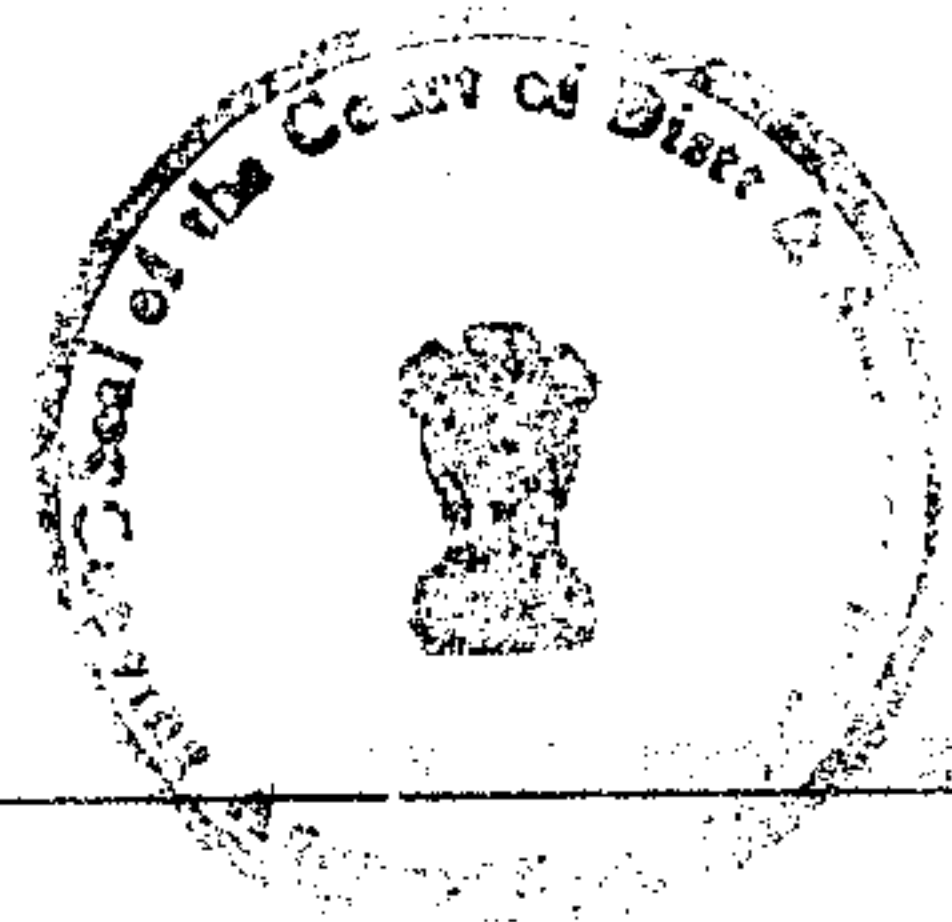
16. As already discussed that company accused had mobilised funds to the tune of Rs.23.80 lac during the period July 1997 to December 97 which was in violation of Section 12(1B) of SEBI Act. It is also undisputed fact that the CIS regulation were notified

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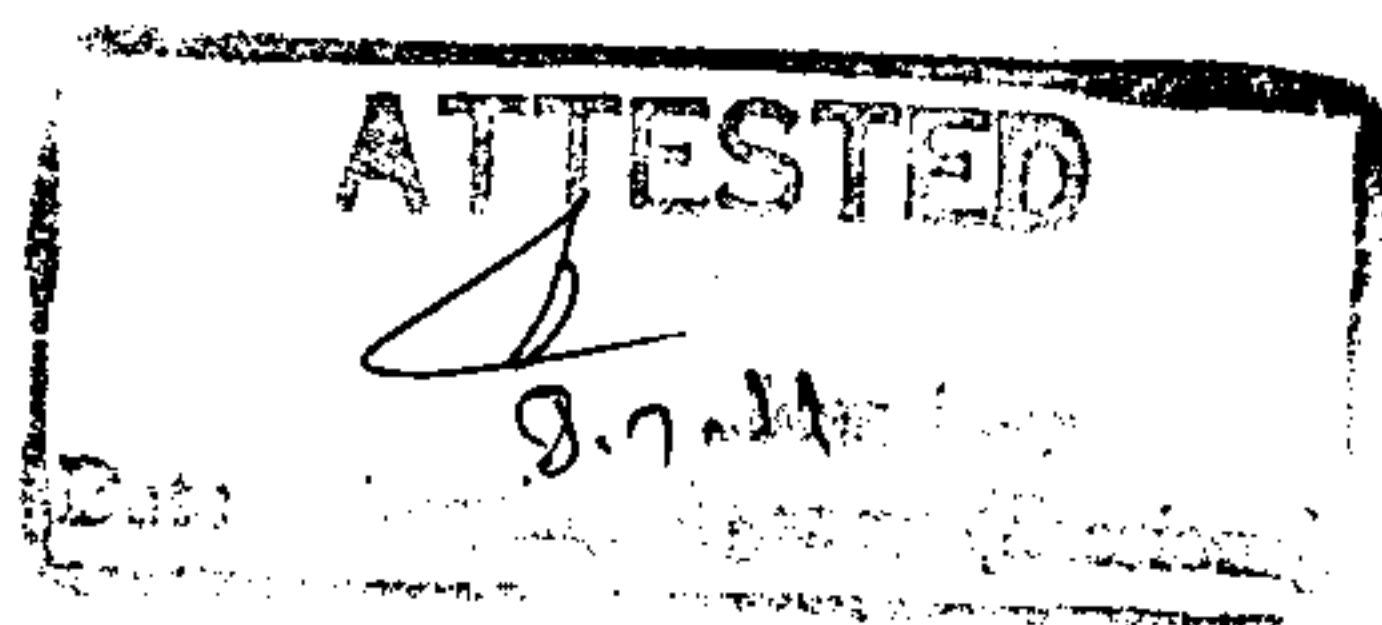




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on October 15, 1999 wherein SEBI had given another chance to the companies which had mobilised funds through CIS in violation of Section 12(1B) of the SEBI Act, to get register themselves with the SEBI and to obtain certificate from the Board. As per Regulation 5, company accused was supposed to move an application before the SEBI within two months from the date of notification to seek registration for the CIS but admittedly, company accused failed to make any such application. As per Regulation 73, if any company fails to make an application in terms of Regulation 5 or if the application is moved but same is rejected by the SEBI, such companies were bound to refund the amount to the investors and to submit the winding up and repayment report on the prescribed formate. Admittedly, the company accused had not submitted the winding up and repayment report prior to February 1<sup>st</sup>, 2011 whereas the complainant had launched the prosecution in December 2003. Thus, the company accused had also violated the Regulation 73. Though, Counsel for accused took the defence that company accused had filed winding up and repayment report on February 1<sup>st</sup>, 2011 yet the same was not filed on prescribed format as mentioned in the CIS Regulation. Thus, it cannot be said that the company accused had complied with the provision of Regulation 73 in its letter and spirit. To my mind, the company accused had violated the Regulation 5 & 73 of the CIS Regulations.

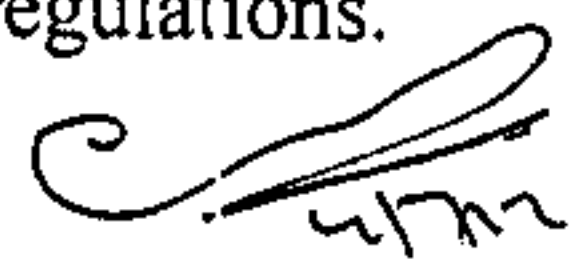
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17. Ld. Counsel further argued that since the A2 to A4 had not received any notice from the SEBI, they were not liable for any violation, if any, committed by the company accused. In this regard, the testimony of CW1 is relevant. Perusal of the testimony of CW1 reveals that the letters were sent to the company accused from time to time but the same were returned with the report that company accused was not functioning at the given address, thus returned undelivered. Thereafter, the press release was issued from time to time and public notice was also issued on 10.12.1999, 22.2.2000 and lastly on 7.12.2000. Since, the press release and public notices were issued from time to time. Thus, it cannot be said that no proper notice was given to A2 to A4. Moreover, the compliance of provisions of SEBI Act and CIS Regulations were mandatory in nature, thus the onus was upon the accused persons to comply with the said provisions. Thus, accused cannot be permitted to take an excuse that since they had not received the letter from the SEBI, they would not be liable for violation, if any, committed by the company accused. Thus, to my mind the said contention is without any substance.

18. At last, counsel for the accused took the defence that since the company accused had refunded the amount to the investors, company accused is not liable for the violation of CIS regulations.

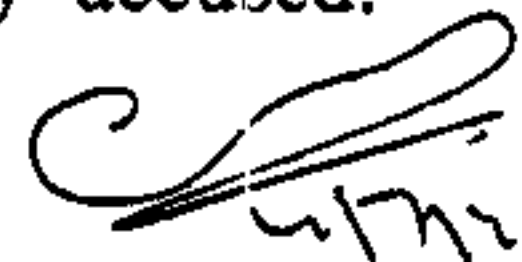


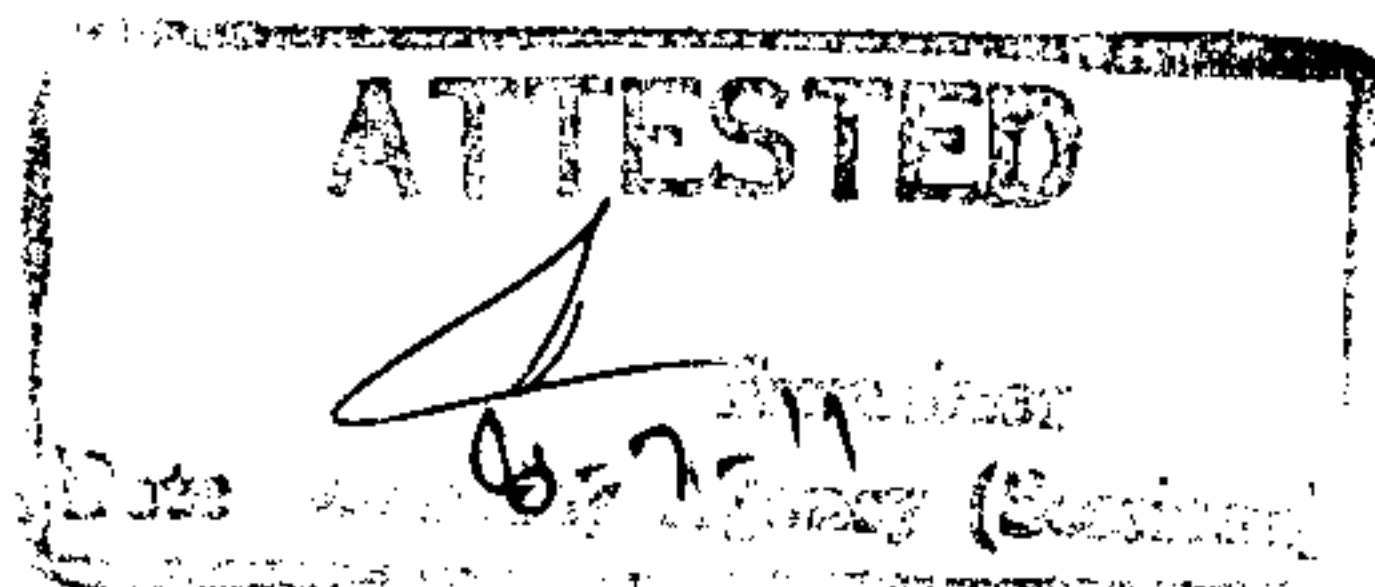


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Refund of the amount to the investors is one of the terms of Regulation 73 of the CIS Regulations. After refunding the amount, company accused was bound to submit the winding up and repayment report with the SEBI on the prescribed formate which company accused failed to do so. Refund of amount to the investors may be a relevant fact at the time of determining the sentence, but ipso facto it does not prove that company accused had not violated Regulation 73.

19. From the on going discussion, it becomes clear that company accused had mobilised the funds to the tune of Rs. 23.83 lac from the general public without obtaining registration certificate from SEBI. It is also established that company accused had also violated the regulation 5 by not moving an application for seeking registration with the SEBI within the prescribed period. Company accused further violated the Regulations 73 of CIS regulations by not submitting the winding up and repayment report with the SEBI on the prescribed formate. Thus, company accused has violated the Section 12(1B) of the SEBI Act. As already discussed A2 to A4, being the directors of the company accused were in charge of, and responsible to, the conduct of the company accused. Thus, in terms of Section 27 of the SEBI Act, they are also liable for the violation committed by company accused.





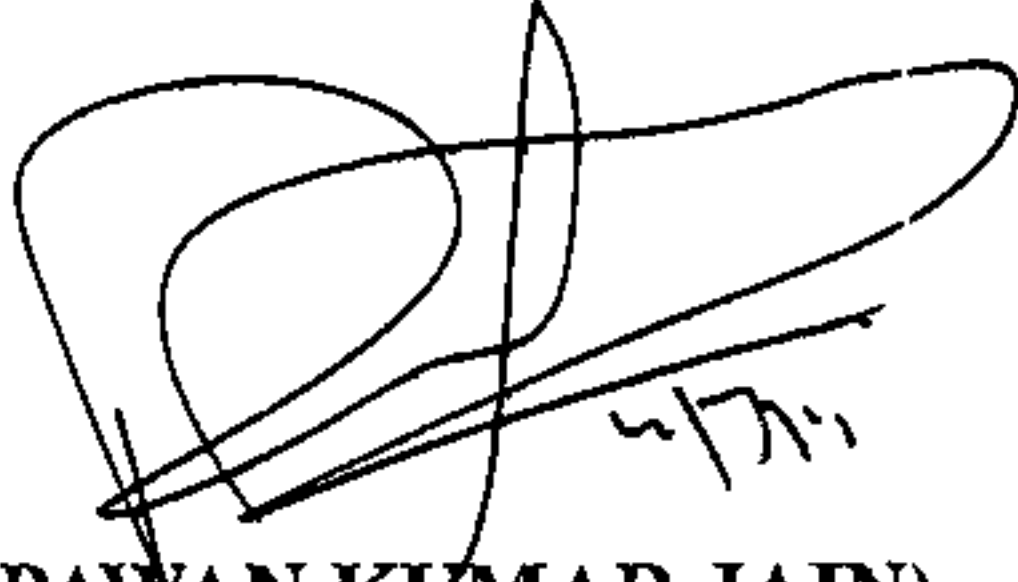


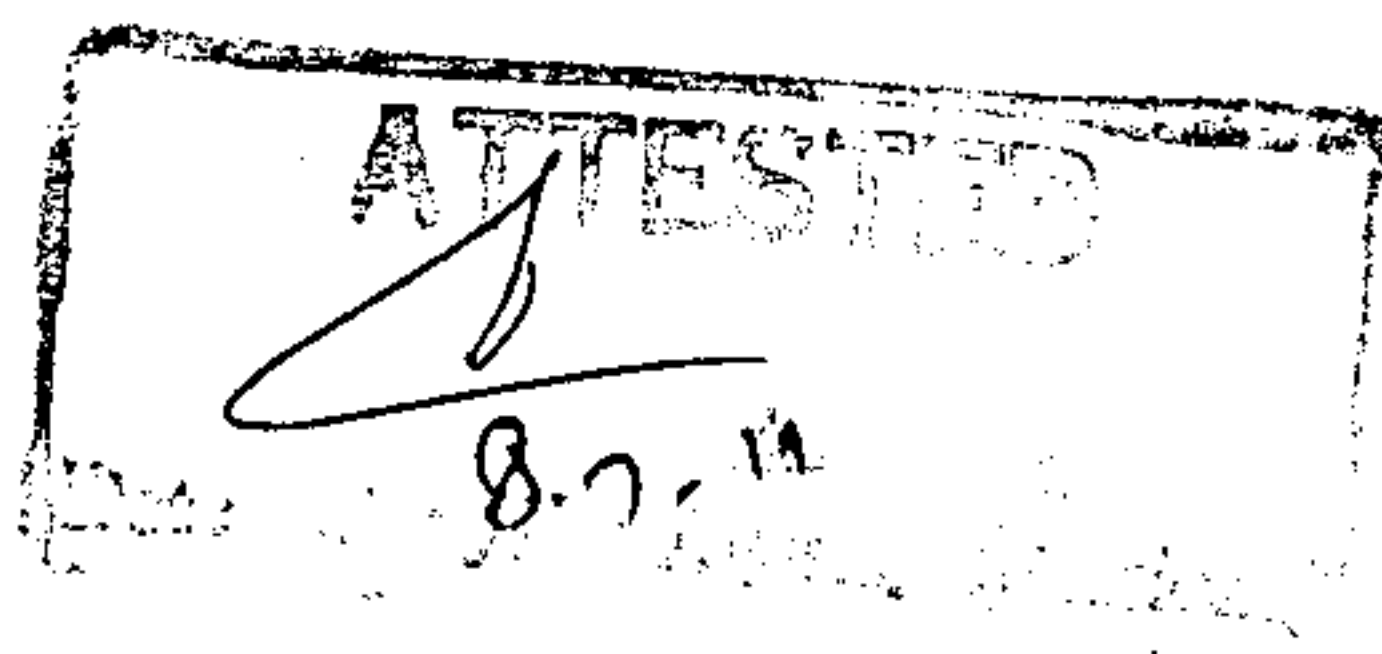
**SEBI Vs. M/S Akansha Agrotech (I) Ltd.**

20. Pondering the on going discussion, I am of the considered opinion that complainant succeeds to prove beyond reasonable doubt that company accused has violated the Section 12(1B) of the SEBI Act as well as regulations 5 (1) & 73 of the CIS regulations. Being the in charge of, and responsible to, the conduct of company accused, A2 Sh. Nagesh Kumar Singh, A3 Sh. Om Parkash Singh & A4 Ms. Nirupama Singh are also liable for the said violation. Accordingly, I hold A1, A2, A3 & A4 guilty for the offence punishable under Section 24 (1) read with section 27 of the SEBI Act.

21. Since, complainant fails to prove that A5 to A8 were in charge of, and responsible to, the conduct of the company accused, I hereby acquit A5 Mohd. Salim and A8 Sh. Sabhajeet Singh from the charges levelled against them. Since, A6 Sh. Rakesh Kumar Singh, A7 Sh. Mahendra Baha are proclaimed offenders, I hereby acquit them in their absentia from the charges levelled against them.

**Announced in the open Court.  
On this 4<sup>th</sup> day of July, 2011**

  
**(PAWAN KUMAR JAIN)**  
Additional Sessions Judge-01,  
Central/THC/Delhi





SEBI Vs. M/S Akansha Agrotech (I) Ltd.

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

Complaint Case No. 59/10  
ID No: 02401R0230732003

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 Rajendra Place, New Delhi and represented by its Manager Ms. Rekha Verma.

Versus

1. M/S Akansha Agrotech (1) Ltd. having its Registered office at Malik Mau, Sultanpur, Road, Rae Bareli-229001

.....Convict no.1

2. Sh. Nagesh Kumar Singh (Director) S/o Sh. B. B. Singh, 8/7, PWD Colony, Doorbhash Nagar, Rai Bareilly-229 010

.....Convict no.2

3. Sh. Om Prakash Singh (Director) S/o Sh. Bishwander Singh, 324, Sector II, Iti Colony, Doorbhash Nagar, Rai Breili-2290101  
Also at: 101, Malik Man Colony, Rai Barelli.

.....Convict no.3


4. Ms. Nirupama Singh (Director) W/o Sh. A. K. Singh, C-67, PWD Colony, Doorbhash Nagar, Rai Barelli -229 010

.....Convict no.4



CC No. 59/10

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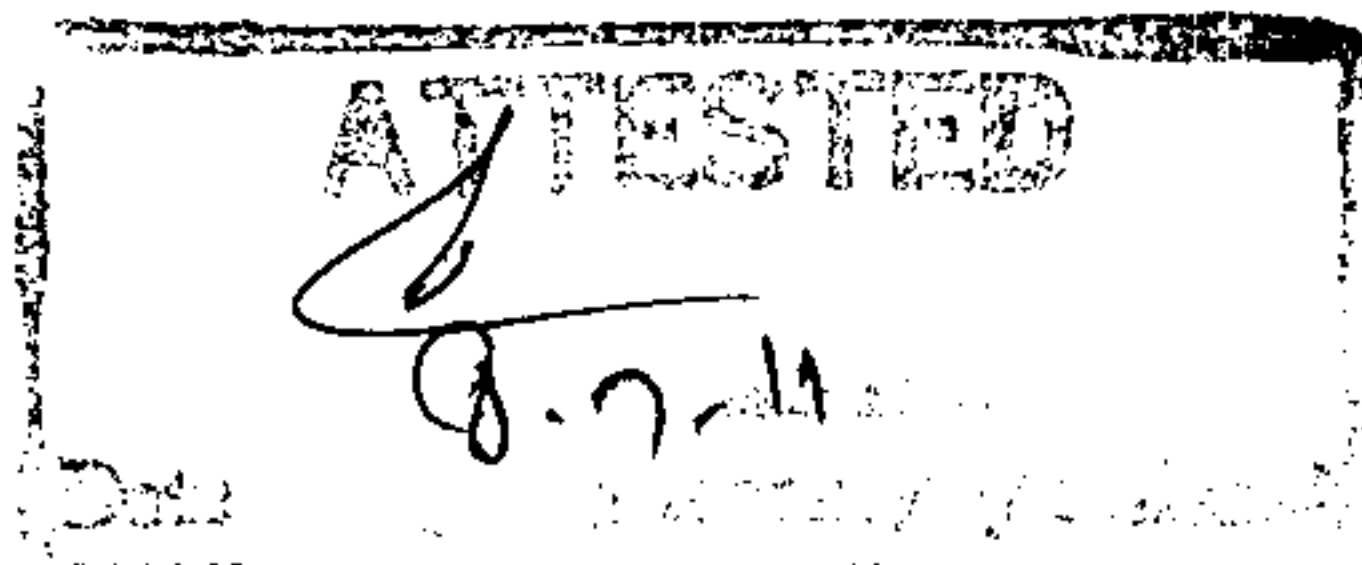
ATTESTED  
  
8-7-11

SEBI Vs. M/S Akansha Agrotech (P) Ltd.

**Present:** Sh. Sanjay Mann, Advocate, Counsel for  
complainant SEBI.  
Sh. S.K. Pandey, Advocate, Counsel for all  
convicts.

**ORDER ON THE POINT OF SENTENCE:**

1. Vide judgment dated 02.07.2011, A1 i.e. Company accused, A2 to A4 have been held guilty for the offence punishable under Section 24 (1) read with Section 27 of the SEBI Act.
2. Counsel for the convicts requested for a lenient view on the ground that convict no. 2 & 3 are the sole bread earner of their respective family and there is no previous conviction against them. Counsel further submitted that convict no. 4 is a housewife and she also has no previous criminal record. It is further submitted that company accused (convict no.1) had already refunded the amount to the investors and company accused (convict no.1) had also filed the winding up report with the SEBI but the same was not on the prescribed formate. On the other hand, Counsel for complainant requested for maximum punishment with substantial fine on the ground that company accused (convict no.1) had mobilized fund to



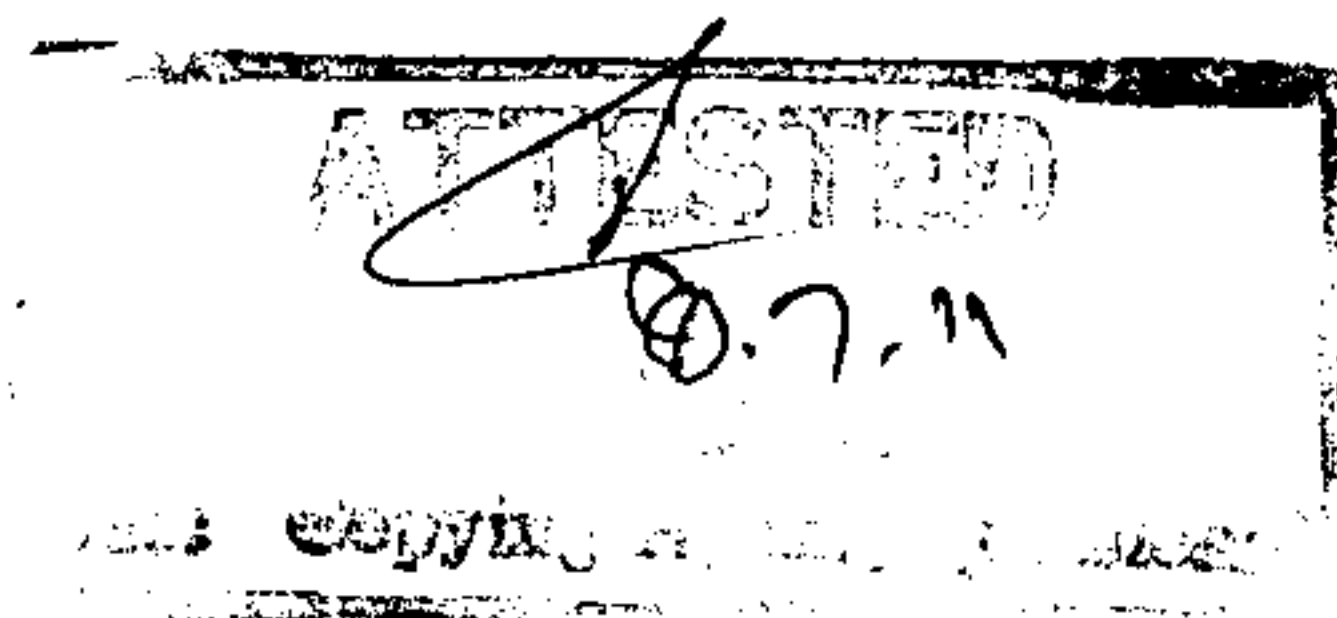
**SEBI Vs. M/S Akansha Agrotech (I) Ltd.**

the tune of Rs. 23.80 lac from the general public and till date company accused (convict no.1) had not refunded the said amount to the investors and even company accused (convict no.1) had not filed the winding up and repayment report with the SEBI. On being asked, Counsel for complainant submitted that no complaint from any of the investors is pending.

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

4. Admittedly, company accused (convict no.1) had mobilised the fund to the tune of Rs. 23.80 lac from the general public and company accused (convict no.1) had not filed the winding up and repayment report on the prescribed formate with the SEBI till date. However, during the trial, company accused (convict no.1) has examined several investors to establish that company accused (convict no.1) had refunded the amount to the investors. Though convicts are liable to be held guilty for the violation committed by the company accused (convict no.1), yet refund of the amount is a relevant mitigating factor to determine the sentence. Admittedly, there is no criminal record against any of the convicts and convict no. 4 is a female aged about 61 years whereas convict no.2 & 3 are

  
4/7/11



SEBI Vs. M/S Akansha Agrotech (I) Ltd.

the sole bread earner of their family. Considering all these facts, I am of the opinion that ends of justice will be met if convicts are burdened with the substantial amount of fine. Accordingly, I hereby impose a fine of Rs.1.50 lac on each of convicts i.e. Convict No. 1 to 4 in default 3 months Simple Imprisonment for the offence punishable under Section 24 (1) of the SEBI Act.

4. Copy of judgment alongwith order on the point of sentence be given to the convicts free of cost.

5. File be consigned to record room.

*Announced in the open Court  
on this 4<sup>th</sup> day of July, 2011*

  
(PAWAN KUMAR JAIN)  
ADDITIONAL SESSIONS JUDGE-01  
Central/THC/Delhi

